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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
In Re: Baycol Products Litigation) MDL No. 1431
)
) 1:30 a.m. o'clock
) December 12, 2002
) Minneapolis, MN
)
)

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

APPEARANCES:

ON BEHALF OF THE PLAINTIFF: CHARLES ZIMMERMAN, ESQ.
RICHARD LOCKRIDGE, ESQ.
STANLEY CHESLEY, ESQ.
EDWARD BLIZZARD, ESQ.

ON BEHALF OF THE DEFENDANT: ADAM HOEFLICH, ESQ.
PETER SIPKINS, ESQ.
SUSAN WEBER, ESQ.
FRED MAGAZINER, ESQ.
PETER SIPKINS, ESQ.

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1 THE CLERK: Multi-District Litigation Case No.
2 1431, In Re: Baycol Products. Please state your
3 appearances for the record.

4 MR. ZIMMERMAN: Charles Zimmerman for the
5 Plaintiffs.

6 MR. LOCKRIDGE: Richard Lockridge for the
7 Plaintiffs.

8 THE COURT: Good afternoon.

9 MR. CHESLEY: Stanley Chesley for the Plaintiffs.

10 THE COURT: Good afternoon.

11 MR. SIPKINS: Peter Sipkins for Bayer, Your
12 Honor.

13 THE COURT: Good afternoon.

14 MR. HOEFLICH: Adam Hoeflich for Bayer, Judge.

15 THE COURT: Good afternoon.

16 MR. MAGAZINER: Fred Magaziner for
17 GlaxoSmithKline.

18 THE COURT: Good afternoon.

19 MS. WEBER: Susan Weber for Bayer.

20 MR. MC CONNELL: Gary McConnell for Bayer.

21 THE COURT: Good afternoon.

22 MR. MARVIN: Douglas Marvin for Bayer.

23 THE COURT: Good afternoon.

24 MR. O'CONNOR: Joseph O'Connor for GSK.

25 THE COURT: Good afternoon.

1 MR. SMITH: Scott Smith, GSK.

2 MR. BLIZZARD: Ed Blizzard for the Plaintiffs.

3 MR. HOPPER: Randy Hopper, Plaintiffs.

4 MR. MOLL: Kenneth Moll, Plaintiffs.

5 MR. GOLDSER: Ron Goldser, Plaintiffs.

6 THE COURT: Special guest from Philadelphia.

7 MR. WEISS: Sol Weiss for the Plaintiffs.

8 MR. MEADOWS: Ted Meadows for Andy Birchfield.

9 MS. CABRASER: Elizabeth Cabraser, Plaintiffs.

10 THE COURT: Welcome. Mr. Zimmerman.

11 MR. ZIMMERMAN: Good afternoon. I was told

12 earlier in the week that historically this is the coldest

13 week of December.

14 THE COURT: It is.

15 MR. ZIMMERMAN: And we have been blessed by not

16 having --

17 THE COURT: This is the coldest day in the

18 history of the state of Minnesota. (Laughter.)

19 MR. ZIMMERMAN: As I appear before you, Your

20 Honor, it was darkest day. We're having a nice day today.

21 Your Honor, we have provided the Court and

22 counsel with a joint agenda and report of the status

23 conference. The parties met and conferred and put this

24 report together, and quite honestly, although there are

25 some issues I think we want to discuss with the Court,

1 there may be some issues we don't have perfect agreement
2 on, I think it's an agenda of which there is not much
3 dispute with regard to what's written here and not a lot of
4 positions that we really vary upon at this time.

5 If I could, Your Honor, and unless the Court has
6 any particular order, we would go through the order that's
7 in the agenda and report on these issues, and, of course,
8 if anyone has any questions, counsel or the Court, we're
9 happy to answer them.

10 The first issue, Your Honor, is the issue of
11 discovery. There is -- first issue of that would be the
12 documents, and what's interesting about this, Your Honor,
13 is that we continue to discuss the scope of production, the
14 timely production prior to depositions. As we told the
15 Court before, there is a little bit of an issue with regard
16 to getting depositions timely so that we can adequately
17 prepare for depositions, and they don't come on the eve or
18 near the eve. For the most part, it's a little bit
19 problematic, but we don't have the kinds of issues that
20 have risen to the level of motion practice. We know where
21 to go. We know what to do if it does. We don't have that
22 issue at this time. Is that a fair statement?

23 MR. HOEFLICH: I believe what's appropriate is
24 the parties are working together and the discovery schedule
25 is moving forward. From our perspective the Defendants

1 don't believe the Plaintiffs have anything to give rise to
2 any motion or any cause for complaint that would not be
3 justified to bring to court today, Judge. Everything is
4 moving forward as we hoped and we planned.

5 MR. ZIMMERMAN: And I guess our position is we
6 are having issues with regard to it, but nothing has risen
7 to the level of making a motion. I think that's what I
8 said, and I'll stick by that and we'll see what happens.

9 But with regard to document production, I think
10 the record will speak that we have an issue with regard to
11 certain issues, but we're proceeding in an appropriate
12 fashion.

13 Second, Your Honor, with regard to -- with regard
14 to depositions. We continue to have weekly meet and
15 confers, at least from the standpoint of the PSC and
16 defense counsel. We identified deponents. We select
17 corresponding dates and times and locations. We've
18 resolved as many different discovery disputes as we have.
19 And, then, we defined the deposition protocol accordingly
20 as we must -- as we go forward. Again, we continue to
21 experience some problems, but we work them through or we
22 attempt to work them through.

23 We are attempting at this time to finalize dates,
24 locations and protocol for the Bayer AG depositions. We
25 discussed that at some length this morning -- this

1 afternoon with the LAC Committee, and we made substantial
2 progress with regard to resolving all of those issues.
3 Those depositions are set to start in England on the 24th
4 of February. We have some issues. We're working them
5 through. Nothing that we need to raise I believe at this
6 time with the Court.

7 The Special Master was extremely helpful and
8 patient, as much as helpful today, in listening to all of
9 the concerns that people raised, but I think we are working
10 it through and we look forward to the depositions starting
11 in London on February 24th and proceeding.

12 The only issues that are involved that have to do
13 with the MDL is coordinated on that regard with the
14 Philadelphia and California coordinated proceedings. I
15 don't think we are having any problems with that at all.

16 There is a slight issue that has to do with the
17 Texas group and their participation, and I think Mr.
18 Blizzard could speak more directly to that because he
19 really is more directly involved with the Texas group, but
20 that will not in any way change what we do with the
21 coordination between Philadelphia and the MDL with regard
22 to the AG depositions which will take place beginning with
23 February 24th. I don't know, Ed, if you have a comment on
24 that or not.

25 MR. BLIZZARD: Your Honor, I believe the issues

1 are primarily with the lawyers in the Eighth Region in Fort
2 Worth. I've had various discussions and talks with them
3 about the coordination. Ultimately, I believe that they
4 will be able to coordinate. We're still working on it, and
5 I'm confident that all the lawyers in Texas will be able to
6 work through the problems and be able to work with the MDL
7 in Philadelphia and these depositions.

8 THE COURT: Thank you.

9 MR. ZIMMERMAN: Your Honor, that moves us to
10 briefly --

11 MR. HOEFLICH: Your Honor, we agree with what Mr.
12 Zimmerman said and we hope that Mr. Blizzard is correct.

13 THE COURT: Thank you.

14 MR. ZIMMERMAN: On the GlaxoSmithKline
15 depositions, the parties continue to confer on the
16 availability of the GSK witnesses and deposition
17 scheduling. We have secured numerous dates in anticipation
18 of finalizing different dates in the near future. In other
19 words, we are not having any significant problems with that
20 as we move forward. Anymore comments from GSK?

21 MR. MAGAZINER: That's accurate, Your Honor.

22 MR. ZIMMERMAN: Unequivocal, that's accurate.
23 I'm getting better. Five depositions took place in the
24 month of November, Your Honor, four Bayer and one GSK. We
25 have eight depositions scheduled for December, five Bayer

1 and two GSK. The other deponent is a non-party witness.
2 Four depositions so far scheduled in January, three Bayer
3 and one GSK, and one Bayer deposition is currently
4 scheduled for February of 2003, and that does not include
5 the Bayer AG depositions that I spoke about that are
6 commencing on the 24th.

7 The document -- that was really the end of my
8 report on deposition discovery. I was going to have a
9 comment on the document depository.

10 THE COURT: Go ahead.

11 MR. ZIMMERMAN: The document depository, Your
12 Honor, is working extremely efficiently and very well. We
13 are very pleased with the level of commitment by PSC
14 lawyers and contract lawyers and contract support people.
15 It's -- it's a pleasure to see the work product. And it's
16 really a pleasure to understand the kind of work that's
17 being done to not only review and code, but assemble them
18 in a form that allows for easy generation at the time of
19 depositions and retrieval on a remote and not -- electronic
20 and remote basis.

21 I don't want to give a complete report on the
22 deposition -- excuse me, document depository. At some time
23 we would like to invite the Court and court personnel to
24 take a look at it for their own information. It might
25 serve to be educational. I think it would be in some ways

1 inspirational to the people that work over there if that
2 invitation were ever to be taken up. I just extend that as
3 a possibility.

4 We're very proud of what's going on over there
5 and the work product that's being produced. The kind of
6 support the deposition takers are getting from it seems to
7 be very good.

8 That is essentially the end of the discovery
9 report. I don't know if the defendants have any further
10 comments.

11 MR. HOEFLICH: We have no further comment, Your
12 Honor.

13 THE COURT: You would not have any problems with
14 Mr. Sipkins going with me over to the document depository
15 so he can represent your side when I go over and visit.

16 MR. HOEFLICH: Of course not, Judge.

17 THE COURT: Mr. Sipkins, you wouldn't mind
18 wandering over there with me?

19 MR. ZIMMERMAN: Limping over.

20 MR. SIPKINS: I had some surgery, Your Honor, but
21 I will be well enough to limp over with you.

22 MR. ZIMMERMAN: Next, Your Honor, is the Canadian
23 coordination and this is just a matter of housekeeping.
24 There was a motion filed on December 5th pertaining to a
25 motion to intervene for the limited purpose of

1 participating in the discovery undertaken in this MDL by
2 the Canadians. The Defendants have opposed the motion and
3 will respond accordingly. We anticipated oral argument
4 possibly at the January status.

5 MR. HOEFLICH: That's accurate, Your Honor.

6 MR. ZIMMERMAN: Your Honor, trial issues I
7 believe is the next issue. This is, again, more
8 information. PSC is actively preparing for a trial when we
9 respectfully request that the Court provide us at some
10 point with a trial date in the first quarter of 2003. We
11 would also like to advise the Court that this is something
12 we would like to discuss with you at some time informally
13 to tell you what we think -- why we think this is important
14 and why we think we'll be ready in time.

15 I know we had a discussion about this at the last
16 pretrial, and I don't want to expand on that at all. I
17 just raise it as something that is the PSC's position. I
18 have some concern about this issue because I've been out
19 there representing that we are going to have an early trial
20 date in 2003, and I just want to make sure I understand
21 where the Court is coming from, and what I have to do amend
22 or modify or bring forward that early trial date.

23 MR. HOEFLICH: Your Honor.

24 THE COURT: Yes.

25 MR. HOEFLICH: Your Honor, Mr. Beck and the

1 Defendants addressed this topic in great detail at the last
2 status conference. We don't know what has changed, and for
3 a matter of efficiency, we don't believe that each party
4 needs to come to the status conference and reargue things
5 that are already before the Court. We believe this issue
6 has been discussed extensively and is already before the
7 Court.

8 THE COURT: It's always been a topic. I have no
9 problems dealing with this. This is an issue that should
10 be on the front burner of the Court, and for the Court
11 being updated on positions. I have no problems with that.
12 It's only taken a few minutes. I can tell you that the
13 date that I'm looking for right now is June 6th.

14 MR. HOEFLICH: Thank you, Judge.

15 MR. ZIMMERMAN: Your Honor, there is a brief
16 issue in here that has to do with a consideration of remand
17 of cases for trial. That's just a matter of information.
18 I believe a proposed order was provided to Susan a while
19 back. I don't think she has given us feedback on it.
20 We'll await her feedback. We are in no immediate hurry on
21 that.

22 MS. WEBER: We are discussing this issue with the
23 Steering Committee, Your Honor. We have some concerns
24 about rushing to enter an order dealing with an expedited
25 remand procedure where there really hasn't been pressing

1 demand for it, and we're concerned that putting it in place
2 could leave a number of people requesting remand when they
3 might not otherwise. But we do recognize that there might
4 be situations where it might be appropriate. So, we're
5 going to talk to the Steering Committee and see if we can
6 come up with a reasonable way to address the situation.

7 THE COURT: I think that's appropriate, but I
8 think the Court has acted in a timely manner on those
9 matters that have to be expedited. So, I'm not in the
10 frame of mind of setting up things that we don't need to
11 set up. I've been available for all of you for any motions
12 that you need, and that's going to continue. So, setting
13 up a mechanism that will have an unintended consequence, I
14 don't think is necessary.

15 MR. ZIMMERMAN: And we actually discussed that
16 this morning, Your Honor, and we are feeling the same way.
17 That if it's working -- if ain't broke, don't fix it, or
18 something like that. That's sort of our conclusion. We
19 did get a couple of requests -- if it ain't broke, don't
20 fix it, is that right?

21 THE COURT: Don't worry about it. You're not
22 going to be president. (Laughter.)

23 MR. ZIMMERMAN: I think I could be. But the
24 question of expedited remand really came from a specific
25 request. And I think although Susan is correct, I don't

1 think it's become an issue. I don't think we have to deal
2 with it, especially if we just laid it out, and that's why
3 I think we can talk it through, and there is no particular
4 hurry.

5 State court trial dates, Your Honor, the state
6 court trials. The Defendants report that the first Baycol
7 trial will commence in Corpus Christi in February 2003.
8 Additional state court trials are scheduled in Mississippi
9 and Texas in March and April of 2003. And I've just been
10 advised that there may be a trial date set in Nevada for
11 June of 2003, if I'm not mistaken. I don't have the order,
12 but that's what's been told to me in an e-mail.

13 I don't know that there are any others. Those
14 are the ones that I'm aware of. I would like the
15 defendants to let us know if there are others that should
16 be on our respective radar screens. I'm sure they are
17 starting to get set.

18 MR. HOEFLICH: Your Honor, we'll continue to keep
19 the Plaintiffs updated on the trial schedule. I believe we
20 tell Mr. Arsenault on a regular basis what the scheduled
21 trial dates are. We'll keep that up.

22 THE COURT: The first trial that's set, is that
23 moving forward or is that just a phantom date?

24 MR. HOEFLICH: No, I believe it's a real date.
25 There's a trial scheduled in Corpus Christi, Texas on

1 February 17, 2003, and we'll obviously see if the case is
2 resolved or whether it goes to trial.

3 THE COURT: What type of case is it?

4 MR. HOEFLICH: It is a Rhabdomyolysis case,
5 Judge.

6 MR. ZIMMERMAN: Single case?

7 MR. HOEFLICH: Yes, it is, Your Honor, a single
8 case.

9 MR. ZIMMERMAN: Federal mediation program, I
10 believe the Special Master is in a better position to
11 discuss it. Although we have had a meeting, actually
12 several discussions on it, but I would prefer that the
13 Special Master give his report on that.

14 THE COURT: Good afternoon.

15 MR. HAYDOCK: Good afternoon, Judge. The
16 Committee that you appointed to implement Pretrial Order 51
17 has agreed upon a proposed order, a copy of which I have
18 provided to you earlier today to implement a mediation
19 settlement program going forward as early as practical in
20 2003. The members of the committee, Bucky, Adam and Ron
21 Goldser and others who aren't here worked hard and
22 cooperatively to put the program together and look forward
23 to continuing the settlement efforts that have been going
24 on up to date and expand those as we enter 2003.

25 THE COURT: Okay. There was some issue for both

1 sides dealing with how this is going to be advertised at
2 some point. Are you going to get together and submit a
3 plan to me on how you want this advertised.

4 MR. ZIMMERMAN: Your Honor, we discussed that at
5 some length at Adam's office on Tuesday, and we struck real
6 language in there that talked about it, and we thought that
7 it would be something we might just discuss privately to
8 see what was within the comfort zone. When you talk about
9 advertising and you talk about federal judges, you want to
10 be very careful.

11 THE COURT: You should be careful with the word
12 advertise. What it's talking about is making sure people
13 know that the program is available.

14 MR. ZIMMERMAN: We have some ideas for that. I
15 think we're not in disagreement on it, but we didn't want
16 to be presumptuous.

17 MR. HOEFLICH: Your Honor, the agreement says
18 that both Plaintiffs and Defendants may reasonably promote
19 the settlement mediation program, and we are hopeful that
20 that will give both parties the flexibility to get the word
21 out there. We are very much in favor of the program, as I
22 know the plaintiffs are, and we will both endeavor to have
23 it make successful strides.

24 MR. ZIMMERMAN: One of the things we discussed
25 along that line was some kind of order we could distribute

1 to people the order of the Court with regard to the setting
2 up of this program. We all felt that that would have a lot
3 more interest to people as they received it than, perhaps,
4 a letter from myself. But we didn't want to do that or
5 take that step until we at least had the opportunity to see
6 if you were comfortable and what you would direct.

7 MR. HOEFLICH: I have no doubt that Mr. Zimmerman
8 will find a creative and successful way to market this.

9 THE COURT: I'm sure both sides will.

10 MR. HOEFLICH: Thank you, Judge.

11 THE COURT: Thank you.

12 MR. ZIMMERMAN: The Settlement Program, as
13 opposed to the Federal Mediation Program, Your Honor,
14 continues to be successful. I think when we were here last
15 time, we had about 75 cases settled -- more, and today we
16 are here with a hundred cases -- a little more than a
17 hundred cases settled within the MDL Settlement Program.
18 Approximately 25 cases are in negotiation right now in
19 addition to those hundred. Lawyers throughout the country
20 continue to express interest in it. It's amazing to us in
21 some ways that people continue to gain knowledge of it.
22 Even though it's probably been out there a while, and I
23 know myself I've sent a number of letters out, but people
24 are still learning about it and people are still responding
25 to the letters. It is continuing to catch people's

1 attention.

2 The program should, I believe, be even further
3 promoted to people because I think the understanding of it
4 and the realization of what you must do and the nuts and
5 bolts of it takes some time to sink into people and to
6 activate it.

7 Bayer is continuing to limit these serious cases
8 defined by them as Rhabdo or documented Rhabdo or close to
9 Rhabdo or Rhabdo is somewhere defined within the records,
10 or at least diagnosable from the records. We, of course,
11 wanted to expand that to other serious injury cases. We
12 have not been successful in doing that at this point, but
13 the program as they have defined it, and the program as we
14 participated in it has resulted in a good settlements, and
15 over a hundred of them to date with 25 more in negotiations
16 and more coming in on a regular basis.

17 I must advise the Court, although it is not a
18 floodgate, it's a trickle. Our office and other offices of
19 the MDL lawyers are getting inquiries, and we expeditiously
20 provide them with the necessary protocol. It's not a
21 floodgate. It's a trickle.

22 MR. HOEFLICH: Your Honor, I'm pleased to report
23 that we have now resolved, I believe, 275 or more cases
24 which is a significant increase. We are very pleased with
25 the progress the settlement program is making, and we are

1 hopeful that we continue to be able to announce progress at
2 each of our status conferences.

3 MR. ZIMMERMAN: PSC motion for class
4 certification, Your Honor, is the next issue unless there
5 are any questions about the Settlement Program.

6 THE COURT: You can answer this in private, but I
7 want to make sure that whatever we set up that there is not
8 going to be a bottleneck, and that people are going to be
9 disappointed in the program because it's not working
10 efficiently. So, I want to make sure that everything is in
11 place when we start that and we can talk about that.

12 MR. HOEFLICH: For the record, we have devoted an
13 enormous amount of resources, Shook, Hardy, so that we can
14 continue to turn around medical records and meet with
15 Plaintiffs on an expedited basis, even if we get a large
16 increase in the number of people coming to us. It's very
17 important to us as a company, and we'll endeavor to do that
18 in every way.

19 THE COURT: Thank you.

20 MR. HOEFLICH: Thank you.

21 MR. ZIMMERMAN: Your Honor, the next issue on the
22 agenda is the PSC's motion for class certification. I
23 believe Defendants will be filing their opposition brief on
24 the 13th, tomorrow. Is that right?

25 MS. WEBER: Yes.

1 MR. ZIMMERMAN: The reply brief by the PSC is
2 currently due on the 9th of January. We respectfully
3 request a brief extension to the 21st for submission of the
4 reply briefs, and I do not believe that the Defendants
5 object to that.

6 THE COURT: The Court does.

7 MR. ZIMMERMAN: The Court might.

8 THE COURT: Yes. Really, the time period I get
9 the materials, and we have a hearing, is a very short
10 period of time and that doesn't give the Court time to
11 digest everything. So, can we shorten that back from the
12 21st to the 14th?

13 MR. ZIMMERMAN: Yes, Your Honor. The 14th would
14 be fine. And as everyone knows from the order that came
15 out yesterday that the oral argument is now set for the 6th
16 of February and the 7th of February, if necessary, having
17 moved from, I believe, the 21st and 22nd.

18 The Pennsylvania class certification motion is
19 also something that we've been reporting to the Court on.
20 We do not believe that there has been a briefing schedule
21 set for this motion, although I'm not in the best position
22 to know. I suspect that there are better people in this
23 courtroom that know more than I on that --

24 THE COURT: Mr. Weiss had to leave.

25 MR. MAGAZINER: To the best of my knowledge that

1 is correct.

2 MR. ZIMMERMAN: With regard to the other matters,
3 Your Honor, Oklahoma, the status is the same as the last
4 time we reported. It's before the Court of Appeals. The
5 briefing is completed. Has oral argument been set? Not to
6 my knowledge. They may not even have oral argument.

7 MS. WEBER: That is correct.

8 MR. ZIMMERMAN: And that is, therefore, at the
9 stage where there is no further action being taken by the
10 parties at this time and we are awaiting -- they are
11 awaiting instruction from the Oklahoma Court of Appeals.

12 There are two class certifications motions filed
13 in Illinois state court. Defendants have advised that they
14 expect one of those to be withdrawn in Madison County. In
15 the Cook County case, no briefing schedule has been
16 established. So, keeping those on our radar screen, it
17 appears there are two motions. One may be withdrawn and
18 one there is no briefing schedule. Is that accurate?

19 MS. WEBER: That is accurate.

20 MR. ZIMMERMAN: I don't think there is anything
21 further, Your Honor, on class certification at this time
22 unless the Court has any questions.

23 THE COURT: Nothing. I don't.

24 MR. ZIMMERMAN: The negotiations with the
25 Medicare private insurers, this is the third-party payor

1 issue. This is something we have been advising the Court
2 on quite regularly. Defendants have met with counsel for
3 certain third-party payors, and discussions and
4 negotiations are continuing.

5 We recently learned that in Philadelphia there
6 was a class action filed by a group of third-party payors
7 seeking some kind of class certification with regard to
8 third-party payors. I have not seen this filing. I am not
9 aware of what it really tries to capture. I can anticipate
10 what it probably is trying to capture, which is a beach
11 head in Philadelphia for all these third-party payor cases
12 to be ultimately resolved. But, again, I haven't seen the
13 papers, and I don't know much about it. I think the
14 Defendants may be able to explain to the Court more than I
15 can. But what I would say to the Court, and I've said this
16 to defense counsel, is that the PSC really wants to be more
17 proactive in this and more involved, at least more
18 knowledgeable of it. We feel like something is happening
19 over there with regard to third-party payors. There are
20 discussions going on with regard to third-party payors, and
21 we don't get much information about it. We're not in the
22 loop, and if you're not in the loop, you're out of the
23 loop, and we are very much out of the loop.

24 We do have a liaison counsel, Joe Arshawsky. I
25 know he had a meeting with the people at Sidney and Austin

1 with regard to this. He has reported to me that there
2 hasn't been much transpiring that he's aware of or that he
3 could report to me in a written document that I can report
4 then to the Court.

5 It is the position of the PSC, and I think we
6 feel strongly about it, that we would like to be more
7 involved and more in the know and more proactive and at
8 least at the table. I don't think we would disrupt the
9 table, but we would like to be at the table.

10 I think it's the position of the Defendants that
11 they are doing fine without us. I guess I would like to
12 hear from them as to what they would like to do.

13 MR. HOEFLICH: Your Honor, discussions with
14 third-party payors continue. Mr. Zimmerman knows who the
15 third-party payors are. Mr. Arshawsky has been named the
16 liaison counsel for the third-party payors, and one of his
17 roles is to communicate substantive discussions with Mr.
18 Zimmerman, and I have no reason to believe he will not do
19 that.

20 Mr. Zimmerman also knows Kim West who came to the
21 meeting last month. I know that he knows Marvin Miller
22 who's representing Plaintiffs in Philadelphia. Our
23 discussions with any of the different third-party payors
24 are between us and them. To the extent that Mr. Zimmerman
25 has asked us, or Gene Scoon (phonetic) in particular, to

1 update him, I know that we are updating him, and the
2 third-party payors are free to discuss with Mr. Zimmerman
3 what they believe is appropriate. I don't believe that the
4 PSC should be involved in our direct negotiations with
5 third-party payors. I am not opposed to them being
6 apprised as appropriate, and we will continue to do that.

7 THE COURT: Thank you.

8 MR. HOEFLICH: Thank you, Judge.

9 MR. ZIMMERMAN: I don't think I would --

10 THE COURT: Adam, do you know anything about
11 what's happening on this motion in Philadelphia? Does
12 anyone know anything about that?

13 MR. HOEFLICH: I think Susan might be the better
14 person to address that.

15 MS. WEBER: The motion was very recently filed,
16 Your Honor. We don't have type of briefing schedule up,
17 and we don't have a feel yet on whether the Plaintiffs
18 there are really interested in pushing the motion at this
19 stage or whether they just want to get on record with it.
20 So, we're going to be talking with them over the next
21 several weeks about an appropriate timetable for briefing.
22 There hasn't been any discovery there. We're talking a
23 matter of months at a minimum.

24 MR. ZIMMERMAN: I think I've made my point, Your
25 Honor. We would like to be closer to the loop. I think,

1 Adam, in all due respect, you say I could call Gene Skoon
2 (phonetic) or talk to you about it, I could talk to anybody
3 about it, I think that's correct. But I do talk about it
4 and I don't really know too much about it. So, I don't
5 think we need to argue it. I'm not trying to do that. I
6 would like to get some direction from the Court on how
7 proactively you and I should share information, could share
8 information. And I think the question is if whether we
9 should be at the table or not be at the table, ultimately
10 we need to talk about it.

11 MR. HOEFLICH: These are clients represented by
12 other Plaintiffs' lawyers, Judge. I believe that it is not
13 up to us to involve Mr. Zimmerman with them. I believe
14 that's between Mr. Zimmerman and those Plaintiffs' lawyer.
15 I know you know Mr. Marvin well and you play golf with him.
16 And you know Mr. Persky well, and you've played golf with
17 Mr. Persky, and you know Joe Arshawsky.

18 I believe, Judge, it would be inappropriate for
19 any of us to try to inject the PSC in other Plaintiffs'
20 lawyers' negotiations that are outside this court, and I
21 wouldn't want to lead the Court in that direction. Those
22 Plaintiffs' lawyers are free to talk to Mr. Zimmerman. We
23 told him what is going on, so, I'm not sure what the
24 communications lapse is. I'm sure I understand why he
25 would like to be involved, but I think the current

1 situation is the appropriate one.

2 THE COURT: Bucky, what you have to do is invite
3 Adam to be a part of the foursome. (Laughter.)

4 MR. ZIMMERMAN: Then I really won't be involved.
5 (Laughter.)

6 MR. HOEFLICH: There are places I would be much
7 more comfortable competing with Mr. Zimmerman than on
8 playing field. (Laughter.)

9 MR. ZIMMERMAN: We'll keep pushing this one, Your
10 Honor. I think the record shows where we want to be and we
11 are not quite there. We'll keep working on it.

12 We talked about the punitive damages motion, and
13 I don't think anything more needs to be said about that.
14 We got the direction of the Court, and we will do what is
15 appropriate with regard to filing of a motion and doing
16 what is necessary with regard to making sure that that is
17 part of the issues with regard to the going forward of
18 complaints and proceedings.

19 The PSC Communication, Your Honor. I'm very
20 pleased really to report that we had a very successful
21 Miami conference. We had probably ninety people in the
22 room, probably twenty of those were PSC-connected people or
23 speakers of some kind. But we had a very good turnout and
24 a lot of very good information was provided. I think the
25 most important thing that I should say in open court is

1 that a lot of people really were excited to see what was
2 going on, what they can do with the work product, did they
3 want to try their case, and what they can do with their
4 client's case if they wanted to start getting it resolved
5 or getting it on a track to get it resolved now. Calls and
6 letters and follow up have been occurring.

7 It was so successful in that regard, that the PSC
8 is probably going to repeat this a number of times around
9 the country in the next several months.

10 Although it was in Miami, we had people from as
11 far away, I think, as Seattle, Washington, Oregon,
12 California. People enjoyed the program, but mostly they
13 came to learn and they came to understand what it is an MDL
14 does for them and what this settlement program can mean to
15 them.

16 As much as we are here intimately involved in it
17 and know about it 24 hours a day, these lawyers just don't.
18 And it was an eye opening for many of them. And a lot of
19 good connections and good communication came from it.

20 So, we're going to take this experience and go
21 further with it and see if we can repeat these and continue
22 to educate other people that have MDL cases or consider
23 being a part of the MDL to learn more about the work
24 product and the settlement program. So, we are very happy
25 with it. Anybody else?

1 MR. HOEFLICH: We have nothing to add, Judge.

2 MR. ZIMMERMAN: Update on cases and counsel,
3 Defendants report that there are 6,588 Baycol cases filed
4 to date, 4,176, Your Honor, filed in the federal court
5 system or removed into federal court, and 2,400 filed in
6 various state courts around the country.

7 The Defendants have forwarded to me recently the
8 names of counsel involved in both the state and federal
9 cases, and we appreciate that very much.

10 We have a little dispute, probably the most
11 exciting dispute we'll have before you today, which is they
12 have to provide us with the addresses as well as the names
13 because names are great, but they are a little hard to
14 communicate to or with unless you know where they are
15 located and what their addresses are. An e-mail address
16 would be great if they have that. But if it's a question
17 does the Court intend that they provide us these addresses
18 of counsel in the MDL and out of the MDL with their
19 addresses or mailing address or firm address so we can
20 communicate with them or is it just a perfunctory
21 obligation to provide the names and it's our obligation to
22 go figure out where they live and where they work and how
23 to communicate with them.

24 MR. HOEFLICH: Judge --

25 MR. ZIMMERMAN: Just a second. Do you mind?

1 MR. HOEFLICH: Of course, but go ahead.

2 MR. ZIMMERMAN: We're happy to try to work this
3 out. We met and conferred on it. We don't seem to have an
4 ability to resolve it right now. As I said, we just got
5 the database within the last several days, but we believe
6 that identifying addresses would and should be provided.
7 And it's not a horribly difficult issue. It's not one that
8 we are going to fight heavily about, but I just want the
9 Court to know that's one dispute that we are having.

10 MR. HOEFLICH: Your Honor, I believe the critical
11 words that Mr. Zimmerman spoke are if they have it. We
12 have given Mr. Zimmerman what we have and what we've
13 compiled. We gave him a database that includes addresses
14 and phone numbers and the like. We have given him our
15 database.

16 What we have not done is endeavored to go back
17 and find out addresses and phone numbers for law firms
18 whose names and addresses we don't have in our database.
19 We have not taken on ourselves to go do that task. It's
20 not something we would do for ourselves and that's
21 information that Mr. Zimmerman has in his own database, his
22 own addresses for his mailings, and we believe his access
23 to that information is the same way that we do.

24 Are we happy to cooperate with Mr. Zimmerman to
25 try to find this information together? Of course, we are,

1 but we don't believe we have an additional obligation to go
2 and have a team of people searching through phone books for
3 the addresses and phone numbers of Plaintiffs. We give him
4 everything we have and compile them on a regular basis and
5 provide him an updated database on a monthly basis.

6 The Court should also obtain in the near future a
7 copy of that database from us as well. We are happy to
8 work with Mr. Zimmerman and work this out. Our standing
9 point has been to go out and put a team of people on doing
10 something that hasn't been done. He has everything we do.

11 THE COURT: Last word.

12 MR. ZIMMERMAN: Can I comment on that?

13 THE COURT: Last word, yes.

14 MR. ZIMMERMAN: Where is the data? Who has the
15 data? A complaint comes in and the address of the lawyers
16 who are filing the complaint by law have to be on there.
17 Now, whether they take that data and then put it into a
18 database and it becomes the database they provide to us, I
19 can't comment on that. But they have the addresses. They
20 come in on the complaints. The complaints come into their
21 offices.

22 When you give me the name of Mr. Smith as the
23 attorney of record for Nancy Jones, or a file number that
24 is filed in Nevada, it's a difficult task to really find
25 that address and expensive because I do want to communicate

1 with Mr. Smith because I want to tell him there's a seminar
2 coming up in Texas next week or there's a settlement
3 program or there's a federal mediation. And if I don't
4 have that address, I don't have much.

5 If they want to give me the complaint so that we
6 can look through the complaint, that's better than looking
7 through a hundred phone books because it just doesn't make
8 sense. If they don't have that information, whether they
9 put it into this database that they have provided to us, I
10 can't speak to. I'm sure he's being honest when he says
11 it's not in that database. I think they have the
12 information, and I would hope that they will just provide
13 it to us and simplify this.

14 THE COURT: Again, the Court won't get involved
15 in this right away. But I will note this for the Special
16 Master. When we start getting the mediation program going,
17 this is one of the things that we'll have to have is the
18 names and addresses of the attorneys involved so the
19 parties will have that information that the Court has a
20 mediation program going.

21 MR. ZIMMERMAN: Your Honor, the next issue is the
22 escrow account. I believe that funds are now being held.
23 I believe we had a discussion in chambers last month about
24 that. I don't know that there is anything further that we
25 have to discuss. I believe we are awaiting the action of

1 the Court on the appointments of the appropriate trustees.
2 As I understand it, funds are flowing into an account
3 pursuant to the settlements, and there has been no problems
4 with that that we can speak of. It's just a question of
5 designation of the trustees and designation of the proper
6 accounts, and that's within Your Honor's discretion.

7 MR. HOEFLICH: We have nothing to add on that,
8 Your Honor.

9 THE COURT: Next.

10 MR. ZIMMERMAN: Privilege log, Your Honor. The
11 parties continue to negotiate privilege issues. I believe
12 Rob Shelquist is here. I don't believe we have anything to
13 report to the Court. Again, if we have continuing
14 problems, we know where to go with them. It's an ongoing
15 process, but we're working it through. We're cooperatively
16 working it through, and should we run into any problems, we
17 know exactly what to do with them. But there is nothing
18 further to report on other than it's a task that we are all
19 working on.

20 MR. HOEFLICH: That's correct.

21 MR. ZIMMERMAN: Next, Your Honor, is the Special
22 Master report. There are three issues, LAC report, the
23 status of the WALL and the Compensation Committee, and
24 there may be others.

25 MR. HAYDOCK: Just briefly, Your Honor. The LAC

1 Committee met today and talked about the AG depositions and
2 some other issues and that went smoothly, and there are no
3 other issues that need to be addressed before the Court
4 today.

5 With regard to the WALL issue, the discovery is
6 continuing on a rolling basis, the WALL review filings and
7 sealing of some of the files continue to go smoothly.

8 Lastly, regarding the Compensation Committee, the
9 committee has not met. We have e-mailed reactions to a
10 proposed order, and we'll have more information for you on
11 that in the next several weeks. That is all.

12 THE COURT: Thank you.

13 MR. ZIMMERMAN: Plaintiffs have been working with
14 the Special Master on all of these issues, and we are
15 very -- it's been a very nice process for both Plaintiffs
16 and Defendants. It's informal. We communicate by e-mail.
17 We set up meetings and show up for the most part on time
18 and we get a lot of work done. So, it's a process from the
19 PSC side we are very pleased with, and I can't speak for
20 the Defendants, but I would imagine they feel the same.

21 MR. HOEFLICH: Your Honor, we are extremely
22 pleased with the progress we made with the Special Master
23 on the Principal Committee and on the subcommittees as
24 well. We think everybody has put in a terrific effort and
25 it's paying dividends.

1 THE COURT: Thank you.

2 MR. ZIMMERMAN: The next issue, Your Honor, is
3 the January status date and location, and that is an issue
4 that I have nothing further to say on.

5 THE COURT: Can we push that to February. I've
6 got several dates set out for the class certification, so
7 either on the 7th of February. How does that sounds?

8 MR. ZIMMERMAN: Good.

9 THE COURT: Instead of having you come back two
10 weeks before the motions. You might as well stay here for
11 those two days.

12 MR. HOEFLICH: We would appreciate that, Judge,
13 thank you.

14 THE COURT: Is that agreeable with the PSC?

15 MR. CHESLEY: Yes, Your Honor.

16 THE COURT: We'll set it for the 7th.

17 MR. ZIMMERMAN: The time, Your Honor, morning or
18 afternoon?

19 THE COURT: It would be the morning, since you
20 would already be here, 9:30.

21 MR. ZIMMERMAN: Your Honor, that's the agenda. I
22 don't have anything further to report, Your Honor. I think
23 that, as I said, we would like to repeat the Miami
24 conference and we would like to do some reasonable
25 communications on the Federal Mediation Program. And I

1 guess we can discuss the parameters of that with you off
2 the record. But we are working hard and the cases are
3 moving forward, and we are here to answer any further
4 questions that the Court may have.

5 THE COURT: Anything for the defense?

6 MR. HOEFLICH: No, Judge. Thank you very much
7 and we'll work with Mr. Zimmerman on the mediation and
8 further communications.

9 MR. MAGAZINER: Nothing on behalf of GSK.

10 THE COURT: Let's adjourn and have an informal
11 meeting in chambers. Figure out who's going to come back
12 and come back in ten minutes.

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REPORTER'S CERTIFICATE

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

CERTIFIED: _____

Brenda E. Anderson, RPR

