

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

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5)
6 IN RE: BAYCOL PRODUCTS LITIGATION) MDL No. 1431 MJD

7) 9:30 a.m. o'clock
8) June 20, 2003
9) Minneapolis, MN
10)
11)
12)
13 -----

14 BEFORE THE HONORABLE MICHAEL J. DAVIS
15 UNITED STATES DISTRICT COURT JUDGE
16 (STATUS CONFERENCE)

17 APPEARANCES:

18 ON BEHALF OF THE PLAINTIFFS: CHARLES ZIMMERMAN, ESQ.
19 RICHARD LOCKRIDGE, ESQ.
20 RICHARD ARSENAULT, ESQ.
21 ELIZABETH CABRASER, ESQ.
22 RONALD MESHBESHER, ESQ.
23 RONALD GOLDSER, ESQ.
24 RANDY HOPPER, ESQ.
25 VICTORIA MANIATIS, ESQ.

ON BEHALF OF THE DEFENDANTS: PHILIP BECK, ESQ.
ADAM HOEFLICH, ESQ.
PETER SIPKINS, ESQ.
SUSAN WEBER, ESQ.
FRED MAGAZINER, ESQ.
TRACY VAN STEENBURGH, ESQ.

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09:40:26

1 THE CLERK: Multi-District Litigation Case 1431, 09:40:26

2 In re: Baycol Products. Please state your appearances for 09:40:33

3 the record. 09:40:37

4 MR. ZIMMERMAN: Good morning, Your Honor. I'm 09:40:37

5 Charles Zimmerman from the PSC. 09:40:37

6 THE COURT: Good morning, sir.

7 MR. LOCKRIDGE: Richard Lockridge for the 09:40:41

8 Plaintiffs. 09:40:43

9 THE COURT: Good morning.

10 MS. CABRASER: Elizabeth Cabraser for the 09:40:44

11 Plaintiffs. 09:40:47

12 THE COURT: Good morning.

13 MR. MESHBESHER: Ronald Meshbeshher for the 09:40:47

14 Plaintiffs, Your Honor.

15 THE COURT: Good morning.

16 MR. HOPPER: Randy Hopper for the Plaintiffs,

17 Your Honor.

18 THE COURT: Good morning.

19 MR. ARSENAULT: Richard Arsenault for the 09:40:52

20 Plaintiffs, Your Honor.

21 THE COURT: Good morning.

22 MR. GOLDSER: Ron Goldser for the Plaintiffs. 09:40:56

23 THE COURT: Good morning. Mr. Beck. 09:41:01

24 MR. BECK: Philip Beck for Bayer and Bayer. 09:41:01

25 THE COURT: You can take your picture

1 off.(Laughter). 09:41:05

2 MR. HOEFLICH: Judge, would be okay if I kept 09:41:05

3 this picture? (Laughter). 09:41:08

4 MR. ZIMMERMAN: This is the one you want. 09:41:10

5 MR. HOEFLICH: Good morning, Your Honor, Adam 09:41:13

6 Hoeflich for Bayer A G. and Bayer. 09:41:16

7 THE COURT: Good morning.

8 MS. WEBER: Susan Weber for the Bayer. 09:41:21

9 THE COURT: Good morning.

10 MR. SIPKINS: Peter Sipkins for the Bayer. 09:41:22

11 THE COURT: Good morning.

12 MR. MAGAZINER: Fred Magaziner for 09:41:27

13 GlaxoSmithKline. 09:41:31

14 THE COURT: Good morning. I think we have a full 09:41:33

15 agenda today. There are a number of things that weren't on 09:41:35

16 the status report probably will be talked about today. 09:41:40

17 Make sure that everyone is keeping a list and that at the 09:41:48

18 end of the session that we talk about this Merck Medico 09:41:52

19 issue. I just saw the e-mails that just came across to my 09:41:57

20 law clerk dealing with possible conflict on four cases that 09:42:05

21 I may have. And, then, setting up the July status 09:42:10

22 conference, I'm looking at either Tuesday the 15th or 09:42:18

23 Wednesday the 16th of July. I think that accommodates Mr. 09:42:23

24 Beck's schedule, and, Mr. Zimmerman, I don't know if that 09:42:33

25 has any conflict with you. 09:42:38

1 MR. ZIMMERMAN: I have no life, Your Honor -- 09:42:40

2 THE COURT: I'm sorry? 09:42:46

3 MR. ZIMMERMAN: I have no life, Your Honor. I 09:42:47

4 guess it would be fine.

5 THE COURT: I think every in this room, including 09:42:50

6 me, and certainly Baycol. Those two things we have to make 09:42:53

7 sure we talk about at the end of the session. Let's move 09:42:58

8 into the agenda, and I'll turn that over to Mr. Zimmerman. 09:43:06

9 MR. ZIMMERMAN: May it please the Court, Charles 09:43:17

10 Zimmerman for the Plaintiffs. We have provided to the 09:43:20

11 Court a status report of the proposed agenda. As in 09:43:26

12 previous sessions, I think going through it and then making 09:43:31

13 comments from both sides and seeing if there is any 09:43:35

14 separation or error between the positions is probably the 09:43:38

15 way to proceed. The beginning is Pending Cases. 09:43:41

16 First off, the report provides there are 9,177 09:43:48

17 cases as of June 16th filed against Baycol -- Bayer, excuse 09:43:55

18 me, and GSK and related parties. Of those, 4,728 have been 09:44:01

19 filed in federal court, and 3,687 cases in state court. 09:44:09

20 The remaining 6 -- 762 cases have not been categorized as 09:44:22

21 being state or federal filings. Frankly, I'm not sure what 09:44:25

22 that means. Maybe they just are there and haven't been 09:44:28

23 looked at or they're in some state of remand or removal or 09:44:31

24 conditional transfer. I just don't know. 09:44:35

25 MR. BECK: I don't know either, Your Honor. 09:44:38

1 MS. WEBER: Your Honor, the keeper of our master 09:44:42
2 database hasn't posted those cases. 09:44:45

3 MR. ZIMMERMAN: I guess it's fair to assume that 09:44:51
4 at least half or more of those are federal cases and 09:44:53
5 state -- and half are state cases. Statistically, I would 09:44:56
6 probably be approximately correct, but I guess we'll find 09:45:01
7 out. It was my assumption, and maybe I'm wrong, that they 09:45:05
8 were in some state of either remand or conditional transfer 09:45:09
9 order status because I think if you look at the case, you 09:45:14
10 can probably tell by counting if it has a state court 09:45:18
11 heading or a federal court heading, but I'll accept that 09:45:22
12 explanation for now. 09:45:25

13 THE COURT: Let me throw some more confusion in 09:45:26
14 the mix. In this district we have 4,888 cases filed as of 09:45:31
15 yesterday at 6:54 p.m., 4,888. 09:45:37

16 MR. ZIMMERMAN: Some statistics that probably 09:45:50
17 don't appear I suspect need to be understood. Of course, 09:45:52
18 these are cases and not plaintiffs. So, the number of 09:45:56
19 plaintiffs obviously are greater than that because there 09:45:59
20 may be multiple parties to any complaint or even multiple 09:46:02
21 claimants, that is, it could be spouses and/or estates or 09:46:07
22 there could be multiple plaintiffs. So, clearly we got 09:46:10
23 more than 4,888 claimants in the federal courts. Although 09:46:16
24 as of yesterday, that at least was the number of filed 09:46:22
25 cases we have. 09:46:26

1 Another interesting statistic is that there are 09:46:26
2 106 -- and I just got the other day, 165 pending class 09:46:30
3 actions. The concern we have about that is a state 09:46:38
4 concern -- a concern in different states because of the 09:46:45
5 tolling issue that may or may not be present with the 09:46:49
6 filing of the class action and the two-year statute that 09:46:53
7 may be applicable, I think, in 22 states where there is a 09:46:59
8 two-year statute. We had requested this information so 09:47:05
9 that we could provide it to lawyers around the country of 09:47:09
10 the pending class actions because people were concerned 09:47:12
11 about tolling and wanted to know, say, their particular 09:47:16
12 state there was a pending class action that may toll the 09:47:22
13 statute for people in that jurisdiction or the national 09:47:29
14 class action may toll the statute of limitations for 09:47:32
15 multiple states. 09:47:37

16 The problem we have is in providing that 09:47:39
17 information. I got a follow-up letter from Susan Weber 09:47:41
18 basically saying we couldn't necessarily rely on the 09:47:46
19 accuracy of that information. It says we do not guarantee 09:47:55
20 its accuracy and you should not act in reliance on this 09:47:55
21 chart. I know that was probably lawyer trying to make sure 09:47:59
22 that no one relies on something to their detriment. On the 09:48:04
23 other hand, that's not helpful if I can't rely accurately 09:48:11
24 on information and then I provide it to people and then I 09:48:16
25 have to say, look, here's the information, but it may not 09:48:19

1 be accurate. I think if they're going to tell us pending 09:48:22
2 class actions, they are not right now telling us pending 09:48:25
3 trials. We'll talk about that later. But if they're going 09:48:29
4 to tell us about pending class actions so people can make 09:48:34
5 decisions about whether or not equitable tolling might 09:48:39
6 apply, we should be able to rely on the accuracy of that 09:48:41
7 information. 09:48:46

8 I just got this letter last night, I think, the 09:48:46
9 19th it came in, so, I would ask the Court if perhaps we 09:48:49
10 could have a representation, at least from Counsel, that 09:48:54
11 the information is reliable. And if it can't be reliable, 09:48:58
12 I guess I would like to know which specific cases aren't 09:49:06
13 exactly reliable. 09:49:09

14 MR. BECK: Your Honor, we are in a situation 09:49:10
15 where we are on the receiving end of filings. For example, 09:49:12
16 coming back to Your Honor's observation about the different 09:49:18
17 number of cases in Minnesota, part of that is probably the 09:49:20
18 practice of Weitz and Luxenberg where they file hundreds of 09:49:25
19 cases and then wait two or three months before telling us 09:49:30
20 about it. So we are always a little bit behind. 09:49:33

21 If the Plaintiffs' lawyers were filing a class 09:49:38
22 action and we are not going to be in the businesses of 09:49:39
23 making representation that Mr. Zimmerman then is going to 09:49:42
24 quote around the country saying that someone couldn't rely 09:49:48
25 on this or delaying in filing a class action. We are 09:49:50

1 giving the best information we can. That's all we can do. 09:49:55
2 We are not guarantors that a complaint that looks like a 09:49:59
3 class action would be a class action under that state's 09:50:03
4 procedure. We are not going to do that. We are simply not 09:50:06
5 going to be in the business of making representations which 09:50:11
6 they then can say they rely on concerning the content and 09:50:13
7 legal effect of complaints that their colleagues are 09:50:20
8 filing. You know, we're just not going to put ourselves in 09:50:23
9 that position. We have given them the best information we 09:50:28
10 have. It's the information that we used to analyze the 09:50:31
11 same question in terms of how many class actions do we 09:50:34
12 think are out there. We don't, ourselves, have a hundred 09:50:41
13 percent confidence in our own analysis, and we are not 09:50:46
14 going to make a binding representation to somebody else on 09:50:50
15 that. We are just giving the best information we have. 09:50:53
16 MR. ZIMMERMAN: May I respond, Your Honor? 09:50:57
17 THE COURT: Just briefly, go ahead. 09:51:03
18 MR. ZIMMERMAN: Well, I have a responsibility to 09:51:03
19 answer people's questions and people have legitimate 09:51:03
20 questions about what cases are pending and what cases are 09:51:06
21 alleged to be class actions. I think I can ask counsel in 09:51:09
22 this case to provide me with accurate information about 09:51:13
23 what a pending class action is in a pending court, and I 09:51:16
24 can provide that information with some accuracy and 09:51:20
25 assurance of accurate information that there is pending 09:51:25

1 class action. I'm not asking about the legal sufficiency 09:51:26

2 or tolling that may or may not apply. 09:51:28

3 In terms of accurate information I think that's a 09:51:32

4 minimum that counsel and officers of this Court should 09:51:34

5 provide to another officer of this Court who has a 09:51:38

6 responsibility beyond the PSC. I don't know the names, I 09:51:41

7 don't know the people, I don't know everybody that's 09:51:44

8 associated with this litigation in these 4,888 cases. I do 09:51:47

9 the best I can to provide them with information. But if I 09:51:50

10 don't get accurate information, garbage in and garbage out. 09:51:55

11 I'm not going to be able to do much in terms of providing 09:52:00

12 other people with accurate information.

13 MR. BECK: Your Honor, we gave them the list of 09:52:01

14 cases that we in our judgment look like class actions, and 09:52:03

15 then he can go and look at these complaints himself. He 09:52:08

16 can call up the Plaintiffs' lawyers and he can do whatever 09:52:13

17 he wants and make his own judgment about whether they're 09:52:16

18 class actions. We got a bunch of complaints that we think 09:52:20

19 look like class actions, we give him name, rank and serial 09:52:23

20 number on every one of these cases, but then he wants us to 09:52:29

21 guarantee that they are something. We're not going to do 09:52:31

22 that. 09:52:35

23 MR. ZIMMERMAN: Mr. Arsenault had a comment with 09:52:36

24 respect to that. 09:52:37

25 MR. ARSENAULT: Good morning, Your Honor, Richard 09:52:37

1 Arsenault. Since the inception of this litigation, I've 09:52:39
2 been involved in the federal/state coordination. From time 09:52:43
3 to time I've gotten calls from some of the state lawyers 09:52:46
4 requesting this information. We have made similar requests 09:52:51
5 at the one-year point when we were provided some of the 09:52:52
6 data. Susan Weber was kind enough at that time to provide 09:52:54
7 us with some copies of the complaints that had been filed 09:52:58
8 at that time. 09:52:59

9 My understanding now, and perhaps I'm not 09:53:00
10 completely correct on this because I've out of the loop for 09:53:02
11 the just a few days, but I know we were provided with some 09:53:06
12 information with regard to what class actions had been 09:53:10
13 filed around the country. And while that information is 09:53:12
14 helpful, what the state lawyers have told me is they need 09:53:14
15 just a little bit more information. If I can get the names 09:53:17
16 of the Plaintiffs' lawyers, that will help them be able to 09:53:21
17 participate in some of the due diligence to call the 09:53:24
18 lawyers and find out a little bit more about the class 09:53:27
19 action. Just knowing that a class action has been filed is 09:53:30
20 helpful, but, for example, if you don't know what remedies 09:53:34
21 were sought with regard to that class action, for example, 09:53:36
22 if it only seeks consumer-type claim as opposed to personal 09:53:40
23 injury, then that does nothing to help someone who's got a 09:53:45
24 personal injury claim. If the class allegation has been 09:53:48
25 withdrawn or under the local rules, if a motion for class 09:53:54

1 certification has not been timely brought -- 09:53:54

2 THE COURT: I understand what you're saying, the 09:53:56

3 information that the lawyers want. The question keeps 09:53:59

4 coming back is what should Bayer supply you, and I think 09:54:05

5 what Mr. Beck has said is we will supply you with as best 09:54:10

6 as they can say is a class action case. My understanding 09:54:19

7 is you give them a name. 09:54:26

8 MR. BECK: Susan can address this better than I 09:54:29

9 can. She has more details. 09:54:32

10 MS. WEBER: Absolutely. I think Richard had 09:54:34

11 requested a list, and I provided a list and Bucky then 09:54:35

12 requested a more detailed list and I don't think Richard 09:54:38

13 has seen the more detailed list. 09:54:42

14 MR. ARSENAULT: Names of Plaintiffs' counsel. 09:54:46

15 MS. WEBER: It has the names of Plaintiffs' 09:54:47

16 counsel. It has the list of causes of action. It has 09:54:50

17 whether we think it is a nationwide or statewide class or 09:54:51

18 it looks like a class, but we can't figure out what kind of 09:54:54

19 class it is. It has docket number. So, it has everything 09:54:58

20 they need to check on their own. 09:55:02

21 MR. BECK: What they want from us is a binding 09:55:05

22 representation so that later on they can quote it if we had 09:55:06

23 misread something or they had misread something. We don't 09:55:11

24 want to be in the business of being the people that the 09:55:15

25 Plaintiffs' lawyers rely on in deciding whether to file 09:55:19

1 their causes of action or not. 09:55:21

2 THE COURT: Mr. Arsenault, that information that 09:55:24

3 Ms. Weber outlined has been received. Is it here? Do you 09:55:28

4 have it -- Mr. Zimmerman, do you have it here. 09:55:33

5 MS. WEBER: I don't have it in hard copy. I can 09:55:38

6 pull it up on the computer. 09:55:40

7 MR. ARSENAULT: That would be helpful if we can 09:55:43

8 get scanned and electronically transmitted or copies of 09:55:45

9 those, Sue. That would probably be one of the best 09:55:50

10 representations we can have that those were actually filed 09:55:52

11 and we can disseminate those. It wouldn't be too expensive 09:55:53

12 to do that. 09:56:01

13 MS. WEBER: I sent it to Bucky by e-mail 09:56:01

14 yesterday so he could forward it to everybody. 09:56:04

15 MR. ZIMMERMAN: Unless I didn't get it 09:56:06

16 downloaded. Was it copies of the complaints? 09:56:09

17 MS. WEBER: You want copies of all of the 09:56:11

18 complaints on the list. 09:56:11

19 MR. ZIMMERMAN: If you can't tell us whether it's 09:56:13

20 an accurate list of all the class actions, because if you 09:56:15

21 are concerned about misreading a caption or misreading -- 09:56:20

22 MR. BECK: Why can't they call the Plaintiffs' 09:56:24

23 lawyers -- 09:56:25

24 THE COURT: Hold on, I don't understand this. 09:56:25

25 This is just ridiculous. If the Defendants give you the 09:56:31

1 names, give you the alleged cause of actions, you've got 09:56:36
2 people that can -- in different states, that can find those 09:56:40
3 complaints, talk to those lawyers and get the information 09:56:46
4 that you need. The defense is not going to give any type 09:56:49
5 of affidavit saying this is certified true and correct 09:56:54

6 beyond that. They are giving you the list. You can do the 09:57:02
7 work from there. I don't understand what your problem is. 09:57:04

8 You can't -- you wouldn't stand up in any 09:57:07
9 conference and say this is the date for your statute of 09:57:11
10 limitations. The lawyer would have to go out and make sure 09:57:19
11 that was the date. They are not going to rely on what you 09:57:21
12 say. So, I don't understand what -- you're starting an 09:57:24
13 argument on the wrong foot here. It's not an argument that 09:57:27
14 you should take up here. You are getting the information. 09:57:34
15 You can do the rest of the work with that information. 09:57:36

16 MR. ZIMMERMAN: As long as the information is 09:57:40
17 accurate. I'll absolutely -- 09:57:41

18 THE COURT: To the best of their ability. They 09:57:42
19 are turning over everything. What do you -- I don't 09:57:46
20 understand what more do you want. Show me -- give me an 09:57:48
21 example of where they have given you information that's 09:57:52
22 been incorrect. Can you give me something now? 09:57:55

23 MR. ZIMMERMAN: I see just got this now. 09:57:59

24 THE COURT: If you don't know if it's incorrect, 09:58:01
25 don't come up here saying that it's incorrect. 09:58:04

1 MR. ZIMMERMAN: I'm not saying it's incorrect, 09:58:07
2 Your Honor. I'm saying they are not telling me if it's 09:58:09
3 correct or not. That's all. If they just tell me it's the 09:58:13
4 best information and it's correct, that's fine. But if 09:58:15
5 they're not telling me I can rely on it, then I have a 09:58:17
6 problem. But I hear the Court, and we'll look at it and if 09:58:20
7 we see some problems, we'll bring it back. 09:58:23

8 THE COURT: Relying on it with what frame. You 09:58:26
9 got the information. Mr. Arsenaault understands what the 09:58:29
10 information is. Why can't you understand? He's going to 09:58:31
11 get the information and he'll be able to transmit it to 09:58:33
12 counsel that are giving you the calls and be able to 09:58:38
13 disseminate the correct information. What you want, as I 09:58:43
14 understand it, is a seal of approval from the defense to 09:58:50
15 saying this is the date, the time and the place where the 09:58:53
16 statute of limitations is. 09:58:56

17 MR. ZIMMERMAN: That's not what I'm asking for. 09:58:59
18 If that's what the Court heard me say, that's precisely not 09:59:01
19 what I'm asking for. I'm just wanting them to tell me 09:59:05
20 whether the information they gave me is accurate, that's 09:59:09
21 all, not whether or not the claim is anything other than 09:59:10
22 what it states -- 09:59:13

23 THE COURT: And I'm saying at any time has the 09:59:16
24 Defendants given you information that has not been 09:59:19
25 accurate? 09:59:22

1 MR. ZIMMERMAN: Well, Your Honor, we have that 09:59:23
2 dispute before the Court. They have marked a lot of 09:59:26
3 documents confidential, that weren't confidential. That's 09:59:28
4 a good example. 09:59:33

5 THE COURT: In dealing with giving you the 09:59:35
6 information about the class actions, have they given you 09:59:35
7 any information that's been false. 09:59:38

8 MR. ZIMMERMAN: I just got it yesterday. I can't
9 say. Absolutely not. 09:59:43

10 THE COURT: Come back in July and if it's false, 09:59:44
11 we'll deal with the information. 09:59:47

12 MR. ZIMMERMAN: Okay. The next item is the 09:59:50
13 Settlements. As of June 16, 2003, Defendants have settled 09:59:53
14 974 cases. 10:00:01

15 THE COURT: Let's backup. I didn't receive 10:00:03
16 anything on class actions. 10:00:08

17 MS. WEBER: I can forward to Your Honor -- I 10:00:11
18 copied Special Master Haydock at the time I sent the 10:00:14
19 information. 10:00:17

20 MR. ZIMMERMAN: I think this just came in 10:00:21
21 yesterday. 10:00:22

22 THE COURT: Would you forward it to Katie? 10:00:25

23 MS. WEBER: I will do that.

24 MR. ZIMMERMAN: Settlement as of June 16th, the 10:00:30
25 Defendants have settled 974 cases. Of this total, 270 of 10:00:32

1 those cases have been settled in the MDL. The interesting 10:00:40
2 point, I guess, Your Honor, is that the total number of 10:00:43
3 cases, 974, is up from 825 last month. So, approximately 10:00:44
4 150 increases in total settled cases in the last 30 days or 10:00:51
5 so, and these 270 cases settled in the MDL is up from 236, 10:00:57
6 which is about 34 cases increased in the MDL. 10:01:06

7 We obviously know of the cases and values of the 10:01:15
8 MDL cases, and we do not have the cases and values of the 10:01:19
9 non-MDL cases, but I understand that information -- 10:01:25

10 THE COURT: The court has that information. 10:01:31

11 MR. ZIMMERMAN: There has been an increase in the 10:01:33
12 number of cases in the MDL mediation process. We are at 49 10:01:36
13 cases within that process, up from 37 last month. I 10:01:41
14 believe there has been -- have been a number of mediations, 10:01:48
15 or I know there was one last week. Lew Remele, Special 10:01:52
16 Master Lew Remele is here, and I suspect that if there is 10:02:00
17 any comment on this settlement, then perhaps the mediator's 10:02:04
18 report from the Special Master. 10:02:07

19 THE COURT: I would like a report from you, 10:02:10
20 Special Master Remele, just on how the program is 10:02:12
21 proceeding at this point, if that's all right with you, Mr. 10:02:18
22 Zimmerman. 10:02:23

23 MR. ZIMMERMAN: Yes. 10:02:23

24 THE COURT: Good morning. 10:02:23

25 MR. REMELE: Good morning, Your Honor. Mr. 10:02:25

1 Zimmerman is correct. I think it is an increase of 10:02:29
2 approximately 10 or 12 cases that have been submitted to 10:02:31
3 mediation since the last status conference. On Monday of 10:02:34
4 this week, I did conduct a mediation down in South Bend, 10:02:37
5 Indiana with Mr. Goldser and a Minneapolis attorney, Mr. 10:02:43
6 Johnson, and representatives from Bayer, and that was a 10:02:47
7 case that was the first case I think where Bayer had 10:02:50
8 declined to either negotiate or mediate, and it was one of 10:02:54
9 the cases that we asked or directed to be put into 10:02:59
10 mediation. 10:03:02
11 I'm happy to report that we had a good session in 10:03:02
12 South Bend. The parties needed some additional information 10:03:06
13 after we spent some time analyzing the case, and I'm 10:03:10
14 optimistic that hopefully when we get that information, 10:03:14
15 which we set a limit of 30 days, that they'll be able to 10:03:19
16 settle that case. 10:03:22
17 We have not -- other than that case and the case 10:03:24
18 in Oregon that Ms. Yani mediated, which I think I reported 10:03:25
19 on in the April status conference, those are the only two 10:03:30
20 cases that have actually been mediated at this juncture. 10:03:34
21 There are a number of cases that Bayer is 10:03:39
22 continuing to negotiate that have been submitted the 10:03:42
23 request. I'm waiting for information. There's three or 10:03:46
24 four cases that they have refused to either mediate or 10:03:52
25 negotiate, and I need to look at those records to determine 10:03:52

1 if those are appropriate cases under our protocol. 10:03:55

2 So, I guess the bottom line is that we're making 10:03:58
3 some incremental progress in terms of cases being submitted 10:04:01
4 for mediation or negotiation, and I think we'll just have 10:04:05
5 to wait as the months come to see if those increase. We 10:04:09
6 have not had any major increase in requests for mediation 10:04:14
7 around the country as we initially anticipated. 10:04:19

8 THE COURT: Any cases that you have before you, 10:04:22
9 you have given me some indication that Plaintiffs do not 10:04:26
10 have the appropriate documentation and that's made it very 10:04:29
11 difficult. So, I would alert the PSC if they're going to 10:04:33
12 submit these cases to mediation that the appropriate 10:04:37
13 documentation be provided so Bayer can do their evaluation 10:04:41
14 and also the mediator can do their job. 10:04:45

15 MR. REMELE: That's correct, Your Honor, and I 10:04:50
16 actually had some discussions with Mr. Goldser when we were 10:04:51
17 Indiana this weekend, and also Mr. Hamilton. I think that 10:04:57
18 we will be able to in the future be a little more efficient 10:05:01
19 in that process. 10:05:06

20 THE COURT: Thank you. Mr. Zimmerman. 10:05:07

21 MR. ZIMMERMAN: Thank you, Your Honor. One other 10:05:08
22 item, Your Honor, on the settlement. I know that Sol Weiss 10:05:09
23 is not here, but he had called me the day before yesterday 10:05:15
24 and indicated that he has 500 cases in settlement 10:05:19
25 negotiations or at least submitted to settlement to Mr. 10:05:25

1 Beck and to the Shook Hardy people. So, I thought the 10:05:29
2 Court might be interested to know that at least Mr. Weiss' 10:05:33
3 cases that he controls out of Pennsylvania are in the 10:05:38
4 settlement process, although we don't know what the 10:05:41
5 outcomes will be. 10:05:44

6 MR. BECK: Your Honor, we are in negotiations 10:05:46
7 with several different groups of Plaintiffs' lawyers who 10:05:49
8 have varying numbers of cases, and I don't feel I should 10:05:53
9 comment on any of those because I promised them that I 10:05:59
10 wouldn't be up making speeches about them. The only 10:06:02
11 comment I am going to make is to clear up possible 10:06:06
12 misimpression left by Mr. Zimmerman. Sol Weiss and his 10:06:10
13 group control a lot more than 500 cases if that's what he 10:06:17
14 told Mr. Zimmerman. The cases that we are talking settling 10:06:22
15 are Rhabdo cases, real injury cases, and I didn't want Mr. 10:06:26
16 Zimmerman's comments be taken by the Court to suggest to 10:06:32
17 other people that we are now settling aches and pains cases 10:06:35
18 when we are not settling his aches and pains cases because 10:06:38
19 that is not happening. 10:06:41

20 MR. ZIMMERMAN: I did not state that. I don't 10:06:43
21 know what aches and pains cases are. They're muscle damage 10:06:48
22 cases.

23 MR. BECK: The aches and pains cases are the ones 10:06:50
24 that up until this status conference he and all of his 10:06:52
25 colleagues have called aches and pains cases, Your Honor. 10:06:56

1 MR. ZIMMERMAN: We'll change that to muscle 10:07:00

2 damage cases from now on. Is that agreeable? 10:07:08

3 MR. BECK: No, it certainly isn't. If he doesn't 10:07:08

4 like the language that accurately describes the cases, he 10:07:08

5 can call it anything he wants, but there were thousands of 10:07:10

6 cases where nobody was injured. 10:07:12

7 THE COURT: The Court has been in communication 10:07:16

8 with the -- several state court judges across the country 10:07:22

9 as part of its cooperation coordination. Maybe this would 10:07:30

10 be a good time for Special Master Haydock to report on the 10:07:36

11 program that's happening in Philadelphia in dealing with 10:07:43

12 settlement and Judge Davis down from Texas, how he is 10:07:48

13 handling these matters. 10:07:54

14 MR. HAYDOCK: Good morning, Your Honor. 10:08:02

15 THE COURT: Good morning. 10:08:06

16 MR. HAYDOCK: I had conversations this week with 10:08:06

17 representatives from Philadelphia, Mary McGovern, Claims 10:08:08

18 Administrator and Judge Ackerman, and the summary of their 10:08:13

19 report is that they mentioned that there is a mediation 10:08:17

20 program underway in the Philadelphia area. The specifics, 10:08:21

21 I have not seen the specifics designated by them. They 10:08:24

22 mentioned there was a meeting this week and they would get 10:08:29

23 back to me with some more detailed information about the 10:08:30

24 timing of that. 10:08:35

25 My understanding from the conversations is that 10:08:36

1 the mediation program will be operated through the 10:08:37
2 Philadelphia court system by the Judges and have different 10:08:40
3 mediation approach than this Court has taken with regard to 10:08:44
4 that. But beyond that, I don't have any detailed 10:08:48
5 information yet to report about the specifics of that, and 10:08:52
6 that's still taking shape that way. 10:08:55

7 With regard to my conversations was some of the 10:08:57
8 Texas state court lawyers, there is no indication of a 10:09:00
9 formalized mediation program. They anticipate the parties 10:09:03
10 will be talking settlement about the cases and they'll be 10:09:08
11 encouraging that. I'm not aware of any specific mediation 10:09:10
12 program there. 10:09:15

13 With regard to the California coordinated 10:09:17
14 proceedings, I haven't obtained information because the 10:09:19
15 Judge is away on vacation for an extended period of time 10:09:25
16 and they put things on hold for a while, so, I'm not sure 10:09:28
17 of the specifics of that. 10:09:31

18 THE COURT: All right, thank you. If anyone has 10:09:33
19 any -- counsel has any other information the Court will 10:09:38
20 appreciate it. 10:09:43

21 MR. ZIMMERMAN: I may, Your Honor. 10:09:47

22 MR. BECK: In Texas, Judge, I think it is 10:10:05
23 accurate there is no formalized mediation program, but it 10:10:08
24 has been the practice there when a case is set for trial 10:10:12
25 and if either side requests mediation, the practice has 10:10:16

1 been up until now that the Judge requires the other side to 10:10:19
2 participate in mediation, and given that practice, then the 10:10:24
3 other side will, you know -- doesn't require a court order 10:10:26
4 or anything like that. 10:10:32

5 So, the practice has evolved in Texas where a 10:10:32
6 case is set for trial, if either side wants to mediate, it 10:10:35
7 will be mediated even though there may not be a formal 10:10:41
8 order as there is in this court. 10:10:48

9 MR. ZIMMERMAN: I have some different information 10:10:56
10 from Sol Weiss, but I don't think it's worth the debate 10:10:58
11 here and now about the cases. I'll just leave that where 10:11:03
12 it lies. 10:11:07

13 Discovery, Your Honor. There is -- I'm not going 10:11:11
14 to read through the three items. The fourth item is 10:11:16
15 probably something we want to discuss at greater length 10:11:21
16 which has to do with PTO 73 and the request for an 10:11:23
17 extension of deadlines. And I'd just like to leave that 10:11:28
18 for a moment because I think that's going to be the subject 10:11:32
19 of some tension today if I've read the positions carefully. 10:11:34

20 But I guess on the other discovery, Richard 10:11:40
21 Arsenault is here and he is the Chair of discovery and if 10:11:44
22 he can at least give the report of where the MDL discovery 10:11:49
23 is and what's been taken and what's left and what, if any, 10:11:51
24 issues remain for meet and confers. 10:11:54

25 THE COURT: Good morning, again. 10:11:59

1 MR. ARSENAULT: Good morning, Judge. Very 10:12:01
2 briefly, to date, we have taken 48 Bayer depositions, 12 10:12:01
3 Bayer AG depositions, 13 GSK depositions and 6 other 10:12:13
4 non-party depositions for a total of 79 depositions. As we 10:12:13
5 speak, there are 2 GSK depositions currently set, Savon 10:12:18
6 Quinn Robinson, and that's as we approach the end of June, 10:12:25
7 and Jeffrey Dubb, July 14th and 15th. We continue to have 10:12:26
8 weekly, or almost weekly meet and confers with defense 10:12:30
9 counsel at which time we bring to their attention 10:12:37
10 additional depositions that we would like to take. 10:12:39
11 As we speak, there are several depositions which 10:12:41
12 have begun but not have concluded and depending on the 10:12:44
13 information that is gleaned in those depositions, it may 10:12:47
14 effect the need or necessity for additional depositions, 10:12:51
15 but we have identified four additional Bayer depositions 10:12:55
16 that we may need to take. We've also identified about 15 10:13:01
17 or 20 GSK depositions that need to be taken, primarily in 10:13:02
18 the areas of regulatory affairs, sales and marketing, 10:13:09
19 managed care and clinical research and finance. We have 10:13:11
20 been cooperating well. We've identified the individual who 10:13:15
21 we want to depose and we've made arrangements for 10:13:18
22 convenient dates and times that we work out the details 10:13:20
23 with regard to materials that need to be produced in 10:13:21
24 connection with those depositions. That's where we stand 10:13:24
25 at the moment. 10:13:28

1 THE COURT: Thank you. Anything from Bayer on 10:13:29

2 the depositions? 10:13:33

3 MR. BECK: Not on the matter that was that just 10:13:34

4 addressed, Your Honor. 10:13:37

5 THE COURT: Continue. 10:13:39

6 MR. ZIMMERMAN: Your Honor, I don't know if you 10:13:40

7 want us to address 73 now or move that to the end when we 10:13:42

8 are going to be arguing motions. 10:13:46

9 THE COURT: That's motions, move that. 10:13:48

10 MR. ZIMMERMAN: Okay. The next topic is Motions. 10:13:53

11 The following motions are pending before the Court. 10:13:56

12 MR. BECK: Your Honor, before we leave on 10:13:59

13 discovery, we have a late addition. It was too late to get 10:14:01

14 on the agenda. We got this thing yesterday afternoon from 10:14:10

15 Weitz and Luxenberg, a letter dated June 19, 2003. I would 10:14:18

16 like to provide a copy to the Court. I'll actually give 10:14:22

17 the Court two copies here, and, Mr. Zimmerman, if you want 10:14:26

18 one. 10:14:30

19 I can quickly summarize, Your Honor. And that is 10:14:32

20 that we noticed depositions of plaintiffs which we were 10:14:35

21 entitled to do under, I think it's Pretrial Order No. 4. 10:14:44

22 We have been entitled to do that since, I don't know, a 10:14:50

23 year or so. And Paragraph 4, Pretrial Order No. 4 says 10:14:54

24 that we could start depositions of the plaintiffs. 10:15:00

25 We're trying though move the cases along and 10:15:04

1 we've noticed up depositions of many Plaintiffs where we 10:15:07
2 think that once we start getting into the facts, we'll find 10:15:13
3 that the cases are worthless. The mere fact of our 10:15:17
4 noticing up the depositions has some salutary effect, like 10:15:21
5 Weitz and Luxenberg just recently dismissed 330 of their 10:15:27
6 cases, 130 of which were Plaintiffs who we had identified 10:15:32
7 in the pilot program for the aches and pains cases. And 10:15:36
8 now Weitz and Luxenberg has taken the position that 10:15:42
9 notwithstanding what the Court ordered way back when, that 10:15:46
10 we are allowed to take the Plaintiffs' depositions, they're 10:15:50
11 simply not going to let us do it. Instead of coming in and 10:15:53
12 moving for protective order or moving for a -- to amend 10:15:58
13 Pretrial Order No. 4, they simply say -- 10:16:03
14 THE COURT: I don't mean to cut you off. This 10:16:07
15 has just been handed to me. This is a discovery matter and 10:16:12
16 refer to Judge -- if you're going to file a motion or Weitz 10:16:16
17 and Luxenberg is going to file a motion, it will be before 10:16:21
18 Magistrate Judge Lebedoff. 10:16:23
19 MR. BECK: Okay, thank you, Your Honor. 10:16:26
20 MR. ZIMMERMAN: Judge, just so you know, Item No. 10:16:28
21 4 under D, on the next page under motions, Plaintiffs' 10:16:31
22 potential motion for protective order clarification or stay 10:16:39
23 of Defendants' depositions of putative class members who 10:16:42
24 filed federal actions, that's the same thing, Your Honor. 10:16:46
25 We have felt that we must move for protection on that if 10:16:49

1 you want that argument before Judge Lebedoff as now 10:16:53
2 ordered. We will notice it and refer it there, but it is a 10:16:57
3 rather complicated question having to do with how much 10:17:02
4 discovery in individual cases in an MDL before remand is 10:17:06
5 appropriate. And pursuant to the Court's instructions we 10:17:10
6 will notice that for argument before Judge -- Magistrate 10:17:14
7 Judge Lebedoff. 10:17:18

8 THE COURT: Thank you. 10:17:20

9 MR. ZIMMERMAN: The motions that are partially or 10:17:28
10 fully briefed before the Court now, the list is 9. Let me 10:17:30
11 just go over them to make sure we are all on the same page. 10:17:38
12 There is the motion for class certification, which has now 10:17:46
13 been fully briefed argued and under submission. There were 10:17:46
14 some supplemental pleadings and argument provided. I 10:17:50
15 believe that's now over with unless there is something that 10:17:54
16 I'm not aware of. 10:17:59

17 MR. BECK: Your Honor, at the last status 10:18:01
18 conference, the Court gave the Plaintiffs 30 days to 10:18:05
19 respond to our supplemental brief. Our supplemental brief 10:18:08
20 argued that their conduct in dismissing the Newville case 10:18:12
21 demonstrated individual issues of facts predominate and the 10:18:17
22 was PSC was inadequate class representatives. They were 10:18:22
23 suppose to respond to that supplemental brief, and instead, 10:18:26
24 they filed a brief rearguing their position on the meaning 10:18:29
25 of State Farm. It doesn't respond to anything that we put 10:18:32

1 in our brief. 10:18:39

2 They filed something that was not what the Court 10:18:40

3 gave them permission to file. And, so, we will be soon -- 10:18:43

4 and, originally, when it came in it was stricken by the 10:18:50

5 Court, I guess, for procedural reasons, but then it was 10:18:53

6 refiled and it hasn't yet been stricken. So, we will soon 10:18:57

7 be filing a motion to strike their most recent brief 10:19:01

8 because it was not responsive to what they were suppose to 10:19:04

9 be responding to. They were using that as an additional 10:19:09

10 opportunity to try to get the last word on a different 10:19:12

11 subject. 10:19:14

12 THE COURT: Let's wait until they file the 10:19:16

13 motion. Continue. 10:19:17

14 MR. ZIMMERMAN: Motion of -- modification of 10:19:19

15 confidentiality order. I believe there is now a 10:19:24

16 stipulation that's been entered by the Court with briefing 10:19:27

17 dates for those. This is this question of German law and 10:19:30

18 the fact that the Defendants have mischaracterized a 10:19:36

19 document as confidential. I believe that is not ripe for 10:19:39

20 hearing and there is another round of argument that 10:19:43

21 Defendants and Plaintiffs on a stipulated order to make. 10:19:46

22 MR. BECK: I think that's right, Your Honor. I 10:19:53

23 think there is further briefing and there cases that have 10:19:54

24 been agreed to.

25 MR. ZIMMERMAN: Do you want those on the record. 10:20:02

1 THE COURT: No, it's not necessary. I don't want 10:20:04
2 to -- is this going to be ripe for July? 10:20:06

3 MR. BECK: I believe the only remaining date is, 10:20:11
4 I'm going to be corrected if I'm wrong here. We have a 10:20:18
5 reply brief that we are going to file on July 8th. I think 10:20:22
6 that ends it. And, therefore, it should be ripe for 10:20:26
7 disposition or argument, rather, in July. 10:20:32

8 MR. ZIMMERMAN: That is correct, Your Honor. The 10:20:35
9 July 8, 2002 (sic) Defendants' reply brief is the last 10:20:38
10 pleading. 10:20:43

11 THE COURT: 2003. So, we'll have argument on 10:20:43
12 that at our July status conference. 10:20:46

13 MR. ZIMMERMAN: Thank you, Your Honor. The next 10:20:52
14 is the motion of Defendants to change venue of cases that 10:20:55
15 were originally filed in the Minnesota U.S. District Court. 10:21:07
16 That motion will be ripe for argument at the July status, 10:21:10
17 but I believe we have our brief that we either just filed 10:21:23
18 or about to file. 10:21:26

19 MR. BECK: Yes, Your Honor. I think that the 10:21:26
20 Plaintiffs Steering Committee has filed a brief. Weitz and 10:21:28
21 Luxenberg, since it relates to a lot of their cases, has 10:21:34
22 indicated that they want to file a separate opposition that 10:21:38
23 I think is due on Friday. Our reply is to be filed on or 10:21:40
24 before July 7th so that this will be ripe for argument at 10:21:46
25 the July conference as well. 10:21:53

1 MR. ZIMMERMAN: I believe Susan and I had an 10:21:57
2 exchange of e-mails on this where we asked that the June 10:21:59
3 20th date for filing be continued to June 30th for the 10:22:05
4 Plaintiffs' brief. I believe she wrote -- is that right? 10:22:11

5 MS. WEBER: Wrong motion. 10:22:18

6 MR. BECK: Different motion. We'll let you know. 10:22:20
7 This one should be teed up for argument in July, Your 10:22:24
8 Honor. 10:22:32

9 MR. ZIMMERMAN: The next one is that motion, Your
10 Honor.

11 THE COURT: Counsel.

12 MS. MANIATIS: I did want to -- 10:22:32

13 THE COURT: State your name. 10:22:34

14 MS. MANIATIS: Victoria Maniatis from Weitz and
15 Luxenberg, and I did want to state that our opposition is 10:22:36
16 being filed today. 10:22:40

17 THE COURT: Did you want to -- I'll give you two 10:22:46
18 minutes time. Mr. Beck was handing out this letter. Do 10:22:47
19 you want to respond to it? 10:22:53

20 MS. MANIATIS: If you would like me to now, that 10:22:57
21 would be find.

22 THE COURT: I have to give you equal time if you 10:23:02
23 want to respond to anything.

24 MS. MANIATIS: Should I start on that one or the 10:23:03
25 one in the beginning. I can clarify quickly the class 10:23:05

1 action issue. Weitz and Luxenberg hasn't filed any class 10:23:12
2 actions, so that should clear up any miscommunication or 10:23:16
3 misunderstanding there that our office has caused. 10:23:21

4 We have been serving our cases timely, and, so, 10:23:27
5 equally granting extensions for the Defendants to answer 10:23:29
6 our complaints. So, if there is a little bit of lag time 10:23:32
7 there, I think that's a normal procedure and not 10:23:37
8 necessarily a Weitz and Luxenberg problem. 10:23:40

9 In terms of the letter that you were just handed, 10:23:40
10 that is a culmination of what's been going on over the past 10:23:42
11 couple of months. This has really come to ahead, I think, 10:23:47
12 particularly this last couple of weeks. We have been 10:23:50
13 getting many deposition notices, and as Mr. Beck pointed 10:23:54
14 out, we have been reviewing our cases continuously. Cases 10:23:59
15 that have been dismissed over the last few weeks are not 10:24:03
16 necessarily related specifically to this issue. I would 10:24:05
17 not say it's unrelated but that's not all that's going on. 10:24:09
18 So, that is partially a correct recitation. 10:24:14

19 We are trying to work with -- as you know, we are 10:24:18
20 dealing with many, many, local counsel who are serving us 10:24:19
21 deposition notices, as many as 60 from a particular office 10:24:23
22 on a particular day, and we are trying to prioritize cases 10:24:27
23 in terms of deposition. And, now, with Your Honor 10:24:30
24 suggestion that we perhaps do need to file a motion for 10:24:34
25 protective order, that is likely where this is leading. 10:24:36

1 We have been just very recently discussing this 10:24:41
2 matter with Mr. Zimmerman, and I think that that's probably 10:24:43
3 appropriate stance to take at this point. And if you wish 10:24:47
4 for us to have that filed immediately for July we can do 10:24:52
5 that or whatever your guidance may be and discuss with 10:24:56
6 Magistrate Lebedoff. 10:25:04

7 MR. BECK: Yes, Your Honor, we would very much 10:25:04
8 like to get this on a fast track. Otherwise, it's the same 10:25:04
9 thing as saying we don't get to take depositions for months 10:25:08
10 at a time. So, if you're going to be filing a motion for 10:25:13
11 protective order, we would ask that it be filed promptly so 10:25:16
12 that we can proceed in an expeditious way and get it 10:25:26
13 resolved by July. 10:25:26

14 MS. MANIATIS: Thank you. 10:25:26

15 THE COURT: Anything else? 10:25:26

16 MS. MANIATIS: That's it for now.

17 MR. ZIMMERMAN: Next, Your Honor, is the motion 10:25:31
18 on case-specific expert discovery for cases filed. This is 10:25:37
19 their pilot program, and I believe that's the case where we 10:25:44
20 have asked for 10 days additional time to the 30th of June 10:25:50
21 to file a response. The condition that I think Susan 10:25:55
22 provided, and I don't know if this is really important to 10:26:02
23 you today as it is then, she wanted one brief on that 10:26:05
24 jointly between Weitz and Luxenberg and the Plaintiffs 10:26:09
25 Steering Committee. I don't see any real need for that. 10:26:15

1 They may have a position different than the PSC's and 10:26:18
2 that's their right, but we'll coordinate and do the filing 10:26:22
3 on the same date. Vicki had asked if she could have 10 10:26:26
4 indicational days to June 30th. The PSC is asking for June 10:26:33
5 30th, and I don't believe there is amu objection to June 10:26:39
6 30th to the defense, it's only that they would like to file 10:26:41
7 a joint brief as opposed to individual briefs. Is that 10:26:44
8 accurate? 10:26:47

9 MR. BECK: No, it's not accurate. It's not 180 10:26:49
10 degrees wrong; it's not 90 degrees wrong. We did not agree 10:26:53
11 to an extension. What we said was that we wanted to be 10:26:55
12 accommodating, we didn't want to be slow boated. We wanted 10:26:59
13 this matter teed up, fully briefed and ready to be argued 10:27:04
14 in July. We're concerned, then, by giving extensions we 10:27:09
15 get past that date. If they want to file two briefs, that 10:27:11
16 to us it doesn't make a lot of sense, but that's not the 10:27:16
17 sticking point. What we want to make sure was that any 10:27:21
18 extension they got would give us ample time to reply. And, 10:27:23
19 therefore, we would be in a position to argue this in July. 10:27:29

20 It looks like we are now talking about July 15th 10:27:32
21 or 16th. And, so, if they get until the 30th, then working 10:27:35
22 over the 4th of July week, I suppose we can get our reply 10:27:44
23 in in time so that it should be teed up for the 15th or 10:27:48
24 16th. So, if we can -- if we can have until maybe the 10th 10:27:54
25 or so, that would give us a couple of extra days on that 10:27:59

1 end. 10:28:03

2 THE COURT: Your briefing this area on June 30th, 10:28:04

3 is that what you are asking? 10:28:07

4 MR. ZIMMERMAN: Correct. 10:28:10

5 THE COURT: And you are asking for a reply on 10:28:10

6 when? 10:28:13

7 MR. BECK: July 10th. There will be plenty of 10:28:15

8 other things for Your Honor to read. 10:28:17

9 THE COURT: Most definitely. Seems like things 10:28:20

10 come in always at the last minute, so I understand that. 10:28:24

11 Is that going to give you -- July 10. 10:28:31

12 MS. WEBER: July 10th will be okay. 10:28:31

13 THE COURT: Then June 30th, is that agreeable? 10:28:34

14 MS. MANIATIS: That's fine with Weitz and 10:28:35

15 Luxenberg, Your Honor. 10:28:38

16 THE COURT: They can be separate briefs. 10:28:41

17 MS. MANIATIS: Thank you. 10:28:43

18 THE COURT: And that will be ready for 10:28:47

19 argument -- ripe for argument in July. Is everyone in 10:28:49

20 agreement with that? 10:28:55

21 MR. BECK: Yes, Your Honor. 10:28:57

22 MR. ZIMMERMAN: That was always our intention. 10:28:59

23 The Plaintiffs -- the next is the Plaintiffs motion to 10:29:00

24 establish a trial plan. That was -- that is due July 14th 10:29:04

25 pursuant to the order of the last status. We filed our 10:29:13

1 proposed plan early without case specifics of which 10:29:17
2 particular cases, and we're going to file those specific 10:29:21
3 cases on or before the 14th of July. We are actually going 10:29:25
4 to try and do that earlier. 10:29:28

5 The reason we did it this way, Your Honor, was to 10:29:30
6 give everyone a notion of where we are going as opposed to 10:29:34
7 laying it all out because the issues of experts and the 10:29:38
8 issues of case -- of setting of trials, we thought just 10:29:41
9 giving the Court and counsel heads up on that was 10:29:48
10 appropriate. I recognize that the Court had asked for 10:29:51
11 specific case numbers and specific case names, and we are 10:29:56
12 intent on providing that well before the 14th, and we are 10:29:59
13 hoping to provide it very soon, but I can't commit to the 10:30:03
14 date because we are actually getting cases from other 10:30:06
15 counsel and getting permissions and things like that does 10:30:10
16 take time. But we are in that process and we will have 10:30:14
17 those case specifics no later than the 14th and, hopefully, 10:30:17
18 before that. But we did try to file our trial plan early 10:30:21
19 just to give everyone the heads up of where we're coming 10:30:25
20 from. Obviously, that's not ripe for argument yet and the 10:30:28
21 Court has said that. We haven't seen the defense response 10:30:32
22 at this point. It's not due for quite sometime. 10:30:36

23 MR. BECK: I don't propose, Your Honor, to take 10:30:41
24 up a lot of time previewing our response to their trial 10:30:47
25 plan. I would just urge the Court not to set any dates 10:30:49

1 geared off of their trial plan because we think their trial 10:30:54
2 plan is highly objectionable. We think it flies in the 10:30:56
3 face of what the Court has already ruled on a couple of 10:31:02
4 other occasions concerning consolidation versus individual 10:31:05
5 trials. Now, instead of trying two cases at a time, they 10:31:10
6 want to try 12 to 20 at a time, seriatim, ever other month. 10:31:13
7 I've kind of --

8 THE COURT: Mr. Zimmerman, I need help. The 10:31:25
9 trial plan, is that going to change between now and the 10:31:29
10 14th. The reason why, I've looked at it, but I have not 10:31:33
11 seriously studied it at this point. I'm waiting for a 10:31:39
12 response, but you said it was a preliminary thing and 10:31:46
13 sometimes in preliminary things it's going to go change 10:31:49
14 180, 360 degrees, so, why waste my time reading it. So, I 10:31:57
15 want to know whether or not I should start looking at it 10:31:59
16 closely or wait until July 14th. 10:32:03

17 MR. ZIMMERMAN: Your Honor, I don't believe it's 10:32:08
18 going to change at all. I believe what's going to change 10:32:11
19 is we are going to give you as requested the specific 10:32:15
20 cases. I'm sure, however, after we see the response of 10:32:18
21 Defendants and some of the objections or proposals that 10:32:23
22 they make, we may come to a point of agreement or come to a 10:32:30
23 point of eliminating this to alleviate that. I can't say 10:32:35
24 we might not do that. But at this point, that is the plan 10:32:41
25 we are proposing to the Court, we did that because I think 10:32:46

1 it puts the other issues that are going to be before the 10:32:47
2 Court between now and the 14th or now and the next status 10:32:51
3 conference in better perspective, at least, so you know the 10:32:56
4 where we are coming from.

5 So, again, the short answer to your question 10:32:59
6 there is no intention to change it. It was only called 10:33:01
7 proposed because I guess we reserve the right to make a 10:33:04
8 tweak here or tweak there, but there is no intention to do 10:33:08
9 that. I hope that answers any -- 10:33:14

10 THE COURT: You said it was preliminary. 10:33:16

11 MR. ZIMMERMAN: That was my language. 10:33:18

12 THE COURT: That's the first -- that's a big word 10:33:21
13 I saw. It's almost way off. It's something I don't have 10:33:26
14 to read if it's not going to be your plan. I just wanted 10:33:31
15 to make sure. So, I understand you, what you submitted, 10:33:34
16 all that's going to be added is the cases. 10:33:42

17 MR. ZIMMERMAN: Correct, specific cases. The 10:33:47
18 next, Your Honor, is the motion regarding intervention by 10:33:56
19 the Italian --

20 THE COURT: And you are going to tell me who the 10:33:57
21 trial lawyers are? 10:34:00

22 MR. ZIMMERMAN: Yes. We're going to give you the 10:34:02
23 name of the trial lawyer -- the lawyer that has each case. 10:34:06
24 In other words, if it's Mr. X's case or Mr. Y's case and 10:34:07
25 who the trial team would be, who the lead counsel will be, 10:34:12

1 just the lead counsel in the case. 10:34:17

2 THE COURT: Right. 10:34:22

3 MR. ZIMMERMAN: Motion regarding intervention by 10:34:26

4 the Italian Government is not ripe. Argument was just 10:34:26

5 recently filed. I don't believe there is any comment 10:34:30

6 necessary from the Plaintiffs' side on that. What that 10:34:33

7 basically is is the Italian Government is doing an 10:34:34

8 investigation of the activities of Bayer. They have asked 10:34:39

9 for some documents from PSC, and they are making a motion 10:34:42

10 to intervene for purposes of having access to certain 10:34:45

11 documents. 10:34:50

12 THE COURT: Mr. Beck. 10:34:50

13 MR. BECK: Your Honor, this is very significant, 10:34:53

14 and it's going to take us some time to address this 10:34:53

15 adequately. It raises -- first of all, if you could 10:34:58

16 provide us with a signed copy of this statement from the 10:35:03

17 Italian prosecutor. We got Verilaw. We need a signed copy 10:35:07

18 because there are a lot of statements, factual statements 10:35:10

19 that are incorrect, so much so that if we go down this 10:35:14

20 route, I may want to take the man's deposition if he wants 10:35:26

21 to intervene in this litigation based factual 10:35:26

22 representations that we can show are false. We may end up 10:35:29

23 having to go there unless we can just show that they are 10:35:32

24 false through other means. 10:35:36

25 It's a complicated matter. It involves questions 10:35:38

1 of Italian law and what is permissible and impermissible 10:35:41
2 for an Italian prosecutor to do. It involves questions of 10:35:46
3 German law. And it involves questions of EU law. It 10:35:50
4 involves questions of American law. Meanwhile, and unlike 10:35:55
5 Susan Weber, lots of our colleagues in Milan and Cologne 10:35:57
6 take vacations during the summer. So, we are going to need 10:36:04
7 some time to pull all the materials together. This is very 10:36:09
8 important to us. This is not going to be something that 10:36:10
9 would be teed up in time for the July hearing. We cannot 10:36:12
10 humanly do that. 10:36:16

11 THE COURT: Will you order Susan to take a 10:36:17
12 vacation. (Laughter). 10:36:20

13 MR. BECK: If she does, it will be the first time 10:36:22
14 she has followed any of my orders so far in the case. We 10:36:24
15 would ask, Your Honor, I know it sounds long, but given 10:36:28
16 what it took us to gather the information and the 10:36:32
17 affidavits and what not for the last German law issue that 10:36:35
18 we had, when we add in Italian law and EU law and numerous 10:36:39
19 treatises that cover how you had collect documents for use 10:36:46
20 in a criminal investigation, realistically, we're going to 10:36:52
21 need six weeks to pull all that together and present it to 10:36:58
22 Court, and the other side can have whatever time they want. 10:36:59

23 As I said, it's not going to get done in July 10:37:03
24 anyway, and we're not going to have a conference in August. 10:37:06
25 So, I really want ample time so we can do the right kind of 10:37:09

1 job here. 10:37:14

2 THE COURT: You tell me the dates. 10:37:15

3 MR. BECK: Six weeks from today. 10:37:18

4 THE COURT: Before you do the dates, it goes for 10:37:24

5 both sides, the Court has certainly granted extensions at 10:37:27

6 times when necessary. I don't want any major fights coming 10:37:35

7 back on people's sides not making the deadlines on 10:37:42

8 submitting their briefs to the Court. I've always said you 10:37:49

9 give me the date. You know what your workload is on this 10:37:55

10 case and other cases, so fudge on the extra time. That 10:38:00

11 goes for both sides because I know that you have to meet 10:38:09

12 other deadlines. So, don't just jump up and think you are 10:38:14

13 satisfying the Court by saying you're going to do it in two 10:38:20

14 weeks when you need three or four. Mr. Lockridge. 10:38:20

15 MR. BECK: Maybe the best thing for us to do is 10:38:30

16 for us to meet with Plaintiffs' counsel on this afterwards 10:38:31

17 and work out an agreed schedule that we can submit to the 10:38:34

18 Court.

19 THE COURT: That would be good because I don't 10:38:38

20 want -- sometimes we say things off the cuff when we can 10:38:40

21 get things done, and when you get back to the office you 10:38:49

22 find out you can't do it. Make your calls over to Europe. 10:38:55

23 And everyone is on vacation, Susan. And, Mr. Zimmerman, I 10:39:00

24 want you to take some time off, too. You're working too 10:39:06

25 hard. 10:39:12

1 MR. ZIMMERMAN: Perhaps I am. I know my wife is 10:39:12
2 telling me that. 10:39:16

3 MR. MESHBESHER: He's got the best sun tan. 10:39:17

4 THE COURT: I guess you've gone to golf. I 10:39:23
5 didn't know you changed to golf, but the days when we were 10:39:25
6 together, that picture was the tennis pro picture. 10:39:31

7 MR. MESHBESHER: I thought it was Tony Orlando. 10:39:36

8 THE COURT: I should say, and I hope it's not 10:39:42
9 reflecting badly on the Court, that when I'm away my staff 10:39:48
10 plays. And, so and to liven the proceedings up and cut 10:39:52
11 some of the tension down, it shows that we're all aging, 10:40:05
12 and they wanted to put mine up, and I said no. 10:40:08

13 MR. ZIMMERMAN: I know where to find one.

14 THE COURT: So you understand my -- hopefully, 10:40:30
15 I'm running this in a professional manner, and I want both 10:40:34
16 sides to be heard on all issues. And you are not going to 10:40:39
17 agree, and I understand you are not going to agree on many 10:40:42
18 issues. That's my role is to make those decisions. 10:40:46
19 However, sometimes levity helps cut the tension. 10:40:52

20 MR. ZIMMERMAN: Your Honor, I appreciate that and 10:41:02
21 I'm a great believer in levity. I must say, however, in 10:41:03
22 all honesty the communication is not good at the present 10:41:09
23 time. We're not communicating very well, if at all. I 10:41:11
24 don't know where that came from. I hope we get back on 10:41:15
25 some kind of a track, but it's pretty adversarial right 10:41:20

1 now, and everything has to be on paper, and it's not like 10:41:24

2 it was six months ago for whatever reason. 10:41:25

3 THE COURT: You have to under my position is it 10:41:27

4 was always my thought that it was going to be adversarial 10:41:36

5 when you came in. To have things agreeable that we go with 10:41:40

6 that and understand that this is an adversarial system, and 10:41:42

7 you have able people with you to assist you. So, I don't 10:41:47

8 mind it being adversarial. I think I said that earlier on. 10:41:56

9 But I would like to see a couple of trials and see you all 10:42:04

10 battle. I see Mr. Meshbesh is here and he's biting at 10:42:09

11 the bit to get that going. I know Mr. Beck is. We've read 10:42:16

12 your -- con congratulations on being one of the top 10 10:42:27

13 trial lawyers in the country -- 10:42:31

14 MR. BECK: Thank you, Your Honor.

15 THE COURT: The Court keeps track of all of you. 10:42:37

16 MR. ZIMMERMAN: I know Phil really likes me, it's 10:42:38

17 just that he can't do it in the courtroom. He's crazy

18 about me. (Laughter) Pete, on the other hand, can. 10:42:47

19 Motion to certify questions relating to 10:42:50

20 intervention by Canadian plaintiffs. You know, I don't 10:42:55

21 really have a dog in that fight really. I think that's 10:42:59

22 really yours. 10:43:02

23 MR. BECK: The Plaintiffs filed a brief opposing 10:43:04

24 certification in this issue, and our reply is due next 10:43:08

25 week, so that also should be ripe for -- 10:43:12

1 THE COURT: July. 10:43:16

2 MR. BECK: July. 10:43:17

3 MR. ZIMMERMAN: Weitz and Luxenberg's motion to 10:43:18

4 reconsider the dismissal of certain Plaintiffs. I don't 10:43:22

5 believe that's ripe either. 10:43:30

6 MR. BECK: That's right. We are filing a reply 10:43:30

7 next week. We're going to have an awfully busy day in 10:43:34

8 July. That should be ripe for argument in July. 10:43:36

9 THE COURT: Is that correct? 10:43:36

10 MS. MANIATIS: Yes. 10:43:38

11 MR. ZIMMERMAN: And then there is a remand motion 10:43:40

12 in Brooks. 10:43:42

13 THE COURT: Can I make request of you, Mr. 10:43:44

14 Zimmerman. Since Weitz and Luxenberg is involved in many 10:43:46

15 cases, may she have a seat. 10:43:52

16 MR. ZIMMERMAN: She can have my seat.

17 THE COURT: We can pull one more chair and come 10:44:00

18 up here. 10:44:03

19 MR. ZIMMERMAN: We were told early on only four 10:44:12

20 can sit at this table. 10:44:13

21 THE COURT: She can sit at the back table. 10:44:17

22 MR. ZIMMERMAN: Thank you. Feel better? 10:44:17

23 MS. MANIATIS: No. (Laughter). 10:44:20

24 THE COURT: It looks like we may have to have two 10:44:26

25 days in July. 10:44:29

1 MR. BECK: I was wondering the same thing. 10:44:36

2 THE COURT: There is no problem with the Court, 10:44:38

3 the 15th and 16th . 10:44:44

4 MR. BECK: Maybe the spirit of adversarialness 10:44:45

5 will depart, and we'll agree on everything and we'll be out 10:44:51

6 by noon on the 15th, but just for safety sake two days. 10:44:53

7 THE COURT: Let's have 2 days. 10:44:57

8 MR. ZIMMERMAN: We'll start at 9:30, Your Honor. 10:45:03

9 THE COURT: Let's start at ten. 10:45:05

10 MR. ZIMMERMAN: Ten on the 15th, and then the

11 16th will be available.

12 THE COURT: And we'll break at 12:30 for lunch. 10:45:07

13 MR. ZIMMERMAN: The next item, Your Honor -- 10:45:16

14 THE COURT: That's my summer schedule. We'll 10:45:19

15 start at 10. 10:45:22

16 MR. BECK: Can we all wear sandals? (Laughter). 10:45:24

17 THE COURT: The fine might be not worth it. 10:45:33

18 MR. ZIMMERMAN: The motion to remand in Brooks, 10:45:43

19 et al., I don't know if it's to be argued or submitted on 10:45:48

20 the papers. 10:45:50

21 THE COURT: It's ready for me to make the 10:45:50

22 decision. It's under advisement. This is the Mississippi 10:45:54

23 case, isn't it? 10:46:00

24 MS. WEBER: Your Honor, I think there are a 10:46:02

25 couple of files to remand we filed this week and Plaintiffs 10:46:04

1 replies are still due and we assume it will go on the 10:46:05

2 papers unless you told us otherwise. 10:46:10

3 THE COURT: Right. Will you give us an update on 10:46:12

4 where we are on all those cases. Just e-mail Katie on all 10:46:14

5 those. 10:46:22

6 MS. WEBER: The ones for this week? 10:46:22

7 THE COURT: This one and the previous ones, so 10:46:22

8 that we can make sure we got the correct ones. We are 10:46:27

9 okay. Don't worry about it. 10:46:29

10 MS. WEBER: Okay, Your Honor.

11 MR. ZIMMERMAN: I believe now we move to motion 10:46:36

12 IV(C), Matters Under Discussion. 10:46:41

13 THE COURT: Is there anything that we need to 10:46:46

14 argue? 10:46:48

15 MR. ZIMMERMAN: Yes. 10:46:56

16 THE COURT: I moved the discovery matters down to 10:46:57

17 motions. 10:47:00

18 MR. ZIMMERMAN: There are six motions that are 10:47:03

19 being discussed below, some of which have actually been 10:47:04

20 filed. That's why -- 10:47:09

21 THE COURT: I'm sorry, continue. 10:47:12

22 MR. ZIMMERMAN: C was just some stipulations with 10:47:13

23 regard to matters that could have been the subject of 10:47:16

24 motions that I believe had been stipulated to. Is that 10:47:19

25 correct, Susan, with regard to HIPPA and adverse events 10:47:24

1 files. 10:47:30

2 MR. BECK: Yes. We have a stipulated order for 10:47:33

3 the Court. A copy was e-mailed. 10:47:33

4 THE COURT: That's the one I received this 10:47:44

5 morning. Go ahead. I'm sorry, go ahead. 10:47:46

6 MR. ZIMMERMAN: All I was saying was I believe 10:47:51

7 that stipulation is before the Court on modification of 10:47:53

8 medical authorizations to comply with HIPPA and 10:47:57

9 modification procedures to produce adverse events files and 10:48:06

10 supplements to previous adverse events information. I 10:48:08

11 believe that is the subject of a stipulation that was 10:48:13

12 provided to you. 10:48:14

13 MR. BECK: Your Honor, on the second one, the 10:48:16

14 stipulation that was provided to you has to deal with 10:48:19

15 medical authorization in HIPPA. On the adverse event 10:48:23

16 reports, we've had proposals back and forth. We've been 10:48:28

17 discussing this. We may be close to an agreement, but we 10:48:33

18 don't have an order yet on the adverse report issue. So 10:48:38

19 that one is not the subject of a stipulated order. 10:48:47

20 MR. ZIMMERMAN: There are some nits and gnats 10:48:51

21 left for us to work out in the adverse events. 10:48:54

22 MR. BECK: I don't know whether they shrink to 10:48:59

23 the level of nits and gnats or not, but we are talking 10:49:02

24 trying to get there. 10:49:06

25 MR. ZIMMERMAN: Okay. Your Honor, the PSC has 10:49:07

1 filed -- 10:49:11

2 THE COURT: So, I understand this correctly, the 10:49:12

3 modification No. C(1) is stipulated to and just needs my 10:49:16

4 signature? 10:49:22

5 MR. BECK: Yes. 10:49:23

6 THE COURT: All right. And 2? 10:49:25

7 MR. ZIMMERMAN: Is not stipulated to and we need 10:49:26

8 some more work. 10:49:29

9 THE COURT: You need some more time to work that 10:49:30

10 out? 10:49:32

11 MR. ZIMMERMAN: Correct

12 MR. BECK: Yes, Your Honor. 10:49:32

13 MR. ZIMMERMAN: Now, we're just going to go 10:50:15

14 through D-1 through 6 and tell the Court where we are with 10:50:16

15 regard to several motions of the Plaintiffs, some of which 10:50:20

16 are intent to file and heads up, and others of which have 10:50:25

17 been filed and probably need to work on briefing schedules 10:50:28

18 on these. 10:50:31

19 The first one, Your Honor, and there is no 10:50:31

20 particular order, is the motion to compel insurance 10:50:34

21 information and documents. That matter has been 10:50:37

22 referred -- has been filed. I have it here and it has been 10:50:41

23 referred by Your Honor to Magistrate -- Chief Magistrate 10:50:46

24 Judge Lebedoff, and I believe he has set a hearing date for 10:50:50

25 that, at least I've been told, he's communicated a hearing 10:50:54

1 date. 10:50:59

2 MR. LOCKRIDGE: Yes, he has. I believe he has. 10:51:02

3 I thought there was a hearing date the latter part of July. 10:51:05

4 MR. ZIMMERMAN: We'll check that out. 10:51:11

5 THE COURT: Check that out. 10:51:12

6 MR. ZIMMERMAN: I'm not aware of that, but I've

7 been told that he has.

8 THE COURT: Normally, he gets his dates out 10:51:14

9 quickly. Work that out through him. 10:51:17

10 MR. ZIMMERMAN: So, that motion has been filed. 10:51:20

11 No. 2 is the motion for class certification of third-party 10:51:23

12 payor class, and that motion has been filed. 10:51:30

13 THE COURT: That was just filed. 10:51:35

14 MR. ZIMMERMAN: That was just filed, I believe, 10:51:36

15 yesterday by Art Sadin who is the chairman of the 10:51:38

16 Third-party Payor Committee with Provost and Humphries in 10:51:42

17 Texas. That motion was just filed, and that is for 10:51:47

18 certification of a class of third-party payors. I suspect 10:51:53

19 we should have -- rather than trying to do it now, we can 10:52:00

20 make this a subject of the meet and confer on briefing 10:52:04

21 schedule, and if we can't agree, certainly, we can come 10:52:08

22 back. 10:52:13

23 THE COURT: We're looking at a September argument 10:52:13

24 on this?

25 MR. ZIMMERMAN: Probably

1 MR. BECK: We are not looking at a July argument. 10:52:19

2 THE COURT: We are not going to have all this. 10:52:19

3 MS. WEBER: I had a very preliminary conversation 10:52:24

4 with a colleague about this. I think we are going to need 10:52:25

5 some discovery on this. 10:52:31

6 THE COURT: Have a meet and confer and get a 10:52:33

7 schedule to me. 10:52:36

8 MR. ZIMMERMAN: Yes, and also my understanding -- 10:52:37

9 THE COURT: With those meet and confer schedules 10:52:40

10 have a target status date -- month put in there like 10:52:44

11 September or October or November. 10:52:50

12 MR. ZIMMERMAN: You mean a hearing date when you 10:52:54

13 say that? 10:52:56

14 THE COURT: Not the date, but the month. You can 10:52:57

15 say we would like this to be heard on the September status 10:53:01

16 conference, the October status conference, November. So, 10:53:06

17 everyone is alerted to that fact, so we can try to keep 10:53:08

18 things on schedule. Of course, we don't have those dates 10:53:13

19 yet, but if you give us the month, that would be helpful. 10:53:17

20 MR. ZIMMERMAN: The next one, Your Honor -- 10:53:26

21 THE COURT: Is that agreeable to you, Mr. 10:53:28

22 Zimmerman? 10:53:33

23 MR. ZIMMERMAN: Yes. The next one, Your Honor, 10:53:33

24 and this has not been filed, this is the No. 3, the motion 10:53:38

25 seeking clarification of the procedure utilized to settle 10:53:44

1 cases where the federal Medicare program is asserting a 10:53:46
2 lien.

3 What's really going on there, Your Honor, is my 10:53:52
4 understanding that in Pennsylvania this issue has been teed 10:53:56
5 up, and we're watching it to see what is going on with 10:54:02
6 regard to how the settlements will in the future be 10:54:06
7 affected by the assertion of Medicare liens. It just got 10:54:11
8 on my -- we have been struggling with it in settlements -- 10:54:16

9 THE COURT: Well, this has been an issue from day 10:54:22
10 one. We have been talking about this. 10:54:26

11 MR. ZIMMERMAN: Right. And what's happening now 10:54:29
12 is the Pennsylvania people have teed it up in a motion in 10:54:30
13 their court. 10:54:33

14 THE COURT: What court? 10:54:35

15 MR. ZIMMERMAN: I believe it's before Judge 10:54:39
16 Ackerman. 10:54:40

17 THE COURT: Keep track of that. 10:54:41

18 MR. ZIMMERMAN: We're just tracking it to see 10:54:44
19 where that is going. We may need to bring that issue to 10:54:46
20 this Court. 10:54:49

21 The fourth one, Your Honor, is what we spoke of 10:54:50
22 earlier which is the motion for protective order and 10:54:55
23 clarification and stay of Defendants' discovery program of 10:55:00
24 putative class members who have filed federal class 10:55:04
25 actions. I don't believe we discussed that. Weitz and 10:55:09

1 Luxenberg is going to be involved heavily in that and we 10:55:15
2 are going to filing a motion to protective order and 10:55:17
3 pursuant to your order. We're going to have that before 10:55:21
4 Magistrate Judge Lebedoff. 10:55:24

5 Number 5, Your Honor, is a motion that has been 10:55:27
6 filed. This is a motion for joinder and/or consolidation 10:55:31
7 of multiple plaintiffs on a single complaint. This motion 10:55:35
8 was just filed, I believe, on the 18th, and we will meet 10:55:39
9 and confer on a briefing schedule after that and a target 10:55:48
10 date for hearing. 10:55:48

11 MR. BECK: We can argue that right now, Your 10:55:55
12 Honor. It's been decided twice already. 10:55:56

13 MR. ZIMMERMAN: Have you read our papers? 10:56:00

14 MR. BECK: Yeah. The -- 10:56:01

15 MR. ZIMMERMAN: Why don't we argue in July. You 10:56:06
16 don't want to put in a brief and we'll just argue in July. 10:56:09

17 MR. BECK: I'll put in a brief. 10:56:13

18 MR. ZIMMERMAN: You said you can argue it now. 10:56:17

19 THE COURT: Please.

20 MR. BECK: I'm ready to argue now or we can brief 10:56:21
21 it for July. 10:56:27

22 THE COURT: Please, let's do it in July. It just 10:56:29
23 landed on my lap. 10:56:31

24 MR. ZIMMERMAN: We'll do that in July. The next 10:56:34
25 is a motion which we have not filed, and I thought was 10:56:36

1 going to be filed, Your Honor, and this was similar to a 10:56:38
2 motion that was made in the Propulsid litigation. Now that 10:56:42
3 there is a common benefit fund and the funds belong to or 10:56:45
4 are held back from settlements and belong to Plaintiffs and 10:56:48
5 Plaintiffs' counsel for distribution of a portion of the 10:56:52
6 common benefit fund to reimburse common benefit expenses 10:56:56
7 and pay expenses going forward. We will be filing a motion 10:57:01
8 very shortly on that. I thought it was going to be filed 10:57:05
9 today. There were some blanks that weren't filled and that 10:57:10
10 will be filed when we here in July or September. Isn't a 10:57:12
11 big deal. I guess sooner rather than later would be in the 10:57:16
12 best interest of PSC members. 10:57:19

13 THE COURT: All right, go to PTO 73 issues. 10:57:24

14 MR. ZIMMERMAN: Correct. There are several 10:57:35
15 issues here, Your Honor. I guess I'd like to separate it 10:57:48
16 this way if we could. There is the question of when, if 10:57:53
17 any, if at all, these disclosures are to be made. I think 10:58:03
18 that question of when has to be decided because if there 10:58:08
19 isn't a release from the wind, the wind is July 1st, and we 10:58:12
20 have to make some decisions very promptly. 10:58:20

21 The what and why, in other words, what is to be 10:58:24
22 contained and why is it really necessary to do it is a more 10:58:30
23 complicated issue, and that we just got a very lengthy 10:58:36
24 brief on and lengthy file on yesterday about three o'clock, 10:58:40
25 and I have not had a full opportunity to really look at it. 10:58:47

1 A lot of it is quoting things that I have said and 10:58:51
2 positions that I have taken that I would like to have an 10:58:55
3 opportunity to look at, you know, to see what I'm being 10:58:57
4 quoted as saying and the accuracy of it. But I think the 10:59:03
5 question is are we really going to argue that today or 10:59:09
6 we're going to have time to put in a brief in response. 10:59:13
7 My position is we should be able to put in a 10:59:18
8 brief in response and argue it appropriately in July. And 10:59:22
9 the only thing we should really be arguing today is relief 10:59:26
10 from the time -- the question of is there something due on 10:59:29
11 July 1st. If that's not the Court's position, the Court 10:59:35
12 wants it all heard now, we'll do the best we can and 10:59:39
13 certainly give the Court the best argument I can give it, 10:59:45
14 but I just have not had the opportunity because it this 10:59:48
15 came in at three o'clock yesterday afternoon to really look 10:59:53
16 at everything that's there. So, the question is are we 10:59:56
17 going to talk about the time, is it appropriate to file 10:59:59
18 something on July 1st, which is what we think is before the 11:00:01
19 Court, or are we going to argue all of it right now with 11:00:05
20 regard to expert disclosure program protocol, the whys, 11:00:08
21 wheres, the basis for it. 11:00:16
22 MR. BECK: Your Honor, we want to argue it all 11:00:19
23 now. If we don't -- if we allow this as an excuse to put 11:00:20
24 it over to July, then they have effectively gotten the 11:00:24
25 relief they want, which is to ignore the Court's order. 11:00:26

1 We have gone round and round and round on experts 11:00:30
2 and what they are going to be required to do and not 11:00:33
3 required to do. There isn't a question about whether 11:00:37
4 something is due on July 1st. There is an order that says 11:00:40
5 it's due on July 1st. And while Mr. Zimmerman may express 11:00:45
6 confusion about that today, when he was in front of how 11:00:51
7 ever many Plaintiffs' lawyers at the Melies conference, he 11:00:58
8 told all these Plaintiffs --

9 THE COURT: This is part of the argument. We 11:01:00
10 will hear everything first -- first, we will hear 11:01:05
11 everything, but we'll start why you feel the Court should 11:01:09
12 vacate or modify PTO 73. 11:01:12

13 MR. ZIMMERMAN: The timing part or the -- ? 11:01:17

14 THE COURT: The timing part. That's what you are 11:01:19
15 requesting? 11:01:22

16 MR. ZIMMERMAN: Yes. Okay. So, I think we have 11:01:46
17 to understand what we are talking, at least I do, in order 11:01:48
18 to make the argument that I want to make. 11:01:51

19 THE COURT: Right, that's why it has to be argued 11:01:55
20 all together, otherwise, you just can't separate them out. 11:01:57

21 MR. ZIMMERMAN: Okay, so, let's talk about what 11:02:02
22 we're talking about. What we're talking about here, Your 11:02:04
23 Honor, are commonly referred to as generic expert reports. 11:02:06
24 Generic expert reports are basically we are calling common 11:02:13
25 issues report. It's the report of an expert that can be 11:02:18

1 usable or used in the trials of remanded cases around the 11:02:22
2 country. It is for the common benefit of lawyers whose 11:02:29
3 cases are in the MDL. They are not always done. In fact, 11:02:35
4 rarely are they done. They are always approached in MDL's 11:02:43
5 as an issue, but the utility of them, the actual use of 11:02:50
6 them is not for the trial of specific cases in this court. 11:02:54
7 They are for the trial of remanded cases in other courts so 11:03:01
8 that people can utilize the common discovery, the documents 11:03:06
9 in the depositions and also have, in effect, a portion of 11:03:11
10 their prima facie case on liability made out in the expert 11:03:17
11 reports. 11:03:23

12 Now, it's a wonderful theory. The problem is 11:03:24
13 that it's really not always -- doesn't always happen 11:03:29
14 because of a number of things. One, the case get resolved 11:03:33
15 in the MDL, and there isn't a large number of remands. 11:03:37
16 Two, case gets certified as a class and the common issues 11:03:43
17 are narrowed by the definition of the class, and the 11:03:48
18 definition of the class issues that a court grants in the 11:03:51
19 MDL court. Number three, that these common issue experts, 11:03:56
20 if they are disclosed too early or before discovery is 11:04:04
21 complete or while science is still unfolding or become 11:04:07
22 useless because the temporal point and time in which they 11:04:14
23 opine and the point in which the report gets used is so 11:04:19
24 vast, they are of no utility to counsel. They are of great 11:04:25
25 utility to defense counsel because they have spent their 11:04:31

1 time poking holes in it -- finding ways of which to go 11:04:34

2 around it, finding experts to counter attack. 11:04:40

3 We are very sensitive to that. The reason we are 11:04:43

4 sensitive to that is it's an expensive process. This is 11:04:46

5 not just you go out and you get an expert to say this is a 11:04:49

6 bad drug because they didn't do the right thing with the 11:04:52

7 FDA because. These are very detailed reports based upon 11:04:56

8 the complete review of a large amount of evidence in the 11:05:02

9 form of documents and depositions for which experts opine 11:05:06

10 the questions of appropriateness or lack of appropriateness 11:05:13

11 in the conduct of the defendants. So, that's the what they 11:05:20

12 are. 11:05:25

13 Why? Why we have them is, like I said, to allow 11:05:25

14 people in the -- who have cases to have something in their 11:05:33

15 arsenal that they don't have to replicate and pay for. 11:05:36

16 Also, you have them because it tends to narrow the focus of 11:05:43

17 the liability to the issues that are joined. Problem here, 11:05:49

18 which is another reason we're asking for relief, is when we 11:05:54

19 first started talking expert reports and we set the 11:06:00

20 deadline of July, we were talking about Rhabdo as the main 11:06:03

21 question of liability, or at least one of the main 11:06:08

22 questions of liability and medicine. 11:06:12

23 THE COURT: Mr. Zimmerman, let me stop you at 11:06:17

24 this point did tell you that the court is doing an informal 11:06:20

25 survey when cases go back. This is a major problem that 11:06:27

1 the courts have to deal with when trying cases. So, I 11:06:34
2 understand that. So, I need your response and your help 11:06:38
3 and Mr. Beck's help when these cases go back. How are we 11:06:43
4 going to make sure that the Judges end up with the cases 11:06:49
5 that can be tried so they are not saying why did Davis hold 11:06:54
6 on to this case for two years or three years and not do 11:07:00
7 anything worthwhile for me to try this case when it's 11:07:05
8 remanded back. I'm on board with that. 11:07:08

9 MR. ZIMMERMAN: That's my point, Your Honor. 11:07:14

10 THE COURT: Right. 11:07:15

11 MR. ZIMMERMAN: I don't want to do expert reports 11:07:17
12 now, disclose them now and have them be of no benefit when 11:07:19
13 the case goes back. That makes no sense. It costs a lot 11:07:23
14 of energy and time and effort for a report in July when 11:07:28
15 it's going to be a long time or could potentially be a long 11:07:32
16 time before cases begin to be remanded in mass. 11:07:39

17 My point I was making about Rhabdo was the issues 11:07:43
18 could change because the Rhabdo issue may be resolved. 11:07:48
19 There may not be many Rhabdo or any Rhabdo because we are 11:07:52
20 seeing that a thousand of them have been resolved in the 11:07:57
21 past several months since the program of resolving cases 11:08:00
22 has begun. And we may find that this issue is not for 11:08:05
23 remanded cases has to do with muscle damage and not 11:08:08
24 confirmed Rhabdo. 11:08:12

25 So, prematurely, providing expert opinion of the 11:08:17

1 relationship between Baycol and Rhabdo may simply be an 11:08:20
2 exercise in futility. 11:08:26

3 So, what I'm saying to the Court is why I'm 11:08:28
4 saying July makes no sense, is until we try some cases 11:08:32
5 here, and until we get through the process of discovery 11:08:35
6 here, and until we get to close to the end of the line 11:08:39
7 here, it doesn't make any sense to be providing expert 11:08:44
8 reports for people to use upon remand because we don't know 11:08:49
9 what's going to be the issues at remand. If the Court 11:08:53
10 certifies a class -- let's say, for instance, the Court 11:08:58
11 certifies a putative conduct class. Well, those issues 11:09:03
12 would be the subject of different set of expert disclosures 11:09:08
13 or expert opinion than if the Court were to certify, say 11:09:13
14 just an economic damages class. Conversely, if the Rhabdos 11:09:15
15 are out of the case and we're remanding nothing but muscle 11:09:21
16 damage cases, the mechanism of muscle damage and the 11:09:25
17 pathology and the physiology that those expert reports 11:09:31
18 would require would be different than the expert reports of 11:09:36
19 Rhabdo cases upon remand would require. 11:09:40

20 Further, Your Honor, and I think this is -- 11:09:46

21 THE COURT: But Mr. Beck is going to argue, well, 11:09:50
22 that's not news. We have known about those 11:09:55
23 classifications. 11:09:58

24 MR. ZIMMERMAN: I understand, but what's the 11:09:59
25 utility. What is -- there is an enormous amount of expense 11:10:03

1 associated with preparing all of these reports in an area 11:10:08

2 in which they are not to be used. They are not usable. 11:10:11

3 They are of no value. 11:10:18

4 I got an e-mail recently from Rob Gordon -- 11:10:18

5 THE COURT: Mr. Beck is going to argue, what 11:10:22

6 happens if there is still a hundred Rhabdo cases. We still 11:10:32

7 have to have expert reports. Let's get them now so we can 11:10:32

8 be prepared to move on. Meet his argument so I know what's 11:10:36

9 going on. I'm trying to tell you that I understand what 11:10:41

10 you're saying, but you have to understand I've got to hear 11:10:44

11 Mr. Beck, and he's going to be saying these things and 11:10:49

12 more, and I want you -- I want to hear how you are going to 11:10:52

13 meet those arguments. 11:11:01

14 MR. ZIMMERMAN: The best argument, Your Honor, is 11:11:01

15 that you have to have your expert reports consistent with 11:11:05

16 and timely to the trial of that case. It can't be 11:11:11

17 separated in time by lots of additional discovery that is 11:11:16

18 going to take place or science, because then those reports 11:11:24

19 become useless. The reason I'm asking the Court -- 11:11:29

20 THE COURT: All right, you said two things. Give 11:11:34

21 me an example what's going to be happening so it's just not 11:11:36

22 theory that additional discovery is going to be happening 11:11:43

23 and we know that. But how that is going to impact upon the 11:11:49

24 experts on science? Yes, how is that going -- 11:11:56

25 MR. ZIMMERMAN: Let's take FDA. 11:12:02

1 THE COURT: See what I'm saying? Just don't give 11:12:05
2 me a generalization. Show me that the problems are going 11:12:08
3 to be there, not generalization. 11:12:12

4 MR. ZIMMERMAN: Well, let's talk about the fields 11:12:19
5 that we are looking at, okay. One of them is the FDA. Did 11:12:22
6 Bayer comply with the requirements of the FDA, and did they 11:12:27
7 react to the signals coming from the FDA and from the 11:12:33
8 adverse events reports appropriately. That's the subject 11:12:39
9 of an expert opinion, someone who's experienced in or had 11:12:42
10 been with the FDA or has experience with the process of the 11:12:47
11 FDA. 11:12:51

12 Now, as Richard said, there are several FDA 11:12:53
13 depositions left to take. With knowledge of what happened 11:12:57
14 within the FDA, third-party discovery from the FDA or
15 people associated with former employees of Bayer who were
16 responsible for FDA, that evidence is going to be coming
17 forward through the deposition program. If that
18 information is important to the expert in writing his
19 opinion -- his or her opinion, then anything we would
20 produce now would not only be subject to extensive cross
21 examination and probably large -- because that evidence
22 wasn't available to the expert when they made this opinion
23 or that opinion, but it would be unreliable because this
24 person didn't have the entire record in front of them. And
25 you could hear the cross examination of any defense counsel

1 saying he didn't review this, you weren't aware of that,
2 you didn't do this, you didn't do that prior to making this
3 opinion. So, you don't want to have your discovery
4 continuing and your depositions should your expert opinions
5 being drafted simultaneously. You want your discovery to
6 be basically concluded so all the discovery can be
7 available, say, to this FDA witness expert.

8 There's another problem, and this is a newer
9 problem that hasn't -- that I have not -- I guess I faced
10 once before --

11 THE COURT: My question to you is this. What is
12 Judge Ackerman doing out in Pennsylvania so his --

13 MR. ZIMMERMAN: He has --

14 THE COURT: We got the same --

15 MR. ZIMMERMAN: Agreed in Pennsylvania, no
16 generic experts at this time is my understanding from the
17 e-mail I received.

18 MR. BECK: He's wrong.

19 THE COURT: Please. You will have time to
20 respond to that. That was just a general question that I
21 wanted to ask. I didn't mean to throw you off.

22 MR. ZIMMERMAN: This is an e-mail I received from
23 a person on the committee who attended the conference June
24 18th before Judge Ackerman. "The revised schedule will
25 eliminate generic expert disclosures in motion practice.

1 There will be no generic expert, just case specific experts
2 at motions." This I got yesterday -- the day before
3 yesterday. Now, if I'm wrong about that, this is what I've
4 been told by someone who was in the courtroom, that the
5 generic expert issue is not going to be the subject of --

6 THE COURT: I'm not holding you to it, I'm just
7 asking you --

8 MR. ZIMMERMAN: I'm telling you the best
9 information I have.

10 Another problem we have, Your Honor, with early
11 disclosure of generic experts and early reports of generic
12 experts is the generic expert himself or herself. She or
13 he wants to know how are these reports going to be used,
14 who is going to use them, and what appropriate compensation
15 will be provided to that expert for the use of that report
16 serially. In other words, the opinion is an opinion of a
17 professional. That opinion is normally provided in a
18 specific case.

19 In an MDL, if you try to do it in a common way
20 generically, we are running into the problem of the expert
21 saying, wait a second, I'm providing you opinion in this
22 case, but I can't control if Mr. Smith uses it here or Mrs.
23 Jones uses there or it gets used 4,000 times in various
24 environments. I have to have some arrangement whereby I'm
25 properly -- where that's properly controlled, either

1 through royalties or license or something. And we're just
2 beginning to get into this problem with people now.

3 And, so, as we get down this road and start
4 talking to people about these common expert reports, we are
5 finding lot of resistance to the notion that one report
6 gets filed and usable at the discretion and will of every
7 other lawyer.

8 Now, I think there is a way around that. I think
9 there is a way around it, but I haven't solved it yet. I'm
10 just facing it with consultants and experts that I
11 personally have sat down.

12 Further, Your Honor, you have the questions of
13 what -- you know, when 73 was issued, what was the Court
14 intending to say. And really what I think -- if I'm
15 reading it correctly, what the Court is saying is if you're
16 going to be providing expert reports, you need to do it by
17 July 1st, and then you have the discovery. Then I guess
18 the answer is what if we don't want to provide expert
19 reports. If it get pushed and we can't do a good job, we
20 won't do it. There is no requirement under the manual.
21 There is no requirement under the federal rules. I mean,
22 Mr. Beck quotes a representation I made at Melies. Again,
23 I love that opening. I will make lots of things in this
24 record about what was said at Melies, and I'll do it in
25 other filings because that opens a great opportunity for me

1 to talk about things that were said. But if he wants to
2 hold me to a representation that I made to a group of
3 lawyers which I think I made in good faith, we're going to
4 help you try your case with common issue experts, I'm not
5 unwilling to do that. I'm just not willing to do it early
6 and prematurely on a less than full record without properly
7 taking care of the expert to make sure that he or she or
8 her concern is protected and in an environment where we
9 haven't even tried cases or received the issues of class
10 certification resolved by the Court, so I know what the
11 areas that we must supplied these report in. I mean the
12 field of science is broad. The field of liability and
13 negligence and strict liability, product liability is
14 broad, but the process of this Court in these MDL's is to
15 narrow that to what's really going to get tried in the
16 remanded situation six months from now, eight months from
17 now, whenever we get there. And when we get there, we know
18 what the issues are, and at that time the question of
19 generic experts should be raised.

20 Remember when we set this things for July 1st for
21 the generic experts, we had anticipated a trial that didn't
22 occur. We had anticipated a class certification which is
23 still under advisement. And we thought we would have a lot
24 more things narrowed. No one is to blame for that. Don't
25 get me wrong. I'm just saying when you set a date six

1 months ahead of time and try and make it a target,
2 sometimes you don't hit the target.

3 It's not inappropriate for class counsel or the
4 PSC counsel to come in and say, Your Honor, we think can't
5 make it, it's an exercise in futility, we're not trying to
6 shirk our responsibility, we want to make remand cases
7 available for people to try simply, but doing it now simply
8 makes no sense. And why are they pushing so hard for it?
9 Because it obviously makes sense to them. Why? We spend a
10 ton of money, we give a ton of experts, and they spend the
11 next twelve months poking all kinds of holes in it, so,
12 basically, all we have to do redo it for the same amount
13 and re-spend the amount of money and get new experts who
14 haven't been beat up for 12 months by defense counsel who
15 want to find ways in which their opinions don't pass their
16 muster.

17 I'm not saying expert reports, Your Honor, are
18 off the table. What I'm saying to Your Honor is that it
19 makes no sense to do it now, and let's look at it in a
20 reasonable way so we can narrow the field.

21 We have provided the Court with, I don't know
22 six, eight expert reports. You can see how scholarly they
23 are. You can see how detailed they are, and they have been
24 provided in this case. And once they have a trial and once
25 those people testify, those reports may well be usable

1 through the video deposition cuts. And they will be
2 available for other witnesses -- for other parties because
3 they were trying a real case subject to real cross
4 examination in a real setting. But to put them out into an
5 abstraction, into some expert report that has no context
6 because we don't know exactly the issues and we don't know
7 exactly the context, I think doesn't work and it's that
8 reason I come before this Court and ask that the July date
9 be given relief and that we revisit it after we have a
10 trial plan and some trials, and we're much closer to the
11 question of remand.

12 I'm not trying to shirk my responsibility. Mr.
13 Beck said I'm shirking my fiduciary responsibility because
14 I told the lawyers this is what we plan to do. I mean I
15 think the Court knows that's not who I am and that's not
16 what this PSC is about.

17 THE COURT: I'm not concerned about that. You
18 were doing an outstanding job for the PSC, and I would not
19 have appointed you if I didn't think you could do an
20 outstanding job. I appreciate the work you have put in the
21 MDL in the appropriate manner.

22 The question I have and I think raised by Mr.
23 Beck is this, it doesn't matter whether or not we have a
24 trials. You are going to have the experts and it's still
25 going to take time for these cases to be remanded back to

1 state court to either to the other districts. Defense will
2 have time to do the same thing that you are talking about.
3 They will have time to take depositions. They will have
4 time to poke holes in the testimony of the experts. So,
5 what difference does it make?

6 MR. ZIMMERMAN: I'll tell you the difference is,
7 Your Honor, obviously they have that right, and, obviously,
8 they will do that to the best and to the greatest of their
9 ability to cross examine and Dalbert and find reasons why
10 this expert shouldn't testify about that. That's the
11 profession we're in and we understand that, and we're not
12 trying to thwart that one iota. But if you do that with an
13 incomplete record, if you do it with AG depositions, Bayer
14 AG depositions are still being --

15 THE COURT: You are saying you want the
16 opportunity to --

17 MR. ZIMMERMAN: Push it back, and --

18 THE COURT: Let's stop there.

19 MR. ZIMMERMAN: Just one more thing, Your Honor.
20 If this had happened in Pedical Screws --

21 THE COURT: Happened in what?

22 MR. ZIMMERMAN: Just a second, I want to read
23 what someone is saying. I can't read that. I was talking
24 about Pedical Screw litigation.

25 THE COURT: What's your point?

1 MR. ZIMMERMAN: I'm sorry, I can't read his
2 writing. What I was saying, I was not as intimately
3 involved in this litigation as Ron was in the Pedical
4 Screws, the orthopedic bone screws litigation. They did do
5 generic experts, and they were done and then cases were
6 remanded and the Dalbert rulings in various remanded courts
7 occurred and the experts were thrown out and all the
8 experts had to be redone. But what it was is they were
9 done prematurely and was an exercise in futility and it was
10 a non-start for the people who had to use these things in
11 the remand form.

12 My point is you have to be careful in how you do
13 this. You have to do it well, and you have to do it right.
14 And to be forced into doing it prematurely and early and
15 without a context, I believe is simply the wrong way to do
16 it, and I just don't think the PSC should be responsible to
17 do that. Everyone will suffer if these aren't done well
18 and if they aren't done appropriately. Thank you. 11:45:28

19 THE COURT: Mr. Beck. 11:45:28

20 MR. BECK: Thank you, Your Honor. First on the 11:45:31
21 status of expert discovery in Pennsylvania, Mr. Zimmerman 11:45:35
22 had it wrong when he represented to the Court that generic 11:45:40
23 expert discovery has been abandoned. In fact, it was quite 11:45:45
24 different from that. The procedure in Pennsylvania state 11:45:50
25 courts is normally that all you get from experts is a 11:45:53

1 written report and you are not allowed to take depositions 11:46:00
2 of experts. So, you end up having to cross examine the 11:46:04
3 experts based on a written report. I've done that a couple 11:46:09
4 of times and it's interesting and it becomes kind of a 11:46:12
5 gamesmanship over how you write the reports, just enough so 11:46:16
6 that you cover your bases so that you can introduce the 11:46:21
7 real goods at trial, but not enough to give the other side 11:46:24
8 any useful information. 11:46:29

9 So, in an effort to avoid the gamesmanship, what 11:46:30
10 we agreed to with the Plaintiffs' lawyers in Pennsylvania 11:46:34
11 is that we would not have the written disclosures, and, 11:46:38
12 instead, would have the depositions. So, we are going 11:46:41
13 ahead with expanded expert discovery in Pennsylvania by way 11:46:44
14 of depositions rather than the kind of hide the ball 11:46:50
15 disclosures that typically take place. 11:46:54

16 THE COURT: Have the experts been identified? 11:46:59

17 MR. BECK: I'm not sure if they have been 11:47:02
18 identified, but those depositions are supposed to take 11:47:05
19 place in the fall, and I think the trial date in light of 11:47:10
20 that was bumped to like January or February. So, we were 11:47:13
21 on track with expert discovery in Pennsylvania. And, in 11:47:16
22 fact, it is enlarged over what normally would take place, 11:47:22
23 which is these, as I said these kind of bare bones written 11:47:28
24 disclosures. 11:47:33

25 THE COURT: While I've got you here, what about 11:47:34

1 the -- have you heard anything more about the mandatory 11:47:37
2 mediation program or settlement program that's going to be 11:47:44
3 set up by the Judges before the trials in Pennsylvania? 11:47:47

4 MR. BECK: It's not something I know about. I 11:47:52
5 don't know if any of my colleagues over there have heard 11:47:54
6 anything. 11:48:00

7 MR. MAGAZINER: Your Honor, I didn't hear your 11:48:00
8 question. Although I'm from Philadelphia, I'm not closely 11:48:02
9 involved in the Philadelphia cases. 11:48:08

10 THE COURT: I'm sorry, I'm hard of hearing. 11:48:13

11 MR. MAGAZINER: I don't know what's going on in 11:48:17
12 the cases, although I'm from Philadelphia. 11:48:21

13 MR. BECK: And I don't know anything about the 11:48:23
14 status of the mediation process there. Your Honor, so 11:48:28
15 that's Pennsylvania. 11:48:32

16 THE COURT: The question that's there is you've 11:48:34
17 been coordinating -- not coordinating, cooperating with 11:48:39
18 Philadelphia, the number of cases there. Shouldn't we be 11:48:45
19 similar tracks? 11:48:53

20 MR. BECK: I don't think so because they are not 11:48:55
21 going to be the same experts. The Philadelphia folks claim 11:49:03
22 to have lined up superior experts to the MDL people, and 11:49:03
23 they are not sharing. They are not playing well together. 11:49:06
24 The Pennsylvania state lawyers --

25 THE COURT: Then you are shaking in your boots. 11:49:10

1 MR. BECK: They say they're superior. All I know 11:49:17
2 is they are different. They are different experts and 11:49:18
3 there is no reason to be on the same time schedule, because 11:49:20
4 what happens if that gets bumped over or if I settle all 11:49:23
5 those cases with Mr. Weiss and the experts get called down. 11:49:28
6 I don't see any reason at all why different experts for the 11:49:33
7 Plaintiffs in cases in Pennsylvania why the expert 11:49:37
8 discovery should be simultaneous. Lots of things could 11:49:42
9 happen in either one of these proceedings to throw that off 11:49:46
10 track. 11:49:51
11 THE COURT: Let me stop you there. The cases 11:49:52
12 that you are negotiating, you've told me that Sol Weiss has 11:49:56
13 more cases than the ones in the package that you are 11:50:02
14 negotiating with and the ones that you are negotiating with 11:50:07
15 him are Rhabdo cases and we know that 99.9 percent of the 11:50:11
16 Rhabdo cases are being settled by you because Bayer has 11:50:18
17 been very fair in the negotiation and settlement of those 11:50:22
18 cases. So, the experts that are being set up in 11:50:26
19 Philadelphia, you can't tell me they are just Rhabdo 11:50:30
20 experts. So, there must be aches and pains cases because 11:50:34
21 every court system is not going to mediate just Rhabdo 11:50:41
22 cases. They are going to mediate every case filed in 11:50:47
23 Philadelphia, so those experts are going to be a broad 11:50:50
24 range of experts and not just Rhabdo, so you are going to 11:50:54
25 continue on with depositions in Philadelphia. 11:50:58

1 MR. BECK: I don't know whether that's going to 11:51:02
2 be true or not. There are a lot of lawyers around the 11:51:04
3 country who have -- a lot of Plaintiffs' lawyers who have 11:51:09
4 made decisions that Rhabdo cases make sense to pursue and 11:51:10
5 to try to settle than the non-injury or aches and pains or 11:51:16
6 what they now like to call the muscle injury cases, they 11:51:20
7 say they don't make sense. 11:51:24

8 I don't know what the eventual expert line-up 11:51:27
9 will look like in Pennsylvania if, in fact, we are able to 11:51:31
10 settle lots of Rhabdo cases. I assume there will be more 11:51:35
11 Rhabdo cases left. I don't know whether any Plaintiff's 11:51:41
12 lawyers in Pennsylvania at this stage are going to want to 11:51:46
13 go to the time, trouble and expense to put up experts for 11:51:49
14 aches and pains cases. I'm not saying they are not going 11:51:54
15 to, but I don't know whether that's going to happen or 11:51:57
16 not.

17 THE COURT: For the Court's edification, why 11:51:58
18 don't you tell me how you are going to set up the experts' 11:52:01
19 deposition schedule in Philadelphia. I assuming it's not 11:52:06
20 set up because you haven't met with the Steering Committee. 11:52:10
21 When are you going to meet with them and when you are going 11:52:15
22 to set up the expert discovery? 11:52:19

23 MR. BECK: I'm a little bit like Mr. Magaziner. 11:52:28

24 MR. MAGAZINER: I have information on this. 11:52:31

25 MR. BECK: Then I'm not very much like Mr.

1 were bumped back. I don't know whether that was late 11:53:51

2 January or early February. 11:53:52

3 THE COURT: Early February. 11:53:54

4 MR. MAGAZINER: That's my best recollection. And 11:53:55

5 the experts dates keyed off the October trial dates were 11:53:58

6 then adjusted accordingly so that they would -- the experts 11:54:02

7 discovery could take place before the trial schedule for 11:54:06

8 early February. 11:54:10

9 And one of the reasons that all that happened is 11:54:12

10 because Mr. Weiss and some of his colleagues were under the 11:54:15

11 belief that if they stated that publicly, they would be 11:54:19

12 able to settle many of their Rhabdo cases with Bayer and 11:54:22

13 that there may not be cases for trial even in February. 11:54:27

14 So, that's the last time I was involved. Unfortunately, I 11:54:32

15 haven't been involved since then. That's how that schedule 11:54:36

16 was an adopted because of the continuance of the trial date 11:54:39

17 from October to February. 11:54:42

18 THE COURT: No matter what, I'm assuming 11:54:45

19 Philadelphia is not looking for just Rhabdo cases. 11:54:50

20 MR. MAGAZINER: That's true, but there are lots 11:54:55

21 of cases that are aches and pains cases. 11:54:57

22 THE COURT: So, the Court has to deal with those 11:55:01

23 and whether or not the cases that you hand picked for 11:55:02

24 February, March for Judge Ackerman will go to trial. At 11:55:07

25 some point he's going to have to deal with what is called 11:55:13

1 the muscle -- 11:55:17

2 MR. ZIMMERMAN: Damage. 11:55:20

3 MR. MAGAZINER: Muscle damage or no injury. 11:55:21

4 THE COURT: They are going to have to deal with 11:55:23

5 the same issues that I'm dealings with. 11:55:25

6 MR. MAGAZINER: For sure. 11:55:29

7 THE COURT: Judge Ackerman and I are of the same 11:55:31

8 mind that we want to efficiently move these cases along. 11:55:40

9 MR. BECK: Your Honor, I think that eventually 11:55:40

10 those you are going to have to be disposed of one way or 11:55:43

11 another in Pennsylvania just as they will here. 11:55:46

12 THE COURT: Or other places. 11:55:50

13 MR. BECK: Right, there are other places as well. 11:55:52

14 But the -- certainly the focal point of the effort in 11:55:55

15 Pennsylvania has been getting ready for Rhabdo trials. 11:56:01

16 And, then, of course, the focal point of the settlement 11:56:04

17 negotiations, not just focal point, the whole subject 11:56:08

18 matter has been cases that involved either Rhabdo or 11:56:14

19 documented injuries. So, I don't know what, if anything, 11:56:18

20 would happen. I don't know whether they are planning on 11:56:23

21 having any experts on the non-injury cases. 11:56:27

22 One thing I would also say, Your Honor, is that I 11:56:30

23 have heard over the months I've been coming to these 11:56:34

24 hearings how important it is for the MDL to stay out in 11:56:38

25 front. And it would seem inconsistent, then, to say, well, 11:56:43

1 we have an expert discovery schedule, which incidentally 11:56:46
2 was proposed by the PSC. This was a schedule where I'll go 11:56:50
3 back and retrace some of the history, but after they first 11:56:58
4 said we can get it all done by June, and then they said we 11:57:02
5 don't want to start until much later, were asking for an 11:57:07
6 aggressive schedule. They were asking for one that would 11:57:10
7 begin in September, basically, and then we went back in 11:57:14
8 chambers, and after a long discussion with Mr. Zimmerman 11:57:18
9 and me about what's the goal of the expert discovery and 11:57:23
10 trials and aches and pains cases, back when we both used to 11:57:28
11 call them those, and, finally, Mr. Robinson, the newest 11:57:33
12 member of the Plaintiffs Steering Committee suggested a 11:57:37
13 middle ground of July. And Your Honor said that's a great 11:57:40
14 idea, and I remember Your Honor turning to me and said, 11:57:44
15 "You see, Phil, sometimes these discussions bear fruit. 11:57:50
16 We're able to come to agreement." And we had an agreement 11:57:52
17 back in Your Honor's chambers that the expert discovery was 11:57:59
18 going to be on that schedule, and Your Honor's order then 11:58:00
19 memorialized basically what happened back in chambers. 11:58:05
20 So, this is a schedule that was proposed by the 11:58:07
21 Plaintiffs Steering Committee, and now for other reasons 11:58:09
22 that I'm going to get to, they are backtracking on that. 11:58:11
23 As I said, I want to, if I can, retrace just very 11:58:18
24 briefly, at least what I remember from my involvement in 11:58:21
25 these discussions. I came here in February for the 11:58:25

1 argument about class certification, and at that point, the 11:58:29
2 Plaintiffs were talking about a June trial. They hoped to 11:58:33
3 have a class action trial in June, which was obviously not 11:58:37
4 realistic, but they wanted some kind of a trial in June. 11:58:41
5 And they proposed an expert discovery schedule that all of 11:58:45
6 the expert discovery and Dalbert hearings would be over, 11:58:50
7 finished and complete in time for a trial that they wanted 11:58:57
8 to start for June 6th, two weeks ago. 11:58:59

9 Now, we thought at the time that that was 11:59:02
10 unrealistic. We said we wanted to move expeditiously on 11:59:03
11 the experts, but we don't think that it makes any sense to 11:59:10
12 pretend that we could get it finished in time for a June 11:59:13
13 trial. But they were insistent. I said there are going to 11:59:17
14 be a lot of common experts here. I remember rattling off 11:59:21
15 10 or 15 subjects. And Mr. Goldser said those are the 11:59:27
16 exact subjects. We got the experts lined up in those 11:59:31
17 subjects and it's not a big deal. We can write the reports 11:59:35
18 ourselves. And everybody laughed, because he said 11:59:37
19 everybody knows what the expert reports are going to say. 11:59:41
20 We can write them ourselves. This was way back in February 11:59:44
21 when they said they could finish the job in time for 11:59:47
22 depositions, Dalbert hearings and rulings all in advance of 11:59:51
23 a June 6th trial. 11:59:56

24 So, here we were June 20th, and basically nothing 11:59:57
25 has been done except in connection with the Olander case, 12:00:00

1 apparently they prepared some experts report, and this is 12:00:06
2 shocking to me, which they filed in camera with the Court 12:00:09
3 and didn't give us. 12:00:13

4 So, right now, the status of expert reports is 12:00:14
5 that they have been communicated ex parte to the Court. 12:00:18
6 And then later on -- 12:00:24

7 MR. ZIMMERMAN: That's so wrong, Phil. That's 12:00:24
8 inappropriate. 12:00:28

9 MR. BECK: The last time when I disagreed with 12:00:30
10 what Mr. Zimmerman said -- 12:00:32

11 THE COURT: Please, you will have an opportunity 12:00:36
12 to respond. 12:00:37

13 MR. BECK: Mr. Zimmerman said we have provided 12:00:39
14 the Court with 7 or 8 reports. Now, in the Olander case, 12:00:43
15 we didn't get those reports. What we got were names of 12:00:46
16 experts. We did get the reports? 12:00:50

17 MS. WEBER: We got the reports in Olander. We 12:00:55
18 don't know what the new Judge --

19 MR. BECK: I'm sorry, we don't know if they are 12:00:59
20 the same thing as Olander reports, then, we've seen those. 12:01:01
21 If they are anything other than the Olander reports, then 12:01:05
22 they're ex parte expert reports. I don't know why they 12:01:09
23 would be providing them in camera rather than telling us 12:01:14
24 whether they're the same thing that was filed in Olander. 12:01:18

25 So, our problem is if these reports are the 12:01:21

1 reports from Olander that's one thing, and, yet, they are 12:01:23
2 being mysterious about it and filing them in camera and not 12:01:27
3 giving us copies. So, if there is something other than the 12:01:30
4 Olander reports, then they are giving substantive 12:01:33
5 information. 12:01:38

6 THE COURT: Mr. Beck, you require the conspiracy 12:01:42
7 group, I think they are the same. 12:01:48

8 MR. BECK: Well, you know, I would like to know. 12:01:48
9 I would like to know if they are the same. 12:01:51

10 THE COURT: I don't have the cover letter. 12:01:54

11 MR. BECK: The letter that they sent to you, 12:01:56
12 Your Honor, says under separate cover, this is Page 2, we 12:01:58
13 provide in camera these reports and opinions and each 12:02:03
14 expert's CV to the Court. These experts and their opinions 12:02:08
15 could well be used in the upcoming trials. To the extent 12:02:19
16 these experts are offering to the upcoming trials, the PSC 12:02:19
17 expects their testimony will be further supplemented, blah,
18 blah, blah.

19 MR. ZIMMERMAN: Read the paragraph on top of 12:02:22
20 that. It says that I've been providing to you and they 12:02:22
21 tell you what they are. You are reading it out of context, 12:02:27
22 Phil.

23 MR. BECK: What it says is they have disclosed 12:02:32
24 witnesses -- well, I don't know. If they are the same, if 12:02:35
25 somebody would tell me that now, I'll stop talking about 12:02:40

1 it. Are they the same reports, Bucky? 12:02:43

2 MR. ZIMMERMAN: They are the same, and it says 12:02:46

3 that in the letter. 12:02:48

4 MR. BECK: Well, we couldn't discern that from 12:02:50

5 the letter. I apologize for the diversion. 12:02:54

6 THE COURT: I like conspiracies. 12:02:54

7 MR. BECK: I have a better one coming up, Your 12:02:57

8 Honor. So, where we were in February, we had 12:02:59

9 representations that it could all be done by June. And 12:03:03

10 today, nothing has been done other than filing in camera 12:03:07

11 the reports that were prepared in the Olander case. And 12:03:12

12 what they're saying right now is basically -- well, they 12:03:18

13 said a couple of different things. 12:03:20

14 In the letter that they sent to the Court, they 12:03:25

15 said essentially that there should be no discovery of -- 12:03:28

16 experts on common issues, at least for the time being and 12:03:33

17 it should just be on individual cases. And then -- that 12:03:38

18 was in the letter they sent to the Court. Then they also 12:03:42

19 filed a little motion to stay where they seem to take a 12:03:46

20 different position which is wait until 60 days after the 12:03:49

21 class certification ruling comes in. 12:03:53

22 So, those have been the recent communications 12:03:54

23 that they have made. I don't know, frankly, what their 12:03:57

24 current position is on this. 12:04:02

25 Your Honor, we're very concerned here that 12:04:04

1 basically we have a situation where today the Plaintiffs 12:04:08
2 are saying let's not do any common expert discovery until 12:04:15
3 it's time for remand. And, then, at the same time we're 12:04:22
4 not making any progress towards remand, at least we're not 12:04:27
5 making any progress due to what the Plaintiffs Steering 12:04:32
6 Committee is up to because what the Plaintiffs Steering 12:04:36
7 Committee wants to do is start a series of trials every two 12:04:39
8 or three months, 10 to 12 cases bundled together, going 12:04:42
9 out, as far as I can tell, most of next year. They want to 12:04:48
10 make the focal point of this proceeding, not the 12:04:52
11 preparation of the cases for remand, but instead trials, 12:04:59
12 trials of cases filed by individuals who have nothing to do 12:05:02
13 with Minnesota, who live in Arkansas, got Baycol in 12:05:07
14 Arkansas, were treated in Arkansas, but have been urged by 12:05:13
15 Mr. Zimmerman to file their cases in this court so that 12:05:17
16 they can be tried in this court. And their proposal is 12:05:21
17 that dozens, or potentially hundreds of individual cases 12:05:27
18 will be tried in this court from around the country having 12:05:30
19 nothing to do with Minnesota other than they were filed 12:05:34
20 here at Mr. Zimmerman's suggestion, and all of that would 12:05:38
21 precede any remand. 12:05:43

22 So, it's really somewhat of a dodge, Your Honor, 12:05:46
23 to say let's hold off on the common experts until we're 12:05:48
24 ready to remand the case when their other filings, their 12:05:54
25 trial plan and everything else they're doing is to delay 12:05:56

1 remand as long as humanly possible. 12:06:00

2 I think, Your Honor -- I've said before that what 12:06:06

3 our view is of the proper role of the multi-district 12:06:08

4 litigation. But I really do think that the Plaintiffs are 12:06:14

5 now taking it way out past anything that is arguable in 12:06:17

6 terms of this Court's principal focus and function. And 12:06:24

7 what they're suggesting is that this Court try dozens of 12:06:27

8 cases selected solely by them of Plaintiffs who have 12:06:32

9 nothing to do with Minnesota, but they were filed in 12:06:37

10 Minnesota because Mr. Zimmerman told the fellows at Melies 12:06:40

11 that's where they should file, and that if there is ever a 12:06:46

12 remand, that will be after you've had dozens and dozens of 12:06:49

13 trial, and it flies in the face of Lexicon and the cases 12:06:56

14 that have followed Lexicon. 12:07:01

15 Let me pause for a moment and talk about what Mr. 12:07:05

16 Zimmerman has been saying to this Court and what he has 12:07:09

17 been saying in his capacity as head of the Plaintiffs 12:07:12

18 Steering Committee when he tells us every month about how 12:07:16

19 he needs information in order to coordinate with the state 12:07:18

20 lawyers. 12:07:21

21 We have attached to one of our filings the 12:07:23

22 remarks that Mr. Zimmerman made at the Melies conference. 12:07:25

23 That's the conference where he said we don't want to use 12:07:30

24 the aches and pains language anymore. We want to now start 12:07:31

25 calling them muscle injury cases. 12:07:33

1 More important than that what he said to all of 12:07:35
2 these people was that you don't need us for Rhabdo cases. 12:07:38
3 Bayer is settling the Rhabdo cases. He didn't say we're 12:07:41
4 being fair, but he said Bayer is settling the Rhabdo cases. 12:07:47
5 You don't need the MDL for the Rhabdo cases. The mantra is 12:07:53
6 the word for the MDL from here on out. It's not Rhabdo. 12:07:55
7 The mantra is these other cases. And, so, he was saying 12:07:59
8 you should file all these other cases with the statute of 12:08:07
9 limitations coming up, or arguably coming up, file all of 12:08:09
10 them in the District of Minnesota. Put all your non-injury 12:08:13
11 -- he didn't use non-injury, put all these other cases in 12:08:17
12 the MDL and preferably file them in the District of 12:08:20
13 Minnesota. And why -- this is, of course, the Plaintiffs 12:08:26
14 Steering Committee marketing how these people should 12:08:33
15 participate in the MDL instead of going to Pennsylvania or 12:08:36
16 Texas or someplace, what's in it for you, ladies and 12:08:39
17 gentlemen, as the Plaintiffs' lawyers, why should you be 12:08:42
18 eager to file your cases in Minnesota. And then he told 12:08:44
19 them. He said because we've put together and are putting 12:08:48
20 together this gang buster generic case. It'll be in the 12:08:50
21 can on videotape, ready for you to use on remand for you to 12:08:55
22 us. We have done a great job in taking depositions of the 12:08:58
23 Germans and the Bayer people, and we also have a roster of 12:09:01
24 world-class experts, as he described them, and we've been 12:09:06
25 working very closely with our world-class experts. 12:09:16

1 And what he told the people at the Melies 12:09:16
2 conference is that we will file their reports on July 1st. 12:09:19
3 That's, I think, Page 10 -- yeah, Page 10 of Mr. 12:09:26
4 Zimmerman's remarks. Said that the expert reports will be 12:09:34
5 filed on July 1st. And this Melies conference, I don't 12:09:36
6 know, was in the last couple of weeks, I think. It was 12:09:41
7 certainly since the last status conference because when he 12:09:44
8 was talking about the Melies conference, I announced that 12:09:48
9 we would have a spy there and we did. 12:09:53
10 So, Mr. Zimmerman was saying, bring your aches 12:09:55
11 and pains cases to me because I've got the world-class 12:09:58
12 experts. They're going to be on videotape in the can ready 12:10:04
13 for you to use. Experts' reports will be filed July 1st. 12:10:07
14 Then he comes into this court and, interesting, Your Honor, 12:10:11
15 and maybe I do sound like a conspiracy theorist here, but 12:10:12
16 they filed a letter here with the court instead of a brief, 12:10:19
17 and the letter, as I understand it, never got posted on 12:10:23
18 Verilaw because it's a letter and not a pleading, is that 12:10:28
19 right? So now having told all of these folks at the Melies 12:10:33
20 conference and the people that read the Melies materials, 12:10:41
21 bring your aches and pains cases to me because I've got the 12:10:41
22 experts all lined up, and we're going to file the reports 12:10:42
23 on July 1st, he filed a letter brief with the Court which 12:10:46
24 these people don't see, which says July 1st makes no sense, 12:10:51
25 and, in fact, the whole idea of generic experts doesn't 12:10:53

1 make too much sense, and we shouldn't be looking at this 12:10:55

2 for a long, long, long time. 12:10:59

3 I think, Your Honor, that what we have here is a 12:11:02

4 situation where whatever the motivation is of the 12:11:09

5 Plaintiffs Steering Committee for changing their tune, we 12:11:15

6 have a situation where they themselves suggested the July 12:11:19

7 1st date. They themselves suggested the schedule which 12:11:25

8 Your Honor ended up entering. And they themselves went out 12:11:30

9 and marketed that schedule as an important reason why 12:11:33

10 people should bring all of their aches and pains cases into 12:11:38

11 the MDL and now they don't want to go forward. 12:11:43

12 We think that Your Honor ought to enforce your 12:11:48

13 order and require them to come forward with the generic 12:11:51

14 expert reports when they were ordered to do so on July 1st. 12:11:55

15 Mr. Zimmerman gave some reasons why, well, maybe 12:12:01

16 that doesn't make sense anymore, and he talked about FDA 12:12:06

17 depositions. I don't have the slightest idea what he is 12:12:11

18 talk about here. There are no depositions scheduled with 12:12:14

19 FDA personnel. He talked about how Mr. Arsenault had 12:12:19

20 referred to FDA depositions. Mr. Arsenault didn't refer to 12:12:24

21 any FDA depositions. There may be winding up either GSK or 12:12:28

22 Bayer personnel and conceivably something they say in the 12:12:31

23 last session could be relevant to an FDA expert. If so, 12:12:36

24 that's why God invented supplemental reports. But there is 12:12:41

25 no waive of discovery that's looming out there for FDA that 12:12:53

1 would justify abandoning the Court order schedule. 12:12:53
2 The issues are not going to change between now 12:12:57
3 and whenever Mr. Zimmerman has in mind for finally coming 12:13:00
4 forward with his generic experts. There will be Rhabdo 12:13:05
5 cases left. We are settling every Rhabdo case that we can. 12:13:08
6 But there are going to be Plaintiffs' lawyers who decide 12:13:13
7 that I can get more by going to trial, and I would rather 12:13:17
8 roll the dice and show everybody how good I am by going to 12:13:21
9 trial rather than settling cases. So there are going to be 12:13:26
10 Rhabdo cases no matter what. 12:13:30
11 But more important than that is the non-Rhabdo 12:13:35
12 cases, the non-injury cases or the aches and pains cases or 12:13:39
13 what they call the muscle injury cases in their new 12:13:41
14 Lexicons, because we know there's going to be lots of those 12:13:44
15 because we're not settling those. Those are the cases that 12:13:51
16 we refuse to negotiate on and we refuse to mediate and we 12:13:53
17 only go to mediation when ordered to. We don't pay on 12:13:58
18 those cases. We're not going to pay on those cases. Those 12:14:02
19 cases are not going away. Those are the cases that it's 12:14:05
20 most important that we get timely expert reports on. 12:14:09
21 Because the way that those cases can go away is if we find 12:14:13
22 out and persuade the Court that there is no science or 12:14:17
23 medicine behind what Mr. Zimmerman now likes to call muscle 12:14:22
24 injury cases, and that's the end games for those cases, or 12:14:29
25 one of the potential end games for those cases. 12:14:33

1 Otherwise, if they can survive filing expert 12:14:37
2 reports and the scrutiny that goes along with those, and 12:14:40
3 they get remanded, then we try them back in the transferor 12:14:43
4 forums, but that's the area where it's most important to 12:14:48
5 get expert reports. Truthfully, the expert reports on 12:14:52
6 whether statins, and Baycol in particular, caused Rhabdo, 12:14:55
7 that's something we stipulate to. That's something our 12:15:00
8 experts agree to when we have the individuals trials. 12:15:03
9 There is not a lot of disagreement about that. It's in the 12:15:06
10 other area where the expert reports are most important. 12:15:11
11 Those are the areas that Mr. Goldser said they could write 12:15:14
12 back in February. And now they say they can't even begin 12:15:18
13 the process for several months. 12:15:23
14 What's happening here, Your Honor, is that we've 12:15:25
15 been, as Your Honor indicated and as I think most of the 12:15:29
16 Plaintiffs' lawyers around the country have recognized, we 12:15:33
17 have kept the promise that I made way back when in New 12:15:37
18 Orleans when I stood up and I said we want to settle the 12:15:42
19 cases where people experienced Rhabdo. We want to agree 12:15:46
20 with you, Plaintiffs' lawyers, on what fair value is. We 12:15:51
21 don't want to fight about this. We don't want to go to 12:15:52
22 juries if we don't have to on whether we were right or 12:15:56
23 wrong. We'll defend ourselves if we have to, but we want 12:16:00
24 to resolve these cases in a fair way.
25 We have been tremendously successful in doing 12:16:10

1 that and, Your Honor, with all respect, and I don't mean to 12:16:13
2 denigrate Mr. Zimmerman or his colleagues in any way, but 12:16:20
3 they basically have not been significant players in that 12:16:23
4 process. Some of their cases have settled, but it's not 12:16:24
5 because of Plaintiffs Steering Committee and it's not 12:16:28
6 because of what's happening in the MDL, it's because we 12:16:32
7 reached out to Plaintiffs' lawyers regardless of where 12:16:35
8 their cases are filed or even if their cases are filed and 12:16:38
9 said if you can show us a Rhabdo injury, we want to talk 12:16:42
10 about fair compensation. And you kind of see the numbers 12:16:48
11 in the settlement reports about where all the settlements 12:16:51
12 are coming from. The vast majority are coming out of state 12:16:53
13 cases and not from the MDL. 12:16:57

14 Again, as I said, I don't meaning to denigrate 12:16:59
15 them in any way by saying that, but it's just a fact, and 12:17:03
16 it's a fact that Mr. Zimmerman recognized and embraced when 12:17:06
17 he was speaking in front of the Plaintiffs' lawyers at the 12:17:11
18 Melies conference where he said, you don't need us for the 12:17:15
19 Rhabdo cases. The mantra for the MDL is no longer Rhabo. 12:17:18
20 The mantra of the MDL is fill in the blank for how you want 12:17:23
21 to describe the muscles injury or aches and pains cases. 12:17:25
22 That's their mantra. That's their focus. That's the 12:17:31
23 reason for being for the MDL. 12:17:35

24 So, now that the Rhabdo cases are kind of being 12:17:37
25 taken care of, but it's hard work and we got a lot of work 12:17:41

1 to do on it, but we do have a process in place that I think 12:17:44
2 everybody recognizes is a good process that's achieved a 12:17:49
3 lot of success. The MDL lawyers have kind of redefined the 12:17:55
4 MDL as the place for the aches and pains cases, and they 12:18:00
5 have encouraged people to file, if they had their way, tens 12:18:04
6 of thousands of cases here before the two-year anniversary 12:18:09
7 of the withdrawal. Bring all those aches and pains cases 12:18:13
8 that you can gen up and file them in Minnesota federal 12:18:19
9 court. 12:18:24

10 So, they envision this Court as sort of a 12:18:25
11 warehouse for the aches and pains cases. And they 12:18:27
12 desperately don't want to have to come forward with medical 12:18:31
13 and scientific evidence that can back up these cases. And 12:18:36
14 we desperately want to force them to do that. We want to 12:18:41
15 hold their feet to the fire and for the Court to enforce 12:18:45
16 its orders so that they have to come forward with their 12:18:49
17 medical and scientific evidence that would -- instead of a 12:18:52
18 linguistic change by a lawyer saying, well, as he told the 12:19:00
19 Melies folks, we don't want to call them aches and pains 12:19:06
20 anymore, we want to call them muscle injuries. From now 12:19:11
21 on, he's never going to say aches and pains again, it's 12:19:14
22 going to be muscle injuries.

23 Bucky Zimmerman, as much as I like him, and the 12:19:15
24 good lawyer that he is, he's not a doctor and he's not a 12:19:19
25 scientist, and just because he's hoping to warehouse 12:19:26

1 thousands of these cases in Your Honor's court, that 12:19:26
2 doesn't mean that he's got any science to back it up. We 12:19:31
3 want to force them to come clean and to come forward with 12:19:34
4 their evidence that says that Baycol was any different from 12:19:38
5 any other statin in terms of aches and pains or muscle 12:19:41
6 aches or what he calls muscle injury because we think -- 12:19:49
7 and that evidence isn't going to change. There is nothing 12:19:52
8 that's going to change based on what happens in a GSK 12:19:55
9 deposition or Bayer AG deposition. That's medical science 12:20:00
10 on whether they got anything to back up their theory. 12:20:05
11 There are no new facts that are going to come out 12:20:09
12 that's going to change that. There is no answer, also, 12:20:11
13 when we've been on a schedule of generic discovery for 12:20:15
14 months to now come forward and say our experts want a 12:20:19
15 pretty nice financial deal. They don't want to just get 12:20:23
16 paid once, they want to license their testimony so that if 12:20:28
17 it's used in these other trials they get paid over and over 12:20:33
18 and over again. They want some kind of royalties every 12:20:37
19 time somebody refers to their expert report. That's not a 12:20:41
20 reason to postpone discovery if that's the kind of experts
21 they have. That'll be kind of a fun area to inquire into 12:20:46
22 in the depositions, but it's not a reason why we should be 12:20:50
23 deprived our opportunity to find out what it is their 12:20:53
24 experts are going to say. The science isn't going to 12:20:58
25 change, the medicine isn't going to change, and those are 12:21:02

1 the areas we really need the reports on.

2 Finally, Mr. Zimmerman said what if we just hold 12:21:07
3 our breath until we turned blue and we say expert reports, 12:21:10
4 we're not filing any. In that case, Your Honor, if the 12:21:19
5 Court says file your expert reports on the generic issues, 12:21:22
6 and they do that kind of a dodge, we would be asking the 12:21:24
7 Court for an order that says in every single one of those 12:21:28
8 cases that Mr. Zimmerman has recruited, in every single one 12:21:32
9 of those cases, there would be an order that would say they 12:21:36
10 would say be precluded from offering any expert or 12:21:39
11 otherwise on those issues. 12:21:42

12 This, incidentally, Your Honor, this month I'm a 12:21:42
13 conspiracy theorist, last month, I was a paranoia, 12:21:47
14 according to Mr. Zimmerman, because when he started talking 12:21:53
15 about the experts, I said, gee whiz, my antenna are 12:21:55
16 tingling here, and it sounds like they're going to back off 12:21:59
17 and they're not going to tell us what their experts are 12:22:00
18 going to testify about or who their experts are, and Your 12:22:03
19 Honor said I want you to tell them what areas you're going 12:22:05
20 to have experts in and then give them the names and give 12:22:08
21 them the reports so we can get this thing rolling. This is 12:22:11
22 an area Your Honor said should be on the front burner. 12:22:19
23 This was months ago Your Honor said this should be on the 12:22:22
24 front burner. I guess what they have done between the last 12:22:22
25 conference and today's conference is prove the old saw that 12:22:26

1 even paranoiacs have real enemies. 12:22:33

2 So, Your Honor, we don't think that there has 12:22:34

3 been any justification that would warrant departing from 12:22:38

4 the Court's order which, as I said, but bears repeating, 12:22:43

5 embodied the proposal made by the Plaintiffs Steering 12:22:56

6 Committee on the timing of common expert discovery. We 12:22:57

7 basically negotiated a deal in Your Honor's chambers and 12:23:02

8 Your Honor incorporated that into a written order, and now 12:23:08

9 for other reasons, they have decided that they don't want 12:23:11

10 to live up to their deal and obey the Court's order. 12:23:13

11 THE COURT: Thank you. Mr. Zimmerman. 12:23:19

12 MR. ZIMMERMAN: First off, Your Honor, I think we 12:23:41

13 can probably agree on a couple of things. First off, 12:23:46

14 muscle aches and pains are symptoms of muscle damage. So, 12:23:50

15 we can get off this game of pointing the finger at me and 12:23:56

16 telling me I'm reinventing the muscle aches and pains are 12:24:01

17 symptoms of muscle damage. That's what we've got before us 12:24:05

18 in addition to Rhabdo, kidney failure and death. 12:24:08

19 The Defendants are settling the death, the 12:24:12

20 Rhabdo. I don't know that it's something inappropriate or 12:24:14

21 wrong to say to people, if you're settling the cases that 12:24:20

22 they're settling of Rhabdo and death, this is a good forum 12:24:23

23 for resolution of the rest. If you choose to use it, you 12:24:30

24 use it. If you choose to not use it, you don't have to. 12:24:35

25 For some reason Mr. Beck wants to make that very 12:24:40

1 perjorative statement. I just can't agree with it, and I 12:24:44

2 guess I feel like I need to defend that. I'm not 12:24:50

3 recruiting. I'm not a huckster. If you read my remarks, 12:24:53

4 which I hope the Court does -- 12:24:59

5 THE COURT: I've read them. 12:25:03

6 MR. ZIMMERMAN: -- I think I took the high road, 12:25:05

7 or tried to, and I don't think I'm going out and trying to 12:25:06

8 do things that are inappropriate. I'm saying to the world 12:25:11

9 we are here for you, and that's our job, doing the best we 12:25:13

10 can and doing discovery. We are going to be helping you 12:25:17

11 prepare your case for trial and this forum could work for 12:25:21

12 you. 12:25:24

13 Second, we have provided reports in cardiology, 12:25:31

14 epidemiology, neurology -- 12:25:39

15 THE COURT: Back up. The Court has read your 12:25:42

16 Melies remarks. I think everyone has missed the point of 12:25:46

17 what you said for the lawyers to file, file the cases that 12:25:52

18 were -- have medical reports that can back the injuries, 12:25:57

19 so, there's no way did you say that to file anything and 12:26:06

20 everything, bad cases, no injury cases in the court system. 12:26:11

21 You said make sure that you talk to the doctors and have 12:26:19

22 the reports to back up what you are filing. 12:26:23

23 MR. ZIMMERMAN: Right, that's exactly what I 12:26:29

24 said. In fact, I used the words documented injury, I 12:26:32

25 believe, and we are not championing non-injury cases. And 12:26:37

1 I told the people not to file non-injury cases, but you 12:26:40
2 know, what's been thrown around here has a lot of spin on
3 it, and I just -- 12:26:44

4 THE COURT: I just wanted to make sure that I 12:26:44
5 didn't see anything inappropriate. 12:26:49

6 MR. ZIMMERMAN: I appreciate that, Your Honor. 12:26:51
7 All this snafu we got about in camera. The reason I filed 12:26:54
8 this as a letter, Your Honor, was because the last time I 12:26:59
9 was here and we put something on Verilaw like the punitive 12:27:03
10 damages motion, there was a lot of objection to that. So, 12:27:08
11 I wanted to put this into a letter. I didn't want these 12:27:11
12 reports to be out there farther than they need to go, and 12:27:15
13 these were the exact reports that were provided to the 12:27:20
14 defense counsel in Olander case. 12:27:24

15 I wanted the Court to know the fields, the scope, 12:27:26
16 the CV's of these people so that they understand that we 12:27:29
17 are not just going back trying to, like Mr. Beck said, 12:27:34
18 trying to shirk some responsibility or not do our work. We 12:27:39
19 have done substantial amounts of work and we want to make 12:27:43
20 the work usable. The nephrology, the pathology, the 12:27:47
21 pharmacology, the toxicology, rheumatology, neurology, the 12:27:50
22 epidology, and the cardiology, we can call them world-class 12:27:54
23 experts, you can call them anything you want, but they're 12:27:58
24 very fine experts that we have provided and we will be 12:27:59
25 utilizing. We think they should first be utilized in a 12:28:02

1 real setting of a trial, and then to the extent they can be 12:28:07
2 and should be used for common issues or generically use 12:28:10
3 them. I'm not trying to do anything other than that. 12:28:15

4 Now, I think the point of this whole letter was 12:28:20
5 to provide the Court with the understanding of what we are 12:28:22
6 doing. 12:28:25

7 The Court did order me on July 1st at the last 12:28:27
8 hearing to tell the Court what my plan for experts was, 12:28:32
9 what expert areas we will be disclosing and do that by July 12:28:38
10 1st. All I'm asking this Court to say is we cannot give 12:28:43
11 you our reports in final form on July 1st. It makes no 12:28:49
12 sense. We have continuing discovery to do whether Mr. Beck 12:28:53
13 believes it's helpful to these deposition programs or not, 12:28:58
14 we have to do it.

15 THE COURT: I understand the issues here. Let me 12:29:03
16 take that under advisement. I have to rule on it quickly 12:29:06
17 because there's a lot of things coming up. 12:29:10

18 MR. ZIMMERMAN: One last point. Your Honor, we 12:29:15
19 want to show the science. We can't hide behind anything. 12:29:17
20 We've got to show these cards. We were the Plaintiffs. 12:29:23
21 Doing it appropriately and doing it the way it would be the 12:29:25
22 best use for the people that we purport to be fiduciaries 12:29:30
23 to, that's ongoing. Doing it appropriately and doing it 12:29:35
24 right is the message we want to give to the PSC -- from the 12:29:39
25 PSC to the field of lawyers looking upon us for help in 12:29:44

1 their cases. Thank you, Your Honor. 12:29:50

2 THE COURT: I'll take this matter under 12:29:51

3 advisement. There is one question I want to ask Mr. Beck. 12:29:54

4 You threw it out when I was dealing with coordination. I 12:29:57

5 just heard it all the time from the state lawyers. We do 12:30:05

6 it better. We have the best. I just want to make sure 12:30:09

7 that I heard you correctly that you said that Sol Weiss 12:30:19

8 said he has better experts than the MDL on the Rhabdo 12:30:22

9 cases. Does that mean that they are going to get better 12:30:27

10 settlements from you just because they have better experts? 12:30:33

11 MR. BECK: First of all, I don't believe anything 12:30:34

12 Sol Weiss says. Everybody I've talked to about their 12:30:36

13 cases, Sol Weiss is not alone. Mark Robinson and Ramon 12:30:42

14 Lopez said they have the experts in the world. And Bucky 12:30:48

15 says they have the best experts in the world. So, all 12:30:50

16 these guys claim that they have the best experts.

17 THE COURT: I just want to make sure that Bayer 12:30:54

18 is not -- since you pointed Mr. Weiss out as having better 12:31:00

19 experts -- 12:31:12

20 MR. BECK: No, no, I'm sorry, Judge. I pointed 12:31:13

21 Mr. Weiss out as claiming he had better experts. 12:31:17

22 THE COURT: Claiming that he has better experts. 12:31:20

23 MR. BECK: He also says he's a better trial 12:31:24

24 lawyer than anybody else, Your Honor, and that his venue is 12:31:27

25 more plaintiff friendly than anyone else. There's a whole 12:31:30

1 host of reasons why Mr. Weiss thinks his cases are 12:31:34

2 extremely valuable. 12:31:38

3 THE COURT: I understand that. You're the number 12:31:41

4 one guy in trials so far. So, they have got to beat you 12:31:44

5 and they haven't been able to do that. My question is 12:31:49

6 whether or not -- are you saying that Philadelphia lawyers 12:31:53

7 are going to get better settlements than California, Texas 12:31:57

8 and the MDL because they allegedly have gotten better 12:32:04

9 experts. 12:32:08

10 MR. BECK: No, I'm not saying that. I don't know 12:32:11

11 if they are going to get any settlements. We're 12:32:13

12 negotiating with them and trying to resolve them and they 12:32:14

13 think their cases are worth a lot, and they are in the 12:32:18

14 negotiation process like we are where lots of other 12:32:21

15 Plaintiffs' lawyers around the country, and we're trying to 12:32:26

16 treat everybody fairly and equally. 12:32:29

17 THE COURT: That's all I want to hear. Anything 12:32:32

18 else? 12:32:37

19 MR. ZIMMERMAN: Not on this issue, Your Honor. I 12:32:39

20 think you now have this under advisement. We have more on 12:32:41

21 the calendar. 12:32:43

22 We got this continuing issue of trial settings, 12:32:50

23 Your Honor. I thought we had an agreement on that and 12:32:56

24 apparently we don't. I believe that it's important 12:32:57

25 information. They will not provide it. I made a proposal 12:33:00

1 to Mr. Beck. I thought we had an agreement on it, and 12:33:05
2 apparently we do not. So, the only trials -- I have not 12:33:10
3 been provided a list of trials. I've been provided a list 12:33:13
4 of class actions which we talked about earlier. So, I 12:33:18
5 guess that matter is for the Court to decide what has to 12:33:23
6 happen there. If you want me to make arguments again, I 12:33:27
7 will -- 12:33:31

8 THE COURT: No, I don't. Well there are some 12:33:31
9 other MDL's running that you were involved in. Have 12:33:34
10 counsel provided the Steering Committee with trials like 12:33:38
11 Propulsid? 12:33:46

12 MR. ZIMMERMAN: Absolutely. Richards Arsenault 12:33:48
13 is the liaison counsel on the state cases in Propulsid. 12:33:52
14 I'm on the PSC. 12:34:00

15 THE COURT: Step forward. 12:34:00

16 MR. ARSENAULT: There has been a brief load of 12:34:00
17 information with regard to trial dates, deposition 12:34:04
18 settings. Sol Weiss has been involved in that case as 12:34:06
19 well. For many, many months we met on a weekly basis, the 12:34:09
20 state lawyers and the lawyers working on the MDL and 12:34:14
21 exchanged information with regard to trial dates and 12:34:18
22 discovery schedules and deponents that are going to be 12:34:22
23 deposed and so forth. 12:34:22

24 MR. BECK: That sounds like the Plaintiffs' 12:34:27
25 lawyers get together and swap information and we certainly 12:34:30

1 haven't suggested that they shouldn't or couldn't do that 12:34:33

2 here. 12:34:36

3 MR. ARSENAULT: It is my understanding as well, 12:34:37

4 Your Honor, that the Defendants did provide us with 12:34:38

5 information with regard to pending trial dates and, I 12:34:40

6 believe, provided that as well to Judge Fallon who is the 12:34:42

7 federal judge in New Orleans in charge of that MDL. 12:34:45

8 MR. BECK: I don't know if that's true or not. 12:34:48

9 Let me address the problems that we have here. I, too, 12:34:50

10 thought we had an agreement. I had explained to Mr. 12:34:55

11 Zimmerman that if he's talking about coordination 12:34:57

12 activities rather than trying to manipulate trial settings 12:34:59

13 to put pressure on us to extract higher dollars for 12:35:06

14 settlements, then I didn't have a problem with that. But I 12:35:12

15 had a problem with him using that information to then try 12:35:14

16 to sort of overload the zone, using the football analogy, 12:35:16

17 where they would pick months and say, let's all try to set 12:35:24

18 trials there because Beck can only be in one place at a 12:35:29

19 time, and he's got three or four other trial teams. But if 12:35:32

20 we overload the zone, they would be under pressure to 12:35:35

21 settle. I said that I didn't think that we should be 12:35:40

22 required to provide information that a defendant typically 12:35:45

23 provide in order to give them a tactical advantage in that 12:35:48

24 regard. He said I'm not going to use it that way, and I 12:35:50

25 said, fine. And on that basis, I thought we did have an 12:35:55

1 agreement. And then he went down to Melies and we were at 12:35:57
2 Melies, and it was here's our trial plan, and let's pile on 12:36:01
3 -- let's make it impossible for them to defend themselves 12:36:04
4 because there is so many cases, and given that's their 12:36:07
5 express strategy to try to force us to settle cases we 12:36:11
6 otherwise wouldn't settle, we don't think we should be 12:36:18
7 required to give them trial setting information to help 12:36:19
8 them do that. 12:36:23

9 MR. ARSENAULT: Judge, for many months we've had 12:36:23
10 weekly meet and confers with defense counsel, and it's my 12:36:26
11 understanding and I directly participated in many of those 12:36:29
12 weekly meet and confers where we were, in fact, receiving 12:36:32
13 on a very basis information with regard to trial dates 12:36:32
14 around the country. And to my knowledge we never took any 12:36:36
15 action whatsoever to try to pile on or to move anything in 12:36:40
16 any direction in terms of trying to set other trial dates 12:36:44
17 that would put Mr. Beck in a position where he can only be 12:36:47
18 in one place at one time. 12:36:54

19 MR. BECK: He hasn't read the e-mail that they 12:36:55
20 accidently sent to us that was circulated among all of the 12:37:02
21 Plaintiffs' lawyers say, you know, here's the number of 12:37:02
22 trials we know about from the information that Bayer has 12:37:03
23 given us in one of our meet and confers. Here's how many 12:37:06
24 trials are set for September. Let's keep the maximum 12:37:06
25 pressure on. 12:37:11

1 MR. ARSENAULT: He's correct, I have not seen 12:37:13

2 that. 12:37:14

3 MR. BECK: I can't help it if they sent it to me 12:37:14

4 and didn't send to him. 12:37:18

5 THE COURT: All right. I'll take this one under 12:37:19

6 advisement, and I'll still receive the list from defense 12:37:24

7 and also the class certification. Let's move on. 12:37:32

8 MR. ZIMMERMAN: I guess -- 12:37:34

9 THE COURT: Let's move on. I don't want to hear 12:37:36

10 anything. 12:37:38

11 MR. ZIMMERMAN: Report of the Special Master, 12:37:39

12 Your Honor. 12:37:42

13 MR. HAYDOCK: Your Honor, it's pretty short. 12:37:53

14 Non-controversial, probably mundane report, so, my 12:37:55

15 apologies. 12:38:00

16 The Common Benefit Trust Fund, as of the last 12:38:02

17 report, has a balance of \$5,036,284. Pursuant to Pretrial 12:38:05

18 Order 78, there have been several requests submitted to me 12:38:13

19 for repayment to some plaintiff state court lawyers for 12:38:18

20 cases that were initially remanded or removed to federal 12:38:21

21 court for repayment back of 6 percent hold back fees. One 12:38:27

22 decision has been issued which we do need to get on the 12:38:31

23 website. And there will be several other decisions issued 12:38:34

24 next week. 12:38:37

25 THE COURT: Make sure that we -- talk to Katie, 12:38:39

1 and we will get those on. 12:38:46

2 MR. HAYDOCK: Yes, Judge. Secondly, the 12:38:49

3 Compensation Committee has reviewed some recommendations 12:38:51

4 from accountants and myself to -- 12:38:53

5 THE COURT: Should we make a separate section for 12:38:59

6 those decisions so the state lawyers can go right to that 12:39:03

7 without having to figure that out? 12:39:08

8 MR. HAYDOCK: As long as that photograph of mine 12:39:11

9 won't go on that special section, I would be happy to do 12:39:14

10 that. 12:39:17

11 THE COURT: It shuts the system down. (Laughter). 12:39:18

12 MR. HAYDOCK: Indeed, so the Compensation 12:39:22

13 Committee has reviewed some recommendations for guidelines 12:39:26

14 for the submission by Plaintiffs' lawyers for attorney's 12:39:29

15 fees as well as expenses. We're working on refining those, 12:39:32

16 and we'll meet after the status conference and get a report 12:39:36

17 to the Court hopefully next week on that issue. 12:39:40

18 And, lastly, regarding the WALL seems to be going 12:39:43

19 smoothly according to reports from both Bayer and the 12:39:50

20 Plaintiffs' lawyers. The adverse report issue that was 12:39:52

21 raised earlier, they are still discussing. I'm aware of 12:39:56

22 their discussions. Hopefully, they'll resolve it. If not, 12:39:58

23 I'll assist them in that process. That's all, Judge. 12:40:01

24 THE COURT: Anything else Mr. Zimmerman? 12:40:07

25 MR. ZIMMERMAN: Next is the report on Melies 12:40:08

1 conference. I would like to read my remarks on the record. 12:40:11

2 THE COURT: The Court will rule they are already 12:40:16

3 in the record. Just submit it. 12:40:20

4 MR. ZIMMERMAN: There is nothing further to 12:40:26

5 report on that, Your Honor. I believe that does conclude 12:40:28

6 the agenda. I believe the Court said there were -- there 12:40:36

7 may be some additional matters that were not on the agenda. 12:40:40

8 THE COURT: Set the next status conference 12:40:44

9 starting on July 15th at ten, and also July 16th. We have 12:40:47

10 those two dates. 12:40:54

11 MR. ZIMMERMAN: Also ten if we start? 12:40:56

12 THE COURT: Yes. We'll adjust that. If it's a 12:41:00

13 carryover for the last couple of hours, we can start early 12:41:06

14 so people can get on planes and get out of here. 12:41:10

15 MR. ZIMMERMAN: I guess there is the Merck Medico 12:41:14

16 issues. 12:41:17

17 THE COURT: I just received those memos. I know 12:41:23

18 I'm going to have to look at the ethical rules. Even if I 12:41:23

19 sell the stock, I have to see what the things are. I don't 12:41:27

20 know what we'll do with four cases. It's just easier for 12:41:33

21 me to sell the stock and keep the four case than to try to 12:41:39

22 find another judge to handle those. I don't know what the 12:41:44

23 defense position would be on those issues. So, let's think 12:41:50

24 about it. It's easy for me to just sell some stock if it's 12:41:53

25 going to cause some problems. 12:41:57

1 MS. WEBER: Your Honor, I forward the 12:42:00
2 information. My colleagues are looking at it because we 12:42:02
3 haven't absorbed all of it. Why don't we, you know, keep 12:42:08
4 this for a little while. I'll check and see whether this 12:42:10
5 issues has come up with other MDL's. 12:42:15

6 THE COURT: Mr. Beck, it's not an issue that's 12:42:17
7 going to kick you out office. It's just four cases. 12:42:20

8 MR. BECK: That's a relief, Your Honor. 12:42:28
9 (Laughter).

10 THE COURT: We'll figure out how to deal with the 12:42:30
11 four cases. 12:42:32

12 MR. ZIMMERMAN: Were there any Plaintiff fact 12:42:37
13 sheet issues on for discussion today? 12:42:41

14 THE COURT: No. 12:42:43

15 MR. ZIMMERMAN: We are going to take something up 12:42:45
16 with regard to the next conference. We won't do it now. 12:42:47
17 It's getting late in the day. We have some issues with 12:42:50
18 regard to Plaintiff fact sheet, the way also the 12:42:52
19 deficiencies are being handled in different jurisdictions. 12:42:58
20 In Texas they are not dismissing cases if they are 12:43:01
21 deficient in the Plaintiff fact sheets. In the MDL they 12:43:06
22 are moving to dismiss. I want -- this came out at the 12:43:11
23 Melies conference about places where the Texas people came 12:43:16
24 in and said they don't dismiss our cases if we're 12:43:19
25 deficient. 12:43:22

1 MR. BECK: Now you are starting to believe the 12:43:25
2 Texas lawyers. Why don't they file something and then we 12:43:28
3 can respond because then we can explain exactly what we're 12:43:34
4 doing in these jurisdictions. 12:43:34

5 THE COURT: Why don't you do this. 12:43:34

6 MR. ZIMMERMAN: That's all I'm saying to the 12:43:38
7 Court. 12:43:41

8 THE COURT: I don't want to be known as a 12:43:41
9 draconian Judge if the jurisdictions are handling them 12:43:43
10 differently. So, let's file something quickly so we can 12:43:50
11 get that on the July calendar so you can -- I get that 12:43:53
12 straightened around if it needs to be straightened around. 12:44:00

13 MR. ZIMMERMAN: I'll do more homework other than 12:44:04
14 what I heard at Melies, but this is where it's coming from. 12:44:07
15 I'm just alerting the Court. Then we're also going to file 12:44:10
16 a deposition protection order for July as well. 12:44:13

17 So, that concludes my understanding of the agenda 12:44:17
18 unless there are additional items from others that I'm not 12:44:20
19 aware of. 12:44:23

20 THE COURT: Mr. Beck, anything further? 12:44:25

21 MR. BECK: No. 12:44:26

22 THE COURT: Anything further for the GSK? 12:44:27

23 MR. MAGAZINER: We have about a dozen items we 12:44:30
24 would like to raise. (Laughter). No, Your Honor. 12:44:34

25 THE COURT: We'll adjourn for this session and 12:44:41

1 I'll see you in July. 12:44:46

2 (Court adjourned for the day.)

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1 REPORTER'S CERTIFICATE

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

7

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14 Brenda E. Anderson, RPR

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