

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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IN RE: STRYKER REJUVENATE)	Case No. 13-MD-2441 (DWF/FLN)
AND ABG II HIP IMPLANT)	
PRODUCTS LIABILITY LITIGATION)	
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)	
This Document Relates to)	St. Paul, Minnesota
All Actions)	May 1, 2014
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BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE AND
THE HONORABLE FRANKLIN L. NOEL
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

STATUS CONFERENCE PROCEEDINGS

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1 some disputed items. And so, we will go through there -- we
2 will go in the order in which that is written, and then at
3 the end we will just ensure that anybody who feels they
4 ought to have a right to speak or say something on the
5 record before we adjourn, we will do so. So, we can
6 proceed.

7 Maybe for the record and the benefit of my court
8 reporter -- do you have everybody who is here? Oh, you do.
9 All right, so unless counsel wants to be heard on
10 acknowledging, whether they are at counsel table -- pardon?
11 Counsel table or in the audience, since Jeanne has that
12 information, we can proceed with the Joint Report and Agenda
13 for today's hearing.

14 Who would like to step to the podium first? And I
15 think as Brenda said, these microphones aren't those fancy
16 entertainment ones, so we have to kind of -- if you don't
17 speak fairly close and clearly into the mike, no one else
18 will hear, not only in the courtroom, but who is on the
19 telephone. So, we can proceed whenever you are ready.

20 MS. WOODWARD: Good afternoon, Your Honor, Karen
21 Woodward for Defendants.

22 MR. FLOWERS: Good afternoon, Your Honors, Pete
23 Flowers for the Plaintiffs.

24 MS. WOODWARD: Your Honor, I can begin with our
25 usual report on filings. We have attached as usual to the

1 joint report that was filed on Monday, the case counts.
2 They fluctuated just a little bit since then.

3 I will update those numbers by reporting that
4 there were approximately 795 cases filed in or on their way
5 to the MDL, 997 cases filed in the New Jersey coordinated
6 proceeding. We have 59 cases filed in Florida, and a total
7 of 85 State Court cases. We do have one case that is
8 pending transfer from State Court to the MDL. The total
9 case count now is 1,878.

10 THE HONORABLE JUDGE FRANK: And without
11 interrupting you, and I will talk hopefully briefly, but
12 later as we get to a couple of issues, both on coordinating
13 with the states, and to the extent they either relate to
14 status of the case and settlement strategies or roadmap, as
15 we have talked about in chambers.

16 In the last week -- this week, including as
17 recently as this morning, I had a lengthy conversation this
18 morning with Judge Martinotti. I have talked on two
19 occasions with Judge Henning, who has the majority of cases
20 in Florida, and then somebody corrected me when I
21 mispronounced the other judge in Florida.

22 MR. BERNHEIM: It is Judge Hafele, Your Honor.

23 THE HONORABLE JUDGE FRANK: Yeah, Hafele, thank
24 you. And we have kind of played telephone tag this week,
25 but we have been in contact. And his chambers called me

1 today just to say he was out until Monday of next week. And
2 so I have been -- and if there are other state judges, apart
3 from the letters we've sent out, that someone wants me to
4 talk about, I will talk more at length later about the
5 conversation this morning with Judge Martinotti. But, we
6 can proceed, then, with the agenda.

7 MR. FLOWERS: Your Honor, the only thing I would
8 add to that is we actually get more updated numbers,
9 maybe -- and as of late yesterday there's 830 cases now in
10 the MDL, as opposed to 795.

11 THE COURT: All right. And I guess under the
12 report on judicial contacts, which I have done that in part,
13 in addition to what I have already said -- and I don't think
14 this is out of order. I will just say something that I said
15 in chambers, that Judge Martinotti and I talked this morning
16 at some length, from New Jersey, and that is not, of course,
17 the first time we have had a conversation. And we'll
18 probably at some time in the next few minutes, between
19 yourselves and Judge Noel, mention kind of what has happened
20 since the last time we were together. But, I think one of
21 the things we agreed on was that with some conferences and
22 get-togethers coming up in June, that I said, well, I think
23 we can agree, we are at the point between now and mid-July
24 that we are going to have to agree to have a roadmap on how
25 we are going to proceed, both case management-wise, and

1 whether conceptually we can agree on a settlement mediation
2 strategy that will be coordinated, or, to say, because I
3 think a lot of people are kind of waiting to see, are we
4 going to truly try to coordinate this or not? So, I think
5 we agree that the outside limit to kind of make that
6 statement or announcement will be -- and we talked at some
7 length in chambers as the lawyers know about that.

8 There is a meeting in June and then in July and we
9 will talk a bit more about that. And then the subcommittee
10 that we appointed in the order, that will probably come up
11 in the next few minutes, as well. So, I think we have
12 agreed on kind of those -- some of those outer limit
13 deadlines, in addition to moving forward with the other
14 issues. I don't know if, Judge Noel, you have anything
15 further that is going to come up --

16 THE HONORABLE MAGISTRATE JUDGE NOEL: Nothing on
17 that right now. We'll talk later.

18 THE HONORABLE JUDGE FRANK: All right.

19 MS. WOODWARD: We can give a brief report on
20 compliance with deadlines for preliminary disclosures and
21 fact sheets, Your Honor. At this point in time, we are
22 still missing approximately 21 percent of fact sheets that
23 had prior deadlines. I know that counsel is working to
24 secure compliance, but that is a significant number, and we
25 would appreciate the Court's encouragement of those efforts.

1 MR. FLOWERS: And Your Honor, I can tell you our
2 numbers, once again, are a little better than that. We
3 understand the issue, though, and we continue to push hard
4 to make sure that the compliance with the deadlines are met.
5 And we will hopefully be able to report in June an even
6 better compliance.

7 THE HONORABLE MAGISTRATE JUDGE NOEL: Can I just
8 ask a question on that? What is the issue? In other words,
9 you send it out to individual Plaintiffs and don't get them
10 back?

11 MR. FLOWERS: I think the issue, Your Honor, just
12 is, is this fact sheet is tremendously long. It is longer
13 than any other fact sheet in any another litigation. It is
14 30 some odd pages. And it is just being able to go through
15 with each Plaintiff and complete it. So, it needs to be
16 done, we understand that. And we will make sure every
17 lawyer who hasn't done that timely is made aware of it.

18 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

19 MS. WOODWARD: Your Honor, to answer, to give you
20 Defendants' version of that answer, our view is that these
21 fact sheet deadlines -- there has been notice of these fact
22 sheet deadlines since late December.

23 I think the Plaintiffs had initially 90 days to
24 get their fact sheets completed and in. Prior to the first
25 deadline coming due, I got some requests for extension.

1 None of them had to do with the fact that the fact sheet was
2 too long. They were more along the lines of: Well, the ASR
3 deadline is April 1st. And we just don't have time to do
4 these fact sheets and do what we need to do for the ASR
5 settlement deadline. Or, my secretary is out sick, or my
6 paralegal is on maternity leave. These are the kinds of
7 things that people told us.

8 Since that time, we have started to hear, well,
9 the fact sheet is too complicated. So, I think Your Honor
10 should weigh that for what it is worth. There is plenty of
11 notice to get these fact sheets done. And it is a minimal
12 discovery obligation in the scope of things and there should
13 be compliance with it.

14 THE HONORABLE MAGISTRATE JUDGE NOEL: I would just
15 say, I agree that there should be compliance with the
16 deadlines. And this would be one of those categories that
17 we were talking about briefly at the end in chambers. If
18 one or the other party thinks they need some judicial action
19 on this, file a motion and brief it before the next status
20 conference asking precisely what relief you are looking for
21 from the Court, and then we can hear you out and then decide
22 quickly right after that status conference what relief is in
23 order.

24 MS. WOODWARD: Thank you, Your Honor, we will do
25 that.

1 Then the next issue on the agenda has to do with a
2 proposed PTO No. 15 relating to in extremis depositions.
3 That is an agreed order. So, if it meets with Your Honor's
4 approval, we are prepared to propose that that be entered.

5 THE HONORABLE JUDGE FRANK: Maybe you could give
6 just a two-minute update on what that is referring to so the
7 rest of the folks in the room and on the phone would know
8 what that issue is?

9 MR. FLOWERS: Yes, Your Honor. So, this deals
10 with Plaintiffs that have terminally ill conditions. It is
11 the ability to retain key evidence, mainly their
12 depositions, being able to schedule them and then go forward
13 with their depositions in a manner that is timely for that
14 individual.

15 As well, it gives the Defendants the opportunity
16 to view their records and be prepared for the depositions.
17 So, there is an outline of some time frames on what needs to
18 be produced.

19 Essentially, what happens is the lawyer for that
20 individual identifies this person's condition to the
21 Defendant, provides an affidavit from their physician as to
22 their condition being terminal. That then starts a process
23 by which typically a deposition will be done in
24 approximately 45 days.

25 There is a similar process in here, as well, for

1 terminally ill, non-party witnesses, you know, like a key
2 witness, a/k/a, like a treating physician that has a
3 condition. There is also a process to do that in an
4 expedited matter as opposed to having to wait so these
5 people's cases and evidence in those cases are properly
6 preserved.

7 THE HONORABLE JUDGE FRANK: All right. And by
8 asking a question I don't claim that either one of us were
9 unaware of this until now. That has come up at prior
10 hearings. And frankly speaking, it is a concern in a number
11 of cases sometimes when there are these vulnerable
12 individuals. So, we will do whatever we need to do, if
13 there is something else we can do to put some priority on
14 these. In this case it is a discovery issue, but when we
15 get to the place where, well, we are ready to discuss
16 resolution but we have this group of particularly vulnerable
17 people, we will do our best to give those priority.

18 MR. FLOWERS: The next thing on the list, Your
19 Honor, is the plan for the custodial file roll-out. This
20 is -- as you will recall, these are 26 individuals,
21 employees of Stryker that are deemed to be materially
22 relevant to this case. So, important people that we would
23 like to see their custodial files.

24 There was an order entered by Your Honors
25 requiring the production at the latest as of July 15th of

1 2014. We have met with the Defendants and have reached an
2 agreement on that roll-out. The roll-out begins, has begun,
3 with two, in addition to others that have already been
4 produced, two key witnesses. It rolls out, essentially
5 every two weeks, and will be completed by July of 2014, or
6 July 15 of 2014.

7 They have identified who those individuals are up
8 through May 30th. We then met and conferred and agreed on a
9 certain schedule for some of the remaining folks, some of
10 the more interesting and important people to us, Mr. Collet,
11 Mr. Qui, people from France are going to be produced in
12 June, June 15th.

13 And then the remaining will be rolled out every
14 two weeks until July 15th of 2014. So, from the Plaintiffs'
15 perspective, that is good. We are going to have, hopefully,
16 26 full custodial files in the next two months, and be ready
17 to proceed forward with depositions very shortly thereafter.

18 THE HONORABLE JUDGE FRANK: Anything from the
19 Defense on that?

20 MS. WOODWARD: Nothing really to add. It was a
21 success in the meet and confer process. That is a good
22 sign, hopefully, going forward.

23 MR. FLOWERS: Two -- sorry, Your Honor.

24 THE HONORABLE MAGISTRATE JUDGE NOEL: I was just
25 going to say, the paragraph in the agenda item you have, "It

1 is Defendants' assertion that objections and responses to
2 the PLCC's document requests will define the scope of the
3 production, along with a privilege log to be produced."

4 Is that an item of dispute or is that just a
5 statement of fact that everybody agrees to?

6 MS. WOODWARD: Well, it is a statement of fact. I
7 don't believe that --

8 MR. FLOWERS: It is a Defendants' fact, yes.

9 MS. WOODWARD: -- we need to address here,
10 necessarily.

11 The Plaintiffs have questions about documents
12 within the production. They have asked for certifications
13 in connection with production of these files. And we said,
14 look, we are responding to your discovery requests. You are
15 going to get verified responses and you are going to get a
16 privileged log, so that is how the issue will play itself
17 out.

18 MR. FLOWERS: Your Honor, the reason we made sure
19 it was in there is we need a certification that these are
20 complete productions of these custodians. I can tell you
21 two of them that we received I personally have gone through,
22 and am concerned about the lack of emails in the files. So,
23 it is a concern, and it will be one as you suggested before
24 that if there is a problem, you will hear about it very
25 shortly. Similarly, with the privileged log, you know, we

1 are going to talk. And if we can't reach an agreement
2 quickly on the production of a privileged log, especially
3 for the custodians that have been produced, we are once
4 again going to be in front of you before the next status
5 hearing.

6 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay, thank
7 you.

8 THE HONORABLE JUDGE FRANK: All right.

9 MR. GORDON: Your Honors, Ben Gordon for the PLCC.

10 MS. WOODWARD: Your Honor, I would like to
11 introduce to you Martin Healy. He is with our New Jersey
12 office. He is making an appearance here today because he is
13 very directly involved in the internal discovery processes
14 that we have going on, and we thought he might be beneficial
15 to you today to answer whatever questions you might have.

16 THE HONORABLE JUDGE FRANK: Good afternoon. And
17 of course we met in chambers, so good afternoon again.

18 MR. HEALY: Thank you, Your Honors.

19 MR. GORDON: Your Honors, we're up here, I think,
20 for the limited purpose of discussing the French language --
21 it related to the foreign language document piece. Marti
22 can actually address this better than I, but it is more than
23 French language. There's some German language documents,
24 maybe a smattering of some other things, but primarily
25 French language documents. And I know I have got to slow

1 down. I apologize in advance.

2 I will say that over the last couple of weeks, we
3 have had a very productive and extensive dialogue with the
4 Defendants about the mechanisms, or mechanism, for how we
5 are going to get this very laborious task done, that is to
6 say, what we expect to be at least, according to the
7 Defendants, about 30,000 pages or more of French language
8 documents and, as I said, a few others.

9 Suffice it to say, at this point, if the Court is
10 comfortable with this, we are making significant process
11 toward reaching a shared resolution of this issue. We have
12 talked with several different companies, both independently
13 and jointly, that hold themselves out as doing certifiable
14 translation work and interpreter work, to the extent we need
15 that.

16 And In fact, I think Marti and I and the group
17 working with him and others have narrowed it down to two or
18 three leading candidates. We both independently vetted
19 different companies and narrowed it down to a couple that we
20 spoke with -- days are running together -- a couple of days
21 ago.

22 And I think within the next few days, in all
23 likelihood, there are still issues to be worked out, but I
24 think we can have an agreement with a set of protocols to
25 help share the expense between the parties of translation of

1 documents that need to be translated.

2 MR. HEALY: And everything Mr. Gordon said is
3 fair.

4 THE HONORABLE JUDGE FRANK: Could I have you speak
5 a little closer to the mike, if you would, please?

6 MR. HEALY: Everything that Mr. Gordon said is
7 entirely fair. The biggest question we have before us is
8 the procedure that we have to put in place to make this
9 work. I think it is agreed upon by everybody that there is
10 very little reason to translate all 30,000, or whatever the
11 number of pages of documents that ultimately are turned over
12 will turn out to be, because of the cost.

13 It is an incredibly expensive process, Your Honor.
14 We are talking -- if we were to try and certify, translate
15 everything -- several million dollars. It does not seem
16 worth it, I believe, to anybody to endeavor in that process
17 right out of the gate and just translate everything. So, we
18 are trying to come up with an agreeable process that takes
19 it in waves, so that we will address certain categories of
20 documents in different ways to see if we can reduce the pool
21 that will ultimately require formal translating so that we
22 will have records that we can present to the Court at the
23 time of trial and the hearings that are agreed upon
24 certified copies.

25 So, that is why the process is taking longer than

1 just selecting an appropriate vendor. We want it at
2 multiple levels of what services these providers offer,
3 including machine translations potentially the first pass,
4 summary translations, translating portions of records as
5 opposed to entire records, to see if we can come up with
6 some way of handling this that is not as taxing, monetarily,
7 on both the Plaintiffs and my client.

8 Because of that, we need leave of the present
9 order. The present order said we are supposed to have
10 agreed upon today where we stand on this point. We are
11 working very well together. We intend to continue to do so.
12 But, it is likely to take another week to work through the
13 process, if not more, and then we will probably have to run
14 some test runs with some documents to see how efficient the
15 companies are able to produce their work product and how
16 reliable it then proves to be.

17 And so, we should be in a position to do this in a
18 not too distant future. But, because the bulk of the French
19 records are not being turned over, they are not going to be
20 completely turned over until July 15th, we have a little
21 time here before we need to make that decision.

22 THE HONORABLE JUDGE FRANK: It sounds like there
23 may be an agreement to modify, accordingly, the order, just
24 to kind of -- not that it is a big issue, at least, today.
25 But to correspond that, well, yes, today was the date if we

1 look at the order, but it looks like you are working towards
2 a resolution?

3 MR. GORDON: Yes, Your Honor. I think we do
4 need -- we have that agreement. I think we do need relief
5 from the Court. As Marti says, I am optimistic we can work
6 through the issues probably in the next week to ten days.

7 THE HONORABLE JUDGE FRANK: All right. Now, I am
8 a little disappointed, and I am kind of joking now, but in
9 my former days, years ago as a State Judge, because it has
10 been 16 years since I was there. But, there was a State
11 Judge in Hennepin County who shall go nameless, who would
12 have insisted on setting this conference to resolve this
13 issue in France, and would have passed those costs on to the
14 respective parties. But, I guess I haven't heard that
15 recommendation here, so I guess I think we will resolve it
16 without a visit, Judge Noel?

17 THE HONORABLE MAGISTRATE JUDGE NOEL: The only
18 thing I would say is I am not the person who would want to
19 go to France on this issue, but I am going to be
20 sufficiently stickler-ish and annoying to ask you to give me
21 a date. When do you think you would be able to get an
22 agreement to put in place so that we know going forward
23 what's going to --

24 MR. GORDON: Thinking for the Plaintiffs, Your
25 Honor, and my schedule, thinking out loud, I would hope and

1 feel that a week from Friday might be realistic, but perhaps
2 it would be safer to say a week from Monday. What do you
3 think, Marti?

4 MR. HEALY: I would build in one additional week
5 to that, Your Honor, because --

6 THE HONORABLE MAGISTRATE JUDGE NOEL: If I say by
7 May 15th, does that cover everybody?

8 MR. GORDON: I think that will be ample.

9 MR. HEALY: Yes.

10 THE HONORABLE JUDGE FRANK: All right.

11 THE HONORABLE MAGISTRATE JUDGE NOEL: Thank you.
12 Sorry.

13 THE HONORABLE JUDGE FRANK: That is not a visit to
14 France?

15 THE HONORABLE MAGISTRATE JUDGE NOEL: No, we are
16 not going to France.

17 MR. GORDON: We will save that for when the
18 depositions come, Your Honors. Thank you.

19 THE HONORABLE JUDGE FRANK: Thank you both. Did
20 the two of you meet and confer with any high differential
21 issues on where you want that podium, since you can put it
22 anywhere you want?

23 MR. CAMPILLO: I am used to being at the bottom
24 level, Your Honor. I am quite comfortable there. For the
25 record. I am Ralph Campillo. And I am addressing the

1 production of exemplars. I believe that we have agreed,
2 since the Plaintiffs demanded or requested a reasonable
3 number of exemplars on April 10th, we have been working to
4 arrange for that. And since the request is jointly made by
5 the New Jersey leadership group, I think we have agreed to
6 try to get together with the New Jersey group as early as
7 next Monday to fine-tune the details.

8 But, there really is no major dispute other than
9 there may be a couple of categories where the actual
10 inventory on hand is very limited, and we are asking to
11 tweak the number to be produced for those particular sizes,
12 so that we don't run out of a particular size. But, I think
13 those are very minor differences we are working out.

14 MR. FLOWERS: That is true. We originally
15 submitted joint letters, both the Plaintiffs in the MDL and
16 the Plaintiffs in New Jersey to the respective Defense
17 counsel with a list. And I am happy to hear when Mr.
18 Campillo says that our list was reasonable and Mr. Gordon is
19 factually correct on things, we are making progress with the
20 Defense.

21 So, I think that is good. Once again, I think a
22 date, an end date on this would be good for the actual
23 production, as well. Maybe, once again, if we could stick
24 with May 15th as some sort of date -- I mean, I just want to
25 have an end date as to when they are going to be actually

1 produced after we get --

2 MR. CAMPILLO: Yeah, my only hesitation is, I
3 understand that these are kept in different facilities in
4 different parts of the world. So, I think May 15th might
5 work, but I would like to have a little more time just for
6 the logistics of it, to be safe. I don't want to be coming
7 back asking for a short extension. But, I think certainly
8 within the next three weeks we should be able to have not
9 only resolved the issue, but also been able to produce them.

10 THE HONORABLE JUDGE FRANK: Go to May 22nd?

11 MR. FLOWERS: That is fine, Your Honor.

12 THE HONORABLE JUDGE FRANK: I will observe in a
13 positive manner that I don't think it got probably missed --
14 it didn't get missed by anybody in the courtroom, but the
15 notion that this is being coordinated with counsel in New
16 Jersey means that we think everybody will benefit from that,
17 so we are not double-stepping things. So, that makes
18 perfect sense. So, that is a good thing.

19 MR. FLOWERS: One just minor sub-issue on this,
20 Your Honor, that I brought up in a phone call with Mr.
21 Campillo, but with respect to him, I didn't bring it up this
22 morning. We intended to serve written discovery to them on
23 the number of devices that were originally created, and the
24 number of devices that exist today.

25 We are a little concerned as to where those

1 devices went and when, because there seems to be very few
2 left versus how many were originally created. So, I just
3 wanted to put it out there on the record. And we have
4 already served discovery. I guess we will seek leave to
5 issue additional interrogatories on that distinct topic.

6 MR. CAMPILLO: I guess when we get those
7 interrogatories, we will deal with them. I wasn't aware of
8 it, specifically, but I understand that what we have agreed
9 to do here is not in any way dependent on whether or not
10 they serve additional discovery. This stands alone on its
11 own merits.

12 THE HONORABLE JUDGE FRANK: All right.

13 THE HONORABLE MAGISTRATE JUDGE NOEL: I have
14 nothing else, thank you.

15 (Discussion off the record.)

16 MS. WOODWARD: I was hopeful that they were
17 conceding on the issue.

18 MS. FLEISHMAN: No. Wendy Fleishman for the
19 Plaintiffs, Your Honor.

20 MS. WOODWARD: Well, the issue -- Your Honor,
21 Karen Woodward speaking again. The issue of Defendants fact
22 sheets, the Plaintiffs asked to put this on the agenda for
23 this status conference. And we then started meeting and
24 conferring on a roll-out deadline.

25 They asked if we would be willing to use the form

1 that is adopted in New Jersey. We said we would. But that
2 for us the issue is, we have to prepare Defense fact sheets
3 now for those cases where Plaintiffs fact sheets have been
4 received.

5 And so far we have received about 450 fact sheets
6 in the MDL. So, the challenge to divide the reasonable
7 roll-out plan is really what is in dispute today.

8 We, Your Honor, had looked at our resources and
9 exchanged some correspondence with the Plaintiffs on what we
10 thought a reasonable plan would be. And just to set the
11 stage on that a little bit, there are 195 Plaintiffs' firms
12 in this MDL. We have about 750 cases on file, now I am
13 hearing it is 830, just recently, the numbers were
14 increased. Well, based off 750, that is 3.9 Plaintiffs fact
15 sheets per firm. It is actually less of a burden on the
16 Plaintiffs to prepare the Plaintiffs fact sheet than that,
17 because the vast majority of Plaintiffs' firms in this MDL
18 only have one or two cases filed.

19 If you look at what the obligation is to prepare
20 Plaintiffs fact sheets and you compare that with the
21 compliance deadline, we are still missing 21 percent of
22 Plaintiffs fact sheets, many, many months -- or months,
23 rather, after the first deadline.

24 Our obligation as Defendants is to roll out fact
25 sheets for now 1,900 cases nationwide. So, the need to

1 devise a schedule that is reasonable is a very important
2 need for the Defendants, Your Honor. What I would like to
3 do, Your Honor, is actually share with you in chart form the
4 schedule that we proposed to the Plaintiffs.

5 THE HONORABLE JUDGE FRANK: All right.

6 MS. FLEISHMAN: The Plaintiffs' position is much
7 more simple, Your Honor, so I didn't give you a chart.

8 MS. WOODWARD: So, Your Honor, what we proposed is
9 that by July 12th we could -- we actually initially proposed
10 that by July 12th, we could roll out Defense fact sheets for
11 whatever cases the Plaintiffs had nominated for trial, as
12 part of the trial selection process.

13 So, we wanted to achieve the goal of getting a
14 quick roll-out of those Defense fact sheets. Now, I
15 understand that may change when we get to the discussion of
16 those cases and the bellwether categories.

17 But, what we also proposed, Your Honor, is that
18 starting in early July, we would then start producing 25
19 Defense fact sheets per week. And we phased it according to
20 receipt in time. So, if you look under the column that
21 says, phase one, this will be the cases that were nominated
22 for trial. Those Defense fact sheets would be prepared and
23 produced immediately.

24 For phase two, we would take the oldest cases for
25 which we had received Plaintiffs fact sheets, the ones that

1 we got prior to the very first deadline of March 13th, and
2 then we would start producing the Defense fact sheets, again
3 25 per week, and we could complete that production by August
4 31st.

5 Phase three would be to take the next set,
6 chronologically, that were received. And again, 25 per
7 week, and completing that production by October 31st.

8 And finally, we would have a phase four for ones
9 that we would be receiving between now and August 31st, and
10 we would complete production of those, 25 a week, by
11 November 24th. We are proposing that any fact sheet that
12 gets served after August 31, the deadline would just be 90
13 days and we would work that into the schedule.

14 So, Your Honor, in order to implement this
15 proposal, we are doubling our resources. We feel very
16 strongly that the plan that the Plaintiffs have proposed is
17 not workable because there are so many fact sheets that have
18 come in and that now would trigger our obligation to prepare
19 defense fact sheets. It would be too much to handle all at
20 once.

21 So, I think on this one I want to defer to Ms.
22 Fleishman so she can make her points. I am sure I will have
23 a rebuttal.

24 MS. FLEISHMAN: I am sure. The Plaintiffs'
25 position, Your Honor --

1 THE HONORABLE JUDGE FRANK: Can you move that mike
2 just a bit so we can make sure everybody can hear? Thanks.

3 MS. FLEISHMAN: Sure. Wendy Fleishman for the
4 Plaintiffs. The Plaintiffs' position, Your Honor, is much
5 more simple. We are asking for all of the Defendant fact
6 sheets for cases that have been filed in the District of
7 Minnesota, which would be cases that would be -- the first
8 category of bellwether selection if the Defendants do not
9 agree to waive Lexicon, and we haven't had that discussion
10 yet. And those cases would have the Defendant fact sheets
11 within 30 days of today, May 1st, so that that will inform
12 the bellwether selection process.

13 Frankly, it's almost impossible to select a
14 bellwether without knowing information from the Defendant
15 fact sheet, that is why we've agreed upon a Defendant fact
16 sheet, and that is why we have used them in MDL after MDL in
17 the past. So, that would be the first set.

18 And then the second set we would ask for 60 days
19 after the Plaintiff fact sheet has been received by the
20 Defendants for all of the cases up to now, and then moving
21 forward 60 days after the Plaintiffs fact sheet has been
22 received. So, they just stage it based on the dates they
23 have received our clients' and the Plaintiffs' clients fact
24 sheets.

25 THE HONORABLE MAGISTRATE JUDGE NOEL: Let me just

1 ask a question if I could, because I am looking at geese and
2 gander.

3 What is the nature of the information set forth in
4 the Defendant's fact sheet? What are you -- how long is the
5 sheet and what kind of information is being disclosed?

6 MS. WOODWARD: The Defense fact sheet, Your Honor,
7 requires the production of the device history record for
8 that particular Plaintiff's product. It requires production
9 of the sales invoice for that particular Plaintiff's
10 product. It requires information regarding the device
11 location, photographs if they are available, sales rep name
12 and supervisor name, the PER summary, and then any
13 information from the Broadspire program. And it requires,
14 essentially, the Defendants to coordinate inhouse to locate
15 these documents, also coordinate with Broadspire. And then
16 once we get the information, to process it and to prepare
17 the fact sheet, itself.

18 MS. FLEISHMAN: It is only three and a half pages
19 long, Your Honors. It's not very long. It is actually
20 information that I am sure that they have in their system
21 already for these devices and for these clients. Because
22 when the devices were explanted, the devices, for the most
23 part, Stryker has either informed us of the explant, or that
24 they actually got the explants.

25 And then from there on, all of the information has

1 been collected. I submit to the Court that this is not such
2 a big deal that we are asking for. And if I can just show
3 the Court the proposed Defendant fact sheets so Your Honors
4 can actually see it, it would be much more helpful, I think,
5 than any explanation from me.

6 THE HONORABLE JUDGE FRANK: All right.

7 THE HONORABLE MAGISTRATE JUDGE NOEL: Sure.

8 MS. WOODWARD: Your Honor, though the fact sheet,
9 itself, is written succinctly, it requires the production
10 and compilation of a substantial amount of information.

11 (Discussion off the record.)

12 THE HONORABLE JUDGE FRANK: Well, nobody heard it,
13 I said: Are you going to trust us with this?

14 And she goes: But, it is Ben's, don't worry about
15 it.

16 THE HONORABLE MAGISTRATE JUDGE NOEL: So the
17 record is clear, Ms. Fleishman just handed over an iPad to
18 the Bench, which it is now looking at on the Bench.

19 MR. DeGARIS: We mean to have a May Day Basket,
20 Your Honor.

21 THE COURT: I don't know the photographs on here.

22 MS. WOODWARD: Your Honor, I don't want to
23 interrupt while you are reviewing the fact sheet, but I do
24 have more to say on the topic of its length and what is
25 required.

1 THE HONORABLE JUDGE FRANK: Go right ahead.

2 MS. WOODWARD: All right. So, although the fact
3 sheet is drafted to be succinct and to the point, it does
4 require the acquisition, the compilation of a significant
5 amount of information. It requires, you know, significant
6 resources to distill that information, to locate it within
7 the company.

8 We do not have all of these items saved in one
9 particular place. We don't have a file folder for every
10 particular Plaintiff. We don't maintain records that way.
11 So, it requires inhouse resources. It requires coordination
12 with Broadspire. It requires significant outside resources.

13 And, Your Honor, I would like to respectfully take
14 issue with the assertion that this information is somehow
15 needed for trial selection. We have asked the Plaintiffs
16 what they intend to learn from the Defense fact sheets that
17 will inform their selection. And they have not been able to
18 articulate that information.

19 What they told us was, it is just a matter of
20 giving us basic investigation for the handling of the
21 litigation. Well, that is too vague, Your Honor. The point
22 is that if the Plaintiffs wanted this information for trial
23 selection, they could have designated a category, a trial
24 category that actually encompassed some of this information.
25 They did not. They could have articulated why it was

1 important during the meet and confer process. They could
2 not do so.

3 They could have brought this issue up months ago
4 when we were talking about pretrial schedules. They could
5 have built a deadline into their schedule. They did not do
6 that.

7 They could have asked the Court a month ago when
8 Defendants came to Your Honor and said: Your Honor, the
9 schedule for selection of trial categories is aggressive.
10 We need a little more time. They could have raised it then.
11 They did not raise it then. So, the fact -- the idea that
12 they might need this information now to make trial
13 selections, I think, is a red herring.

14 I think that in many cases, many litigations,
15 oftentimes the production of defense fact sheets doesn't
16 even happen until you know what your trial pool is going to
17 be, and then the focus, depending on the size of the
18 litigation, is getting defense fact sheets on that select
19 trial pool. It is not on every Plaintiff in the litigation,
20 which is what we have agreed to do, here. And it is a
21 substantial undertaking.

22 We have crunched the numbers as to what it would
23 cost to do this kind of production, the kind of production
24 that we have suggested. It is a substantial amount of
25 money. So, we ask Your Honor to please take all of this

1 into consideration as you consider what the roll-out should
2 be.

3 And we will tell Your Honor, too, just for a
4 little bit of background, in the New Jersey litigation, they
5 were faced with a similar situation where the Defense fact
6 sheet issue came up later in the game. They already had a
7 critical mass of Plaintiffs fact sheets. So, they devised a
8 roll-out schedule.

9 And it has been ongoing for six months. They are
10 almost complete with it. I believe they were rolling out
11 their 50 fact sheets a month, and we are proposing 100. We
12 are doubling our offer of what we will produce in terms of
13 Defense fact sheets here in the MDL.

14 In the Florida State Court, Judge Henning last
15 week set a deadline of producing Defense fact sheets 80 days
16 after the receipt of the Plaintiffs fact sheet. Now, we
17 don't have a rolling production there because: A, we only
18 have one fact sheet; and B, there were only 59 cases in that
19 litigation. So, there is not a need to clean up a backlog
20 in this area.

21 THE HONORABLE JUDGE FRANK: How many Minnesota
22 cases, separate from the Lexicon issue, how many Minnesota
23 cases do you estimate, if we have a range?

24 MR. NEMO: Your Honor, there are probably 80
25 Minnesota cases right now.

1 THE HONORABLE JUDGE FRANK: All right.

2 MS. WOODWARD: My last count was 88, Your Honor,
3 but that doesn't take into account what might have just been
4 filed.

5 MS. FLEISHMAN: And I am not going to stand here
6 and say: Well you said this and I said this, and you said
7 this and I said this, but that is not very useful.

8 I do recall a different series of discussions
9 about the Defendant fact sheet that dates back to when we
10 originally wrote the Defendant fact sheet and agreed to
11 accept it. And we do need this information. I'm not sure
12 how much information the Court wants about why it is
13 helpful, but I can explain a little bit without disclosing
14 any secrets. Okay?

15 THE HONORABLE JUDGE FRANK: All right.

16 MS. FLEISHMAN: The first thing would be, we would
17 want to know about the relationship between the implanting
18 doctor and the sales representative. And we want to know
19 about the relationship between any implanting doctor and,
20 therefore, and Stryker. We want to know about the
21 relationships about specifically the device and the
22 information that the Defendants collected about the device.
23 When it was explanted, whether or not they inspected it,
24 whether or not they tested it, all of that information is
25 very relevant to selecting a case.

1 In addition to that, we need to know more about
2 the Broadspire process and if our clients made statements to
3 Broadspire that we are unaware of because we don't have that
4 file. And that is just the beginning of what I suspect is
5 in the available information. And all of that information
6 certainly informs this process and it would certainly inform
7 the way we try a case.

8 MS. WOODWARD: To respond, Your Honor, first of
9 all, Plaintiffs are in the unique position that they have
10 access to the implanting physicians. And I know for a fact
11 that they have reached out to implanting physicians and they
12 are having ongoing discussions with implanting physicians.
13 So, if they narrow their pool of selections and want further
14 information on a particular case, they have the ability to
15 call up the implanting physician and get that information.
16 This is not critical to their selection process, and they
17 have another way to get it.

18 Mr. Campillo also just informed me that per the
19 final joint report and the numbers that we have in the joint
20 report, that the number of Minnesota cases are 133.

21 THE HONORABLE JUDGE FRANK: Now, I saw Ms.
22 Fleishman shaking her head in the -- not in the affirmative,
23 so --

24 MS. FLEISHMAN: Yes, Your Honor. It is the
25 Plaintiffs' position that in fact the doctors are not an

1 open book in the way that Ms. Woodward has described. And
2 that is part of the process of understanding a case. And in
3 all of these cases, all medical device cases, some doctors
4 are happy to talk to their clients' lawyers about the
5 treatment that they gave them, and some are not. And we are
6 not -- we can't say for certain what the information is.
7 But, we certainly want to know what Stryker's relationship
8 is with the doctor, because we know that Stryker has an
9 ongoing relationship with many of these doctors because they
10 continue to sell devices to them, and they continue to have
11 conversations with them. So, all of that information is
12 certainly relevant to the questions that will be before the
13 Court.

14 Now, I am not going to pre-try this issue for the
15 Court. I don't think that is appropriate at this time.
16 But, I certainly think that these are among the reasons why
17 getting a Defendant fact sheet is critical to understanding
18 and in properly selecting bellwether cases.

19 THE HONORABLE MAGISTRATE JUDGE NOEL: I have
20 nothing.

21 THE HONORABLE JUDGE FRANK: Just one observation
22 is all, not to delay the discussion on this issue. And I am
23 not even suggesting it, no matter what any response is, that
24 it will affect how we decide this issue. And that is, you
25 mentioned Lexicon, well in the prior MDLs, and I can just

1 speak for the cases I have had in the past, it's rare that
2 all of the cases came from direct filing here. There was
3 one or two that, for reasons that either the parties agreed
4 on -- it could have come from the Defense or from Plaintiff.
5 They did quickly sign the Lexicon waiver in cases that
6 weren't directly filed here. So, potentially, that is a
7 disadvantage to both of you, depending on -- although, I
8 don't think it is going to affect this, because I suppose if
9 somewhere down the road that very special case by
10 stipulation or otherwise came to be and there was a Lexicon
11 issue, we would probably make that work somehow.

12 MS. FLEISHMAN: If the Defendants choose not to
13 waive Lexicon, then we can, if the Court chooses to do so,
14 the Court can go and sit in the District where the case was
15 initially filed.

16 THE HONORABLE JUDGE FRANK: And that's what we --

17 MS. FLEISHMAN: So, if it was filed in Arizona or
18 Florida or Alaska --

19 THE HONORABLE JUDGE FRANK: And frankly -- right.

20 MS. FLEISHMAN: -- those would all be either
21 choices for the Court and part of the bellwether process.

22 THE HONORABLE JUDGE FRANK: And frankly speaking,
23 maybe something beyond the scope of today's -- but, one of
24 the expectations that wasn't true a decade ago by the MDL
25 Panel is that if there are such cases, the Judge here -- I

1 follow it back to the home -- because that is one of the
2 complaints by the home districts.

3 Well, what have you guys been doing all of this
4 time? Now it is back here and we are supposed to pick up
5 and start over. So, that is an expectation with the
6 intercircuit assignment that goes on much more frequently
7 today than it did a decade ago.

8 MS. WOODWARD: Your Honor, and I just want to say,
9 Defendants have never stated that we are not going to waive
10 Lexicon. I tried to explain that that issue came out of a
11 side conversation. Our view is that it has nothing to do
12 with this particular issue, the issue of what will be the
13 roll-out of Defense fact sheets. So, when it is time to
14 deal with Lexicon, we will happily cooperate in that.

15 THE HONORABLE JUDGE FRANK: We will. Thank you.

16 THE HONORABLE MAGISTRATE JUDGE NOEL: Should we
17 return Mr. Gordon's iPad before it is left here on the bench
18 and he is back in his home state saying: Oh, my God, where
19 is my iPad?

20 MR. GORDON: I can't function without it. Thank
21 you, Your Honor.

22 THE HONORABLE JUDGE FRANK: Most of us can't these
23 days.

24 MS. ZIMMERMAN: Hopefully, we get to start out
25 agreeing more than we disagree, but I think we might be up

1 here for the duration. Genevieve Zimmerman, Your Honor, for
2 the Plaintiffs.

3 MR. GRIFFIN: Tim Griffin for the Defendants, Your
4 Honor. I am happy to report that one of the issues that you
5 had challenged us to resolve the last few months has been
6 resolved; and that is the waiver of service of summons for
7 cases filed prior to PTO No. 10.

8 PTO No. 10 adopted the master pleadings naming
9 several Defendants. The Defendants, I believe it was on
10 Monday, filed an agreed-upon limited waiver of service that
11 listed the cases that were affected by the waiver. And so,
12 for purposes of Howmedica, Stryker Sales and Stryker
13 Corporation, any cases filed prior to the entry of PTO No.
14 10, the Defendants have waived service so long as one
15 Defendant was served.

16 MS. ZIMMERMAN: That is correct, Your Honor. And
17 for ease of the Court's reference purposes and also for any
18 counsel that may be listening on the phone or referring back
19 to these pleadings, we did attach a list so people should be
20 able to find their case, so that it is concrete and there is
21 no disagreement down the road about which cases they have
22 agreed to a limited waiver of service on.

23 The remaining issue with respect to service
24 arising out of the Master Long-Form Complaint had to do with
25 Stryker Ireland. And as the court is aware, we have had

1 some ongoing conversations about how and what we might do
2 with that particular entity. For a variety of reasons,
3 we've decided that we are going to go forward and serve all
4 of the complaints.

5 THE HONORABLE JUDGE FRANK: It seems like such a
6 cumbersome, unnecessary, expensive process. There is no
7 other way to do this for everybody's benefit?

8 MS. ZIMMERMAN: Well, Your Honor, we evaluated and
9 we had a lot of, I think, productive conversations and some
10 potential offers from Defense counsel, as well, in terms of
11 waiving service and entering into a tolling agreement for
12 Stryker Ireland. But, for a variety of evidentiary reasons,
13 and also because actually effectuating service in Ireland is
14 very easy and quite cost effective, we can essentially do it
15 by mail.

16 THE HONORABLE JUDGE FRANK: Were they named in
17 the --

18 MS. ZIMMERMAN: They are named in the master long
19 form and short form complaints.

20 THE HONORABLE MAGISTRATE JUDGE NOEL: What is the
21 issue, I guess? From the Defendants' perspective, why is
22 Stryker Ireland different than these other entities that you
23 are willing to waive service for, but not willing to waive
24 service for Stryker Ireland?

25 MR. GRIFFIN: Your Honor, we agreed, just to put

1 this in context, a number of Defendants have been named, and
2 from our perspective have no connection to these products
3 Stryker Ireland being among them.

4 Our client is resisting the ever-expanding list of
5 named Defendants that have no connection with this product.
6 To address the Plaintiffs' concerns, we offered to, number
7 one, have the parent company stand behind any ultimate
8 judgment that could be entered against Stryker Ireland.
9 That was not accepted. We offered to toll any claims
10 against Stryker Ireland like was done in New Jersey. We
11 thought we had agreement on that, but I understand that the
12 Plaintiffs have chose to go a different path.

13 So, at that point, the conversation frankly ended
14 in the last few days. I believe that answers your question.
15 I think we will likely have motion practice on the
16 appropriate Defendants at some point in the litigation, but
17 that has not been the focus of the parties energies thus
18 far.

19 THE HONORABLE JUDGE FRANK: So, what is the status
20 of this issue, to the extent it is relevant in New Jersey?

21 MS. ZIMMERMAN: Well, in New Jersey, Your Honors,
22 the Plaintiffs there named only the subsidiary HOC or
23 Howmedica Osteonics Corporation. And I understand it in
24 exchange for naming just that one Defendant, were successful
25 in obtaining a tolling agreement from Defense counsel in New

1 Jersey with respect to the other named or potentially-named
2 Defendants, including Stryker Ireland. I'm not sure if that
3 extends also to both Stryker Corporation and Stryker sales.

4 THE HONORABLE MAGISTRATE JUDGE NOEL: And what is
5 the Plaintiffs' position regarding what role in life Stryker
6 Ireland played in any of these cases? Do you know or --

7 MS. ZIMMERMAN: Your Honor, I think a lot of that
8 we intend to and expect to learn in discovery, but we have
9 seen sticker sheets that indicate that these products were
10 in fact manufactured there, so we expect a great deal of
11 discovery to come out of that.

12 And we have also seen in the documents produced
13 thus far that Stryker Ireland was very active in the design
14 of these products, as well, so we think that there is
15 discovery, and witnesses, as well.

16 THE HONORABLE MAGISTRATE JUDGE NOEL: But in any
17 event, so far as we're concerned, you have reached agreement
18 on what you have agreed to, and agreed to disagree and you
19 are going to serve all of the complaints on Stryker Ireland?

20 MS. ZIMMERMAN: We are. My firm and Mr. Nemo,
21 Liaison Counsel to the District Court, have taken upon the
22 issue and we will be serving all of the complaints later
23 this week, with summons.

24 THE HONORABLE MAGISTRATE JUDGE NOEL: So, there is
25 nothing that the Court is being asked to do in this regard,

1 is that a correct statement?

2 MS. ZIMMERMAN: That is probably not entirely
3 correct. Brenda is issuing or making sure that we have an
4 appropriate summons to effectuate this service for a lot of
5 the complaints that were served prior to the adoption of
6 Pretrial Order No. 10, Plaintiffs did not request a summons
7 be issued for Stryker Ireland at that time. So, there is a
8 process by which a bulk generation is being done right now.

9 THE HONORABLE JUDGE FRANK: All right.

10 MR. GRIFFIN: Your Honor, if I may add, I am just
11 hearing the logistics of a bulk service like this, and we
12 are committed to trying to ease administrative burden. And
13 to the extent we can't agree on substantive legal issues,
14 figure out an efficient and appropriate way to resolve them,
15 and so -- we will continue to work with the Plaintiffs to do
16 that.

17 MS. ZIMMERMAN: We are glad to do the same.

18 THE HONORABLE JUDGE FRANK: All right.

19 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

20 MS. ZIMMERMAN: So, moving on now to -- can you
21 believe we are just getting to the disputed issues?

22 THE HONORABLE JUDGE FRANK: Well, and maybe I can
23 say this as background to what we said in chambers, and so
24 you will have ample time to object on any specific issue.
25 But, what we said in chambers for the benefit of everybody,

1 and so it is on the record, is you can put on the record
2 what you need, but we are not going to be requesting any
3 additional briefing.

4 Now, whether one or both parties say, well, you
5 may not need it, but we are going to request it. And I
6 think we also said back there we would issue orders, plural,
7 within one week on all issues that are here in the disputed
8 items, but I guess we will soon find out. So, all right?

9 MS. ZIMMERMAN: Thank you, Your Honor. Well, the
10 first item listed under the disputed issues is the request
11 for partial reconsideration of Pretrial Order No. 13. And I
12 will let Mr. Griffin start with that.

13 THE HONORABLE JUDGE FRANK: Since it is their
14 request, yes. And I think you have co-counsel heading for
15 the podium, too.

16 MR. GRIFFIN: That is correct, Your Honor. Mr.
17 Healy is here in part to address to this issue and also
18 speak to the French translation issue, so I will yield.

19 THE HONORABLE JUDGE FRANK: All right.

20 MR. HEALY: Hello again, Your Honors. Martin
21 Healy from Sedgwick, Newark, New Jersey. This is the real
22 reason why I am here today, Judge.

23 When we received your Order, PTO 13, and as it
24 relates specifically to your request that we go back and
25 attempt to match up documents that we maintain in hard copy

1 with some potential electronic data that may reside
2 someplace on the system or systems maintained by HOC, this
3 candidly took me completely by surprise. And the reason why
4 is because when we have made meticulous efforts to collect
5 our data as it is maintained in the normal course of
6 business, and because we -- and we do that because Rule 34
7 demands it. So, that is the way we intended to produce our
8 information. It is how we collected it. It is how we
9 preserved it. It is how we produced it.

10 So, when we went back and we produced the core
11 documents, these are not, as you imagine, single documents
12 lined up in a row. They are large collections of regulatory
13 filings that are created over a long period of time. Many
14 start before the product ever gets to market, and they run
15 all the way through.

16 And as these documents are created, they are
17 thrown, placed into a storage file, which is in a fireproof
18 cabinet and maintained for FDA regulatory purposes as part
19 of the company's normal course of business. That same exact
20 file does not exist anywhere else in that form, in the
21 electronic form. Because what these are is a lot of them
22 are the end documents, they are signed, there is marginalia,
23 they are put into binders. The binders have binder covers
24 and binder labels, and many of them have indices for the
25 individual labels. None of that information exists anywhere

1 in the ESI system. Some may have been scanned at one time
2 or another, but then it would be identical to what we've
3 already produced.

4 What the Plaintiffs have asked us to do in this
5 case is they have asked us to now go back and try and find
6 each of the underlying documents, the more than 7,000
7 underlying documents that made up the 510(k), the CE Mark
8 and the design history files. I have never heard, and never
9 been involved in a case, I've never read any cases where if
10 the company that had produced the records, produced them in
11 the manner in which they were kept in the normal course of
12 business, have been asked to go back and create a compendium
13 that matches that in ESI form.

14 The only time we have ever been asked to go back
15 and redo or recreate documents is when what was produced was
16 not in the normal course, or when it was produced there was
17 some element of bad faith in the matter. And when I read
18 Your Honor's Order, it specifically mentioned that there was
19 the aspect of stripping out metadata. There was no metadata
20 stripped in what we produced. I have to make that
21 absolutely clear to Your Honors.

22 This is a paper copy. There is no metadata with
23 the paper copies. There are underlying documents that may
24 have been created by one or more of the employees that
25 worked for the company over the decade where some of the

1 products were from bought to finish, and many of them are in
2 shared drives, and they are the versions prior to being
3 finalized, the last version that would come out. But, they
4 wouldn't reside in any one location.

5 It would take people at HOC. They have to go and
6 search for each and every one of these documents, look among
7 all of the various versions that may exist of the document
8 to identify the last copy, the final version, and then make
9 sure it is the exact same, store it over to the side, to
10 even attempt to recreate this file. At the end of the day
11 we would still not have the complete file, because a lot of
12 these documents never existed electronically at all. Some
13 of them are documents that were sent to us and included in
14 other things. And because of that, this Order just did not
15 make sense to me. And I wanted to make sure that Your Honor
16 understood that in my mind there had to be some mistake of
17 what your understanding was of the documents themselves, of
18 what we did in the process of collecting it and producing
19 it, because otherwise I have never had a case where I have
20 been asked to go back and create something from whole cloth
21 that, as far as I can tell, does not exist in a single
22 location.

23 Now, again, Rule 34 specifies that that is our
24 option to produce in the normal course, which is what we
25 did, as they were maintained in the normal course. And

1 these are hardcopy records.

2 Counsel points to a single case of the *Wagner*
3 *versus Dryvit* case, which I imagine Your Honors may have
4 relied upon. That case is wholly dissimilar. The documents
5 that were set aside in that particular instance, where the
6 litigation had originated eight years ago, all the documents
7 that had anything to do with -- in the litigation down in
8 North Carolina were thrown into an individual filing system
9 in a location in North Carolina. There was no rhyme or
10 reason for the documents. They weren't separated in any
11 manner. There was no indices included.

12 And most importantly, they were no longer
13 maintained as they had existed in the normal course of
14 business. They were just constantly added to over the years
15 by the lawyers. We, on the other hand, have made sure that
16 every time we cull and collect something, we keep it exactly
17 the way it was in the normal course of business. And it is
18 because of that, we should not be compelled to go back and
19 recreate this.

20 Now, I understand their concerns. They want to
21 know where they are going to get this information. They get
22 it during the remainder of the roll-out between now and July
23 15th, because they are going to get it as part of the 26
24 custodians. They are going to get it as part of the shared
25 drives' documents that we are producing. And those

1 documents, as well, are going to be produced, just as they
2 are maintained by the company. At the end of the day, they
3 will have exactly what we have. And if they think it is
4 necessary to go back and do the matching up at that point in
5 time, they will have the exact same ability as we do to do
6 it at the end of the production.

7 And if, by chance, there are certain documents,
8 several documents, where they think that they need the
9 assistance of us, we will be more than glad to help them try
10 and match up at that point on the back end. But, to take on
11 this endeavor of over 7,000 documents when we, just to give
12 you an idea -- I don't know, I wanted to find out how long
13 this would actually take us to do. I took the best document
14 reviewer we have, the best attorney that did the job, and I
15 had her start the process of finding this for me. And over
16 the course of a little over four hours, she had only managed
17 to find about 30. At that rate, we are talking something in
18 excess of 750 hours of time to recreate something. And it
19 is not even going to be the exact same copy at the end of
20 the day.

21 It defeats the entire purpose of putting the
22 resources towards this, when they have the information -- we
23 are talking about the differential being, they have the
24 documents, they have the most important stuff. What they
25 don't have presently is some element of the metadata that

1 may exist. It doesn't always exist on the electronic side.
2 And that they will get when they find the individual -- when
3 the individual documents or the component parts are given by
4 custodians by shared drives.

5 THE HONORABLE MAGISTRATE JUDGE NOEL: Let me just
6 ask a question, if I could. So, I speak from time to time
7 on the topic of electronic discovery. And my opening line
8 is usually we have a word for electronic discovery. We call
9 it "discovery." And there is no such thing, at least so far
10 as I can tell, in the 21st century a document that wasn't
11 originally an electronically-stored piece of information.
12 So, what I think the Court intends by this Order is: Where
13 is the document as it existed before you put it in a binder
14 and put it in your regulatory safe, or wherever you keep
15 these things? It had to be on a computer somewhere.

16 And I guess I just find it somewhat incredulous
17 that you don't know where that is, or that it is a hard
18 thing to find it, or it takes four hours to find 30 of them.
19 I mean, it had to exist on a computer before you made it
20 into a piece of paper.

21 MR. HEALY: Well, some of the documents date back
22 much further than the time that everybody would use to
23 produce. But, I understand what Your Honor is saying. The
24 difference here is that the documents we are speaking of,
25 the reason why we offered the core documents was because

1 they were all located in one space. They exist together for
2 a reason. That is the regulatory file. That is the
3 progression of the product over a period of time. Okay?

4 Yes, there are components, there are all these --
5 the 7,000 individual documents that make that up, they
6 reside across a broad spectrum of the entire computer
7 system. Not by person, by one group, by one area. There
8 are dozens of people, dozens of areas, dozens of locations
9 where all of these things reside. And to go back and try
10 and find them is very difficult.

11 And one of the prime reasons is, there is no
12 clear-cut dedupe method that you could take the scanned
13 version and then match it back to what its original would
14 look like in the system. So, you have to do it manually.

15 And then there is also a very little way you can
16 take it if you fuzzy it up, you make it a little bit more
17 loose on how you match the two documents. Now you capture
18 dozens and dozens of documents that have the content that
19 are very similar, the various versions of it leading up to
20 the file. They all exist in that same pool. And then you
21 have to go and cull down to find the last one to try and
22 create this new document. So, that is our issue in that
23 file.

24 MS. ZIMMERMAN: Thank you. Your Honors, the
25 Defendants fail to show compelling circumstances that would

1 justify a motion to reconsider on the facts. These issues
2 have been briefed. And I think that to Judge Noel's
3 question, really the policy implications of what the
4 Defendants are asking is, essentially, should a defendant
5 like Stryker make a decision that they can print out any
6 kind of documents they may have and provided they keep it in
7 some sort of a bottom drawer, then at some point down the
8 road then the Plaintiffs have to bear the burden of figuring
9 out who had what files and when. That is certainly not what
10 is contemplated in the Rules.

11 We have briefed the issue in terms of undue
12 burden, and the Court considered those going forward. And I
13 think another part that is -- or as the issue was considered
14 earlier, I think one of the really important facts here is
15 looking at what the history has been of discovery, or sought
16 discovery in this case.

17 When we were before Your Honors in September, we
18 indicated even just as interim counsel that we were prepared
19 to serve discovery. And the Defendants at that time said:
20 Please don't. Make sure that anything you do is not
21 duplicative of what has happened in New Jersey. We
22 certainly were aware of and had been provided copies of the
23 discovery that had been propounded in that litigation dating
24 all the way back to over a year ago, now, April of 2013.

25 So, mindful of that and mindful of the nature and

1 the purpose of an MDL, we stepped back and waited for the
2 good faith production that Defendants assured us would be
3 coming. We fought about the protective order for a number
4 of months. We came to an interim decision on that, and we
5 finally got a very small production which we are now being
6 told is the bottom drawer hard copy of a number of
7 documents, representing about 7,500 documents.

8 But, it is not a complete production. And we are
9 not in the best position to go back and figure out exactly
10 who had these, whose handwriting is in the margins of the
11 various documents that may or may not be key, and for all of
12 the reasons that were detailed to the Court in previous
13 briefing, we think the Order was appropriate.

14 MR. NEALY: Again, Your Honor, I just point out
15 that we gave them the documents as they are maintained by
16 the company, these core documents. And that is purely what
17 these are. These are the core documents, the regulatory
18 files, probably the most important documents related to the
19 products, themselves.

20 The way the company works is that all of the
21 individual components that go in to making it up are done by
22 dozens and dozens of different people. If you have an issue
23 at the company about a specific issue, you are going to go
24 to a specific person. You are not going back to the core
25 document to find it. The core document tells the story in

1 large, that is what it does. It is not the individual
2 document.

3 The individual documents, they are going to get
4 that information, they are just going to get it in the
5 custodians' path. They are going to then see what the
6 custodian had to say, what the individual, what the group
7 did with regard to any one of the issues they might want to
8 explore. They are going to have the time to do that and
9 look at these issues when they get those documents and when
10 they are analyzing them. Some they already have. Some will
11 be given to them between now and July 15th.

12 We have now already quadrupled the number of
13 people we have put on it to meet the July 15th deadline. To
14 now have to go and add this extra burden to it when at the
15 end of day they are going to get all of the same information
16 anyway, it just doesn't make any sense.

17 THE HONORABLE JUDGE FRANK: It will be one of
18 these issues, unless Ms. Zimmerman wants something -- that
19 will be included either in a separate order or in one of the
20 orders issued in the next -- within the week.

21 MR. HEALY: And if I could -- just one other point
22 I could raise, if possible?

23 THE HONORABLE JUDGE FRANK: All right.

24 MR. HEALY: The Order also spoke in terms of
25 trying to find the native version of these particular

1 documents. Everything we have been producing so far has
2 been pursuant to a production protocol that was initially
3 prepared by the Plaintiffs' lawyers in the New Jersey
4 litigation. We tweaked it, we played around with it, we've
5 agreed upon it. We gave it to counsel at our first meet and
6 confer meeting. I know that Ben had been at that
7 conference.

8 And I thought it had been agreed, or at least
9 tacitly agreed at that point in time that any production
10 would have been pursuant to that document, which would
11 require, for these particular things, it would be a tiff
12 with a list of metadata that would exist to the extent it
13 resides on the system.

14 And I just would ask that if Your Honors are going
15 to do it, unless they are going to force us to go to, that
16 is an actual issue of contention, then we would have to
17 object to the native production, as well, because then that
18 is forcing us to produce across multiple jurisdictions the
19 very same documents in completely different formats.

20 MS. ZIMMERMAN: Well then, Your Honor, that may be
21 an issue that we need to brief more fully to the Court. As
22 I think the Court may recall, we actually were prepared to
23 offer an expert in ESI and other discovery issues to present
24 to the Court --

25 THE HONORABLE JUDGE FRANK: That's true.

1 MS. ZIMMERMAN: -- back in December, November or
2 December, Mr. Conor Crowley. We have not entered into or
3 come to an agreement about the format of production here,
4 and we would certainly request in this MDL native format
5 productions.

6 MR. HEALY: And except for the fact that Mr.
7 Crowley was at the first meet and confer meeting that I was
8 at, we showed him the Order. We asked him if there was
9 anything about it that he required changing or that he
10 thought needed changing. He specifically indicated it
11 looked good to him. He did reserve the right to go back and
12 discuss it further.

13 But, from that time until this motion, the
14 original motion to compel, there was never any question.
15 We've been rolling out documents pursuant to it since.

16 (Discussion off the record.)

17 THE HONORABLE JUDGE FRANK: As I said before, we
18 will go ahead and issue an order granting or denying, and
19 then covering these issues. And then when you get the
20 order, if one or both of you feel that, well, they didn't
21 directly address this native production issue, I guess you
22 will know that when you get the order next week. And then
23 we will take it from there.

24 And fortunately or unfortunately, if something
25 remains unresolved, I guess we will hear about it in our

1 next get-together in June. So, hopefully, our order will
2 take care of most of this. And if not, I guess we will know
3 soon enough. All right?

4 MR. HEALY: Thank you, Your Honor.

5 THE HONORABLE JUDGE FRANK: Thank you both.

6 MS. ZIMMERMAN: I thought we would do treating
7 physicians first. Your Honors may know that there are a
8 couple of issues that we think fall within the protective
9 order, the interim protective order and finalizing that.
10 But, at any rate, I think we have a disagreement about how
11 to describe it. So, it is number 4B, the retention of
12 treating physician experts, and also modification of
13 Pretrial Order No. 9.

14 So, starting with what the Plaintiffs would
15 consider Defendant's request to make ex parte contacts with
16 treating physicians for Plaintiffs --

17 MR. GRIFFIN: Do I get to go first, since it is my
18 request?

19 MS. ZIMMERMAN: Sure.

20 MR. GRIFFIN: Okay. To preview for the Court, I
21 think we reached an agreement on PTO No. 9 language.

22 MS. ZIMMERMAN: Subject to a number of things we
23 would like to put on the record.

24 MR. GRIFFIN: Subject to a few points that I don't
25 know that I fully appreciate, but within the last couple

1 hours there has been some, hopefully, meeting of the minds
2 that will resolve that issue.

3 With regard to HOC's proposal to retain treating
4 physician experts, Your Honor, we proposed a structure in
5 which we would have court approval to reach out to
6 physicians who may have Plaintiff patients in the
7 coordinated MDL proceeding, or in the future may. And we
8 wanted to do so in a way that respected any patient
9 privilege and provided safeguards around any communications
10 we had with them to prevent the disclosure of any patient's
11 specific privileged information.

12 The clear weight of authority and trend in the
13 authority supports the proposal that we made. We cited that
14 had case law in our proposal.

15 THE HONORABLE JUDGE FRANK: You gave a couple of
16 examples of orders that other MDL Judges have issued. Not
17 to oversimplify the issue, but isn't the primary issue the
18 four-position limit? Isn't that one of the issues?

19 MS. ZIMMERMAN: That is one of the issues that has
20 evolved, as we have continued to meet and confer about this
21 'til all hours on a number of occasions, here. The
22 Plaintiffs' primary, I guess, objection or concern is the
23 issue of the patient/doctor confidentiality. And it is
24 something that this Court was concerned with in *Guidant*, and
25 certainly Judge Davis addressed the issue in *Baycol*.

1 There's some very good orders that we cited to the Court
2 with respect to Judge Fallon's decisions in *Vioxx*. But, I
3 think that we are prepared to reach an agreement about a
4 portion of how to address Plaintiffs' concern.

5 Defendants had proposed something akin to what
6 Judge Pallmeyer has done in the *NexGen. Litigation* in
7 Illinois, whereby there is essentially an order from the
8 Court that directs a treating physician -- they are not
9 allowed to speak with Defendants about Plaintiff-specific
10 issues that would violate this --

11 THE HONORABLE JUDGE FRANK: And you are required
12 to show that to the doc before anything happens, right?

13 MS. ZIMMERMAN: Right, and provided that, I think
14 a great deal of -- or a number of our concerns are addressed
15 by having that order in place and the Court may be aware
16 that in the reply or response letter that we submitted last
17 week, we also attached as an exhibit, a potential order.

18 THE HONORABLE JUDGE FRANK: You did.

19 MS. ZIMMERMAN: We had proposed at one point that
20 the Defendants be allowed to have contact with four
21 orthopedic surgeons. We requested that they disclose to us
22 who they would be and that they not be treaters within the
23 state of Minnesota because we were, I guess, forecasting
24 potential Lexicon issues. That is obviously, I think, a
25 subject that continues to be discussed at this point.

1 Most recently we had offered in the response we
2 submitted last week to follow Judge Pallmeyer's lead.
3 Subject to this Order they are not allowed to talk about
4 anything that violates the privilege, offering 25 orthopedic
5 surgeons that the Defendants would be allowed to have
6 contact with.

7 I believe the last position from Defendants was
8 that that 25 would be added to -- or, there would be at
9 least 19 additional orthopedic surgeons with whom the
10 Defendants could have conversations, because they had a
11 prior business or consulting relationship, and I believe
12 were involved with either the design, the evaluation or
13 science and clinical evaluation of these products at issue.

14 The Plaintiffs have gone through the Plaintiffs
15 fact sheets that have been submitted thus far, and in light
16 of what the bellwether pool is likely to be, it is our
17 understanding there are 123 total implanting physicians that
18 could be at issue. And because that number is really so
19 small, we object strongly to Defendants having the ability
20 to have ex parte contact with, you know, 25, plus 19, or
21 whatever the number ends up being. I mean, that could very
22 well be over half. And as Ms. Fleishman previously
23 indicated to the Court, there's a great many of these
24 physicians who may not be willing to speak with the
25 Plaintiffs, as well. So, the number of potential folks that

1 we would have to meet with from an expert standpoint in the
2 pool is very small.

3 MR. GRIFFIN: So, focusing the conversation on the
4 last 48 hours where we have Defendants' proposed order that
5 permits them to communicate with any of the treating
6 surgeons, so long as the conversation doesn't include
7 patient-specific information, the numerical limit of 25 is
8 inserted into that proposal. And the way that the Order is
9 worded is problematic, because as a matter of undisputed
10 law, we have the right to contact fact witnesses to perform
11 informal investigation of the surgeons that consulted on the
12 design of these products.

13 We cite in our papers right on point the decision,
14 recent decision in the *Pelvic Repair Litigation* from the
15 Southern District of West Virginia, 2013 stating: Defendant
16 has every right to meet, and in brackets, the
17 preceptor/consultant and prepare for inquiry on topics
18 related to the preceptor/consultant services for defendant.

19 What we are concerned is, if a numerical limit is
20 inserted into this order, it captures and limits our ability
21 to conduct investigations and meet with fact witnesses. So,
22 that problem is simply solved by putting in a parenthetical
23 that excludes our consultants, those folks with whom we had
24 a consulting relationship prior to this litigation. And
25 that is what we have proposed informally.

1 The 25-surgeon limit, while we are not likely to
2 run up against the 25-surgeon limit for purposes of
3 bellwether, obviously. But, we are trying to forecast down
4 the road, if we get a large number of cases that are
5 remanded and we are attempting to retain independent
6 physician experts that are knowledgeable, that are from the
7 community, that 25 limit is conservative, frankly.

8 And so, the Defendants are on solid sound ground,
9 legally, in arguing that there should be no numerical limit.
10 The mischief possibility is addressed by Rule 11.

11 The *Zimmer* decision by Judge Pallmeyer that
12 Plaintiffs rely upon, the 25 numerical limit was conceded by
13 the Defendants. It wasn't an issue. It wasn't briefed. It
14 wasn't disputed. So, I don't think that has persuasive
15 value, as this Court looks at the law and the landscape and
16 tries to craft an order that respects the patient privilege,
17 that protects it, but also protects what many courts, MDL
18 courts have described as the defendant's right to compete on
19 an equal playing field; and that the Court should not limit
20 a surgeon's ability to decide whether he wants to testify
21 for one side or the other. So, that is where we are at in
22 the evolving briefing and attempt to find common ground,
23 Your Honor.

24 MS. ZIMMERMAN: And if I may briefly respond? So
25 the --

1 THE HONORABLE MAGISTRATE JUDGE NOEL: Before you
2 do that, could I just ask a quick question? Is your last
3 proposal, the one that you described as being evolved in the
4 last 48 hours in a written form somewhere before us or no?

5 MR. GRIFFIN: It is not, Your Honor.

6 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

7 THE HONORABLE JUDGE FRANK: I was about to ask the
8 same thing, that before we are done with this, so we can get
9 an order out this next week, as well, is to make sure that
10 whatever the 48 hours has produced, if we could have --
11 unrealistic if you are travelling, but say by the end of
12 business day on Monday, send that to our chambers box.

13 I was going to ask the very same question. We
14 weren't even passing notes to each other. So, just to make
15 sure we have got your most recent proposals, those things
16 you agree on, those things you don't, because it sounds like
17 there has been some movement in the last 48 hours, as you
18 have said.

19 MS. ZIMMERMAN: I think that we really have
20 reached basic agreement with the number, I think, piece,
21 being the remaining issue. Is that fair?

22 THE HONORABLE JUDGE FRANK: All right. And then
23 if we can just --

24 MS. ZIMMERMAN: If I could briefly add? When
25 Judge Pallmeyer did consider and address the compromised

1 position of 25, she was faced with a very similar MDL,
2 similar numbers around 800 cases at the time. So, to this
3 point, to the extent Defense counsel is aware of potentially
4 19 physicians that would have, you know, relevant
5 information about the design, evaluation, clinical history
6 of these products, they have got a number of folks with whom
7 they can consider and consult already.

8 MR. GRIFFIN: Your Honor, obviously a surgeon who
9 consulted on the design who is a fact witness for whom
10 Plaintiffs in their first set of discovery, first set of
11 requests, first set of interrogatories have asked detailed
12 information about is not as likely a candidate to be an
13 independent expert in a piece of litigation. So, these are
14 two different buckets of folks. They should be treated
15 separately.

16 THE HONORABLE JUDGE FRANK: Ms. Zimmerman, do we
17 have your most recent order? Does that reflect where we are
18 at in the last 48 hours?

19 MS. ZIMMERMAN: I think it is -- I think that it
20 does.

21 THE HONORABLE JUDGE FRANK: Let's say we do it by
22 5:00 Central Standard Time on Monday. If you want to send
23 it earlier, that is fine. Then that still won't interfere
24 with getting an order out addressing this this next week, as
25 well. To show you what a small world it is, my co-faculty

1 member at the MDL Conference for Judges when we suffer
2 through Breakers every October down in West Palm Beach is
3 we, Ms. Rebecca Pallmeyer and I co-teach -- not the new, new
4 Federal Judges, but the Federal Judges with their first MDL
5 case. And she and I are the two that have done that the
6 last three years. So, for what it is worth, so --

7 MS. ZIMMERMAN: And to confirm, Your Honor,
8 Exhibit D to the filing we submitted --

9 THE HONORABLE JUDGE FRANK: That reflects --

10 MS. ZIMMERMAN: -- last Thursday, it is redlined
11 to show literally just the number. It says up to 25
12 physicians. So, it shows the difference that we would add
13 to Mr. Griffin's proposal.

14 MR. GRIFFIN: If I may, Your Honor, make a
15 suggestion? How about if we attempt to have a conversation
16 after this hearing? And if we are unable to bridge the gap,
17 we will submit --

18 THE HONORABLE JUDGE FRANK: Okay.

19 MR. GRIFFIN: -- our redline and the Court will
20 have the parties' positions.

21 THE HONORABLE JUDGE FRANK: Perfect. Sounds good.

22 MS. ZIMMERMAN: All right. So, we move on then to
23 the modification and attempt to finalize the Pretrial Order
24 No. 9, which is presently the interim protective order.

25 This has again ben something that we have been in

1 ongoing meet and confers about and pleased to tell the Court
2 that we have had a great deal of success and agreement on a
3 lot of disputed issues.

4 There are a couple of main issues that we would
5 like to make sure to confirm on the record.

6 MR. GRIFFIN: And if I may provide context, Your
7 Honor, this was a proposal that Defendants made following a
8 conversation Ms. Zimmerman and I had earlier in the week --
9 late last night. So, we are eager to hear what she has to
10 say.

11 MS. ZIMMERMAN: Well, I think that we have a basic
12 agreement on the definition of competitor in Mr. Griffin's
13 most recent draft. There is a -- working with somebody
14 else's documents is always fun -- but it has been very good.
15 Wanting to clarify in paragraph -- is it 9? The
16 de-designation process.

17 MR. GRIFFIN: Paragraph 9.

18 MS. ZIMMERMAN: I think it is paragraph 9.

19 Thank you for your indulgence. So, paragraph 9
20 actually incorporates, in large part, in this new redlined
21 version language from Form 6 offered by the District of
22 Minnesota in terms of de-designation or reclassification of
23 documents.

24 And the language is adopted completely from the
25 forum suggestion by this Court. But, the Plaintiffs would

1 like to confirm that any designations of documents as
2 confidential needs to be a made in good faith. And that to
3 the extent that a party believes that a document had been
4 mis-designated, we follow the forum process in terms of, we
5 will raise it with the producing party and request a change
6 in designation. If that change is not agreed to, we
7 would -- we had proposed in the letter we submitted last
8 week that we would bring it to the Court's attention within
9 14 days and hope to get the matter before the Court with all
10 due speed.

11 THE HONORABLE JUDGE FRANK: And confidential
12 meaning different people define that differently in terms of
13 the sealing issue, for example. What -- just to make sure
14 we are all on the same page, here --

15 MS. ZIMMERMAN: The protective order actually
16 defines confidential, Your Honor.

17 THE HONORABLE JUDGE FRANK: And so that would not
18 be changed?

19 MS. ZIMMERMAN: That is not to be changed. And
20 actually, there is very little to be changed. There were
21 really only a few areas of dispute dating back to when we
22 were first discussing these issues in November and December,
23 two main issues, I believe.

24 I wanted to also place on the record just for the
25 Court's edification, that in some of the more recent

1 litigations, particularly those involving hips, it has been
2 counsel's experience that really a very small, and I mean a
3 handful of documents, would ever potentially be so
4 confidential as to have proprietary information that
5 couldn't be shown to an expert, for example. And that is,
6 really, I think, the heart of the question with this
7 protective order.

8 MR. GRIFFIN: I don't foresee a problem, Your
9 Honor, given the agreed upon language as I understand it
10 with Plaintiffs not being able to share documents with
11 retained consulting or testifying experts.

12 Where there is a request by the Plaintiffs to
13 share this type of information with a prohibited person, we
14 have adopted again the mechanism from Form 6, which the
15 Court is likely familiar with. So, I do think we are in a
16 good spot with language that the Court is familiar with and
17 that is hopefully uncontroversial.

18 THE HONORABLE MAGISTRATE JUDGE NOEL: Just to be
19 clear, then, we would anticipate the parties will submit an
20 amended or updated or something referring to Pretrial Order
21 No. 9 --

22 MS. ZIMMERMAN: We will do that.

23 THE HONORABLE MAGISTRATE JUDGE NOEL: That the
24 Court can just adopt?

25 MS. ZIMMERMAN: That is right.

1 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

2 THE HONORABLE JUDGE FRANK: Absent a late night
3 meeting or something.

4 MS. ZIMMERMAN: Hopefully not too many more of
5 those. On to bellwethers?

6 MR. GRIFFIN: Thank you, Your Honor.

7 MR. CAMPILLO: Your Honor, I think the next item
8 is the bellwether categories. As we have represented to the
9 Court in chambers, I think we have reached an agreement, at
10 least in terms of what the categories will be for the
11 bellwether cases, and I will just repeat those.

12 I think we submitted a letter, and there was a
13 typo, and it had to be corrected. So I wanted to make sure
14 the record is clear that the parties, first of all, agree
15 that patients who have not yet been revised will be
16 considered to be in their own category, and that that
17 category of Plaintiffs, for the time being, at least, will
18 not be considered for a bellwether trial, but will be dealt
19 with in the appropriate time and in due course.

20 And then the rest of the cases, meaning the
21 revised cases, will be divided into five categories.
22 Category one would be Rejuvenate cases that have been
23 revised where the implant was put in before January 1 of
24 2011, and the patient has had, what we are referring to
25 somewhat loosely, but I think we understand what we are

1 talking about, uncomplicated revision, or uncomplicated
2 outcome.

3 Category two would be Rejuvenate cases also that
4 will have been revised that had an implant also put in
5 before January 1, 2011, but it had a what we would call a
6 more complicated outcome.

7 Category three would be Rejuvenate revisions where
8 the implant was put in after January 1, 2011 with an
9 uncomplicated outcome.

10 And category four would be Rejuvenate revisions
11 with an implant being put in after January 1, 2011, but with
12 a more complicated outcome.

13 And category five would be the ABG II cases that
14 is have been revised, which are part of this MDL, and there
15 would not be any further classification of those. So, any
16 ABG II cases that have been revised would fall into category
17 five.

18 I think we have also agreed that with regards to
19 the order of the trials, the parties still will meet and
20 confer further. That after category one, which category
21 will be the second one to be set for trial, and third and
22 fourth and fifth is something we need to discuss further.
23 So, the setting of the trial for each category remains to be
24 discussed, but we have agreement on the categories,
25 themselves.

1 MR. FLOWERS: So, Your Honor, that is correct with
2 some caveats, just so we are clear for the record. The date
3 of January 1 of 2011 was not a date that was selected by the
4 Plaintiffs. We think it is an arbitrary date. And we just
5 want to make clear for the record that this particular date
6 should have no effect at all on anything. We don't have the
7 documents to determine whether that is a relevant date in
8 terms of some sort of cutoff or not, but it is a date we are
9 at least willing to live with at the time.

10 The second part is in terms of the differentiation
11 of Rejuvenates from ABG II's, it was also an issue that we
12 discussed in great detail and many, many calls with Mr.
13 Campillo. For the record, we just want to make certain that
14 the differentiation of these two groups of cases should have
15 no affect on any evidentiary issues at the trial of either
16 case, and should have no affect on discovery, meaning the
17 production of documents in regard to ABG II, because it is
18 our position that there is a lot of crossover between the
19 two. And especially with the documents, there's going to be
20 a lot of documents that are relevant, we believe, to both
21 cases. So, we just want to make certain that by
22 differentiating the bellwethers, it has no effect on either
23 evidentiary issues or discovery issues.

24 MR. CAMPILLO: Yeah, and we are agreeable to that,
25 Your Honor. The fact that there is a discrete category,

1 i.e., Category No. 5 for ABG II in and of itself is not in
2 any way addressing evidentiary issues or anything relating
3 to discovery. It doesn't mean that there may be evidentiary
4 issues that would be resolved on their own merits, but it
5 won't be because there was a straight category set for ABG
6 II. That will not be an argument we will make, nor is that
7 our proposal.

8 THE HONORABLE JUDGE FRANK: And I don't think we
9 have that most recent agreement on categories, or do we? On
10 these five?

11 MR. CAMPILLO: It is essentially the proposal that
12 was submitted in writing by Stryker.

13 THE HONORABLE JUDGE FRANK: Right.

14 MR. CAMPILLO: But for the pool issue which we are
15 going to come to in a second. So, in terms of the
16 categories, I think the Plaintiffs are adopting Stryker's
17 proposal with the caveats that have been stated here on the
18 record. And I would just say that with regards to the
19 January 1, 2011 date, it is partly arbitrary, but we picked
20 that date because of the number of months the products were
21 marketed kind of fall into -- it seems to be the midpoint.

22 And also, there are roughly a number of Plaintiffs
23 in the MDL that currently seem to fall in equal numbers
24 before and after January 2011. There is nothing beyond that
25 in terms of why we selected that date, and I think that is

1 set forth in our written papers, as well.

2 MR. FLOWERS: And then, Your Honors, in terms of
3 the order of the trials, in terms of the second, third,
4 fourth and fifth. It is something that we discussed, and I
5 think we need to re-discuss a point. But, I would like to
6 expedite that and, you know, put us on a schedule again to
7 get those things set so that when we pick these cases, at
8 least the first four categories we pick, these cases coming
9 up, that those are set in terms of what is the order.

10 So, Mr. Campillo and I have talked about this.
11 And I think what we would like to do is to come back to you
12 in seven days. If we don't have an agreement, we will
13 figure out a process by -- where you will make a ruling on
14 what is the next --

15 THE HONORABLE JUDGE FRANK: Well, and there are
16 some other issues, here. I hope this doesn't surprise
17 anyone. It shouldn't. And I -- again, with a preference
18 that one size doesn't fit all, I will use as one reference
19 the *Guidant* case that just, coincidentally or not, had five
20 categories, but the -- a couple of issues.

21 One is the selection process, itself, of the cases
22 to go into that category, because as many of you know in the
23 room, courts have been criticized over the years in MDLs,
24 well, the Judge should have taken a more meaningful role in
25 picking the bellwether trial. And whether that is using

1 kind of the preemptory strike issue -- or the Judge agreeing
2 with the selection -- so they are truly representative
3 cases, not the weakest or the best, something that were --
4 and for two reasons, just not the trial, but what I did in
5 *Guidant* with input from counsel, we ended up deciding on a
6 selection process with the input from management by the
7 Court and the parties on which cases and how they were
8 selected. And two, that also dictated motion practice, as I
9 said in chambers.

10 In that case, relevant or not, I am not really one
11 to set trial day limits. I have never gone over, except one
12 trial, an 8-week trial by one or two days in my career.
13 But, we did set, pretty much by agreement, I think it was 10
14 days for each trial with a few days off in between, or maybe
15 8 trial days, and then back to back. And I think we all
16 agreed on the order in which they went. But, then we also
17 had a schedule, because I think before it was over, I heard
18 32 dispositive motions, about 8 *Daubert* motions. And then
19 what role that played, I will leave it up to the lawyers --
20 some of you were in the room. That played in the settlement
21 process. But, those are all things that we will be
22 discussing. But, I think it is, importantly, this first
23 stage is a critical stage to get these categories.

24 And one thing that changed, to use again the
25 *Guidant/Boston Scientific* case was there was some debate

1 about whether a category should have been added for death
2 cases, and there wasn't total agreement on that, because
3 there weren't that many death cases.

4 Sadly, I don't know if any of the lawyers in here
5 represent the Plaintiff who recently died in one of the
6 pending cases here, but I think those are the things we can
7 discuss and likely come up with a plan that is fair, but
8 serves everybody's interest. And I don't know if by
9 something I have said one of you have been startled and
10 said: Well, wait a minute. We have a plan, and it doesn't
11 resemble anything the Judge has just said, and Judge Noel
12 may have something that relates to some of the discovery or
13 other issues, as well. But, I don't know if anybody has
14 questions for me or any response? I guess more to come down
15 the road here, soon. So --

16 MR. CAMPILLO: That is our understanding, Your
17 Honor.

18 THE HONORABLE JUDGE FRANK: All right.

19 THE HONORABLE MAGISTRATE JUDGE NOEL: If I could
20 just add and make sure I am clear, then by May 8th, which
21 will be seven days from today, you are going to submit to
22 us -- first you are going to write down what you told us
23 here about what the categories are, correct?

24 THE HONORABLE JUDGE FRANK: They do resemble in
25 substantial part what the --

1 THE HONORABLE MAGISTRATE JUDGE NOEL: Yes. And
2 then you are also going to -- and you have agreed that the
3 first category, category one, the Rejuvenate that were
4 implanted before January 1 of 2011 and are uncomplicated,
5 will be the first category for trial for bellwether
6 purposes. And then on that May 8th date, you will either
7 submit an agreed upon order for the others, two through
8 five, or a process by which the Court will decide what that
9 order is going to be, correct?

10 MR. CAMPILLO: Yes.

11 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay, great.
12 Thank you.

13 MR. CAMPILLO: And the only remaining point has to
14 do with the selection or the eligibility of cases for the
15 pool. And our letter brief proposed that we use cases that
16 have been filed by March 18th, 2014, we have agreed to
17 extend that to include cases filed through the end of
18 business on Monday of this week. That was, I think, the
19 28th of April.

20 THE HONORABLE JUDGE FRANK: Right.

21 MR. CAMPILLO: And cases then not only that were
22 filed by April 28th, but an essentially completed Plaintiffs
23 fact sheet has been submitted through the end of business
24 today. So, any cases achieving those two dates will be
25 eligible for either pools and eligible to be lead cases for

1 each of the categories. But, because of the additional
2 cases that will be considered, we are asking that each of
3 the parties propose lead cases for each of the five
4 categories, be extended approximately a month from June
5 12th, which was the original deadline, to sometime in
6 mid-July whatever is appropriate, in terms of submitting the
7 three per side, per category, of proposed lead cases.

8 THE HONORABLE JUDGE FRANK: All right.

9 MR. FLOWERS: That is our agreement.

10 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

11 MR. FLOWERS: I think that is all on bellwethers,
12 Your Honor.

13 THE HONORABLE MAGISTRATE JUDGE NOEL: I think that
14 was the last thing.

15 THE HONORABLE JUDGE FRANK: We have "other" issues
16 on paragraph 5?

17 MR. FLOWERS: We have a couple of other issues,
18 Your Honor.

19 THE HONORABLE JUDGE FRANK: And if I haven't -- if
20 I don't cross into uncharted territory here or objectionable
21 territory, not relating to these three topics, but in the
22 interest of transparency -- and I don't know if before we
23 conclude whether or not anybody wants to -- if there are
24 lawyers in the room that are listening that have those one
25 or two cases and are wondering, well, what was discussed

1 back there, conceptually or otherwise, about -- other than
2 what the Judge has said about the goal being somewhere in
3 the middle of January -- or January -- hope not. July,
4 let's try it again, the "J" word, to discuss whether or not
5 there is going to be some global approach, to use, for lack
6 of a better word, of a settlement procedure, and whether
7 that will look like New Jersey, or if the cloak of
8 confidentiality comes off and there are a combination.
9 Because there was some significant discussion about that,
10 especially with -- I think I can speak for everyone
11 concerned, for the older, vulnerable, frail, and just in the
12 interest of, I guess, transparency, that it is a concern by
13 everyone. But, I will let people say as little or as much
14 as they want about that. Maybe you are thinking enough has
15 been said, you know, the way we opened up the hearing. So,
16 I will leave that up to counsel, unless Judge Noel has
17 something else on that. But, we can go on -- these other
18 issues, whether it is A through -- A, B and C, or another
19 issue before we conclude.

20 MR. FLOWERS: Your Honor, I think we talked about
21 service.

22 THE HONORABLE JUDGE FRANK: We did.

23 MR. FLOWERS: So just in terms of the master
24 answer to the Long-Form Complaint, we are trying to get a
25 date as to when we will see an answer to the Long-Form

1 Complaint.

2 MR. GRIFFIN: I think if we look at point C, which
3 mentions amendment of the Master Long-Form Complaint, my
4 understanding is Plaintiffs are close to proposing an
5 amendment and it probably makes sense to talk about how to
6 handle that before answering, given where we are at.

7 MR. FLOWERS: We do intend to amend the Complaint.
8 Shortly, we are going to send them a draft. It essentially
9 just adds in some French entities with essentially the same
10 allegations as they are against Stryker Ireland, for that
11 matter.

12 There are one or two French entities that -- you
13 know, once again, that is why Mr. Gordon has been dealing
14 with French documents that were clearly involved in this,
15 the design, the marketing, the whole process of both of
16 these devices. So, those two we are intending to amend the
17 Complaint to bring in.

18 We are going to provide them with an amended
19 Complaint, probably, on Monday, and then the process will
20 start. But, I still think that we ought to have -- since
21 that is not really going to change much of anything, we
22 ought to have, or try to have some sort of schedule on when
23 we are going to get an answer, ultimately, to the long form
24 complaint.

25 THE HONORABLE JUDGE FRANK: So, on the assumption

1 that -- what, you are saying maybe early next week an
2 Amended Complaint?

3 MR. FLOWERS: Right, the only change is adding two
4 Defendants.

5 THE HONORABLE JUDGE FRANK: On the assumption of
6 that circumstance, Counsel, any date in mind, whether it is
7 agreed to or court-ordered or whatever the case may be for
8 an answer to the master -- master answer to the Amended
9 Master Long-Form Complaint?

10 MR. GRIFFIN: I don't, to be frank, Your Honor.
11 This wasn't a specific issue we discussed in advance of the
12 hearing. It is not something I have spoken to our client
13 about, or Mr. Campillo, frankly. At minimum, 30 days?
14 Because I think what we are going to be evaluating is motion
15 practice.

16 MR. FLOWERS: 30 days? We can live with 30 days,
17 Your Honor.

18 THE HONORABLE JUDGE FRANK: Well, what that might
19 do -- I will let Judge Noel -- before I -- I was just going
20 to say, our next get-together is going to be June 12th at
21 8:15, and then 9:00 here. So, that wouldn't be incompatible
22 with that, but I can tell you were ready to --

23 THE HONORABLE MAGISTRATE JUDGE NOEL: No, I was
24 just going to say, it seems to me if you can reach
25 agreement, by all means do so. If not, it seems to me -- I

1 think these are one of those things that I was talking about
2 earlier where you make a formal motion so that it is
3 something on the docket so we know what we're addressing.
4 Each of you submit a letter or a formal document arguing
5 your positions and we can decide it at the June 12th thing
6 for sure, if that's agreeable for you.

7 THE HONORABLE JUDGE FRANK: For sure.

8 THE HONORABLE MAGISTRATE JUDGE NOEL: As to how
9 long before this master answer comes in. I would assume
10 pretty much everyone kind of knows what -- you are not
11 admitting liability in any of these answers, I assume.

12 MR. GRIFFIN: I think that is correct, Your Honor.
13 I think understanding which entities they are going to name,
14 understanding the arguments, the legal arguments in play,
15 will take some time to get them developed. So --

16 THE HONORABLE JUDGE FRANK: And the status of that
17 in New Jersey, if I may ask?

18 MR. FLOWERS: They don't have the French entities
19 or the Irish entity.

20 THE HONORABLE JUDGE FRANK: Or apart from that,
21 but has an answer been filed in the New Jersey case? I can
22 look on -- but I haven't recently --

23 MR. GRIFFIN: It has, Your Honor.

24 THE HONORABLE JUDGE FRANK: All right.

25 MR. FLOWERS: I don't think, unless I am

1 forgetting something, that there's any other issues from the
2 Plaintiffs' perspective.

3 MR. GRIFFIN: Your Honor, there is at least one,
4 and that is scheduling the next conference. I don't believe
5 we have a date scheduled in July. And I may be mistaken on
6 that, but I think that is correct. And I do know that if we
7 were to assume the third Thursday of the month practice,
8 that would present a complication for a number of folks on
9 the Defense side. So, maybe if the parties could get
10 together and compare calendars and make a proposal to the
11 Court?

12 THE HONORABLE JUDGE FRANK: And trying to be
13 sensitive to -- well, I know vacation time is a big thing;
14 but, yeah, I don't think we have a date for July. But, we
15 should probably do that sooner, rather than later.

16 So, could the two groups chat and get something to
17 me this next week? And then we will see if we can hopefully
18 come up with a -- because I think unlike when we skipped one
19 month, this won't be one of those months where we should
20 skip, because of lots of things happening, deadlines, trying
21 to move on, especially in light of some of the things
22 happening in New Jersey.

23 And I think the Judge and I there, we have talked
24 about trying to, you know, trying to agree on certain
25 things, about where everything heads sometime in mid to late

1 July. So, let's see if we can do that and get dates.

2 Unless you all agree to meet in France, which I
3 doubt that you will, but that makes sense. So --

4 MR. FLOWERS: Okay.

5 THE HONORABLE JUDGE FRANK: Anything else people
6 wish to discuss?

7 MR. CAMPILLO: Your Honor, I would like to make
8 one comment. Ralph Campillo, again, for those who are
9 listening in. This conference has been a little unusual in
10 the sense that a lot of things have been argued and this
11 Court is going to be apparently issuing some orders in the
12 next few days.

13 THE HONORABLE JUDGE FRANK: Week, right.

14 MR. CAMPILLO: And I would like to just sort of
15 say a very brief comment that kind of puts a gloss over that
16 whole thing. And that is, that the Defendant is one party,
17 as Ms. Woodward has stated. And although you can say that a
18 company has resources, large resources, there's only so many
19 things to go around, so many people to go around.

20 THE HONORABLE JUDGE FRANK: Only so many
21 associates to have working 24 hours a day, 7 days a week?

22 MR. CAMPILLO: Including that. And one of the
23 purposes of an MDL is to try to reserve and protect the
24 assets of all of the litigants to try to resolve the case,
25 cases, in an efficient manner.

1 As we stand here, we will have orders, have or
2 will have orders that deal with: Number one, reviewing
3 hundreds of cases for possible lead case selection for the
4 categories, the bellwether categories.

5 We have to review hundreds of fact sheets being
6 received for purposes of deficiencies and a lot of them do
7 need to be followed up on, and that takes an inordinate
8 amount of time. We are about to get an order that is going
9 to roll out some -- or provide some order on when the
10 Defense fact sheets will be due.

11 We have the ongoing burdens dealing with discovery
12 that we have been struggling with for many months. And we
13 have some roll-out issues that are ongoing, as well as the
14 new issues that were discussed today with Mr. Healy about
15 specific issues that have arisen that need resolution. That
16 is a lot.

17 And I say that, because what is different now
18 about where we were a couple of months ago, is that we now
19 really have inconsistent tracks going in various
20 jurisdictions. What is happening here is significantly
21 different from what is happening in New Jersey. Things are
22 happening in Florida at different paces. And I really urge
23 the Court to keep that in mind as these orders are issued.
24 Because the goal here, I don't think, is to break the bank
25 or bring Stryker to its knees, but it rather is to have a

1 fair process, a timely process for discovery to get done
2 while these other things are also being done.

3 And I think that is one of the most important
4 aspects of being in a Multi-District Litigation. And I
5 think I would not be representing my client adequately if I
6 did not make that point, which is of utmost importance to
7 us.

8 THE HONORABLE JUDGE FRANK: Well, even if you
9 hadn't said anything, I mean, people in the room and on the
10 phone have probably heard this before. The sole
11 justification, whether it is in State Court with 900 cases,
12 or an MDL, because many people are here who don't want to be
13 and would rather have their freestanding cases. If we can't
14 save money and time for everybody, that is the only
15 justification to pull everybody into one case. So, that
16 coordination or lack thereof plays a part, and there is
17 always ways to do it without stomping on the rights of
18 individuals.

19 And there is no question, apart from whether it is
20 Plaintiff or Defense, if we can't when it is all over
21 everybody can't honestly say, we spent less money, less
22 attorney fees, less costs on discovery, less everything,
23 that is the sole justification. And if we haven't done that
24 then we, including the Court, especially the Court, has
25 failed, without a doubt.

1 And obviously, what you didn't say is we spent
2 some time back there talking also to you about, well, while
3 this was all going on, people were trying to conceptually
4 come up with, well, are we going to coordinate some -- not
5 rushing into it or forcing it, if one size doesn't fit all,
6 but a coordinated, or so-called global approach to
7 settlement technique and mediation, too. So, that is all
8 kind of in the background of this, too.

9 But, I suspect Plaintiffs' counsel is going to
10 want to jump in here, too, while you both are --

11 MR. FLOWERS: I would be remiss if I didn't say,
12 when they explain about how much work they have to do, Mr.
13 Campillo's law firm has 400 lawyers in it. There is a law
14 firm in New Jersey that has another 300 lawyers in it, more
15 than all of the Plaintiff lawyers, combined.

16 But, most importantly to me, is the people that we
17 represent deserve justice in a timely manner. I mean, these
18 are people that aren't here other than the fact that Stryker
19 designed, created and sold a device that was defective
20 inside of them and caused an injury.

21 So, while I understand they might have a lot to
22 do, they have a huge staff to do it, a lot more than we will
23 ever have. And our clients are here because of something
24 that happened to them. So, I think you just keep in mind in
25 the entire litigation, the reasons people are here, it is

1 not because Stryker acted in a reasonable way. So, sorry to
2 be on my soapbox.

3 THE HONORABLE MAGISTRATE JUDGE NOEL: Let me just
4 add one more piece to what Judge Frank was saying about what
5 was chatted about in chambers. It is my evaluation that
6 basically the Plaintiffs and the Defendants have, to put it
7 mildly, different visions about how a global settlement
8 might ultimately be achieved. And it is my understanding
9 that the model that has been adopted in New Jersey, the
10 Plaintiffs have agreed to attempt a few individual
11 mediations to see if there is something to be learned from
12 what is going on in the mediation process in New Jersey that
13 can be used, here.

14 And we can chat further at our June 12th
15 get-together about what kind of success or not we are
16 having. And it is my understanding the Plaintiffs -- rather
17 than try to characterize your different views, I will just
18 leave it -- your approach, your vision of the future is
19 different, and we will have more to come later.

20 MR. FLOWERS: Thank you, Your Honor.

21 THE HONORABLE JUDGE FRANK: Yeah, and as we speak,
22 something that I mentioned in chambers, and I don't have
23 most of the facts, because that would be confidential, but
24 as we speak, there will be four -- I think four, at least
25 four MDL cases that Arthur Boylan, recently retired Arthur

1 Boylan -- it doesn't involve the Court, but four MDL cases
2 are being mediated next week in Chicago, as I understand it,
3 early in the week.

4 So, in other words, I guess we will learn more as
5 time goes on, but I agree with that. Now, one comment, not
6 to plow over old ground before we adjourn, but one thing
7 separate from everything else that has been said, that was
8 just observed by defense counsel is -- yeah, of course it is
9 a concern. We each have our responsibilities, but
10 obviously, looking at issues -- the phrase you used -- and I
11 am not saying it is the first time it has come up is, well,
12 proceeding "inconsistently" with say some of the trial
13 management or case management plans in New Jersey.

14 I mean, obviously, regardless of what we each do,
15 that potentially when we are not -- the lack of
16 coordination, not always, because sometimes it is entirely
17 justified, and in the next couple of months we are going to
18 soon find out just how we are all going to roll out, here.

19 But oftentimes, lawyers and their clients equate
20 with that, more money, more time, more delay. So, I am
21 hoping -- that is why we are trying to do our best to
22 communicate with the State Trial Judges who have these large
23 caseloads because I have, as you know -- and I don't know if
24 I mentioned this earlier, I did talk to Judge Henning twice
25 from Florida who has got the 59 cases in the last couple of

1 weeks, as well. And I think that is where we are working
2 together.

3 But, I don't know if anybody wants to say anymore
4 about that. It is what it is. We just promise to be aware
5 of -- whether everybody ends up agreeing or not -- being
6 aware of what is happening in each respective jurisdiction
7 and reaching out. So, to the extent we can each do that
8 without compromising everybody's rights to try -- because
9 usually coordination is a good thing, unless we just blindly
10 comprised the rights of Plaintiffs or Defendants. And we
11 will do our best not to do that.

12 But, we will hear from you next week, apart from
13 what somebody else has said about a date that may work,
14 hopefully, in July.

15 I will tell you that, while it will be too soon,
16 July 4th, out of my chambers, they shoot the fireworks off,
17 right off Harriet Island. It is quite a good view out
18 there --

19 THE HONORABLE MAGISTRATE JUDGE NOEL: I think July
20 4th is a Federal holiday for everybody.

21 THE HONORABLE JUDGE FRANK: And I should say I
22 have an open invitation to the janitorial and maintenance
23 staff, they are free, whether I am here or not, to come in
24 on the evening of July 4th and bring their families and
25 watch it out the big windows in my front corner office. So,

1 you might not be alone if you were there watching the
2 fireworks.

3 But, anything further for the Plaintiffs this
4 afternoon?

5 MR. FLOWERS: No, Your Honor.

6 THE HONORABLE JUDGE FRANK: For the Defense?

7 MR. CAMPILLO: No, Your Honor.

8 THE HONORABLE JUDGE FRANK: And I assume for those
9 people present, whether on the phone or in the audience, if
10 you have questions or concerns, please communicate with
11 respective counsel. And hopefully, whatever those concerns
12 are, they can get relayed to us. So, if we all can't agree,
13 we can at least -- you will know you have been heard in some
14 proper way. So, with that, we will stand adjourned and wish
15 everybody safe travels from here on out.

16 THE HONORABLE MAGISTRATE JUDGE NOEL: Thank you.

17 ALL COUNSEL: Thank you.

18 THE HONORABLE JUDGE FRANK: Thanks again for the
19 May baskets, too.

20 (Adjournment.)

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I, Jeanne M. Anderson, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-entitled matter.

Certified by: s/ Jeanne M. Anderson
Jeanne M. Anderson, RMR-RPR
Official Court Reporter