

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MINNESOTA

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4 In Re: Baycol Products Litigation ) File No. MDL 1431  
5 )  
6 ) 9:30 a.m. o'clock  
7 ) May 15, 2003  
8 ) Minneapolis, MN  
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9 BEFORE THE HONORABLE MICHAEL J. DAVIS  
10 UNITED STATES DISTRICT COURT JUDGE  
(STATUS CONFERENCE)

12 APPEARANCES:

13 ON BEHALF OF THE PLAINTIFFS: CHARLES ZIMMERMAN, ESQ.  
14 RICHARD LOCKRIDGE, ESQ.  
15 RONALD MESHBESHER, ESQ.  
16 MICHAEL MC SHANE, ESQ.  
17 JEAN M. GEOPPINGER, ESQ.  
18 RONALD GOLDSER, ESQ.

19 ON BEHALF OF THE DEFENDANTS: PHILIP BECK, ESQ.  
20 FRED MAGAZINER, ESQ.  
21 ADAM HOEFLICH, ESQ.  
22 SUSAN WEBER, ESQ.  
23 TRACY VAN STEENBURGH, ESQ.

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1 THE CLERK: Multi-District Litigation No. 1431, 09:39:04

2 In re: Baycol Products. Please states your appearances 09:39:08

3 for the record. 09:39:11

4 MR. ZIMMERMAN: Good morning, Your Honor, Charles 09:39:14

5 Zimmerman for the PSC. 09:39:16

6 THE COURT: Good morning. 09:39:17

7 MR. LOCKRIDGE: Good morning, Your Honor, Richard 09:39:20

8 on Lockridge for the PSC. 09:39:21

9 THE COURT: Good morning.

10 MR. MESHBESHER: Ronald Meshbeshher for the PSC. 09:39:23

11 THE COURT: Good morning. 09:39:27

12 MR. GOLDSER: Ron Goldser for the PSC.

13 THE COURT: Good morning.

14 MR. BECK: Good morning, Your Honor, Philip Beck 09:39:30

15 for Bayer and Bayer. 09:39:33

16 THE COURT: Good morning.

17 MR. HOEFLICH: Good morning, Judge, Adam Hoeflich 09:39:36

18 for Bayer and Bayer. 09:39:40

19 THE COURT: Good morning.

20 MS. WEBER: Susan Weber for Bayer and Bayer. 09:39:41

21 THE COURT: Good morning.

22 MR. MAGAZINER: Your Honor, I'm wondering how the 09:39:50

23 court reporter is going to differentiate between Bayer and 09:39:52

24 Bayer. (Laughter) Fred Magaziner for GSK, Your Honor. 09:39:53

25 THE COURT good morning. We have competing status 09:39:58

1 agendas, so, Mr. Zimmerman why don't you begin and Mr. 09:40:06

2 Beck, as usual, you can jump in whenever you feel it is 09:40:12

3 appropriate. 09:40:16

4 MR. ZIMMERMAN: Good morning, Your Honor. 09:40:20

5 THE COURT: Good morning. 09:40:22

6 MR. ZIMMERMAN: We'll start with the Number 1 on 09:40:23

7 the agenda, which is the pending cases. As a matter of 09:40:26

8 explanation, the reason we have competing reports, however, 09:40:32

9 is because it was not possible for us to schedule a time to 09:40:35

10 meet and confer. I don't think I want to go into the 09:40:41

11 reasons why. Hopefully, we can get it cleared up for the 09:40:45

12 next conference. 09:40:50

13 THE COURT: I'm going to make it clear, and we 09:40:52

14 won't have these problems. I've ordered you to meet and 09:40:54

15 confer and give the Court an agenda prior to the status 09:40:59

16 conference. I want that done, and if for some odd reason 09:41:06

17 you cannot meet, I do not want either side to place their 09:41:13

18 proposed agenda on the Verilaw. Certainly, and you have 09:41:26

19 submitted to the Court. I don't want things published that 09:41:31

20 aren't agreed upon. It may cause confusion or more 09:41:38

21 problems for the Court, something being published that 09:41:48

22 should not be published. 09:41:53

23 So, Verilaw is not a newspaper for the PSC, and I 09:41:55

24 think that's clear. 09:42:06

25 MR. ZIMMERMAN: It's very clear, Your Honor. 09:42:06

1 Going, then, to the item on the agenda, Pending Cases. We 09:42:07  
2 have not been provided with the pending cases. We feel we 09:42:16  
3 should be provided the census in advance, so, I don't have 09:42:22  
4 anything to report from last month to this month on pending 09:42:29  
5 cases, so I have to turn that over to the Defendants. But 09:42:33  
6 I would again request -- it seems pretty simple that we be 09:42:36  
7 provided that in advance. I don't think it needs anything 09:42:45  
8 formal, but it's information that we have asked for and I 09:42:45  
9 think we have been able to exchange up to now, and for some 09:42:50  
10 reason it's being not provided and we would ask the Court 09:42:55  
11 to ensure that we are provided with pending cases in both 09:42:58  
12 state and federal court. 09:43:04

13 THE COURT: Mr. Beck, good morning. 09:43:05

14 MR. BECK: Good morning, Your Honor. Every month 09:43:08  
15 when we meet and confer, we sit down and we tell them how 09:43:10  
16 many cases there are pending in federal court and state 09:43:15  
17 court. Since they filed their agenda before we met and 09:43:17  
18 conferred, we hadn't communicated that information to them. 09:43:23  
19 There is no secret about it. There are, by our count, 09:43:26  
20 8,896 total cases, 4,887 of those are federal cases. Just 09:43:33  
21 as an aside and in the interest of sharing with the PSC the 09:43:44  
22 information that we have, we estimate approximately 83 09:43:50  
23 percent of the federal cases are from Weitz and Luxenberg, 09:43:53  
24 almost all the aches and pains cases. 09:44:02

25 Then there are about 4,009 state cases. That 09:44:05

1 includes also many of Weitz and Luxenberg's cases, although 09:44:07  
2 those are those Rhabdo cases. So, we have 8,896 total, 09:44:12  
3 4,887 federal and 4009 state, and we'll make this 09:44:20  
4 information -- we wait until the meet and confer because we 09:44:24  
5 want up-to-date information. We always meet and confer 09:44:28  
6 within days of the status conference, and we'll continue to 09:44:31  
7 share this information as we have done every month. 09:44:35

8 THE COURT: I appreciate that. Thank you. 09:44:38

9 MR. ZIMMERMAN: The second issue, Your Honor, is 09:44:45  
10 the two-year anniversary is coming up in August, and many 09:44:47  
11 states do have two-year statutes of limitations. I believe 09:44:53  
12 the Court had indicated a question to us about what we 09:44:58  
13 might expect in terms of influx in filings and I tried to 09:45:04  
14 provide the best answer I could, which is we anticipate 09:45:09  
15 some significant amount, but we can't tell for sure with 09:45:12  
16 the class pending. There is an argument on tolling, so 09:45:15  
17 some jurisdictions feel more protected under tolling by 09:45:24  
18 virtue of pending class than others. 09:45:30

19 Further feedback, however, from PSC members and 09:45:32  
20 from other litigants, especially from the California 09:45:36  
21 conference that we had a couple of weeks ago, indicate that 09:45:41  
22 there probably will be a fairly significant influx of 09:45:43  
23 filings. What that means is hard to tell, but I think 09:45:47  
24 people are asking the questions that we would anticipate 09:45:51  
25 being asked as we approach the summer deadline -- how to 09:45:56

1 file, how many can we file together, what's, you know, 09:46:01  
2 questions that are coming that would indicate people are 09:46:07  
3 getting -- taking a look at their inventories and at their 09:46:14  
4 cases and determining what cases to file and making 09:46:14  
5 decisions as to where to file. 09:46:18

6 I think it's probably logical also to assume 09:46:20  
7 that -- 09:46:23

8 THE COURT: Excuse me for one second. Because of 09:46:25  
9 the feedback, I need you to move the microphone away from 09:46:27  
10 you. You can point it towards you. Thank you. 09:46:32

11 MR. ZIMMERMAN: Is that better? Because of the 09:46:42  
12 issue having to do with where they file, whether it be in 09:46:46  
13 the federal system or state system, it's also probably 09:46:51  
14 logical to assume that the only place you can file your 09:46:55  
15 case in state court where you don't have to name a local 09:46:58  
16 Defendant would be in the residence of the Defendants, 09:47:03  
17 which is basically in Philadelphia, Pennsylvania, I 09:47:08  
18 believe. 09:47:11

19 So, because you have to name doctors or 09:47:12  
20 pharmacists, pharmacies or manufacturers or distributors to 09:47:18  
21 stay in state court in other states, we would also think 09:47:21  
22 that that would mitigate probably in favor of people not 09:47:26  
23 doing that because of more restrictive problems with having 09:47:31  
24 to name doctors in many jurisdictions, having to file 09:47:34  
25 medical reports like we have in Minnesota, and a shorter 09:47:38

1 statutes of limitations in many states. Again, this might 09:47:45  
2 mitigate in favor of an influx of filings in the federal 09:47:48  
3 system. 09:47:54

4 Those are speculations, Your Honor, but I think 09:47:55  
5 it's fair to do that because the question came from the 09:47:56  
6 Court. I guess time will tell. But I can say this from 09:48:00  
7 the communication that the PSC is giving to people and 09:48:04  
8 receiving from people, we do expect an influx of federal 09:48:09  
9 filings. 09:48:14

10 THE COURT: Mr. Beck, anything on that? 09:48:15

11 MR. BECK: Bayer does not anticipate filing any 09:48:17  
12 additional actions. 09:48:22

13 MR. ZIMMERMAN: How about Bayer? 09:48:26

14 MR. BECK: Bayer, the same way. The only point I 09:48:28  
15 would make, Your Honor, is that we would appreciate it if 09:48:32  
16 the Plaintiffs Steering Committee did not make 09:48:38  
17 representations on our behalf about what we do anticipate, 09:48:41  
18 especially on something like this because there are -- if 09:48:45  
19 we actually have an anticipation of a significant influx of 09:48:51  
20 cases that are going to be filed against us, that may or 09:48:56  
21 may not trigger all sorts of ancillary matters. 09:48:59

22 THE COURT: And the Court had asked informally 09:49:05  
23 and had nothing to do with the Court wanting more cases 09:49:08  
24 filed, as you well know. It was a question because of how 09:49:15  
25 the court system is funded, and we have to get our request 09:49:20

1 in for additional staffing down in the Clerk's office. We 09:49:28  
2 have done that, so, I appreciate your timely responses so 09:49:34  
3 we could get the appropriate request in to the 09:49:39  
4 Administrative Offices for our staffing. All right, let's 09:49:47  
5 move on. 09:49:49

6 There is one other issue before I forget it. It 09:49:51  
7 popped up on our computer screen yesterday. There is a 09:49:55  
8 case that's been filed, and the Plaintiff has named as one 09:49:59  
9 of the Defendants, Merck, Medica, is that correct -- 09:50:07  
10 Medico, and we have not gotten sufficient information 09:50:17  
11 dealing with Merck. And the reason why I raised that is I 09:50:25  
12 own Merck stock, and I need to know whether or not I need 09:50:31  
13 to recuse myself from this one case. Does Defendant know 09:50:36  
14 if Merck, Medico, whether or not that's -- 09:50:41

15 MR. BECK: I don't, Your Honor. I don't know 09:50:45  
16 anything about this case and I don't know anything about 09:50:50  
17 Merck or Merck Medico. 09:50:52

18 MS. GEOPPINGER: My experience is that Merck 09:50:56  
19 Medico is a pharmacy providing prescription refills. The 09:50:58  
20 chances are Merck has been named is a pharmacy or 09:51:03  
21 pharmacists for whatever reason they were named. It was 09:51:05  
22 most likely a pharmacist, a large division of Merck. 09:51:10  
23 That's what Merck Medico is. 09:51:17

24 MR. BECK: I don't know that that helps you. 09:51:20

25 THE COURT: It does. I'm not sure, it's not 09:51:22



1 affiliated with the pharmaceutical company? 09:51:26

2 MS. GEOPPINGER: It's not certain of the 09:51:30

3 affiliation, but it's not the pharmaceutical. It may be a  
4 subsidiary.

5 MS. WEBER: Your Honor, I believe Merck has been 09:51:31

6 surfaced as a third-party discovery here and they have 09:51:35

7 named their counsel on record and well find out. 09:51:37

8 THE COURT: All right. Thank you. 09:51:42

9 MR. ZIMMERMAN: We'll continue the investigation 09:51:46

10 into Merck. 09:51:47

11 Settlement, Your Honor. We have been provided 09:51:53

12 with a list of the cases that have settled, as normally 09:51:58

13 done -- as done on a regular basis at the end of each 09:52:09

14 month. There are 236 cases settled in the MDL or that have 09:52:13

15 MDL affiliations through April 30, 2003. There are -- I 09:52:18

16 don't know how many cases have settled in the state system 09:52:30

17 because I think that information is not provided to me but 09:52:34

18 is provided in camera to the Court. 09:52:38

19 THE COURT: That is correct. 09:52:41

20 MR. ZIMMERMAN: I do have the list, and I do have 09:52:42

21 the amount, gross amounts of the settlement, and I do have 09:52:45

22 the gross amount that has been put into the Common Benefit 09:52:48

23 Fund. I can provide that on the record or I can provide 09:52:52

24 that not on the record, depending on how the Court the 09:52:56

25 wants to receive that. 09:53:00

1 MR. BECK: Your Honor, I guess I'm a little 09:53:01  
2 confused. In terms of what we provide, my understanding is 09:53:04  
3 that every month we provide an update on the total number 09:53:08  
4 of cases that have been settled, including those in the MDL 09:53:14  
5 or with MDL affiliation and those outside the MDL, but we 09:53:18  
6 don't give a breakdown on dollars for settlement and that 09:53:24  
7 kind of settlement by settlement information. So, just as 09:53:29  
8 I did last month, I'll report on the total number of 09:53:32  
9 settlements in the universe of Baycol cases. 09:53:40

10 Last month, I reported that there were a total of 09:53:40  
11 713 cases that had been settled, 220 of which were either 09:53:43  
12 MDL, or as Mr. Zimmerman referred to as MDL-affiliated 09:53:52  
13 cases. Our latest figures for the total universe of 09:53:57  
14 settlements are in excess of 825. So, we have settled an 09:54:04  
15 additional 112 or so in the last month. About 16 of those 09:54:14  
16 were MDL or MDL-affiliated cases and the remainder, you 09:54:25  
17 know, in the high 90's are state cases. So -- and then 09:54:35  
18 we'll provide the information we always provide to the 09:54:39  
19 Court on the settlement by settlement information. 09:54:43

20 THE COURT: I appreciate that. Go ahead. 09:54:48

21 MR. ZIMMERMAN: The -- on the mediation program, 09:54:53  
22 Your Honor, there have been -- and this comes from the 09:54:57  
23 mediator's office, approximately 38 cases have been 09:55:04  
24 submitted under the federal mediation or this Court's 09:55:08  
25 mediation program to date, and nine of these cases have 09:55:13

1 settled. There have been mediations of four MDL cases, 09:55:15  
2 three successfully, and some of the mediations have been 09:55:20  
3 arranged privately as opposed to through the program, as I 09:55:23  
4 understand it. There is one mediation scheduled for June 09:55:28  
5 16, 2003, and we anticipate, that is, the PSC anticipates 09:55:31  
6 the use of the mediation program to increase in the future, 09:55:41  
7 and that's base the upon a discussion we had with the 80 or 09:55:45  
8 so people that came to the seminar in Los Angeles and based 09:55:51  
9 upon feedback and communications that our office is 09:55:55  
10 receiving. So, we see a likelihood that the mediation 09:56:01  
11 utilization will increase, and that a lot will depend upon 09:56:07  
12 when people get their cases filed and timed into the 09:56:14  
13 mediation program that we see that increasing. 09:56:20

14 THE COURT: Anything else? 09:56:25

15 MR. BECK: I guess our records indicate 39 versus 09:56:26  
16 38, but we're generally in accord with Mr. Zimmerman's 09:56:30  
17 report. 09:56:36

18 THE COURT: Special Master Haydock, anything on 09:56:37  
19 that issue. 09:56:39

20 MR. HAYDOCK: No, Your Honor. 09:56:40

21 THE COURT: You may continue. 09:56:41

22 MR. ZIMMERMAN: Your Honor, I did probably leave 09:56:48  
23 out the -- on the settlement, whether or not you wanted me 09:56:51  
24 to put on the record the amounts of the settlements in 09:56:56  
25 gross or the amounts of the Common Benefit Funds. 09:56:59

1 THE COURT: Have we done that in the past? I 09:57:02

2 don't think we have. 09:57:06

3 MR. BECK: I don't think so, Your Honor. 09:57:07

4 THE COURT: It's not necessary. 09:57:09

5 MR. ZIMMERMAN: Discovery. Document production 09:57:13

6 by Bayer, Bayer and GSK continue, and Magistrate Lebedoff 09:57:20

7 has ruled on some initial privilege issues, and Defendants 09:57:26

8 have produced some documents in response to that ruling. 09:57:33

9 The parties are to meet and confer with respect to the 09:57:35

10 ongoing privilege issues. There are approximately 100 09:57:37

11 documents in dispute and that may necessitate a motion. 09:57:43

12 This is exclusive of the privilege log issues recently 09:57:50

13 provided, which we have to evaluate. In other words, we 09:57:55

14 received a privilege log and we're reviewing it as I 09:57:58

15 understand it. So, this has to do with the rulings of 09:58:01

16 Judge Lebedoff and the hundred documents -- approximately 09:58:07

17 hundred documents that remain in dispute. 09:58:13

18 I guess suffice to say for purposes of today, 09:58:15

19 there is nothing for the Court. It's just a matter of 09:58:18

20 information. I don't think we need to have it here, but we 09:58:21

21 are going through it and we'll make the appropriate motions 09:58:24

22 as we need to or as we feel in our best exercise of our 09:58:27

23 professional judgment we must do so. 09:58:33

24 THE COURT: Discovery? 09:58:37

25 MR. BECK: We have nothing to add to the report 09:58:39

1 here, Your Honor. 09:58:41

2 THE COURT: And your submission to the Court, did 09:58:43  
3 you want to take up your Item B, or has that been taken 09:58:46  
4 care of? 09:58:52

5 MR. BECK: In my submission? 09:58:54

6 THE COURT: Yes, your submission, Discovery B, 09:58:59  
7 dealing with concerns of -- 09:59:02

8 MR. BECK: No, I think that -- and I apologize. 09:59:08  
9 Everything in Item B in my submission looks like Page 1, 09:59:10  
10 but, no, I think that the business with Gary Hughes is 09:59:15  
11 working itself out. There is no reason to take up the 09:59:22  
12 Court's time with that. 09:59:25

13 THE COURT: All right. 09:59:28

14 MR. ZIMMERMAN: Yeah, I think the issue with 09:59:30  
15 Hughes probably does not have to be heard today. I guess 09:59:31  
16 we just alert you that we have an issue with that, and I 09:59:35  
17 don't want to argue now. If we work it out great, but we 09:59:39  
18 feel that it's an issue that's percolating. 09:59:43

19 Depositions of Bayer Corp. and GSK fact witnesses 09:59:49  
20 continue. I would like to provide a brief report to the 09:59:55  
21 Court on what has transpired with regard to deposition 10:00:00  
22 discovery just in total so the Court has some idea of your 10:00:05  
23 magnitude. 10:00:10

24 A report was provided to me by the Chairman of 10:00:12  
25 the Discovery Committee, Richard Arsenault. It is as 10:00:15

1 follows: 10:00:19

2 As of yesterday, 48 Bayer witnesses have been 10:00:20

3 deposited, 48. As of yesterday, 10 Bayer AG depositions have 10:00:26

4 been -- have taken place, and 12 GSK depositions have taken 10:00:34

5 place, along with 6, what we would call other depositions, 10:00:40

6 and that basically would be these, I believe, 10:00:44

7 third-parties. So, on rough count that's 50, 60, -- 76 10:00:48

8 depositions approximately have taken place. 10:00:58

9 Tomorrow, the deposition of Dr. Frank Armstrong 10:01:01

10 is taking place in London, which is a Bayer AG witness, and 10:01:05

11 the 19th and 20th of Dr. David Ebsworth's deposition will 10:01:14

12 be taking place in London. Then there are a few other 10:01:17

13 depositions that are currently scheduled which I'm not 10:01:22

14 going to go into because I'm only discussing stuff that's 10:01:25

15 in place -- has taken place or is about to take place 10:01:32

16 within the next few days. 10:01:38

17 So, the work product is continuing. The effort 10:01:40

18 has been enormous on both sides, and I think for the most 10:01:45

19 part that protocol has worked quite well. It hasn't been 10:01:50

20 without some problems, but it has certainly been -- we 10:01:55

21 completed a seventy something odd program of depositions 10:02:00

22 with very few fireworks to date. 10:02:03

23 I think there was a brief hiatus of meet and 10:02:07

24 confers that were happening because of all of us being over 10:02:12

25 in Europe for some of the AG depositions, and those are 10:02:15

1 reoccurring, in other words, they're re-establishing with 10:02:19  
2 Doug Martin and Richard Arsenault from our side, and Doug 10:02:26  
3 Martin from the Defendant side to work through these 10:02:34  
4 various scheduling issues for the completion of the 10:02:37  
5 deposition protocol. We're quite pleased with that. 10:02:40  
6 The next item on my agenda is concerning 10:02:48  
7 expert -- generic experts. Generic expert is a rather 10:02:52  
8 interesting topic for any PSC, and especially this PSC, 10:03:01  
9 because what we're really talking about here is providing a 10:03:08  
10 work product that can be usable in trials, be it in this 10:03:11  
11 court or be it in the courts of original jurisdiction when 10:03:16  
12 the cases are remanded. 10:03:23  
13 Providing generic experts is nice -- is a good 10:03:27  
14 idea in theory. It's a very good idea. Oftentimes, in 10:03:33  
15 practice, however, if there is a lot of time delay or if 10:03:37  
16 there is actually discovery delay, discovery occurring 10:03:41  
17 between the time of the establishment of the generic expert 10:03:46  
18 report and/or his deposition and the use of that generic 10:03:49  
19 expert at trial, much can occur. New facts can emerge, 10:03:53  
20 responses to the generic experts can be generated by the 10:04:00  
21 defense which requires there be supplementing or 10:04:05  
22 supplementing of the generic expert's report, etc., etc. 10:04:09  
23 So, the PSC wants to be careful in utilizing the resource 10:04:13  
24 appropriately and provide a good work product that's usable 10:04:18  
25 and not an exercise that's just an exercise and is really a 10:04:20

1 declaration of something that is not usable six months or a 10:04:24  
2 year from now when the trial of that particular case may 10:04:27  
3 occur. 10:04:31

4 Having said that, the PSC has gotten together and 10:04:33  
5 tried to decide what types of generic experts make sense 10:04:37  
6 for us to prepare on behalf of the universe of MDL cases, 10:04:41  
7 and we have broken it down into probably four or five 10:04:51  
8 topics, and they are as follows. 10:04:53

9 The FDA, the role of the FDA, what the FDA does, 10:04:56  
10 what the FDA did with regard to this particular product. 10:05:02

11 Corporate responsibility. What is the corporate 10:05:08  
12 responsibility of a manufacturer with regard to adhering to 10:05:10  
13 concerns in the universe of complaints and adverse bad 10:05:18  
14 reports. 10:05:25

15 Epidemiology. What is the general epidemiology 10:05:26  
16 that might be usable in a generic basis with regard to the 10:05:31  
17 effect of this drug and how it compares to other drugs with 10:05:36  
18 regard to incidents? 10:05:41

19 Toxicology and pharmacology. What is the 10:05:43  
20 mechanism of this drug? How does it affect the -- what 10:05:45  
21 does it do in the bloodstream? What does it do in the 10:05:51  
22 body? What is the toxicology and pharmacology of the drug. 10:05:56

23 And, finally, one more, warnings and labels. 10:06:00  
24 What are the proper warnings? What are the proper labels? 10:06:04  
25 What do reasonable manufacturers do with warnings and 10:06:09



1 labels? Why would these be, in our opinion judgment, 10:06:13  
2 deficient? And expert testimony on what would be the 10:06:17  
3 appropriate warning. 10:06:23

4 And, lastly, economics and accounting. That 10:06:23  
5 would have to do with punitive damages, potentially, and 10:06:28  
6 what is the ability of Bayer and Bayer and GSK to respond 10:06:35  
7 in punitive damages. If punitive damages were to go to the 10:06:40  
8 jury, you would want to have an economist or 10:06:46  
9 accounting-type person to give you the earnings and worth 10:06:50  
10 of the company. 10:06:54

11 Those are the fields we are developing for 10:06:57  
12 generic experts. We have a deadline of July 1st. We are 10:07:01  
13 working hard to do that. It's a difficult process in the 10:07:08  
14 sense that it takes time. You have to meet and find these 10:07:11  
15 people. You have to engage them. They have to review tons 10:07:15  
16 of data and then they have to file the appropriate reports. 10:07:18

17 I've been involved in many, many MDL's over the 10:07:25  
18 years, and my experience tells me that the usefulness of 10:07:29  
19 these become problematic as I kind of introduced to the 10:07:36  
20 Court at time because of the ability to counteract them and 10:07:44  
21 the ability to try and poke holes in them when they are not 10:07:47  
22 case specific. But having said that, we are still going to 10:07:53  
23 generate them for the benefit of those who believe they 10:07:57  
24 should have them, and our belief that they should be 10:08:01  
25 available to people when they take their case back into 10:08:06

1 their remanded court. And we hope it simplifies the trial 10:08:11  
2 and provide useful data and useful evidence that would be 10:08:14  
3 available to Plaintiffs' counsel throughout the country. 10:08:18

4 MR. BECK: I guess all I can do, Your Honor, is 10:08:22  
5 express some combination of confusion and unease at this 10:08:28  
6 report. I remember back when we argued class 10:08:34  
7 certification, and I said, and they were saying that we 10:08:39  
8 ought to be having a trial in June, and they wanted to have 10:08:47  
9 it on some sort of generic trial, and they identified 15 or 10:08:50  
10 20 topics that they said were no-brainers that they said 10:08:56  
11 they would have generic experts on and that they said could 10:09:01  
12 be done in weeks. And my concern here is that now it 10:09:05  
13 sounds -- I'm getting the feeling that we are in stage one 10:09:10  
14 of a contemplated process by which the Plaintiffs Steering 10:09:14  
15 Committee is somehow backing away from the concept that 10:09:18  
16 they are obliged to come forward as part of the MDL and 10:09:26  
17 identify all the generic experts and that people -- and 10:09:30  
18 that we will take the discovery, and that when these cases 10:09:36  
19 are then remanded for trial, the expert testimony on those 10:09:39  
20 subjects will be completed and locked in and people won't 10:09:48  
21 have the option to say, well, gee whiz, I don't like Mr. 10:09:51  
22 Zimmerman's experts on this topic so I'll just use 10:09:59  
23 different ones, in which case the entire MDL will be have 10:10:02  
24 been a one-way exercise and not as it's supposed to be, 10:10:08  
25 instead two-way exercise. 10:10:10

1           So, as I listened to Mr. Zimmerman talk about how 10:10:13  
2 they're trying to find these people and that I heard a few 10:10:16  
3 months ago they already had them lined up and they are 10:10:19  
4 going to do their best they said to make it July and when I 10:10:21  
5 heard a few months ago they were going to do it in April, 10:10:27  
6 and whether I hear these reports are nice in theory, but in 10:10:29  
7 practice they don't mean a thing, all I can do by way of 10:10:34  
8 alerting the Court is that if, in fact, my fears prove well 10:10:39  
9 founded that the PSC is somehow trying to either delay the 10:10:42  
10 generic expert discovery process or back away from it and 10:10:47  
11 somehow that we're going to have major concerns down the 10:10:57  
12 road, and we'll wait and see what they file and if my fears 10:11:01  
13 are well founded or just paranoia on my part. 10:11:07

14           MR. ZIMMERMAN: Paranoia. I think you are 10:11:17  
15 hearing more than what I was saying. I was not saying what 10:11:23  
16 you anticipate, what you thought I was saying. I was 10:11:26  
17 saying we are doing this. It's a process and I just really 10:11:35  
18 identified to the Court the areas I was identifying. 10:11:41

19           MR. MAGAZINER: May I say something, Your Honor? 10:11:44

20           THE COURT: You may.

21           MR. MAGAZINER: I apologize because I had to 10:11:50  
22 leave the courtroom because I was coughing. I thought it 10:11:52  
23 was better to leave than stay, so I didn't hear what Mr. 10:11:55  
24 Zimmerman had to say during the thirty seconds I was out. 10:11:56

25           What I heard him suggesting, which is similar to 10:11:58

1 what Mr. Beck heard him suggesting, is that the PSC is not 10:12:02  
2 necessarily going to submit reports on generic subjects 10:12:07  
3 which may be issues that will have to be tried in these 10:12:11  
4 trials -- in these cases after they are remanded. And, 10:12:18  
5 indeed, if that's what he's saying it seems to me it 10:12:22  
6 distorts the entire purpose of a coordinated MDL such as 10:12:27  
7 this. The way it is typically handled, I believe, is that 10:12:31  
8 the PSC and MDL are required to come forward with experts 10:12:33  
9 in all the generic subjects that may be tried in the 10:12:39  
10 individual cases after remand, although not necessarily all 10:12:43  
11 the case specific experts for every case that is in the 10:12:47  
12 MDL. 10:12:52

13 For example, if a case is filed in the Eastern 10:12:53  
14 District of Pennsylvania, which is where the greatest 10:12:58  
15 number of these cases was filed as you know, if that case 10:12:59  
16 raises an issue of whether Bayer conducted the appropriate 10:13:03  
17 clinical trials, that would be something -- since that 10:13:09  
18 doesn't relate to each individual plaintiff, that would be 10:13:13  
19 something that would necessarily be the subject of the 10:13:16  
20 generic expert reports and discovery in the MDL, whereas in 10:13:20  
21 such a case there is a question whether Plaintiff was ,in 10:13:24  
22 fact, harmed by his use of Baycol that would be a case 10:13:28  
23 specific point. 10:13:32

24 As I understand it, Mr. Zimmerman was saying, and 10:13:33  
25 I would be happy to hear his clarification, there may be 10:13:37

1 some generic issues they are not going to address in these 10:13:41  
2 reports and leaving it to be addressed somewhere down the 10:13:46  
3 road, and like Mr. Beck says, it turns into one-way 10:13:51  
4 exercise, and I think they ought to be required, as is 10:13:53  
5 typical, to provide reports on every generic subject which 10:13:55  
6 is the proper subject of expert testimony in this MDL 10:13:59  
7 rather than pick and choose and say, well, we choose it on 10:14:05  
8 these issues or these subjects and not on these other 10:14:08  
9 subjects. 10:14:11

10 For example, in the list of expert reports that 10:14:12  
11 Mr. Zimmerman said he would submitting, he says nothing 10:14:15  
12 about cardiology. One would expect there to be many 10:14:19  
13 generic cardiological issues that would be addressed in MDL 10:14:27  
14 and they decided they don't want to have cardiologist. 10:14:30  
15 That's fine with us if there aren't going to be 10:14:34  
16 cardiologists down the road who aren't going to testify on 10:14:37  
17 generic issues. I just think there will be. I think not 10:14:41  
18 necessarily today, we ought to clarify what generic expert 10:14:43  
19 discovery exercise is all about. It can't be they say, 10:14:48  
20 well, we feel like doing it on these issues, but not these 10:14:50  
21 other issues, and it's our discretion. 10:14:53

22 THE COURT: Mr. Zimmerman, do you wish to 10:14:56  
23 respond? 10:15:00

24 MR. ZIMMERMAN: No. 10:15:01

25 THE COURT: I believe at our next status 10:15:06

1 conference I would like a more clear report from the PSC 10:15:09  
2 dealing with this issue of generic experts. And I would 10:15:18  
3 like to see it at least a week before the status 10:15:28  
4 conference. That will give the Defendants time to get a 10:15:31  
5 short response to the Court so we can discuss this further 10:15:40  
6 at the June status conference. 10:15:43

7 MR. ZIMMERMAN: That would be fine, Your Honor. 10:15:47  
8 The next issue is status of procedures used to effectuate 10:15:51  
9 PTO 54 concerning the Plaintiffs' fact sheets. I've been 10:15:59  
10 told most of that has been worked through. Is that 10:16:06  
11 correct? 10:16:10

12 MS. GEOPPINGER: Your Honor, I'm Jean 10:16:10  
13 Goepfinger -- 10:16:14

14 MR. BECK: An agreed order has been submitted, 10:16:16  
15 Your Honor. 10:16:18

16 MS. GEOPPINGER: My name is Jean Geoppinger of 10:16:20  
17 Waite, Schneider, Bayless and Chesley. I've been working 10:16:23  
18 on the Plaintiffs' fact sheet for the Plaintiffs Steering 10:16:24  
19 Committee. Pretrial Order No. 54 was not working, as you 10:16:29  
20 know we reported at the last conference. Since then the 10:16:33  
21 Plaintiffs and the Defendants with help and direction from 10:16:33  
22 Magistrate Lebedoff have developed a procedure involving an 10:16:36  
23 exchange of lists of delinquent or allegedly delinquent 10:16:40  
24 Plaintiffs, and we had multiple meet and confers to assure 10:16:42  
25 that adequate time for follow up with the individual 10:16:44

1 Plaintiffs' attorneys has been provided and that accurate 10:16:47  
2 information is being submitted to the Court for the 10:16:49  
3 purposes of recommending dismissal of cases with prejudice. 10:16:52

4 At this juncture, we have no orders put together. 10:16:56  
5 Magistrate Lebedoff does have it, and anticipates that 10:16:59  
6 there would be a set process that was very similar to what 10:17:04  
7 is in Pretrial Order No. 54, but it now incorporates the 10:17:08  
8 meet and confers between the Plaintiffs and Defendants on 10:17:11  
9 certain dates and submission of lists to Magistrate 10:17:13  
10 Lebedoff which would then lead ultimately to order 10:17:16  
11 submitted to Your Honor for the dismissal of cases of 10:17:19  
12 Plaintiffs who still remain delinquent. That first order 10:17:22  
13 will be submitted for waves 3, 4, 5 tomorrow. So, you be 10:17:26  
14 will seeing that in the next of couple days. It will be an 10:17:31  
15 agreed upon list of Plaintiffs who are delinquent in their 10:17:35  
16 discovery responses based on information we have from 10:17:38  
17 individual Plaintiffs' attorneys. So, I believe the 10:17:40  
18 process will go forward smoothly in the future and 10:17:44  
19 everything has been taken care of. 10:17:47

20 As I understand it, there have been several 10:17:49  
21 recent filings with regard to second wave where there was a 10:17:52  
22 motion to compel as opposed to this process in place. I 10:17:55  
23 can't speak to where that is all going to shake out, but I 10:17:56  
24 know that Victoria Maniatis from Weitz and Luxenberg who is 10:18:02  
25 here and did file some pleadings related to that within the 10:18:05

1 last 24 hours, and she can probably speak to that more 10:18:09

2 accurately than I can. 10:18:13

3 THE COURT: Is that going to be official, amended 10:18:15

4 54 or -- 10:18:20

5 MS. GOEPPINGER: We anticipate it would be a new 10:18:20

6 pretrial order, and the proposal that we had given to 10:18:23

7 Magistrate Lebedoff says that it supercedes 54, and it 10:18:26

8 literally is 54 plus couple of new paragraphs. So, 54 will 10:18:31

9 be out and whatever the new pretrial order number is will

10 be the formal process that's being followed.

11 THE COURT: So, that's something I'm going to 10:18:38

12 have to sign? 10:18:40

13 MS. GOEPPINGER: I believe so, yes. Magistrate 10:18:42

14 Lebedoff asked that we have him review it first. 10:18:45

15 THE COURT: Before he ships it out to me? 10:18:47

16 MS. GOEPPINGER: Yes. He's had it about a few 10:18:50

17 days, so, it should be coming. 10:18:53

18 THE COURT: I'll talk to him about that. 10:18:55

19 Anything further on that, Mr. Beck? 10:18:57

20 MR. BECK: No, Your Honor. 10:19:01

21 THE COURT: Thank you. Mr. Zimmerman. 10:19:02

22 MR. ZIMMERMAN: The next issue, Your Honor, is 10:19:05

23 the status of insurance disclosures. The Plaintiffs 10:19:07

24 Steering Committee feels that we have not received the 10:19:15

25 appropriate information regarding insurance policies and 10:19:18



1 disclosure of information with regard to coverages. I 10:19:24  
2 think the Defendants feel that they have provided a 10:19:29  
3 response. Mr. Sean Rader is here who has been 10:19:34  
4 quarterbacking that issue for us. He can put this before 10:19:41  
5 the Court if you would like, but I have a suggestion and I 10:19:44  
6 have not battled this completely with anyone on my side and 10:19:49  
7 certainly no one on the other side. Maybe we should just 10:19:55  
8 ask the Special Master after this hearing to review this 10:19:59  
9 issue with us and see if he feels everything is where it is 10:20:03  
10 supposed to be or if there is a lack of compliance and have 10:20:08  
11 the Special Master determine what needs to be provided 10:20:13  
12 because there seems to be a disconnect between our view, 10:20:15  
13 which is the disclosures have been deficient, and their 10:20:19  
14 view that the disclosures are sufficient. 10:20:25  
15 MR. BECK: I have a different suggestion, and 10:20:28  
16 that is if we are deficient in our disclosure, then file a 10:20:30  
17 motion and we respond to and if Your Honor refers it to the 10:20:32  
18 Special Master, then it's referred to the Special Master or 10:20:36  
19 it goes to him as a matter of course. But I don't think we 10:20:40  
20 should try to resolve this on the fly through informal 10:20:44  
21 unstructured discussions when we don't have a clear 10:20:49  
22 statement of what things we have been deficient on. We 10:20:53  
23 really would prefer to respond to a motion rather than a 10:20:58  
24 concern. 10:21:01  
25 THE COURT: Agreed upon. I'll refer this to 10:21:03

1 Magistrate Judge Lebedoff. If you need to file a motion 10:21:06

2 before Magistrate Judge and so he can hear this matter. 10:21:11

3 MR. ZIMMERMAN: Thank you, Your Honor. With 10:21:18

4 regard to pending? 10:21:21

5 THE COURT: Do you think there would be a motion 10:21:25

6 so I can alert him. 10:21:26

7 MR. RADER: Sean Rader, Your Honor. I believe 10:21:30

8 there will be. 10:21:32

9 MR. ZIMMERMAN: Your Honor, with regard to 10:21:36

10 pending motions, it's my understanding there are no motions 10:21:38

11 scheduled for hearing today. So, I believe there is 10:21:44

12 nothing to argue in terms of motions. 10:21:49

13 MR. BECK: I agree, Your Honor. 10:21:51

14 MR. ZIMMERMAN: There are motions pending that 10:21:54

15 are pending before the Court, and I believe the only one 10:21:55

16 that may require additional briefing has to do with the 10:21:58

17 confidentiality order, PTO 24. Recently, I believe 10:22:05

18 yesterday or the day before yesterday, we received a brief 10:22:12

19 from Defendants regarding German law and how it may apply 10:22:16

20 to the proposed changes to the confidentiality order. 10:22:20

21 Frankly, my notes, I'm not clear as to whether or not we 10:22:26

22 have a response and when that response date is. 10:22:29

23 THE COURT: You don't have a date and that's on 10:22:32

24 my note to give you a date. How much time do you need? 10:22:35

25 MR. LOCKRIDGE: We would like 30 days, Your 10:22:38

1 Honor, because it's a very complicated brief and they 10:22:41  
2 submitted, I believe, an expert report. We as much as 10:22:44  
3 possible. 10:22:49

4 MR. BECK: We have no objections to that. It's a 10:22:51  
5 complicated issue and if they want 30 days. 10:22:53

6 THE COURT: Is the New York Times here today? 10:22:58  
7 Thirty days for both the PSC and the New York Times to 10:23:01  
8 respond. Can I have a date? 10:23:07

9 THE CLERK: June 13th, 12 noon. It has to be 10:23:10  
10 filed by 12 noon. 10:23:16

11 MR. ZIMMERMAN: Your Honor, that leaves -- we 10:23:21  
12 leave motions and we go to trials. 10:23:25

13 THE COURT: No, I've granted Defendants' motion 10:23:30  
14 for supplemental memoranda. How much time do you need? 10:23:32

15 MS. WEBER: We filed a supplemental memorandum in 10:23:41  
16 conjunction with the motion. 10:23:46

17 MR. ZIMMERMAN: Do you want my response to that. 10:24:00

18 THE COURT: You've seen it? 10:24:02

19 MR. ZIMMERMAN: Yeah. I think we should have 30 10:24:03  
20 days. Could we do it on the same June 13th date? 10:24:06

21 THE COURT: June 13th, 12 noon. Is that going to 10:24:11  
22 put Mr. Lockridge to the gun. 10:24:16

23 MR. LOCKRIDGE: We'll manage, Your Honor, thank 10:24:18  
24 you. 10:24:20

25 MR. ZIMMERMAN: Moving on, then, Your Honor, to 10:24:26

1 trials. As everyone in this courtroom knows, the Olander 10:24:27

2 case has settled and the Long case was dismissed. 10:24:32

3 MR. BECK: I was hoping Mr. Chesley could be here 10:24:45

4 so I could apologize personally for settling the Olander 10:24:48

5 case. 10:24:54

6 MR. ZIMMERMAN: I would like to say, however, in 10:24:56

7 his absence, his wife came down with pneumonia, and he's 10:24:57

8 attending to her in Cincinnati, and he asked me to tell the 10:25:03

9 court he apologizes for not being here. It is probably 10:25:09

10 best that he wasn't here. (Laughter) Timing is 10:25:16

11 everything. 10:25:21

12 Your Honor, we have submitted briefly in this 10:25:22

13 agenda our view of how to go about selecting cases for the 10:25:25

14 trial. 10:25:32

15 THE COURT: And I had -- I'll short circuit you 10:25:35

16 because I've heard this argument before, and I think Mr. 10:25:41

17 Beck is correct. Let's make a motion on this and submit 10:25:46

18 the cases that you are talking about, grounds and lay 10:25:49

19 everything out. I think we've had too many false starts 10:25:54

20 dealing with these issues, and it's time for you -- if you 10:26:01

21 want something to be considered by the Court to have it in 10:26:08

22 order and the Defendant can respond to it and the Court can 10:26:13

23 rule on what's going to happen. 10:26:16

24 At this point, I've heard -- I've heard arguments 10:26:22

25 on this before and we spent a lot of time at the last 10:26:30

1 status conference in chambers talking about this issue. 10:26:35  
2 So, it's time for the PSC to put something in writing so 10:26:39  
3 the Defendants can respond to it, and I want specific cases 10:26:43  
4 that you are talking about, file numbers, so the Court can 10:26:48  
5 look at those cases. 10:26:58

6 MR. MAGAZINER: Your Honor, the defense counsel 10:27:01  
7 for Bayer and GSK have been discussing some ideas how we 10:27:03  
8 think the Court might deal with some of the cases pending 10:27:09  
9 before it, and we would propose to file a motion of our 10:27:12  
10 own, perhaps the same date that the PSC files its motion 10:27:16  
11 dealing with our suggestion for the aches and pains cases. 10:27:21

12 THE COURT: Most definitely. The PSC, their 10:27:29  
13 theory on how the Court should be handling those types of 10:27:35  
14 cases and then the trial aspect. Otherwise, I know the 10:27:39  
15 Defendants are going to file something that would be very 10:27:44  
16 helpful to the Court. And you want dates? Let's get 10:27:47  
17 dates. 10:27:53

18 MR. ZIMMERMAN: Your Honor, absolutely. This is 10:27:54  
19 obviously an important issue for us, and it is going to 10:27:56  
20 dictate the direction for the rest of the litigation. So, 10:28:01  
21 we have to confer. We have to look specifically. We have 10:28:08  
22 to do a real good -- real specific job of this. I expect 10:28:12  
23 we will need some time to do that and they will certainly 10:28:17  
24 want time to respond. If I could maybe suggest -- 10:28:19

25 THE COURT: We can come back to this at the end 10:28:26

1 of the conference and that will give you time to -- 10:28:27

2 MR. ZIMMERMAN: Right, rather than do it off the 10:28:32

3 top of my head. 10:28:36

4 THE COURT: I'm assuming that you don't want this 10:28:37

5 to be heard by the June conference. You probably want it 10:28:40

6 in July. 10:28:44

7 MR. ZIMMERMAN: Right, yes. 10:28:47

8 MR. BECK: We may -- 10:28:52

9 THE COURT: You may submit yours earlier. 10:28:52

10 MR. BECK: Ours really -- there is no reason for 10:28:56

11 them to be on the same track in terms of our suggestion. 10:28:58

12 We'll probably get ours in a couple of weeks. 10:29:03

13 THE COURT: I'm assuming your suggestion has 10:29:07

14 nothing to do with trials at all. 10:29:09

15 MR. BECK: Right. 10:29:12

16 THE COURT: So, it's different tracks. 10:29:13

17 MR. BECK: Yes. 10:29:17

18 THE COURT: Let's have a time so the PSC can 10:29:20

19 respond to it. How much time do you need? 10:29:24

20 MR. BECK: Two weeks, Your Honor. 10:29:27

21 THE COURT: Two weeks, when is the next status 10:29:30

22 conference, the 20th? Two weeks after that, two weeks from 10:29:34

23 today's date. 10:29:40

24 THE CLERK: May 28th, 12 noon. 10:29:43

25 THE COURT: Two weeks after that. 10:29:49

1 THE CLERK: Two weeks after the next status? 10:29:53

2 THE COURT: Two weeks after the 28. 10:29:55

3 THE CLERK: June 11th. 10:29:58

4 THE COURT: PSC response, June 11th. 10:30:00

5 MR. ZIMMERMAN: Response to their proposal. 10:30:02

6 THE COURT: To their response -- to their 10:30:06

7 proposal, so we can argue the matter at the June 20th 10:30:11

8 status conference for oral argument. 10:30:13

9 MR. ZIMMERMAN: We have an open issue if we go to 10:30:21

10 the next topic about the list of trial settings that Bayer 10:30:24

11 has decided they no longer want to provide to the PSC. All 10:30:29

12 I say to the Court is if we are supposed to communicate and 10:30:36

13 cooperate and coordinate with state and federal 10:30:42

14 participants in the litigation, we need to know where the 10:30:47

15 trials are, who the trials are with, where the 10:30:53

16 jurisdictions are, etc. So, I ask the Court to allow us to 10:30:56

17 receive that information appropriately because it's been 10:31:04

18 unilaterally taken off our information exchange. 10:31:10

19 MR. BECK: Your Honor, we had voluntarily 10:31:14

20 provided that information to the Plaintiffs Steering 10:31:16

21 Committee in the past and explained previously why we were 10:31:20

22 no longer going to voluntarily provide that. We think it 10:31:24

23 was not being used for coordination purposes, but as they 10:31:30

24 themselves expressed to one another in an e-mail that they 10:31:32

25 inadvertently copied us on, it was being used as pressure 10:31:37

1 tactics to gen up publicity in the media or to try to stamp 10:31:43  
2 trial dates to put us under maximum pressure. So, we felt 10:31:50  
3 they were using it for public relations and tactical 10:31:56  
4 purposes and that no real coordination purposes served by 10:31:59  
5 those details to them. We, of course, continue to provide 10:32:03  
6 it to the Court and we will continue to do so. 10:32:07

7 THE COURT: Mr. Zimmerman, this is an issue that 10:32:17  
8 I think the Defendants are rightfully concerned about 10:32:37  
9 dealing with how information is used. It's a strange topic 10:32:40  
10 to be discussing because I suspect that you could do your 10:32:47  
11 own research to find out where all these cases are. 10:32:53  
12 Fortunately, Bayer knows where they are at where, their 10:32:58  
13 cases are being tried in state court. What they have seen 10:33:02  
14 is some overt efforts on the part of the PSC or members of 10:33:07  
15 the PSC to generate publicity about those cases, and they 10:33:13  
16 feel, if I'm wrong, they feel that if the PSC didn't know 10:33:28  
17 about the cases, they wouldn't have generated that 10:33:34  
18 information. It's not for coordination to talk to the 10:33:39  
19 lawyers how they are going to try their cases, do you need 10:33:45  
20 any information from the PSC or MDL or that sort, but it's 10:33:49  
21 more generating adverse publicity toward Bayer. 10:33:56

22 The question is to you how do we -- if you want 10:33:59  
23 the list, and you explain to me what you will be doing with 10:34:06  
24 it and who will have control of that list so Bayer can feel 10:34:10  
25 comfortable with it being in your hands as the leader of 10:34:17



1 the PSC, and that it's going to be used in the appropriate 10:34:24

2 manner for your coordination. 10:34:29

3 MR. ZIMMERMAN: Well, certainly, that's the 10:34:31

4 purpose. 10:34:34

5 THE COURT: I know it's the purpose. 10:34:36

6 MR. ZIMMERMAN: I'm not clear in my own mind what 10:34:38

7 Mr. Beck is concerned about in terms of adverse publicity 10:34:44

8 about trials. I mean trials are trials. If there are 20 10:34:48

9 cases set for trial or 3 cases set for trial and where they 10:34:57

10 are set for trial, I mean I'm not sure this is information 10:35:02

11 that is somehow harmful. But having said that, I'm not 10:35:04

12 here to say my job is to be the provider of that 10:35:10

13 information to anyone. But if a reporter calls me and asks 10:35:15

14 me information and it's not confidential information, I 10:35:19

15 guess, unless the Court feels I shouldn't, it appears to me 10:35:26

16 that to provide that information about the next trial is in 10:35:30

17 Oregon or the next trial is in Kansas, doesn't appear to be 10:35:34

18 the kind of information that would be unduly burdensome or 10:35:44

19 oppressive to the Defendants. 10:35:44

20 Because the use of the information from my point 10:35:46

21 of view is not to answer questions about where the next 10:35:49

22 case is because I suppose if I'm a leader of the MDL, the 10:35:52

23 press has the appropriate question to me, which is what's 10:35:57

24 the next trial coming up or where's the next 3 trials 10:36:00

25 coming up, and I say, gee, I really don't know, I'm not 10:36:03

1 wearing that leadership hat very well. 10:36:07

2 But more to the point, it's when the lawyer calls 10:36:11

3 from Oregon and says, we're looking for this or that 10:36:13

4 document, or we have this trial, have you had any 10:36:17

5 experience with this motion in limine or do you have any 10:36:21

6 experience on this particular set of facts, that I want to 10:36:24

7 provide them with that information and be even more 10:36:26

8 proactive and go to them and say Mike Williams, you're 10:36:32

9 trying a case next week in Oregon, would you like our help? 10:36:38

10 Can we come and help you with anything? I think that's we 10:36:41

11 are supposed to do. I truly believe that. I mean they are 10:36:46

12 a coordinated effort to defend, and we should be a 10:36:48

13 coordinated effort to share information. 10:36:52

14 Now, we always have the overlay of 6 percent and 10:36:56

15 assessments and do we want the work product or not, and 10:36:59

16 that's an issue, but I still want to be there for them if 10:37:03

17 they want us. And as we get down the road, this is only 10:37:08

18 going to get -- the group has become more centralized and 10:37:11

19 tighter and more sharing. But if I sit here and say I 10:37:16

20 don't have the information, I don't know when your trials 10:37:20

21 are, I don't have the ability to anticipate what's coming, 10:37:23

22 I look foolish. 10:37:28

23 Yeah, are we in a public relations battle? I 10:37:31

24 guess we always are. These are big cases. And Phil Beck 10:37:34

25 is perfectly competent and his people competent, and they 10:37:39

1 have public relations people that are talking to the press 10:37:42  
2 and making statements. They have a website and they are 10:37:45  
3 putting out what they think is appropriate. I don't think 10:37:49  
4 it's inappropriate for us to comment on the other side. 10:37:52  
5 That's what freedom of the press is all about. 10:37:56

6 THE COURT: I'm not saying that you shouldn't or 10:37:59  
7 can't. I'm not putting limits on it. I never put any 10:38:02  
8 limits on what you can say or not say about in case on 10:38:05  
9 either side. The question is dealing with this list, how 10:38:10  
10 this list is going to be interpreted and used. I certainly 10:38:14  
11 want you to have it for coordination, state and federal 10:38:22  
12 coordination. However, concerns of defense are serious and 10:38:27  
13 I understand their position on dealing with how that list 10:38:37  
14 may be used. 10:38:43

15 You are concerned about if the press calls you 10:38:44  
16 and says when is the next case being tried, certainly you 10:38:49  
17 can say there are a number of cases being tried. We don't 10:38:54  
18 have the up-to-date information when the next trial is. 10:38:57  
19 You will have to call Mr. Beck. That would be the normal 10:39:00  
20 procedure. Do you have any problems with that? 10:39:04

21 MR. ZIMMERMAN: I think -- it seems like I look a 10:39:10  
22 little stupid doing that. Frankly, shouldn't I be aware of 10:39:13  
23 what's going on in the universe of the Baycol litigation if 10:39:18  
24 I'm wearing the hat of the lead counsel of the MDL. If I 10:39:23  
25 say, you know, I think there are some trials coming in, but 10:39:27

1 I don't know when. You'll probably have to call the 10:39:30  
2 defense counsel because they know and I don't. How do I -- 10:39:31  
3 that seems to me to be sort of tying my hands a little bit 10:39:34  
4 in terms of a coordinator. 10:39:38

5 In addition, I'm constantly reaching out in 10:39:40  
6 newsletters and websites and conferences. I'm speaking at 10:39:47  
7 a Melies conference June 2nd and 3rd down in Florida. And 10:39:57  
8 if I don't have, you know, information about what's going 10:40:00  
9 on in the states where I'm speaking about the state courts 10:40:04  
10 to whom the people I'm addressing, it seems to me that I'm 10:40:10  
11 coming in there with a -- with one of my arms tied behind 10:40:14  
12 my back. 10:40:19

13 It's not a huge issue, Your Honor. We are 10:40:20  
14 probably spending more time than required. I'm not sure 10:40:24  
15 what we did wrong with regard to this list. I'm really not 10:40:27  
16 exactly clear what it is that the alleged offense here that 10:40:31  
17 require them to close this down is. 10:40:36

18 THE COURT: Well, I've reviewed -- this has been 10:40:40  
19 on the agenda for what, the last three times, and I just 10:40:44  
20 pulled up the last -- the transcript from the March 10:40:48  
21 hearing, and Mr. Beck went on for several minutes talking 10:40:53  
22 about, if I remember correctly, he was quite angry about 10:40:57  
23 what happened with the New York Times article. I think 10:41:01  
24 that was the major -- the Wall Street Journal -- 10:41:04

25 MR. BECK: Wall Street Journal, and we explained 10:41:09

1 it subsequently in a letter that we copied Mr. Zimmerman. 10:41:12

2 THE COURT: Exactly. So -- let me put it this 10:41:17

3 way. Why don't you all meet and confer on this issue, and 10:41:22

4 I think, certainly, I want to continue to have you receive 10:41:26

5 the list, and I think Plaintiffs' counsel -- the PSC 10:41:33

6 understands the Court concerns with this -- with this list, 10:41:41

7 and, certainly, you need to know where the trials are being 10:41:48

8 held. You just can't have that in a vacuum, but, 10:41:51

9 certainly, I believe Mr. Beck and you, Mr. Zimmerman, can 10:42:00

10 sit down and discuss how -- make sure that no problems can 10:42:05

11 arise from this. Maybe you can do that today. Special 10:42:16

12 Master Haydock can referee it for a few minutes and get it 10:42:25

13 done. It's something that I think the PSC should get, but 10:42:28

14 let's set some ground rules to make sure that the type of 10:42:37

15 thing that Bayer is concerned about does not occur again. 10:42:40

16 Because it's -- I don't think it was a false 10:42:48

17 concern. It's been raised in February. It was raised in 10:42:53

18 March, and it was raised again in April by Bayer. So, it's 10:43:01

19 something that they are concerned about. Let's see if we 10:43:07

20 can resolve it and move on. 10:43:12

21 MR. ZIMMERMAN: Okay, very good. We'll meet 10:43:15

22 afterwards. The next issue, Your Honor, on the agenda has 10:43:17

23 to do with third-party payor. Again, this is an issue with 10:43:23

24 the PSC on a continuing basis brought before the Court on 10:43:28

25 information. I think it's now come to time when we will 10:43:32

1 make the appropriate motion with regard to this topic. I 10:43:37  
2 think that, as a matter of background, these third-party 10:43:40  
3 payor issues occur in every MDL and they are not new 10:43:48  
4 issues. We have tried from the standpoint of the PSC, and 10:43:53  
5 I think really from the standpoint of the Defendants, to 10:43:59  
6 raise these issues early and even to get them resolved 10:44:02  
7 early. Normally, they get resolved late. And to 10:44:05  
8 everyone's credit, it's on the radar screen early in the 10:44:12  
9 litigation. 10:44:16

10 The PSC believes that these are client of ours, 10:44:17  
11 these are people whose medical expenses are at issue that 10:44:22  
12 are in part being reimbursed through subrogation -- excuse 10:44:27  
13 me, in part being withheld in the case of Medicare or 10:44:33  
14 being -- having a subrogation claim that is being settled 10:44:38  
15 or in negotiation for settlement that directly involve 10:44:42  
16 these people. And simply said, we want to be involved. We 10:44:46  
17 believe we are entitled to be involved in the process. We 10:44:51  
18 have tried to assert ourselves into it voluntarily, and we 10:44:54  
19 are not getting there. 10:44:58

20 THE COURT: You are going to have file your 10:45:00  
21 motion. 10:45:03

22 MR. ZIMMERMAN: We'll file our motion. And 10:45:03  
23 that's where we are and I just want the Court to be aware 10:45:05  
24 of it, and I think it will be properly teed up through the 10:45:07  
25 motion and we will respond to it that way. 10:45:11

1 THE COURT: Mr. Beck, you can have thirty seconds 10:45:14

2 in stating the Defendants' position on this. 10:45:17

3 MR. BECK: Our position is when they file a 10:45:20

4 motion we will respond to it, Your Honor. 10:45:21

5 THE COURT: Anything else? 10:45:26

6 MR. ZIMMERMAN: Additional reports by the Special 10:45:29

7 Master. 10:45:31

8 THE COURT: Good morning. 10:45:37

9 MR. HAYDOCK: Good morning, Judge. I feel very 10:45:39

10 honored to have my photograph of myself hung in a federal 10:45:41

11 courthouse. I never thought in my lifetime it would happen 10:45:47

12 to me. And my son, who is almost at the age that 10:45:51

13 photograph was taken of me, is afraid he will end up 10:45:56

14 looking like that. I appreciate that, Judge. Three short 10:46:00

15 reports. First, with regard to the conversation -- 10:46:07

16 THE COURT: Don't wear that polyester suit. 10:46:07

17 (Laughter).

18 MR. HAYDOCK: I still have that. It lasts 10:46:11

19 forever. I'm thinking about having it retailored. Nehru 10:46:13

20 comes back, I'll do the jacket as well. 10:46:19

21 With regard to the Compensation Committee and 10:46:22

22 Plaintiffs' attorneys' fees, I, along with Joe Kenyon and 10:46:24

23 his staff have been reviewing submissions by PSC-affiliated 10:46:28

24 law firms, and we have been reviewing those and will 10:46:34

25 continue to review those over the next several weeks. 10:46:37

1 There are approximately 40 something law firm's that have 10:46:40  
2 filed fees and expenses and there is additional 5 10:46:43  
3 non-affiliated PSC firm's from various state courts that 10:46:48  
4 have filed and we expect a few more of those. 10:46:54

5 We anticipate completing that process in the 10:46:58  
6 early part of June. I'm going to recommend to the Court 10:47:01  
7 and we'll propose an order for you to consider setting a 10:47:03  
8 final deadline in early June, probably June 7th, for any 10:47:08  
9 submissions by any Plaintiffs firm who seeks to recover 10:47:13  
10 from the Common Benefit Fund. So, all records and expenses 10:47:15  
11 as of March 31st will have to be submitted to this Court 10:47:20  
12 for consideration by this Court later in it's distribution 10:47:23  
13 of the Common Benefit Fund, and also suggest in that 10:47:26  
14 proposed order that subsequently in the future, Plaintiffs' 10:47:30  
15 lawyers quarterly file their reports, either through the 10:47:35  
16 PSC or the non-PSC firms directly with the Court 3 months 10:47:39  
17 at the end of each quarter, to be clarified with some 10:47:45  
18 specific dates in that order. Hopefully, that will provide 10:47:50  
19 us with that information on a on-going basis. It's easier 10:47:53  
20 for the auditors to review and submit back if issues or 10:47:58  
21 questions arise. 10:48:03

22 In addition, we plan to -- the Compensation 10:48:04  
23 Committee will meet by conference and we will have the 10:48:08  
24 meeting here in June to propose recommendations going 10:48:10  
25 forward in terms of format for those submissions in terms 10:48:13



1 of the quantitative information and any beginning 10:48:17  
2 assessment of the qualitative assessment of the fees and 10:48:19  
3 expenses to the Court as well. Any questions on that, Your 10:48:26  
4 Honor? 10:48:29

5 THE COURT: No. We reviewed that this morning 10:48:29  
6 with Mr. Kenyon, so. You may want to touch on expenses. 10:48:32

7 MR. HAYDOCK: Yes. We have the -- there have 10:48:42  
8 been fewer firms that have been submitting the expenses to 10:48:46  
9 date, in part because the PSC has established a protocol of 10:48:49  
10 not accepting certain expenses unless there were original 10:48:54  
11 receipts attached and there were specific descriptions of 10:48:59  
12 expense items. So, that has been delayed. Again, they 10:49:03  
13 anticipate receiving those by whatever deadline the Court 10:49:06  
14 would set in early June. And, presumably, the state court 10:49:09  
15 lawyers who are not here would have access to this order 10:49:17  
16 and date on the website, and I'll communicate that to those 10:49:20  
17 firms who have been active before this Court so they are 10:49:23  
18 aware of that deadlines as well both for the fees and the 10:49:27  
19 expenses. 10:49:30

20 THE COURT: All right. 10:49:31

21 MR. HAYDOCK: Secondly, Your Honor, with regard 10:49:33  
22 to the trust fund for the settlement amounts, Defendants 10:49:34  
23 Bayer have been cooperating with responding to questions of 10:49:40  
24 the accountants and asked about verifying some of those 10:49:43  
25 figures and that has been proceeding well. There is 10:49:47

1 approximately 4.4 million dollars in the trust funds as of 10:49:50

2 this moment. Anything on that, Your Honor? 10:49:54

3 THE COURT: No. 10:50:00

4 MR. HAYDOCK: Lastly, the WALL continues to 10:50:03

5 proceed and be -- the medical files continue to be reviewed 10:50:05

6 as ordered by the Court, and I met briefly this morning 10:50:12

7 with attorneys on both sides and that process seems to be 10:50:14

8 going very well. That's all. 10:50:17

9 THE COURT: Any comments from the PSC dealing 10:50:20

10 with the Special Master's report. 10:50:22

11 MR. ZIMMERMAN: No, Your Honor. We have been 10:50:27

12 working hard to be in compliance with all of the orders, 10:50:29

13 and I understand that the review is vigorously transpiring 10:50:34

14 or taking place and we continue to cooperate with anything 10:50:42

15 that the auditors need. 10:50:45

16 Other PSC reports, Your Honor, very briefly. We 10:50:54

17 had a very informative presentation in Los Angeles. There 10:50:58

18 were approximately eighty Plaintiffs' lawyers in 10:51:10

19 attendance, and the feedback was very positive from the 10:51:12

20 standpoint of the quality of the work product that we were 10:51:17

21 providing to them and the mechanisms for them to resolve 10:51:24

22 cases should they choose to go that route, and the 10:51:30

23 information that has been provided through the Internet, 10:51:36

24 both the Court's and the PSC, were favorably looked upon by 10:51:42

25 these 80 Plaintiffs lawyers, most of whom were from the 10:51:49

1 western part of the United States. 10:51:55

2 So, we have no further seminars planned. We may 10:52:00

3 do some, we don't know. But the feedback is it was well 10:52:04

4 received by the community of people we are trying to serve. 10:52:09

5 There is a Melies conference set for June 2nd and 3rd in 10:52:12

6 Amelia Island, Florida. This is being chair by state 10:52:19

7 lawyers, Barry Hill and, I think it's John Castano, I'm not 10:52:26

8 sure from Juan Lopez's firm. I'm not positive on that. 10:52:29

9 And I'm making a presentation on behalf of the MDL. I'll 10:52:32

10 simply state that these seminars are part of the Melies 10:52:39

11 program, which is a commercial organization that puts on 10:52:45

12 seminars of this type around the country, and we will be 10:52:49

13 there telling them about the MDL. 10:52:53

14 MR. BECK: My understanding is that we try to 10:52:59

15 send a spy to these things, not to the Los Angeles one, but 10:53:02

16 the Melies conference. So the person with the Groucho Marx 10:53:09

17 will be one of our companies. (Laughter). 10:53:15

18 MR. ZIMMERMAN: The last on the PSC matters, Your 10:53:20

19 Honor, simply have to do with the ongoing communications in 10:53:24

20 the Internet world. So much is coming so fast. It is 10:53:31

21 interesting, I was with Arnold Levin yesterday in an 10:53:37

22 unrelated -- in a Propulsid litigation down in from of 10:53:43

23 Judge Fallon in New Orleans, and we had a 1:30 meeting with 10:53:46

24 the Court, and about twelve o'clock I was in my room and 10:53:52

25 there was a big e-mail came on about all the horrible 10:53:55

1 things Arnold Levin had done in the Phen-Fen litigation.

2 There was this e-mail that came in about some brief that 10:54:05

3 was filed by some lawyer challenging all of these things he 10:54:08

4 had allegedly done that this lawyer didn't like in the 10:54:10

5 Phen-fen litigation. So I walk into the chambers and I was 10:54:12

6 telling Arnold about it, and he knew nothing about it. I 10:54:16

7 had gotten the whole brief downloaded and all of the 10:54:20

8 allegations, and poor Arnold was sitting there and didn't 10:54:24

9 know what it was all about it. So, it underscores the 10:54:31

10 speed at which information is traveling in the circle of 10:54:33

11 MDL's and the circle of mass tort litigation. In order 10:54:34

12 to --

13 THE COURT: Why is it that negative information 10:54:39

14 travels faster? 10:54:44

15 MR. ZIMMERMAN: Right. And it's true this stuff 10:54:44

16 travels -- it's mind boggling in some respect. I guess the 10:54:49

17 point I'm coming to is the PSC recognizes that, and, so, we 10:54:54

18 have an obligation to make sure we communicate with people 10:54:59

19 because we can't be the last to provide them with 10:55:03

20 information. They should look to us as being the first. 10:55:06

21 So we try and be responsive. We try and use the Internet. 10:55:10

22 We try and use newsletters. We refer them to the court's 10:55:15

23 website and those that are members of Verilaw, to Verilaw. 10:55:20

24 And for the most part, it works very well. And, frankly, 10:55:23

25 of all the MDL's I've been involved with, this one is the 10:55:27

1 most electronic and the most advanced in that arena. I 10:55:32  
2 think we should be happy with that, although there some 10:55:39  
3 problems with that, obviously. We've had some missed 10:55:41  
4 things, things that shouldn't have been filed on Verilaw 10:55:43  
5 that were, or we have an e-mail that somebody gets that 10:55:46  
6 they maybe shouldn't have gotten. We had a snafu with a 10:55:49  
7 phone call, or was it an e-mail, where someone called a 10:55:53  
8 name and where someone said Adam was a real jerk or 10:55:57  
9 something worse than that.

10 MR. BECK: That was me, Your Honor. Now, they 10:56:04  
11 have tapped my phones. (Laughter). 10:56:06

12 MR. ZIMMERMAN: So, all I say is we are in a 10:56:10  
13 different world and it's interesting. 10:56:13

14 THE COURT: I think Adam is a wonderful lawyer 10:56:15  
15 and person. 10:56:18

16 MR. ZIMMERMAN: And he's good looking. 10:56:19

17 THE COURT: Why anyone would call him any names. 10:56:23

18 MR. HOEFLICH: I appreciate that, Your Honor. 10:56:27

19 MR. ZIMMERMAN: Ten copies of the transcript. 10:56:29  
20 But my point is, Your Honor, we endeavor to do this, we 10:56:32  
21 endeavor to do it right, and we endeavor to do it well, and 10:56:36  
22 we are working at the speed of light, and it will continue 10:56:40  
23 because that's the modality and that's the world we live 10:56:43  
24 in. So, I'm proud to be part of it, but I also recognize 10:56:47  
25 there are limitations, of human limitations to it, and 10:56:52

1 sometimes we do make mistakes. 10:56:58

2 I don't want Mr. Beck to get paranoid that I've 10:57:00

3 done anything he's going to find out about later, and I'm

4 trying to say some I'm not say. All I'm saying, Your 10:57:06

5 Honor, is our job is to put the information out there as 10:57:07

6 quickly as we can because our competition and the people 10:57:09

7 who are the commercial services are trying to always do it 10:57:13

8 as well. So, it's important that we lead this march and we 10:57:17

9 don't follow the march because I think it provides -- by 10:57:20

10 doing so we will be recognized as the leaders in this 10:57:27

11 litigation which is our goal, again to communicate, 10:57:30

12 cooperate and coordinate. 10:57:35

13 MR. BECK: Our goal, in contrast, Your Honor, is 10:57:37

14 to try to find the people who took Baycol who actually 10:57:39

15 suffered some side effects from it, and then to negotiation 10:57:45

16 fair settlements with their lawyers. And I, frankly, wants 10:57:49

17 to be as cordial and collegial as we can with anybody who's 10:57:57

18 representing Plaintiffs, even if they represent plaintiffs 10:58:02

19 who didn't suffer any injuries. 10:58:04

20 But our goal is different from Mr. Zimmerman 10:58:07

21 goals. So, why he worries about his competition and he 10:58:09

22 worries about whether he's first with news to the world or 10:58:13

23 whether some commercial publication beat him to the punch 10:58:18

24 with a hot piece of information, that's of no interest to 10:58:24

25 us. And I saw the item listed as communications with 10:58:26

1 Baycol counsel. I don't know whether that implicates us or 10:58:35  
2 not. If it does I will simply reiterate that I'm not 10:58:41  
3 interested in intramural competition between the state 10:58:47  
4 counsel and the Plaintiffs Steering Committee and who's 10:58:51  
5 going to take preeminence and whose going to get the most 10:58:53  
6 cases referred to them. I'm interested in resolving the 10:58:58  
7 cases where people were actually injured, and I think we 10:59:05  
8 are making substantial progress on that front and that's 10:59:07  
9 where our efforts are going to be focused. 10:59:09

10 MR. ZIMMERMAN: I guess my biorhythms must be 10:59:13  
11 down today, and I'm not communicating. That's not what I 10:59:17  
12 was trying to say. 10:59:22

13 THE COURT: It's a full moon. It's a full moon. 10:59:23  
14 I've done things in chambers, that I normally don't do. 10:59:26  
15 So, don't worry about it. 10:59:29

16 MR. ZIMMERMAN: That's not what I'm trying to  
17 say. It's not about competing -- 10:59:31

18 THE COURT: It's communicating, and if I remember 10:59:34  
19 correctly, part of it is to tell the lawyers that Bayer is, 10:59:37  
20 in fact, settling cases and giving them the information 10:59:43  
21 about how the settlements can take place and also about the 10:59:46  
22 Court's communication. I think that's important that we 10:59:53  
23 get the words out that the cases are -- that Bayer means 10:59:58  
24 what it says and that they are settling cases and the 11:00:05  
25 lawyers should not be afraid to take their care cases to 11:00:08

1 Bayer to be evaluated for settlement. So, I understand what 11:00:12

2 you are saying. I appreciate it. 11:00:19

3 Dealing with one more issue if I can throw my 11:00:24

4 biorhythms down today because of a number of things that 11:00:29

5 occurred, one issue that's -- I just wanted to make sure 11:00:35

6 it's on your radar screen and it's going to be on the next 11:00:41

7 report. It's driven by my IS department regarding the 11:00:47

8 Court's migration to electronic filing. So, Ron and I 11:00:56

9 forget who is on the Bayer side, dealing with Verilaw, we 11:01:01

10 are going to have to reconstitute another committee so you 11:01:09

11 all know what's happening with the court and it's migration 11:01:13

12 to electronic filing and how that impacts Verilaw to make 11:01:17

13 sure you don't have any problems with that. 11:01:23

14 MR. GOLDSER: Do you want us to meet with Andy 11:01:28

15 Seldon before the next status? 11:01:32

16 THE COURT: I have to meet with Andy. We had a 11:01:35

17 meeting yesterday and he has to get more information to me 11:01:36

18 regarding the impact upon our court system, what's going to 11:01:41

19 be happening with the new electronic filing, and then I'm 11:01:45

20 going to sit down with him and my court staff and we'll 11:01:48

21 come up with an outline of what's going to be happening 11:01:55

22 within the court. And then I'll have him contact you. Who 11:02:00

23 is your contact person? Is that Peter. 11:02:09

24 MR. BECK: Yes, Peter. 11:02:13

25 THE COURT: Peter Sipkins, and the representative 11:02:14



1 from Verilaw so they can get it because they have to be 11:02:17  
2 involved in what's happening, too. So, maybe you all can 11:02:23  
3 meet before the next status conference and have a report 11:02:28  
4 for the Court, at least a preliminary report of what's 11:02:31  
5 going on. The migration is not going to take place until 11:02:37  
6 January 1st of '04. But, of course, you know things have 11:02:40  
7 to occur way before then. It just complicates my life 11:02:48  
8 dealing with that. I just want to make sure that's on your 11:02:55  
9 radar screen so we can deal with those issues. 11:03:00

10 MR. GOLDSER: I have watched other courts go 11:03:04  
11 through that process and I have some passing familiarity, 11:03:07  
12 and it is as hard as you think. 11:03:11

13 THE COURT: Anything else that needs to be 11:03:15  
14 brought to the Court's attention during the status 11:03:18  
15 conference. 11:03:22

16 MR. ZIMMERMAN: Just the setting of our date for 11:03:23  
17 submitting of our proposal how to get to the trial. We 11:03:26  
18 think 60 days from today would be a good time to get back 11:03:29  
19 to you. 11:03:33

20 THE COURT: What's a 60-day date? 11:03:34

21 THE CLERK: July 14th, that would be a Monday. 11:03:39

22 THE COURT: July 14th at noon. Defense needs 30 11:03:42  
23 days after that? 11:03:48

24 MR. BECK: We would like 30 days, Your Honor. 11:03:49

25 THE CLERK: August 14th. 11:03:53

1 MR. BECK: I guess I'm getting presumptuous. Is 11:03:57

2 that okay? 11:04:02

3 THE COURT: August 14th. Anything else that 11:04:06

4 needs to be -- 11:04:18

5 MR. ZIMMERMAN: The next status, I understand, is 11:04:20

6 at June 20th. Is that a 9:30 start. 11:04:23

7 THE COURT: Yes. Do you all wish to see me in 11:04:28

8 chambers? 11:04:36

9 MR. BECK: No, Your Honor. 11:04:36

10 MR. ZIMMERMAN: We have nothing. 11:04:37

11 THE COURT: Anything else, Mr. Zimmerman. We'll 11:05:05

12 stand in recess until the next status conference. Mr. 11:05:06

13 Zimmerman and Mr. Beck, if you can get together for a few 11:05:12

14 minutes with Special Master Haydock, I'd appreciate it. 11:05:16

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REPORTER'S CERTIFICATE

I, Brenda E. Anderson, Official Court Reporter,  
in the United States District Court for the District of  
Minnesota, do hereby certify that the foregoing transcript  
is a true and correct transcript of the proceedings in the  
above-entitled matter.

CERTIFIED: \_\_\_\_\_

\_\_\_\_\_  
Brenda E. Anderson, RPR