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1 (In chambers via telephone.)

2 THE COURT: Good afternoon, everyone. Just for
3 the record, this is In re: St. Jude Medical, Incorporated,
4 Silzone Heart Valves Products Liability Litigation. We're
5 here by telephone for a status conference.

6 MR. CAPRETZ: Anybody else having trouble
7 hearing?

8 THE COURT: I wonder if we don't have kind of a
9 poor connection today.

10 MR. CAPRETZ: Judge, I couldn't hear you at all
11 other than when you said hello.

12 THE COURT: We're up close and talking loudly, so
13 we may not have a very good connection today.

14 MR. CAPRETZ: You're okay right now.

15 THE COURT: Okay. I'll just get up close to the
16 phone, then. Okay. We have a telephone status conference
17 this afternoon. I have the proposed agenda. Let's see.
18 Who is going to start?

19 Mr. Capretz?

20 MR. CAPRETZ: Sure. Well, I'm speaking, as the
21 judge indicated he was, directly into the phone and a
22 little bit loud, but the agenda basically focuses around,
23 Your Honor, other than the status reports on the matter of
24 the Eighth Circuit Court of Appeals issue of the briefing.

25 As the Court may be aware, the Eighth Circuit

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1 issued today the mandamus, so we are prepared to go forward
2 with the scheduling of the briefing, and Steve Angstreich ,
3 my colleague, initiated a discussion with Steve Kohn about
4 a potential briefing schedule, and if Your Honor allows us,
5 we can tell you what we're thinking, unless the Court
6 wanted to speak first.

7 THE COURT: Go right ahead.

8 MR. CAPRETZ: Steve?

9 MR. ANGSTREICH: Okay. This is Steve Angstreich.
10 Your Honor, we thought that plaintiffs' submission would be
11 on January 9th or 10th, given the holidays that are coming,
12 with the defense's response on March 10th. On March 24th,
13 plaintiffs' reply and then giving Your Honor sufficient
14 time to go through what will probably be a few more pages
15 of paper than the last time sometime in May for an
16 argument.

17 THE COURT: Okay. Mr. Kohn?

18 MR. KOHN: That's acceptable to us, Your Honor.

19 THE COURT: Okay. Let's go ahead and do that.
20 We may not need to wait until May. We can probably have
21 the argument in April at some point in time. Why don't we
22 just get started with the process first, and then we'll
23 have a number of status conferences as we go along, and we
24 will set up a time for the argument.

25 The dates are fine with the Court.

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1 MR. ANGSTREICH: That's fine, Your Honor.

2 THE COURT: January 9th or 10th, which do you
3 wish?

4 MR. ANGSTREICH: It would probably be the 10th.
5 That way we make sure that on Monday the 9th it's completed
6 and in your hands on Tuesday morning.

7 THE COURT: Okay. Sounds good. That's fine. We
8 will set that as the briefing schedule. Okay. What's
9 next?

10 MR. CAPRETZ: All right. The next is, we can
11 collapse, I think -- well, we put the schedule for expert
12 reports. We had a brief discussion of that matter before
13 the Court got on the line, and we're pretty much agreed to
14 the current schedule. We intend on submitting our expert
15 names and reports on November 30th, and we're just going to
16 follow that schedule.

17 MR. ANGSTREICH: Your Honor, this is Steve
18 Angstreich. What we want to do, however, is with respect
19 to damages under the UDAP, what we would like to do is to
20 await Your Honor's ruling because the damage issues may
21 become a function of what law you apply if it's something
22 other than Minnesota's, and therefore what we would like to
23 do is get all of the experts relating to the product
24 itself, the advertising issues and the misrepresentation
25 issues and then leave quantification of damages to a later

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1 date, including quantification of a medical monitoring
2 protocol because that also will become a function of what
3 remedies might be available under the law Your Honor
4 determines to be applicable.

5 THE COURT: Okay. Mr. Kohn, anything?

6 MR. KOHN: Well, if I'm understanding your
7 proposal, you would simply be disclosing your liability
8 experts and no damage experts, is that right?

9 MR. ANGSTREICH: We would be providing you with
10 the reports of our liability experts, but not reports on
11 damages because we don't know what law will be -- will be
12 involved for us to quantify damages.

13 MR. KOHN: Okay. Well, I -- that may be right.
14 I don't -- I guess that's agreeable to us.

15 THE COURT: And then we would set up a time then
16 for a disclosure of the damage experts' reports at some
17 point after any ruling, then, is what you're talking about,
18 Mr. Angstreich?

19 MR. ANGSTREICH: Yes, Your Honor.

20 THE COURT: Okay. Okay. That's fine. Anything
21 else on experts?

22 MR. CAPRETZ: No. I think that should do it.

23 THE COURT: Okay. Mediation, how are we doing?

24 MR. CAPRETZ: I'll leave Attorney Kohn -- I mean,
25 I will turn it over to him to report on the program and on

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1 the -- we had a brief discussion as well. I understand he,
2 Steve, indicates, Kohn, that there are 15 cases not class
3 type of actions remaining with the vast majority involved
4 in the mediation negotiation program. Steve, do you want
5 to --

6 MR. KOHN: Sure. Your Honor, excluding the class
7 representatives, there are 15 individual cases left in the
8 MDL. 14 of those cases are either involved in being
9 evaluated or in some way negotiated outside of mediation
10 framework. It's possible that a couple of them will go to
11 mediation either before the end of the year or in January.

12 The only case that at this moment looks like it's
13 not going to be a candidate for mediation is the Van Gilder
14 case which has already been mediated twice, and I really
15 don't see that case being mediated yet a third time,
16 although it's possible that might change.

17 So I think that there are some more settlements
18 in the offing that will take place between now and the end
19 of the year, and it may well be that we will have several
20 mediations as well. I would look since there have been
21 very few new filings for the number of case certainly by
22 the end of the year to be fewer than the 15 we currently
23 have.

24 MR. CAPRETZ: And I could just parenthetically
25 add that Van Gilder is one of the ones in our portfolio,

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1 and I do want to seek the Court's guidance in that regard
2 so we don't have to burden all the parties involved in this
3 call, but would like to have a brief discussion on that
4 situation with the Court at its leisure.

5 THE COURT: That's fine. Let's do that at a
6 later occasion. That's the Janice Van Gilder matter, is
7 that correct?

8 MR. CAPRETZ: You're fading out.

9 THE COURT: I said, that's the Janice Van Gilder
10 matter?

11 MR. KOHN: That's correct, Your Honor, Janice
12 Van Gilder.

13 THE COURT: Janice Van Gilder. Okay. Are there
14 any current insurance related difficulties right now, or
15 has that been smoothed over?

16 MR. CAPRETZ: Paying them to come to fair numbers
17 is probably the biggest challenge, right, Steve Kohn?

18 MR. KOHN: I think there have been fair numbers,
19 without getting into a debate about it. No, Your Honor,
20 the insurance situation as far as I know there are no
21 current issues. Kemper is the carrier that is still
22 involved, and it's unclear at this moment how much longer
23 they will continue to be involved. Probably by early next
24 year, other carriers will replace Kemper, but that's a
25 guesstimate on my part.

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1 MR. ANGSTREICH: Your Honor, this is Steve
2 Angstreich. Steve Kohn, I understood that maybe a week ago
3 another case was mediated for the second or third time,
4 something like that, or for Mike Knippen went to visit an
5 attorney. Did that result in a settlement?

6 MR. KOHN: I believe that that visitation that
7 you are referring to didn't take place and is happening
8 this week.

9 MR. ANGSTREICH: Okay. Well, if you're going to
10 be speaking to Mr. Knippen, would you remind him that he
11 has cancelled two meetings with me?

12 MR. KOHN: I will do that. I will be talking to
13 him as well.

14 MR. CAPRETZ: Your Honor, I would just like to
15 add that in light of that news, I hadn't heard that, but we
16 had a similar circumstance happen where, Your Honor, we had
17 a trip planned to Louisiana to mediate, and it was
18 cancelled at the last minute after all the arrangements
19 were made, so if this is a pattern of conduct, I'm a bit
20 troubled.

21 MS. VAN STEENBURGH: In that case, Mike has
22 spoken to plaintiff's counsel in that case, and they're in
23 discussions now.

24 MR. CAPRETZ: I'm aware of that, and I appreciate
25 the comment. That is accurate, but it is not a good --

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1 MR. KOHN: Well, there is certainly no pattern of
2 conduct, and I think we have faithfully been involved in
3 the mediation process. We have shown up for every
4 mediation. There have been some schedule adjustments that
5 have been necessary, but they have been few and far
6 between.

7 MS. VAN STEENBURGH: I think some of those, Steve
8 Angstreich, were due to your schedule as well.

9 MR. ANGSTREICH: No. No. We had a meeting in
10 Chicago that was cancelled. We then had a meeting in my
11 office in Philadelphia that was cancelled. Mike was
12 supposed to get back to me with new dates and has not. It
13 had nothing to do with me cancelling anything. Those dates
14 were firm dates, but obviously we all are busy, and we all
15 have scheduling problems, but clearly, we need to, we need
16 to try to get that back on track.

17 MS. VAN STEENBURGH: I'll speak to Mike about it.

18 MR. ANGSTREICH: Okay.

19 MR. CAPRETZ: Are you ready to move on?

20 THE COURT: Yeah. Let's go on to the state court
21 litigation.

22 MR. CAPRETZ: Item number 4 was just a report on
23 the pending cases, and Steve Kohn mentioned that there were
24 15 other than class actions. State court according to the
25 last report I received from David Stanley a couple of weeks

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1 ago indicated that there were approximately 29 cases for
2 class -- I was going to say class, no. 29 state claims.
3 Some of those might have been resolved, not yet technically
4 dismissed, but I don't know, Steve Kohn, do you have
5 anything?

6 MR. KOHN: I don't have an accurate current
7 count. I know it's fewer than 29, and again in the state
8 court cases, there are discussions taking place vis-a-vis
9 settlement that will probably reduce that number even
10 further, and I would not want to estimate the precise
11 number, but I believe it to be fewer than 20 at this moment
12 in the state courts.

13 THE COURT: Total?

14 MR. CAPRETZ: And that way we can segue into the
15 status of the Ramsey County and Canadian litigations, and
16 I'm odd man out again. I guess I have one that we believe
17 we will have to take to trial in state court, and it's
18 apparently set for the spring, March of '06, but that is
19 going to have to be pushed back because of the expert
20 circumstances for the MDL and our dependence on the MDL
21 experts.

22 So it will probably be re-cast sometime in the
23 summer or early fall sometime, so hopefully by the summer
24 of '06, but nothing has come to pass by way of any trials
25 anywhere that I'm aware of.

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1 MR. KOHN: No. There is only -- Jim Capretz,
2 this case is the only case set for trial in Ramsey County
3 and for that matter the only case set for trial anywhere.
4 There are other cases in Ramsey County. Steven Angstreich
5 has some, has most of the rest, I believe, and --

6 MR. ANGSTREICH: Probably.

7 MR. KOHN: Judge Gearin, I should bring you up to
8 date on this, Your Honor. There was an issue in Ramsey
9 County that was litigated before Judge Gearin relating to
10 whether or not the damage limitations in Canada would apply
11 to the Canadian residents who have brought suits in Ramsey
12 County.

13 And that issue was litigated before Judge Gearin,
14 and recently within the past couple of weeks, she issued an
15 order that the Canadian damage caps would apply to those
16 Canadian residents. So that development needs to be
17 reported, and that will hopefully factor into the
18 settlement negotiations that are ongoing in those cases.

19 MR. ANGSTREICH: Actually, the settlement
20 negotiations were to occur before that ruling came down
21 with both sides recognizing the risks. Unfortunately for
22 plaintiffs at this moment, Mr. Knippen was omniscient and
23 cancelled the meeting, and now we have the ruling. The
24 impact of which places a cap on pain and suffering but not
25 a cap on out-of-pocket.

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1 So, however, what that means, Your Honor, is that
2 we have to now do a better job at quantifying the actual
3 out-of-pockets so that we can put the packages together in
4 a different -- different context, and along those lines,
5 Your Honor, with respect to the EU class action that is
6 pending there, we have received St. Jude Medical's answer
7 now that the forum non conveniens and the comity motions,
8 which were denied by Judge Gearin, denied by the
9 intermediate appellate court and denied by the Supreme
10 Court, were ruled upon.

11 We now are at a position to move forward and
12 address what will be the next thing, which would be a class
13 cert motion.

14 THE COURT: When do you anticipate that to be
15 brought before the judge?

16 MR. ANGSTREICH: Hopefully, hopefully within the
17 next 60 days if we can double track this, these issues,
18 Your Honor.

19 THE COURT: Okay. Anything happening in Canada?

20 MR. CAPRETZ: Well, Canada have reached the stage
21 that I think we last reported, and that is, they have a
22 limited discovery process in that area. And litigation
23 depositions were set and I think have taken place
24 throughout this past October, and I'm not quite sure.

25 Are they complete for both sides, Steve Kohn?

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1 MR. KOHN: You know, I'm not sure.

2 MR. CAPRETZ: Okay.

3 MR. ANGSTREICH: According to our contact in
4 Canada, the answer is no.

5 MS. VAN STEENBURGH: Yeah, they still have a
6 couple dates.

7 MR. CAPRETZ: So they're going through it, and
8 they have a trial scheduled. I had a note on it, and I
9 can't find it at the moment, but everything is still as it
10 was and as we reported to the Court. Somebody on the line
11 should have that.

12 Was it the fall of '06? When is the trial on the
13 merits of those claims, Steve or Liz?

14 MR. KOHN: The first trial I believe is in the
15 fall of '06.

16 MR. CAPRETZ: Yeah, '06. So that is tracking.
17 The only thing that probably wasn't reported was that they
18 had, plaintiffs' counsel had a fee award which was
19 challenged by St. Jude's request for an appeal, and that
20 right to appeal was granted. I think I might have reported
21 on this now, and that is underway with briefing and of
22 course no decision or rulings at this point in time.

23 THE COURT: Okay.

24 MR. KOHN: Your Honor, Steve Kohn. I wanted to
25 go back and revisit an issue related to the briefing for a

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1 minute if I could.

2 THE COURT: Surely.

3 MR. KOHN: And this relates to, since the
4 plaintiffs' opening brief is not going to be filed for at
5 least 60 days, I think it's important we have some
6 discussion here of what the scope of that briefing is going
7 to entail since obviously both sides are going to have to
8 prepare for it.

9 It's our view that under the Eighth Circuit
10 mandate that all issues under Rule 23 are in play now.
11 Choice of law certainly has to be briefed, but choice of
12 law raises implications for all elements of Rule 23, and I
13 would like to have some statement from the plaintiffs or
14 some thoughts from Mr. Angstreich about what the scope of
15 that briefing is going to be.

16 MR. ANGSTREICH: Very simple. I don't believe
17 that the Eighth Circuit said all issues of Rule 23 are in
18 play. What the Eighth Circuit said was, his Honor was to
19 do a 50 state analysis, and that's what was required.

20 While we disagree with the Eighth Circuit's
21 analysis and application here, it's our intention to
22 provide the Court with guidance as to what law should be
23 applied to the UDAP claim, and we have argued the issues
24 with respect to Rule 23, individualized issues and
25 everything else, three times already. And while you may

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1 have thought you argued it before the Eighth Circuit, the
2 Eighth Circuit certainly did not rule in that regard.

3 The only thing the Eighth Circuit did, which we
4 also believe was error, was to do a merits analysis with
5 respect to whether or not medical monitoring was available
6 because of individualized issues with respect to particular
7 plaintiffs, but certainly there is no Rule 23 commonality,
8 typicality and all of those other things.

9 We have been down that road before. It is simply
10 a choice of law analysis, and from our perspective, it's
11 whether or not even given a 50 state analysis, whether
12 Minnesota law should apply based upon all of the factors
13 that come into play. That's our view, and that's -- that's
14 how we believe the issues ought to be framed.

15 MR. KOHN: If I could respond, Your Honor, our
16 view is directly opposite of what Mr. Angstreich just said.
17 The differences in the laws amongst the states give rise to
18 the issue of whether a class action is the superior method
19 of resolving these cases. It gives rise to the
20 manageability of these cases and all the other problems of
21 Rule 23, so you can't just look at choice of law in a
22 vacuum.

23 You have to look at all the other elements of
24 Rule 23 to decide whether there is a certifiable class here
25 or not, and to look at just choice of law alone and brush

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1 everything else aside I think is to put your head in the
2 sand and get away from issues that clearly the Eighth
3 Circuit, I think, said were important, not the least of
4 which is the fact that I think a clear signal here is that
5 medical monitoring is not an appropriate remedy.

6 MR. ANGSTREICH: Actually, it didn't say that at
7 all, Steve.

8 MR. CAPRETZ: Your Honor, if I may, number one,
9 just reading from the decision, one of the points was that
10 the district court's class certification was in error
11 because the district court did not conduct a thorough
12 conflicts of law analysis with respect to each plaintiff
13 class member before applying Minnesota law, citing due
14 process and constitutional issues, and I think that is what
15 is basically involved at this point and what needs to be
16 briefed.

17 I think Mr. Kohn may be a bit overreaching in the
18 way he sees it, but in any case, it may be that the Court
19 needs to give us direction on this so that we are acting
20 under one uniform principle of what law we're trying to
21 brief to the Court.

22 THE COURT: Mr. Kohn, anything else?

23 MR. KOHN: No, Your Honor. I think we have
24 stated our position with respect to what we think the
25 issues are.

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1 THE COURT: Well, I think we should proceed ahead
2 with, you know, the plaintiffs have stated their viewpoint
3 of the issues. I'm sure that will be discussed at length
4 in their brief. You know, if the defendants believe that
5 analysis of these issues changes other issues --

6 MR. CAPRETZ: Can't hear you, Your Honor.

7 THE COURT: -- changes other issues under
8 Rule 23, I'm sure you will state that in the responsive
9 brief, and then the plaintiffs will have a chance to reply
10 to inform the Court as to whether they agree with that
11 analysis or not. So I think that's the way we should
12 proceed.

13 I don't think you're all that far apart, but I
14 would be interested in your viewpoints through the briefing
15 process.

16 MR. ANGSTREICH: That's fine, Your Honor.

17 THE COURT: Okay.

18 MR. ANGSTREICH: Your Honor, there is one other
19 thing if I might.

20 THE COURT: You can. Go ahead.

21 MR. ANGSTREICH: It's not on the agenda, but it
22 really is in the context of the analysis that we need to go
23 through. We would like an opportunity to obtain some
24 documents from St. Jude Medical relating to their sales or
25 consignment agreements with respect to the Silzone valves

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1 as it relates to the forum selection clause dispute.

2 This was something that we obviously didn't need
3 to focus in on during discovery while we were under the,
4 according to the Eighth Circuit, misapprehension that
5 Minnesota law applies, but we think that issues relating to
6 those documents and choice of law clauses, which we believe
7 are contained within them, would be important factual
8 issues to present to the Court.

9 And, for example, if St. Jude Medical tells
10 somebody in Iowa that they're bound by Minnesota law and
11 they have to bring suit in Minnesota, that I think is an
12 important fact with respect to the issues that we're going
13 to be briefing. It would not be extensive. It would not
14 delay the briefing schedule, and it would just be document
15 production.

16 We would not be asking for depositions.

17 THE COURT: Mr. Kohn?

18 MR. KOHN: Well, I think, Your Honor, fact
19 discovery closed a long time ago in these cases, including
20 document production. It's very late in the game to be
21 reopening discovery for any reason, especially at a time
22 when both sides are busy with experts and with briefing.

23 So we object to it, and I think it's unnecessary.
24 If they had this discovery request, they should have made
25 it a long time ago.

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1 THE COURT: What is the projected volume,
2 Mr. Angstreich?

3 MR. ANGSTREICH: It's their form contract, their
4 form sales agreements and/or consignment agreements to
5 hospitals and doctors with respect to the Silzone valve. I
6 can't imagine that we're talking about -- I would assume
7 that every agreement is a uniform agreement. Maybe we're
8 talking about two documents, but I think for somebody to
9 make the argument it is late in the day and we have been
10 operating on the assumption throughout fact discovery that
11 Minnesota law was applicable and therefore these agreements
12 were really irrelevant to the issue of fact discovery, I
13 guess what we're really saying is, we're back to class
14 discovery as opposed to fact discovery, specifically
15 addressed to what the Eighth Circuit is asking us to
16 provide to Your Honor which is, what law should apply based
17 upon constitutional mandate.

18 THE COURT: Well, I do think that this, this
19 issue which is now before us was somewhat unanticipated. I
20 don't think at least for a limited document production this
21 is too late. I would ask the parties to meet and confer
22 about this, and if you can't agree, the Court would be
23 prepared to hold a telephone conference on very short
24 notice to get it resolved.

25 I'm not anticipating that this is very extensive.

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1 It probably can be taken care of fairly quickly.

2 MR. ANGSTREICH: That's fine, Your Honor. We
3 will -- we will provide to Mr. Kohn a short document
4 request immediately, and then we can meet and confer over
5 it if there is really an issue and then advise Your Honor
6 accordingly.

7 MR. KOHN: That's fine, Your Honor. Thank you.

8 THE COURT: Sounds good. Okay.

9 MR. CAPRETZ: That concludes the regular agenda,
10 Your Honor, and the only thing would be, would you like to
11 set a status conference to catch up at some point in time
12 for the first of the year, or how would you like to handle
13 that?

14 THE COURT: When do you think it would be best
15 for the next one?

16 MR. CAPRETZ: I would think that we might want to
17 check in in early January, about the time the first brief
18 is due, to just see the development and check on, we have
19 these expert reports, and we may need to get a case or so
20 remanded in here in the near term. So I think we should do
21 it within the next 60 days.

22 MR. ANGSTREICH: Your Honor, I think that's an
23 excellent suggestion, sometime after we get the brief to
24 you, which would be sometime the week of the 9th, the 10th,
25 the 11th, the 12th, something like that, assuming that Your

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1 Honor wants it in person or by telephone, so at least we
2 could look towards that week.

3 MR. KOHN: That's fine for us, Your Honor.

4 MR. CAPRETZ: Being in January, I think
5 telephonically would be the best way to go.

6 THE COURT: Okay. How about the latter part of
7 that week, the week of January 9th? What's Thursday?
8 What's that date?

9 MR. ANGSTREICH: The 12th, Your Honor.

10 MR. CAPRETZ: That's fine for me.

11 MR. KOHN: That's fine for us.

12 THE COURT: Okay. Let's plan it as a telephone
13 conference. If either side wishes more, we surely can have
14 an in-court conference at that point in time, but let's
15 plan it for right now as a teleconference. Okay?

16 MR. CAPRETZ: Do you want to use the same time?

17 THE COURT: Yeah. Let's plan for two o'clock on
18 the 12th?

19 MR. CAPRETZ: Sounds good.

20 THE COURT: Two o'clock central.

21 MR. ANGSTREICH: Two o'clock central time?

22 THE COURT: Two o'clock central if that works
23 out.

24 MR. CAPRETZ: That's fine.

25 MR. ANGSTREICH: That's fine.

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1 MR. CAPRETZ: Thank you, Your Honor.

2 MR. KOHN: That's fine.

3 MR. ANGSTREICH: Your Honor, are we going to be
4 submitting the new PTO with these briefing schedules to
5 you, or is that something that you're going to be issuing?

6 THE COURT: Why don't you submit one for me?

7 MR. ANGSTREICH: Okay. We will get that out.

8 THE COURT: Sounds good.

9 MR. CAPRETZ: And I will talk with Attorney Kohn
10 about this one Van Gilder case and see if we can make any
11 headway. If not, we may impose on you with a telephone
12 call in the near future here.

13 THE COURT: That's fine. Thank you.

14 MR. ANGSTREICH: Thank you, Your Honor.

15 MR. KOHN: Thank you, Your Honor.

16 MR. CAPRETZ: Thank you very much.

17 THE COURT: Thank you, Counsel.

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

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Certified by:

Kristine Mousseau, CRR-RPR

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Dated: December 8, 2005

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