

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: Baycol Products)
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Litigation)
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BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE
(STATUS CONFERENCE)

APPEARANCES

For the Plaintiffs: CHARLES ZIMMERMAN, ESQ.
 RICHARD LOCKRIDGE, ESQ.
 RONALD GOLDSER, ESQ.
 RANDY HOPPER, ESQ.
 DANIEL BECNEL, ESQ.
 VICTORIA MANIATIS, ESQ.

For Defendant Bayer: PHILIP BECK, ESQ.
 ADAM HOEFLICH, ESQ.
 PETER SIPKINS, ESQ.
 SUSAN WEBER, ESQ.
 DOUGLAS MARVIN, ESQ.

For Defendant FRED MAGAZINER, ESQ.
GlaxoSmithKline: SCOTT SMITH, ESQ.

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Proceedings recorded by mechanical stenography;
transcript produced by computer.

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1 THE COURT: Let's call this matter, please.

2 THE CLERK: Multidistrict Litigation No. 1431,

3 In re: Baycol Products. Please state your appearances for
4 the record.

5 MR. ZIMMERMAN: Good morning, Your Honor.
6 Charles Zimmerman for the plaintiffs.

7 THE COURT: Good morning.

8 MR. LOCKRIDGE: Good morning, Your Honor.
9 Richard Lockridge for the plaintiffs.

10 THE COURT: Good morning.

11 MR. HOPPER: Good morning, Your Honor. Randy
12 Hopper for the plaintiffs.

13 THE COURT: Good morning.

14 MR. GOLDSER: Good morning. Ron Goldser for
15 plaintiffs.

16 THE COURT: Good morning.

17 MR. BECNEL: Daniel Becnel for the plaintiffs.

18 THE COURT: Good morning.

19 MS. MANIATIS: Good morning, Your Honor.
20 Victoria Maniatis from Weitz & Luxenberg for the
21 plaintiffs.

22 THE COURT: Good morning.

23 MR. BECK: Good morning, Your Honor. Phil Beck
24 for the Bayer defendants.

25 THE COURT: Good morning.

1 MR. HOEFLICH: Good morning, Your Honor. Adam
2 Hoeflich for Bayer.

3 THE COURT: Good morning.

4 MS. WEBER: Good morning, Your Honor. Susan
5 Weber for Bayer.

6 THE COURT: Good morning.

7 MR. SIPKINS: Good morning, Your Honor. Peter
8 Sipkins for Bayer.

9 THE COURT: Good morning.

10 MR. MAGAZINER: Good morning, Your Honor. Fred
11 Magaziner for GSK.

12 THE COURT: Good morning.

13 MR. MARVIN: Good morning, Your Honor. Douglas
14 Marvin for Bayer.

15 THE COURT: Good morning.

16 MR. SMITH: Good morning, Your Honor. Scott
17 Smith from Halleland Lewis for GSK.

18 THE COURT: Good morning.

19 MR. ZIMMERMAN: May it please the court. We are
20 here for the status conference, pursuant to court order,
21 hearing of today. We've provided the court with an agenda
22 and status report that we filed last night. We apologize
23 for it being a little late. Travel got a little bit in the
24 way for both of the sides, but I think we did get it to the
25 court late yesterday afternoon.

1 Starting with number one, Your Honor, pending
2 cases. As of the close of business on April 9th defendants
3 have been served with 8,801 cases that remain active. Of
4 this amount, 6,095 cases are in federal court, 2,689 are
5 pending in state courts.

6 At the last count the number of claimants, people
7 with claims, excluding spouses, exceed 22,000 individuals
8 in both the state and federal courts. Although this number
9 has been reduced substantially due to dismissals, the exact
10 number at this time is not known with particularity.

11 These numbers do not include filed but unserved
12 cases that obviously would increase this amount and would
13 not include dismissed cases where dismissals are pending,
14 which would reduce that amount.

15 This compares with the last February conference
16 of 9,691 cases that were active, of which 6,219 were in
17 federal court and 2,689 were pending in state court; again,
18 the same exclusions and inclusions.

19 I don't think there's any more comment on that
20 particular item.

21 An updated list of plaintiffs' counsel was
22 provided recently to the PSC in accordance with our normal
23 practices. For your information, that list comprises
24 approximately 1,400 attorneys. There are some duplicate --
25 duplications, however, within that list, but that's the

1 best number I can come up with is approximately 1,400
2 lawyers on the list.

3 Settlements. To date --

4 THE COURT: Excuse me. Mr. Beck, anything on the
5 numbers?

6 MR. BECK: No, Your Honor.

7 THE COURT: All right.

8 MR. ZIMMERMAN: Settlement, Your Honor. To date
9 defendants have settled 2,296 individual cases for a total
10 of \$868,459,070. Of this amount, 618 cases have been
11 determined to be subject to the MDL assessment, with a
12 total value of the MDL assessed cases at 221,700,348.

13 As of the January status conference there were
14 2,177 cases settled, so we are up about 120 --
15 approximately 120 cases that settled in the ensuing period.
16 That total then was \$826,799,707 for an increase of
17 approximately \$42 million. Of this total 596 cases were
18 MDL assessed cases, for a total value of \$211,727,847.

19 Approximately 115 cases have been submitted to
20 the MDL mediation process. I believe that is up
21 substantially. I don't have the comparative figure. I
22 believe that is up substantially.

23 And as the court knows, we have asked for some
24 additional adjustments to the mediation process and we have
25 submitted a letter to the court. Defendants have provided

1 their comments and that is before the court at this time.

2 In addition to the mediation process, the PSC has
3 continued to negotiate directly with Bayer and that has
4 obviously been continuing.

5 With that, Your Honor, I would turn it over to
6 Special Master Lew Remele for the mediator's report.

7 SPECIAL MASTER REMELE: Good morning, Your Honor.

8 THE COURT: Good morning.

9 SPECIAL MASTER REMELE: I don't have too much
10 more to add than what Mr. Zimmerman has already informed
11 you about.

12 There is, I think, if my memory -- I was also
13 looking for the number from last month, but I think it's up
14 close to 20 cases that have been submitted to the mediation
15 program since last month.

16 I'm not certain whether that's partly the impact
17 of Pretrial Order 114 or not, but I suspect that as people
18 start to review their cases and determine what cases should
19 be submitted to the program and which shouldn't, that
20 hopefully those numbers will continue to increase.

21 We are -- there are several cases where the
22 parties are exchanging medical information at the moment
23 and hopefully we'll have some additional cases that will be
24 submitted to mediation as a result of that.

25 We are in the process of scheduling a couple of

1 cases for mediation right now, one down in Texas, and the
2 program is moving along and I suspect that as people do
3 review their cases under the recent pretrial order that we
4 will see more cases submitted into the program.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Beck, anything you would like to add to
8 settlement?

9 MR. BECK: No, Your Honor.

10 THE COURT: All right.

11 MR. ZIMMERMAN: The next topic, Your Honor, is
12 discovery. The document production from Bayer Corp.,
13 Bayer AG, and GSK does continue.

14 The Defendant Bayer has asked that we look at
15 concluding the formal discovery process and a letter to me
16 was sent a while ago about that topic, I think on February
17 23rd.

18 I have not had the opportunity -- well, I have
19 had the opportunity to ask members of the PSC to give me
20 their views on what additional areas of document discovery
21 may still exist.

22 As you know, we did get 30,000 additional
23 documents in CDs on February 20th and we're still going
24 through that. But having said that, we're looking at
25 trying to bring this to a conclusion.

1 We do believe there may be some areas of
2 additional discovery that will have to be looked at, but I
3 have sent a letter to members of the PSC to ask them for
4 specifics as to areas that we want to continue to look
5 into. And as soon as I get those comments back and have a
6 chance to discuss it with the PSC members who respond, I
7 will give a formal response back to the defendants.

8 With regard to the documents that -- the 32 CDs
9 of documents that were provided on February 20th, this has
10 created some problems for us. We are trying to work
11 through them in terms of determining what is there and what
12 is important to us or what we think, consider to be
13 relevant.

14 And we do believe -- and I have told the
15 defendants this -- that it will probably or may require us
16 to take some additional depositions of people that we
17 thought were concluded in Europe. This is that Ebsworth,
18 Plischke, Von Keutz, Weidman, Sprenger group.

19 We have not made a final determination on that.
20 We will meet and confer with regard to our needs. We just
21 anticipate we will have to conduct additional depositions
22 based upon these additional documents because, as the court
23 knows, they were produced after those depositions were
24 concluded.

25 I did agree with counsel that we would not argue

1 it today. It's just a matter of information. We will meet
2 and confer on it as we look to re-noticing, if we decide in
3 the future to do that.

4 THE COURT: Do you have a timetable when you
5 think you will get through those documents?

6 MR. ZIMMERMAN: Yeah. We will have our
7 recommendation as to who we have to depose within, I would
8 say, two weeks and then we will provide the names of the
9 people we think may have to be deposed and then defendants
10 will respond and hopefully it won't be a problem. If it
11 is, I guess you will hear from us.

12 THE COURT: All right.

13 MR. ZIMMERMAN: Next item, Your Honor, is
14 pursuant to PTO 99. This has to do with the
15 confidentiality re-designation problem. As you know,
16 defendants are under an obligation by order of this court
17 to re-designate documents appropriately confidential that
18 may not have been appropriately designated confidential.

19 The problem for us, Your Honor, is it's hard for
20 us to determine how this process is going. First of all,
21 it's not completed. April 30th is the completion date.
22 It's been on a rolling basis.

23 But if you think about how we have to go about
24 doing this, we have to look at what was designated
25 confidential, what's now released from confidentiality,

1 what is still confidential and see if we think there are
2 problems contained therein. We have begun that process.
3 We have seen some minor problems so far, but it's in the
4 early stages. It's a very labor-intensive and kind of
5 costly process. We will have to discuss this with the
6 defendants.

7 We don't have -- you asked me to report to the
8 court on this at the last conference and I cannot give you
9 a detailed report other than to tell you we are doing it,
10 we see some inconsistencies. We'll have to discuss them
11 with the defendants.

12 It's labor-intensive. It's costly. We may ask
13 the defendants to participate in that additional cost if we
14 deem it to be appropriate. We will bring that before them
15 and before the court if that becomes an issue.

16 THE COURT: Mr. Beck.

17 MR. BECK: Your Honor, my understanding is we
18 asked them, since they wanted to put this on the agenda, to
19 tell us if they had any issues or problems and this is the
20 first we've ever heard of it. They say they have minor
21 problems. We don't know what they are.

22 They say it's labor-intensive and expensive. We
23 agree. It's been very labor-intensive and very expensive,
24 and it's not because we wanted to do it. So I sympathize
25 with Mr. Zimmerman.

1 But so far we haven't heard about any problems.
2 And if they have any, they can raise them with us and we'll
3 respond. And if we disagree, we'll come to the court. But
4 so far they haven't told us anything.

5 THE COURT: All right.

6 MR. ZIMMERMAN: I think that's accurately what I
7 just stated and I agree with that.

8 THE COURT: All right.

9 MR. ZIMMERMAN: Next item, Your Honor, is
10 discovery is proceeding in cases being prepared under PTO
11 89 and 96. I believe the parties have provided reports to
12 the court. I know Vicky is here because many of these
13 cases are cases that are in their offices.

14 It's my understanding that that discovery is
15 proceeding relatively smoothly. I don't know, Vicky, if
16 you want to say anything further. But the depositions are
17 occurring, the witnesses are being properly proffered. I
18 believe we are going to be talking more about that in New
19 York at the conference with the special master on
20 April 15th.

21 Vicky, I don't know if you have anything further.

22 MS. MANIATIS: All I can add is that I agree.
23 Everything is moving along smoothly and on schedule.

24 MR. ZIMMERMAN: Ron, did you have anything?

25 MR. GOLDSER: (Shaking head.)

1 MR. MAGAZINER: Your Honor, very briefly, if I
2 may interrupt, the status report refers to PTO 96. All the
3 cases that are subject to PTO 96 have been voluntarily
4 dismissed, so I think that's probably a mistake in the
5 status report to refer to PTO 96 as being an order which is
6 governing discovery at this point.

7 MR. ZIMMERMAN: Okay.

8 THE COURT: Thank you.

9 MR. ZIMMERMAN: So it's under 89, the random
10 select.

11 Number E, Your Honor. The PSC has received
12 copies of settlements reached with third party payers.
13 This was a carryover item from last time. We have advised
14 the PSC -- the PSC has advised plaintiffs' lawyers
15 throughout the country that they may be entitled to a
16 refund because of these settlements with insurance carriers
17 and we've posted the names on a rolling basis on our
18 website.

19 And I don't know if that's been occurring,
20 frankly, but at least people are aware that if there was a
21 settlement with an insurance company, insurance carrier,
22 that's been accepted by the insurance carrier and Bayer,
23 that those withholds would not apply and they can either
24 seek refunds if it's been inappropriately withheld or they
25 don't have to withhold them for those particular carriers

1 involved.

2 All I can do is report that that's what's going
3 on. I cannot report that people are taking advantage of
4 that or not.

5 Number F, Your Honor. Recently we met and
6 conferred with the PSC regarding our request I informally
7 made to Bayer to produce the documents that were seized by
8 the Italian authorities. Bayer is considering that
9 request.

10 My guess is if they do not agree to -- not my
11 guess. My intent is if they do not agree to informally
12 provide us with those documents, we will have to use a
13 procedure, I think the letter is rogatory, a procedure
14 which may be timely -- I mean which may take a lot of time,
15 but that is something we are preparing in the event that
16 the informal request to provide those documents does not --

17 THE COURT: I don't remember hearing about any
18 seizures. What are you talking about here?

19 MR. ZIMMERMAN: There were some documents seized
20 by the Italian authorities back in 2002 in regard to an
21 investigation that they were doing and those -- I believe
22 100,000 documents were seized.

23 And we have tried to get them through a motion to
24 intervene that was the subject of the sanction motion of
25 Mr. Moll; and now that that's been resolved, we want to go

1 through and get those documents notwithstanding the way it
2 was handled previously by the attempted motion to
3 intervene.

4 THE COURT: All right.

5 MR. ZIMMERMAN: Generic expert report, I believe
6 the special master -- I don't believe. The special master
7 just came up to us and said we are going to talk about
8 this --

9 THE COURT: Correct.

10 MR. ZIMMERMAN: -- afterwards. We had each
11 proposed orders that are slightly different. There's been
12 a lot of talk and discussion in meetings and mediations.

13 THE COURT: My understanding is that you are
14 really close and that's why I've asked the special master
15 to talk to you after the status conference.

16 MR. ZIMMERMAN: Right. We are planning on doing
17 that.

18 Just for information purposes, there's a meeting
19 set for Friday at the offices of Weitz & Luxenberg with the
20 special master, members of defense, members of the PSC, and
21 the Weitz & Luxenberg people to discuss matters having to
22 do with the Weitz & Luxenberg inventory of cases and I
23 suspect the random select list, which many or most of those
24 cases, if not almost all of those cases, are cases of
25 Weitz & Luxenberg. And so we're planning on meeting with

1 the special master, Special Master Haydock, in New York
2 this Friday to discuss those issues and anything else that
3 may come up at that time.

4 Next, Your Honor, is there are two orders by
5 Magistrate Lebedoff where the magistrate found that
6 additional compliance was required by Bayer for discovery
7 requests. And the first one we're working towards
8 resolution on. Actually both of them we are working on
9 resolution on.

10 The first one I'm going to address is the detail
11 people order. You will recall the magistrate judge ordered
12 that detail people who were not -- who were no longer
13 employees of GSK and/or Bayer would also have to have their
14 documents retained and that was not done in the original
15 demand or the original order of the court. The magistrate
16 judge said they must notify those people.

17 And we recently received a letter, it's dated
18 April 9th. It was actually a copy of a letter dated
19 April 9th to the magistrate judge signed by both Susan
20 Weber for Bayer and Fred Magaziner for GSK indicating their
21 compliance with that order or at least the process they
22 went through to comply.

23 I have to review this in greater detail, but it
24 does appear they have now taken the steps to notify several
25 thousand additional -- "several," that's not the right

1 word -- 1,600 additional Bayer sales representatives who
2 have been terminated from their employment or transferred
3 out of the field from January 26, 1988, the date of the
4 launch, to May 1, 2002. In other words, they've contacted
5 now the former employees and given them a letter saying
6 hold the documents that you have.

7 And also they have contacted -- excuse me. Then
8 they contacted people that they contract with for doing
9 detail. This is a company called Publicis Healthcare
10 Communication Group, which acquired a company called Nelson
11 Group, and they were contacted because they had used
12 contract -- Bayer had used contract people who were
13 employed by this company and asked them as well to send a
14 letter because apparently they took the position they were
15 not in direct employment relationships with those contract
16 sales representatives. An additional 657 of those
17 employees were then notified on April 8th of this year and
18 again on April 6th another group of 276.

19 We have to look at this, Your Honor, and make
20 sure it all works together. We hope it does. I just got
21 this and so I have not had the opportunity to fully examine
22 it.

23 There's a slightly different problem with GSK,
24 which I will talk about briefly, but what we did do and
25 what we are waiting for a response is for the list of

1 people that they contacted and the names and addresses of
2 those people. And that request has not been responded to
3 because it was just provided to them in the last several
4 days. We asked for copies of the letters that they used to
5 make the notification and the list of the names and
6 addresses of the people contacted, and that response is
7 still being reviewed.

8 GSK, on the other hand, has a slightly different
9 problem and they are doing this on kind of a rolling basis.
10 On March 31st they mailed a letter and a copy of PTO 6 to
11 the last known addresses of 2,154 GSK sales representatives
12 who had been terminated from employment with GSK between
13 the day of the launch and June 21, 2002 and then they
14 mailed the same letter on April 1st to another 186 sales
15 representatives who were terminated from their employment.

16 They're saying, then, that there's another
17 installment of this letter due that they still have to do
18 and they hope to have this completed soon, and I'm just not
19 sure what the scope of that is. I think I'm --

20 THE COURT: You will find out right now.

21 MR. ZIMMERMAN: Yeah, I'm going to find out.

22 MR. MAGAZINER: As it says in the letter, Your
23 Honor, the final installment of the letter and a copy of
24 PTO 6 is expected to be mailed to the remaining 1,909 such
25 sales representatives by April 16, 2004, a couple of days

1 from now.

2 THE COURT: All right.

3 MR. ZIMMERMAN: So that's another 1,900 that will
4 be notified hopefully by Saturday. Again, we'll look
5 through this and we request the names and addresses of the
6 list and copies of the letters.

7 With regard to the second order of Magistrate
8 Judge Lebedoff that had to do with the PacifiCare documents
9 that he had ordered turned over, my understanding is that
10 that's working its way through.

11 Bert Black of our group is working with defense
12 counsel to get that information. The last report I got
13 from Bert Black was they are working it through and he is
14 getting compliance. If there's a problem, we'll let you
15 know, but that's the most recent information that I have.

16 THE COURT: All right. Thank you.

17 Mr. Beck, Mr. Magaziner, any comments dealing
18 with discovery, section number III of the status report?

19 MR. BECK: Your Honor, only that if and when
20 there are actual disagreements, we'll respond at that time,
21 but I think Mr. Zimmerman has highlighted the areas where
22 we've continued to make progress. And there may very well
23 be areas of dispute in the future. If so, we'll respond at
24 that time, but I don't think there's anything ripe right
25 now.

1 MR. MAGAZINER: I have nothing further, Your
2 Honor.

3 THE COURT: All right. Thank you.

4 MR. ZIMMERMAN: Next, Your Honor, is motions.
5 The motions that are currently submitted and are under
6 advisement by the court, as we understand it now, are
7 number 2, 3, 4, and 5. And so there's nothing further to
8 report on that except they are under advisement by the
9 court. I don't know if you want me to list them for the
10 record or not.

11 THE COURT: No.

12 MR. ZIMMERMAN: I don't know if that's necessary.

13 THE COURT: Just keep watching Verilaw this week.

14 MR. ZIMMERMAN: Okay. Next is PTO 114. I think
15 it's a little -- the reason this was put on the agenda was
16 just to kind of update the court on what we're seeing from
17 the PSC side and what the defendants are seeing from their
18 side. So I guess it's just a status report.

19 And I think the most important issue that's come
20 up so far is there have been several motions for relief
21 from parts of the order that basically have to do with the
22 requirement of filing a case specific report.

23 I think there are -- I counted four motions
24 pending that have been filed if you count Mr. -- if you do
25 count Mr. Ronwin's motion as one, there were, I believe,

1 three, then, that have been filed by other firms.

2 I can't respond to them because I think they're
3 specific to law having to do with either that jurisdiction
4 or how they perceive what their requirements are under
5 their state's requirements.

6 I suspect what we should probably do, Your Honor,
7 is set up some kind of a procedure so at least we can tell
8 people we're going to have a hearing on this on such and
9 such a date and all these may be heard at a particular time
10 rather than do it serially. But we haven't really talked
11 about it and I don't know what the court's view on how to
12 deal with that is.

13 But I suspect there will be some more. I know
14 Nevada is going to be filing something. I don't think
15 they've filed yet. And I think there are going to be some
16 other people that are filing.

17 So it's just kind of a heads-up. There are --
18 this issue is coming to a head and I believe that there
19 will be -- there are motions for relief and there probably
20 will be more coming in the future.

21 THE COURT: You've counted four?

22 MR. ZIMMERMAN: I had four. No. Three counting
23 Ronwin. I'm sorry. Three I have. Two plus Ronwin. Did I
24 say four? I meant three.

25 MR. BECK: I think three is the right count.

1 Your Honor, we'll respond to the motions and I
2 think we can work with Mr. Zimmerman where -- when it
3 appears that the motions have been fully vetted and
4 papered, then we can suggest that they be put on for
5 argument at the next appropriate status conference and he
6 can communicate that to the plaintiffs' counsel.

7 I'm not sure that it makes sense to wait until we
8 have, quote, all of the objections because who knows when
9 we are going to have all the objections in. And if, in
10 fact, they are unique to Nevada law or some other state's
11 law, I don't see any particular advantage in conglomerating
12 a whole bunch of them from different plaintiffs' counsel.

13 So my strong suspicion is that the request for
14 relief will be extremely case specific and they are going
15 to have to be responded to on that basis and considered by
16 the court on that basis.

17 So anyway, right now what I would suggest is that
18 we get our responses in, find out if they want to file
19 replies, and then we coordinate through Mr. Zimmerman with
20 getting those matters -- if Your Honor wants oral argument
21 on those, maybe what we ought to do is get all the papers
22 in.

23 THE COURT: I would like to get all the papers in
24 so I can review them and then maybe -- I prefer not to have
25 oral argument on them, but if I see that they're serious

1 enough that we should, then I can alert you.

2 MR. BECK: Then we will just make sure that we
3 get the paperwork done, we get them teed up and alert Your
4 Honor that these are now ripe.

5 THE COURT: Right.

6 MR. BECK: And Your Honor will tell us whether we
7 should be working together to schedule oral argument or
8 whether we'll be receiving an order.

9 MR. ZIMMERMAN: I think, Phil, they are coming
10 out in bunches of cases as opposed to case specific. I
11 think there's almost an inventory or groups of --

12 MR. BECK: I understand, but if somebody says
13 under Nevada law so-and-so, that doesn't have anything to
14 do with somebody from New Hampshire.

15 MR. ZIMMERMAN: Right.

16 MR. BECK: So I'm not saying that there aren't --
17 that a particular lawyer's cases from a particular
18 jurisdiction shouldn't be considered at once. I was trying
19 to say that they are going to be, I guess, maybe to each
20 lawyer unique requests.

21 MR. ZIMMERMAN: Okay.

22 THE COURT: I should alert you -- I don't know if
23 it's on Verilaw or not -- the Shannon law firm from
24 Mississippi filed a motion for relief and that filing has
25 been rejected by our clerk's office. It seems like that

1 law firm is representing not only some plaintiffs, but some
2 doctors involved in Baycol. So that's been rejected by our
3 clerk's office, so just be -- I am just putting that on
4 your radar screen.

5 MR. ZIMMERMAN: I actually saw two come in from
6 that Shannon firm. Maybe they did a follow-up or maybe
7 both have been rejected. I can't say for sure.

8 Next, Your Honor, is trial settings. I think
9 number one has been discussed -- I mean A has been
10 discussed. It has to do with PTO 89 and the finishing of
11 that discovery. I don't think there's any further
12 reporting on that.

13 The next is the list of trial dates, and I think
14 the court has been provided with it. I have been provided
15 with it. And it's fairly extensive. It's probably not
16 even totally complete because I get information of trials
17 that aren't on here and I'm sure that it's not intentional,
18 but --

19 MR. BECK: We would appreciate you letting us
20 know so we don't miss one.

21 MR. ZIMMERMAN: I think there's a default today
22 in Mississippi. I do have one from the Shannon law firm
23 that wasn't on your list.

24 MR. BECK: Probably one of the doctors.

25 MR. ZIMMERMAN: It could be. And then I'll let

1 you know if -- I just say it from a standpoint of there are
2 just a lot of trials and you know better than I what they
3 are, but they are extensive in number and some that have
4 been reported to me just didn't make it on the list.

5 THE COURT: The Nevada ones have disappeared is
6 my understanding and there's some --

7 MR. ZIMMERMAN: One group of Nevada.

8 THE COURT: I'm sorry?

9 MR. ZIMMERMAN: One group of Nevada. There are
10 two groups of cases in Nevada that are set. One of 20 or
11 24 cases was recently resolved and then there's, I think, a
12 group -- another group of 50 that have now been set for
13 September, October.

14 THE COURT: And then the Pennsylvania cases are
15 moving along somewhere?

16 MR. BECK: Yes.

17 THE COURT: Slowly, fast, I don't know.

18 MR. BECK: They are moving along, yes, Your
19 Honor. We've got -- we had some individual cases set for
20 trial that settled after we picked the juries and then we
21 have some other trials that are set to begin on kind of a
22 rolling basis, multiple trials in the summer, and everybody
23 is moving towards trying those cases.

24 THE COURT: My understanding is most of those
25 cases are rhabdo cases, the first ones?

1 MR. BECK: I think that the short answer is yes.
2 I think that from a plaintiff's point of view, all of them
3 are rhabdo cases. We may dispute whether some of them are
4 rhabdo or not, but the focus there is on rhabdo cases, not
5 on nonrhabdo cases.

6 THE COURT: We've come a long way, haven't we?

7 MR. BECK: Yes, we have. He didn't even smile.

8 MR. ZIMMERMAN: I did smile, I did smile. Muscle
9 damage.

10 So I guess that's the trial list. I have been
11 told that there are five Beasley and one Roda & Nast case
12 set for trial in Philadelphia on August 2nd, and the reason
13 that's significant is the Roda & Nast has a PSC claim along
14 with the Beasley claims and that's why I was aware of that.
15 And it is on your list.

16 MR. BECK: Yes, I think that's right.

17 MR. ZIMMERMAN: And I think the MDL is going to
18 be participating in that --

19 MR. BECK: Good.

20 MR. ZIMMERMAN: -- if it doesn't resolve.

21 Number C, Your Honor, I don't think there's
22 anything further on that. We've talked about alternative
23 plans for trial under the auspices of the MDL court. We
24 gave some suggestions to the court in a letter. The
25 defendants provided their objections to our proposal and

1 sent a similar letter to the court. And I don't think
2 there's anything further at this time on that issue, unless
3 anybody has any comment or questions about that.

4 We do wish to advise the court of the
5 certification of a class action in Pennsylvania under
6 medical monitoring. I don't know for sure if the court has
7 a copy of that order and memorandum. If not, I have a
8 copy. I think it's important just for informational
9 purposes, that that statewide medical monitoring class has
10 been certified and going forward.

11 I think that it doesn't need any further comment
12 from me except that we've seen this in other mass tort
13 contexts over the years, where a national medical
14 monitoring case may have been denied, but then statewide
15 class medical monitoring cases have been certified. We saw
16 that in diet drugs.

17 In St. Jude's it is going a little bit
18 differently. The judge is certifying statewide medical
19 monitoring classes under the federal system or federally in
20 certain states. I think it's 16 states, if I'm not
21 mistaken, that Judge Tunheim certified statewide medical
22 monitoring.

23 The PSC is looking at those issues. There will
24 be more to report on that. Whether or not we are going to
25 pursue or whether the PSC will support in any way or pursue

1 in any way statewide medical monitoring either in state or
2 federal court, it's premature at this point. But based
3 upon the order that came out on March 19th from
4 Pennsylvania, it has required us to take another look at
5 statewide medical monitoring.

6 THE COURT: All right.

7 MR. ZIMMERMAN: There's also the Oklahoma
8 certified class, Your Honor. It's not on the agenda, and I
9 apologize. The only thing I can report on that is that we
10 are meeting with Terry West, the lead counsel, and that the
11 PSC is meeting with them at the end of the month and we are
12 going to work with them on a trial plan for that Oklahoma
13 statewide I believe that's both personal injury and medical
14 monitoring class.

15 MR. BECK: I think it is just personal injury.

16 MR. ZIMMERMAN: Personal injury. I beg your
17 pardon.

18 THE COURT: What happened to West Virginia?

19 MR. ZIMMERMAN: It's still in the country, it's
20 still with us.

21 THE COURT: No one knows?

22 MR. BECK: I don't think we ever had a class --

23 THE COURT: Wasn't it? I thought something came
24 up from West Virginia.

25 MR. BECK: You may be thinking of one of my many

1 other cases in West Virginia.

2 THE COURT: I thought there were --

3 MR. BECK: I don't think we've got anything in
4 West Virginia.

5 MR. ZIMMERMAN: I don't think so.

6 THE COURT: Forget that, then.

7 MR. ZIMMERMAN: Okay. So just the uptick on
8 Oklahoma is that they are asking us for help and we are
9 going to help them in their efforts in Oklahoma.

10 Next, Your Honor. Number B is a mistake. It
11 should be off the agenda. We had agreed to remove that
12 because we've talked about it, and I apologize for that
13 being on there. Pete and I worked on that and it was
14 supposed to be removed and it wasn't, and I apologize.

15 The issue of European expense sharing, I think,
16 is something that I bring to the court with some
17 trepidation might be the right word. It's an LAC issue,
18 but it's an intramural issue and so I don't know if we want
19 to put it on the record now or discuss it with the special
20 master and the court privately. It just has to do with
21 expense sharing of the European deposition program which is
22 not working quite according to plan. We're concerned about
23 it. I believe a report has been provided by Mr. Hopper
24 to -- no, yes?

25 MR. HOPPER: Yes.

1 MR. ZIMMERMAN: Maybe you --

2 THE COURT: Good morning.

3 MR. HOPPER: Good morning, Your Honor. I think
4 the one thing that's important to know is that there aren't
5 any disputes between defendants, particularly Mr. Marvin,
6 and the PSC and me on that issue. As Mr. Zimmerman
7 indicated, it's purely an intramural meeting as between the
8 state coalition of attorneys and the PSC under Your Honor's
9 order for the Bayer AG protocol.

10 And we are attempting to work that out with
11 Special Master Haydock. He was apprised of it some months
12 ago by me and we've attempted to continue to try to resolve
13 that. And our hope is that with the special master's
14 assistance we will be able to get it resolved, but I wanted
15 to be sure the court knew that there were no disputes
16 between defendants and the PSC on this matter.

17 THE COURT: All right. I thought you knew to get
18 your money up front.

19 MR. HOPPER: I've been a banker a few times and
20 I'm not happy about it.

21 MR. ZIMMERMAN: Next, Your Honor, is a matter of
22 information. We were advised recently of a Department of
23 Defense and FDA joint investigation through subpoena of
24 Bayer that has to do with the Baycol issues. Apparently it
25 was provided by Bayer, the information about this was

1 recently provided by Bayer in an SEC filing, but I first
2 found out about it through a Reuters story about this
3 investigation.

4 And it's just a matter of information, there is
5 this investigation going on. Obviously it perks the
6 concern of us and we want to know more about it. We want
7 to know what documents they may have looked at or what is
8 forming the basis for their inquiry.

9 I can't report any further on it other than to
10 say that I just was advised that the Defense Department
11 issued a subpoena demanding documents relating to the
12 withdrawal of Baycol and this was done recently. So I just
13 want to bring that before the court's attention and we'll
14 follow it and see where it leads us.

15 THE COURT: Anything else on the calendar?

16 MR. ZIMMERMAN: No, Your Honor.

17 THE COURT: The special report from the special
18 master.

19 SPECIAL MASTER HAYDOCK: Good morning, Your
20 Honor.

21 THE COURT: Good morning.

22 SPECIAL MASTER HAYDOCK: We have come a long way.
23 This is the quickest I have ever been on the calendar when
24 we first started the status conference. I am almost not
25 prepared. I usually have to wait.

1 Three issues, Your Honor, in addition to what the
2 parties, Mr. Zimmerman and Bayer and GSK lawyers, have
3 talked about. We have been working together on a number of
4 issues, but I want to bring three to the court's attention.

5 The LAC subcommittee on Medicare and third party
6 payer issues had a conference call last week and I am
7 continuing to receive and gather information about any
8 problems they're having with Medicare claim resolution on
9 individual plaintiff claims and we'll be receiving an
10 update from Bayer regarding the third party payer
11 settlements in the new future and then schedule another
12 call or report to the court, depending upon the information
13 I receive from them.

14 But I do want for those lawyers who happen to
15 read this transcript, plaintiffs' lawyers, if they are out
16 there having any issues with the Medicare claims people,
17 they should e-mail me directly or go through Mr. Zimmerman
18 and the LAC if they need any assistance with those issues
19 that arise.

20 Secondly, Your Honor, we will meet after this
21 conference with the lawyers to discuss the recommendation
22 to you about the generic expert report and related issues.

23 And then thirdly and lastly, Your Honor, we're
24 exploring whether we need to continue the wall that
25 continues to exist in Connecticut regarding the medical

1 records there and will report to the court accordingly in
2 the near future on that.

3 THE COURT: Great.

4 SPECIAL MASTER HAYDOCK: Any questions, Your
5 Honor?

6 THE COURT: None from me. Any questions,
7 Mr. Zimmerman?

8 MR. ZIMMERMAN: On this Medicare issue, I did
9 speak to the special master about it. We are seeing more
10 concerns than we've seen before with e-mails and so we are
11 going to try and put those all together and get them to the
12 special master.

13 It seems to be bubbling up a little bit more to
14 the surface having to do with Medicare and so there are
15 internal issues getting people information on how to get
16 their Medicare issue resolved and some -- I don't know if I
17 want to use the word stonewalling, but problems they are
18 having with the agency really getting information and some
19 of the feedback from -- the help that has been forthcoming
20 or not forthcoming from the U.S. Attorney's Office and Mary
21 Tripler.

22 So I am going to get that all together and give
23 it to the special master and see if we can grease those
24 sleds a little bit and get that resolved a little more.
25 There are more problems than I think I've reported to the

1 special master and they are just starting to come in for
2 some reason, they are starting to bubble up.

3 THE COURT: We have the special master to handle
4 this, so let's get that to him so those matters can be
5 resolved as quickly as possible.

6 MR. ZIMMERMAN: Then I have one more internal
7 matter, Your Honor.

8 THE COURT: Excuse me. Mr. Beck, any comments on
9 the special master's report?

10 MR. BECK: No, Your Honor.

11 MR. ZIMMERMAN: One more internal problem. It
12 has to do with the Nevada stipulation. Will Kemp has asked
13 me to bring a stipulation to modify PTO 25 based upon his
14 settlements and some language that they -- I believe Bayer
15 has asked for or maybe Bayer and Will Kemp has asked for,
16 and I find it -- I'm not sure I agree with it and so I
17 would like to talk to them about it.

18 I just got this yesterday. I would like to talk
19 to them about it and see what the purpose of it is, but it
20 seems to say something to the effect that if the state
21 court later orders a refund of a portion of the withhold,
22 then that order trumps your order; and I'm not sure I want
23 to stipulate to that, at least without your consent.

24 So I guess I would like to run this by Your
25 Honor, run it by Bayer, see why they're asking for this

1 insertion. Maybe I am misunderstanding it and there's no
2 issue here.

3 THE COURT: I don't even think I have seen that.

4 MR. ZIMMERMAN: It just came in.

5 Are you familiar with this?

6 MS. WEBER: I think the concern, Your Honor, is
7 that the way the withhold is set up in Nevada, cases could
8 be subject to double withholding.

9 I also have a draft that I have recently received
10 that I understand was prepared largely by Will Kemp.
11 Something which I agree with Bucky, it is remarkable for
12 its opaqueness. So I think we need to talk about what the
13 draft is going to look like.

14 MR. ZIMMERMAN: Remarkable by what?

15 UNIDENTIFIED SPEAKER: Opacity.

16 MS. WEBER: Opacity.

17 MR. ZIMMERMAN: That's all I have, Your Honor. I
18 guess are we saying we should address this before we bring
19 this to the judge?

20 MS. WEBER: I think I have to talk to my
21 clients and --

22 THE COURT: I believe that's the appropriate
23 method to do it.

24 MR. ZIMMERMAN: Okay. That's all I have, Your
25 Honor.

1 THE COURT: Thank you.

2 Mr. Beck?

3 MR. BECK: I have nothing further, Your Honor.

4 THE COURT: Mr. Magaziner?

5 MR. MAGAZINER: Nothing further, Your Honor.

6 THE COURT: Anyone else have anything to bring to

7 the court's attention at this time?

8 Let's set up the next status conference. I'm

9 looking at June 21st or 22nd. How does that look on your

10 calendars?

11 MR. ZIMMERMAN: Tuesday is always better than

12 Monday for travel, I think.

13 MR. BECK: June 26th?

14 THE COURT: The 21st and 22nd.

15 MR. BECK: I'm sorry. So we are now looking at

16 the 22nd or the 21st?

17 MR. HOPPER: Tuesday, the 22nd.

18 MR. ZIMMERMAN: The 22nd is what we are kind of

19 recommending, Phil, given the fact that it's a Tuesday as

20 opposed to a Monday.

21 THE COURT: Is that all right?

22 MR. BECK: That works for me, yes, Your Honor.

23 MR. MAGAZINER: It works for me, Your Honor.

24 THE COURT: All right. June 22nd at 10:00. Do

25 you all need to see me in chambers or not?

1 MR. ZIMMERMAN: We always like to see you, Your
2 Honor.

3 THE COURT: Right. I know better than that. All
4 right. I'll leave you to my special masters and I'll see
5 you on the 22nd of June. Thank you very much.

6 (Court adjourned.)

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9 * * *

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

13

14

15 Certified by:
Lori A. Case, RMR-CRR

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17 Dated: April 19, 2004

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