

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In re: Baycol Products                    )  
          Litigation                        )     File No. MDL 1431  
  )                       (MJD/SRN)  
  )  
  )     Minneapolis, Minnesota  
  )     December 17, 2007  
  )     10:00 a.m.  
  )  
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BEFORE THE HONORABLE MICHAEL J. DAVIS  
UNITED STATES DISTRICT COURT JUDGE

**(STATUS CONFERENCE)**

APPEARANCES

For the Plaintiffs:                    CHARLES ZIMMERMAN, ESQ.  
  RICHARD LOCKRIDGE, ESQ.  
  RANDY HOPPER, ESQ.  
  DANIEL BECNEL, ESQ.

For Defendant Bayer:                   PHILIP BECK, ESQ.  
  PETER SIPKINS, ESQ.  
  SUSAN WEBER, ESQ.  
  JAMES MIZGALA, ESQ.

For Defendant  
GlaxoSmithKline:                        FRED MAGAZINER, ESQ.

Court Reporter:                        LORI A. SIMPSON, RMR-CRR  
  1005 U.S. Courthouse  
  300 South Fourth Street  
  Minneapolis, Minnesota 55415  
  (612) 664-5104

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

LORI A. SIMPSON, RMR-CRR  
(612) 664-5104

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

## IN OPEN COURT

1 THE COURT: Let's call this matter.

2 THE CLERK: This is the Baycol status conference,  
3 Civil Case No. 01-MD-1431. Counsel, will you please state  
4 your appearances for the record.  
5

6 MR. ZIMMERMAN: Good morning, Your Honor. Charles  
7 Zimmerman for the PSC.  
8

9 THE COURT: Good morning.

10 MR. LOCKRIDGE: Good morning, Your Honor. Richard  
11 Lockridge for the PSC.

12 THE COURT: Good morning.

13 MR. HOPPER: Good morning, Your Honor. Randy  
14 Hopper for the PSC.

15 THE COURT: Good morning.

16 MR. BECNEL: Parts unknown, Daniel Becnel for the  
17 PSC.

18 THE COURT: Good morning, Mr. Becnel.

19 MR. BECK: Good morning, Your Honor. Phil Beck  
20 for Bayer.

21 THE COURT: Good morning.

22 MS. WEBER: Good morning, Your Honor. Susan Weber  
23 for Bayer.

24 THE COURT: Good morning, Susan.

25 MR. SIPKINS: Good morning, Your Honor. Peter

1 Sipkins for Bayer.

2 THE COURT: Good morning.

3 MR. MIZGALA: Good morning, Your Honor. James  
4 Mizgala for Bayer.

5 THE COURT: Good morning.

6 MR. MAGAZINER: Good morning, Your Honor. Fred  
7 Magaziner for GlaxoSmithKline.

8 THE COURT: I like the hair.

9 MR. MAGAZINER: Not mine.

10 THE COURT: Well, I like your hair too.

11 All right. Mr. Zimmerman, let's bring this to --

12 MR. ZIMMERMAN: If it gets any longer, he's going  
13 to come over to the Plaintiffs' side.

14 MR. MIZGALA: Sipkins was my inspiration.

15 MR. ZIMMERMAN: No ponytail anymore, Peter?

16 THE COURT: I think he's going to be in the movies  
17 pretty soon.

18 MR. ZIMMERMAN: There was a song, I always forget  
19 the name, another year older and deeper in debt. Another  
20 year older and deeper in debt, what was that song?

21 MR. BECK: Tennessee Ernie Ford, *16 Tons*.

22 MR. ZIMMERMAN: I think that's kind of it, Judge,  
23 we're another year older and deeper in debt here. At any  
24 rate --

25 THE COURT: That's usually for the judges, not for

1 plaintiffs' lawyers.

2 MR. ZIMMERMAN: I heard you guys are getting a  
3 raise.

4 THE COURT: Dream on.

5 MR. ZIMMERMAN: I know your chambers are getting  
6 bigger.

7 At any rate, we're here --

8 THE COURT: We'll be upstairs next year.

9 MR. ZIMMERMAN: Congratulations. That's really  
10 exciting.

11 THE COURT: I don't know about that.

12 MR. ZIMMERMAN: It will get Jim Rosenbaum off the  
13 bench. No, I'm just kidding.

14 THE COURT: I'll pass that on.

15 MR. ZIMMERMAN: Wait a couple of weeks, would you?

16 This is a status conference in the Baycol MDL.

17 Last time we were before Your Honor we were -- I think it  
18 was January and so we're here to update the Court on what's  
19 happened in the last year and sort of hopefully give an  
20 outline to the Court on what we believe will be a fairly  
21 quick and efficient winding down and closing of this MDL.

22 THE COURT: Okay.

23 MR. ZIMMERMAN: We met with the defense counsel, I  
24 don't know, about ten days ago in Chicago in person to sort  
25 of go over procedures to bring this MDL to a just

1 conclusion.

2 I think we're pretty much on the same page in  
3 doing that. There's a couple of matters that will have to  
4 be decided by Your Honor in terms of procedure that  
5 hopefully we can resolve today.

6 And assuming we're all on the same page, we look  
7 to the concluding of this MDL and the remanding of cases  
8 that remain right around the second quarter of 2008, but  
9 we'll get to that as we get into the body of the status  
10 conference.

11 If I could start with Roman numeral II, with the  
12 settlements, just because I think it will be easier to  
13 track, then, what's remaining once we go through what's been  
14 resolved.

15 The Plaintiffs and Defendants have settled 3,110  
16 cases in both the state and federal courts for a total value  
17 of \$1,162,700,835. Of those cases, 968 were subject to the  
18 MDL assessment for a total value of \$356,246,334.83.

19 I think it goes without saying, but of course I  
20 want to comment that this MDL has been extremely efficient  
21 and effective in resolving the serious rhabdomyolysis cases.  
22 I think that everybody stepped up at the beginning of the  
23 case and did the right thing. We negotiated these cases to  
24 a just conclusion and both sides of the bar are to be  
25 commended for that effort.

1           Phil Beck was courageous in coming forward early  
2           on and saying that the company wanted to resolve those  
3           cases. Plaintiffs were courageous in coming forward and  
4           taking him on his word and doing the things that needed to  
5           be done to get those cases into queue and get them resolved.  
6           And it was a successful conclusion of the state and federal  
7           rhabdomyolysis matters.

8           Everybody, including the Court, of course, and the  
9           special masters and the mediation masters, is to be  
10          commended for those efforts and it's just a terrific result  
11          for all the people that have been so affected.

12          Putting it in a little bit of perspective, in the  
13          one year since we were here last 43 additional rhabdo cases  
14          have settled. So we're really at the end of that rhabdo  
15          chain of cases. 27 of those are in the MDL. That would  
16          leave 16, I think, if my math is correct, in federal -- in  
17          state court.

18          So we are seeing some rhabdo cases come out. From  
19          the process of the discovery and the process of the  
20          case-specific discovery we're seeing some rhabdo cases come  
21          to the fold, but they're few. And we had predicted there  
22          would be some and we're seeing some.

23          And I think we're probably very much at the end of  
24          that. There may be a few coming out, but we won't --  
25          probably not very many. And we can see by the last total 12

1 months or 11 and a half months we've only seen 43 cases,  
2 which is a very small amount.

3 So on the settlement front we're where we are and  
4 that's a very good report.

5 There are 141 cases that have been submitted to  
6 the MDL mediation process and, quite frankly, I don't know  
7 where they are specifically. Maybe Susan or someone else  
8 can say if they're still in the process or they've just been  
9 submitted and they're out of the process. I couldn't --

10 (Cell phone ringing.)

11 MR. ZIMMERMAN: That's contempt of court.

12 THE COURT: It is.

13 MR. MAGAZINER: I'm sorry, Your Honor. I thought  
14 I put it on vibrate and I didn't.

15 THE COURT: Holiday season, so you're absolved.

16 MS. WEBER: I'm not aware of any that are in  
17 mediation right now.

18 MR. ZIMMERMAN: So I think that what you're saying  
19 is they went into mediation, but they may have come out in  
20 one way, shape, or form.

21 MS. WEBER: They are going through the process.

22 MR. ZIMMERMAN: So that's the report on the  
23 settlement, Your Honor. I don't know if you have any  
24 questions about it, if Special Master Haydock has any  
25 questions about it, but from all parties' side a successful

1 resolution, a wonderful program, and this Court and the  
2 parties before this Court have done their job and seen that  
3 the people that were seriously injured by this drug by  
4 contracting rhabdomyolysis have been well taken care of in  
5 record time.

6 THE COURT: Well done.

7 MR. ZIMMERMAN: Thank you.

8 THE COURT: Mr. Beck.

9 MR. BECK: I'd like to thank the Plaintiffs'  
10 lawyers and the Court and all the Court's personnel for the  
11 cooperation and leadership that was shown in getting this  
12 done. I agree with Bucky that everybody has stepped  
13 forward, did the right thing. I think we've got a just and  
14 fair resolution and we're all, I think, rightly proud of  
15 that.

16 Just a detail I think Your Honor may be interested  
17 in. I know you've been interested in how many rhabdo type  
18 cases are still outstanding. As far as we know from the  
19 information that we've obtained in the discovery, there are  
20 a grand total of about four, two in the MDL. They're both  
21 in Phase IV, so we're still in the information-gathering  
22 process and we hope as we go forward that we'll be able to  
23 resolve those as well.

24 THE COURT: All right.

25 MR. ZIMMERMAN: Then on to the pending cases, Your



1 Honor, and this is outlined in actually Roman numeral I of  
2 the joint status report. As of December 14th there remained  
3 361 active Baycol cases, down from a huge number, almost  
4 15,000, ever filed in this litigation. I believe that's  
5 state and federal court; is that right?

6 MS. WEBER: Yes.

7 MR. BECK: Yes.

8 MR. ZIMMERMAN: And then 156 of those cases have  
9 been filed in or removed to federal court, down from  
10 approximately 9,100.

11 And of these 156 cases, Your Honor, I believe 173  
12 are active plaintiffs. That means there must be some  
13 multiple plaintiff cases --

14 MS. WEBER: Yes.

15 MR. ZIMMERMAN: -- and that's why we're at 173  
16 active plaintiffs.

17 This excludes certain cases that are people who  
18 have stipulated to dismiss but the Court hasn't entered  
19 their dismissal order or plaintiffs who assert only a  
20 derivative claim, like a consortium claim, and somehow those  
21 cases haven't been dismissed and will be through a process  
22 we're going to discuss later in the agenda.

23 And it also doesn't exclude -- it excludes 22  
24 Phase IV plaintiffs, to whom dispositive motions on  
25 procedural grounds are now pending, from that 173 because I

1 think the wisdom is that those cases will probably be  
2 dismissed.

3 What we really then have here, Your Honor, is 156  
4 cases, 173 plaintiffs, and they're scattered between the  
5 Phase I, Phase II, Phase III, and Phase IV discovery. And I  
6 think it boils down to this, Your Honor. Many of those  
7 cases, at least Phase I and Phase II, are the subject of a  
8 pending summary judgment motion.

9 Defendants' position I believe is, and I won't  
10 advocate it, but their position is if the Court should rule  
11 on the summary judgment motion, they could dispose of the  
12 issues not only in those cases that are before them, but  
13 even other cases that have similar issues before them in,  
14 say, Phase IV.

15 We had resisted that idea for a long time thinking  
16 that the dispositive motions, the case-specific dispositive  
17 motions, should be done in the remanded court or the  
18 transferor court.

19 We've rethought that, Your Honor, and I think it  
20 is best that they get resolved here. This Court is sitting  
21 with the most knowledge. This Court is sitting with all of  
22 the wisdom of the expertise that have been gained over the  
23 months and years that we've been in front of Your Honor and  
24 it's probably best that the Court rule on them as quickly as  
25 possible and as expeditiously as possible, from which then

1 we can take those rulings and understand where these lines  
2 are to be drawn and decide how to go forward from there.

3 Susan Weber and I discussed this at some length  
4 with James in their offices in Chicago a couple -- about ten  
5 days ago and we came away with the notion that's probably  
6 the best way to do it.

7 I've been opposed generally of having  
8 case-specific matters decided here in the MDL court, I  
9 thought they should go back, but having considered  
10 everything now in the magnitude and the order of magnitude  
11 of what we have and the kinds of issues that were made, I'm  
12 of the belief that they should be resolved.

13 And I know some of them are pending before Your  
14 Honor, some are about to be -- have recently been filed, and  
15 some are about to be filed from even Phase III and IV. So  
16 our position is ruling on them when it's appropriate. I  
17 think Susan probably wants to comment on what's more coming  
18 your way, what they're going to look like, because they're  
19 not our motions, they're theirs.

20 And then once the Court rules, then we'll know  
21 where the lines are drawn and what's going to be left if --  
22 well, what is going to be left to remand and then we can  
23 deal best with a procedure for the remand and getting an  
24 order for those cases that have made it through the case  
25 specific, made it through the summary judgment and are ready

1 to go back, to get them back.

2 My view at that point is they should go -- they  
3 will go into the mediation program. Hopefully they'll get  
4 resolved there. They will be the kind of cases that have  
5 been through everything they need to get through and they  
6 will be in the mediation program that the Court set up very  
7 early in this MDL. They're either going to get resolved  
8 there, which we hope they will; and if they aren't, take  
9 them back to where they belong and get them resolved there.

10 So that's our position. We've changed our  
11 position considerably. And I think Susan and Phil and  
12 others can comment on how that should work in terms of their  
13 motion.

14 Mr. Becnel.

15 MR. BECNEL: May it please the Court. I have one  
16 case we resolved I think last week and we got the check in  
17 last week. It wasn't quite a rhabdo, but it was more than.

18 But the case I'm particularly concerned about,  
19 only because I'm getting such pressure, is the one former  
20 Mayor Landreiu of New Orleans has brought, uncle of Senator  
21 Landrieu and uncle of Lieutenant Governor Landrieu and a  
22 number of Landrieu judges.

23 Mr. Landrieu has been deposed. His wife, who is  
24 the president of the school board of Orleans Parish, New  
25 Orleans, has been deposed. The doctors have been deposed.

1 He's getting close to being near death and I'd like that  
2 case not to wait anymore. I mean, it's just -- they would  
3 like to have it tried, up or down, win or lose, in  
4 Louisiana.

5 You know, I'm just asking the Court to please send  
6 that case back because I'm in a terrible predicament trying  
7 to explain why we're still here and why we can't after all  
8 the discovery is finished. We've taken all the discovery.  
9 There's nothing left to do. We don't want any discovery of  
10 the Defendants. We just want to try the case.

11 THE COURT: Good morning.

12 MS. WEBER: Good morning, Your Honor. Just with  
13 respect to the Landrieu case, it was moved back to Phase IV  
14 at Mr. Becnel's request. We have just deposed Plaintiffs'  
15 expert, which Mr. Mizgala advised me was a deposition that  
16 was postponed at Plaintiffs' request.

17 We will be submitting our case-specific expert  
18 report shortly and once we have -- Plaintiffs have had the  
19 opportunity to depose our expert, then we will look to  
20 expeditiously file any motion that we may have in that case.  
21 But it's not ripe for remand and the reason it's not in -- I  
22 think it was originally in Phase I is because Mr. Becnel  
23 asked to have it moved.

24 With respect to briefing on other cases, we have  
25 summary judgment motions in for all of the plaintiffs in

1 Phases I and II. Under the agreed order that we worked out  
2 with Mr. Zimmerman and Mr. Hopper, we are going to be filing  
3 all of the dispositive motions for Phase III by the end of  
4 January. There are 17 plaintiffs listed there, but there  
5 will not be 17 motions. We've got some recurring issues, so  
6 we can group the plaintiffs.

7 We're going to be doing the Phase IV plaintiffs by  
8 the end of March. Again, we've got one case there that's  
9 got 37 or 39 -- 45 plaintiffs in it. So the fact that there  
10 are 89 plaintiffs listed does not mean you are going to be  
11 getting 89 summary judgment motions and we have got issues  
12 that are recurring in Phase IV that will be resolved through  
13 the issues and decisions in Phases I and II.

14 What we have proposed doing in the draft order we  
15 submitted to the Court is that Defendants will send you a  
16 letter that sort of flags all of the cases with the same  
17 expert, cases that are all under California law, cases that  
18 raise the same issue under Michigan law -- I know those are  
19 some of the groups we have -- so that it will be possible  
20 for you to efficiently manage this workload and it will not  
21 be -- or it will minimize the burden on the Court to the  
22 extent we can.

23 MR. BECNEL: May it please the Court. That's not  
24 correct. I didn't ask for -- we took the depositions of the  
25 doctors. On Friday they scheduled the deposition at the

1 last minute. I told them I was committed to a certain  
2 presidential candidate that I was doing a big fund-raiser  
3 for in New York and that I couldn't do it that day, but I  
4 could do it Tuesday or Wednesday or any time they wanted to  
5 thereafter, but I asked them not to do it on Friday.

6 They don't have any more depositions to take.  
7 It's finished. In fact, I've attended most of the  
8 depositions that have been taken and they've been taken over  
9 the last six months.

10 And so the only thing we have is somebody who is  
11 about to die who will not be able to testify in his case.  
12 In fact, that's why we perpetuated the deposition of his  
13 testimony.

14 But they would like to have their trial. I mean,  
15 this is not rocket science. This is a trial package that  
16 the Plaintiffs' Committee has put together with experts,  
17 et cetera. This is documents that -- we know what the  
18 documents are. This is really, truly just a damage trial, a  
19 causation damage trial. That's all it is. Probably take  
20 two or three days to try. And I'd just ask the Court to  
21 allow them to have their trial.

22 And I'm not delaying a thing. I can only go by  
23 their lawyers in New Orleans who are doing all these  
24 depositions and they are kind of shaking their heads about  
25 it.

1           So I don't know what else to do other than to ask  
2           the Court to remand that case. I mean, to put it into a  
3           mediation process is wonderful, but to come back here to do  
4           mediation when somebody is near death, it's not going to get  
5           us anywhere.

6           Thank you.

7           THE COURT: Thank you.

8           MS. WEBER: Your Honor, if it would help matters,  
9           we can expedite summary judgment on that and talk to  
10          Mr. Mizgala about the expert deposition. We can have that  
11          filed, I would say, at the latest January 15th and hope for  
12          sooner than that. I just don't want to blow anybody's  
13          holiday by having them work the whole time. Is that all  
14          right?

15          THE COURT: Let's do that. We'll move that along.

16          MR. ZIMMERMAN: My only comment on what Susan said  
17          was we would like to see the Phase III and IV deadlines  
18          quicken from the March -- was it March? -- January 31st  
19          and March 31st. You know that, but I will accede to your  
20          request if you believe it's absolutely required. I just  
21          would like to get this moving as quickly as possible and in  
22          my judgment I think we could quicken that up a little bit,  
23          if you would be so kind.

24                 It would allow us to get this MDL wrapped up in  
25          the second quarter of '08 without there being much problem



1 and it seems to me that we could have the Phase I [sic]  
2 motions a little bit earlier if you're willing.

3 MR. BECK: Phase I is done.

4 MR. ZIMMERMAN: Phase IV. I beg your pardon.

5 MS. WEBER: Your Honor, we've got discovery still  
6 going on in some of these. We're assigning them out as  
7 discovery is completed and we will file them on a rolling  
8 basis as expeditiously as we can, but because not all the  
9 depositions are completed, we obviously can't commit to  
10 having all of the briefs filed as early as Mr. Zimmerman  
11 would want in a perfect world.

12 THE COURT: Okay. But let's try to expedite them  
13 as quickly as possible so we can wrap these matters up,  
14 because I am going to dedicate myself to hearing those and  
15 ruling on those as quickly as possible if that's necessary  
16 because we've gone through -- what is this, our sixth year?

17 MR. HOPPER: Sixth, yes.

18 THE COURT: I still remember you saying we're  
19 going to be done in two years.

20 MR. ZIMMERMAN: If things changed, we would have.  
21 I appreciate the comments.

22 THE COURT: Yes.

23 MR. ZIMMERMAN: The next item on the agenda, Your  
24 Honor, is we've really talked, spoken about the discovery.  
25 I'll just reiterate what's in the status conference report

1 under Roman numeral III.

2 The plaintiffs were broken down into four groups  
3 for case-specific discovery pursuant to PTO 149. The active  
4 plaintiffs remaining in each group are as follows: In  
5 Phase I, 16 plaintiffs; in Phase II, 51 plaintiffs; in  
6 Phase III, 17 plaintiffs; and in Phase IV, 89 plaintiffs  
7 with an asterisk and the asterisk being that expert -- the  
8 parties are completing but have not completed the expert  
9 discovery, which has been extended by agreement, and I  
10 expect that 89 may get whittled down further because of that  
11 expert discovery issue.

12 But that's the nature of what we've got left,  
13 that's the phases they're in. And once the Court rules,  
14 then, on the summary judgment motions, after the Phase IV  
15 and III is completed we'll then know what's really left and  
16 then how to deal with them in terms of remand.

17 I don't know if there are any more comments on  
18 Roman numeral III.

19 MR. BECK: No, Your Honor.

20 MR. ZIMMERMAN: Trial settings. Your Honor, no  
21 Baycol trials have been set since the last status  
22 conference. The Mary Reed case is set for trial, which I'm  
23 not aware of, I don't know too much about, in May of 2008 in  
24 Mississippi and the Luis Nieves case is set in Puerto Rico  
25 on May 20, 2008. Frankly, I don't know anything about

1 those. I trust those are state matters.

2 MR. BECK: They're state cases, Your Honor, muscle  
3 aches. And we're not sure whether they're actually going to  
4 proceed to trial or not, but they do have those dates.

5 THE COURT: All right.

6 MR. ZIMMERMAN: Roman numeral V, Your Honor, is --

7 THE COURT: There haven't been any trials since I  
8 last saw you in January, right?

9 MR. BECK: No, there have not.

10 MR. ZIMMERMAN: Motions, Your Honor, we've  
11 discussed them and I don't know that any further comment  
12 from me is necessary on the motions. We've heard from the  
13 Court on that.

14 So I think we really do have this MDL where it  
15 needs to be in terms of the end game and resolving the  
16 discovery, case-specific discovery, getting the motions  
17 heard and setting up the remand of what -- and the mediation  
18 of what, if anything, will be left at the end of the day.

19 We have attached a proposed pretrial order which  
20 sets out these procedures for winding down this MDL pursuant  
21 to our meet and confer and pursuant to the discussion we  
22 just had.

23 We heard the Court's comments with regard to the  
24 summary judgment motion and my comments. The dates in there  
25 for Phase III are January 31, 2008 and for Phase IV

1 March 31, 2008 and hopefully we can do everything we can to  
2 make those dates even quicker so that all those motions can  
3 get before Your Honor on all those III and IV cases and that  
4 rulings can come shortly.

5 With regard to other pending motions, there's  
6 going to be an agreed list of pending motions. Frankly, I  
7 don't know what they might be. This is number 2, other  
8 pending motions. I'm not sure what they might be.

9 MR. BECK: I think we've got some motions  
10 concerning plaintiffs who have not appeared for their  
11 deposition or who appear to have abandoned the litigation  
12 but we don't have dismissals yet, that sort of thing.

13 MR. ZIMMERMAN: And I think that's been happening  
14 fairly expeditiously. I think the magistrate judge has been  
15 handling those.

16 MR. BECK: Yes.

17 MR. ZIMMERMAN: Derivative claims, Your Honor, the  
18 disposition of derivative claims, this is what I briefly  
19 spoke about before. These are claims where although the  
20 underlying claim has been resolved, for whatever reason the  
21 derivative claim, the consortium or the relative claim for  
22 some reason has not been resolved.

23 Susan, you're more of an expert on where this is  
24 and what the problems are, but we talked about getting an  
25 order to show cause and getting people to come in and say do

1 I really want to pursue this claim. If not, it will be  
2 dismissed on an order to show cause kind of procedure.

3 MR. BECK: Susan tells me -- why don't I just have  
4 Susan tell you instead of relate what Susan tells me.

5 MS. WEBER: Your Honor, these are cases in which  
6 the main plaintiff has been dismissed a long time ago and  
7 when we submitted orders we should have submitted the  
8 spouses with loss of consortium claims. So we are now in  
9 the process of just trying to get it cleaned up.

10 And we're hoping that we can do this entirely by  
11 stipulation with Plaintiffs' attorneys. We just wanted to  
12 have a procedure in place so that if someone has problems  
13 with the client and getting a stipulation, we will be able  
14 to do that to just get your docket mopped up.

15 THE COURT: Okay.

16 MR. ZIMMERMAN: Procedures for -- number 4 of the  
17 proposed order, procedures for remand of cases. As we said  
18 before, there's a condition precedent to remand, which is  
19 the referral of the matter to mediation.

20 We have some hope and optimism that by doing so at  
21 the end of your dispositive motion decision process, that  
22 those cases will be resolved amicably through mediation  
23 under the good offices of Special Master Remele. Again,  
24 it's a process that has been fairly effective going  
25 forward -- or in the past and we think it will be effective

1 going forward for whatever remains of the 156 cases.

2 So that's the condition precedent before they get  
3 to remand and we look forward to implementing that process  
4 and perhaps as we get -- after the summary judgment motion  
5 we can have a meet and confer with Special Master Remele to  
6 see how he wants to handle it and under what speed and what  
7 order he wants to hear and see these cases. We'll meet and  
8 confer with the other side on that and see what we can come  
9 up with.

10 Meeting with agreement, I will move to the next,  
11 which is the notice of cases ready for remand. We've agreed  
12 the best idea is to come up with a notice of remand, that  
13 is, once we get through the motion practice, once we get  
14 through the mediation and the cases, if there are any, are  
15 ready for remand, we'll meet on a monthly basis for an  
16 agreed list and present it to Your Honor and ask you to  
17 remand them.

18 There are certain conditions precedent which are  
19 listed, a substantially completed fact sheet, execution of  
20 appropriate HIPAA compliant authorizations, completion of  
21 certain case-specific fact and expert discovery, the Court  
22 having ruled on the motions, as we discussed, and the  
23 mediation pursuant to 4a of PTO 59. At that point the case  
24 will be ready for remand and we believe the first of such  
25 lists will be ready by the end of January of next year.

1           Then the work of setting what the record will be  
2           and putting the trial notebooks together will be really the  
3           work of -- a joint effort by Defense and Plaintiffs to  
4           determine what parts of the record should be the official  
5           record, what the summaries should be coming from this Court.

6           And then our work on the PSC side will be  
7           preparing trial notebooks of the discovery and making  
8           available to anyone who has a remanded case the appropriate  
9           discovery so -- all of that will be available probably in  
10          electronic form -- the case can then go back with a summary  
11          record, the orders, and the work product of the PSC. But we  
12          haven't gotten to that yet because we don't know what is  
13          going to be available for remand and we've got a little  
14          time.

15          And having said all that, we really do look  
16          forward to the closing of this. I know from the PSC  
17          standpoint we have lots of obligations and we want to be  
18          free of those at some point. It's been a wonderful process,  
19          it's been a great learning experience, it's been a collegial  
20          MDL, and it's been six years and it's time for us to move on  
21          and we will.

22          From the Defendants' point of view, they don't  
23          need to be the subject of this litigation any longer either  
24          and the MDL will come and should come to a close hopefully  
25          in the second quarter of 2008.

1           And I promise to have a party and we can all get  
2 together again, like we used to, at the various clubs around  
3 the country and say good tidings and good cheer. I've  
4 become very close personal friends with Phil over the years  
5 and I know he wants to take me golfing. And I'm getting  
6 better, I'm getting good enough that I think I can probably  
7 hold my own --

8           THE COURT: Wait a minute.

9           MR. ZIMMERMAN: -- these days if he gives me four  
10 or five strokes.

11          THE COURT: I think you've been snookered on this  
12 one.

13          MR. BECK: I'm holding on to my wallet, as I often  
14 do when Mr. Zimmerman is talking.

15          MR. HOPPER: You did that from the start, Phil.

16          MR. ZIMMERMAN: It has been a great experience. I  
17 mean, we can talk about who did what to whom, but it's been  
18 a great experience and I came back into the court today and  
19 greeted everybody.

20                 It's been a real interesting time and a real  
21 intellectually stimulating period in my life. A lot of  
22 things turned out the way I wanted them to and a lot didn't,  
23 a lot like life.

24                 But we're all here and we all are very proud of  
25 the effort and I believe we've become closer friends and



1 better colleagues, and we have certainly handled ourselves  
2 professionally in front of Your Honor and I'm very proud of  
3 that.

4 THE COURT: You have support here. Why don't you  
5 have them introduce themselves and thank them for all the  
6 work they've done.

7 MR. ZIMMERMAN: The real soldiers are there.  
8 Stacy from our office, she's been a tremendous asset to this  
9 process as one of the unsung heroes who keeps everything  
10 going and the cases together and the details that have to be  
11 well managed managed and keeps me from making a fool of  
12 myself, and I appreciate it very much. She's been a  
13 wonderful player in the Baycol matter.

14 You've met my great friend Danny Becnel, who loves  
15 me dearly, although he has trouble expressing it sometimes.

16 MS. DAILEY: Good morning, Your Honor. Deanna  
17 Dailey. I am formerly with Larson & King and was involved  
18 in the Baycol litigation for about six of the seven years  
19 I've been practicing. So I came today to check up on it and  
20 see how everyone was doing and I'm glad to see --

21 MR. ZIMMERMAN: Where are you now?

22 MS. DAILEY: I'm at Sprenger & Lang, which is  
23 attached to this building.

24 THE COURT: Right. You sent me an e-mail telling  
25 me that.

1 MR. ZIMMERMAN: She's been just absolutely  
2 wonderful through --

3 THE COURT: Of course. We go back a long ways to  
4 trial practice. When she was in law school I taught her  
5 trial practice.

6 MS. DAILEY: Thank you, Your Honor.

7 MR. TATTING: Good morning, Your Honor. Troy  
8 Tatting from Larson King and I've taken over Deanna's job,  
9 but certainly have not replaced her.

10 THE COURT: You certainly haven't.

11 MR. TATTING: And our paralegal.

12 THE COURT: You do all the work. I'm glad you're  
13 here.

14 Do we have anyone on --

15 MR. BECK: We have from Bayer Lisa Floro.

16 MS. FLORO: Good morning, Your Honor. Lisa Floro  
17 from Bayer. Happy to see that we are getting towards an end  
18 finally.

19 MR. BECK: Your Honor, Susan asked me to join in  
20 thanking the people who have been assisting Bucky. She says  
21 that they've done Herculean work and we really appreciate  
22 it.

23 THE COURT: Anything else for Defense?

24 MR. BECK: No, Your Honor.

25 MR. BECNEL: Judge, may I make a suggestion?

1 THE COURT: Have I ever stopped you from making a  
2 suggestion? Come on down. I need to see this jacket that  
3 you have on. This is --

4 MS. WEBER: Look at the tie, Judge.

5 MR. BECNEL: Your Honor, I would like to --

6 THE COURT: Wait a minute. What's on the tie  
7 here?

8 MR. BECNEL: Squirrels, a number of squirrels.

9 MR. ZIMMERMAN: Squirrels?

10 MR. BECNEL: Squirrels.

11 THE COURT: Aren't those rodents?

12 MR. BECNEL: I was in Austria doing a deposition a  
13 few weeks back and had this made because I liked the color  
14 and so it was interesting.

15 One of the things I wanted to suggest to the  
16 Court, maybe to -- only because it's worked now twice, is  
17 Judge Katz in the Ortho Evra case, where we have about 2,000  
18 plus women who are either dead, strokes, heart attacks,  
19 et cetera, decided he wanted to try to resolve the case  
20 rather than work in Toledo night and day for six years or  
21 eight years and so what he did, he said, I'm going to start  
22 having you guys get to me ten cases to try to mediate.

23 Over the last six months we've been able to  
24 mediate -- you know, these are a pittance of the settlements  
25 that we have mediated -- 200 cases and he scheduled so many

1 and he's trying to do a global to do exactly what Phil and  
2 Judge Fallon did by trying a number of cases to see where it  
3 would go.

4 And I know that is not something federal judges  
5 have done in the past, but it's been very, very successful  
6 and I think we will probably wind up reaching a global  
7 settlement with Johnson & Johnson, but he took the executive  
8 committee to handle the cases that were submitted by the  
9 various lawyers around the country and he did the actual  
10 mediation.

11 Secondly, Judge Fallon called me into his office a  
12 month or so ago, only because I brought that initial case of  
13 both Propulsid and Vioxx to him, and said, Danny, I think I  
14 found a new way to resolve cases.

15 Sometimes, you know, we can try them and try them  
16 and try them and we'll be trying them. Mr. Beck was super  
17 successful. Rebecca Todd of my office and Mark Robinson  
18 were the only ones successful in federal court with the  
19 trial of one individual.

20 But the judge called in people from the board of  
21 directors, the people -- the powers that be, and started  
22 trying with the state judges to craft a global settlement in  
23 Vioxx. It worked.

24 And so I know in the past, unlike a lot of the  
25 state judges where they get directly involved, because of

1 the enormous power of the bench in bringing people  
2 together -- and I'm not taking anything away from  
3 Mr. Haydock or anybody else, but this has just worked and  
4 it's worked a lot quicker.

5 And I just wanted to throw that out to the Court  
6 as a suggestion because that might be a way -- you know,  
7 we've had success with Bucky and Dan Gustafson with  
8 Medtronics and the Guidant/Boston Scientific case that was  
9 just done with the help of both special masters and also  
10 with mediators, but I just wanted to bring that out because  
11 that might be something that we could do.

12 You know, I'm asking Mr. Beck, he's asked me, and  
13 I am sure he is going to ask Mr. Haydock -- he's made so  
14 darn much money in Vioxx -- to look for a house for him in  
15 Aspen, and I've been looking, but he's just having a hard  
16 time paying the price.

17 But I just thought that might be something the  
18 Court might consider to wrap this all up, if we can possibly  
19 do that.

20 Thank you, Your Honor, for allowing me to address  
21 you.

22 THE COURT: It's amazing. We were on such a high  
23 note.

24 I can't imagine all the different alternatives  
25 that I've tried in the resolution of these cases, and I've

1       been steady on that.  Anyone that had an idea or a  
2       thought -- I've traveled.  I had people meet.  We've had  
3       conclaves.  We've tried for two years to have group trials.  
4       So, Mr. Becnel, what you've said, I don't know where you've  
5       been for the last six years.  The Court has done everything  
6       possible.

7               We are on the right resolution of these matters.  
8       The PSC has come together with the Defense for this Court to  
9       handle the summary judgment motions.  I have blocked off my  
10      time in January and February and March and April so we would  
11      have the appropriate time to do that, and I will do that and  
12      we will come to a successful conclusion.

13             I can't satisfy everyone and that's not my job.  
14      My job, as I told everyone at the beginning, was that we  
15      have a fair resolution of these cases and that the people  
16      that were seriously injured be paid, those that did not have  
17      claims were not going to have a free ride; and that's been  
18      my position from the beginning and it may not have made  
19      people happy.

20             I know what's happening -- certainly I know what's  
21      happening across the country and also what's happening in  
22      this state with the MDLs and I wish the judges well that are  
23      handling those MDLs that have settled, but we know there are  
24      going to be tremendous problems finalizing everything.

25      You've got a meeting this afternoon to deal with that issue

1 and so -- I'm speaking to Mr. Zimmerman.

2 And so I know that these are all difficult and  
3 I've tried to -- hopefully you can all walk away thinking  
4 that the Court has been fair. Fair does not mean that you  
5 win and so it's -- on that note I want to stop and, if  
6 there's nothing further, invite everyone back to chambers so  
7 we can chat off the record.

8 MR. ZIMMERMAN: I just want -- if you're finished,  
9 Your Honor.

10 THE COURT: Yes.

11 MR. ZIMMERMAN: I actually want -- I meant to  
12 thank Professor Haydock for his work as well. He has worked  
13 very hard and has been very loyal to the cause and been  
14 always accessible to us. I wanted to on the record thank  
15 him for the effort.

16 And I also wanted to wish everyone a happy  
17 holiday, holiday season. We've all been through some trials  
18 and tribulations over the course of the six years, we've had  
19 happiness and sadness in our personal lives, but everybody  
20 is here and everybody is here for another holiday. I just  
21 want to wish everyone a very warm and happy holiday and safe  
22 holiday and look forward to going back to chambers and  
23 talking informally with Your Honor.

24 Thank you very much.

25 THE COURT: Anything further, Mr. Beck?

1 MR. BECK: No, sir.

2 THE COURT: Let's recess and come back to  
3 chambers.

4 (Court adjourned at 10:50 a.m.)

5 \* \* \*

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8 I, Lori A. Simpson, certify that the foregoing is a  
9 correct transcript from the record of proceedings in the  
10 above-entitled matter.

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13 Certified by:

Lori A. Simpson, RMR-CRR

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