

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Levaquin Products
Liability Litigation File No. 08-md-1943
(JRT/AJB)

Minneapolis, Minnesota
March 13, 2013
2:55 P.M.

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

APPEARANCES

For the Plaintiffs: **RONALD S. GOLDSER, ESQ.**
CHARLES ZIMMERMAN, ESQ.
COREY SULLIVAN, ESQ.
JOHN CAREY, ESQ.

Via telephone: **KEVIN FITZGERALD, ESQ.**
KRISTIAN RASMUSSEN, ESQ.
ELIZABETH PETERSON, ESQ.
PAIGE BOLDT, ESQ.
BILL BROSS, ESQ.
JODY RUDMAN, ESQ.
DAVID BAUMAN, ESQ.
SARAH MCNEELY, ESQ.
JOSEPH SOFFEY, ESQ.

For the Defendants: **TRACY J. VAN STEENBURGH, ESQ.**
DANA LENAHAN, ESQ.
WILLIAM ESSIG, ESQ.
JOHN WINTER, ESQ.

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Proceedings recorded by mechanical stenography;
transcript produced by computer.

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2:55 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon.
All right. This is MDL 08-1943, In Re: Levaquin Products
Liability Litigation.

Let's have counsel note appearances, first here
in the courtroom for plaintiffs.

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

THE COURT: Mr. Goldser.

MR. CAREY: Good afternoon, Your Honor. John
Carey for plaintiffs.

THE COURT: Mr. Carey.

MR. SULLIVAN: Good afternoon, Your Honor. Corey
Sullivan for plaintiffs.

THE COURT: Mr. Sullivan.

MR. ZIMMERMAN: Good afternoon. Bucky Zimmerman
for plaintiffs.

THE COURT: Mr. Zimmerman. Good afternoon to all
of you.

Now for defendants in the courtroom?

MS. VAN STEENBURGH: Tracy Van Steenburgh for
defendants.

THE COURT: Ms. Van Steenburgh.

1 MR. WINTER: Good afternoon, Your Honor. John
2 Winter.

3 THE COURT: Good afternoon, Mr. Winter.

4 MS. LENAHAN: Your Honor, Dana Lenahan for the
5 defendants.

6 THE COURT: Ms. Lenahan.

7 MR. ESSIG: Bill Essig.

8 THE COURT: Mr. Essig, welcome back. We have a
9 number of people on the telephone.

10 If you would just go through for plaintiffs?

11 MR. RASMUSSEN: Good afternoon, Your Honor.

12 Kristian Rasmussen, counsel for plaintiffs.

13 MR. FITZGERALD: Hello, Your Honor. This is
14 Kevin Fitzgerald for plaintiffs.

15 MR. SOFFEY: Good afternoon, Judge. This is Doug
16 Soffey, counsel for plaintiffs.

17 MS. MCNEELY: Good afternoon, Your Honor. This
18 is Sarah McNeely for the plaintiffs.

19 MS. RUDMAN: Good afternoon, Your Honor. This is
20 Jody Rudman for plaintiffs.

21 MR. BROSS: Hello, Your Honor. This is Bill
22 Bross for the plaintiffs.

23 MR. BAUMAN: Good afternoon, Your Honor. David
24 Bauman for the plaintiffs.

25 MS. PETERSON: Good afternoon, Your Honor.

1 Elizabeth Peterson for the plaintiffs.

2 THE COURT: All right. Anyone else for
3 plaintiffs on the phone?

4 MS. BOLDT: Good afternoon. Paige Boldt on
5 behalf of Ryan Thompson for the plaintiff.

6 THE COURT: All right. Anyone for defendants on
7 the phone?

8 MS. VAN STEENBURGH: Your Honor, Mr. Irwin was
9 going to appear, but he was called away with a family
10 medical condition for an uncle, so he will not be joining
11 us today.

12 THE COURT: Okay. That's fine. Very well. Did
13 I get everyone on the telephone? Sounds like I did.

14 All right. Let's turn to the agenda today. Who
15 is going to begin? Ms. Van Steenburgh?

16 MS. VAN STEENBURGH: I will, Your Honor.

17 THE COURT: Mr. Goldser is ceding that position?

18 MS. VAN STEENBURGH: Yes. I am actually going to
19 ask that Mr. Essig come up and take his familiar place here
20 to report on the federal and state cases in the MDL and
21 state court in terms of numbers, the first item on the
22 agenda.

23 MR. ESSIG: Your Honor, just the basic numbers of
24 the cert case that we're aware of. Right now our count in
25 the MDL is 1921 cases still pending. Actually a couple new

1 cases this month have come through and are on their way
2 here to Minneapolis, and there are just a handful of state
3 court cases outside of New Jersey.

4 And perhaps Carey & Danis has two of them in
5 southern Illinois they can report on. There is another one
6 in Cook County still called Welu, and then in New Jersey,
7 Your Honor, there are 1355 active cases remaining, and to
8 date in New Jersey, there are roughly about 360 dismissals
9 that have been finalized.

10 There is another 400 some cases in New Jersey
11 that have been settled in principle where the dismissals
12 have not yet been entered, so that would be roughly 770
13 some dismissals in New Jersey shortly.

14 THE COURT: And what's the total in Illinois
15 state court right now?

16 MR. ESSIG: Your Honor, there is two cases still
17 pending in southern Illinois, Brown and Sprehe, and one
18 case in Cook County up in Chicago called Welu.

19 THE COURT: All right.

20 Mr. Carey.

21 MR. ESSIG: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Essig.

23 MR. CAREY: Yeah. Your Honor, just commenting on
24 the two cases remaining in Illinois state court, we have
25 completed all the discovery, including fact specific, case

1 specific experts. The cases were actually set for trial in
2 St. Clair County, Illinois. The local counsel, the trial
3 counsel for the defendants is a good friend of ours.
4 Unfortunately he got very ill, got cancer, had to have
5 surgery. So we agreed to continue those cases. They
6 haven't been reset.

7 Since then, we have engaged in some discussions
8 with the local counsel for the defendants about the
9 possibility of resolving our cases. We appear to be at an
10 impasse right now. So we might request the Court to reset
11 those cases for trial in Illinois. So that's the current
12 status of Illinois.

13 THE COURT: The number three is correct?

14 MR. CAREY: Pardon?

15 THE COURT: There we go. Three is correct in
16 Illinois?

17 MR. CAREY: Two.

18 THE COURT: Two, two cases.

19 MR. CAREY: Brown and Sprehe are the two cases
20 left.

21 THE COURT: Okay.

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

23 THE COURT: Can we try this again? Those of you
24 on the phone, if you wouldn't mind hanging up and
25 re-dialing back in? We will try this first. Okay?

1 most of the cases settled. Number four is the status of
2 the PTO.

3 MR. GOLDSER: And from the plaintiffs'
4 perspective, I think the process is going smoothly. Where
5 there are difficulties and impasses, we have enlisted the
6 aid of Magistrate Judge Boylan, and he has graciously
7 agreed to have several conference calls. The Court may
8 have seen the minute entries from those that occurred
9 earlier this week.

10 I do want to make clear that while Mr. Carey has
11 several cases that are teed up for trial, he has a large
12 number of cases that are in settlement mode. So there is
13 still a large block of cases out there that he has, and I'm
14 sure that will come up, but I didn't want to lose sight of
15 that.

16 THE COURT: All right. Go ahead, Mr. Zimmerman.

17 MR. ZIMMERMAN: Thank you, Your Honor. I
18 communicated, I communicated this week with Mike London and
19 Rick Lanier -- Rick Meadow, excuse me, and they tell me
20 that everything is on track. However, Judge Higbee has
21 been tied up in some trials on some other matters and that
22 I was told that she is redrafting the order, but there
23 aren't any problems.

24 It seems like it has taken an inordinate amount
25 of time, and it makes us all a little concerned because I

1 think the New Jersey settlement dollars are getting close
2 to moving from the defendants to the plaintiffs' lawyers,
3 and this all has to be in place.

4 There is very little I can do, other than talk to
5 the lawyers in New Jersey, the plaintiffs' lawyers, but I
6 don't see a problem. I have not been told there is a
7 problem. It just isn't all folded in yet.

8 THE COURT: There has been no current expressed
9 opposition to the order?

10 MR. ZIMMERMAN: That's correct. There has been
11 no opposition expressed at all for a long time with regard
12 to the proposed order.

13 THE COURT: And she, Judge Higbee, just hasn't
14 gotten to it, is that it?

15 MR. ZIMMERMAN: What I have been told is, she was
16 involved in a very long trial, which I knew about.

17 THE COURT: Mm-hmm.

18 MR. ZIMMERMAN: And then I was told the day
19 before yesterday or yesterday that she is in the process of
20 redrafting a portion of the order. That was, Rick Meadow
21 told me that in an e-mail. I don't really have connection
22 to her chambers.

23 I don't really have an ability to interact with
24 her because I don't have any cases there, so I have to do
25 everything through the liaisons. I don't know. Maybe,

1 John, you know something more than I about what is going on
2 in New Jersey, but that's what I know.

3 I don't see it as a problem. If you might want
4 to reach out and find out if there is a problem or if it's
5 just a matter of timing and let us know, and then we can
6 react either way.

7 THE COURT: I'll try to reach her.

8 MR. ZIMMERMAN: Okay. Thank you.

9 MS. VAN STEENBURGH: I don't know if it makes any
10 difference, Your Honor, but I believe she started another
11 trial on Monday.

12 THE COURT: Did she?

13 MS. VAN STEENBURGH: So it may be a little tough
14 to reach her.

15 THE COURT: Well, it may take a little while, but
16 I'll start.

17 MS. VAN STEENBURGH: Item number 5 has to do with
18 the reduction of the bond in the *Schedin* case. Just very
19 briefly, I don't have anything necessarily to present today
20 other than to let the Court know that we're going to submit
21 a proposed order, and I wanted to make sure the plaintiffs
22 knew that we were going to submit a proposed order to
23 reduce the bond now that all of the issues -- other than,
24 there is one pending issue before the Eighth Circuit, and
25 that's the Rule 60 motion.

1 THE COURT: Mm-hmm.

2 MS. VAN STEENBURGH: So what we're requesting to
3 do is reduce the bond to the amount of the compensatory
4 damages plus interest and alleviate that portion that
5 represent the punitive damages. So I wanted to let
6 everyone know that that was our plan and that we will
7 submit an order to the Court accordingly unless anyone
8 objects to it.

9 MR. GOLDSER: Your Honor, I would expect that
10 Mr. Fitzgerald, if anyone, would have comments on that. I
11 know he's on the phone or at least was before we re-dialed
12 in, and so I would certainly anticipate if there were
13 issues that it would come from his office.

14 MR. FITZGERALD: This is Kevin. We would like to
15 see the proposed order, but if it is as Tracy just set
16 forth, I don't think we'll have any problems with it.

17 THE COURT: All right.

18 MS. VAN STEENBURGH: The next issue, Your Honor,
19 has to do with the fallout from the Court's order to show
20 cause relative to some of the PFSs, and Ms. Lenahan is
21 going to present that argument.

22 THE COURT: All right.

23 MS. LENAHAN: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MS. LENAHAN: A little bit of background as to

1 how we got here. You may recall that last year the
2 defendants raised this issue initially of plaintiffs who
3 have not submitted PFSs despite defendants having notified
4 them twice of their failure to do so.

5 You invited us to submit a proposed order
6 indicating that, that the plaintiffs had to either serve a
7 completed plaintiff's fact sheet or show cause as to why
8 they could not do that within 60 days, and Your Honor
9 entered that order on December 3rd of 2011.

10 According to the Court's order, then, there was,
11 these plaintiffs had 60 days to serve their completed
12 plaintiff's fact sheets, and that deadline expired on
13 February 1st of this year. As Your Honor is likely aware,
14 the majority of those cases in which the plaintiffs had not
15 served their PFSs were cases that were filed by the Carey &
16 Danis law firm.

17 So I'm sure they will be speaking to this, but
18 our next step then as the Court's ordered advised was that
19 the defendants could, if the plaintiffs didn't submit their
20 PFSs within that 60-day window, submit an order of
21 dismissal for those cases and Your Honor would dismiss
22 them.

23 So at the last status conference, you may recall
24 that Ms. Van Steenburgh raised this issue. As we were on
25 our way to the courthouse, we were advised that the Carey &

1 Danis law firm had sent PFSs that our office had received,
2 and we didn't have time to look at those before we came
3 here, so we did not raise the issue of dismissing them at
4 that time.

5 Afterwards, we took a look, and the vast majority
6 of the PFSs that they served were significantly deficient.
7 They range from, the plaintiffs haven't verified them, so
8 we have no indication of whether or not the plaintiffs have
9 actually looked at them, to not giving any medical
10 histories, to not listing providers, not providing authors
11 for medical records.

12 This is not in compliance with the Court's order
13 of December 3rd. They have had plenty of time to get the
14 information that they need from their clients. Some of
15 these cases were filed as early as 2010, so it's not an
16 issue of not having enough time. They just simply haven't
17 complied with the Court's order.

18 We think enough is enough at this point and the
19 Court should go ahead and dismiss those cases at this time.
20 Rather than submit -- I believe there is 51 of these cases
21 now that the plaintiffs from the Carey & Danis law firm
22 have submitted deficient PFSs.

23 Rather than submit all of those for the Court to
24 review or file them, because some of them do contain some
25 sensitive personal information, we just submitted a list

1 that identifies their deficiencies, but if Your Honor is
2 inclined, I brought a couple of them with me if you would
3 like to see them, otherwise we can submit them all to you,
4 but we submit that they should all be dismissed with
5 prejudice at this point.

6 THE COURT: Mr. Carey?

7 MR. CAREY: Thank you, Your Honor. Just so the
8 record is clear, we did submit plaintiff fact sheets on
9 each and every one of our claimants, so any suggestion that
10 we ignored this Court's order would simply not be accurate.

11 Now, they have some issues with whether these
12 fact sheets are completed, at least to the specificity that
13 they would like. They filed this motion on March 4th, nine
14 days ago. There is a meet and confer requirement under the
15 local rules. They didn't do that. They didn't even tell
16 us exactly what deficiencies they were complaining of.

17 Instead, we get form letters that said we don't
18 have what they considered a completed fact sheet. What I
19 would suggest to the Court, Your Honor, is give the parties
20 30 days, which we should have done in the first instance.
21 Let us see if we can cure these deficiencies.

22 I think that we will get the vast majority, if
23 not all of these issues resolved, and then we don't have to
24 burden the Court with it. I just wish they had contacted
25 us directly, said let's work together, let's figure out

1 what we think is deficient and let's see if we can get it
2 resolved. If we can't, you know, maybe we can agree to a
3 dismissal.

4 Maybe we have to take some issues up with the
5 Court, but it's premature. We're not even close to that
6 stage, and I wish they had given us that courtesy.

7 THE COURT: So are there plaintiff fact sheets
8 that are completely filled in properly out of these, out of
9 the group from Mr. Carey's law firm, or do they all have
10 deficiencies?

11 MR. CAREY: They listed 51. There is, I don't
12 know, many hundreds of others they don't have a complaint
13 about.

14 THE COURT: I see.

15 MR. CAREY: And so they picked out these 51.

16 THE COURT: Ms. Lenahan?

17 MR. CAREY: What I'm suggesting is, just let us
18 work together and see if we can get this resolved.

19 THE COURT: I understand. Sorry about the
20 configuration here. We had to have this for trial.

21 MS. LENAHAN: I find it kind of interesting that
22 he is complaining about our courtesy when they have not
23 provided us the courtesy of providing plaintiff fact sheets
24 in the three plus years that some of these cases have been
25 filed, but with that said, there is no question that they

1 have had plenty of notice about this.

2 I'm not suggesting they ignored the Court's order
3 in its entirety, because obviously they kind of complied,
4 but that doesn't cut it. We can't move forward on these
5 cases with the information that they have provided. I
6 think that at this point there is no reason to go forward
7 with another 30 days.

8 They just didn't do what they were required to
9 do, and I don't know how many more opportunities we need to
10 give them to do this. This has been an issue on the
11 Court's calendar for a long time and on our calendar, and
12 it's time to just be done with this.

13 THE COURT: Anything else, Mr. Carey?

14 MR. CAREY: I don't disagree with anything she
15 just said, Your Honor. At some point in time, we need to
16 get these matters resolved. I think if we work together we
17 will get it resolved. I think 30 days is a reasonable
18 amount of time. I don't know how the defendants feel about
19 that, but I'm hoping we'll get it resolved one way or the
20 other in 30 days if we work together.

21 THE COURT: Well, it's an issue. I mean, do you
22 need identification of deficiencies, or do you know what
23 the deficiencies are at this point in time?

24 MR. CAREY: We found out what the deficiencies,
25 what they claim they are, when they filed this motion on

1 March 4th. It's just a summary chart form. You pretty
2 much know what the deficiencies are from the March 4th
3 filing. That's what we know.

4 THE COURT: Okay.

5 MS. LENAHAN: Your Honor, there can be no dispute
6 about what the efficiencies are here. They're the ones
7 required to fill out the forms where there are huge chunks
8 of blank spots, so this isn't a question of we need to
9 identify for them what they're required to do. They're
10 required to do this.

11 There is just one thing I want to point out that
12 I didn't mention earlier, and that is, I believe there may
13 be one case that is listed on our exhibit in error that may
14 be another law firm's case. So if Your Honor is inclined
15 to grant this motion to dismiss, we will submit a proposed
16 order that omits that one case, but otherwise we believe
17 all of these should be dismissed, and there is no reason
18 for further delay to do this.

19 Obviously, these weren't important enough for
20 them to actually go through and get their clients to verify
21 these and submit all the important information that the
22 Court requires.

23 MR. CAREY: Your Honor, they didn't even comply
24 with local Rule 7.1 concerning dispositive motions. Under
25 the local rules, we were to be given 21 days to file a

1 responsive pleading, which we haven't even been allowed
2 that. I mean, I don't want to waste the Court's time
3 arguing about technicalities. I'm here to address the
4 point, but they haven't even complied with this Court's
5 local rules regarding dispositive motions.

6 So it would be inherently unfair to us and
7 contrary to this Court's local rules to grant this motion
8 at this time.

9 MS. LENAHAN: Your Honor, again, again, the
10 plaintiffs' counsel did not comply with the Court order,
11 and this is not a typical dispositive motion because Your
12 Honor had already advised the defendants that they could
13 submit an order to dismiss cases in which they did not
14 comply with Your Honor's prior order. So that's why this
15 is not presented as a typical motion to dismiss.

16 THE COURT: Are there other cases that we need to
17 dismiss, other than the ones that we're talking about here,
18 that plaintiff fact sheets were not submitted pursuant to
19 the Court's order?

20 MS. LENAHAN: I believe there may be some that we
21 need to submit now that have since become deficient, but I
22 think some of those may be cases that are in settlement
23 mode right now. So I don't have a list of those, but I do
24 believe that if there are certain deadlines not met, we're
25 going to have an additional set of PFSs that are deficient,

1 and we'll need to move on those.

2 THE COURT: All right. Okay. Well, I will give
3 an additional 30 days for these documents to be done, but
4 there will be no further extensions on this. So if it's
5 not done at the end of 30 days, I will dismiss any cases.

6 All right. What's next on the list?

7 MS. VAN STEENBURGH: Your Honor, as we have been
8 working through some settlement on some cases, some of the
9 plaintiffs' attorneys have advised us that they intend to
10 withdraw from representing their clients, which is
11 presenting an interesting issue that we're going to have a
12 fair number of pro se plaintiffs.

13 THE COURT: Fair number? How many?

14 MS. VAN STEENBURGH: Currently, we are going to
15 have -- right now we have 37, and what I'm here to tell you
16 is that we are not going to object to your entering an
17 order allowing those attorneys to withdraw.

18 THE COURT: Okay.

19 MS. VAN STEENBURGH: What we're proposing to do
20 is -- those pro se plaintiffs fall into two categories.
21 They're either cases that need to be remanded in due course
22 as part of this MDL, or they're going to be subject to a
23 forum non conveniens transfer motion. So what we wanted to
24 let the Court know is that if there is an order, we
25 certainly will do whatever we can to let those pro se

1 plaintiffs know next steps and what's happening.

2 Something needs to go into the order in terms of
3 an address because most of them will not have ECF access,
4 but as part of the process, most of those cases will get
5 remanded to their original jurisdictions, and they will
6 then be there, and the pro se plaintiff can proceed forward
7 in the case in that jurisdiction.

8 And we will have counsel there, so we will have
9 someone who will be able to be in contact with that pro se
10 plaintiff. I just wanted to at least raise it for the
11 Court's attention.

12 THE COURT: Yeah, that's helpful to know. Do you
13 have an idea what is causing, presumably these cases have
14 been around for a while, what's causing the motions for
15 withdrawal, what's the rationale for them? Disagreements
16 about settlement?

17 MS. VAN STEENBURGH: Probably. I don't know all
18 the details. We have just been informed that in certain
19 cases, the plaintiffs want to withdraw and settle the other
20 cases.

21 THE COURT: Okay.

22 MS. VAN STEENBURGH: If the Court should need a
23 list of those, we certainly can provide a list. We are
24 keeping track of all the pro se plaintiffs, but the one
25 request we will have is that whatever order, there is an

1 address or some forwarding address for that person.

2 THE COURT: All right.

3 MS. VAN STEENBURGH: And that also brings me to
4 the issue of the cases for remand and a proposed remand
5 order. At our last status conference, we had informed the
6 Court that there were several cases where the plaintiffs
7 definitely did not want to settle their claims and wanted
8 their cases remanded.

9 So we have prepared kind of a short order, a
10 proposed suggestion of remand with a list of those six
11 cases. We have submitted that to the plaintiffs and
12 circulated to that. I don't think anyone has any
13 objection, and so we will either -- I have a copy here, but
14 we can also e-mail a copy of the proposed order to
15 chambers, and we'll put it in a Word format so if you want
16 to make changes to that, you can.

17 THE COURT: So we should be ready to go on this.
18 Any objections from the plaintiffs?

19 MR. GOLDSER: No, Your Honor. I've looked at it.
20 I'm not absolutely certain that the list is correct, but I
21 believe it to be, and certainly once the order is entered,
22 if any individual case does have a problem, they will let
23 us know.

24 THE COURT: Okay. Okay. Why don't you get that
25 in to the chambers' mailbox, and we will get it signed and

1 filed right away.

2 MS. VAN STEENBURGH: Now, in addition to those
3 six cases, Your Honor, we have other cases that would fall
4 into what we would call the remand bucket. When it comes
5 right down do it, it's only approximately 50 cases.

6 Because of the 128 that would otherwise go in
7 that category, 38 are pending in settlement at the moment.
8 13 of them are Mr. Carey's cases, and then 31 of them are
9 the pro se plaintiffs.

10 So we have, really, for those who are represented
11 only approximately between 46 and 50 cases that would be
12 remanded to the transferor jurisdictions. We believe that
13 most of those in that 46 to 50 number are people who either
14 don't know, have not been keeping track as to what's going
15 on.

16 And we don't know if there is a mechanism by
17 which we should somehow contact those folks as to what is
18 happening or whether the Court should, I don't know, issue
19 an order to show cause saying if they want their case
20 remanded, they should notify the plaintiff or the defendant
21 or something like that, but these seem to be people that
22 are out in, for lack of a better word, the ether who really
23 don't have a lot of contact either with the plaintiffs' MDL
24 counsel or with defendants' counsel.

25 THE COURT: But they're represented?

1 MS. VAN STEENBURGH: They're represented as far
2 as we know, yes. They appear on our list as still being
3 represented.

4 THE COURT: Mr. Goldser?

5 MR. GOLDSER: I don't know who is on this list.
6 If you want to send it to me, I would certainly like it.
7 So I don't know if they're people that I have been in
8 contact with over time or not.

9 I could certainly see the Court issuing something
10 in the nature of a suggestion of remand that is typically
11 then sent to the panel, but with a provision in it that
12 gives that individual plaintiff's lawyer some period of
13 time, two weeks, 30 days, to respond and oppose the
14 suggestion of remand and that any such order would be filed
15 in the individual plaintiff's file as well as the general
16 file, so that if you're getting ECF, you will get notice in
17 your own individual case, as well as in the general MDL
18 file.

19 That way, again, give the individual plaintiffs
20 notice, let them respond. If they don't respond, then the
21 remand can take place.

22 MS. VAN STEENBURGH: That seems to me to be a
23 logical solution to it as well, Your Honor.

24 THE COURT: Okay. All right. So what's the next
25 step here?

1 MS. VAN STEENBURGH: So I guess depending on what
2 the Court wants to do, we do have approximately 50 cases
3 that will be subject to remand that we have not heard
4 anything about in terms of settlement or other resolution,
5 and so we can gather up those cases and put those into a
6 proposed suggestion of remand.

7 THE COURT: Yeah. Let's do a proposed suggestion
8 of remand and give them 30 days to respond if they want to
9 keep it here. Then we will at least have the connection.
10 If there is no response, they will get remanded.

11 MS. VAN STEENBURGH: Okay. And then that brings
12 us to the forum non conveniens cases. We still have 575 of
13 those. However, 436 belong to Mr. Carey's office. There
14 are a few of those that are pending potential dismissal. 6
15 are pro se, so those include the pro se cases. 58 are
16 pending settlement discussions.

17 So there are a few cases that we will probably
18 have to bring a motion to transfer pursuant to 28 U.S.C.
19 1404, but it narrows the list down to approximately 25, 30
20 cases depending on what happens with Mr. Carey's cases. So
21 that is the projection with respect to the forum non
22 conveniens cases.

23 THE COURT: All right.

24 MS. VAN STEENBURGH: Okay? The only other thing,
25 I mean, I think we are pulling things together and cleaning

1 things up relatively well, and so the last item is the
2 projected end of the MDL, and we are still shooting for
3 June sometime.

4 THE COURT: June?

5 MS. VAN STEENBURGH: To see if we can get this
6 closed down.

7 THE COURT: All right. Sounds good.

8 Mr. Goldser, anything you would like to add?

9 MR. GOLDSER: No. I think that covers it. We're
10 clearly in an administrative mode for the cases that are in
11 this MDL. There are some cases that will go to trial, I
12 expect, probably not in this courthouse, but perhaps,
13 perhaps in other courts. I have heard from counsel who do
14 want to try their cases.

15 There is one issue that is kind of percolating
16 out there, and that is the group of plaintiffs who are
17 under age 60 but who were on concomitant corticosteroids,
18 which fits the liability theory that has been successful in
19 this court, so those cases might need to have a trial
20 somewhere. Whether that's here or elsewhere remains to be
21 seen.

22 THE COURT: All right. Okay.

23 Anything else, Ms. Van Steenburgh?

24 MS. VAN STEENBURGH: No, Your Honor.

25 THE COURT: Okay. Mr. Zimmerman, did you have

1 anything?

2 MR. ZIMMERMAN: Not really, Your Honor. I don't
3 know how many more times I will be before you with this
4 case, but we are in the wind-down phase, and cases are
5 being resolved, and it's taken a lot of work and a lot of
6 effort, and I think we're at the point where, as Ron said
7 and Tracy has said, we're kind of in the settle most of
8 them, remand some of them, perhaps try a few, but the vast
9 majority have been resolved.

10 THE COURT: Getting close. Okay.

11 Well, thank you, everyone. I appreciate that
12 good update. Should we set another date? Let's set it
13 after the 30 days so if we have any issues there, we can
14 resolve them.

15 Perhaps April 23rd, does that look okay?

16 MR. GOLDSER: Sorry. The date was what?

17 THE COURT: April 23rd. It's a Tuesday.

18 MR. GOLDSER: What time, Your Honor?

19 THE COURT: We would probably do it -- I'm
20 anticipating a criminal trial going on at that time, so we
21 would probably do it sometime midday, say 12:30.

22 MR. GOLDSER: Fine with me.

23 THE COURT: All right? Okay. Let's set our next
24 status conference then for Tuesday, the 23rd of April.

25 Hopefully we will be -- the snow will be gone by then, but

1 the way things are going this year, I'm not sure, but we'll
2 set it for 12:30 and then if for some reason we don't have
3 the trial, then we can probably move the time, but we will
4 give you plenty of advance notice, but for now, we will
5 plan on 12:30.

6 All right. Thank you very much. We will be in
7 recess.

8 THE CLERK: All rise.

9 * * *

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

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

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