



1        APPEARANCES (Cont.)

2        For the Plaintiffs:  
3        (Appearing By Phone)

Ciresi Conlin, LLP  
JAN M. CONLIN, ESQ.  
Suite 4600  
225 South Sixth Street  
Minneapolis, Minnesota 55402

5        Pritzker Hageman, PA  
6        DAVID J. SZERLAG, ESQ.  
Suite 2950  
45 South Seventh Street  
7        Minneapolis, Minnesota 55402

8        Andrews, Thornton, Higgins,  
9        Razmara, LLP  
ANNE ANDREWS, ESQ.  
10        JOHN C. THORNTON, ESQ.  
LAUREN DAVIS, ESQ.  
11        Suite 110  
2 Corporate Park  
Irvine, California 92606

12        Davis & Crump, PC  
13        MARTIN D. CRUMP, ESQ.  
ROBERT D. CAIN, JR., ESQ.  
14        WILLIAM STEVENSON, ESQ.  
2601 14th Street  
15        Gulfport, Mississippi 39501

16        DeGaris & Rogers, LLC  
17        D. WAYNE ROGERS, JR., ESQ.  
Suite 1030  
2 North 20th Street  
18        Birmingham, Alabama 35203

19        Goldenberg Law, PLLC  
20        NOAH C. LAURICELLA, ESQ.  
Suite 2150  
800 LaSalle Avenue  
21        Minneapolis, Minnesota 55402

22        Beasley, Allen, Crow, Methvin,  
23        Portis & Miles, PC  
MEGAN ROBINSON, ESQ.  
24        218 Commerce Street  
Montgomery, Alabama 36104

25

1        APPEARANCES (Cont.)

2        For the Plaintiffs:  
3        (Appearing By Phone)

Bernstein Liebhard, LLP  
DAE Y. LEE, ESQ.  
28th Floor  
10 East 40th Street  
New York, New York 10016

5        Capretz & Associates  
6        DON K. LEDGARD, ESQ.  
7        Suite 2500  
8        5000 Birch Street  
9        Newport Beach, California 92660

10       Gertler Law Firm  
11       MEYER H. GERTLER, ESQ.  
12       LEOLA ANDERSON, ESQ.  
13       Suite 1900  
14       935 Gravier Street  
15       New Orleans, Louisiana 70043

16       Goza & Honnold, LLC  
17       KAITLYN S. NEUFELD, ESQ.  
18       Suite 200  
19       11181 Overbrook Road  
20       Leawood, Kansas 66211

21       Carr & Carr  
22       PATRICK E. CARR, ESQ.  
23       4416 South Harvard Avenue  
24       Tulsa, Oklahoma 74135

25       Fitzgerald Law Group  
KEVIN M. FITZGERALD, ESQ.  
Suite 200  
120 Exchange Street  
Portland, Maine 04101

Grossman & Moore, PLLC  
JENNIFER A. MOORE, ESQ.  
EMILY A. DeVUONO, ESQ.  
Suite 1810  
401 West Main Street  
Louisville, Kentucky 40202

Lewis & Caplan  
PETE LEWIS, ESQ.  
3631 Canal Street  
New Orleans, Louisiana 70119

1        APPEARANCES (Cont.)

2        For the Plaintiffs:  
3        (Appearing By Phone)

Hollis Legal Solutions, PLLC  
SCOTT B. HOLLIS, ESQ.  
Suite 101  
6814 Crumpler Boulevard  
Olive Branch, Mississippi 38654

5        Houssiere, Durant & Houssiere  
6        RANDAL A. KAUFFMAN, ESQ.  
7        MONICA C. VAUGHAN, ESQ.  
8        Suite 800  
9        1990 Post Oak Boulevard  
10       Houston, Texas 77056

11       Hurley, McKenna & Mertz  
12       MOLLY L. CONDON, ESQ.  
13       Suite 1430  
14       33 North Dearborn Street  
15       Chicago, Illinois 60602

16       Johnson Becker, PLLC  
17       ROLF FIEBIGER, ESQ.  
18       Suite 1800  
19       444 Cedar Street  
20       St. Paul, Minnesota 55101

21       Johnson, Johnson & Schaller  
22       LESLIE W. O'LEARY, ESQ.  
23       Suite 1050  
24       975 Oak Street  
25       Eugene, Oregon 97223

KP Law  
RAJESH KANURU, ESQ.  
Suite 2325  
105 West Adams  
Chicago, Illinois 60602

Law Offices of James S. Rogers  
ELIZABETH J. McLAFFERTY, ESQ.  
Suite 500  
1500 Fourth Avenue  
Seattle, Washington 98101

Brian Loncar, PC  
BRIAN LONCAR, ESQ.  
424 South Cesar Chavez Boulevard  
Dallas, Texas 75201

1        APPEARANCES (Cont.)

2        For the Plaintiffs:  
3        (Appearing by Phone)

Lord & Associates Law Office  
MELISSA M. HEINLEIN, ESQ.  
309 Clifton Avenue  
Minneapolis, Minnesota 55403

4  
5        McEwen Law Firm, Ltd.  
6        GREGORY N. McEWEN, ESQ.  
7        5850 Blackshire Path  
8        Inver Grove Heights, Minnesota  
9        55076

10       Michael Hingle & Associates  
11       JULIE M. JOCHUM, ESQ.  
12       BRYAN A. PFLEEGER, ESQ.  
13       220 Gause Boulevard  
14       Slidell, Louisiana 70005

15       Murray Law Firm  
16       CAROLINE W. THOMAS, ESQ.  
17       Suite 2150  
18       650 Poydras Street  
19       New Orleans, Louisiana 70130

20       Nash & Franciskato Law Firm  
21       BRIAN S. FRANCISKATO, ESQ.  
22       Suite 170  
23       2300 Main Street  
24       Kansas City, Missouri 64108

25       NEAL R. ELLIOTT, JR., ESQ.  
P.O. Box 80136  
Baton Rouge, Louisiana 70898

Paglialunga & Harris, PS  
JAMES W. HUMANN, ESQ.  
Suite 500  
4660 La Jolla Village Drive  
San Diego, California 92122

Peterson & Associates, PC  
BRIAN E. TADTMAN, ESQ.  
Suite 107  
801 West 47th Street  
Kansas City, Missouri 64112

1        APPEARANCES (Cont.)

2        For the Plaintiffs:  
3        (Appearing By Phone)

Parker Waichman  
MICHAEL WERNER, ESQ.  
6 Harbor Park Drive  
Port Washington, New York 11050

4  
5        Pogust, Braslow & Millrood, LLC  
6        T. MATTHEW LECKMAN, ESQ.  
7        Suite 940  
8        161 Washington Street  
9        Conshohocken, Pennsylvania 19428

10       Raizner Slania, LLP  
11       JEFFREY L. RAIZNER, ESQ.  
12       2402 Dunlavy Street  
13       Houston, Texas 77006

14       Randall J. Trost, PC  
15       RANDALL J. TROST, ESQ.  
16       Suite 1001  
17       801 Main Street  
18       Lynchburg, Virginia 24504

19       Rieders, Travis, Humphrey,  
20       Waters & Dohrmann  
21       CLIFFORD A. RIEDERS, ESQ.  
22       SASHA B. COFFINER, ESQ.  
23       161 West Third Street  
24       Williamsport, Pennsylvania 17703

25       Shelton Law Group  
JOHN R. SHELTON, ESQ.  
Suite 215  
9300 Shelbyville Road  
Louisville, Kentucky 40222

Sidney P. Cominsky, LLC  
SIDNEY P. COMINSKY, ESQ.  
Suite 1500  
109 South Warren Street  
Syracuse, New York 13202

Skikos, Crawford, Skikos &  
Joseph, LLP  
MELISSA E. MIELKE, ESQ.  
Suite 2830  
One Sansome Street  
San Francisco, California 94104

1        APPEARANCES (Cont)

2        For the Plaintiffs:  
3        (Appearing By Phone)

Tate Law Group, LLC  
MARK A. TATE, ESQ.  
Suite 600  
2 East Bryan Street  
Savannah, Georgia 31401

5        The Ruth Law Team  
6        STEVEN C. RUTH, ESQ.  
7        AUSTIN J. GRINDER, ESQ.  
8        Suite 200  
842 Raymond Avenue  
St. Paul, Minnesota 55114

9        Zimmerman Reed, PLLP  
10       JACQUELINE A. OLSON, ESQ.  
11       Suite 1100  
80 South Eighth Street  
Minneapolis, Minnesota 55402

12       Hare, Wynn, Newell & Newton  
13       DONALD P. MCKENNA, JR., ESQ.  
14       Suite 800  
2025 Third Avenue North  
Birmingham, Alabama 35203

15       For the Defendants:  
16       (Appearing By Phone)

Blackwell Burke, PA  
JERRY W. BLACKWELL, ESQ.  
BENJAMIN W. HULSE, ESQ.  
MARY S. YOUNG, ESQ.  
Suite 2500  
431 South Seventh Street  
Minneapolis, Minnesota 55415

19       Faegre, Baker, Daniels, LLP  
20       BRIDGET M. AHMANN, ESQ.  
21       Suite 2200  
90 South Seventh Street  
Minneapolis, Minnesota 55402

22       Court Reporter:

LORI A. SIMPSON, RMR-CRR  
Suite 146  
316 North Robert Street  
St. Paul, Minnesota 55101



1 MS. YOUNG: I am, Your Honor.

2 JUDGE ERICKSEN: And Mr. Blackwell?

3 MR. BLACKWELL: I am. Good morning, Your Honors.

4 JUDGE ERICKSEN: Good morning.

5 Mr. Hulse?

6 MR. HULSE: Yes. Good morning.

7 JUDGE ERICKSEN: Good morning.

8 And Ms. Ahmann?

9 MS. AHMANN: Yes. Good morning.

10 JUDGE ERICKSEN: All right. Anybody else there on  
11 the defendants' side?

12 MR. BLACKWELL: That's us, Your Honor.

13 JUDGE ERICKSEN: I don't know whose idea it was to  
14 do this by phone, but it seems to be -- well, we'll see, but  
15 it seems so far to be a pretty good idea.

16 Was somebody else going to say something there?

17 (Pause)

18 JUDGE ERICKSEN: No. Okay.

19 Let's take a look, then, at the agenda. Is there  
20 anything on the pretrial orders or should we go to the  
21 plaintiff fact sheets?

22 MR. BLACKWELL: For 3M, I think we can go to the  
23 plaintiff fact sheets.

24 COURT REPORTER: If they could identify who they  
25 are. I don't know --

1 MR. GORDON: Ben Gordon for plaintiffs. We agree  
2 with Mr. Blackwell.

3 JUDGE ERICKSEN: Unless they say otherwise, when  
4 it's just a question like this we'll be hearing from  
5 Mr. Blackwell on the defendants' side and Mr. Gordon on the  
6 plaintiffs' side.

7 MR. BLACKWELL: Right. And Judge Ericksen, there  
8 is some discrete areas that within our team we have divvied  
9 them up to speak to for the persons directly involved. So  
10 if we may, we would like to identify those persons so the  
11 Court gets the best information.

12 JUDGE ERICKSEN: Yes, and that's fine. I'm just  
13 telling Lori that unless it's someone other than you two, it  
14 will be you two and you will identify when it is.

15 All right. So the plaintiff fact sheets.

16 MR. HULSE: Your Honor, this is Ben Hulse. I can  
17 speak to that.

18 JUDGE ERICKSEN: All right.

19 MR. HULSE: All right. So to update you from  
20 where we were at when we put in the report, so as of last  
21 week at the time we put in the report there were about 70 to  
22 75 cases that had overdue PSSs, that is, we had not received  
23 any at all. Some were two weeks overdue. We've been  
24 working with the plaintiffs to address that and the list is  
25 now down to 27.

1           We do intend to proceed to seek relief on those  
2 27. We think there's been adequate opportunity and notice  
3 now at that point to relevant counsel that they needed to  
4 either get us a PSS or dismiss the case or let us know if  
5 they need an extension and why. These 27, we don't have any  
6 of those things, so we do intend to proceed in the near term  
7 to seek dismissal of those cases with prejudice.

8           JUDGE ERICKSEN: Okay. And Mr. Gordon, you'll --

9           MR. GORDON: Your Honor --

10          JUDGE ERICKSEN: Go ahead.

11          MR. GORDON: Yes, Your Honor. Thank you. This is  
12 Ben Gordon.

13           Briefly, I will agree with Mr. Hulse that  
14 significant progress has been made just in the past week,  
15 even 48 hours, with respect to the defense contention that  
16 PSSs are deficient or overdue.

17           In fact, I think Mr. Hulse would concede that even  
18 within the last hour I have notified them of a dispute with  
19 respect to one of the remaining 27 in one of my cases where  
20 they contend that it has not been served, the PSS. We  
21 believe it was served adequately on December 24th.

22           So my view on this globally, Your Honor, is that  
23 we have made huge strides in the last week alone with  
24 respect to what they believe is deficient and what we  
25 believe is deficient and which cases need to be supplemented

1 and which need to be dismissed, and we're working diligently  
2 to get that done. I think Mr. Hulse would agree with that.

3 Based on that, I think if the Court would give us  
4 until the next status conference before any kind of punitive  
5 action is considered with respect to potential orders to  
6 show cause or even dismissals of cases, we can have this  
7 either eliminated as an issue or refined down to the truly  
8 few contested issues.

9 JUDGE ERICKSEN: Well, nothing has been --

10 MR. HULSE: If I may, Your Honor --

11 JUDGE ERICKSEN: Could I just say nothing has been  
12 filed yet and so it would be premature for us, I think, to  
13 say that there's some new deadline. It sounds like you're  
14 working diligently together and if there's a dismissible  
15 case, everyone will agree to dismiss it. If there is a  
16 reason for the delay in the fact sheet, I imagine Mr. Hulse  
17 will be understanding about that. And if there are some  
18 legitimate disputes, then there will be a motion filed. But  
19 without anything filed right now, I'm not inclined to set a  
20 month-away target.

21 MR. HULSE: Thank you, Your Honor. And we're not  
22 proposing that. Just wanted to let you know that we have  
23 been working with the plaintiffs and that there's this  
24 remaining group that there's been no satisfactory action on  
25 to remedy, that it's overdue. So we do intend to bring that

1 to the Court for action --

2 JUDGE ERICKSEN: If necessary.

3 MR. HULSE: If necessary, of course.

4 And separate -- there's separately the issue of  
5 PSSs that have been received that have a core deficiency as  
6 defined in PTO 14. PTO 14 provides the process that we are  
7 following. About 75 percent of the PSSs that we've received  
8 have one or more core deficiency. I'm sure plaintiffs will  
9 dispute some of those. But anyway, we have a process we go  
10 through. The notices will start going out today and we'll  
11 work through those, as provided by the Court's order.

12 JUDGE ERICKSEN: Very well.

13 Now, on the bellwether selection plan, we're  
14 fortunate that Judge Leary was able to come over and be with  
15 us here. So who wants to talk about the bellwether  
16 selection plan, who wants to start that off?

17 MS. YOUNG: Your Honor, this is Mary Young for the  
18 defendants.

19 The first issue with respect to the bellwether  
20 selection plan is the parties' joint request that we be  
21 allowed a short extension of time until January 31st to put  
22 in our 16 nominated cases, and that is just due to our joint  
23 belief that it will take us a bit more time to get through  
24 all of the PSSs.

25 So Your Honor has an idea, we have received -- of

1 the 150 randomly selected cases, we have received 115 PSSs  
2 and two have not been received. The remaining cases the  
3 PSSs are not yet due because the bellwether pool included  
4 cases filed up through December 19th and those PSSs will not  
5 be due for 90 more days. So we are working our way through  
6 the group of 115 PSSs on each side to come up with our 16  
7 nominated cases.

8 On January 9th the parties put in their joint  
9 submission as to what a representative case may look like in  
10 the consolidated action and agree that the nominated cases  
11 should be either hip or knee procedures and that the kind of  
12 random other procedures should not be selected, and that is  
13 also before the Court.

14 And in addition, defendants proposed one category  
15 and that is that it's our view that the cases should also  
16 fall within a staph species bacteria. And we have had an  
17 opportunity to do some additional analysis on the 115  
18 plaintiff fact sheets that have been received and believe,  
19 based on that analysis of both the fact sheet and some  
20 company medical records, that about 60 percent of those  
21 cases fall within a hip and knee procedure and a staph  
22 species bacteria. So it's our view that those cases would  
23 be most representative for the first bellwether selection.

24 So that is an issue that was teed up for the Court  
25 on January 9th and we would request that the Court delineate

1 both of those categories today and give guidance to the  
2 parties for a January 31st nomination date.

3 JUDGE ERICKSEN: You're in agreement about the hip  
4 and knee, so that's an easy one. Mr. Gordon --

5 MR. GORDON: Yes, Your Honor.

6 JUDGE ERICKSEN: -- who on your side wants to talk  
7 about this staph versus nonstaph infection?

8 MR. GORDON: I'd be happy to step off the curb on  
9 that, Your Honor, if I may.

10 JUDGE ERICKSEN: Sure. Look both ways.

11 MR. GORDON: Yes, exactly, Your Honor.

12 First, obviously we agree with the extension to  
13 January 31st. I think that's appropriate.

14 I will say that with respect to the further  
15 delineation of or stratification of cases along the lines  
16 that Ms. Young suggests, Your Honor correctly points out  
17 that we agree on the broadest variables in these cases,  
18 which are hips, knees, and other types of devices or other  
19 types of surgeries, and that those criteria apply broadly to  
20 all of the cases under contention and under selection  
21 consideration.

22 And to further stratify that based on a  
23 controverted issue concerning a very complicated issue  
24 relating to causation and other things I think misses the  
25 mark with respect to a bellwether selection process. I

1 think it limits the pool unnecessarily and artificially in a  
2 way that simply gives us fewer cases to choose from.

3 The Court has already chosen to select from 150  
4 cases. The parties agree with the broad division of those  
5 among these three areas: hip implants, knee implants, and  
6 other.

7 The issue with respect to microbes is very complex  
8 and, as I say, disputed because, for example, there are  
9 many, many cases within this pool that have unknown microbe,  
10 unknown pathogens at this point in time and may forever have  
11 unknown pathogens.

12 It is not uncommon, Your Honor, and I think the  
13 defense would concede this, for the medical personnel to  
14 find a clear infection, they will see lots of neutrophils,  
15 other cells that reflect infection, but when they do the  
16 culture, they simply do not get a specific positive species  
17 cultured out. For some of these plaintiffs it will be  
18 unclear whether they are staph or other species.

19 In addition, there are many cases in the mix  
20 that -- again, the defense I think would agree -- have  
21 multiple species. In fact, I looked at two yesterday where  
22 they have both enterococcus species and staph species that  
23 contributed to their infection. So what do we do with  
24 those?

25 I think it presents a lot of expert issues and

1 factual issues that will simply confound the bellwether  
2 process if we add that additional layer, Your Honor.

3 JUDGE ERICKSEN: Well, we've got a couple  
4 categories there, you've got staph and you've got unknowns.  
5 And on the principle that the bellwether cases should  
6 reflect the various categories of cases, I'm prepared to  
7 give you an answer. Let me just look to my colleagues here  
8 and see if it's all right with them if I just go ahead and  
9 rule here.

10 JUDGE LEARY: (Nodding.)

11 MAGISTRATE JUDGE NOEL: What's your answer?

12 JUDGE ERICKSEN: Judge Noel is saying, well,  
13 what's your answer.

14 We're not going to limit it to staph. We won't  
15 recognize the pathogen subcategory. So we will go ahead  
16 with the hip and knee restriction, but not the other. And I  
17 will, of course, grant the requested extension to  
18 January 31st.

19 MR. GORDON: Thank you, Your Honor.

20 MS. YOUNG: Thank you, Your Honor.

21 JUDGE ERICKSEN: Okay.

22 MS. YOUNG: I think there is one additional issue  
23 with respect to the nominations and that's related to the  
24 inclusion of Ramsey County cases.

25 JUDGE ERICKSEN: Right. Judge Leary, did you

1 want --

2 JUDGE LEARY: What did you want to say in that  
3 regard? And I have reviewed the e-mail that you sent  
4 yesterday. But is there anything you want to add?

5 MS. AHMANN: This is Bridget Ahmann. I think  
6 we're just looking for some guidance as to what the  
7 expectation is. There's noted that each of the parties will  
8 choose one to two cases, but we don't know where that falls  
9 within the other bellwether workup or setting them for  
10 trial.

11 The PSSs in Ramsey County will be due by the end  
12 of the month and the parties to identify cases I think by  
13 mid February, but I think that we're looking for a little  
14 guidance as to where it goes beyond that.

15 JUDGE LEARY: What do you mean by "where it goes"?  
16 Are you trying to distinguish between the federally-filed  
17 cases and the Minnesota-filed cases?

18 MS. AHMANN: Right. I mean, I think --

19 JUDGE LEARY: I understood your question to be  
20 whether or not -- given those bellwether cases, whether or  
21 not any of them would be litigated in Ramsey County. And  
22 it's always been my understanding that at least one of those  
23 cases would be litigated in Ramsey County. Is that your  
24 question?

25 MS. AHMANN: Well, I mean, I think it is. So if

1 we're going to -- the Court's order, I think, provides that  
2 we agree to eight cases and then there is a workup of six  
3 cases. Are we saying that one of those cases is going to be  
4 a Ramsey case workup for trial?

5 JUDGE LEARY: I would assume yes unless my  
6 colleagues disagree.

7 JUDGE ERICKSEN: I do not disagree. I figured  
8 that there would be a Ramsey County workup.

9 JUDGE LEARY: And let me ask you this question in  
10 that regard. Is it helpful to the potential resolution of  
11 these cases, given their bellwether designation, that you do  
12 have one of the bellwether cases -- at least one of the  
13 bellwether cases tried in Ramsey County?

14 MS. AHMANN: Yeah, I don't know if it makes a  
15 difference in terms of, you know, getting representative  
16 cases on board.

17 JUDGE LEARY: Okay. Well, given that it doesn't  
18 make a difference, then I would stand by what I said before.  
19 At least one of those cases would be Ramsey County.

20 MR. GORDON: Your Honor, from the plaintiffs'  
21 standpoint, if you wish for me to respond?

22 JUDGE LEARY: Go ahead, Mr. Gordon.

23 MR. GORDON: Thank you, Judge Leary and Your  
24 Honors. You know, we read with interest the defendants'  
25 submission with respect to this question. In my re-reading

1 of the scheduling order and the bellwether paradigm, I don't  
2 see anything that specifically addresses one way or the  
3 other whether once we finalize the list of eight, we presume  
4 agreed list of eight, one of those cases must be a Ramsey  
5 County case, but I also am happy for the plaintiffs, I  
6 believe, to report that we would be fine with that addition  
7 or that requirement. We don't think that it necessarily has  
8 an impact, you know, one way or the other, but if the Court  
9 would prefer that one of the cases selected of the six final  
10 cases be a Ramsey County case, we're fine with that.

11 JUDGE ERICKSEN: We're all nodding here.

12 JUDGE LEARY: So this is Judge Leary. I'm  
13 agreeable to that and I would anticipate that one of those  
14 cases that are designated be a Ramsey County case. And if  
15 you want to designate more than one, that's fine too.

16 JUDGE ERICKSEN: But one of the six.

17 JUDGE LEARY: One of the six.

18 JUDGE ERICKSEN: If we're down to six, it will be  
19 one of the six.

20 JUDGE LEARY: Any other questions in that regard?

21 (Pause)

22 JUDGE LEARY: I'm not hearing any.

23 JUDGE ERICKSEN: Okay. This is Judge Ericksen.  
24 If you're not talking, could you make sure to push mute on  
25 your speaker so that we don't hear side conversations and

1 static.

2 MR. GORDON: Your Honor, if I might -- this is  
3 Mr. Gordon. I might have one follow-up point that I imagine  
4 Ms. Ahmann might have questions or we might both be  
5 scratching our heads a little bit here in terms of how  
6 things play out and perhaps we can address it later, but  
7 with respect to the eight cases, if we agree on eight, I can  
8 imagine a scenario in which let's just say each side has  
9 selected one Ramsey County case and one or both of those  
10 cases potentially could be stricken if each party had a  
11 strike. And so what I hear the Court saying is that if  
12 there are only one or two cases among the eight, then it  
13 would not be appropriate to use a strike to strike one of  
14 those cases.

15 JUDGE ERICKSEN: I don't think that's what we're  
16 saying. This is just the number that we're -- once  
17 everything is said and done and we're down to the list after  
18 strikes.

19 MR. GORDON: And I suppose my question, Your  
20 Honor, is that if --

21 JUDGE LEARY: Mr. Gordon, if I understand your  
22 question, is if one of the cases submitted is a Ramsey  
23 County case and the other side strikes it, is that  
24 appropriate or not; is that correct?

25 MR. GORDON: Yes, Your Honor. And will we then

1 have to pull up another case to replace that case?

2 JUDGE LEARY: From my point of view, I think  
3 that's a fair question and I think it's something that  
4 perhaps the judges here need to discuss and perhaps discuss  
5 privately.

6 MR. GORDON: Thank you, Your Honor.

7 MR. BLACKWELL: Judge Leary, it's Jerry Blackwell.  
8 We are content to cross that bridge when we get there.  
9 Obviously there will be some process of being able to strike  
10 a Ramsey County case and to be able to replace it with  
11 another Ramsey County case. We're content to wait to hear  
12 from Your Honors and to cross that bridge when we get there.

13 JUDGE LEARY: From my point of view I think,  
14 Mr. Blackwell, that's a reasonable way of looking at it. It  
15 will also allow the judges here an additional opportunity to  
16 figure out where we want to go if we do have to come to that  
17 point.

18 JUDGE ERICKSEN: Okay. Just give us a moment  
19 here. I'm going to put you on mute. Don't go away, but  
20 we're going to take a 30-second conversation and see if we  
21 can give you an answer now on that. Hold on one second.

22 (Judge Ericksen, Judge Leary, and Magistrate  
23 Judge Noel confer off the record)

24 JUDGE ERICKSEN: All right. We're back. Here's  
25 the situation. We agree that it makes sense to have a

1 bellwether trial in a Ramsey County case if possible. And  
2 so my thought is that if there are strikes such that we're  
3 left without a Ramsey County case, then you'd pull another  
4 one.

5 And the question that would be left potentially  
6 for another day is if there's something about that process  
7 that becomes really problematic and then, as with any other  
8 unforeseen problem, we can cross that bridge.

9 But in terms of the planning, we're looking at  
10 ending up with a Ramsey County case and if that means you  
11 pick another one to replace a strike, then that's what it  
12 means.

13 JUDGE LEARY: This is Judge Leary. I'm in  
14 agreement with that.

15 MAGISTRATE JUDGE NOEL: As am I.

16 JUDGE ERICKSEN: And as is Judge Noel.

17 MR. GORDON: Thank you, Your Honors.

18 MR. BLACKWELL: Thank you.

19 JUDGE ERICKSEN: Does that take the suspense out?

20 MR. GORDON: For the time being. We'll mount it  
21 again later.

22 MR. BLACKWELL: Agreed.

23 JUDGE ERICKSEN: Okay. And then the foreign  
24 discovery is concluded, as I understand. Is there anything  
25 to discuss about that?

1                   MAGISTRATE JUDGE NOEL: I was just going to say  
2                   there was some kerfuffle at the last moment on the  
3                   deposition of Dr. McGovern, as I recall, and I guess my only  
4                   question -- this is Frank Noel. My question is: Are there  
5                   any lingering issues or has that been resolved as a result  
6                   of the last e-mails and telephone messages?

7                   MS. CONLIN: It's been -- this is Jan Conlin.  
8                   It's been resolved, Your Honor.

9                   MAGISTRATE JUDGE NOEL: Thank you.

10                  MR. BLACKWELL: Thank you, Jan. We concur.

11                  MAGISTRATE JUDGE NOEL: Okay. Thank you.

12                  JUDGE ERICKSEN: All right. And then there's some  
13                  action on the St. Louis cases that will proceed according to  
14                  the outline that is here in the joint agenda. I don't think  
15                  there's anything we need to do about that right now. Is  
16                  there?

17                  MR. BLACKWELL: Judge Ericksen, Mr. Hulse will  
18                  speak to this, but I think the Court should be aware of what  
19                  seems to be emerging in the city of St. Louis.

20                  MR. HULSE: I don't want to belabor this, Your  
21                  Honor, but basically that a plaintiffs' firm is trying to  
22                  start another MDL in St. Louis in the City of St. Louis  
23                  Court, split up the plaintiffs to avoid CAFA mass action  
24                  removal and then, you know, included one Minnesota defendant  
25                  in each case to defeat diversity. So we've removed under

1 fraudulent joinder and lack of personal jurisdiction  
2 arguments. We've filed the tag-along.

3 Plaintiffs are objecting in the JPML to transfer,  
4 so that will play out -- they've also sought remand. So  
5 that will be playing out in the Eastern District of Missouri  
6 as well. But depending on how things shake out, it may  
7 be -- subject matter jurisdiction, personal jurisdiction  
8 issues may well land before Your Honor.

9 JUDGE ERICKSEN: But there's nothing here now?

10 MR. HULSE: Not at this point.

11 MR. GORDON: Your Honor, this is Ben Gordon. I  
12 would just say that while plaintiffs in the MDL don't have a  
13 dog in this fight, so to speak, you know, just in terms of  
14 Mr. Hulse's characterization, I would say that obviously I  
15 think the plaintiffs' lawyers in Missouri have followed  
16 whatever they believe are appropriate -- their prerogatives  
17 under state law in Missouri and that process needs to play  
18 itself out, you know, until and unless it's before this  
19 Court, which it's not.

20 MAGISTRATE JUDGE NOEL: Frank Noel here. I think  
21 you just answered the question I have, but just to be clear,  
22 so the plaintiffs' lawyers who have filed these Missouri  
23 actions do not have any plaintiffs who are in the MDL as we  
24 speak?

25 MR. BLACKWELL: For 3M, we don't know the answer

1 to that at this time. We're sort of looking at each other  
2 around the table here and, Judge Noel, we don't know the  
3 answer to that yet.

4 MAGISTRATE JUDGE NOEL: Mr. Gordon, do you know?

5 MR. GORDON: I absolutely do not, Your Honor. I  
6 agree with Mr. Blackwell, none of us knows the answer to  
7 that. My assumption is that they do not have any cases in  
8 the MDL, but I do not have an answer for you today.

9 MAGISTRATE JUDGE NOEL: Okay.

10 JUDGE ERICKSEN: Thank you.

11 MS. CONLIN: This is Jan Conlin. To be clear, I  
12 don't want the Court left with some impression that there  
13 is, you know, some acquiescence or blessing on our part on  
14 what's going on. I think Mr. Gordon stated it correctly,  
15 which is folks are doing something down there and we're  
16 not -- it's not part of anything that we're a part of.

17 MR. GORDON: Correct, yes.

18 MAGISTRATE JUDGE NOEL: And as I understand it,  
19 it's simply two cases with multiple plaintiffs in each case;  
20 is that correct?

21 MR. HULSE: That's right, Your Honor. They --

22 JUDGE LEARY: Would you identify yourself, please.

23 MR. HULSE: I'm sorry, Your Honor. It's Ben  
24 Hulse. It's more than 100 plaintiffs collectively, but to  
25 avoid mass action removal under CAFA, they split it into two

1 groups of just over 50 and then divided their Minnesota  
2 defendants [sic] between the cases to defeat diversity.

3 MAGISTRATE JUDGE NOEL: Okay.

4 MR. HULSE: I mean the Minnesota plaintiffs.

5 MAGISTRATE JUDGE NOEL: Thank you.

6 JUDGE ERICKSEN: All right. We'll step off that  
7 curb when we have to.

8 MR. GORDON: We're all going to be using that  
9 expression.

10 JUDGE ERICKSEN: I love it.

11 MR. GORDON: In fairness, Your Honor, I borrowed  
12 that from His Honor Judge Frank.

13 JUDGE ERICKSEN: The reason I like it is I might  
14 have mentioned before the connection with this, but I lived  
15 in England for two years and one of the things that has  
16 forever been on my mind is which way to look when I step off  
17 the curb because tourists are constantly getting run over  
18 because they look the wrong way when they step off the curb  
19 and then a double-decker bus creams them.

20 And as a child I read a spy novel where somebody's  
21 identity was given away as a spy because she looked to the  
22 left rather than the right. So that's part of why I like  
23 that expression.

24 Anyway, the other state court proceedings, I  
25 didn't see any discussible issues there, but any -- am I

1 wrong about that? And I am including the Canadian action in  
2 that.

3 MR. BLACKWELL: Your Honor, for 3M, we agree with  
4 Your Honor, nothing there to add.

5 MR. GORDON: Same for plaintiffs, Your Honor.

6 JUDGE ERICKSEN: Okay. And then on the discovery,  
7 anything you want to bring up at this point?

8 MR. HULSE: Yes, Your Honor. It's Ben Hulse. You  
9 will be seeing or Judge Noel will be seeing another motion  
10 with respect to Dr. Augustine's compliance with the  
11 subpoenas and his prior order. I think that's likely to go  
12 on file today or tomorrow and I think we've reserved a  
13 hearing spot for February 6th. Another issue that we will  
14 be addressing is noncompliance with the Court's order for  
15 payment of fees and costs too, which are still outstanding.  
16 So that's the status there. We have continued  
17 Dr. Augustine's deposition while we continue to pursue these  
18 compliance issues.

19 MAGISTRATE JUDGE NOEL: So the deposition won't --  
20 so we had a date -- Frank Noel here. We had a date earlier,  
21 I thought, for issues relating to Dr. Augustine and then  
22 that got moved.

23 (Magistrate Judge Noel and law clerk confer)

24 MAGISTRATE JUDGE NOEL: Never mind. Strike that.

25 MR. HULSE: I think February 6th is the date that

1 we have a hearing.

2 MAGISTRATE JUDGE NOEL: And so the deposition of  
3 Dr. Augustine will not occur until after whatever we rule on  
4 whatever motions you bring on that February 6th date; is  
5 that correct?

6 MR. HULSE: That's correct, Your Honor.

7 MAGISTRATE JUDGE NOEL: Okay.

8 MR. HULSE: Continuing on to the completion of the  
9 defendants' e-mail production, we have been working  
10 expeditiously to complete that. We've got nearly 90  
11 reviewers who have been working nonstop to complete it.

12 The plaintiffs, we appreciate, were willing, after  
13 we shared our plan with them to complete the rolling  
14 production, were agreeable to continue the deadline to  
15 complete that production to January 31st and we just ask the  
16 Court's approval on that agreement.

17 JUDGE ERICKSEN: So given.

18 MR. HULSE: On depositions, Your Honors, what's  
19 going on is laid out here in summary and I won't repeat it  
20 and would just defer to anything that the plaintiffs'  
21 counsel would like to add.

22 MR. GORDON: This is Mr. Gordon, Your Honors. I  
23 would say I agree with Mr. Hulse, it's laid out here.  
24 There's been additional work that continues, a deposition  
25 yesterday. We've been very cooperative in moving certain

1 depositions to accommodate the new discovery schedule. I  
2 think there are some additional discovery requests we will  
3 be submitting with respect to third parties, very limited,  
4 but those are not ripe. And I agree with Mr. Hulse there's  
5 nothing too controverted to dispute today.

6 JUDGE ERICKSEN: Very well. Any random thoughts,  
7 Mr. Gordon, that you want to share?

8 (Laughter)

9 MR. GORDON: Well, I enjoyed your anecdote about  
10 the double-decker bus. I will tell you that when my  
11 daughter was five years old she was living in London or near  
12 London in the Harrogate area and so I had an opportunity to  
13 study abroad while in law school and for a semester I spent  
14 time over there and had that exact incident you're  
15 describing occur where I was holding her hand and she's five  
16 years old and she stepped off the curb almost directly in  
17 front of a red double-decker bus and all the people gasped.  
18 It's a common occurrence. Fortunately she was not smashed.

19 JUDGE ERICKSEN: Yeah. I think that the media  
20 suppresses the numbers, at least there was talk of that when  
21 I was over -- I taught trial practice there not too long ago  
22 and it was still going on and I said, How come we never read  
23 about this? Why do you have to come over here to experience  
24 it? Of course everyone said it's because the tourist bureau  
25 doesn't want people to know how many tourists get flattened

1 on the street.

2 Mr. Blackwell, any random thoughts on your part?

3 MR. BLACKWELL: Your Honor, I've never had an  
4 issue stepping off the curb in my life.

5 (Laughter)

6 JUDGE ERICKSEN: You know, you always struck me as  
7 a person who knows which way to look.

8 (Laughter)

9 MR. BLACKWELL: Last random thought. I just last  
10 Saturday ordered eight more beehives to get ready for the  
11 season.

12 JUDGE ERICKSEN: Oh.

13 MR. BLACKWELL: My final random thought, spring  
14 will be here.

15 JUDGE ERICKSEN: Wow. I didn't even -- I must  
16 have been out of the room when you revealed that you're a  
17 beekeeper.

18 MR. BLACKWELL: Yes, I do. So there are 16 hives.  
19 They are all ready. I'm looking to get eight more for next  
20 season.

21 JUDGE ERICKSEN: Wow.

22 MS. CONLIN: Mr. Blackwell, we're looking forward  
23 to you sharing some of your honey with the rest of us.

24 MR. BLACKWELL: I may not bring you honey, but  
25 I'll bring you my sweetness. Okay?

1 (Laughter)

2 JUDGE ERICKSEN: Well, okay. Thanks, everybody.

3 MR. BLACKWELL: Thank you, Your Honor.

4 JUDGE ERICKSEN: It's been a pleasure.

5 MR. GORDON: Thank you very much, Your Honor.

6 JUDGE ERICKSEN: We'll meet again. We're in  
7 recess.

8 (Court adjourned at 10:10 a.m.)

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13 I, Lori A. Simpson, certify that the foregoing is a  
14 correct transcript from the record of proceedings in the  
15 above-entitled matter.

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17 Certified by: s/ Lori A. Simpson

18 Lori A. Simpson, RMR-CRR

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