

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

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4 In re: BAYCOL PRODUCTS LITIGATION) MDL No. 1431 MJD
5)
6) 9:30 a.m. o'clock
7) March 20, 2003
8) Minneapolis, MN
9)
10)
11 -----

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

15 APPEARANCES:

16 RICHARD LOCKRIDGE, ESQ.
17 RONALD MESHBESHER, ESQ.
18 RANDY HOPPER, ESQ.
19 JOHN CLIMACO, ESQ.
20 TURNER BRANCH, ESQ.

21 ON BEHALF OF THE DEFENDANT: PHILIP BECK, ESQ.
22 ADAM HOEFLICH, ESQ.
23 SUSAN WEBER, ESQ.
24 PETER SIPKINS, ESQ.
25 FRED MAGAZINER, ESQ.
TRACY VAN STEENBURGH, ESQ.

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1 THE CLERK: Multi-District Litigation No. 1431, 09:39:23

2 In re: Baycol Products. Please state your appearances for 09:39:23

3 the record. 09:39:43

4 MR. ZIMMERMAN: Good morning, Your Honor, 09:39:43

5 Charles Zimmerman of Plaintiffs Steering Committee. 09:39:43

6 MR. LOCKRIDGE: Good morning, Your Honor, Richard 09:39:43

7 Lockridge for the Plaintiffs Steering Committee. 09:39:43

8 THE COURT: Good morning. 09:39:43

9 MR. MESHBESHER: Good morning, Your Honor, Ron 09:39:43

10 Meshbeshher for the Plaintiffs. 09:39:43

11 MR. ROBINSON: Good morning, Your Honor, mark 09:39:50

12 Robinson from California. 09:39:50

13 THE COURT: Good morning.

14 MR. HOPPER: Good morning, Your Honor, Randy 09:39:50

15 Hopper for the MDL Plaintiffs. 09:39:51

16 MR. CLIMACO: Good morning, Your Honor, John 09:39:51

17 Climaco for the MDL Plaintiffs.

18 THE COURT: Good morning.

19 MR. BRANCH: Turner Branch on behalf of the 09:39:53

20 Plaintiffs, Your Honor. 09:39:56

21 THE COURT: Good morning.

22 MR. BECK: Good morning, Your Honor, Phil Beck 09:40:02

23 for the Bayer Defendants. 09:40:02

24 THE COURT: Good morning.

25 MR. HOEFLICH: Good morning, Adam Hoeflich for 09:40:04

1 Bayer Defendants. 09:40:09

2 THE COURT: Good morning.

3 MR. SIPKINS: Good morning, Your Honor, Peter 09:40:09

4 Sipkins on behalf of Bayer. 09:40:11

5 THE COURT: Good morning.

6 MS. WEBER: Good morning, Your Honor, Susan Weber 09:40:14

7 on behalf of Bayer.

8 THE COURT: Good morning.

9 MR. MAGAZINER: Good morning, Your Honor, Fred 09:40:17

10 Magaziner, GSK. 09:40:19

11 THE COURT: Good morning.

12 MS. VAN STEENBURGH: Good morning, Tracy Van 09:40:21

13 Steenburgh for GSK. 09:40:24

14 THE COURT: Good morning. Mr. Zimmerman -- 09:40:27

15 before we get started, we have Special Master Roger Haydock 09:40:27

16 here, and also I have Special Master John Borg, who's the 09:40:33

17 Special Master dealing with the European depositions 09:40:36

18 traveling with me tomorrow, and welcome down here. You may 09:40:42

19 proceed. 09:40:45

20 MR. ZIMMERMAN: Thank you, Your Honor. We are 09:40:49

21 here on MDL 1431. We have filed with the Court a joint 09:40:56

22 status report and agenda as is the normal practice. We had 09:41:01

23 a meet and confer with defense counsel and the PSC, and we 09:41:06

24 came together and provided the Court with a joint status 09:41:11

25 report and agenda. We will go through those items as we 09:41:16

1 normally have, and, then, invite any other comments as the 09:41:21
2 Court may desire. 09:41:26

3 The first item, Your Honor, and we'll go in order 09:41:29
4 unless the Court desires us to go any other way is pending 09:41:33
5 cases. 09:41:37

6 The statistics of pending cases, there are 09:41:38
7 approximately 5,000 cases pending in the federal court 09:41:42
8 which have been transferred to the MDL. Actually, the 09:41:48
9 number as of March 17th is 5,077. I imagine as of today 09:41:52
10 they might be slightly different, but that is the number. 09:41:57
11 There is an exhibit attached to the report that breaks it 09:42:01
12 down by state. There are approximately thirty-four hundred 09:42:04
13 cases pending in state courts around the country. I 09:42:12
14 believe that those figures have been provided to us by both 09:42:18
15 the Court and by defense counsel. We are not privy to 09:42:27
16 exactly those numbers at each moment, but we believe them 09:42:33
17 to be accurate. 09:42:39

18 MR. BECK: We have nothing to add, Your Honor. 09:42:45

19 MR. ZIMMERMAN: The next item, Your Honor, is 09:42:50
20 settlement. As the report indicates, to date Bayer has 09:42:55
21 entered into settlement with approximately 235 persons 09:43:01
22 asserting claims as a result of the use of Baycol. These 09:43:04
23 claims are -- have settled -- 170 of those claims have been 09:43:12
24 members of the PSC or claimants whose settlements have 09:43:19
25 otherwise been subject to an MDL withhold by virtue of them 09:43:23

1 being negotiated with or through the efforts of the PSC or 09:43:28

2 being filed -- case filed in the MDL. 09:43:33

3 The PSC has submitted approximately 27 other 09:43:36

4 additional claims to Bayer for possible settlement. 09:43:40

5 Obviously, this is a little bit of a moving target because 09:43:43

6 cases settle on regular and daily basis, but those are the 09:43:48

7 best statistics we have. 09:43:54

8 I can tell the Court additionally that more and 09:43:58

9 more cases do come in a regular basis, both to the defense 09:43:59

10 counsel's offices through Shook Hardy and our offices at 09:44:03

11 Zimmerman Reed pursuant to whatever notifications and 09:44:08

12 whatever information exist out there. And the rate of them 09:44:11

13 coming in ebbs and flows. Interesting, a few more have 09:44:17

14 come in lately, but we have seen it, not a waterfall of 09:44:24

15 cases, but a small steady trickle of cases coming into our 09:44:31

16 offices. We don't have a real barometer of what comes in 09:44:38

17 directly to Shook Hardy who pursuant to the Court's letter 09:44:43

18 or any other pronouncements that have occurred in the 09:44:48

19 public domain or the press. We would like to get a better 09:44:50

20 handle on that, and I think we will. We've asked for more 09:44:54

21 information on what the rate of cases coming in is. I 09:44:58

22 believe the Court does get that information, but it would 09:45:02

23 just be helpful to us to know what the rate of cases coming 09:45:05

24 in, at least to participate in the program, be it the 09:45:08

25 formalized mediation program or the informal settlement 09:45:14

1 program. 09:45:17

2 MR. BECK: Good morning, Your Honor. Some 09:45:18

3 additional information on settlement. I know the Court has 09:45:22

4 expressed some interest in what the settlement posture had 09:45:25

5 been in the Haltom case down in Corpus Christi because 09:45:30

6 there had been conflicting reports in the press about that. 09:45:36

7 The situation was as follows. Before the Haltom 09:45:39

8 trial began, significantly before the Haltom trial began, 09:45:46

9 we asked Mr. Watts if he would be interested in discussing 09:45:50

10 the Haltom case individually or the Haltom case and other 09:45:56

11 Rhabdo cases that he had. We got inconsistent feedback at 09:46:01

12 different times as he was figuring out his position and the 09:46:07

13 position of the other lawyers who joined with him. 09:46:11

14 Eventually, we made an offer, a written offer of 09:46:14

15 \$250,000 for the Haltom case which is generally right in 09:46:17

16 the range that similar cases have been settled for. We 09:46:26

17 were told at some point along the way by Mr. Watts that he 09:46:33

18 would not settle the Haltom case for any amount of money 09:46:38

19 unless we agreed to settle all 1,400 cases that he and his 09:46:41

20 colleagues had put together down there, the vast majority 09:46:46

21 of which we would consider to be no injury cases and that 09:46:49

22 anyone would agree are certainly not Rhabdo cases. 09:46:55

23 We told him that consistent with our settlement 09:47:00

24 program that we had been following throughout the country 09:47:02

25 that we would not be settling the no injury or non-Rhabdo 09:47:06

1 cases, and we would not, essentially, be held hostage by 09:47:12

2 his refusal to consider settlement of the Rhabdo cases. 09:47:19

3 We were told not to bother to make any additional 09:47:26

4 offers because Mr. Watts would match anything -- any offer 09:47:31

5 that we made to Mr. Haltom, Mr. Watts would guarantee Mr. 09:47:36

6 Haltom that he would pay in the event of a loss, and, so, 09:47:37

7 we shouldn't bother making an individual offer because 09:47:41

8 there was no offer that we could make that Mr. Haltom -- 09:47:44

9 that it would be financially attractive to Mr. Haltom to 09:47:48

10 accept. So, we did not make any other offers having been 09:47:52

11 told that by Mr. Watts. 09:47:54

12 We sought court-ordered mediation on the eve of 09:47:57

13 trial. Mr. Watts objected and the Court declined to order 09:48:00

14 mediation, and, so, we went to trial and we were fortunate 09:48:04

15 and we got a defense verdict. And, hopefully, Mr. Watts is 09:48:08

16 going to give Mr. Haltom what would have been our first 09:48:12

17 offer but not our last offer. So, that was the settlement 09:48:17

18 situation in the Haltom case. 09:48:20

19 I got concerns and I apologize that I was unable 09:48:23

20 to raise those yesterday when meeting with Magistrate 09:48:26

21 Lebedoff on the pretrial matters concerning the Olander

22 case. I couldn't get here in time from Corpus Christi. 09:48:38

23 But after that meeting, I discussed it with my colleagues, 09:48:42

24 and I have a practical concern about the Olander case in 09:48:45

25 terms of settlement, and that is the Magistrate has set 09:48:49

1 aside two days for settlement meetings, April 30th and May 09:48:56
2 1st.

3 Here's my concern, Your Honor. By the time we 09:49:01
4 get there, the Plaintiffs' lawyers may have incurred so 09:49:03
5 much additional chargeable expense by way of experts or 09:49:09
6 whatever to Mrs. Olander, that we will be in a situation 09:49:13
7 where, as a practical matter, the case may be unseizable 09:49:19
8 because an offer to her, you know, pick a number would 09:49:24
9 result in a zero recovery by her because they will have 09:49:31
10 spent 2, 3, 4, \$500,000 on expert fees that would eat up 09:49:35
11 any settlement proposal to her. 09:49:41

12 So, I feel bad that Mr. Haltom missed out on an 09:49:47
13 opportunity to settle his case, and I would feel bad as 09:49:50
14 well if, because of the timing of settlement conference, 09:49:53
15 the economics work out that Mrs. Olander's case is 09:49:59
16 unseizable and we find ourselves with another test case 09:50:04
17 preferred by the Plaintiffs' lawyers by missing an 09:50:10
18 opportunity to deliver significant settlement dollars to 09:50:12
19 somebody who suffered side effects from our medicine, 09:50:16
20 something that we are a lot more interested in than we are 09:50:20
21 test cases. So, that's a practical consideration that I 09:50:24
22 put out there. 09:50:26

23 I'm very worried that in their desire to have a 09:50:28
24 test case teed up, that Plaintiffs obviously will do their 09:50:31
25 homework and get their experts in line and incur large 09:50:37

1 expenses that will be chargeable against any settlement 09:50:41
2 that would be made by Mrs. Olander, thus, making it as a 09:50:46
3 practical matter an unseizable case. I put that out. I 09:50:50
4 don't have an answer. I have a serious concern in that 09:50:54
5 regard. 09:50:58

6 THE COURT: All right, Mr. Robinson. 09:50:58

7 MR. ROBINSON: Good morning. 09:51:02

8 THE COURT: Good morning. 09:51:04

9 MR. ROBINSON: Good morning, Your Honor. I'm 09:51:05
10 certainly concerned. I appreciate Mr. Beck's concern for 09:51:07
11 Mrs. Olander, and as her attorney, I'm very concerned for 09:51:10
12 her as is Ms. Pearson who has tried to push her case 09:51:15
13 forward as best she can and at all times thinking about 09:51:22
14 Mrs. Olander. 09:51:28

15 The problem is that practically speaking, we're 09:51:30
16 off to Europe on Saturday, and that's going to take about 09:51:34
17 three weeks of our time. Frankly, that's not really time 09:51:38
18 that is going to be billed to Mrs. Olander's case. I think 09:51:40
19 that's generic time. I think in terms of the expert 09:51:48
20 designations, a lot of those are generic experts. There 09:51:53
21 may be some case specific experts that we're going to 09:51:57
22 designate. I don't really see the major costs issues 09:51:59
23 coming to the forefront before the April 30th date that 09:52:02
24 Judge Lebedoff set. And I think that's probably a 09:52:07
25 reasonable date given all the things that are going on in 09:52:10

1 this case. In fact, I am going to Europe, and I would like 09:52:14
2 to be there at the settlement conference. I'd like to meet 09:52:18
3 with Mrs. Olander for a week or two before we go to the 09:52:21
4 settlement conference and really get her feeling of what 09:52:25
5 she wants to do, etc. 09:52:30

6 I think April 30th actually is a good date. I 09:52:32
7 don't think she'll be missing out on anything here because 09:52:36
8 of cost. So, I just don't think we have another solution, 09:52:39
9 given the fact that we're going to Europe on Saturday this 09:52:45
10 time, Your Honor. 09:52:49

11 THE COURT: The final wisdom of the Olander 09:52:51
12 matter cases set for June 6th before this Court, I 09:52:56
13 specifically told Magistrate Judge Lebedoff to set up a 09:53:03
14 settlement conference for both of these cases and is the 09:53:09
15 normal policy for all of my cases that come through this 09:53:14
16 district. So, we are and will have that settlement 09:53:17
17 conference on those dates unless you have a mind to change 09:53:22
18 and you can do that in agreement with Judge Lebedoff. 09:53:27

19 All right, anything else dealing with the 09:53:30
20 settlements for the defense side on the number of cases, 09:53:33
21 Mr. Beck, on the number of cases settled over the period of 09:53:37
22 time, what's reflected in the report is accurate? 09:53:42

23 MR. BECK: It is accurate, Your Honor. In terms 09:53:45
24 of cases that we have under discussion with individual 09:53:47
25 Plaintiffs' lawyers, I don't think we're going to be giving 09:53:50

1 the PSC additional details on that. We've been very 09:53:54
2 concerned that information that we have provided to the PSC 09:54:01
3 for purposes that are stated to be, you know, for 09:54:05
4 federal/state coordination end up making their way into 09:54:10
5 newspapers and efforts to put pressure on our stock price. 09:54:13
6 And, so, at this point, we're going to provide them with 09:54:18
7 the information that we are required to, but we don't 09:54:22
8 anticipate providing them with additional information 09:54:24
9 beyond what we are required to. 09:54:28

10 THE COURT: Thank you. Anything further on that 09:54:31
11 issue, Ms. Zimmerman, before we move on dealing with the 09:54:33
12 settlement. 09:54:42

13 MR. ZIMMERMAN: Yeah, there are a couple of other 09:54:43
14 A's and B's and C's under settlement. I think we are into 09:54:46
15 B, and that has really to do with the informational letter 09:54:49
16 that the Court sent out. I believe you received those 09:54:54
17 copies. I believe we e-mailed them to you. You said you 09:55:03
18 hadn't received them.

19 MS. WEBER: I haven't seen a copy, Bucky. 09:55:06

20 MR. ZIMMERMAN: Maybe it wasn't. They asked that 09:55:11
21 we provide them with a copy. I thought they had one. I 09:55:13
22 apologize. We sent it over Monday. They had not seen 09:55:18
23 actually the final copy of the Court's letter, but it was 09:55:23
24 the Court's letter, and we will get one to them today and I 09:55:25
25 apologize they didn't see it. But the point -- 09:55:29

1 THE COURT: We got two letters that went out, one 09:55:33
2 to the Plaintiffs' lawyers, all the Plaintiffs' lawyers, 09:55:35
3 the names that you submitted to the Court, and also the 09:55:40
4 Judges, state court Judges that are handling the matters. 09:55:46
5 I sent a letter to them. It was a modification of the 09:55:50
6 first letter. So, let's get both of those to defenses as 09:55:53
7 quickly as possible by the end of -- 09:55:58

8 MR. ZIMMERMAN: Today. 09:56:02

9 THE COURT: -- by two o'clock. It's an e-mail. 09:56:04

10 MR. ZIMMERMAN: It was just an oversight, Your 09:56:07
11 Honor. I apologize. 09:56:08

12 The point I guess I wanted to go to next was 09:56:11
13 approximately 15 claimants have submitted requests to Bayer 09:56:13
14 for mediation with respect to those letters, and the PSC is 09:56:19
15 working with a number of those claimants to help them along 09:56:26
16 on those one-on-one settlement mediations. I think that 09:56:34
17 sequels then into perhaps the mediators' report if 09:56:38
18 Professor Haydock or Special Master Haydock has some 09:56:45
19 comments or additions to the mediation process. 09:56:50

20 THE COURT: Good morning. 09:56:55

21 MR. HAYDOCK: Good morning, Your Honor. I'm 09:56:56
22 reporting on behalf of Special Master Remele on the 09:56:58
23 mediation program this Court has established.

24 We had as of yesterday 16 cases that are being 09:56:59
25 processed, one more than the number that Mr. Zimmerman just 09:57:01

1 mentioned. They are in various stages of acquiring 09:57:06
2 information from the Plaintiffs or awaiting a response from 09:57:10
3 Bayer or setting the matter for schedule, and they are 09:57:16
4 covering six states, Minnesota, Oregon, California, 09:57:16
5 Mississippi, Missouri and Florida, potential mediations in 09:57:20
6 those cases. 09:57:24

7 One of the cases set for mediation had settled by 09:57:26
8 the parties which is encouraging as well. The parties have 09:57:29
9 been cooperative, both in terms of providing our 09:57:33
10 administrator with the information, and Bayer is responding 09:57:36
11 to the various requests. So the parties seem to be 09:57:38
12 operating as intended by the Court. 09:57:45

13 THE COURT: Thank you. 09:57:47

14 MR. ZIMMERMAN: As part of settlement, Your 09:57:52
15 Honor, there is the third party payor issue, and -- can I 09:57:55
16 approach the Bench on that for a minute? 09:58:04

17 THE COURT: Yes, Mr. Beck. 09:58:07

18 (Whereas, the following conference was had at the
19 Bench and on the record.)

20 MR. ZIMMERMAN: I don't know what you want me to 09:58:44
21 say except we are going to replace Joe Arshawsky. 09:58:47

22 THE COURT: You are going to replace him or are 09:58:53
23 you requesting the Court to replace him? 09:58:55

24 MR. ZIMMERMAN: He's here. Shall I have him 09:58:58
25 stand up. 09:59:01

1 THE COURT: Yes. 09:59:02

2 (End of Bench conference.)

3 MR. ZIMMERMAN: Your Honor, we have asked the 09:59:13

4 Court to substitute the representative with liaison counsel 09:59:18

5 for the Third Party Payors on behalf of the PSC, substitute 09:59:28

6 Mr. Art Sadin for Joe Arshawsky. Mr. Sadin is here today, 09:59:33

7 and I would like to introduce him to the Court. 09:59:40

8 MR. SADIN: Good morning, Your Honor. 09:59:46

9 THE COURT: Good morning. 09:59:46

10 MR. ZIMMERMAN: We have submitted the request to 09:59:47

11 be replaced from Mr. Arshawsky who has to resign, and Mr. 09:59:49

12 Sadin I have known for a number of years. But more 09:59:56

13 importantly, I know him as having a great deal of expertise 09:59:59

14 in the third-party payor litigation and third-party payor 10:00:03

15 negotiation aspect of these mass tort litigations. 10:00:08

16 So, I would introduce Mr. Sadin to the Court. I 10:00:12

17 believe I have provided a resume and Mr. Sadin is here to 10:00:15

18 answer any questions the Court may have. 10:00:22

19 THE COURT: Welcome to our great state from 10:00:24

20 Texas, and I have reviewed your resume, and I'm sure you 10:00:27

21 can add quite a bit more to that. But I welcome you to the 10:00:30

22 PSC. 10:00:36

23 MR. SADIN: Thank you. The only concern we have, 10:00:39

24 Your Honor, is that the unions we have been contacting in 10:00:40

25 connection with other matters in which we represent them, 10:00:45

1 labor matters and associated matters, want us to start a 10:00:47
2 dialogue with the Defendants in regard to labor union and 10:00:52
3 health and welfare funds. I'd like to start that 10:00:57
4 discussion after this status conference. Obviously, as 10:01:00
5 soon as possible given the depositions in Amsterdam. But 10:01:06
6 the funds are anxious to get the process started because of 10:01:09
7 their concerns about their expenditures, both out of pocket 10:01:13
8 for the drug and the cost of that for the treatment of the 10:01:14
9 people alleging injuries from the drugs. So, we are 10:01:16
10 looking forward to starting discussions on behalf of the 10:01:19
11 labor unions base funds. Thank you, Your Honor. 10:01:24

12 MR. ZIMMERMAN: Your Honor, I don't know too 10:01:30
13 much at this point, although we requested information and 10:01:34
14 gotten pieces of information of the status of where certain 10:01:38
15 negotiations are between Bayer and some of the health 10:01:41
16 insurance, or third-party payor funds, and, perhaps Susan 10:01:48
17 Weber could update the Court on the status of those 10:01:52
18 negotiations. 10:01:56

19 THE COURT: Mr. Beck. 10:01:57

20 MR. BECK: Perhaps she could. I know that I 10:01:59
21 could not (laughter). 10:02:01

22 THE COURT: Good morning, . 10:02:06

23 MS. WEBER: Good morning, Your Honor. We are 10:02:07
24 continuing to have discussions with various third-party 10:02:10
25 payors. We are also having discussions with our insurers 10:02:15

1 in connection with that. If Mr. Sadin has clients, we'll 10:02:19
2 be happy to talk to him as well. Things are just plodding 10:02:23
3 along. They never go as quickly as you want them to, but 10:02:28
4 it's moving. 10:02:32

5 THE COURT: I appreciate that. Thank you. 10:02:33

6 MR. ZIMMERMAN: The next item, Your Honor, on the 10:02:38
7 agenda is the Common Benefit Fund. A protocol has been 10:02:40
8 established for Court oversight of the Common Benefit Fund 10:02:48
9 under the auspices of the Court and the Special Master. 10:02:53
10 It's my understanding that the Special Master, Professor 10:02:58
11 Haydock, will report to the Court on the Fund to the extent 10:03:02
12 that the protocol needs to be in any way addressed or if 10:03:06
13 there is any report that the Special Master wants to make. 10:03:12

14 THE COURT: Good morning. We have Magistrate 10:03:23
15 Judge Lebedoff. Welcome. Do you need to see me. 10:03:26

16 MAGISTRATE JUDGE LEBEDOFF: I understand there is 10:03:37
17 an issue about the settlement conference as going forward 10:03:38
18 on the 30th and the 1st. First of all, we are going to 10:03:41
19 send out the notice on the web. We are not going to send 10:03:45
20 individual written notices to everybody. I assume that's 10:03:51
21 okay. 10:03:54

22 The other thing is I have no other time I can do 10:03:54
23 it. This is the earliest date I can do it is the 30th and 10:03:56
24 the 1st. If, that's a qualified, if the parties wanted to 10:04:03
25 have a settlement conference this coming Monday, you'll 10:04:07

1 probably be in Amsterdam, if you wanted to have it this 10:04:12

2 Monday, I would find a way to do it Monday. So, I'll wait 10:04:13

3 to here from you on that. If you would let me know by 10:04:19

4 today --

5 MR. BECK: We would be delighted to do it on 10:04:24

6 Monday. 10:04:26

7 MR. ROBINSON: I really want to be there for 10:04:28

8 this. I think it's very important that I'm here and I'm 10:04:30

9 going to Amsterdam on Saturday. I really don't see a 10:04:34

10 problem with the 30th.

11 MAGISTRATE JUDGE LEBEDOFF: I really don't want 10:04:38

12 to get into that. I apologize for interrupting. That's 10:04:38

13 the only day I'm available. I appreciate the concerns that 10:04:45

14 you want to get it done sooner. I'm trying to accommodate 10:04:49

15 you. On a stretch I can do it Monday. That's the only 10:04:50

16 date. If you all can agree, let me know by today. 10:04:52

17 Otherwise, I'll see you on the 30th. 10:04:56

18 THE COURT: You may continue. 10:05:05

19 MR. HAYDOCK: Good morning, again, Your Honor. 10:05:06

20 THE COURT: Good morning. 10:05:07

21 MR. HAYDOCK: Some weeks ago I submitted a report 10:05:09

22 which is available on the website related to the Common 10:05:13

23 Benefit Fund protocol agreement which both Bayer and the 10:05:15

24 PSC lawyers had agreed to. That's been operating smoothly. 10:05:18

25 Bayer has been providing the Court and us with the current 10:05:23

1 up-to-date information which our conferences are reviewing 10:05:26

2 and perhaps some further discussions with Bayer as needed 10:05:30

3 as well as the PSC in the future. That's all, Your Honor. 10:05:34

4 THE COURT: Thank you. 10:05:38

5 MR. ZIMMERMAN: I believe that takes us now to 10:05:53

6 discovery. There are several aspects of discovery that I 10:05:55

7 will go over individually. I don't think any of these are 10:06:00

8 the subject of any motions at this time. They're merely a 10:06:03

9 matter of update. 10:06:07

10 With regard to the document production which is 10:06:12

11 first, there are certain privilege disputes relating to 10:06:14

12 Bayer AG documents, and I believe they are now under 10:06:19

13 consideration by the Chief Magistrate Judge Lebedoff. Is 10:06:24

14 that correct? 10:06:30

15 THE COURT: That is correct. 10:06:31

16 MR. ZIMMERMAN: That is correct. 10:06:33

17 THE COURT: That order should be coming out 10:06:37

18 tomorrow is my understanding. 10:06:39

19 MR. ZIMMERMAN: The parties are in a meet and 10:06:46

20 confer status with regard to other privilege issues and 10:06:49

21 there is nothing that we have to report on that other than 10:06:54

22 we're still working on things on a meet and confer status 10:06:56

23 with regard to documents and privilege logs. I don't know 10:07:02

24 if Rob Shelquist -- is Rob Shelquist here? Anything 10:07:09

25 further on that, Rob. -- 10:07:13

1 MR. SHELQUIST: No. 10:07:15

2 THE COURT: Defense counsel? 10:07:18

3 MR. SIPKINS: We have nothing further, Your 10:07:22

4 Honor.

5 MR. BECK: Are we just on document discovery now? 10:07:22

6 MR. ZIMMERMAN: Yeah. Depositions of Bayer Corp. 10:07:24

7 and GSK fact witnesses continue and continue. I don't know 10:07:28

8 that I'm prepared at this time to give the actual 10:07:32

9 statistics of how many are complete and how many are left 10:07:37

10 to go. I don't know if the Court wants them. I think 10:07:41

11 there is someone in the courtroom who may have those facts. 10:07:46

12 I don't have them in hand. If you want them, I can give 10:07:54

13 them to you right now. 10:07:54

14 John, do you have that, the number of completed 10:07:56

15 Bayer Corp. and GSK fact witnesses? Richard Arsenault 10:07:59

16 probably has them. 10:08:06

17 THE COURT: Good morning. 10:08:08

18 MR. ARSENAULT: Good morning, Your Honor. We 10:08:08

19 have completed approximately 50 depositions, Your Honor. 10:08:11

20 We have worked for the last several months to develop the 10:08:15

21 Bayer AG protocol, and that's now been concluded. The GSK 10:08:16

22 depositions are moving along, and those are being done 10:08:21

23 domestically. There are still probably five or six 10:08:25

24 additional depositions for Bayer AG witnesses that we are 10:08:29

25 doing in the states here, and everything is moving along 10:08:32

1 relatively smoothly. 10:08:36

2 THE COURT: Thank you. Any response? 10:08:38

3 MR. BECK: We have nothing to add on that. 10:08:40

4 MR. ZIMMERMAN: There is the depositions of Ms. 10:08:53

5 Fischer which will be taking place in a few minutes. And I 10:08:59

6 don't think the nuts and bolts of how we got here need to 10:09:01

7 be discussed in any way. It's all a matter of record, and 10:09:07

8 suffice to say that the deposition of Ms. Fischer will be 10:09:11

9 taking place today, commencing in about 25 minutes. 10:09:16

10 Next, Your Honor, is the depositions of Bayer AG 10:09:21

11 fact witnesses which will be commencing Monday in 10:09:23

12 Amsterdam. The Court has approved a protocol. It is now 10:09:27

13 up on the website. I believe it's PTO 68. And this was 10:09:32

14 the product of a lot of very good and hard work 10:09:38

15 administered by the Special Master to have the Defendants, 10:09:43

16 the PSC and various state groups of lawyers come together 10:09:49

17 to figure out how we are going to go about a fairly 10:09:53

18 complicated deposition program. But I think in the end, 10:09:58

19 although it took some work, we have a fair and effective 10:10:02

20 and efficient program and we're all looking forward to it 10:10:04

21 being utilized next week in Amsterdam. 10:10:09

22 However, I received a phone call earlier in the 10:10:15

23 week from Mr. Sol Weiss, and I did not have a chance to 10:10:16

24 talk to him, but I talked to him this morning. He would 10:10:21

25 like to address the Court on continuing those depositions, 10:10:24

1 I believe. 10:10:28

2 THE COURT: Mr. Weiss. 10:10:29

3 MR. WEISS: Good morning, Your Honor. Thank you. 10:10:34

4 THE COURT: Good morning. Welcome again. 10:10:38

5 MR. WEISS: On behalf of the lawyers who work in 10:10:40

6 our group in Pennsylvania and California, the vast majority 10:10:43

7 in recognition that the war has broken out expressed 10:10:48

8 concerns about going forward in Amsterdam given the fact 10:10:50

9 that Bayer had agreed, if we had agreed, to bring the most 10:10:55

10 important witnesses to the United States for depositions, I 10:11:01

11 believe, except for David Edsworth in May of this year. 10:11:07

12 In light of the fact we are at war, my people are 10:11:10

13 concern about going to Europe and would ask that they be 10:11:17

14 put off and be taken here if we can for the safety of all 10:11:21

15 the people involved, including deponents, the Court and 10:11:26

16 lawyers. It might not be a safe place to be outside the 10:11:28

17 United States. 10:11:33

18 MR. BECK: Your Honor, we had offered an 10:11:33

19 accommodation because of our witnesses' desires and we had 10:11:35

20 offered an accommodation to come to the United States and 10:11:39

21 it was turned down, and that was for their personal 10:11:41

22 accommodation on their schedule. That offer was turned 10:11:46

23 down, and it's not on the table anymore. We are prepared 10:11:50

24 to go forward with the depositions in Amsterdam next week. 10:11:53

25 If the Court decides they shouldn't go forward, then we'll 10:11:59

1 be prepared to go forward on whatever schedule is 10:12:02
2 appropriate in Europe. But we don't have a standing offer 10:12:06
3 to the Plaintiffs to bring our people over to the United 10:12:11
4 States, and I don't think they will be willing to do that. 10:12:12
5 So, I don't want any misunderstanding that if the Amsterdam 10:12:15
6 dates are postponed that somehow that means we are going to 10:12:19
7 be bringing the people to the United States because we do 10:12:23
8 not anticipate that we will be doing that. 10:12:25

9 THE COURT: I haven't checked this morning's 10:12:28
10 website -- the State Department's website. Does anybody 10:12:35
11 have any updated knowledge of the State Department saying 10:12:37
12 there shouldn't be any European travel, especially to 10:12:40
13 Amsterdam? There wasn't anything as of last night. Does 10:12:44
14 anyone have anything? 10:12:49

15 MR. WEISS: I was traveling this morning, Your 10:12:52
16 Honor, at six o'clock, so I don't know what was on. I've 10:12:54
17 been asked to make this offer and give our views to the 10:12:59
18 Court. 10:13:02

19 THE COURT: I understand. The record should 10:13:02
20 reflect that we've had conversations, and the Court has 10:13:04
21 moved these depositions because of the concerns of the 10:13:09
22 parties about traveling to London and was delayed when 10:13:17
23 London was on high alert, and that the Government had put 10:13:21
24 troops around both airports. At that point the Court made 10:13:28
25 the judgment that we would not travel to London. 10:13:30

1 Mr. Zimmerman, do you have any other -- 10:13:38

2 MR. ZIMMERMAN: The only other information I 10:13:40

3 have, Your Honor, I just spoke with one of the PSC firm 10:13:42

4 counsel who is an -- has access to the airline information. 10:13:45

5 He's a former Captain for Delta. He's told me that all the 10:13:53

6 airlines are flying and there are no restrictions on Europe 10:13:56

7 travel as of eight o'clock this morning. 10:14:02

8 THE COURT: Mr. Weiss, as for your motion for 10:14:03

9 delaying the depositions, that will be denied. 10:14:08

10 MR. WEISS: Thank you, Your Honor. 10:14:14

11 THE COURT: And, certainly, everyone should know, 10:14:14

12 Mr. Beck and Mr. Zimmerman, that I am available. My plane 10:14:17

13 leaves at three o'clock tomorrow, but I can reached, and if 10:14:22

14 something comes up, the circumstances calls for us to delay 10:14:29

15 it, the Court will do that. Rest assured, if you get 10:14:35

16 information about something, make sure you all know about 10:14:42

17 it so the Court can make a reasonable decision on this. 10:14:46

18 There is no way the Court does not want to put anyone in 10:14:53

19 harm's way, especially when we can delay things in the 10:14:53

20 appropriate manner. 10:15:00

21 MR. ZIMMERMAN: The comments I'm getting from the 10:15:30

22 PSC are, Your Honor, if there is any accommodation that 10:15:33

23 could make these depositions available in the U.S., my 10:15:37

24 understanding is the answer is no, but there has been a 10:15:43

25 certain miscommunication or misunderstanding. We would 10:15:47

1 prefer to take them in the U.S. if there is a way to do 10:15:50
2 them in the U.S. We would be very open to that, but my 10:15:54
3 understanding is that that's not the case and that's never 10:15:58
4 been offered to us. But if it's something that could be 10:16:02
5 offered to us now, nobody is looking forward to being gone 10:16:06
6 for an extended period of time if we don't have to be at 10:16:11
7 this time. 10:16:16

8 MR. BECK: Your Honor, my understanding is that 10:16:16
9 we offered to bring them to the United States in May. That 10:16:18
10 was unacceptable to them. They said that time frame was 10:16:21
11 unacceptable, and, so, our witnesses -- they had offered to 10:16:26
12 do this because of their own personal and business 10:16:28
13 scheduling needs. We tried to accommodate them, and they 10:16:31
14 said, no, that wasn't acceptable and they wanted to go to 10:16:36
15 Amsterdam instead. And, so, now our people have rearranged 10:16:40
16 their schedule and they're available next week. Obviously, 10:16:45
17 if security concerns dictate that its get postponed, it 10:16:48
18 gets postponed. But as I said, we were turned down in our 10:16:53
19 offer to bring them here in May and that's not an 10:16:59
20 outstanding offer that we can make on behalf of those 10:17:00
21 witnesses. 10:17:05

22 MR. HOEFLICH: Just for clarity, Your Honor, it 10:17:05
23 was three key witnesses, Dr. Plischke, Dr. Weidman, and Dr. 10:17:07
24 Sprenger. We offered to bring them all to the United 10:17:14
25 States, and we offered to inquire about the remainder. 10:17:15

1 That may have been in private discussions that people 10:17:19
2 wanted to do it in May. I was turned down on the three who 10:17:19
3 wanted to delay if they wanted to come here, and we never 10:17:23
4 raised the issue with the others. When we went to them and 10:17:25
5 asked if they could do it at that time and their concerns 10:17:29
6 could be accommodated and we were told no. 10:17:34

7 THE COURT: If we are going to argue about what 10:17:39
8 was turned down and what was offered, I don't need to hear 10:17:41
9 any of that. 10:17:45

10 MR. ZIMMERMAN: Moving on, Your Honor. 10:17:49

11 THE COURT: So, again, it's clear and there is no 10:17:51
12 misinterpreting what I'm saying, if something occurs in 10:17:56
13 Europe, we are going minute by minute, hour by hour, 10:18:01
14 because that's the nature of the times that we are in. I 10:18:09
15 can be reached and I will make the judgment call, and, of 10:18:13
16 course, I will err on the conservative nature so that we 10:18:18
17 stay in the United States and not fly to Europe. So, that 10:18:22
18 information has to -- is going to have to come from a 10:18:29
19 Government source, and I prefer the State Department 10:18:34
20 because they are on top of everything, and I've been in 10:18:38
21 touch with the friends of the State Department to trying to 10:18:43
22 gauge what's going on, too. So, let's move on. 10:18:47

23 MR. ZIMMERMAN: Thank you, Your Honor. Third 10:18:55
24 party discovery, Your Honor. We are engaged in ongoing 10:18:58
25 discussions with regard to Pacificare discovery and third 10:19:04

1 party subpoena. Although no motion is pending, it has been 10:19:09
2 somewhat of an arduous task. This is just a matter of 10:19:14
3 update, Your Honor. There is nothing before the Court, but 10:19:20
4 it has been a matter of some contention that really is 10:19:23
5 not -- has to do with Pacificare agreeing or accommodating 10:19:27
6 some of the discovery requests that have been made. I have 10:19:37
7 nothing it further to say on it because there is nothing 10:19:40
8 before the Court. It goes to the machinations. There is 10:19:43
9 probably no concern at this time. There is an issue and 10:19:46
10 I'm alerting the Court that it may become more serious if 10:19:50
11 we can't get Pacificare buttoned down. 10:19:55

12 Moving, then, Your Honor to Page 3 -- 10:20:01

13 MR. BECK: Your Honor, before we leave discovery, 10:20:04
14 in addition to an outstanding item from the last time we 10:20:07
15 were in front of the Court is the schedule for generic 10:20:11
16 expert discovery. We had argued that matter the day after, 10:20:17
17 I think, we argued class certification. The Plaintiffs had 10:20:23
18 a schedule that was proposed on generic discovery that 10:20:26
19 would have gotten all the generic discovery done in advance 10:20:32
20 of the June trial date. We had a schedule that we proposed 10:20:36
21 that would have gotten the generic discovery done later 10:20:42
22 than that. We didn't think it was possible to do it by the 10:20:46
23 June trial date. 10:20:49

24 But since the June trial date has been set, the 10:20:50
25 idea of generic expert discovery seems to have fallen by 10:20:54

1 the wayside, and we don't think it should. We proposed an 10:20:59
2 order with the schedule so that we could continue to move 10:21:03
3 forward on generic expert discovery. We don't think it is 10:21:06
4 appropriate that merely because the Plaintiffs Steering 10:21:11
5 Committee has been accommodated in their desire to have a 10:21:17
6 couple of individual trials that, therefore, the MDL work 10:21:22
7 of getting the common discovery completed should be somehow 10:21:27
8 put into hiatus. 10:21:32

9 So, we had argued this matter before with the 10:21:34
10 Court. I think probably what happened was that when the 10:21:36
11 Court set the June trial dates, that issue of generic 10:21:39
12 discovery kind of got maybe lost in the shuffle a little 10:21:44
13 bit, and we would urge the Court to focus on that because 10:21:47
14 we think we ought to be making progress on that, and there 10:21:51
15 is no reason for us to wait until after Mrs. Olander's case 10:21:53
16 gets tried before we get their generic expert reports and 10:21:59
17 before we proceed with depositions of their generic experts 10:22:03
18 and before we get our reports in. So, we think that ought 10:22:07
19 to be going on really simultaneously with whatever is going 10:22:16
20 on in the individual cases. 10:22:16

21 MR. MAGAZINER: May I speak to that, Your Honor? 10:22:18

22 THE COURT: You may. 10:22:20

23 MR. MAGAZINER: Just to clarify because the Court 10:22:20
24 may not be clear on all that happened yesterday with 10:22:25
25 respect to the setting of the two cases for trial on June 10:22:28

1 6th. The Plaintiffs and the Defendants have agreed that 10:22:32
2 all experts who will be designated to testify at the June 10:22:36
3 6th trial, either of the Olander case or the Long case will 10:22:42
4 be disclosed according to the schedule that was established 10:22:48
5 in yesterday's conference with Magistrate Judge Lebedoff. 10:22:52
6 Those experts will be disclosed and depositions taken will 10:22:57
7 include all experts for those trials, whether the testimony 10:23:00
8 would otherwise be deemed case specific or generic. 10:23:05

9 What Mr. Beck is talking about is all the other 10:23:08
10 generic experts whose testimony would be relevant to all 10:23:10
11 the other MDL cases that are sitting here that ought to be 10:23:14
12 in our view processed toward a time when they can be 10:23:18
13 remanded for trial. And we are very eager from the defense 10:23:22
14 perspective to receive the Plaintiffs' expert reports from 10:23:26
15 those generic experts who are not going to be called -- to 10:23:30
16 testify in the Olander and Long trials so that we can then 10:23:34
17 respond to that generic expert and depositions taken and 10:23:39
18 the completion of that program. 10:23:41

19 It is our view that the cases would then be ready 10:23:44
20 for remand to the transferor courts. And we would like to 10:23:48
21 see that program proceed as quickly as possible 10:23:51
22 simultaneously with the preparation for the June 6th trial. 10:23:56
23 There are certainly enough lawyers on the Plaintiffs' side 10:24:00
24 and the defense side that we can both prepare for the June 10:24:02
25 6th trials and do the generic expert program 10:24:06

1 simultaneously, and we would hope that the Court would 10:24:10

2 agree to get that program under way. 10:24:12

3 THE COURT: Any comments? 10:24:15

4 MR. ZIMMERMAN: Yes, Your Honor, several 10:24:19

5 comments. First off, doing generic discovery for the rest 10:24:21

6 of the country is important and something we take very 10:24:30

7 seriously and something that needs the attention of the 10:24:33

8 people who are the most expertised and the most 10:24:36

9 experienced. We are only human and we can't do many of 10:24:41

10 these things at the same time. We are preparing the cases 10:24:45

11 for trial. We have set a rocket docket to do that, and 10:24:50

12 frankly, Your Honor, the people that are going to be doing 10:24:57

13 the expert discovery and the expert designations and 10:25:01

14 reports in those cases are going to be the same people that 10:25:04

15 are going to be doing the generic. We can't split that and 10:25:07

16 splinter that because our expertise are specialized in this 10:25:13

17 regard and this is really falling on the trial team and 10:25:18

18 science team. We cannot dual track that. That isn't to 10:25:22

19 say that we can't begin that immediate -- you know, soon 10:25:25

20 and to do it quickly and to do it expeditiously. But to do 10:25:30

21 it dual track is more than ambition. It is simply 10:25:39

22 impossible. Mr. Robinson, I mean you saw him speaking in 10:25:41

23 my ear how, you know, just physically impossible it is to 10:25:46

24 do that, and how in preparing the case that's now March 10:25:51

25 20th for June when we have a lot of discovery to do and a 10:25:55

1 lot of experts to work with, and then at the same time 10:26:00

2 prepare this massive generic discovery for the rest of the 10:26:03

3 universe and do it properly is just a non-starter for us. 10:26:08

4 Second, I was just provided this proposal this 10:26:12

5 morning by Susan Weber. That doesn't mean we won't be 10:26:16

6 happy to meet and confer on these dates and try and come up 10:26:22

7 with appropriate dates that can be agreed to given all that 10:26:25

8 has happened this week with setting of the case for trial 10:26:31

9 and setting of the discovery dates that Judge Lebedoff set 10:26:33

10 for us yesterday on the rocket docket. So, I would suggest 10:26:38

11 that we meet and confer on this within a few days and 10:26:42

12 discuss what we can agree on and give our proposals to the 10:26:47

13 Court and let the Court decide as it should and it must, 10:26:51

14 these appropriate dates. But to somehow say we should just 10:26:55

15 dual track it and get going and we've got a lot of people 10:26:59

16 is just not -- 10:27:01

17 THE COURT: Meet and confer and get your proposal 10:27:01

18 to me by April 4th by 12 noon. 10:27:04

19 MR. ZIMMERMAN: Thank you. Did you want to say 10:27:09

20 something, Phil? 10:27:17

21 MR. BECK: We'll do that, Your Honor. I'm 10:27:18

22 concerned, frankly. It's a concern I've articulated 10:27:19

23 before, and I'll raise it because it was a more general 10:27:24

24 matter, and that is that we not lose sight of why this 10:27:27

25 Court was appointed. 10:27:32

1 THE COURT: I've certainly not lost sight. 10:27:36

2 MR. BECK: I'm a little bit concerned that the 10:27:38

3 last time I stood up here, they said that not only can it 10:27:40

4 all be started, but it can all be completed by June 6th. 10:27:45

5 And now we are told that it's impossible to get it underway 10:27:48

6 in the next couple of months. I'm just concerned that 10:27:51

7 because the Plaintiffs Steering Committee has decided that 10:27:55

8 it's in their interest to have individual trials, and the 10:27:56

9 MDL is being shunted off to the side and then hijacked by 10:28:00

10 their individual cases. 10:28:07

11 THE COURT: I guess that goes to the Court 10:28:08

12 because you are saying the PSC runs this Court, and that is 10:28:10

13 certainly not the case. The Court has a number of things 10:28:13

14 that it's handling at once, and I think I'm doing a very 10:28:17

15 good job of handling it all. I have not lost sight of what 10:28:22

16 my job is to do. And I have tried to accommodate 10:28:27

17 everyone's wishes, and for me, these two trials are very 10:28:33

18 important. I don't think -- the cases that you've listed 10:28:37

19 to me in the state court, none of them deal with aches and 10:28:42

20 pains case that I can figure out, is that correct. 10:28:49

21 MR. BECK: No, Your Honor. The one that's on 10:28:59

22 trial right now in Mississippi is an aches and pains case. 10:28:59

23 THE COURT: We'll have one there and we'll have 10:28:59

24 one up here and the Olander case. And I have certainly the 10:29:03

25 last time we were here, we had spirited class certification 10:29:05

1 issues. And certainly I'm working hard on that, and the 10:29:10
2 reason why I gave April 4th is because that's when I will 10:29:18
3 be back and sitting at my desk, and it's hard for me to 10:29:21
4 sign an order. 10:29:24

5 MR. BECK: I appreciate that. As I said in my 10:29:26
6 remarks, I understood that probably what happened is with 10:29:29
7 the June dates being set, the whole question sort of got 10:29:32
8 lost in the shuffle. What I was expressing concern about 10:29:35
9 is not the timing of the Court's ruling, but what I 10:29:39
10 consider to be the 180 degree shift in the Plaintiffs 10:29:43
11 Steering Committee's position once they got the June trial 10:29:47
12 date on the individual cases. Before they had that trial 10:29:50
13 date and were hoping to do a class trial on June 6th, they 10:29:53
14 were saying to this Court that every single expert 10:29:57
15 deposition and report could be completed by June 6th. And 10:30:02
16 now that they have prevailed on getting the individual 10:30:06
17 cases, we're told it's physically impossible and we're only 10:30:09
18 human and we can't get under way. So, I just wanted to 10:30:13
19 make a little bit of argument before I left Minnesota. 10:30:16

20 MR. ZIMMERMAN: I think the Court will take 10:30:27
21 judicial notice that we are only human, and I'm telling you 10:30:29
22 that this issue has been properly discussed and we will 10:30:30
23 make our proposals to you on June 4th -- excuse me April 10:30:34
24 4th, Freudian slip. 10:30:41

25 THE COURT: Before we move to the motions which 10:30:44

1 is on Page 3, anything -- let's go to Page 4. Anything 10:30:47
2 further dealing with the trials since we have been talking 10:30:53
3 a bout those. 10:30:58

4 Mr. Beck has reported on the defense verdict in 10:30:58
5 Corpus Christi, and we have talked about the Olander and 10:31:03
6 Long cases. Anything else? 10:31:11

7 MR. ZIMMERMAN: Yes, Your Honor, there are a 10:31:14
8 couple of things. At the pretrial we had before Magistrate 10:31:15
9 Judge Lebedoff, he asked us to bring before Your Honor a 10:31:20
10 question -- two questions, and that, I guess has to do with 10:31:25
11 the trials in the trial of Olander and Long. 10:31:31

12 The first question is this. We had discussed the 10:31:38
13 question in chambers of a jury questionnaire and whether or 10:31:42
14 not we would need to submit proposed jury questionnaires to 10:31:49
15 Your Honor prior to trial, and if so, what was the date. 10:31:53
16 It was discussed at that time -- it wasn't clear whether it 10:31:58
17 is going to be the policy of this Court or is the policy of 10:32:02
18 this Court to have a jury questionnaire, that is, to 10:32:06
19 question the panel before they are seated to get a certain 10:32:09
20 amount of information. 10:32:14

21 Judge Lebedoff said he wasn't sure what the 10:32:16
22 practice of this Court would be with regard to these MDL 10:32:20
23 cases. So he asked us to bring that to you for instruction 10:32:27
24 because we have offered that there should be a 10:32:29
25 questionnaire, or if there is going to be a questionnaire, 10:32:30

1 we need to set a date for it. But the question of whether 10:32:34
2 or not it would be acceptable practice to this Court was 10:32:38
3 something the Magistrate Judge just didn't want to venture 10:32:41
4 into. 10:32:45

5 THE COURT: Right. I've used questionnaires 10:32:46
6 before. I don't know if the defense wants a questionnaire, 10:32:49
7 and if so, then can you meet and confer on this issue. 10:32:51
8 Usually, we have the same questions that you want to ask. 10:32:55
9 So, you put them in a questionnaire and we get them to the 10:32:59
10 prospective jurors and they fill them out, and either prior 10:33:02
11 to them coming to court or when we call them into court, we 10:33:07
12 spend a day for them to fill those questionnaires out and 10:33:13
13 then get them duplicated for you to go over them. 10:33:18

14 Another thing in my practice, I allow voir dire 10:33:24
15 by counsel. We'll talk in chambers about how much time you 10:33:28
16 will need. But the questionnaires certainly cut down the 10:33:34
17 number of questions to be asked. But I'm used to using 10:33:38
18 questionnaires, and I certainly do it the old-fashioned way 10:33:42
19 in allowing the lawyers to ask questions. 10:33:47

20 MR. BECK: Your Honor, I think that the 10:33:50
21 questionnaire is a good idea and we ought to be able to 10:33:52
22 agree on the contents. If we disagree at the margin, we 10:33:55
23 will be able to get that resolved. I'm relatively 10:34:00
24 painlessly, we Texans call it voir dire. I spent three 10:34:07
25 days down there in Corpus Christi. That will happen a 10:34:16

1 little more expeditiously. 10:34:20

2 THE COURT: I don't know if Texas sells up here 10:34:24

3 or not. 10:34:29

4 MR. ZIMMERMAN: I think we've got an answer to 10:34:32

5 the first question and we will meet. Shall we set a date? 10:34:34

6 MR. BECK: It seems to me we ought to be able to 10:34:37

7 work that out. 10:34:40

8 MR. ZIMMERMAN: The second? 10:34:42

9 THE COURT: What we can do, and the reason why I 10:34:43

10 hesitate, I've done it both ways. I've sent the 10:34:47

11 questionnaire out to the prospective jurors like a month 10:34:51

12 beforehand and got very good responses back. However, this 10:34:55

13 case has not really generated that much press in this area. 10:35:01

14 So, if we send it out too early, I think we would be 10:35:07

15 missing and we end up spending a lot of time in voir dire 10:35:17

16 questioning the jurors dealing with the newspaper articles 10:35:21

17 that will be coming out right before trial. So, I would 10:35:25

18 prefer you get it together and I can take a look at it and 10:35:27

19 then we can meet and confer about that and whether or not 10:35:30

20 we should send it out or submit it to the jury when they 10:35:32

21 come to court. 10:35:37

22 MR. BECK: My inclination is the latter, Your 10:35:44

23 Honor, for the reason that you indicated, and, you know, it 10:35:44

24 shouldn't be all that burdensome questionnaire to fill out. 10:35:44

25 You can get a lot of information in a few pages. 10:35:48

1 MR. ZIMMERMAN: The second question, Your Honor, 10:35:53

2 is an esoteric one in some respects -- 10:35:57

3 THE COURT: Then don't ask it. 10:36:04

4 MR. ZIMMERMAN: It wasn't asked by me. 10:36:07

5 THE COURT: Let me guess what the question is. 10:36:10

6 If we settle the case in the middle of three days in, 10:36:13

7 whether or not we would have to go to trial on the Long 10:36:18

8 case. 10:36:22

9 MR. ZIMMERMAN: Correct, Your Honor. The 10:36:24

10 question is who asked that question? 10:36:26

11 MR. MAGAZINER: Your Honor probably knows. Judge 10:36:29

12 Lebedoff suggested we bring that up with Your Honor, and if 10:36:33

13 Your Honor doesn't mind, let me make a proposal. 10:36:37

14 We had a great deal of discussion yesterday about 10:36:40

15 what would happen under various scenarios. As we 10:36:43

16 understand it, if the Olander case settles on or before 10:36:47

17 June 5th or June 6th, we'll start the Long trial. If the 10:36:49

18 Olander case doesn't settle, then, of course, we'll start

19 the Olander case on June 6th.

20 Magistrate Judge Lebedoff said that if the 10:36:58

21 Olander case tries, although all the pretrial activities 10:37:00

22 will have been completed in the Long case prior to the 10:37:05

23 start of the Olander trial, the trial of the Long case will 10:37:10

24 be postponed until probably sometime in August because of 10:37:12

25 Your Honor's schedule, which is fine. 10:37:15

1 The question that I raise is that it is very 10:37:18
2 esoteric because Olander counsel have some sense and can 10:37:21
3 make their own plans. If the Olander case settles after a 10:37:25
4 day or two, what are we going to do. I would not suggest 10:37:31
5 that we try to answer that question. I would suggest 10:37:33
6 instead that we have an understanding with the Court that 10:37:35
7 if the Olander case settled early on, Your Honor would then 10:37:38
8 tells us whether we go directly to the Long case because 10:37:42
9 the Olander started trial and it would be inconvenient to 10:37:45
10 start the Long case because the Long would not proceed 10:37:50
11 until August. 10:37:51

12 I thought we ought not have a set rule if we go 10:37:53
13 one hour into Olander and Long begins in August, we'll see 10:37:57
14 what happens in Olander, and if it settles during trial, 10:38:03
15 Your Honor will tell us what do. 10:38:08

16 THE COURT: Again, I'm trying to be as flexible 10:38:10
17 for all parties as possible dealing with that second case. 10:38:12
18 And I will listen to what you have to said, whether or not 10:38:15
19 you are able to go to trial at that time if -- if the 10:38:21
20 Olander case settles close to trial time. 10:38:27

21 MR. MAGAZINER: Thank you, Your Honor. 10:38:31

22 THE COURT: One other thing that everyone should 10:38:32
23 be aware of and, hopefully, it won't cause any problems, I 10:38:35
24 do have other cases other than this one. And dealing with 10:38:39
25 the criminal docket, if there is something that comes up 10:38:49

1 that has to be tried because of the speedy trial 10:38:52
2 determination, then I certainly will let I you know about 10:38:55
3 those issues. But at this point, we don't have anything on 10:39:01
4 the horizon that will cause any problems. 10:39:04

5 MR. ZIMMERMAN: Glad we got that one over with. 10:39:17
6 The other issues with regard to trial settings, Your Honor, 10:39:17
7 is there is a fairly long attachment entitled jury 10:39:20
8 calendar, I believe with about 39 cases that are set for 10:39:25
9 trial within the next 12 months or less. I'm looking -- it 10:39:30
10 was prepared by defense counsel in state courts, I believe. 10:39:37
11 I don't have too much comment on that other than I 10:39:43
12 understand there is a case under way currently in Jackson 10:39:47
13 County -- Hines County, Mississippi, and that case is under 10:39:52
14 way in a court of limited jurisdiction as we speak. 10:40:01

15 MR. BECK: That's right, Your Honor. I do want 10:40:05
16 to alert the Court and counsel that from Bayer's side, we 10:40:07
17 are going to be reassessing how much of this information we 10:40:12
18 provide to the Plaintiffs Steering Committee. This is an 10:40:17
19 example of information that we were told would be helpful 10:40:22
20 for them in their federal/state coordination efforts. 10:40:25
21 Instead, we find that this information is being used by 10:40:30
22 Plaintiffs Steering Committee members publicizing it in the 10:40:35
23 press as part of an effort to put pressure on Bayer in 10:40:39
24 terms of its stock price and the problems facing Bayer. 10:40:47
25 Plaintiffs Steering Committee members have been 10:40:52

1 quoted as to how many trial we face in the next three 10:40:55
2 months or the next six months or whatever when anybody who 10:40:59
3 has any understanding of this list would understand an 10:41:05
4 awful lot of these cases are going away, but then we read 10:41:08
5 in the Wall Street Journal and New York Times about this 10:41:11
6 avalanche of trials that we are facing within the next 10:41:16
7 several months. That has impact on us in terms of how the 10:41:21
8 marketplace is reacting to the overall problem, and we 10:41:24
9 feel, frankly, that the information that we have provided 10:41:29
10 in an effort to be accommodating, and that information we 10:41:30
11 were told to be used for one purpose is being used in sort 10:41:36
12 of an ongoing publicity campaign. And as I said, we're 10:41:39
13 going to be reassessing how much of this information we 10:41:43
14 provide voluntarily to the Plaintiffs Steering Committee. 10:41:50
15 THE COURT: Well, Mr. Beck, I find this 10:41:52
16 information very helpful to me. And I think I read the 10:41:55
17 same article that you read in the New York Times, and you 10:42:01
18 were quoted in that article. And once -- if I finish up my 10:42:06
19 business and it goes away and Bayer wants these cases to 10:42:16
20 go, 4,000 cases will go back to trial in different federal 10:42:21
21 jurisdictions, so that will be on both sides. 10:42:26
22 So, the number is always there. When we announce 10:42:30
23 that there's 8,000 cases in the system, that's a factual 10:42:35
24 basis, whether or not they all go to trial or settle. We 10:42:41
25 certainly have the information that Bayer settled these 10:42:47

1 cases at an appropriate amount and that information has 10:42:52
2 gotten out to the public. 10:43:02

3 So, I find this information very helpful so I 10:43:09
4 know what's going on throughout the country because I would 10:43:09
5 not have an idea what's happening in state courts. And 10:43:14
6 both sides have asked this Court for over a year to be 10:43:18
7 involved in the state/federal coordination, and this 10:43:21
8 information is essential for me to know what's going on. 10:43:27

9 MR. BECK: We are happy to provide it to the 10:43:33
10 Court, Your Honor. I should have been clear about this. 10:43:34
11 We are reassessing whether we are going to be providing it 10:43:37
12 voluntarily to the Plaintiffs Steering Committee. We will 10:43:43
13 provide the Court with this information as the Court 10:43:44
14 wishes, but this information, which we were told, was to be 10:43:47
15 used by them for one purpose has been used by them for an 10:43:54
16 entirely different purpose. And we are, frankly, not eager 10:43:58
17 to continue voluntary cooperative exchanges of information 10:44:04
18 and find those being used in publicity campaigns against 10:44:09
19 us. We certainly will provide the information to the 10:44:17
20 Court. But in terms of what we provide and the detail that 10:44:19
21 we provide to the Plaintiffs Steering Committee matters 10:44:22
22 that have to do with state court litigation rather than 10:44:26
23 federal litigation, we're taking a fresh look at the 10:44:30
24 information is used by them. 10:44:36

25 MR. ZIMMERMAN: I've been around long enough to 10:44:39

1 know whether I'm being goaded into a fight. I'm not going 10:44:42
2 to take the bait, and I'm going to pass on that. But I 10:44:46
3 feel some of those comments are unnecessary and 10:44:53
4 inappropriate. But I'm not going to go there in the 10:44:54
5 interest of discretion. 10:45:00

6 THE COURT: All right. Let's move on to Page 3, 10:45:04
7 the motions. 10:45:06

8 MR. ZIMMERMAN: Your Honor, there are a number of 10:45:09
9 motions before the Court. However, all of them, as I 10:45:11
10 understand it that are listed 1, 2, and 3 under B, are in 10:45:16
11 an incomplete stage and not ready for argument because 10:45:22
12 either briefing is still due or the briefing is not -- 10:45:27
13 briefing is not complete. There are three motions, Your 10:45:36
14 Honor, the first is -- 10:45:41

15 THE COURT: Well, these are non-dispositive 10:45:47
16 motions. We can argue them now. 10:45:47

17 MR. BECK: We'd love to argue them, Your Honor, 10:45:52
18 especially the motion to put a gag order on Bayer. We're 10:45:54
19 very eager to argue that today.

20 MR. ZIMMERMAN: And we talked about that and we 10:45:59
21 are not prepared to argue it today, Your Honor, because we 10:46:01
22 have a reply brief that's due, and we would like that 10:46:02
23 briefed before the Court. 10:46:07

24 THE COURT: Does Bayer want to have that 10:46:07
25 scheduled on a different day than the scheduling 10:46:10

1 conference. I'm thinking of what date -- 10:46:13

2 THE CLERK: April 17th. 10:46:18

3 THE COURT: April 17th would be the next status 10:46:19

4 conference. 10:46:21

5 MR. BECK: Your Honor, they styled this an 10:46:24

6 emergency, and I would like to get this thing argued as 10:46:26

7 soon as we possibly can. I can't imagine why we would need 10:46:28

8 a reply brief on this. We have had an exchange of short 10:46:35

9 memoranda, and this is something where I have personal 10:46:40

10 knowledge and involvement in and would be the principal 10:46:48

11 victim if they had their way here. And I very much want to 10:46:48

12 be heard here. I want to be heard as soon as we possibly 10:46:55

13 can, Your Honor. 10:46:58

14 THE COURT: Can we do that today. 10:47:00

15 MR. ZIMMERMAN: No, Your Honor, we're not 10:47:04

16 prepared to do it today. We felt that was not -- no one is 10:47:05

17 prepared to do that today. We will do it as soon as our 10:47:06

18 reply brief is in and before the Court. I don't think -- 10:47:11

19 we have had a procedure in this court that we are not 10:47:14

20 arguing until our briefing is complete. I don't think e 10:47:19

21 should be --

22 THE COURT: April 17th. Is that all right with 10:47:21

23 you, Mr. Beck? 10:47:25

24 MR. BECK: I'll be here. 10:47:28

25 THE COURT: 1, 2, and 3 will be -- 1:30. The 10:47:30

1 status conference will be at 1:30, and we'll have these 10:47:40

2 motions, 1, 2, and 3 be heard at that time. 10:47:44

3 MR. ZIMMERMAN: The status conference will start 10:47:50

4 at 1:30 and then the motions will be heard as part of the 10:47:52

5 status, is that correct? 10:47:56

6 THE COURT: That's correct. 10:47:58

7 MR. ZIMMERMAN: Thank you. There are apparently, 10:47:58

8 not apparently, there are three motions that are before the 10:48:01

9 Court that are pending decision. They are outlined under 10:48:04

10 C-1, 2, 3. I don't believe there is any discussion 10:48:08

11 necessary with regard to that. It's only for a matter of 10:48:11

12 information. That's the Canadian coordination and 10:48:14

13 reconsideration of 61 and class certification. 10:48:19

14 MR. MAGAZINER: Your Honor, is Your Honor 10:48:24

15 contemplating April 17th as a status conference or argument 10:48:27

16 on the motion to put a gag order on Bayer? 10:48:33

17 THE COURT: Both. 10:48:38

18 MR. MAGAZINER: The motion is directed both to 10:48:38

19 Bayer and GSK as I understand it. I don't know why anyone 10:48:41

20 is filing against us. I would like to be at the motion on 10:48:46

21 the 17th, but that's the first day of Passover and that 10:48:49

22 would create a problem for some of us. 10:48:52

23 THE COURT: Let's change that. 10:48:55

24 MR. MAGAZINER: Your Honor, is the 15th a date 10:49:44

25 that's available to the Court. We can deal with the tax 10:49:47

1 returns and have it be in court at the same time. I'll 10:49:56

2 mail my tax returns from Minneapolis. 10:50:02

3 THE COURT: April 15th at 1:30. And the May 10:50:04

4 status conference, I was thinking of May 15th. 10:50:12

5 MR. ZIMMERMAN: 10:30, 9:30, 1:30. 10:50:18

6 THE COURT: The morning is fine, 9:30. 10:50:22

7 MR. ZIMMERMAN: Your Honor, there are three 10:50:30

8 motions, I believe, pending in front of Judge Lebedoff. I 10:50:30

9 believe -- I don't know what the status of those are. 10:50:38

10 THE COURT: My understanding is briefing is not 10:50:41

11 done on the fact sheets. 10:50:43

12 MS. WEBER: We have just received some additional 10:50:53

13 oppositions from the Plaintiffs. We recently submitted to 10:50:58

14 Your Honor a new order relating to Plaintiffs' fact sheets 10:51:01

15 that was designed to streamline the process of briefing 10:51:04

16 these, and it doesn't seem to be working out that way. We 10:51:08

17 got a new order but briefing deadlines are playing out to 10:51:11

18 be just as long as they were in the first place. 10:51:16

19 I don't see the people here from the Plaintiffs 10:51:23

20 side who normally work on the fact sheet issues. What I'm 10:51:23

21 going to try to do is to get together with them and Judge 10:51:26

22 Lebedoff and see if we can debunk the process. 10:51:30

23 MR. ZIMMERMAN: Anything more on those motions 10:51:41

24 before Judge Lebedoff? Susan, anything more on the motions 10:51:44

25 before Judge Lebedoff. 10:51:50

1 MS. WEBER: No, Your Honor. 10:51:53

2 MR. ZIMMERMAN: The next item on your agenda, if 10:51:57

3 we are done with motions, is additional reports, if any, by 10:52:00

4 the Special Master, and I believe he has some. 10:52:09

5 MR. HAYDOCK: Your Honor, one more report 10:52:19

6 regarding the Compensation Subcommittee the Court 10:52:21

7 established under Pretrial Order 37. We had a meeting this 10:52:25

8 morning and will be submitting a report to the Court 10:52:28

9 shortly regarding the submissions by Plaintiffs who are 10:52:30

10 interested in obtaining fees or expenses from the Common 10:52:34

11 Benefit Fund to be reported. I understand the PSC 10:52:37

12 committee will be providing the fees and expenses that they 10:52:40

13 have compiled by the end of the month to the accountants 10:52:43

14 and will be in the process of reviewing them and reporting 10:52:46

15 back to the Court promptly thereafter some recommendations 10:52:49

16 as to how to proceed in the future with that. 10:52:52

17 But I did want those people who would be reading 10:52:54

18 the transcript and those in court that Plaintiffs' firms 10:52:59

19 who are not part of the PSC to be aware of the implications 10:53:01

20 of Pretrial Order 47 that you do expect them to file their 10:53:04

21 fees and records in a timely quarterly basis in order for 10:53:09

22 them to seek proceeds out of the Common Benefit Fund later. 10:53:14

23 THE COURT: Thank you. 10:53:23

24 MR. ZIMMERMAN: Your Honor, I think that brings 10:53:26

25 us to what we call other PSC matters or reports, and there 10:53:29

1 are just a few minor housekeeping matters there. However, 10:53:35
2 before -- well, under the matter of PSC reports, the Court 10:53:41
3 should be aware, and I think is aware, that we have a trial 10:53:47
4 team here and I wanted to introduce to the Court, and I 10:53:51
5 know the Court knows who he is, but that he's on our team, 10:53:54
6 Mr. Ron Meshbesh of Minneapolis who will be one of the 10:53:58
7 lead trial lawyers -- 10:54:04
8 MR. MESHBESHER: Nice meeting you, Your Honor. 10:54:06
9 THE COURT: Nice seeing you. 10:54:08
10 MR. ZIMMERMAN: -- and, of course, Mark Robinson 10:54:11
11 who is here will also be one of the lead trial team 10:54:11
12 lawyers, which also brings me to handing up to the Court a 10:54:16
13 Pretrial Order which amends Number 3 which adds Mr. 10:54:20
14 Robinson to the PSC. And we talked about that the last 10:54:28
15 time and I've prepared the order. 10:54:31
16 With regard to the trial team, however, there is 10:54:53
17 one request that I would like to make, perhaps, or ask 10:54:56
18 direction from, and that is Mr. Robinson informed me that 10:55:00
19 we have been trying to get copies of the exhibits used in 10:55:05
20 the Texas trial and we have not been able to get them from 10:55:11
21 Plaintiffs' counsel, and I would ask defense counsel if 10:55:15
22 they would be willing to do that voluntarily or do you want 10:55:18
23 us to make a motion on that? It's just the exhibits that 10:55:21
24 were used in court in Texas. 10:55:29
25 MR. BECK: I'm stunned that they are not 10:55:31

1 available on the internet, but they will be available. Or 10:55:34

2 they can call their contact at the New York Times I'm sure. 10:55:39

3 MR. ZIMMERMAN: Never spoke to her. 10:55:46

4 MR. BECK: We'll have them available. 10:55:48

5 MR. ZIMMERMAN: Next, Your Honor, there is a PSC 10:55:51

6 information seminar that's coming out in Los Angeles on the 10:55:54

7 24th of April, and it's only -- I just want the Court and 10:56:01

8 the record to reflect that the PSC is putting on a trial 10:56:06

9 preparation and current settlement activity seminar in Los 10:56:12

10 Angeles on the 24th of April. It will be a one-day seminar 10:56:16

11 to help educate and bring up to date people from around the 10:56:24

12 country who are interested in the MDL work product and the 10:56:27

13 settlement activities and availability. 10:56:32

14 THE COURT: Are you having someone from Bayer 10:56:35

15 come in and talk about settlement? 10:56:37

16 MR. ZIMMERMAN: We would love to have them if 10:56:40

17 they would like to come. I think we extended an invitation 10:56:42

18 to the last one in Miami and I think they were not willing 10:56:47

19 to come. We would love to have them, a representative of 10:56:52

20 Bayer or Shook Hardy who is their Bayer settlement counsel 10:56:54

21 or Mr. Beck himself. 10:56:56

22 MR. BECK: Thank you for the invitation. 10:57:02

23 MR. ZIMMERMAN: It includes lunch, too, and maybe 10:57:06

24 golf. 10:57:08

25 THE COURT: Anything else? 10:57:10

1 MR. ZIMMERMAN: I don't believe so, Your Honor. 10:57:14

2 If I can look around the room and see if anyone has 10:57:16

3 anything that I've overlooked. 10:57:20

4 MR. ZIMMERMAN: Just so we are all clear, the 10:57:26

5 Court is meeting with the deposition team in Amsterdam on 10:57:28

6 Sunday, I believe, at three o'clock. I'm not sure what 10:57:36

7 that location is or if it has been set.

8 THE COURT: My understanding it's at the World 10:57:36

9 Trade Office -- Center. 10:57:40

10 MR. HOPPER: I just wanted to clarify that for 10:57:42

11 the Court, Your Honor. 10:57:45

12 MR. MAGAZINER: I have information from Mr. 10:57:46

13 Marvin, Place Du Terte, P-l-a-c-e, D-u, T -e-r-t-e. I

14 don't know what language that is, at the World Trade Center 10:58:03

15 at 3 p.m. That's the street where the World Trade Center 10:58:05

16 is at. It says the room is called the Place Du. 10:58:11

17 THE COURT: That's the room. 10:58:16

18 MR. MAGAZINER: That's what Mr. Marvin has said. 10:58:22

19 He sent this to a whole bunch of lawyers.

20 THE COURT: T-e-r-t-e.

21 MR. MAGAZINER: That's what his e-mail says to

22 me. That doesn't seem to be a word in French. It's Dutch. 10:58:29

23 The e-mail was sent to Your Honor, I'm sure, as well as 10:58:36

24 everyone else. It was sent to about 48 people. 10:58:41

25 THE COURT: It's at three o'clock. 10:58:46

1 MR. BECK: Your Honor, for Bayer you won't be 10:58:49
2 seeing any of our familiar faces on Sunday afternoon, but 10:58:50
3 Mr. Hoeflich will be arriving soon thereafter. We'll have 10:58:53
4 a whole crew of other Bayer lawyers there. I didn't want 10:59:00
5 you to be surprised at a new crop of faces. 10:59:01

6 MR. MAGAZINER: May I apologize as well on behalf 10:59:05
7 of GSK. We assigned various lawyers on various of these 10:59:08
8 depositions depending on what we thought made the best 10:59:12
9 sense for us, and lawyers who are attending the first 10:59:16
10 series of AG depositions on behalf of GSK would be lawyers 10:59:18
11 that Your Honor has not previously met, and I'm going over 10:59:20
12 at a later time to attend some other depositions. 10:59:25

13 THE COURT: Well, as you know, I'll be there for 10:59:26
14 a day or so just make sure everything is set up in the 10:59:29
15 appropriate manner. Special Master John Borg will be 10:59:32
16 sitting in the depositions for two weeks, and Special 10:59:40
17 Master Haydock will be coming over for the last week. 10:59:45

18 So, I think -- we spent most of yesterday 10:59:51
19 afternoon and last evening talking about the protocol. We 11:00:01
20 are on board and on what's going to happen. 11:00:05

21 MR. ZIMMERMAN: Your Honor, the team you will be 11:00:11
22 seeing will be this, will be us, so the faces will be 11:00:14
23 familiar faces on the Plaintiffs' side. So, for whatever 11:00:19
24 that's worth. 11:00:25

25 THE COURT: The usual suspects. 11:00:25

1 MR. ZIMMERMAN: The usual suspects, Your Honor, 11:00:26

2 the usual suspect. That concludes what the PSC has on the 11:00:29

3 agenda and the joint agenda. We have nothing further. 11:00:34

4 MR. BECK: We have nothing further, Your Honor. 11:00:40

5 THE COURT: Mr. Weiss, anything you would like to 11:00:40

6 add?

7 MR. WEISS: Nothing at all. Thank you for having 11:00:43

8 us here today. 11:00:47

9 THE COURT: Can we have a short meeting in 11:00:50

10 chambers in 10 minutes? 11:00:51

11 (End of hearing.)

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1 REPORTER'S CERTIFICATE

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

7

8

9 CERTIFIED: _____

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14 Brenda E. Anderson, RPR

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