

1 UNITED STATES OF AMERICA
2 DISTRICT OF MINNESOTA

3 -----
4 In Re: Baycol Products Litigation) File No. MDL 1431

5)
6) May 9, 2002
7) 1:00 p.m. O'clock
8) Minneapolis, MN
9)
10)

11 -----
12 BEFORE THE HONORABLE MICHAEL J. DAVIS
13 UNITED STATES DISTRICT COURT JUDGE
14 (STATUS CONFERENCE)
15

16 APPEARANCES:

17 ON BEHALF OF THE PLAINTIFFS: CHARLES ZIMMERMAN, ESQ.
18 RICHARD LOCKRIDGE, ESQ.
19 ELIZABETH CABRASER, ESQ.
20 STANLEY CHESLEY, ESQ.
21 RONALD GOLDSER, ESQ.
22 JOHN CLIMACO, ESQ.
23 JAMES DUGAN, ESQ.
24 WOODY ISOM, ESQ.
25 ASA GROVES, ESQ.
DAVID SAN PEDRO, ESQ.
HUGO GERSTL, ESQ.

ON BEHALF OF THE DEFENDANTS: ADAM HOEFLICH, ESQ.
PETER SIPKINS, ESQ.
SUSAN WEBER, ESQ.
GENE SCHAERR, ESQ.
FRED MAGAZINER, ESQ.
GARY MC CONNELL, ESQ.
KRISTINE BOYLAN, ESQ.
DAVID SHULTZ, ESQ.

COURT REPORTER: BRENDA ANDERSON
300 South 4th Street
Suite 1005
Minneapolis, MN 55415
(612) 664-5104
E-mail- bander2400@aol.com

1 THE COURT: Let's call this matter.

2 THE CLERK: Multi-District Litigation Case

3 1431, In re: Baycol Products. Please state your

4 appearances for the record.

5 MR. ISOM: Woody Isom on behalf of Plaintiff

6 Keyser.

7 THE COURT: Good afternoon.

8 MR. SAN PEDRO: David San Pedro on behalf of

9 Plaintiff Cabellos.

10 THE COURT: Good afternoon.

11 MR. GROVES: Asa Groves representing Eckerd

12 Drug.

13 THE COURT: Good afternoon.

14 MR. ZIMMERMAN: Charles Zimmerman on behalf of

15 Plaintiffs.

16 THE COURT: Good afternoon.

17 MR. LOCKRIDGE: Richard Lockridge on behalf of

18 the Plaintiffs.

19 THE COURT: Good afternoon.

20 MS. CABRASER: Elizabeth Cabraser on behalf of

21 the Plaintiffs.

22 THE COURT: Good afternoon.

23 MR. GOLDSER: Ron Goldser for the Plaintiffs.

24 MR. CLIMACO: John Climaco for the Plaintiffs.

25 THE COURT: Good afternoon.

1 MR. DUGAN: James Dugan for the Plaintiffs.

2 THE COURT: Good afternoon.

3 MR. HOEFLICH: Good afternoon, Adam Hoeflich
4 for Bayer.

5 THE COURT: Good afternoon.

6 MR. SIPKINS: Peter Sipkins for Bayer.

7 THE COURT: Good afternoon.

8 MS. WEBER: Susan Weber for Bayer, and I would
9 like to introduce my partner, Gene Schaerr.

10 THE COURT: Good afternoon.

11 MR. ISOM: This is Woody Isom. We can hear
12 people speaking in the background, but we can't hear what
13 is being said.

14 THE COURT: You are not missing anything.

15 MR. MAGAZINER: Fred Magaziner for Smith.

16 THE COURT: Good afternoon.

17 MR. MC CONNELL: Gary McConnell, in-house
18 counsel for Bayer.

19 MS. BOYLAN: Kristine Boylan for Eckerd
20 Corporation.

21 THE COURT: Good afternoon.

22 MR. SHULTZ: David Shultz for GlaxoSmithKline.

23 THE COURT: Good afternoon. We have -- can
24 those on the telephone hear me?

25 MR. ISOM: Yes.

1 MR. GROVES: Yes.

2 MR. SAN PEDRO: Yes.

3 THE COURT: We have an agenda today, Mr.

4 Zimmerman?

5 MR. ZIMMERMAN: May it please the Court and

6 thank you, Your Honor. I believe we do have an agreed

7 agenda that we submitted to the Court after a series of

8 meet and confers. Many items on that agenda have been

9 submitted and resolved. I wasn't sure if the Court was

10 going to hear the remand motion first --

11 THE COURT: Yes.

12 MR. ZIMMERMAN: -- and then go on to the other

13 matters.

14 THE COURT: Right. Unfortunately the Smith

15 attorney is not on yet. Have we hooked up with him yet?

16 THE CLERK: No.

17 THE COURT: We might as well hear the Keyser

18 matter. Who are the attorneys on the Keyser matter?

19 MR. ISOM: Woody Isom for the Plaintiff.

20 THE COURT: All right, you have five minutes.

21 Proceed.

22 MR. ISOM: On the Keyser matter, the only issue

23 with regard to remand as to do with whether or not the

24 case has a value in excess of \$75,000. There is

25 diversity, but we had contended the value of this case is

1 less than \$75,000, and, therefore, we should remain in
2 state court where we began.

3 We filed a pleading which our client signed
4 saying she is seeking less than \$75,000 in damages and
5 does not wish to be part of this multi-district
6 litigation because of that.

7 THE COURT: Thank you.

8 MR. SCHAERR: Your Honor, Gene Schaerr on
9 behalf of Bayer. I think the dispositive fact in this
10 case is -- appears in the Plaintiff's complaint where
11 quite clearly she alleges injuries which on their face
12 easily satisfy the \$75,000 amount. She has alleged,
13 among other things, acute renal failure. She has also
14 alleged lost income, a loss of her ability to earn
15 income. And she's also alleged that those injuries and
16 losses are ongoing and permanent. And even the acute
17 renal failure alone would more than satisfy the \$75,000
18 threshold if, in fact, that condition is permanent. So,
19 we think from the face of the complaint the threshold has
20 been satisfied.

21 Now, as the Supreme Court put it in the case of
22 Horton v. Liberty Mutual, which I'm sure the Court is
23 familiar with, in determining that the thresholds have
24 been satisfied, the general federal rule has long been to
25 decide what the amount in controversy is from the face of

1 the complaint itself. It is well settled that the Court
2 should examine the circumstances that existed at the time
3 of removal.

4 Now, in this case, there has been a
5 development, post removal, and that is the filing of the
6 Plaintiff's unsworn document which she has called a
7 notice of limitation on an amount in controversy, and
8 that notice states that the amount in controversy does
9 not exceed \$75,000 and that she is not claiming more than
10 \$75,000. But that simple document is not sufficient to
11 defeat the jurisdiction of this court for at least three
12 reasons.

13 First of all, given that the complaint -- given
14 that the amount in controversy should be examined as of
15 the time of removal, that notice of limitations is
16 irrelevant and can't be considered here at all, and there
17 are several cases that we have cited in our briefs that
18 stand for that proposition.

19 Second, there is no indication in the notice at
20 all that the Plaintiff intends to be or would actually be
21 bound by its terms, and there is no guarantee that she
22 can't turn around and either seek, or if not seek, accept
23 a jury award in excess of \$75,000 when the case is
24 returned to court in Florida. And there is case law also
25 cited in our brief that says that a stipulation of that

1 kind is not adequate to defeat diversity even if it's
2 filed before removal.

3 And, third, even if the notice were considered
4 binding on its terms, it doesn't purport to limit
5 Plaintiff's ability to seek such things as attorney's
6 fees and punitive damages which themselves could amount
7 to over \$75,000 if the Plaintiff were to prevail at
8 trial. And there is Eighth Circuit case law and cases in
9 other jurisdictions that says that it's appropriate to
10 consider attorney's fees and potential claims for
11 punitive damages in determining whether the
12 jurisdictional threshold has been satisfied.

13 So we think for all those reasons that the
14 Plaintiff has submitted should be disregarded.

15 THE COURT: Mr. Isom.

16 MR. ISOM: Your Honor, very briefly. As the
17 Court and I'm sure counsel is aware that at the very
18 moment that we never asked for or received \$75,000 or
19 this case would be immediately removed. My client had a
20 three-day hospitalization and she has \$30,000 in medical
21 bills and as counsel is aware in Florida, if you want to
22 be in Circuit Court you have a case with a value of
23 \$15,000 is all that was alleged in the case.

24 We believe that it's in the sound discretion of
25 the Court and we'll defer to your judgment, Your Honor.

1 THE COURT: Thank you, Counsel. After careful
2 consideration of this matter, arguments of counsel,
3 relevant case law, and the record as a whole, the Court
4 will deny the Plaintiff's motion for remand.

5 Let's move on to the next matter. Is the Smith
6 attorney on line yet? Let's go to the rest of our
7 calendar.

8 MR. ZIMMERMAN: Are we still on the speakers?

9 THE COURT: Yes.

10 MR. ZIMMERMAN: Your Honor, the agenda is
11 broken down into several parts. I will go in order of
12 the agenda unless we divert for any reason.

13 Amendments to Pretrial Order 4, Master
14 Discovery. What this is, Your Honor, is a request to
15 amend the pretrial order to allow the date for the
16 defendant's serving of interrogatories and other
17 discovery, I believe in the form of request for
18 production on the Plaintiffs, for that date to be moved
19 to sometime in November.

20 THE COURT: November 8, 2002, is that correct?

21 MR. HOEFLICH: Yes, Judge.

22 MR. ZIMMERMAN: I don't even believe those
23 interrogatories have been served yet, and so nothing is
24 due and we anticipate that they may be served in the
25 future, but we should move the date back to November.

1 THE COURT: The Court has signed the Pretrial
2 Supplemental Order Number 4 moving the date to November
3 14, 2002.

4 MR. ZIMMERMAN: Very well, Judge. The next
5 item, Your Honor, is the assessment order. There has
6 been a glitch in that that has developed. We would like
7 to take that. There is a motion pending. We thought we
8 had an agreement. There is one item that has not now
9 been agreed to. It was actually something that the
10 Plaintiffs removed from the proposed order yesterday
11 evening. We did have a brief chance this morning to meet
12 and confer on it. We have not reached resolution. We
13 will be meeting on that issue between now and the next
14 period of time to hope to come to an agreement. If we
15 cannot, we will submit it for argument at the next
16 conference. If we come to agreement, we will submit a
17 stipulation of agreement.

18 But, basically, Your Honor, what is not in
19 dispute is that we are asking the Court to issue an
20 assessment order on cases that are filed or proceeding
21 with discovery in the MDL, and that that order be up to a
22 6 percent assessment of Plaintiffs' cases; 4 percent from
23 counsel's attorneys' fee and 2 percent at costs. And
24 that would be to be able to fund the common benefit
25 petition, ultimate petition, if there were one for

1 Plaintiffs' counsel in the MDL. We are taking that off
2 the calendar today because we thought we had an
3 agreement. We will put it back on the calendar if we
4 don't have an agreement.

5 The hang up, Your Honor, and I'll be just real
6 brief, is a question of cross noticing. If the
7 defendants cross notice a deposition that the MDL lawyers
8 take in these proceedings, does the assessment order
9 attach or not attach. And we have not worked that out.

10 THE COURT: All right. Anything for the
11 defense on that issue?

12 MR. HOEFLICH: Your Honor, what Mr. Zimmerman
13 said was accurate. We have reached an agreement where no
14 assessment would attach based solely on a cross notice.
15 The goal was that that would foster federal and state
16 coordination. The Plaintiffs had some reservations or
17 second thoughts about that last night, and we're working
18 with them to resolve their concerns.

19 THE COURT: Thank you.

20 MR. ZIMMERMAN: Your Honor, the next item is
21 protocol for electronic production of documents. I
22 believe we have now submitted an agreed order to the
23 Court. I've been advised by Mr. Goldser, who is my
24 electronic production whiz at Zimmerman Reed that that
25 order is now on your desk in an agreed fashion. Is there

1 anything else we need to say about it? I don't believe
2 so. You may have some questions.

3 THE COURT: Yes, I do. Did you receive the
4 Court's questions regarding the agreement?

5 MR. GOLDSER: This is not the Bayer log
6 agreement, Your Honor. This is something else. This
7 order has to do with the production of documents restored
8 electronically on Bayer and SmithKline's computers.

9 THE COURT: I've got the order, the four-page
10 order that you submitted to me?

11 MR. GOLDSER: I think so. Yes, it is.

12 THE COURT: Any comments by the defense on
13 this?

14 MR. HOEFLICH: No, Your Honor.

15 THE COURT: The Court will review this order
16 and will sign it.

17 MR. ZIMMERMAN: The next item, Your Honor is
18 the Pretrial Order 17 Briefing Schedule. I believe that
19 now has been worked out. There is an agreed order that
20 is -- has been submitted or has it been submitted in hard
21 copy? Has bene submitted in hard copy. I was going to
22 call on Mr. Lockridge to discuss this because this has to
23 do with the class certification discovery and matters
24 having to do with the class motion to be filed on the
25 15th.

1 MR. HOEFLICH: I believe that's a separate
2 matter.

3 MR. LOCKRIDGE: That is a separate matter.
4 Kind of disregard what he said very briefly, Your Honor.
5 I believe that PTO 17 involves the latest order that you
6 submitted -- you gave us, Your Honor, on the remand
7 briefing schedule for the diversity jurisdiction issues
8 concerning the medical monitoring issues. And I believe
9 that Ms. Weber and I have come to an understanding. I
10 believe, am I correct, that you will be submitting an
11 order to the Court.

12 THE COURT: The order is in front of me, and I
13 have reviewed it and it allows the Court that I will
14 receive all the briefs before October 30, on or are
15 before October 30, 2002, and we will argue this on
16 November 14. Is that the date that we have down? We
17 will argue it at the next status conference hearing,
18 whatever Thursday that will be in November.

19 THE CLERK: The 14th.

20 THE COURT: Is that good for our calendar
21 because we went through September? The 14th it will be.

22 MR. LOCKRIDGE: Thank you, Your Honor.

23 THE COURT: I'm signing the order.

24 MR. ZIMMERMAN: Your Honor, the next item on
25 the agenda is the Verilaw proposal. I believe there is

1 an agreed order and contract that has now been submitted
2 to Your Honor. I believe that the Court and the court
3 personnel and parties from both sides have been pretty
4 intimately involved in this. I don't know if you have
5 any questions about it. Again, it's in Mr. Goldser's
6 bailiwick if you have some questions.

7 THE COURT: Mr. Goldser, my question was have
8 you -- did you receive the e-mail from the Court
9 regarding our concerns.

10 MR. GOLDSER: I did, Your Honor. The document
11 that you have in front of you incorporates all of those
12 concerns on change. They have been run by Mr. Amders, the
13 president of Verilaw. He accepts them and all parties
14 accept them and I believe we have a fully agreed contract
15 in order.

16 MR. SIPKINS: Mr. Goldser has correctly stated
17 the defendants' position as well. We have reviewed the
18 changes proposed by the Court and accept them.

19 THE COURT: All right. I will sign that order.
20 We're hearing music.

21 MR. SAN PEDRO: Sounds like somebody put us on
22 hold.

23 MR. ZIMMERMAN: Plaintiffs' fact sheet, Your
24 Honor, I think we are moving that back to Number 2, or do
25 you want to do that now?

1 MR. HOEFLICH: That's fine. We can move that
2 back to Number 2.

3 MR. ZIMMERMAN: So, the next item, Your Honor,
4 is basicall some PSC status reports that I would like to
5 provide to the Court.

6 First off, I want to talk about the document
7 depository. And in doing that, I think a little bit of
8 background.

9 As you know the liaison counsel, Dale Larson
10 and his firm, are housing the document depository and
11 that depository is in full swing and is in operation and
12 it's doing a tremendous amount of work. It's being
13 staffed by attorneys that have been hired either by the
14 PSC or people that have been come up from other locations
15 around the country as employees of the PSC who have come
16 to St. Paul to work there, and it's a full-time
17 operation.

18 It's my pleasure to introduce to the Court
19 Julie Bice who has been hired by the PSC as the document
20 manager. Julie is sitting -- there she is.

21 MS. BICE: Good afternoon.

22 MR. ZIMMERMAN: I wanted Julie to be introduced
23 because she may be interfacing with the Court, and she's
24 certainly been working hard with counsel. And I did want
25 to recognize one thing, and I know this is going to

1 embarrass her a little bit, but Julie is a Big Sister in
2 the Twin Cities and this year -- and she has been a Big
3 Sister for six and a half years. This year she was named
4 Big Sister of the Year in the Twin Cities area. And we
5 are very proud of Julie. She does wonderful work and
6 finds time to be a wonderful Big Sister and we appreciate
7 it very much.

8 THE COURT: Congratulations. That gives me an
9 opening to all these lawyers in the courtroom to talk
10 about my favorite subject which is pro bono work and
11 giving back to the community and the communities that you
12 come from.

13 I preach to the lawyers that come in my
14 courtroom and lawyers in this district that pro bono work
15 is very important. We have a large segment of our
16 communities whose legal needs are not being met, and we
17 can't forget our vows as lawyers, as counselors, to give
18 back to the community in a way that will benefit this
19 whole society.

20 And, so, we have a shining example of someone
21 that's giving a lot of time and effort and commitment,
22 and I hope everyone can follow that lead.

23 MR. ZIMMERMAN: Thank you very much, Your
24 Honor. In the document depository, a bailiwick, I had
25 asked the Court if it would be okay to play a short video

1 of the document depository. I think it will give
2 everyone -- most people in the courtroom haven't seen it
3 and don't know what it looks like -- just a little
4 four-minute visual of what's going on there. If we
5 could, we would like to play that video.

6 MR. GOLDSER: You touch screen to make change,
7 play, Your Honor? I understand you need to do that.

8 THE COURT: I've touched it. That's one of the
9 few

10 (Video played.)

11 MR. HOEFLICH: Your Honor, if I may, I feel a
12 by the video. That was not a[ere] description of the
13 document depository. It was a promotional piece, that
14 display, the Plaintiffs used on bit sandbagged things I
15 can do. Need to hit the the inappropriate dosage. And I
16 think it was inappropriate for the Plaintiffs to show
17 that video. I think if something like that was going to
18 be shown in court, it should have been previewed to us
19 and we should have known it was coming. We don't agree
20 with the merits of showing that video and we want the
21 opportunity to respond at the appropriate time.

22 MR. ZIMMERMAN: Are you saying that you didn't
23 see it?

24 MR. HOEFLICH: We did not see it.

25 MR. ZIMMERMAN: At the meet and confer Peter

1 had seen this video, and I asked if you wanted to see it
2 and you said you would get back to me if you wanted to
3 see it. Adam, you may have not been on that call, but it
4 was fully discussed.

5 THE COURT: I saw the video and certainly I
6 know what this litigation is about. I'm shocked, Mr.
7 Zimmerman, that you would show such a thing to me. Let's
8 continue.

9 MR. HOEFLICH: Point well taken, Your Honor.

10 MR. ZIMMERMAN: Next, Your Honor, is the matter
11 of depositions, and I would ask that the deposition
12 protocol be presented to the Court so that you know where
13 we are going with that, and I'd like Richard Arsenault,
14 who's been leading the deposition orders of -- the
15 deposition requests and the agreement that we have
16 reached so the Court will know where we are at with the
17 depositions.

18 MR. ARSENAULT: Good afternoon, Judge.

19 THE COURT: Good afternoon.

20 MR. ARSENAULT: Very briefly, we have now
21 noticed two corporate depositions, one that deals with
22 information management systems, and another that deals
23 with the corporate structure of Bayer. Those are
24 scheduled for May 15 and May 20, respectively.
25 Additionally, we have noticed eleven fact witness

1 depositions for the next few months, and we continue to
2 be in a dialogue with the defendants to schedule
3 additional depositions.

4 THE COURT: Thank you.

5 MR. HOEFLICH: Your Honor, we have received the
6 notices for deposition from Plaintiffs. We have some
7 objections as to the breadth, in particular with the
8 30(b)(6) depositions, and we will work those out with the
9 Plaintiffs.

10 THE COURT: Let's -- do we have -- is Hugo on
11 the line. Hello, is there anyone on the telephone.

12 MR. GROVES: Yeah, Asa Groves here.

13 MR. SAN PEDRO: David San Pedro is also here.

14 THE CLERK: Mr. San Pedro, were you able to get
15 Hugo on the line?

16 MR. SAN PEDRO: Yes, he's on the line. I think
17 he just identified himself.

18 THE COURT: Let's proceed with that remand in
19 the Smith matter.

20 MR. SCHAERR: Your Honor, before we hear that
21 on the merits, may I be heard on a procedural point?

22 MR. SAN PEDRO: Can the Court hear Hugo?

23 THE COURT: No, we can't. Can you listen to me
24 for a second.

25 MR. SAN PEDRO: Can you --

1 THE COURT: This is Judge Davis.

2 MR. SAN PEDRO: He's the only person -- he can
3 hear me and I can hear him, but apparently you are not
4 being able to communicate with one another.

5 THE COURT: Can you hear me? Can you be quiet
6 for a second? This is Judge Davis. You tell him to get
7 on a hard line and call here. I'm sure California has
8 hard lines. He's on a cell phone and it doesn't make
9 sense.

10 MR. SAN PEDRO: He's made efforts to call the
11 the Court --

12 THE COURT: He's on a cell phone. He's on a
13 cell phone, that's why we can't hear.

14 MR. SAN PEDRO: Judge Davis is saying it's
15 because you are on a cell phone. Okay, he's saying he's
16 not.

17 THE COURT: You can get through to us, why
18 can't he. He was on a cell phone before.

19 MR. SAN PEDRO: I don't know, Your Honor.

20 THE COURT: Please give him our number and have
21 him call on a hard line. Thank you.

22 MR. SAN PEDRO: Can you give me that number and
23 I will be happy to go ahead and give it to him.

24 THE COURT: 612 --

25 MR. SAN PEDRO: The Court is giving me a number

1 so you can call them. Judge Davis, I'm ready for the
2 number.

3 THE COURT: 612, that's the area code, 664 --

4 MR. SAN PEDRO: 664 --

5 THE COURT: 5070.

6 MR. SAN PEDRO: We've got 664 --

7 THE COURT: 5070.

8 MR. SAN PEDRO: Apparently, that's the number
9 he's been calling. He's been calling 664-5070.

10 THE COURT: We will wait for his call.

11 MR. SAN PEDRO: They said they'll wait for your
12 call.

13 MR. SCHAERR: Your Honor, I'll save my
14 procedural point until he gets on.

15 THE COURT: Let's continue.

16 MR. ZIMMERMAN: Your Honor, we've finished with
17 the deposition updates which are going to begin, and
18 there are several matters that are under discussion
19 between the parties which we are just going to let the
20 Court know as a matter of information.

21 We are discussing but have not been able to
22 reach agreement on the waiver of Hague for filing of
23 complaints. We believe that issue is still under
24 discussion, but we believe that if it isn't resolved we
25 will put it on for the calendar for the next hearing. We

1 are not sure if it will be resolved, so I think I just
2 wanted to alert the Court that we will probably have it
3 on for the next hearing if it is not resolved. The same
4 is true for tolling. We will put that matter on for a
5 hearing.

6 THE COURT: You are going to make sure that I
7 don't get all the briefs a day before the hearing?

8 MR. ZIMMERMAN: Absolutely, Your Honor. We
9 will have those twenty-one days beforehand. We will have
10 them to you twenty-one days before the hearing. We are
11 preparing those documents as we speak, actually.

12 When I'm talking about tolling, what I'm really
13 talking about is some kind of administrative hold within
14 the Court clerk's office to be able to interrupt the
15 statute of limitations.

16 Confidentiality agreement is the next item.
17 Your Honor, there is an issue that occurred with regard
18 to the agreed confidentiality order. It has to do with
19 having to provide curriculum vitae or resumes of experts
20 that we may be consulting with with regard to scientific
21 issues, and we have found a glitch in that process that
22 we have been trying to work out. I don't know that I
23 need to submit it in summary form at this point, but
24 there is a glitch in the order that makes it difficult
25 for us to consult with experts before we give them a

1 resume because of the scope of that confidentiality, how
2 it applies to agents and subcontractors and the like.

3 We are trying to work it out. We haven't been
4 able to work it out and it only arose in the last, maybe,
5 forty-eight hours, and so, if we don't get it worked out,
6 we have a briefing schedule for it and we will be
7 submitting a briefing schedule so that we have it teed up
8 as quickly as possible.

9 THE COURT: Would this be something that I can
10 put Professor Haydock on?

11 MR. ZIMMERMAN: I believe that would be very
12 helpful.

13 MR. HOEFLICH: Yes, Judge, we would agree with
14 that.

15 THE COURT: Professor Haydock will be put on
16 this issue. And you are going to be meeting with him
17 afterwards so you can address that issue at that time.

18 MR. HOEFLICH: I'm hopeful we can work out this
19 issue on our own in the next twenty-four hours. If we
20 can't then we'll raise it in briefs to Professor Haydock
21 quickly.

22 MR. ZIMMERMAN: Ron wants to make a comment.

23 MR. GOLDSER: I've been dealing with this issue
24 and it's very important to my Science Committee. They
25 are really hamstrung in their ability to reach experts.

1 We have agreed upon a briefing schedule. I am hopeful
2 that we can work it out, but the existence of an
3 expedited schedule and the potential for resolution will
4 certainly help us do that. We've agreed that the
5 Plaintiffs will submit the briefing by the end of Monday,
6 May 14, 4:30 to be consistent with the Verilaw order to
7 be filed and served and service to be received by
8 opposing counsel by 4:30 on Monday. Defendants would
9 have the opportunity to respond by the close of business
10 4:30 on Friday, May 17. Plaintiffs would then respond to
11 that by the close of business 4:30 on Tuesday, May 22,
12 and we would obviously hope for a ruling as soon as
13 thereafter as possible. I don't know if the Special
14 Master will want to hold a hearing or argument, but I'll
15 certainly defer to him on that score and we can take that
16 up at our meeting later.

17 MR. HOEFLICH: Judge, that briefing schedule,
18 I'm hoping will not be necessary. Mr. Goldser came to us
19 yesterday with an issue of the confidentiality order. We
20 would like to work it out if they have legitimate
21 problems. If Professor Haydock believes a formal
22 briefing schedule is necessary when they file brief on
23 Monday, we are happy to do that, but otherwise, we're
24 happy to work it out informally by letter briefs or
25 whatever Professor Haydock would prefer.

1 THE COURT: All right.

2 MR. ZIMMERMAN: That deals with the Number 2,
3 the confidentiality order. On the master complaint, Your
4 Honor, there are two master complaints. There is the
5 master amended class action complaint, which we will file
6 with the class action complaint. I think Dick Lockridge
7 will be talking about that when we talk about class
8 certification next. But that one, I believe, will be
9 filed on the 15th. And then there is what we call the
10 individual or the check-off complaints -- complaint, and
11 that will be a form complaint that will allow people to
12 simply file a case by checking off the causes of action
13 and claims that they would want to make in these
14 proceedings.

15 Both of those would have to be reviewed by
16 defense counsel before we will have an agreement or no
17 agreement on them and we hope to have them soon to
18 defense counsel. So, it's just a matter of updates to
19 the Court to let you know we are working on those and we
20 should have them very shortly to defense counsel. I
21 believe defense counsel will then have their comments to
22 us and we will decide if we have an issue with them or
23 not by the next conference.

24 THE COURT: Thank you.

25 MR. HOEFLICH: That's accurate, Judge.

1 MR. ZIMMERMAN: Two for two. Discovery
2 schedule for class certification, Your Honor, Dick
3 Lockridge and others are heading up the class
4 certification, so I would like him to update the Court on
5 where we are with regard to our plan for class
6 certification.

7 MR. LOCKRIDGE: Very briefly, Your Honor, so
8 you know the order provides for the Plaintiffs to file
9 their class memorandum and motion on May 15, and we will
10 be doing that on the 15th. We will be filing a
11 comprehensive memorandum of law and motion and,
12 obviously, exhibits.

13 And at the same time, we and the defendants
14 have been discussing about a slightly proposed schedule
15 which we would like to submit to you on the 15th. It's
16 not entirely certain. It's not yet entirely agreed upon,
17 but we are close to basically -- I believe, the order
18 now read it provides for ninety days for discovery. I
19 think we may ask the Court for leave to extend that out a
20 little bit.

21 Although we have reviewed hundreds of thousands
22 of documents from the defendants, there are still many
23 documents coming in that we still need and we need to do
24 a little bit more work with a couple of the committees.
25 And, also, we will be, perhaps you will not be surprised,

1 we would be asking the Court for leave to file a brief
2 somewhat longer than thirty-five pages, also.

3 MR. HOEFLICH: Your Honor, according to the
4 video, it's a million documents.

5 MR. LOCKRIDGE: The first million, but we
6 understand several more million are coming in.

7 MR. CHESLEY: We'll make a new deal.

8 MR. LOCKRIDGE: And I believe -- Ms. Weber, is
9 that essentially correct?

10 MS. WEBER: Yes.

11 MR. LOCKRIDGE: We will work it out with Ms.
12 Weber and then present something to you then on the 15th,
13 Your Honor.

14 THE COURT: Thank you.

15 MR. ZIMMERMAN: Now, the next item on the
16 matters under discussions is the census of cases and
17 claims. I have the exact numbers and I don't remember
18 what they are, but I believe we have approximately 240
19 cases filed in the MDL.

20 MR. HOEFLICH: That is correct. There were a
21 large group of filings in federal court this week, and we
22 are happy to give Mr. Zimmerman an update. We sometimes
23 get this information first, so we're happy to pass that
24 on as we get it.

25 MR. ZIMMERMAN: Go for it. What is it?

1 MR. HOEFLICH: I don't have the number.

2 MR. ZIMMERMAN: The last time we spoke there
3 were 240 cases in federal court and about 130 were
4 actually pled as class actions. There were approximately
5 550 cases filed in state court that have not been subject
6 to removal or have not been removed. Approximately fifty
7 or sixty of those are class actions. So, as of last
8 week, there were approximately a total of 700 or so cases
9 that have been filed across the country.

10 What's going to happen, Your Honor, and I guess
11 I want to give the Court and everyone some notice of
12 this, is most members of the PSC and members of the
13 committees of the PSC have not filed their cases, and we
14 are going to -- we have said that we want to file some
15 additional cases and they are going to be doing that.
16 So, I guess the Court will probably see a rush of cases
17 coming from counsel that are members of the PSC. PSC has
18 filed cases and everyone on the PSC has a federal case
19 and every member of the committee, I believe, has a
20 federal case, but we are asking that these members file
21 additional cases for the purposes of having a better idea
22 of what the census of cases will be and what the run of
23 types of cases will be.

24 In that regard, and it's an issue that's under
25 discussion which is why it is on the agenda, is this

1 question of census.

2 One of the ideas that we've been discussing,
3 and we don't have an agreement on yet, but I think
4 philosophically or theoretically we have an agreement
5 that it is a good idea to try and get a sense of claims
6 that are in inventory as opposed to just claims that have
7 been filed because in these mass and complex cases people
8 file their cases, but they warehouse or inventory many
9 cases because they want to see where the litigation goes,
10 and there is no need to file everything that's in your
11 inventory.

12 But I think for purposes of this Court's order
13 of magnitude for the purposes of our, and certainly for
14 the purposes of the defendants trying to get their hands
15 around and arms around the scope of the litigation and
16 the types of claims that exist, we have come up with the
17 notion of trying to have a census form or a short form
18 that people can file or provide to the Court and counsel
19 that will tell us that I've got ten cases filed and
20 ninety days in inventory and these are essentially what
21 the claims contained in my inventory are.

22 There is some resistance to that in the field.
23 People like to keep it a little bit of a mystery, I
24 suppose, but I think at the end of the day it's important
25 information. So, we're working with the defendants to

1 try to come up with some ideas on how to do that, and so
2 for purposes of the discussion today I'm just advising
3 the Court that that's one of the matters we have under
4 discussion and review.

5 THE COURT: All right. Counsel.

6 MR. HOEFLICH: I have no comment on that one.

7 THE COURT: That sounds like a very good idea.

8 We can do this to see what the universe looks like.

9 The -- is Mr. Becnel here?

10 MR. BECNEL: Yes.

11 THE COURT: Good afternoon.

12 MR. BECNEL: Good afternoon.

13 THE COURT: I can see your issue on the
14 agenda. I've been doing some research. I've had my
15 staff, because it's going to impact the Clerk's office as
16 you've -- I'm glad that you pointed that out to me at the
17 last meeting. It's going to impact our Clerk's office,
18 and they have pulled up one of the prior MDL orders,
19 bundling the cases in 50. When we have our private
20 meeting, I'll hand out copies to the defense on that.

21 So, if you have anything further that you wish
22 to get to the Court so the defense can respond to it, it
23 is -- so the defense knows, it's a tremendous problem for
24 the Clerk's office. So, we will have to try to deal with
25 that issue in an efficient manner.

1 MR. BECNEL: It does two things, and if I may
2 address the Court from here.

3 THE COURT: Please come down here because I
4 think we still may have somebody on the phone.

5 MR. BECNEL: For example, I have thousands of
6 these cases. I advised counsel that I will begin filing
7 them. In fact, we'll be begin filing 20 to 40 tomorrow
8 morning, and then we are going to file them periodically
9 like that, most of which will be in federal court. The
10 problem arises is that when you file them, because I
11 usually have as many or more cases than almost anybody,
12 whether Propulsid, Rezulin, PPA and the like, is the fact
13 sheet, so you have to do it on a rolling production so
14 that my staff of 40 or so lawyers and my associated
15 counsel, referral lawyers, can comply with the Court's
16 order rather than being constantly on a sheet that says,
17 hey, you need your thing filed. That's one of the things
18 that we like to do that it makes it so much user friendly
19 in dealing with the computers, and we use a Needle's
20 program to deal with all of this.

21 And I would suggest to the Court that this be
22 done only in an effort to be more efficient because what
23 you are going to do is cause individual clients to come
24 here individually where we might pay the court costs up
25 front, and I'm going to have more petitions than you can

1 shake a stick at.

2 THE COURT: We are aware of that and you have
3 brought it to the Court's attention, and I want to be
4 proactive in this area. And, so, let's hear from the
5 defense. But you know where I'm leaning on this.

6 They don't want bundles of more than 50 because
7 they have talked to the other Clerk's office and how they
8 dealt with it and gotten their perspective on it, and the
9 other Clerk's offices, the Eastern District of Texas --

10 MR. BECNEL: Judge Shell.

11 THE COURT: Right. It was bundles of 50 that
12 he ordered.

13 MR. HOEFLICH: Judge, I do not believe that
14 bundling of cases is a uniform or standard practice. For
15 example, in the Philadelphia Baycol cases, cases that had
16 been brought in a bundle form, have already been
17 severed. We don't think it would be appropriate here.
18 If Mr. Becnel wants to file bundled cases, we believe he
19 should file a motion and request leave to do that, and we
20 should have an opportunity to object to it and I believe
21 we will object to it.

22 THE COURT: As he knows he has to file his
23 motion, but I'm telling you, I'm giving you the alert
24 that I have already talked to my staff, and unless you
25 have got some very persuasive arguments, we don't have to

1 go to the AO's office to hire two or three more people to
2 deal with these filings.

3 MR. HOEFLICH: Understood, but I'm going to do
4 my best to come up with persuasive arguments on this.
5 Thank you, Judge.

6 MR. BECNEL: May it please the Court, in
7 Phen-fen I filed the first big batch of them --

8 THE COURT: If I've given you an indication --

9 MR. HOEFLICH: If I were Mr. Becnel, I would
10 have sat down.

11 MR. ZIMMERMAN: I'm shocked, Mr. Becnel. I
12 have on the calendar, Your Honor, the remand motion,
13 again. I guess we are still waiting on that. It's just
14 on my sheet under Number 4.

15 THE COURT: Who do we have? Please announce
16 your presence, those that are on the telephone.

17 MR. GERSTL: This is Hugo Gerstl on behalf of
18 Plaintiff Smith. I can barely hear you.

19 THE COURT: Can you hear me?

20 MR. GERSTL: Just very, very vaguely. Can you
21 hear me.

22 THE COURT: Yes, we can. I'll turn up my
23 hearing aid. We can't do anything to amplify it on your
24 end.

25 MR. GERSTL: I've filed (inaudible).

1 MR. ZIMMERMAN: Are you on speaker phone? Can
2 you hear this?

3 MR. GERSTL: Yes, I can hear you.

4 MR. ZIMMERMAN: Judge, we can trade places.

5 MR. GERSTL: This telephone is almost ready for
6 us. Can you hear me?

7 THE COURT: Yes, I can hear you.

8 MR. GERSTL: I can hear a voice.

9 THE COURT: Can you hear me now?

10 MR. GERSTL: Yes, I can.

11 THE COURT: Would you please announce your
12 appearance again, please?

13 MR. GERSTL: My name is Hugo, H-u-g-o, last
14 name Gerstl, G-e-r-s-t-l, appearing for Plaintiff.

15 THE COURT: Welcome, you are going to be able
16 to express yourself.

17 MR. GERSTL: (Inaudible.)

18 THE COURT: Did you write "Express Yourself".

19 MR. GERSTL: I'm sorry.

20 THE COURT: Did you write "Express Yourself",
21 the song.

22 MR. GERSTL: Do I write express myself? Ah,
23 yes, I did, 103rd Street Rhythm Band.

24 THE COURT: Was that Archie Bell and the
25 Drells?

1 MR. GERSTL: I'm sorry?

2 THE COURT: Was that Archie Bell and the Drells
3 who did that song?

4 MR. GERSTL: No, it was the Watts 103rd Street
5 Rhythm Band.

6 THE COURT: I want you to know I read
7 everything you submitted.

8 MR. GERSTL: Does that include this morning's
9 exhibits?

10 THE COURT: Yes, it does. Before you continue,
11 we have the -- would you hold on for one second.
12 Counsel?

13 MR. SCHAERR: Yes, Your Honor. I'd like to
14 just raise a procedural issue that I tried to discuss
15 with Mr. Gerstl earlier this morning but was not
16 successful in reaching him. And it has to do with the
17 submissions that we received today.

18 My understanding is that this Court has a
19 standing order that requires all briefs and other
20 materials that pertain to a hearing to be submitted to
21 the Court and opposing counsel at least a week prior to
22 the hearing. Now, Mr. Gerstl filed what he called a
23 rebuttal to a brief that we filed slightly over a week
24 ago, on May 3, which was a day late. We didn't object to
25 that. Today, as Your Honor knows, we both received a

1 letter brief and then a series of, I believe, nine
2 additional exhibits that Mr. Gerstl believes pertain to
3 the issues on this remand motion. If the Court has had
4 an opportunity to review those, you are ahead of me
5 because I received those as I was sitting in a meeting on
6 another matter and have only had an opportunity to barely
7 skim them.

8 So, what I would request that the Court do in
9 light of this is that the Court either limit its
10 consideration of the remand motion to the record as it
11 existed a week ago today, or in the alternative, and I
12 would be equally happy with this option as well if it's
13 acceptable to the Court, that we continue the hearing on
14 this motion until the next status conference, which I
15 believe also June 13, and that we be given an opportunity
16 to respond to these new exhibits and, frankly, new
17 arguments that Mr. Gerstl has submitted.

18 THE COURT: No. What I will do is I will take
19 the arguments today, and then I will give defense one
20 week to respond in writing to the Court, and then I will
21 decide the case. Plaintiff's counsel wants this matter
22 heard as quickly as possible. He has given the Court in
23 his pleading good reason for the Court to decide this
24 case one way or the other as quickly as possible, and
25 there is just no reason for the Court to continue this

1 matter to the next hearing.

2 So, let's proceed with the arguments.

3 MR. SCHAERR: That's entirely acceptable to us,

4 Your Honor.

5 MR. GERSTL: It is to us, Your Honor.

6 THE COURT: Counsel, you may proceed with your
7 argument.

8 MR. GERSTL: Mr. Schaerr proceed or do I
9 proceed?

10 THE COURT: I'm sorry?

11 MR. GERSTL: Mr. Schaerr, I believe, for Bayer
12 or the Plaintiff.

13 THE COURT: The Plaintiff.

14 MR. GERSTL: Your Honor, first of all I
15 apologize to the Court and apologize to Mr. Schaerr.
16 What happened is I was set to go with what was there a
17 week ago and over the weekend I had to go to Pennsylvania
18 for a depo. While I was there in Cleveland and on the
19 way back my secretary called and Mr. Miller called from
20 Bayer wanting a copy of the filing date of when the paper
21 was filed.

22 (Whereas, the remainder of the telephonic
23 conference by Mr. Gerstl became inaudible and impossible
24 to decipher for the court record.)

25 THE COURT: You are dropping your voice.

1 Please speak louder.

2 MR. GERSTL: All I was going to say is I have
3 nothing more to add.

4 THE COURT: All right. Counsel.

5 MR. SCHAERR: Your Honor, we believe that the
6 motion to remand should be denied for the simple reason
7 that it is clear that in neither the Plaintiff's original
8 complaint nor the first amended complaint that she filed
9 after the case was removed is there a viable claim
10 against the pharmacy that the Plaintiff has sued in an
11 effort to try to prevent this case from being subject to
12 the jurisdiction of the federal courts. And it's well
13 settled under federal law that where it is clear from the
14 complaint that the Plaintiff can state no viable cause of
15 action against a non-diverse defendant, that the -- the
16 joinder of that defendant should be ignored for diversity
17 purposes.

18 Now, the Plaintiff has already admitted that
19 the two claims that she asserted against the pharmacy,
20 Long's Pharmacy in this case, in her original complaint
21 are not viable and, in fact, we learned from the rebuttal
22 that was filed six days ago that she has now dismissed
23 the second of those two claims in the original complaint
24 with prejudice. And that leaves just one claim, which
25 Plaintiff has called a claim for professional negligence

1 in the second -- the first amended complaint that, as I
2 mentioned, was filed right after this case was removed.

3 There are both procedural and substantive
4 reasons why that claim can't be a basis for denying
5 jurisdiction to this Court.

6 First on the procedural side, as I mentioned,
7 that first amended complaint was filed after the removal
8 to federal court which occurred on October 11. A day
9 after the notice of removal was filed in federal court,
10 the Plaintiff filed a second amended complaint alleging
11 that the original removal to federal court was
12 defective. And if you look at Page 4 of his rebuttal --
13 or her rebuttal, she claims that the removal was
14 defective and that "she took advantage that have defect"
15 in order to file a second amended complaint.

16 The problem, of course, is that she filed the
17 second amended complaint after the removal had already
18 occurred and, in fact, as we have pieced together the
19 timetable as best we can, the Plaintiff originally
20 asserted that the notice of removal on Bayer's part was
21 not filed in state court until October 13. We have since
22 learned that that was incorrect and that it was, in fact,
23 filed on the 12th.

24 The Plaintiff, in all these exhibits that he
25 has submitted to the Court today, has tried to make a

1 case that, in fact, he won the race to the courthouse
2 with his first amended complaint and that he got there
3 shortly before Bayer's notice of removal was filed in
4 state court. We think that's irrelevant because we
5 think, in fact, that the controlling date is the date
6 that the notice of removal was actually filed in federal
7 court. That in all events, we think the evidence, and
8 we'll explain this in greater detail when we respond to
9 his submission today, we think the evidence shows, in
10 fact, that if the Court needs to decide who won the race
11 to the courthouse, that Bayer actually won that race.

12 But perhaps more importantly on the merits of
13 the claim that he has raised, we believe that the new
14 professional negligence claim is defective for the very
15 reasons that his original negligence against claim
16 against the pharmacy was defective.

17 His principal basis for claiming negligence
18 against against the pharmacy was his allegation that
19 because they knew they had certain information about the
20 alleged dangers of Baycol, but if you look at Paragraphs
21 13 and 14 of his original complaint, they make clear that
22 the drugstore did not and could not have known about
23 those dangers until almost two full months after the
24 pharmacy filled the Plaintiff's prescription. That
25 prescription was filled on March 24 --

1 THE COURT: Isn't one of the allegations by Ms.
2 Smith is that the drugstore filled the wrong
3 prescription?

4 MR. SCHAERR: Yes, that is also an allegation
5 and I will be happy to address that --

6 THE COURT: I think you should. That is the
7 main point.

8 MR. SCHAERR: Okay, I will be happy to address
9 that. Again, this issue was raised or presented in its
10 fully formed state and briefs that have been filed since
11 we filed our briefs that we will address this as well in
12 our submission, but the key California decision here is a
13 case called Murphy, which the court is undoubtedly
14 familiar with from the briefs.

15 The Murphy decision explains that a pharmacist
16 is subject to certain statutory rules of professional
17 responsibility and subject to disciplinary proceedings
18 that violates those rules. One of the those rules is
19 4047.6 of the California Business and Professions Code
20 which is discussed in the Murphy decision. And that
21 provision, as we understand it, makes it illegal for a
22 pharmacy to do anything other than substitute a generic
23 equivalent for a prescription from a doctor unless the
24 prescription itself gives the pharmacy greater latitude
25 than that.

1 Now, the Plaintiff has not alleged a violation
2 of that provision of California law, 4047.6. So the
3 natural conclusion from that failure to make that kind of
4 a claim is that the doctor himself gave permission to the
5 pharmacy to substitute Baycol or another drug for the
6 Zocor drug that Plaintiff says was prescribed.

7 So we think that the Plaintiff has failed to
8 carry her burden to establishing that she has a viable
9 claim against the pharmacy even on that theory. I will
10 be happy to respond to whatever other questions the Court
11 has.

12 THE COURT: Anything further?

13 MR. SCHAERR: No, Your Honor.

14 THE COURT: Plaintiff's counsel, anything
15 further?

16 MR. GERSTL: Yes, Your Honor, first of all my
17 brother says that this is the second amended complaint.
18 It was not. It was a first amended complaint. The
19 question is does the removal take effect if neither the
20 Court nor the other parties know that.

21 Third, why was there no attempt whatsoever to
22 communicate with Long.

23 Fourth, the argument on the merits made by
24 Bayer is an argument that possibly could be made by Long,
25 but it has not been. Long would have the opportunity to

1 confer on the grounds that it would be a criminal and not
2 a civil case. In consideration of whether there is a
3 valid and legitimate cause of action for purposes of the
4 removal, I believe that is different. For example, in
5 the second cause of action, in the first amended
6 complaint, there are very specific allegations that
7 divorce the pharmacy from the manufacturer. (Inaudible)
8 The complaint is Zocor was put down as the prescription
9 and that Long had attempted to substitute something
10 else. They had a duty to advise the Plaintiff of the
11 risks of that drug. Therefore, there is a viable,
12 legitimate cause of action against Long.

13 THE COURT: All right. Thank you very much. I
14 will take this matter under advisement, and the defense
15 will have one week from today to file their response to
16 the papers -- the letter and the documents that you
17 submitted today by fax.

18 MR. GERSTL: I do not think I need to be
19 permitted any further response.

20 THE COURT: Thank you. I'm sorry we've had so
21 many technical difficulties getting you on line, but bear
22 with us. We are in the Midwest and sometimes our
23 telephone lines don't work.

24 MR. GERSTL: At least it works there. This is
25 California, we can't even afford electricity.

1 THE COURT: Thank you.

2 MR. GERSTL: Thank you, Your Honor. Have a
3 good day.

4 THE COURT: You too.

5 MR. SCHAERR: Your Honor, just so we are clear,
6 we would like an opportunity to respond to the arguments
7 he made in the brief he filed six days ago as well.

8 THE COURT: Certainly.

9 MR. HOEFLICH: Your Honor, I believe we
10 inadvertently passed over one status report, and that is
11 on Plaintiffs' fact sheets. We have started to receive
12 them. There were some issues of the inadequacy and we
13 addressed them with the Plaintiffs' Steering Committee
14 and I believe they are working hard to resolve the issue.

15 THE COURT: Thank you.

16 MR. ZIMMERMAN: We come to the motion by Mr.
17 Ronwin. I don't know if that's actually before the Court
18 again, Your Honor. I have a letter of April 13, so, I
19 wasn't sure. I know this has been Mr. Stan Chesley's
20 project, and I certainly don't want to take it away from
21 him in any way, shape or form. Perhaps there is
22 something before the Court on that or not.

23 THE COURT: The hearing would not be complete
24 without Stan.

25 MR. ZIMMERMAN: He's got a part.

1 THE COURT: Please.

2 MR. CHESLEY: Judge, as the Court may know,
3 I've had somewhere between 50 and 60 communications with
4 Mr. Ronwin. We've become -- I thought we were friends,
5 but I can't tell. It's my understanding that the Court
6 overruled all of his motions.

7 THE COURT: That's correct.

8 MR. CHESLEY: He called me and advised that the
9 Court was clearly erroneous and I told him to file a
10 motion for reconsideration. He also felt that he -- I
11 just wanted to report to the Court -- he also felt that
12 he had never asked to remove Mr. Lockridge and you
13 overruled that one even though it wasn't there. But his
14 key issue to me was that he thought he had an absolute
15 right to (a) get out from under the MDL, so I sent him
16 281407 so that he could read it and review it, that the
17 transferring court has the absolute right to maintain and
18 continue the jurisdiction of the transferring court until
19 discovery is totally complete. I did not hear back on
20 that.

21 His other issue was that he couldn't find
22 nothing in the statute that prevented him from having
23 oral argument, and I explained to him that's totally
24 discretionary with the Court and that the only thing I
25 could do from that time on was to suggest that we had

1 done what we could do, and that he could either file a
2 motion for reconsideration with this Court or take it to
3 the Court of Appeals. And that's the last time I heard
4 from him, and that was approximately a week and a half
5 ago. So, I don't think there is anything pending in this
6 court right now relative to this gentleman. But I would
7 advise the Court that every effort was made to talk to
8 him, including weekends, Saturdays, Sundays and my
9 secretary, she also is pleased that the matter has been
10 resolved, at least at this level. Thank you, Your Honor.

11 THE COURT: The Court thanks you for taking on
12 that responsibility without knowing what the
13 responsibility was going to be.

14 MR. CHESLEY: Your Honor, I'm not certain, I
15 think he has my Federal Express number now. So, I
16 forewarn everyone. I sent him everything Federal
17 Express, and I think he's a very honorable person, but I
18 now forewarn everyone that he now has a Federal Express
19 number, so we'll see what happens.

20 MR. ZIMMERMAN: Next item, Your Honor, is the
21 Special Master report. We've had meetings, meet and
22 confers. We have had conferences with the Special
23 Master. I believe the Special Master has filed a report
24 with the Court, and I believe we may have a comment or
25 two as to where we are going to go and Mr. Chesley will

1 handle that.

2 MR. CHESLEY: Your Honor, very briefly, I want
3 to thank the Court and I want thank Professor Haydock.
4 And, also, a lot of times the young lawyers don't get
5 their due. I also want to publicly thank Rob Shelquist
6 who's here in the courtroom and who has been working on
7 this with me. And between he and Susan Weber, they
8 drafted, which I believe takes care of and has filed a
9 stipulation relative to the jurisdiction given to
10 Professor Haydock on the issue of the law.

11 We also advised Professor Haydock that we will
12 have some subsequent issues relative to what is being
13 done with these documents and where they're going, but I
14 believe he accurately indicated that he did not have
15 jurisdiction and so what we will do is --

16 THE COURT: He will tell you again in emphatic
17 terms and that came from me, so he --

18 MR. CHESLEY: That's the last word.

19 THE COURT: That's right.

20 MR. CHESLEY: If there are any additional
21 issues on that issue, we will bring it directly in front
22 of the Court after we have had some discovery to make
23 certain that what we are saying is accurate. So I wanted
24 to let you -- and I want to thank Your Honor and thank
25 Professor Haydock and Susan Weber for her help and Rob

1 Shelquist who was very helpful.

2 MS. WEBER: Counsel has indicated there may be
3 additional discovery, and if that's served we'll deal
4 with it at that point and time.

5 THE COURT: Any other issues that are not on
6 the agenda that we should hear?

7 MR. ZIMMERMAN: I believe there are some
8 matters we wanted to take up with the Court privately
9 regarding the coordination issues.

10 THE COURT: We'll take care of that in
11 chambers. Are there any other issues? Anyone else that
12 has any other issues that they wish to present to the
13 Court at this time that are not on the agenda?

14 Let's take a ten-minute break and I'll see the
15 appropriate counsel back in chambers

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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