

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Baycol Products)	File No. 01-MD-1431
Litigation)	(MJD/SRN)
)	
)	Minneapolis, Minnesota
)	Tuesday, December 5, 2006
)	1:00 p.m.
)	

BEFORE THE HONORABLE SUSAN R. NELSON
UNITED STATES MAGISTRATE JUDGE

(TELEPHONE STATUS CONFERENCE)

APPEARANCES

For the Plaintiffs:	CHARLES ZIMMERMAN, ESQ. RICHARD LOCKRIDGE, ESQ. ELIZABETH CABRASER, ESQ. RANDY HOPPER, ESQ. MATT MOYLAN, ESQ. YVONNE FLAHERTY, ESQ.
For Defendant Bayer:	ADAM HOEFLICH, ESQ. PETER SIPKINS, ESQ. SUSAN WEBER, ESQ.
For Defendant GlaxoSmithKline:	FRED MAGAZINER, ESQ.
Also present:	ROGER HAYDOCK
Court Reporter:	TIMOTHY J. WILLETTE, RDR, CRR Official Court Reporter - U.S.D.C. 1005 United States Courthouse 300 South Fourth Street Minneapolis, Minnesota 55415 612.664.5108

1 (1:00 p.m.)

2 P R O C E E D I N G S

3 IN CHAMBERS

4 (PARTIES APPEARING VIA CONFERENCE CALL)

5 THE COURT: Let me call the case.

6 We are here today in the matter of In Re: Baycol

7 Products. This is MDL File Number 01-1431.

8 If we could begin by having counsel note your
9 appearances.

10 MR. LOCKRIDGE: Hi. Richard Lockridge on behalf
11 of --

12 (Windows message alert tone)

13 MR. LOCKRIDGE: -- Yvonne Flaherty with me from my
14 firm.

15 THE COURT: Mr. Lockridge, you're going to have to
16 speak a lot louder than that, please.

17 MR. LOCKRIDGE: Okay.

18 THE COURT: Thank you.

19 MR. ZIMMERMAN: Judge Nelson, this is Bucky
20 Zimmerman for the Plaintiffs' Steering Committee.

21 MS. CABRASER: Good afternoon, your Honor.
22 Elizabeth Cabraser for the Plaintiffs' Steering Committee.

23 MR. HOPPER: Good afternoon, your Honor. Randy
24 Hopper for the PSC.

25 MR. HOEFLICH: Good afternoon, your Honor. Adam

1 Hoeflich for Bayer Corporation and Bayer AG.

2 MS. WEBER: Good afternoon, your Honor. Susan
3 Weber for the Bayer defendants.

4 MR. SIPKINS: Good afternoon, your Honor. Peter
5 Sipkins for the Bayer defendants.

6 MR. MAGAZINER: Good afternoon, your Honor. Fred
7 Magainzer for GlaxoSmithKline.

8 THE COURT: Well, good afternoon to everyone. We
9 do have a court reporter here, Mr. Haydock is also present,
10 and my law clerk Dave Toepfer is also present.

11 We are here today to conduct a status conference in
12 this matter. The record should reflect that the parties have
13 submitted to the Court some submissions and the Court has
14 reviewed them carefully. I'd like to have each side, though,
15 make a brief presentation to me and then I'm going to raise
16 some issues for your consideration. Let's begin with the
17 Plaintiffs' Steering Committee.

18 MR. ZIMMERMAN: Your Honor, this is Bucky
19 Zimmerman. Unfortunately, the Plaintiffs' Steering Committee
20 is kind of spread out into various areas of the country, so
21 we can't really see each other and we weren't sure exactly
22 how the Court wanted us to proceed, but I will essentially
23 summarize where we are and what we view as being the place to
24 go from here.

25 THE COURT: Mr. Zimmerman, can I just interrupt

1 you one moment? I am having trouble hearing you.

2 MR. ZIMMERMAN: Okay.

3 THE COURT: I apologize for that. Are you on a
4 speakerphone?

5 MR. ZIMMERMAN: I'm on a cell phone,
6 unfortunately, and it's the only place I can talk, but maybe
7 Richard Lockridge, who's on a hard line, could proceed if
8 you're having trouble hearing me. Again, Judge, I apologize.

9 THE COURT: That's okay. I think if you speak
10 unusually loudly, that would help.

11 MR. ZIMMERMAN: Okay. Can you hear me better now?

12 THE COURT: Yes, as long as you speak loudly.
13 That'll be fine.

14 MR. ZIMMERMAN: Essentially, your Honor -- and
15 again, I don't want to go too long into this, because I know
16 you've got these letters, but we've had a very successful MDL
17 in many respects. Many thou -- several thousand cases have
18 been settled and many thousand cases have been dismissed.
19 The question that lies in front of us today is how to
20 effectively deal with the cases that remain, many of which
21 should be, in the judgment of the PSC, resolved for no
22 compensation or dismissed, many of which -- some of which, a
23 smaller number, we think should either be resolved through
24 settlement or remanded for trial. The issue that exists has
25 to do with how to do that efficiently and effectively.

1 For approximately the last year we've been engaged
2 in a practice which we now have a history to reflect upon,
3 which essentially shows us that the cases that remain,
4 although some of them serious in the sense that they
5 represent serious injuries that are less than rhabdomyolysis,
6 or we'll call rhabdos, are still not large in the scope of
7 damage returns that might be available within a settlement of
8 trial. And the problem that exists and the reason we're
9 trying to streamline the process going forward is, the
10 current regime of pressing forward with kind of -- sort of
11 unfettered case-specific discovery has for the most part
12 resulted in a lot of litigation fatigue, at least in our
13 view, but more importantly has not resulted in all of the
14 cases being addressed and we are looking at a significant
15 length of time in order to do that through the existing
16 regime that's in place.

17 We think a more efficient method can exist and
18 could be put into place, should be put into place, the result
19 of which will result in many cases being put in an
20 order-to-show-cause sort of system that I won't describe in
21 detail now but is described in the letter, which would result
22 in dismissals and some of which will result in them being
23 either available for mediation through the existing mediation
24 program, a global resolution of those several hundred cases
25 that might remain, or remand for trial in the event that no

1 resolution of these serious injury cases could exist.

2 We think that this MDL, which is now almost five
3 years old, in the next 12 months, if not less, will show us
4 what cases really require the type of focus because they
5 represent real serious cases of serious injury and what cases
6 then would have to be dealt through mediation, through
7 potential settlement, or to be remanded for trial.

8 THE COURT: Mr. Zimmerman, can I ask you a
9 question?

10 MR. ZIMMERMAN: Yes.

11 THE COURT: Are you aware of any non-rhabdo cases
12 that have been settled?

13 MR. ZIMMERMAN: Well, that's an interesting
14 question, your Honor. You know, it's sort of what the
15 definition of "is" is, I guess. I mean, we have -- there's
16 been sort of an interesting way of defining rhabdo over the
17 years and I think that -- it's been reported to me that
18 certain cases that look and smell, are close to rhabdo, have
19 been resolved, and I think Defendants have taken the position
20 that it's only rhabdos that have been resolved. I think if
21 you really drove down into them, you will find that there are
22 cases that have elevated labs and symptoms that represent
23 something that could or should or might have looked like
24 rhabdo or be close to rhabdo that have been resolved, but
25 honestly, I think only the defendants know what they've

1 resolved and I only know what has been resolved through the
2 efforts of my office or in conjunction with the advice
3 received from my office.

4 And I would say to you I believe there have been
5 cases that have been -- of serious injury that look or are
6 close to or are rhabdo-like or rhabdo lite that have been
7 resolved, but I can't swear to that because I don't have
8 those files in front of me. I don't know if anybody else on
9 the Plaintiffs' Steering Committee, like Yvonne or Dick or
10 Elizabeth, who are on this call, would have any other facts
11 that could support or even tell me that I'm wrong.

12 But I think what we've started out with, a regime
13 to settle only rhabdo which had a doctor's certification, if
14 you will, and I think some cases have been resolved as very
15 close to or serious enough that the defendants classified
16 them as such in order to settle them. And I don't say that
17 in a disparaging way. I'm just trying to be as honest about
18 facing that question as I could.

19 THE COURT: Thank you.

20 MR. ZIMMERMAN: Does anybody on the Plaintiffs'
21 Steering Committee have any further insight on that?

22 MS. CABRASER: This is Elizabeth. Most of my
23 firm's individual cases turned out to meet the defendants'
24 definition of rhabdomyolysis and they settled. We have
25 relatively small collections, 15 to 20 cases, that we

1 consider to be serious injury cases, but don't at least --
2 haven't yet met what the defendants consider to be settleable
3 case criteria. And I think by extrapolation there may be as
4 many as a couple of hundred cases in the litigation, your
5 Honor, that fall in that category that ought to be resolved
6 and they just are in a no-person's land between the
7 rhabdomyolysis cases which have -- which virtually all have
8 settled and then the larger number of cases that both sides
9 are concerned with that don't meet either rhabdomyolysis or
10 serious injury criteria.

11 THE COURT: Thank you.

12 MR. LOCKRIDGE: Your Honor, this is Dick
13 Lockridge. If I could just amplify very briefly.

14 Just so it's very clear to everybody, including the
15 defendants, what we are proposing is that the plaintiffs will
16 go through the remaining cases and analyze them ourselves --
17 I mean, basically we do know what's there -- and suggest that
18 a large number of these cases be put on sort of a show cause
19 calendar, if you will, which would then presumably allow the
20 individual plaintiffs' attorneys, if they wish to try to come
21 forward at that time, with some reason why the cases should
22 not be dismissed. Anticipating that most of those cases
23 would be dismissed, as Elizabeth Cabraser said, there would
24 be perhaps 200 to 300 cases left at that time, and then at
25 that time I guess we would propose a further conference or

1 conferences with the defendants and the Court to see if
2 there's anything to do with those two or 300 cases, but the
3 main thing is to try to get rid of all this underbrush, if
4 you will.

5 THE COURT: Okay. Anybody else on the Plaintiffs'
6 Committee wish to be heard?

7 MR. ZIMMERMAN: This is Bucky Zimmerman, your
8 Honor, again.

9 The only thing that I'm saying is that I think we
10 recognize that by taking depositions and having a program
11 where there's no remand in sight and that cases are just
12 being case-specific discovered with no outlet on the other
13 end and no criteria to try and determine how we might more
14 simply get to the cut between serious and certainly not
15 serious cases, that we kind of get into this perpetual
16 discovery of -- case-specific discovery, and I think we
17 defeat the purpose from the plaintiffs' point of view of
18 trying to be pragmatic about these decisions about which
19 cases could meet the criteria of serious versus cases that
20 are just there and need to be dealt with on a dismissal
21 calendar. So we're trying to be proactive and say, okay,
22 we've learned a lot in this area about what goes away and
23 what stays. Let's try and do it ourselves and then come back
24 at the end of the day without the litigation fatigue and the
25 expense to both sides, quite frankly, and see if we can deal

1 with them more appropriately. If we can, great; if we can't,
2 then the remand program could then be undertaken, which is
3 why the end game includes not just settlement, which may or
4 may not be in the cards, but also remand, which would be the
5 logical extension of this program.

6 THE COURT: Okay. Let's turn our attention to the
7 defense then.

8 MR. HOEFLICH: Your Honor, this is Adam Hoeflich.

9 We agree with Mr. Zimmerman that this MDL has been
10 a success. More than 3,000 cases of persons with serious
11 injuries have been voluntarily resolved by Bayer for more
12 than a billion dollars. We disagree on what cases remain.
13 We believe that the remaining cases are aches-and-pains cases
14 and we do not intend to settle the mass of cases that remain.
15 We believe that the Court should stay the course.

16 As early as PTO 4, Pretrial Order 4, I believe, the
17 Court said that case-specific discovery would take place in
18 the MDL, and in what was a carefully and thoroughly
19 negotiated order set forth in Pretrial Order 149, Judge Davis
20 set forth specific procedures for finishing case-specific
21 discovery. The first two phases of the procedures are
22 nearing completion with Phase I to be completed effectively
23 this year and Phase II being completed I believe by May of
24 next year. We are ready to embark on discovery for the last
25 two phases and we believe that that should take place.

1 I don't know what Mr. Lockridge or Mr. Zimmerman
2 are referring to with this order to show cause procedure, but
3 if they have cases they believe should be dismissed, they
4 should dismiss them. The other cases should not be stayed
5 and they should move toward discovery. I believe that we
6 should work with the Court and with the plaintiffs to put in
7 place a schedule for discovery and motion practice in the
8 remaining cases and to begin remands on an orderly course.
9 We don't disagree with that. We're not asking for everything
10 to be held in limbo indefinitely in the MDL. What we're
11 asking is to follow the procedures that Judge Davis put
12 forth.

13 I just briefly would like to address this argument
14 about litigation fatigue. That's just not the case. The
15 plaintiffs are abandoning their claims before any witness
16 testifies or immediately after their own depositions. The
17 defendants have been remarkably restrained and have taken
18 only those depositions necessary to defend themselves. I
19 believe there's only a handful of cases where there have been
20 five or more depositions, maybe ten or 15 cases. It would be
21 enormously inefficient to have case-specific discovery take
22 place anyplace except in this MDL. Cases are going away
23 before enormous file shuffling that would have to take place
24 between Judge Davis' courtroom and the courts that were the
25 original transferor courts. We don't see any reason for

1 further settlement discussions with the plaintiffs on these
2 cases. If there are rhabdo cases, of course we want to use
3 the mediation procedures that Judge Davis has set forth, but
4 the other cases should be prepared for remand the same way
5 the other ones have been prepared for remand and we should go
6 through the Daubert hearings and the motion process just like
7 Judge Davis has prepared.

8 So, we think that Phases III and IV can be
9 compressed somewhat and we are more than happy to work with
10 the Court to work on a proposed schedule that would compress
11 those phases, but we're not interested in stopping the MDL
12 and trying to engage in settlement talks at this point. We
13 don't believe that would be fruitful. We've been there,
14 we've tried that. It would not be productive. We're not
15 prepared to resolve these hundreds of cases that the
16 plaintiffs are talking about and we'd like to proceed
17 according to the pretrial orders that Judge Davis has set
18 forth.

19 THE COURT: Any response from the plaintiffs?

20 MR. LOCKRIDGE: This is Lockridge again.

21 Well, notwithstanding the rhetoric, I don't think
22 there's any really fundamental disagreements here, quite
23 frankly. Our proposal is that the plaintiffs will make an
24 effort to try to lead up on what we think are the
25 inappropriate cases and that's why we suggested the order to

1 show cause calendar. That also helps us deal with some of
2 the individual plaintiffs' attorneys and that's certainly
3 fine with us to have the cases be remanded, the remaining
4 several hundred cases that are there to be remanded from the
5 district where they came, your Honor, and we're not asking
6 for a stay of discovery either.

7 MR. HOPPER: Your Honor, this is Randy Hopper.

8 With all due respect to my friend and colleague,
9 Mr. Hoeflich, we were brought before your Honor now by Judge
10 Davis, notwithstanding those orders that Mr. Hoeflich
11 referred to, to try to find a way to streamline this MDL, and
12 he's doing anything but trying to streamline the MDL. In
13 fact, what you heard him say and argue is stay the course,
14 stay the course, stay the course. That's not what Judge
15 Davis asked us to do at all. Judge Davis asked us to come
16 before your Honor and to attempt to streamline this MDL and
17 to find some creative solutions with your Honor to accomplish
18 that. And the plaintiffs have put before your Honor what we
19 believe is a very significant step in that direction, and
20 trying to stay the course and keep this MDL going as we told
21 Judge Davis, but unfortunately your Honor was not present to
22 hear before we joined your Honor in front of you, is that to
23 stay the course that Mr. Hoeflich is continuing to propose
24 and Defendants want to carry on with takes us well into 2008,
25 your Honor. That's not at all what Judge Davis is hoping to

1 achieve here with the MDL at this point.

2 What we're trying to do is to reach a point without
3 having to say whether it's settlement, whether it's remand,
4 whether it's mediation, whatever the outcome may be once we
5 continue through with the process that we propose, to bring
6 this MDL to a close after nearly five years on the 18th of
7 December, in just a few more days, your Honor, five years.
8 And I think that's the goal and that's the end that we're
9 looking to achieve and what Judge Davis has brought us here
10 before your Honor to do and what we're all expected to work
11 toward now. With all due respect, Mr. Hoeflich's plan of
12 stay the course is not toward that end or that goal at all.

13 MR. HOEFLICH: Randy, just to avoid confusion so
14 that you know, first, if you have a procedure, again, on
15 dismissing cases sooner, we're happy to look at it and I'd
16 urge you to send it to us.

17 Second, maybe I wasn't clear enough about this. We
18 agree on compressing the schedule, so we would propose that
19 Phases III and IV be moved up in time and we're happy to work
20 with the Court and with the plaintiffs on that, so there may
21 not be as much disagreement as you're suggesting.

22 MR. HOPPER: That's good.

23 MR. HOEFLICH: And we believe as well that we
24 should move forward and we're not suggesting anything other
25 than moving expeditiously through the process.

1 MS. WEBER: And if I can add a couple words here.
2 This is Susan Weber.

3 You know, in addition to proposing a mechanism for
4 moving up Phases III and IV, we have also suggested a
5 specific procedure for starting a remand process on a rolling
6 basis that would provide for a mechanism for mediation,
7 rhabdo cases, through the procedures we've already got in
8 place with the Court and so that that process could go
9 forward. And I would anticipate on the type of schedule
10 we've been contemplating there would be, you know, remands
11 during this upcoming calendar year depending on how quickly
12 the JPML moves them, and we all know that's beyond everyone's
13 control here.

14 MR. MAGAZINER: This is Fred Magaziner, your
15 Honor.

16 THE COURT: Yes.

17 MR. MAGAZINER: Just one quick observation, which
18 is, if the plaintiffs take the responsibility of dismissing
19 the cases that they think could be dismissed and the number
20 of cases in the MDL drops precipitously from where it is now
21 to, let's say, only a hundred cases or so, obviously that
22 will enable the parties to discuss more realistically what
23 kind of schedule is appropriate to process those cases. The
24 fewer cases that remain, the more quickly it can all be done.

25 MS. WEBER: That's actually why PTO 149 only

1 provided schedules for Phases I and II. The idea was we'd
2 figure out what happened with the first couple of phases, see
3 how the timetables played out and how many cases actually
4 made it to that point in the discovery process. Then we
5 could set a timetable for III and IV, and also, the order
6 specifically provided that the remand process would be --

7 MR. HOPPER: But the difference, your Honor --
8 Randy Hopper again -- is that we believe that Judge Davis has
9 put us here -- this is a new day and that we don't see the
10 need to continue with this exceedingly expensive discovery
11 and process and layer upon layer upon layer of judicial
12 process in order to get to the end. Whether we're going to
13 call it expediting Phases III and IV or not, we're prepared
14 to take a major step forward with the remaining inventory to
15 achieve that without all this layering of judicial process
16 and without all this expensive discovery, which as Bucky said
17 is expensive for both sides.

18 MR. HOEFLICH: Again, we welcome any mechanism the
19 plaintiffs want to use to dismiss cases. What we can't agree
20 to is to give up discovery in any cases that remain and the
21 plaintiffs wish to try. We're entitled to defend
22 ourselves --

23 MR. HOPPER: And we agree with that, Adam. I
24 think --

25 MR. HOEFLICH: Okay.

1 THE COURT: Hey, hey, gentlemen. Counsel?
2 Counsel? The poor court reporter is trying his best to get
3 all of this, so before you speak, if you could identify
4 yourself.

5 MR. HOEFLICH: This is Adam Hoeflich. And so we
6 would very much like to look at whatever Plaintiffs are
7 proposing, because we favor dismissals as much or more than
8 the plaintiffs do, but what we don't want to do is forfeit
9 any rights to discovery in cases that will proceed to trial.
10 We need to defend ourselves and we're entitled to do that.

11 THE COURT: Okay. Let's have the Court for a
12 moment throw out some thoughts here.

13 I think that the parties are really headed in the
14 right direction. I can see that you have some disagreements,
15 but I think everybody's prepared to streamline things.

16 I do think Mr. Hopper is correct to a certain
17 extent that this is a bit of a new day, because we're trying
18 to sort of take a hard look at PTO 149 to see if there's some
19 ways in which we can't streamline this litigation and at the
20 same time, of course, preserve everybody's rights to the
21 discovery they need.

22 I am going to make some suggestions. That's all
23 they are at this point. I'd like some feedback on them and
24 then I will end up getting back to the parties on some of
25 these thoughts.

1 First of all, the Court is pleased, as I think
2 everyone is, with the Plaintiffs' Committee's suggestion that
3 they meet and confer and make a concerted effort to dismiss
4 cases that do not involve valid injuries, and I think the
5 Court will certainly encourage that to occur.

6 With respect to this order to show cause calendar,
7 I'm not sure exactly how that works and I'd need a little bit
8 more feedback from the plaintiffs on what they anticipate,
9 but I imagine dozens and dozens of plaintiffs' lawyers coming
10 and asking the Court to make threshold medical
11 determinations, which doesn't seem quite right. I suspect
12 that those dismissals will have to be by agreement and if
13 they're not by agreement, those cases will proceed to the
14 next step.

15 My third thought is this: Although every MDL has
16 its own goals and this MDL's goals clearly from the beginning
17 have been to make these cases trial ready before remand, it
18 is unclear to me whether that is necessary at this stage.
19 After all, the original goals of MDLs were to streamline
20 generic discovery. It made sense for the parties to come
21 before one court and ensure that the generic fact and generic
22 expert discovery was streamlined and accomplished, and that
23 has been done here and will be completed after the Daubert
24 hearings.

25 With respect to case-specific discovery, MDLs

1 operate differently. We often get remands as judges here
2 from MDLs where there is some case-specific discovery
3 remaining, and usually that case-specific discovery is
4 case-specific expert discovery and it's often treating
5 physicians.

6 So I just throw this out to you: If the first step
7 were for there to be a meet-and-confer where a substantial
8 number of these cases were dismissed and the second step was
9 that case-specific fact discovery proceed but not
10 case-specific expert discovery, leading then to a trial or
11 more here of Minnesota cases -- now, the Minnesota cases --
12 and I understand there are six of them left in Phase I and
13 II. I don't know how many are in Phase III and IV -- those
14 would go through case-specific fact and expert discovery and
15 be prepared for trial and tried. We'd like to get those
16 tried by the end of next year. And the non-Minnesota cases,
17 once case-specific fact discovery is concluded, would be
18 remanded. I think that schedule would permit us in the year
19 2007 to remand or try all of these cases and conclude all
20 generic discovery and all case-specific fact discovery.

21 Let me ask for some feedback on those thoughts.
22 Let's begin with the plaintiffs.

23 MR. ZIMMERMAN: This is Bucky Zimmerman, your
24 Honor.

25 I think we're being -- we're close to what we think

1 is the way that we can get to the end in 2007. The
2 meet-and-confer and work on dismissals requires cooperation
3 and we've had difficulty in the last year with cooperation,
4 but perhaps with the help of the Court and the new era that
5 we're trying to embark on, I'm confident that we can do that.

6 With regard to the order to show cause, I think
7 you're right. I think we have to get -- the order to show
8 cause is simply a vehicle to try and get Plaintiffs' counsel
9 and defense counsel to agree on dismissal. Obviously defense
10 will agree. It's getting Plaintiffs' counsel to agree. And
11 the Plaintiffs' Steering Committee is willing to take that
12 step to promote that dismissal within our judgment that is
13 appropriate. Our judgment may be challenged at times and
14 then we may be at the end of our power, but we're willing to
15 do that in the interest of getting this case much more
16 narrowed.

17 With regard to trial ready at the end of the year,
18 sure. I think we can do that and try the Minnesota cases
19 that need to be tried. I can't sit here and say for sure
20 what those cases should be, the order, how they should be
21 grouped, how they should not be grouped. I'd like to leave
22 that for another day, but certainly that is an appropriate
23 goal for the Minnesota cases, if they need to be tried, to
24 try them.

25 And then with regard to the remand of the other

1 cases in that same time frame, it's only the discovery that
2 needs to occur occurring, we support that notion as well.

3 The only caveat I have, your Honor, to all of this
4 is this idea which I think we have a little bit of disconnect
5 on which I hope the Court has now helped us with, which is
6 the idea that we need to try and find a better way to get to
7 the end rather than the stay-the-course way, and I think we
8 can work within that as long as the parties are given that
9 direction and that mandate, if you will, by the Court.

10 So I'm in support of basically what the Court has
11 outlined and I think it's workable. Obviously I'm just
12 trying it on for the first time. There may be some need for
13 us on the plaintiffs' side to discuss it further, but at the
14 risk of putting myself out on a limb, those are my thoughts.

15 MR. HOEFLICH: Your Honor, this is Adam Hoeflich.

16 I have obviously the same need to discuss with my
17 colleagues the Court's proposal; however, I would have some
18 significant concerns about it.

19 From early on in this MDL, Judge Davis proposed I
20 believe what he called put a bow on the cases before they get
21 sent back for remand, and the reason that Judge Davis
22 proposed that was because there is great efficiency in
23 coordinating proceedings before they go back to the
24 transferor courts. What the Court envisioned and put in
25 place in PTO 149 was not just having case-specific fact

1 discovery take place here, but also the case-specific expert
2 discovery, and one of the reasons the Court set that forth
3 was so that motions of the same nature and kind could be
4 filed in this court to be ruled on by Judge Davis. If we
5 were to go to the transferor courts before going through
6 expert discovery, we would have courts throughout the United
7 States deciding on similar motions and we would lose an
8 enormous amount of the efficiency and coordination of the
9 MDL, and that is not what the Court put in place as early as
10 2002 when we first started looking at these cases. And PTO
11 149 is very clear that one of the reasons we're having the
12 Daubert motions here is so that motion practice can take
13 place in this court after the work of this Court has been
14 completed, and to hold otherwise would have all of the
15 parties going to transferor courts around the country and
16 having them burden their dockets with what could be done once
17 rather than on several fronts.

18 THE COURT: Now, Mr. Hoeflich, don't you draw a
19 distinction between case-specific expert discovery and
20 generic expert discovery?

21 MR. HOEFLICH: No, your Honor, I believe they are
22 different, but I believe the case-specific discovery should
23 be dealt with in this court for many reasons.

24 For example, when we're dealing with the
25 aches-and-pains cases, we're dealing with alleged side

1 effects that occurred no more frequently than either
2 disclosed in the label or with other statins, and we would
3 think that Judge Davis would deal with those motions in the
4 first instance rather than having courts throughout the
5 United States deal with motions based on that who haven't
6 been familiar with the cases for several years. So, while I
7 understand that Judge Davis will deal with Daubert motions,
8 there's an enormous benefit to having him deal with
9 case-specific motions as well.

10 Or, for example, where the Plaintiffs' Steering
11 Committee has an enormous number of plaintiffs looked at by
12 the same experts and the cases may come from different
13 jurisdictions, motions concerning those experts should go to
14 one court. They should go to Judge Davis and they shouldn't
15 have to be heard by judges across the United States at
16 different times rather than once. That's exactly the
17 reasoning behind the diet drug case that we cited to the
18 Court when it heard this and decided it the first time, it's
19 the reasoning behind I believe the In re Patnaude case from
20 the Third Circuit, and it's why the Judicial Panel on
21 Multi-District Litigation has been having cases worked up in
22 the transferee courts rather than the transferor courts.

23 So, we have given considerable thought to this and
24 briefed it in front of Judge Davis on several occasions. So
25 we agree on every front that there needs to be a mechanism to

1 move forward the MDL on an expedited basis and are more than
2 happy to work on that. We are willing to work with the
3 plaintiffs to accomplish dismissals as quickly as possible.
4 We are willing to work on remand process, including remands
5 and work on cases that were filed within the District of
6 Minnesota as quickly as possible. And I note that in
7 Phases I and II there were very few cases remaining filed in
8 the District of Minnesota, but again, we would suggest that
9 that compressed work be done in the MDL just as Judge Davis
10 had said it would be since the inception of this case.

11 MR. MAGAZINER: Your Honor, this is Fred
12 Magaziner. May I just add a point, please?

13 THE COURT: Sure.

14 MR. MAGAZINER: I agree completely with what Adam
15 Hoeflich has said and I think that perhaps your Honor would
16 benefit, if I may make the suggestion, if both parties were
17 to submit to you written submissions on the desirability of
18 having case-specific discovery take place in the MDL versus
19 on remand, and then after you receive the submissions from
20 both parties -- and I would suggest these not be ex parte,
21 they be admissions that are served on the opposing party as
22 well -- that after you've received the written submissions,
23 we could then reconvene and have a discussion, or argument,
24 if you will, with your Honor on that issue, because it is an
25 issue of great importance and I think your Honor might

1 benefit from having both parties present their best arguments
2 on that issue.

3 MS. WEBER: Your Honor, Susan Weber.

4 THE COURT: Yes.

5 MS. WEBER: One of the specific points on this is
6 that, with respect to coordinating the case-specific experts,
7 I know what the expert team has been doing, which is taking
8 -- it's the same expert that shows up in 20 cases in a phase.
9 They've been lining up the cases one after another and going
10 through them with the experts, so that greatly simplifies the
11 project of scheduling the expert's time and going through the
12 cases as efficiently as possible. If we end up with bad
13 expert discovery scattered to a number of district courts,
14 we're going to have logistics issues, and we could, you know,
15 explain that to you in greater detail in a brief.

16 THE COURT: Anybody else wish to respond?

17 MS. CABRASER: Just a couple of footnotes, your
18 Honor, on the order to show cause process.

19 We didn't contemplate that the Court would be
20 called upon to make all of the rulings that you raised a
21 concern about. The procedure is there because although most
22 dismissals will probably be accomplished by agreement, we on
23 the PSC are charged with common benefit responsibility, but
24 we're not counsel of record in the underlying individual
25 cases and we cannot unilaterally cause a case to be

1 dismissed. We are willing to make the hard decisions and the
2 hard choices about which cases don't need criteria for
3 continuing in the federal system given the level of damages,
4 but there would need to be some procedure in place, hopefully
5 used only infrequently, if there were real disagreement
6 between those of us on the PSC making evaluations and counsel
7 of record in the case. I suspect that the number of cases
8 that would actually come up for hearing on such a calendar
9 would be very, very small, but it takes care of the due
10 process issue and it also reinforces the concept that we and
11 the Court and Defendants are serious about, making the
12 process work.

13 With respect to remand once common discovery and
14 common expert discovery has been completed, I think that is
15 the appropriate role of the MDL. My concern with keeping
16 cases in the MDL system when they have gotten through the
17 case-specific discovery phase is that it presupposes that a
18 particular state's law, or a particular district's law, or a
19 particular circuit's law is going to govern on an issue and
20 it may be stepping on the toes of the judges who will have
21 responsibility for conducting trials in those cases. So it
22 may solve in concept some coordination issues, but the
23 parties and counsel can continue to work those out in terms
24 of coordination post-remand, and it raises many, many other
25 issues which so far this MDL court has avoided, for example,

1 ruling on choice of law, having to consider what other
2 districts or what other circuits might rule on expert issues
3 or evidence issues.

4 MR. HOEFLICH: Your Honor, just briefly. Those
5 are issues that have been dealt with in this MDL before and I
6 believe in this context when the Court dealt with whether --
7 the requirements of Lone Pine orders under different laws.
8 Judge Davis very ably dealt with them, MDL courts deal with
9 choice-of-law issues all of the time, and the precedent for
10 completing the MDL's work in the MDL exists in light of the
11 concerns that Ms. Cabraser is raising. So we don't believe
12 that those are legitimate reasons to shut down the MDL. As
13 Mr. Magaziner suggested, if the Court wants briefing on this,
14 we're happy to brief it, but the great weight of authority is
15 for conducting the case-specific expert discovery in the MDL,
16 allowing Judge Davis to rule on issues so they're not ruled
17 on multiple times and burdening district courts around the
18 country and so that like issues can be dealt with together,
19 and we would propose that the Court continue to do what it
20 has said it would do since 2002.

21 THE COURT: Anybody else wish to speak?

22 MR. ZIMMERMAN: Yeah. This is Bucky Zimmerman. I
23 mean, I think the Court can see a very good case of some of
24 the things that tend to separate us. Let me step back and
25 propose that we look at this case at this point in time

1 slightly differently.

2 What I'm trying to say to the Court and to counsel
3 is, maybe we could have more objectivity and more direct
4 communication and come up with better answers once we have
5 two or 300 or maybe 50 to 150 cases and we know what they are
6 locked in this MDL rather than sit here today with several --
7 many thousands or when we sat here a year ago with almost
8 10,000. We're trying to change the emphasis, because we are
9 spending a ton of resources, both on our side and on their
10 side, fettering out, getting rid of cases that probably in
11 the federal court do not deserve the attention they are
12 getting in the magnitude of a federal case.

13 What we're saying to the Court and to counsel is,
14 let's put our heads together, see if we can get down to that
15 core of cases that we think are serious, we don't think are
16 rhabdo, we think should be resolved, you don't think should
17 be resolved, but see what we have at the end of that day --
18 maybe that's six months from now, maybe that's three months
19 from now -- and let's deal with these issues without all this
20 wheel spinning, brief writing, arguing over these very
21 interesting esoteric issues. But after five years we owe
22 ourselves -- we owe the Court the obligation to get out of
23 Dodge, if you will, to resolve and wrap up the cases, and I
24 think it might be better and easier to do when we know what's
25 left, we know what's there, we can identify them and figure

1 out the solution.

2 I know Adam says and he's said for a year, "We'll
3 never settle another case, we're not interested," blah, blah,
4 blah, blah, blah, and I hear that. I'm not -- you know, I'm
5 not Alice in Wonderland here, I'm not in Fantasyland, but
6 they can take that position, and if that is their position,
7 we'll figure out to how to deal with them. If their position
8 is -- whether it's 50 cases here that we think are
9 rhabdo-like or rhabdo lite, we think they're going to be more
10 expeditiously dealt with in some kind of a settlement
11 modality, we'll have the opportunity to identify them and
12 either side is not going to get scared by the fact that there
13 are just thousands of cases out here that may qualify for
14 compensation when they shouldn't have. So I'm trying to just
15 change the focus and see if we can approach it from the back
16 end when we know what's left as opposed to the front end when
17 we've got these thousands of potential problems.

18 MR. LOCKRIDGE: Can I amplify on that just very
19 briefly, your Honor? This is Dick Lockridge.

20 THE COURT: Sure.

21 MR. LOCKRIDGE: Just very briefly. I think that's
22 absolutely right. I mean, all this talk of more briefing and
23 so forth, we've briefed every issue ad nauseum with the
24 defendants for five years. I don't know why they want to do
25 that anymore.

1 The point is, I think within 60 days we can be down
2 to a very finite number of cases, be it 150 or 200, and at
3 that point, I think we should all then come back together and
4 revisit, because it's an entirely different ballgame and
5 entirely different case, 150 or 200 cases instead of four or
6 5,000.

7 THE COURT: Anybody else wish to be heard?

8 MS. CABRASER: Well, your Honor, just so you're
9 clear on how many plaintiffs we're dealing with at this point
10 in time. These are plaintiffs that we list in our discovery
11 rolls that list as active plaintiffs, so if there's a
12 stipulation to dismiss that's on Judge Davis' desk and it
13 hasn't been signed yet, I'm not counting it here.

14 We're down to about 42 plaintiffs from Phase I,
15 117 active plaintiffs in Phase II, which is the group that's
16 in the midst of discovery now, 423 plaintiffs in Phase III,
17 so -- that's the group that's been through the narrowing
18 process, the plaintiffs have not elected to dismiss on their
19 own at this point in time. And then with respect to Phase IV
20 where the narrowing process will only complete in January or
21 early February, we've got 1523 plaintiffs.

22 THE COURT: Okay.

23 MS. CABRASER: So there aren't 5,000 of them out
24 there. And you can see how the narrowing process is
25 functioning to reduce the volume of cases.

1 THE COURT: Okay. Well, here's my thought in
2 terms of what order we should do things in:

3 I think we shouldn't -- I think the very first
4 thing we should do is have the Plaintiffs' Steering Committee
5 meet and make a judgment and a recommendation about which
6 cases should be dismissed, and it's my understanding from
7 Mr. Zimmerman's schedule in his letter that he proposes an
8 update with the Court mid-January on that and completing that
9 process I think by the conclusion of January. I think we
10 ought to do that and see how many cases will go away that
11 way.

12 Ms. Cabraser, I'm intrigued by this
13 order-to-show-cause process. I'm not sure what authority the
14 Court has exactly to dismiss on that basis. I'm not familiar
15 enough. I mean, our usual orders to show cause have to do
16 with things like failing to prosecute and that sort of thing.
17 So for cases where the plaintiffs' attorneys have proceeded
18 appropriately and believe that there is merit to the case,
19 short of evaluating whether there's merit to the case, which
20 is what the Court wants to try to avoid doing at this stage,
21 I'm not sure how that works exactly. I think the best we can
22 do is have the Steering Committee make its recommendations
23 and see how many cases are dismissed at that point.

24 Now, obviously, those plaintiffs' lawyers who
25 choose not to follow the Steering Committee's recommendations

1 will have to jump right into discovery. But unless you can
2 clarify that further, I'm just not sure exactly what role the
3 Court could effectively play and I'm concerned that it might
4 involve 50 or a hundred motion hearings.

5 MS. CABRASER: Your Honor, I think it makes
6 absolute sense to do as you've suggested and go through the
7 evaluation process. I think at the end of the process we
8 will have a much clearer picture as to whether there would
9 even be any need for something like an OSC process, and if we
10 felt there was, we would also be able to qualify -- would
11 have to qualify exactly what that process meant and under
12 what federal rule authority the Court could proceed, so that
13 would be our job to figure out a workable rule/compliance
14 procedure to do that if there's a necessity to do that. I
15 think it is useful for the PSC to be able to represent that
16 it is proceeding under the authority of your Honor and Judge
17 Davis to conduct this process and to make recommendations
18 regarding dismissal. I think that alone may be sufficient to
19 signify that this is a serious process and that we're making
20 decisions that we hope will be enforced through agreement and
21 consensus about the cases that remain in the MDL.

22 THE COURT: Okay. So it's my thought that that
23 process would take place, we'd have an update on it
24 mid-January, hopefully completing the process by the
25 conclusion of January and then take a look and see where we

1 are. At that point, the Court will consider what the parties
2 have said on the phone today and if additional written
3 submissions are necessary whether we need case-specific
4 expert discovery before remand, but until that point, I think
5 that it makes more sense to go through the meet-and-confer
6 first before we address that issue.

7 The other part of this that I want all the parties
8 to keep in mind -- and this is slightly different than I
9 think how we've been proceeding in the past -- and that is,
10 the court does want to tee up these Minnesota cases for
11 trial, so we need to focus in on that as well.

12 I'm about to get my calendar here. If you could
13 take a look at your calendars so we can come up with a date
14 mid-January for the status conference. We can do it by phone
15 again, or if you'd like to be here, you can do it here. What
16 are your thoughts about that?

17 MR. LOCKRIDGE: Well, I was going to say, without
18 talking to Bucky or Randy here, I think it might be helpful
19 for us to appear before your Honor in person.

20 THE COURT: Any object --

21 MR. ZIMMERMAN: That would just be my comment,
22 your Honor. I think when we sit together and when we take
23 the time to focus and give it a day, things tend to happen.
24 We tend to be maybe more creative, which is really what I'm
25 calling for here and I think others on my side are calling

1 for, is really working hard to try and get creative and get
2 to the end and do what we have to do, and I think by
3 focusing, your Honor, and giving it a day in front of your
4 Honor, a few hours in front of your Honor, it would be
5 helpful. Obviously, if there's travel restrictions or family
6 problems, we can deal with them by adding some people in by
7 conference call, but that would be my preference if I had to
8 vote.

9 THE COURT: Okay. All right. Is January 8th too
10 quick for this process?

11 MS. WEBER: Your Honor, can I make a suggestion
12 about how -- and the PSC may already be contemplating this
13 with respect to their internal review process here, but it
14 doesn't make -- there are a certain number of cases with
15 respect to Phase IV that are probably going to go away under
16 the narrowing process based on our experience, and what would
17 make most sense is if the PSC could focus on the first three
18 phases, which would affect what would happen with the
19 discovery and remand process, whether there were, you know, a
20 few cases in there that it would be appropriate to mediate --
21 and, you know, I don't know how long the PSC needs to go
22 through it that way -- and then do the Phase IV cases after
23 the next narrowing order comes out from Judge Davis.

24 MR. LOCKRIDGE: No, your Honor, I don't think
25 that's --

1 MS. WEBER: That's not going to work, Dick?

2 MR. LOCKRIDGE: Susan, I think what we want to do
3 is -- and we can do it in two or three weeks --

4 MS. WEBER: Oh, okay.

5 MR. LOCKRIDGE: -- all of the phases and make our
6 recommendation. We can appear by the 8th if --

7 MS. WEBER: Okay. Great.

8 MR. LOCKRIDGE: -- if your Honor wants us to.

9 THE COURT: I mean, I know that the holidays
10 intervene there, and the question -- I want to give you
11 enough time to do it properly, so --

12 MR. ZIMMERMAN: The 8th is a little fast, I think,
13 your Honor, honestly, given the holidays. It's also a
14 Monday --

15 THE COURT: Yes.

16 MR. ZIMMERMAN: -- which is a hard travel day
17 right after the first of the year. If we can perhaps move it
18 into that next week, I think it gives us a little bit of
19 breathing room.

20 THE COURT: Okay. If you can hold one minute, I'm
21 going to get you a couple dates. One second, please.

22 (Pause)

23 THE COURT: All right. I can hear you debating
24 about -- give me an idea when you think this ought to be,
25 keeping in mind that the Daubert motions I think are the 18th

1 and 19th, is that right?

2 UNIDENTIFIED SPEAKER: 30th and 31st, your Honor.

3 THE COURT: All right.

4 UNIDENTIFIED SPEAKER: I think we were talking
5 about the 11th, Magistrate.

6 UNIDENTIFIED SPEAKER: Or the week of the 22nd.

7 THE COURT: All right. Just a minute.

8 MR. MAGAZINER: Judge, this is Fred Magaziner. As
9 you know, I represent GSK. What I was saying when you got
10 back on the phone is, since this is largely a Bayer show, if
11 your Honor finds that this is scheduled the week of the 15th,
12 I won't be able to participate then, but I can get someone
13 else to do it and I don't think the process would suffer.

14 THE COURT: Okay. All right.

15 UNIDENTIFIED PERSON: So the 16th is a possible
16 day, your Honor, and it's been proposed.

17 THE COURT: Okay. Well, let's see now. The 23rd
18 would work for me. The 24th would work for me. That's a
19 Tuesday and a Wednesday.

20 MR. ZIMMERMAN: These are good for me, your Honor
21 -- this is Bucky Zimmerman -- for whatever that's worth.

22 MR. LOCKRIDGE: This is Lockridge. The 24th does
23 not work for me, but again, if need be, if that's the best
24 date for everyone else, I will have to get someone --

25 MS. WEBER: The 23rd's good here. Adam, Peter?

1 UNIDENTIFIED SPEAKER: 23rd's fine with me, your
2 Honor.

3 THE COURT: Okay.

4 UNIDENTIFIED SPEAKER: With me also.

5 THE COURT: Okay. Very good. We will make it
6 January 23rd.

7 Now, before that, I think to make this process most
8 effective, I think it would be helpful to have a court order
9 defining just what the Court expects of the Plaintiffs'
10 Committee and perhaps more importantly what it expects of
11 Plaintiffs' counsel in response to the recommendations of the
12 committee, so two thoughts.

13 One is, I'd like the Plaintiffs' Committee to
14 propose an order and to run it by the defense and to consider
15 having Mr. Haydock present to talk to individual plaintiffs'
16 lawyers if necessary as a representative of the Court,
17 anything to impress upon Plaintiffs' counsel the importance
18 of being diligent about making this selection.

19 Any thoughts about that?

20 MR. ZIMMERMAN: This is Bucky Zimmerman, your
21 Honor. I don't -- with all due respect to Professor Haydock,
22 I think that probably isn't going to be very helpful to the
23 Plaintiffs' Steering Committee to have Mr. Haydock proposing
24 things like dismissal, and I just think that's going to
25 actually make it more difficult in some ways.

1 THE COURT: Okay. Well, a court order, though, I
2 think would be helpful, so why don't you propose a court
3 order. If you can have it to me in the next week, that would
4 be helpful.

5 Okay. So on the 23rd we will have an update. At
6 that point we'll make a judgment about going forward. I am
7 assuming that in the meantime discovery is going to be
8 stayed. Is that the assumption of the parties?

9 UNIDENTIFIED SPEAKER: Yes.

10 UNIDENTIFIED SPEAKER: Yes, your Honor.

11 UNIDENTIFIED SPEAKER: Yes, your Honor.

12 UNIDENTIFIED SPEAKER: No, your Honor.

13 THE COURT: Well, I don't think it makes sense to
14 proceed with discovery if what we're really trying to have
15 Plaintiffs' counsel do is focus on reducing these numbers
16 very significantly. I think that really helps streamline the
17 process and it will distract the process during the holidays
18 to be scheduling depositions around the country, so --

19 MS. CABRASER: Your Honor, if we had a stay, I can
20 tell you -- this is Elizabeth Cabraser, and I think Dick will
21 probably second or third this -- I can tell you that that
22 will enable us to put people on case evaluation for dismissal
23 that would otherwise be on deposition duty, and I think the
24 former at this point is much more important than the latter.

25 THE COURT: I agree with that.

1 MR. LOCKRIDGE: Yes, absolutely. This is Dick.
2 Absolutely.

3 THE COURT: It's a short period of time. It's a
4 very important process. I think it really will serve
5 everyone's interests, clearly will serve the defendants'
6 interests. So let's do that. There will be a stay until the
7 23rd. We will get together in my courtroom at 9:30 that
8 morning. In one week from today there will be a proposal for
9 a court order. I would like submissions in advance of the
10 23rd about what progress has been made. Given that that's a
11 Tuesday, I would like the submissions no later than the close
12 of business on the 19th.

13 MR. HOEFLICH: Your Honor, can the stay make clear
14 that it is being issued because the plaintiffs are working on
15 processes to dismiss cases? What would be unfair to
16 Defendants would be if a stay were to get out there and
17 people were to think it was because of some sort of
18 settlement talks that are not taking place.

19 MR. ZIMMERMAN: Oh, come on, Adam. We're not
20 going to say that. That isn't -- it gives me a little
21 leverage to go to people and say the heat's off discovery.
22 You got to comply with us.

23 MR. HOEFLICH: Well, I don't see the harm,
24 Bucky --

25 THE COURT: Counsel? Counsel, please don't argue

1 with each other on the phone.

2 MR. HOEFLICH: Bucky, my concern is not what
3 you'll say. It's from what people will read into it based on
4 what was said at public hearings. And there are no
5 settlement talks taking place and you're saying the reason
6 for the stay is that you can dismiss cases and there should
7 be no reason why Plaintiffs shouldn't hear the reason for the
8 stay.

9 THE COURT: Well, the proposed order is going to
10 set forth a process for the Steering Committee to make
11 recommendations about dismissal and it'll say in the interim,
12 until the 23rd of January, all discovery will be stayed. I
13 think that's plenty clear.

14 MR. HOEFLICH: Thank you, your Honor.

15 THE COURT: Anything further from the parties
16 today?

17 MS. WEBER: Just clarification with respect to one
18 case. I don't think this will be disputed, but I believe
19 there are plans to go forward with discovery and preservation
20 depositions in a case in which a plaintiff has requested
21 expedited remand. I believe the plaintiff's name is
22 Landrieu.

23 MR. MOYLAN: And, Susan -- Matt Moylan for Daniel
24 Becnel's office -- we've also -- we're the ones that moved
25 for that.

1 Your Honor, we'd ask that that still continue, as
2 it is set for tomorrow.

3 THE COURT: That's fine. That's fine.

4 MR. ZIMMERMAN: Just so I understand, your Honor,
5 we have submissions -- we have a proposed order that is
6 coming from us to be run by the other side, and when is that
7 due to your Honor?

8 THE COURT: That's due one week from today.

9 MR. ZIMMERMAN: One week from today. And then the
10 submission based on the progress of our proceedings, our
11 informal proceedings, that is due the Friday before the
12 hearing.

13 THE COURT: That's correct.

14 MR. ZIMMERMAN: Okay. Thank you.

15 MS. WEBER: Your Honor, will we have some sort of
16 report from the plaintiffs ahead of that time so that
17 Defendants will able to respond to where things stand?

18 THE COURT: That's a fair point.

19 UNIDENTIFIED SPEAKER: We can do that.

20 THE COURT: Okay. Can you do it by Monday the
21 15th?

22 MR. LOCKRIDGE: Yes, your Honor. Lockridge.
23 That's just fine.

24 THE COURT: All right. Now, just a ministerial
25 point. When you submit your submissions to me, if you would

1 please fax them or e-mail them to me directly and not through
2 the current Baycol e-mail system, and Peter Sipkins will
3 assist you in learning how to do that.

4 MR. SIPKINS: Hopefully, your Honor.

5 (Laughter)

6 UNIDENTIFIED SPEAKER: Your Honor, Peter Sipkins
7 hasn't assisted me with much. I don't know if I can rely on
8 that.

9 THE COURT: Well, you can always call my
10 secretary, too.

11 UNIDENTIFIED SPEAKER: All right.

12 THE COURT: Okay. Anything further from the
13 parties?

14 VARIOUS COUNSEL: Thank you, your Honor.

15 (Proceedings concluded at 2:10 p.m.)

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C E R T I F I C A T E

I, TIMOTHY J. WILLETTE, Official Court Reporter
for the United States District Court, do hereby
certify that the foregoing pages are a true and
accurate transcription of my shorthand notes,
taken in the aforementioned matter, to the best
of my skill and ability.

TIMOTHY J. WILLETTE, RDR, CRR
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