

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE: NUVARING PRODUCTS)
LIABILITY LITIGATION)
) Case No. 4:08-MD-01964 RWS
)**

**STATUS HEARING
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
SEPTEMBER 9, 2015**

APPEARANCES:

For Plaintiffs: Kristine Kraft, Esq.
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(Appearances continued on Page 2)

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Appearances Continued:

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Andres F. Alonso, Esq.
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Also Present: Joseph Zonies, Esq.
Nicholas Linley, Esq.
Richard Volpe, Esq.

1 (PROCEEDINGS STARTED AT 10:41 AM.)

2 THE COURT: Good morning. We're here this morning in
3 the case styled -- I was about to sentence somebody. We're
4 here this morning in the case styled *In Re: NuvaRing Products*
5 *Liability Litigation*, 4:08-MD-1964.

6 Would counsel make their appearances, please? Ms.
7 Kraft, why don't you start for the plaintiffs.

8 MR. KRAFT: Good morning, Your Honor. Kristine
9 Kraft, liaison counsel and co-lead counsel for plaintiffs.

10 MR. ZONIES: Morning, Your Honor. My name is --

11 THE COURT: Why don't you all come up to counsel
12 table here on the right if you have any plaintiffs left in the
13 litigation.

14 MR. ZONIES: Thank you, Your Honor.

15 THE COURT: I don't want to leave you too close to
16 the door. We're going to figure this out today, whatever it
17 is.

18 MR. ZONIES: I was a little concerned, Your Honor,
19 with your misstep at the beginning that that might be --

20 THE COURT: Yeah, you know. Well, we know what to do
21 if anybody gets out of line, but I apologize.

22 MR. ZONIES: Your Honor, my name is Joe Zonies. I
23 represent Leslie Benyo. I'm with the firm Reilly Pozner in
24 Denver, Colorado.

25 MR. LINLEY: Nicholas Linley. I'm here for Jose

1 Perez. I represent Amado Perez and Adelita Perez and the
2 estate of Gabriella Amanda Perez.

3 THE COURT: All right.

4 MR. VOLPE: Good morning, Your Honor. Richard Volpe.
5 I represent --

6 THE COURT: Who's your client?

7 MR. VOLPE: Cali Longtin.

8 THE COURT: Okay.

9 MR. ERIKSSON: Good morning, Your Honor. Reed
10 Eriksson from the Oliver Law Firm on behalf of Plaintiff Amy
11 Sechrist.

12 MR. LEVITT: Good morning, Your Honor. Gary Levitt.
13 I represent Elyssa Correia. We are from Honolulu, Hawaii.

14 MR. COOK: Morning, Your Honor. James Cook for
15 Plaintiffs Christine and Alan Law.

16 THE COURT: Very good. Anyone else on behalf of
17 plaintiffs?

18 MS. GEIST: Your Honor, there may be counsel on --

19 THE COURT: Anyone on the telephone?

20 MR. ALONSO: Yes, Your Honor. Andres Alonso --

21 THE COURT: You have to back up from the phone just a
22 little bit and state your name again, please.

23 MR. ALONSO: Andres Alonso, Alonso Krangle, New York,
24 New York, for certain plaintiffs in the MDL. Right now the
25 cases are Hill, Buford, Carda, and Buhler.

1 THE COURT: Okay. On behalf of the defendants?

2 MS. GEIST: Your Honor, good morning. Melissa Geist
3 from Reed Smith for the defendants.

4 MR. STRAUSS: Morning, Your Honor. Steve Strauss
5 from Bryan Cave for the defendants.

6 MR. YOO: Morning, Your Honor. Thomas Yoo for the
7 defendants.

8 THE COURT: Very good.

9 MR. KRANGLE: Your Honor, David Krangle as well from
10 Alonso Krangle in New York, representing Plaintiffs Hill
11 Buhler, Carda, and Buford.

12 THE COURT: And I understand, although five carriers
13 fly nonstop from New York to St. Louis, you were unable to
14 find a plane; is that correct?

15 MR. KRANGLE: That's correct, Your Honor.

16 THE COURT: Very well. All right. So as this
17 multidistrict case reaches its natural and logical conclusion,
18 we have -- why don't you bring us up to date on the
19 settlements. I received 50 dismissals today. Obviously, they
20 were filed yesterday; so they were on my daily activity report
21 this morning. Tell me the status of that program, and then
22 let's determine who's left and what we're going to do about
23 that to get these cases resolved, however that is.

24 Yes, sir.

25 MR. STRAUSS: Thank you, Your Honor. Steve Strauss

1 updating on the completion of the claims process and the
2 resolution program. For the 3,704 claimants that enrolled in
3 the program, that process is proceeding in its planned and
4 scheduled order. The 50 dismissals you saw are the initial
5 batch of dismissals that were enrollees who did not
6 participate in receiving any compensation. Those were filed
7 pursuant to the settlement.

8 The master settlement agreement -- and once the Court
9 has processed those, then we'll start filing those in
10 manageable batches in coordination with the clerks office and
11 your chambers.

12 With respect to those individuals who are in the
13 settlement program and who are receiving payments, as we
14 reported to you last status update, that process started the
15 week of July 8 and has been continuing. Each Friday new
16 groups of claimants who have completed all of their lien
17 resolution paperwork are submitted -- their names are
18 submitted by the claims administrator to the qualified
19 settlement fund administrator, and then payments are issued.
20 That is an ongoing process.

21 And we have worked closely with Ms. Kraft and the NPC
22 on any issues or bumps that occur in that process, but
23 otherwise it is also proceeding as scheduled. I don't know if
24 Ms. Kraft has anything to add to that.

25 MS. KRAFT: Yes, Your Honor. If I may, I have some

1 specific numbers, if you're interested in that. Of the 3,704
2 claimants who were enrolled, 3,280 claims were approved for
3 payment; so those are the number of claims that we need to
4 ultimately see paid and dismissed.

5 Of that 3,280, 803 claimants have been approved for
6 payment. Out of that 803, 752 of those claimants have
7 actually received their payment; so there's 51 other claims
8 working through the process which will most likely be paid out
9 this Friday.

10 That leaves 2,477 claims that have not yet, you know,
11 been paid out or approved. However, there are 1,131 claimants
12 who have submitted all their paperwork, and that paperwork
13 needs to be reviewed. However, 783 of those claims have, in
14 fact, been reviewed by Bryan Cave and the claims administrator
15 and have been approved for payment.

16 So there's approximately 400 that are in the claims
17 review process, and as counsel indicated, that's a continuous
18 process that is being addressed as the certifications and all
19 the necessary documents are submitted by individual claimants.

20 THE COURT: Anything to add?

21 MR. STRAUSS: Just that this is the natural process.
22 Counsel was not able to negotiate with any lienholders until
23 they had an amount. Once they had an amount, they began
24 negotiating with lienholders, and then they complete the
25 paperwork showing the liens are cleared. So this is going as

1 scheduled, and it's a back and forth that is, I believe,
2 progressing on schedule.

3 THE COURT: Okay. So, Ms. Kraft, I might be getting
4 ahead of myself. We got two pieces. You have a proposed
5 payout order for the Special Master and other expenses. And
6 has that been served on everybody?

7 MR. KRAFT: Yes, Your Honor.

8 THE COURT: I haven't seen any objections.

9 MR. KRAFT: I have not seen any objections.

10 THE COURT: Should we set an objection date today, or
11 do you think it's been sufficient notice to everyone?

12 MR. KRAFT: I can look at the filing date. I thought
13 it was sufficient notice to be addressed today, but I can
14 count the number of days.

15 THE COURT: Let's take a look and make sure. I don't
16 want to prejudice anyone.

17 MR. KRAFT: Certainly.

18 THE COURT: I mean, that is the -- not having -- you
19 know, wasn't my job and not my interest to micromanage the
20 payouts. That's why we had a Special Master. And as we work
21 through the settlement fund, is there any anxiety about where
22 we are with 400 claims not processed yet? I mean, you have to
23 take that global look, right? You have a finite amount of
24 money to distribute.

25 MR. KRAFT: Correct.

1 THE COURT: I'm just trying to get context.

2 MR. KRAFT: Yes. However, the work that is the
3 subject of our motion, which was filed September 2 --

4 THE COURT: Okay.

5 MS. KRAFT: -- pertains to work that has already been
6 done and doesn't have the possibility of ever being either
7 redone or modified in any way because the work that we are
8 asking the Court to approve the Special Master's
9 recommendation pertains solely and exclusively to the initial
10 claim review process to make determinations as to the
11 allocations of enhancement points and ultimate settlement
12 dollars to individual claimants, all of which were approved by
13 the Special Master.

14 And then there was another level pertaining to the
15 work described in the Special Master's report that pertains to
16 the auditing of claims that appealed their determination, and
17 the total of those claims were approximately, I think, 1,100
18 claims total. So that was a substantial amount of work. The
19 particular numbers were cited in the Special Master's report.

20 So that's never going to kind of come up again, and
21 the work that remains to be done is, you know, the
22 administration of making sure, you know, the process moves
23 along timely, addressing contacts that I receive from other
24 counsel with respect to inquiring about the status of their
25 case after the submission of the H4 form, and just a variety

1 of other issues.

2 THE COURT: Right. I'm going to enter the order
3 Monday unless something happens between now and then.

4 MR. KRAFT: Okay.

5 THE COURT: Having reviewed it and find it to be
6 reasonable.

7 MR. KRAFT: Okay. Thank you.

8 THE COURT: All right. So, Mr. Strauss, you have
9 that pregnant negative look on your face. What's up?

10 MR. STRAUSS: Could I have just one minute to ask Ms.
11 Kraft something?

12 THE COURT: You may.

13 **(COUNSEL CONFERRING OFF THE RECORD.)**

14 MR. KRAFT: Yes, Your Honor. Just to make clear that
15 the request for payments from -- that is the subject of the
16 motion that I filed doesn't in any way affect the ultimate
17 dollar award that's been awarded to any individual claimants.

18 THE COURT: Understood.

19 MR. KRAFT: That's final and complete, and there's no
20 effect on that.

21 THE COURT: All right. So who's going to talk about
22 the status of the remaining cases from the defendant's point
23 of view? Then I want to hear from each plaintiff counsel as
24 to how they wish to proceed in this case.

25 Mr. Yoo?

1 MR. STRAUSS: I think Mr. Yoo will talk substantively
2 just to update the Court --

3 THE COURT: You're left with procedure, then.

4 MR. STRAUSS: Yes. Yes, sir. With the two cases
5 that were transferred in, Buhler and Carda, which were filed
6 by Messrs. Alonso and Krangle --

7 THE COURT: Right.

8 MR. STRAUSS: -- that leaves us with 12 total. And
9 so that is the status with respect to numbers, and I will turn
10 it over to Mr. Yoo.

11 THE COURT: All right.

12 MR. YOO: A little bit more on the status of those 12
13 cases, Your Honor. As I think Your Honor knows, we haven't
14 started case-specific discovery in those cases yet. So that's
15 one of the issues we assumed you might want to discuss with us
16 today.

17 THE COURT: Correct.

18 MR. YOO: In a broader sense as the Court is aware by
19 now, with Mr. Alonso and Mr. Krangle on the phone, there are
20 going to be about 109, perhaps a little bit more, cases to be
21 filed and transferred into the MDL in the coming months. So
22 that was obviously a significant development that we learned
23 of over the last month or so.

24 THE COURT: And we've been together long enough now
25 you know me well enough I'm not going to borrow trouble. I

1 appreciate the idea and the concept you've been talking to
2 counsel about these 109 cases, but they're not here. The
3 panel hasn't made a determination. I assume -- I understand
4 they haven't even been filed.

5 MR. YOO: Well, two of those 109 have been filed.

6 THE COURT: They're here.

7 MR. YOO: They're here.

8 THE COURT: So we have another 107 cases that haven't
9 been filed, haven't been transferred, and I don't have any
10 cases in front of me of that 107. So that's just a discussion
11 for another day, in my mind. I'm not going to borrow trouble.
12 When they get here, we'll figure out what to do with them.

13 MR. YOO: Well, I think we're consistent with Your
14 Honor in that regard in the sense that, as we've set out in
15 our proposed agenda, we think it makes sense to come back in
16 several months for another status conference and talk about
17 the future of the MDL, and we'll look at how many cases are
18 actually in the MDL at that time, but --

19 THE COURT: And that impacts Ms. Kraft, I assume, to
20 some extent, and obviously -- it may -- it's probably easier
21 with the other ten who have been in the MDL. There's the
22 document depository, all the discovery that's gone on. What
23 we do with that when that's over I don't know. Who's going to
24 maintain the or support the cost of maintaining that document
25 depository?

1 I mean, I'm borrowing trouble now, I know, but that's
2 something we need to figure out sooner rather than later as to
3 who's going to take control of that. It's my understanding
4 from our last conference that Mr. Denton and Ms. Kraft and all
5 their clients have settled, and so their role is they're
6 heading out the door, but we got to take care of the remaining
7 plaintiffs and the discovery that's gone on.

8 MR. YOO: That's right, Your Honor. In our
9 meet-and-confer discussions with Mr. Alonso and Mr. Krangle,
10 the Alonso Krangle firm has indicated that they would serve as
11 the point of contact for the coordination of further discovery
12 related to the defendants, that is, additional general
13 discovery that needs to be done.

14 And I think we're also all on the same page that Ms.
15 Kraft's firm's role as liaison counsel is with respect to the
16 settlement program and that I don't think anyone is looking to
17 them for any further coordinating role with respect to the
18 pending cases or future cases. And I think the Alonso Krangle
19 firm will take over at least some of those responsibilities.

20 They probably need an opportunity to speak, Mr.
21 Alonso's firm and Ms. Kraft's firm, but I think we are in
22 agreement that we're not looking to Ms. Kraft to continue to
23 have any active involvement with discovery in the future
24 cases.

25 THE COURT: All right. So you touched on the third

1 rail for today: Common discovery. What common discovery do
2 you think remains to be done in the MDL?

3 MR. YOO: So as we've indicated in the past, we
4 believe there should be an update of some of the regulatory
5 file documents. With the settlement program and all of the
6 discussions that went into that resolution, there was a freeze
7 on the document production; so we think that bit of backlog
8 should be cleared. And not to speak for the plaintiffs, but
9 Alonso Krangle agrees with us at least in that there's some
10 depositions of company witnesses that probably relate to that
11 that the plaintiffs will want.

12 Some of this backlog relates to a label change that
13 occurred in October 2013. I know some of the counsel in this
14 courtroom have stated in their papers that they don't feel
15 that that label change is relevant to their client's injury.
16 We think that remains to be seen. We haven't done any
17 case-specific discovery in these cases. We don't know what
18 their specific contentions are. We don't know what the
19 theories of their experts will be.

20 So we think we can't be foreclosed to the possibility
21 that even that October 2013 label change may relate in some
22 fashion to injuries that occurred prior to that, but I think
23 suffice to say for purposes of today's discussion, this
24 general discovery will not only affect the 107 to-be-filed
25 cases and the cases in general, but they may relate to some of

1 these cases, some of the 12 cases that are currently before
2 the Court.

3 So we think that general discovery should be done.
4 We've met and conferred with Mr. Alonso and Mr. Krangle about
5 some additional written discovery. As we've put in our
6 proposed order that Your Honor has, we're willing to respond
7 to ten additional interrogatories and ten additional document
8 requests to be propounded by Alonso Krangle in coordination
9 with other plaintiffs' counsel. And then for any additional
10 discovery we think that should be taken up on an
11 issue-by-issue basis.

12 We've also proposed to Your Honor that Judge Stack be
13 appointed as discovery referee to help facilitate the
14 efficient management of further discovery issues, and we think
15 additional discovery requests the plaintiffs may want to put
16 to us can be met and conferred upon. And, if needed, Judge
17 Stack can get involved in at least making recommendations to
18 Your Honor about what the resolution of those discovery issues
19 should be.

20 THE COURT: So of the ten cases, do you have a
21 spokesman, or do you each want to take this one at a time?

22 MR. ZONIES: Your Honor, Joe Zonies again, if I may.
23 We do not have a spokesman and are not in any sense
24 coordinated, in part I think because of the reasons that
25 you'll hear from each of us, which is that we each feel

1 differently situated from the other.

2 I've been in Ms. Kraft's position in wrapping up an
3 MDL as co-lead in Avandia, and I think the Court is correct in
4 being concerned about what happens because, despite those
5 efforts, it's still going, and it's years later.

6 So I would be -- I think the concept that the Court
7 raised at the last hearing about remand is ripe, and the
8 reasons are fairly simple. For example, my client did not
9 have the opportunity to participate in the settlement and may
10 very well have wanted to do so. It was a timing issue simply.
11 It wasn't a conscious "No, I don't want that." It was a
12 function of timing. And I think some of these --

13 THE COURT: And your client is?

14 MR. ZONIES: Ms. Benyo.

15 THE COURT: Right.

16 MR. ZONIES: And she would love to have -- and I've
17 had these discussions with defense counsel -- the opportunity
18 to be able to participate. And it's a single case, and the
19 defendant has indicated that their client is not interested in
20 that, and that's their right. What can I do?

21 So this is a case that then was initially filed in
22 Colorado, where Ms. Benyo is from, and I've discussed with Ms.
23 Kraft that I would like to get the discovery, the documents
24 themselves, and if -- and I'll put them on my own system. I'm
25 used to dealing with 20 million-plus pages of documents, and

1 I'll work the case up and get it ready for trial in front of
2 one of our Colorado District Court judges and be happy to do
3 so.

4 It's not a preferred path, but the more that we incur
5 expenses related to a single case, obviously it becomes less
6 and less beneficial for our client. And each trip up to St.
7 Louis, although we love it -- my firm in particular sits on
8 the 17th floor. A few months ago we got a verdict against
9 PNC. We like being in St. Louis. Those are costs that
10 unfortunately will eventually have to come from my client's
11 resolution and/or judgment, settlement, or verdict.

12 So we would prefer to follow the Court's, I think,
13 gut instinct, which is to remand the case back to Colorado as
14 soon as possible and get ready to go to trial.

15 On the issue of coordinated discovery, I think we are
16 all fairly experienced litigators. I'm not looking to run
17 around and light fires in the countryside with discovery. I'd
18 be happy to coordinate with Messrs. Alonso and Krangle if they
19 determine -- if finally 100 cases come here. I'm happy to
20 submit myself personally to this Court's jurisdiction to yell
21 at me if I'm not coordinating my discovery in my court in
22 Colorado. I just would like to get some trial dates.

23 I think the primary issue, Your Honor, is the
24 defendant wants case-specific discovery here. We're getting
25 ready for trial. There's no settlement in the future. That

1 case-specific type of discovery should happen in Colorado
2 where the doctors are, where my experts are, and we should
3 have dates that drive that that are based upon a trial date in
4 the District Court in Colorado.

5 THE COURT: What do you think about the suggestion
6 that there's common discovery that remains left in the case?

7 MR. ZONIES: I have yet to review the discovery that
8 the plaintiffs have done to determine whether or not that's --
9 that there is additional discovery that will be needed.
10 Again, I'm happy to parallel track that with anyone if someone
11 remains here and/or coordinate with these -- all of the
12 lawyers to ensure that we're all working together should that
13 discovery be necessary.

14 And I'm sure that the defendant could request some
15 action from Your Honor to ensure that we're all playing nicely
16 together, but I would not anticipate that would be a problem.
17 That group has done an enormous amount of work, as Your Honor
18 knows, and we're not looking to run from assessments if that's
19 what's required. We're -- at least I'm speaking for my client
20 and for myself. I've been in Ms. Kraft's position in fighting
21 for assessments before; so I understand and appreciate the
22 work they've done and understand that that deserves
23 compensation. And I'm happy to sign on to whatever assessment
24 every other attorney and/or client has in the past. That's
25 not a concern of mine. I just want to get to work.

1 THE COURT: Okay.

2 MR. LINLEY: Nicholas Linley for the Perez
3 plaintiffs. Touching on what counselor said just for the
4 purposes of convenience, we'd ask that any remaining fact
5 discovery be handled by the transferor court. The
6 undisposed -- undeposed experts, undiscovered documents,
7 witnesses are all in California, and for purposes of
8 convenience and economic reasons, I think it's best that that
9 court take over the fact discovery before --

10 THE COURT: What district in California?

11 MR. LINLEY: Central District.

12 THE COURT: Oh. If you talk to the judges there,
13 they'd whine that the mere thought that they have the time,
14 since their docket's triple the average docket of any federal
15 judge in the country, but you know it better than anybody.

16 MR. LINLEY: Right. On our -- on the response to the
17 proposed order, on the second page, line 4, in the alternative
18 if the Court decides that the Eastern District maintain
19 supervisory duties over the fact discovery, we request that --
20 two things: Number one, all the written discovery previously
21 produced by the defendants be provided to plaintiff before
22 September 30, on or before September 30; and that all
23 deposition transcripts shall be provided to plaintiff on or
24 before September 30. I really don't have anything else to say
25 at this time.

1 THE COURT: All right. What do you think about
2 common discovery, if any, remains?

3 MR. LINLEY: I agree with what counselor said on
4 that.

5 THE COURT: All right. Have you talked to Ms. Kraft
6 about the discovery in this case?

7 MR. LINLEY: I have not. And Mr. Perez --

8 THE COURT: Are you prepared to enter into a
9 common --

10 MR. LINLEY: The lead counsel on this case has --
11 have you been in touch with Jose?

12 MS. KRAFT: Not that I recall.

13 THE COURT: And you're prepared to enter into the
14 common benefit fund agreement to pay for the --

15 MR. LINLEY: Indeed.

16 THE COURT: All right. All right.

17 Yes, sir?

18 MR. VOLPE: Hello again, Your Honor. Richard Volpe.
19 We represent Plaintiff Cali Longtin.

20 I think pretty much our entire position has been
21 stated by the two attorneys that preceded me. We certainly
22 wouldn't be against remand at this time for all the reasons
23 that have already been stated. And we did file a response to
24 the proposed order also requesting that all prior discovery
25 and deposition transcripts be provided or be provided to our

1 client for review.

2 THE COURT: So the same question to you about
3 coordination with lead counsel. Have you made that contact?
4 I mean --

5 MR. VOLPE: We wouldn't be --

6 THE COURT: The whole purpose of the MDL is to
7 consolidate the efforts. Have you had that conversation with
8 Ms. Kraft?

9 MR. VOLPE: No. We haven't had any conversations
10 about how that would be handled.

11 THE COURT: All right.

12 MR. VOLPE: Thank you.

13 MR. ERIKSSON: Good morning again, Your Honor. Reed
14 Eriksson from the Olive Law Group on behalf of Plaintiff Amy
15 Sechrist.

16 Your Honor, to be brief, because while we did not
17 have a coordinated messenger for these proceedings, much of
18 what I was going to say has already been stated by counsel,
19 Your Honor.

20 We too responded to the proposed order put out by
21 defense counsel regarding the common discovery and the October
22 2013 change in the label. Because of Ms. Sechrist's injuries
23 preceded that label change, we can't see how that discovery
24 would be relevant. And because the discovery that has already
25 been done throughout the MDL has already been completed, we

1 would be more than happy to coordinate with plaintiffs'
2 liaison counsel for access to that discovery, and any
3 remaining discovery regarding Ms. Sechrist would be specific
4 to her individual case; so we would ask for remand as well,
5 Your Honor.

6 THE COURT: All right.

7 MR. LEVITT: Thank you, Your Honor. Gary Levitt. I
8 represent Plaintiff Elyssa Correia. I would agree. I believe
9 that prior counsel has adequately stated my client's position.

10 Just briefly, for case specific of my client, my
11 client's injuries also arose prior to any label change, and it
12 was a function also of timing of why she could not join the
13 multidistrict litigation.

14 And this is, to be very blunt, Your Honor, a large
15 financial burden on my client. My client is from Hawaii, born
16 and raised on the Big Island right outside of Hilo. We filed
17 this in the District Court for the District of Hawaii, and
18 basically we think it would be a lot easier there. All the
19 doctors, treating physicians, hospitals are in Hawaii. And to
20 be perfectly candid, there is one treating physician at
21 Stanford University that my client was sent to, but other than
22 that, it all arises in Hawaii. It's very difficult for me to
23 get here.

24 Likewise, I did file a response to the proposed order
25 and basically not knowing so but for the same reasons that the

1 other counsel did and sought transfer.

2 As to the Court's question about common discovery, I
3 believe there will be, as the other counsel stated, no problem
4 in working out the common discovery, and I also believe that a
5 lot of work has been done and, on behalf of my client and
6 myself, would be willing to work with all counsel. And
7 anything that I needed to do or speak to Ms. Kraft, I never
8 had an opportunity to speak to her prior to this and --

9 THE COURT: It would be one of the good things that
10 will come out of today, is to coordinate that effort.

11 MR. LEVITT: Yes, Your Honor. And I was also under
12 maybe a different impression because I just got a letter
13 stating that we had not provided our preservation letters to
14 the doctors, and I may have been under a misinterpretation,
15 but I read that as being part of the proposed order that was
16 going to be discussed here today because that was in the
17 proposed order.

18 And so I was thinking that I had 30 days until, I
19 believe, September 22 or something to get that, and I will
20 work and get all of that done. It wasn't any type of
21 disrespect. It was just because I wanted to figure out kind
22 of what was going on.

23 THE COURT: Okay.

24 MR. LEVITT: Thank you.

25 THE COURT: At a minimum, we'll open the conference

1 rooms outside the courtroom today, and we can sit down and
2 everybody work out, to the extent they can, any of these
3 wrinkles so that we know what we're doing next.

4 MR. LEVITT: Thank you, sir.

5 MR. COOK: Morning, Your Honor. James Cook for
6 Plaintiffs Christine and Alan Law. I'll simply adopt the
7 comments made by preceding counsel and substitute the Southern
8 District of Iowa for the other jurisdictions mentioned. Thank
9 you.

10 THE COURT: Which judge in Iowa had your case?

11 MR. COOK: Ah, I can get --

12 THE COURT: The only one who's staying in the
13 circuit. So I was just curious.

14 MR. COOK: It was assigned to Judge Longstaff.

15 THE COURT: Okay. Have you talked to Ms. Kraft about
16 the discovery issues?

17 MR. COOK: I have not, Judge.

18 THE COURT: All right.

19 Yes, Mr. Yoo?

20 MR. YOO: Your Honor, so what appears clear is none
21 of the plaintiffs' counsel who have spoken have said that they
22 don't need general discovery. In fact --

23 THE COURT: Well, they did. They said they don't
24 think that the subsequent label applies to them or impacts
25 them and they don't care about it. You want to do the

1 discovery, but I heard they don't.

2 MR. YOO: Well, Your Honor, they --

3 THE COURT: You can't say "none." I think it was
4 unanimous they're ready to go home.

5 MR. YOO: Your Honor, they've asked for the past
6 discovery. They've not had an opportunity to review the past
7 discovery. Several counsel have asked us or Ms. Kraft to
8 provide the past discovery. We have no problem with them
9 getting the past discovery. We think they should review it.

10 THE COURT: I may need to hear from Ms. Kraft on
11 this, but I assume they should work through her so that
12 they're part of the common effort here and not circumvent the
13 plaintiffs' steering committee by going straight to you.

14 MR. YOO: I agree, Your Honor. What I heard counsel
15 say is that they will work things out with Ms. Kraft, but no
16 one has said that they don't need further general discovery.
17 I've heard several counsel say what they want is a trial date.

18 Our proposal doesn't prejudice any of the plaintiffs'
19 counsel here. In fact, in our proposal to Your Honor for
20 today in one of the proposed discovery orders, we have set
21 forth a proposed six-month schedule to do fact discovery.

22 What we think makes sense is that between Ms. Kraft,
23 Mr. Alonso, and Mr. Krangle, and then the plaintiffs' counsel
24 who are in this courtroom, they should discuss looking at the
25 past general discovery and then working together to coordinate

1 further general discovery. And Alonso Krangle has indicated
2 that they will take the leading role in doing further general
3 discovery.

4 And so rather than having cases be remanded and then
5 counsel reaching back into the MDL for further general
6 discovery, general discovery should happen here in a
7 coordinated fashion. Furthermore --

8 THE COURT: Well, we're in agreement on that. Common
9 discovery is the purpose of the MDL. When we get to
10 fact-specific discovery as to each plaintiff, it's time to go
11 home. Then I'm defeating the purpose of the MDL.

12 And let me give you an example. I was just at a
13 complex litigation conference in Denver. To prepare for that,
14 I went back and looked at my Celexa-Lexapro MDL. I remanded
15 those cases in June of 2013. And one of them went to the
16 Western District of Washington to Judge Lasnik.

17 So I called Judge Lasnik and said, "How did it go?"
18 You know, "Did you get a different result?" More out of
19 curiosity. "Did you do better? Did you do worse than the
20 global settlement?"

21 They're set for trial in November. I found that
22 horribly discouraging that after the MDL it then took pretty
23 much a standard case management order in the home district to
24 bring the case to conclusion. That's affecting part of my
25 thought process today.

1 I mean, at some point, whatever it is, we need to get
2 on with it, and we're not going to do fact-specific discovery
3 in these cases in the Eastern District of Missouri. That's
4 not the purpose of the MDL.

5 But your point is well taken. And I need to go back
6 and hear from counsel. If you haven't looked at on
7 coordinating with Ms. Kraft the discovery or if you haven't
8 been brought up to speed on the discovery that's been done in
9 the common discovery, how do you have an opinion as to what
10 you have or don't have or what you're going to need? Right?

11 MR. YOO: Correct, Your Honor. And if counsel are
12 willing to state on the record for purposes of their
13 individual case that they will not lodge any objection to our
14 using any of the new information at the time of trial in their
15 cases and they don't want to do any discovery with that
16 knowledge and that agreement, well, maybe we've got something
17 to talk about, but I doubt --

18 THE COURT: That's why we're here today: To figure
19 out what we agree on and what we don't agree on; what, if
20 anything's left of the common discovery. And I think six
21 months is too long. I don't know how many -- Ms. Geist,
22 you're my document guru, my Yoda on documents.

23 When Mr. Yoo said that there were document -- there
24 was a document production that was not completed, what are we
25 talking about?

1 MS. GEIST: Your Honor, you probably recall that once
2 we began settlement discussions with Ms. Kraft and her
3 colleagues in earnest, we sort of put a hold or a stay --

4 THE COURT: You have earnest colleagues.

5 MS. GEIST: -- on that aspect. So we're going back
6 the last couple years, Your Honor. You know, our proposal
7 envisions an update of the regulatory files for the company,
8 specifically to produce documents and information relating to
9 the label change that occurred in 2013. So we're talking
10 about a fairly streamlined discovery proposal, but it does go
11 back a couple of years, Your Honor.

12 THE COURT: But how much are we talking about?
13 What's your document production going to look like that isn't
14 completed?

15 MS. GEIST: In terms of volume, Your Honor --

16 THE COURT: Volume.

17 MS. GEIST: -- I hesitate to give a page count
18 because I haven't gone back and looked at it, but we would
19 need to begin the collections process and weed through it. It
20 certainly wouldn't be the millions of pages that we've
21 produced in the past, but there was significant back and forth
22 and discussions with FDA relating to the new label change; so
23 it will take some time.

24 THE COURT: What does that mean? Thirty days?
25 Forty-five days? Sixty days? It's not going to take six

1 months. So what are we talking about?

2 MS. GEIST: It wouldn't take six months to complete
3 it, Your Honor. That's not what I anticipate. But it will
4 take -- as Your Honor is well aware, it takes time to go in
5 and do the collection, do the review, and do the production.
6 So I would think -- I would anticipate three to four months we
7 would be finished and maybe even earlier than that, but I
8 hesitate to give Your Honor --

9 THE COURT: I understand, because if you don't know
10 the universe --

11 MS. GEIST: -- a time until I go back and look at the
12 universe, because we did stop that portion of our work on the
13 defense side of things.

14 THE COURT: I want to hear from one of the
15 plaintiffs' counsel as to where you think you are if you
16 haven't coordinated with Ms. Kraft. At a minimum you're going
17 to need what she has -- right? -- in order to put your case
18 on. The global -- the big picture before you go to the
19 specific picture, the overarching liability before you go to
20 causation, for lack of a better term.

21 So what are we talking about in terms of getting --
22 and, Ms. Kraft, you may need to weigh in on this. I assume
23 you're as anxious to be done with this as anybody.

24 MS. KRAFT: Yes.

25 THE COURT: Right? Why don't you both --

1 MR. ZONIES: Sure. Your Honor, Joe Zonies again.

2 THE COURT: We'll assume you're speaking for
3 everybody because if people disagree they'll let me know,
4 right? You haven't been here before, but no one leaves
5 without saying whatever they want to say; so we'll find out.

6 MR. ZONIES: Your Honor, as I said when I initially
7 stood up, not having had the opportunity to review that yet --

8 THE COURT: Right. Puts you in a little bit of a
9 trick box. That's what I'm trying to figure out, though.

10 MR. ZONIES: Right. And so two issues come up. One
11 is I would like to review that discovery. Having read
12 everything I can get my hands on so far, including the expert
13 reports, Your Honor's Daubert rulings, even information from
14 the honorable judge in New Jersey --

15 THE COURT: I was going to suggest you need to look
16 at some of Judge Martinotti's materials. It would help.

17 MR. ZONIES: Yes. I've reviewed everything that I
18 can get my hands on in that respect. And having reviewed all
19 of that, I believe -- I honestly would say to the Court I'm
20 ready to go to trial today based upon what I've gotten out of
21 there.

22 Now, are there additional things that I haven't
23 gotten because I haven't seen the PSC's work product, et
24 cetera, and their work-up? I'm sure. And I'm sure that those
25 will help me in my case.

1 THE COURT: You know you need to see it.

2 MR. ZONIES: Absolutely. I wouldn't go to trial
3 without it.

4 THE COURT: Right.

5 MR. ZONIES: So I would like the opportunity to
6 review that.

7 As far as the additional documents, I don't think
8 anybody would be surprised if additional documents are coming
9 out the week before at trial. It happens to us particularly
10 in mass torts all the time with the rolling productions. I'm
11 prepared for that. I'm prepared to have the productions come
12 to me while I'm working toward my goal which, as Your Honor
13 points out, is still, even if I get back to Colorado --
14 although not as jammed up as California -- it's pretty crowded
15 in Colorado, and it's going to take me a year plus to get to
16 trial if I get on that docket next week. And that's where I
17 would love to resolve my case.

18 THE COURT: Probably longer than that. Because once
19 you step back and look at the big picture, you're going to
20 have to do an expert schedule, and you got to be deferential
21 to the defendants who can't be in ten places at the same time.

22 The biggest problem's going to be experts and their
23 availability because you don't have ten different experts.
24 They're going to have one or two. Experts are going to drive
25 the result.

1 You're then going to have a new round of Daubert
2 motions on your case-specific experts. You're going to
3 have -- as Judge Martinotti, if you've read his materials,
4 summary judgment isn't out of the question.

5 MR. ZONIES: Sure.

6 THE COURT: That may have struck a pain in a few
7 people's heart that drove the settlement in this case.

8 But the law in New Jersey is kind of uniquely good
9 for the defendants. You would agree?

10 MS. GEIST: I'm certainly not going to disagree on
11 the record, Your Honor.

12 MR. ZONIES: There are a substantial number of
13 pharmaceutical companies headquartered in New Jersey.

14 THE COURT: It's kind of like in St. Louis alcohol
15 laws are a little different than they are anywhere because of
16 Anheuser-Busch. It's not shocking. We used to be able to
17 drink and drive until a few years ago, okay? At least
18 lawfully, as long as you weren't over the legal limit. No
19 open container law, if you will. So those things happen
20 around the country -- for a variety of different reasons.

21 So a year is probably optimistic to do expert
22 discovery, give the defendant the room that they need to move
23 with their experts around to summary judgment motions and
24 Daubert motions. That's my anxiety. Celexa-Lexapro taught me
25 that, if nothing else. It's probably at one year to trial is

1 an expedited case.

2 MR. ZONIES: It absolutely --

3 THE COURT: And that's probably unrealistic. We
4 digress. I apologize.

5 MR. ZONIES: No. Your Honor makes a few good points.
6 One, under Your Honor's order of February 7, 2014, it required
7 me within a certain number of days of filing my complaint, I
8 have my case-specific expert. I have provided the defense
9 with my case-specific expert's report. Happens to be a
10 treater. I'm a lucky guy that my treater saw that and it's in
11 the medical records.

12 So they -- fully identified. They have a complete
13 plaintiff's fact sheet that Your Honor, I assume, approved
14 early in the litigation. They have all of the medical
15 records. The case is, in essence, ready to start its
16 case-specific discovery.

17 My biggest concern, Your Honor, is in their proposed
18 order, for example, page 1 would be introduction, page 2 is
19 general fact discovery, double space, but it's case-specific
20 discovery on plaintiffs includes depositions of treaters, my
21 client, the experts, and expert schedule. That's the piece --
22 unless we are going to do a bellwether here, which I suspect
23 the Court is not interested in because you've already achieved
24 what bellwethers typically try to achieve, which is a
25 resolution --

1 THE COURT: Right.

2 MR. ZONIES: Unless we were doing --

3 THE COURT: You don't want to drag everybody here.

4 MR. ZONIES: It makes no sense. So is this capable
5 of being remanded, get it back, get it on the docket?

6 Defendant can have --

7 THE COURT: So that's Question No. 1. When can you
8 coordinate with Ms. Kraft to figure out when you're satisfied
9 you have the common discovery complete here?

10 MR. ZONIES: I will -- I can say to the Court that
11 within 30 days of my receipt of the documents and materials
12 from Ms. Kraft I will be able to step in front of this podium
13 and say, "Your Honor, I need two more depositions" or "I don't
14 need any more depositions" or "I need more document
15 discovery." Within 30 days I will know the answer to that.

16 THE COURT: Ms. Kraft, you're at the fulcrum right
17 now. What do you think about that? Apparently, no one is --
18 I mean, this isn't an aspersion, but you haven't had
19 conversations with individual counsel about the discovery
20 materials. So what do you think is reasonable in terms of
21 coordinating with counsel that are now looking to proceed to
22 trial?

23 MR. KRAFT: Well, we are willing to coordinate and to
24 provide the discovery that we have done and the documents
25 subject to the agreement, as they've all indicated to sign on

1 to the assessment, to make it consistent with everyone. We --

2 I mean --

3 THE COURT: This is not an easy task.

4 MR. KRAFT: As far as the time frame? I would
5 suggest -- I'm going to say 45 days. I mean, we would work
6 expeditiously before that. I have other commitments and so on
7 within our office, and we -- I mean, we would work as quickly
8 as possible.

9 I would like to also, though, state for the record
10 with respect to the mass document production that was produced
11 over the course of time, those documents are housed with a
12 third-party vendor.

13 THE COURT: Okay.

14 MR. KRAFT: Crivella West is the name of that vendor.
15 I have been in contact with them to obtain information on the
16 ability to transfer the data to whoever would be responsible
17 for it. And, of course, that would be a separate cost; that
18 this group of plaintiffs' counsel, whether separately or
19 jointly, subject to some agreement, would have to bear. We
20 would want to make that clear in our discussions with counsel.
21 And then, you know, there's a number of other documents and
22 depositions and, you know, work product.

23 THE COURT: It's all being maintained by the
24 third-party vendor?

25 MR. KRAFT: Oh, no. Not, not -- only the documents.

1 So we would have to go through our files and gather all the
2 other, you know, development of the work product and
3 depositions, et cetera.

4 THE COURT: Do you agree with the scope of document
5 production that Ms. Geist has mentioned in terms of the --
6 that remains to be accomplished?

7 MR. KRAFT: That's my recollection; that defense
8 counsel was in the midst of a production, particularly at the
9 time the settlement was reached. And I'm sure there's
10 additional documents to be produced, particularly with the
11 label change; so I do know the document production had been at
12 a standstill for a period of time so we could engage in
13 discussions, but it certainly wasn't complete at that time.

14 MR. YOO: Your Honor, general discovery is going to
15 take a few months. It's going to take plaintiffs some time to
16 get prior depositions of company witnesses and prior documents
17 from Ms. Kraft's office. It's going to take us a little time
18 to produce the new documents. Even Mr. Zonies, who's been the
19 most vocal of the plaintiffs' counsel here --

20 THE COURT: Oh, I don't know. You don't have to call
21 him the most vocal. He's just the voice of reason. We have a
22 new voice of reason.

23 MR. ZONIES: I've been called much worse.

24 MR. YOO: He's indicated the possibility of asking
25 for additional discovery. So it's clear that general

1 discovery --

2 THE COURT: We need to figure that out.

3 MR. YOO: We need to figure that out, and it's going
4 to take some time. What I would propose, Your Honor, is that
5 we get going with case-specific fact discovery. In the
6 meantime there's no reason to wait. And I've heard some
7 arguments about --

8 THE COURT: Well, if there's any fact-specific
9 discovery, I won't prevent it, but it's not going to be forced
10 to be done here.

11 MR. YOO: Well, I don't know what that -- plaintiffs'
12 counsel --

13 THE COURT: I mean, if the gentleman who's got a
14 client on the Big Island and the doctors are there, you can't
15 force those folks to come here.

16 MR. YOO: Of course not, Your Honor. We are
17 simply -- Your Honor will recall case-specific discovery in
18 this MDL prior to the settlement was done --

19 THE COURT: Sure, in the cases that were targeted for
20 trial.

21 MR. YOO: Yeah. Was done in a variety of cases. And
22 the discovery was done locally, where the witnesses were
23 located. I expect that to occur here with the present cases
24 and future cases. I've heard some arguments about financial
25 prejudice or other geographic prejudice, and I just don't see

1 it.

2 THE COURT: No. No. I think that was -- I see it in
3 terms of if I force everyone to stay here until the case was
4 trial ready, that would be an unnecessary amount of travel.

5 Beyond that, what you're suggesting is I should treat
6 these ten cases like I would having set up the ten for
7 bellwethers and get them ready for trial, whether or not they
8 have been remanded back to their home district, under the
9 understanding that the discovery for those plaintiffs is done
10 in their home district or where the witnesses are and we don't
11 arbitrarily force travel on the parties.

12 MR. YOO: Correct, Your Honor. We think that --

13 THE COURT: I don't know if anybody would object to
14 that.

15 MR. YOO: We think that five months from now, six
16 months from now, if fact discovery can be completed by then,
17 general discovery would have been completed, and it's more
18 appropriate for this MDL court to tell the transferor courts
19 fact discovery has been completed; you can take the case on
20 with whatever remains, rather than sending cases to various
21 jurisdictions now and us potentially facing a host of
22 inconsistent discovery rulings on issues that are --

23 THE COURT: You won't. Look, you're not going to
24 get -- well, and I can't eliminate that. I'm not going to
25 tell ten federal district judges how to adjudicate their case.

1 It would be unusual to revisit some of my rulings, but I
2 wouldn't tell them they couldn't. I mean, I can't inoculate
3 you from going home and having a district judge say, "No, this
4 is what we're going to do."

5 MR. YOO: The review of Your Honor's rulings -- you
6 know, that issue aside, we think that fact discovery being
7 completed at this time while the cases are here and the
8 discovery itself will be done locally where the witnesses are
9 located, especially while we're taking time to complete
10 general discovery, we think that makes sense.

11 THE COURT: Does anyone object to treating these ten
12 cases as bellwethers and start case-specific discovery? I
13 think that's in your best interest as long as it's done as has
14 been described, as if you were already back at the transferor
15 court.

16 MR. ZONIES: Your Honor, I will say one thing about
17 that, which is, I may have prejudiced some of these counsel by
18 being the one up here, because I would only say this. To the
19 extent that counsel are confident that, for example, the new
20 documents that are coming that are post-October 2013 label
21 change documents, to the extent that they're fairly confident
22 that those documents aren't going to be relevant to what they
23 need, to the extent that we could front-load the document --
24 the obtaining the documents and depositions from Ms. Kraft,
25 getting the new documents from the defendant, give this team

1 an opportunity to review those, and then step in front of the
2 Court and say, "Your Honor, I've reviewed everything, I'm not
3 interested in any more discovery, please send me home to go do
4 my depositions at home," I think that that may be a more
5 orderly way to approach it so that if counsel is -- can be
6 confident enough to come back in 20, 60 -- I mean in 60, 90
7 days and say to the Court, "I'm confident that I am ready for
8 trial and do not need to participate in any more general
9 discovery, please send me home to go do my case-specific
10 discovery," that that opportunity should be given to them
11 before we would start the case-specific discovery in this
12 court as bellwethers.

13 THE COURT: Views?

14 MR. LEVITT: I would agree with that --

15 COURT REPORTER: Counsel, state your name, please.

16 THE COURT: If it didn't happen at the podium, it
17 didn't happen.

18 MR. LEVITT: I'm sorry. Gary Levitt for Elyssa
19 Correia.

20 I would agree with counsel on that one point. I
21 basically have no objection to what's been proposed. What I
22 would like --

23 THE COURT: You're just not quite ready yet to open
24 the starting gate.

25 MR. LEVITT: Exactly. I would like to be able to

1 meet with Ms. Kraft, talk to her, see discovery, see what
2 other discovery that the other plaintiffs' counsels have
3 already obtained, because they seem to be a little bit ahead
4 of me, and then so I would agree with that, that standard, and
5 then be able to either come back and say, "Yes, I want to go
6 home" or "I need a little bit more common discovery," which
7 may be blended a little bit with specific case fact discovery.
8 Thank you.

9 MS. GEIST: Your Honor, Melissa Geist for defendant.

10 THE COURT: Oh, now, see, this is the defense voice
11 of reason.

12 MS. GEIST: The only add I would make, Your Honor, to
13 the prior comments is this. First of all, I do see some
14 inconsistencies and inequities in putting the burden of
15 discovery on defendants only without some reciprocity on
16 behalf of plaintiffs.

17 Second, I want to clear up any misimpressions. I
18 mean, if anyone had been following this docket for the last
19 number of years, we, the defense, traveled, everyone here, to
20 the treating physician's office. We were typically in the
21 office. So the burden and expense generally was greater on
22 the defendant. The only travel issue for plaintiffs' counsel
23 here is coming to the MDL, and that, you know, is once every,
24 I don't know, typically three months, Your Honor; so that's
25 minimum.

1 And the only other point I would make, Your Honor, is
2 I think what I'm hearing is clearly plaintiffs' counsel here
3 need some time to coordinate --

4 THE COURT: I think this is where we're going to
5 agree.

6 MS. GEIST: -- and discuss and, yes, and work through
7 with Ms. Kraft about what exactly they need to do. But in
8 terms of our discovery, Your Honor, the sort of the elephant
9 in the room is that there are other plaintiffs' counsel who
10 have said most definitively that they will be seeking and need
11 additional discovery, including depositions and written
12 discovery of the defendant, which is why the further
13 coordination with this judge is needed.

14 THE COURT: Ms. Kraft.

15 MR. STRAUSS: Could I -- Your Honor, I'm sorry.

16 THE COURT: It's a twofer. We can take turns.

17 So, Ms. Kraft, come on up.

18 Mr. Strauss, you'll get to do a surrebuttal.

19 MR. STRAUSS: It's not on that point; so go ahead.

20 THE COURT: You're "Mr. Process." What's going on?

21 MS. KRAFT: Yeah. I simply was going to reiterate
22 that we'll work with counsel in coming up with a time frame,
23 and we will work as best as we can, and quickly, to move this
24 along. But I can't, until I kind of communicate with our
25 office on responsibilities, commit to a time exactly today. I

1 can propose maybe sometime next week to -- as a proposed time
2 frame for turning this over --

3 THE COURT: I want you to sit down with everybody
4 before you leave today and figure something out.

5 MS. KRAFT: Oh, I will. I will work with them. I
6 mean, part of the reason -- well, the reason why Roger Denton
7 is not here today is because he as well as the other attorney
8 who worked on the NuvaRing litigation substantially are both
9 in trial in Ohio, and so we are very short in the office. We
10 have other team members that are participating in that trial;
11 so I want to --

12 THE COURT: An Ortho-Evra case in Toledo?

13 MR. KRAFT: No, we aren't. It's a toxic water case;
14 so . . .

15 THE COURT: All right. Not Cold Water Creek?

16 MR. KRAFT: No. No. So I will work with counsel and
17 come up with a proposal as quick as we can.

18 THE COURT: So, Mr. Strauss, you have a process.

19 MR. STRAUSS: So I was going to talk on the subject
20 Ms. Kraft talked on. You issued your order to show cause in
21 July. We're in September. They have all explained how they
22 know what MDLs are like, but no one called Ms. Kraft. So it's
23 September 9. It's not fair for Ms. Kraft to have an
24 explanation of how long it will take her to get all of the
25 stuff to the people that haven't called her.

1 THE COURT: She didn't feel tortured.

2 MR. STRAUSS: No. I'm not saying that. So I propose
3 that we come back in December, December 9. They have time to
4 work out whatever assessment or agreement to make the
5 transition so that when the defendants are ready to make their
6 production they have someone to produce it to, because in the
7 interim we are held in limbo, and it is not -- it is not
8 our -- we don't even have a seat at the table to talk about
9 assessments, common benefit fund, nor do we want one.

10 THE COURT: No.

11 MR. STRAUSS: However, that will give them time. It
12 won't put pressure on Ms. Kraft of 30 days or 45 days. And if
13 they have issues in agreeing, they then have time to see Judge
14 Stack, who is very --

15 THE COURT: Look, Judge Stack didn't do any of the
16 discovery in this case. I don't know why he has to be in the
17 discovery of the case now. That has baffled me from the
18 get-go. He wasn't a Special Master for discovery before. Why
19 is he going to be a Special Master for discovery now?

20 MR. STRAUSS: I'm sorry, Your Honor. What I meant
21 was they can see Judge Stack with respect to their agreement
22 on the common benefit or assessment --

23 THE COURT: He doesn't have to go -- they can work --
24 Ms. Kraft didn't feel aggrieved by any of this. You're
25 aggrieved for Ms. Kraft. That leaves me cold. She'll tell me

1 if she's got a problem, all right?

2 MR. STRAUSS: Yes, sir, Your Honor. But what I'm
3 mostly aggrieved for is for the defendant because all of the
4 burden discussion has been about the plaintiffs and none about
5 the defendant; so that is what I'm aggrieved about. And I
6 would like an orderly process. And the defendants in an MDL
7 have a right too, also, to have it proceed orderly and have
8 the general discovery --

9 THE COURT: You wanted to stay here for six more
10 months, and we're talking today about whether we should come
11 become in 45 days or 60 days. I don't understand why you're
12 aggrieved by that.

13 MR. STRAUSS: I'm aggrieved because they want to
14 delay potential --

15 THE COURT: They don't want to delay.

16 MR. STRAUSS: -- discovery of -- that they don't know
17 if they want, but at the same time we're not able to take
18 discovery on them; so I would like --

19 THE COURT: You're going to get all the discovery you
20 want. You are -- no one is not going to get the discovery
21 they need in this case.

22 MR. STRAUSS: When the cases -- we would like, Your
23 Honor, to oversee all of the general discovery. That's been
24 our --

25 THE COURT: We're going to do our best.

1 MR. STRAUSS: -- from the beginning. The only reason
2 our order contained information with respect to case-specific
3 fact discovery was so that while they were doing the general
4 discovery we weren't just twiddling our thumbs.

5 THE COURT: All right.

6 MR. ZONIES: Your Honor, I think that probably the
7 most efficient way to move through this, having lived through
8 it before in Avandia with Judge Rufe, is -- it's very
9 straightforward -- allow us a period of 45 to 60 days to get
10 our hands on the discovery that's already been issued.

11 And to be clear, I don't mean to -- I've made a
12 request for this, for this discovery, quite a long time ago;
13 so I didn't want that representation that we didn't reach out
14 to Ms. Kraft a while ago to stand on the record. In fact, we
15 have. And it's nothing negative against Ms. Kraft. I
16 understand exactly where she is that we didn't get that yet.
17 I believe that we can reach that agreement, we can get that
18 discovery.

19 The defendant is the one saying they need to update
20 their document discovery. Great. We'll take that too. But
21 in that period of time we should be able to step up and do
22 what I frankly wish we all could have done today, which is
23 say, "I'm good to go, Judge; let me out of here; and let me go
24 do my case-specific discovery in front of my judge or our
25 judge in my local district." That is the only period of time

1 we're talking about.

2 Now, I understand that the defendant would love to
3 start -- it appears that all of these orders are drafted in a
4 way to say I want the deposition of your plaintiff; I want the
5 deposition of your treater; I want the deposition of your
6 expert in the next 30 to 45 days.

7 We will have difficulty getting the work done of
8 reviewing the current status of discovery and reviewing the
9 new documents to be able to come to you and say we don't need
10 any more general discovery if, at the same time, we're
11 defending five depositions, et cetera.

12 So all I would say is step-wise it seems to make
13 sense to let everybody put their foot fully in the pool, feel
14 the water, see what the documents are, then come back here in
15 a reasonable period of time that works for the Court's
16 schedule, and say, "Your Honor, I now feel confident that I
17 can say to you I'm ready to go home" or, "Your Honor, the
18 defendant was right when they said, 'Oh, I need two more
19 depositions,' but they were wrong. I actually need 50
20 interrogatories and 50 more document requests" -- or whatever
21 unreasonable or reasonable position someone is going to take.

22 The fact that that would -- the fairness in that is,
23 is that it appears that the gentlemen from whom we haven't
24 heard on the phone from New York already know they want more
25 discovery, and so maybe they're okay having their clients get

1 case-specific discovery done on them because they're going to
2 be here for a while, whereas some of the other people here
3 can't answer that question yet and, in fairness, haven't had
4 the opportunity to review the documents to do so.

5 I don't see any problem if at the end of the day the
6 Court determines to keep the Alonso and Krangle for 209 cases
7 here and work while we go do a trial. And we don't need any
8 general discovery. We're getting ready for trial on our
9 case-specific --

10 THE COURT: Those cases, in my view, are still a
11 hypothetical.

12 MR. ZONIES: I agree.

13 THE COURT: And so I'm not going to make any
14 decision, as I said at the beginning, about those cases
15 because they don't exist, as far as I know, as a concrete
16 matter. I don't doubt they're there, but they haven't been
17 filed. The MDL panel hasn't seen them, and I don't have them.
18 So they're irrelevant right now to the determination I make.

19 Now, they may affect us in the future, and, you know,
20 we'll deal with that impact when it happens.

21 MR. ZONIES: In 45 to 60 days --

22 THE COURT: If I talk five more minutes, are you
23 going to miss your plane, Mr. Yoo?

24 MR. YOO: Don't worry about it.

25 THE COURT: I don't want to hold you up.

1 MR. ZONIES: In 45 to 60 days, Your Honor, you can
2 have ten of these cases stand before you saying, "We don't
3 need any more stuff; let us go try those cases, and let us go
4 do our case-specific discovery at home." Thank you.

5 THE COURT: Yes, Mr. Yoo.

6 MR. YOO: Your Honor, when the rubber meets the road,
7 positions start to vary, and I think we just heard some of
8 that. "I'm ready to go to trial right now; please send me
9 back" is not consistent with "Please don't make me review
10 general discovery and produce my plaintiff for deposition
11 because I can't do both."

12 So I mean -- and this exemplifies why we need further
13 coordination. When we get --

14 THE COURT: Well, that's why we're still here.

15 MR. YOO: And I think we should stay here for the
16 time being, Your Honor.

17 THE COURT: Well, I haven't heard anybody who says we
18 should go home today, because we need to make an evaluation
19 about what we have, a learned decision about what's -- if
20 anything needs to be done, and then we're going to get going.

21 MR. YOO: And I think 45 days is not realistic. If
22 I'm hearing Ms. Kraft correctly --

23 THE COURT: Oh, now you're wearing Mr. Strauss' hat
24 and you want to talk for Ms. Kraft. She'll tell us what she
25 thinks is reasonable. She's never been bashful before.

1 MR. YOO: Your Honor, they're not going to be able to
2 come back in 45 days and say, "We've reviewed" --

3 THE COURT: What if I tell them they have to?

4 MR. YOO: Well, that's --

5 THE COURT: I mean, I'm a little frustrated that I
6 had to force today because when we had this discussion last
7 month nobody else was here but Ms. Kraft. I said, "Well,
8 let's get everybody in the room and figure out what we're
9 going to do."

10 It was not a bad idea. As miserable as some of you
11 probably were in getting here, this was necessary to go
12 forward so that we all get together and figure this out. And
13 we're going to get together and figure this out, and I don't
14 know if it's -- it's going to be 45 or 60 days. I need to
15 hear from Ms. Kraft which she thinks is more manageable when
16 we get back together, and we either declare this sine die or
17 we decide what it is that needs to be completed.

18 MR. YOO: Your Honor, one final thought before Ms.
19 Kraft speaks.

20 THE COURT: Yeah.

21 MR. YOO: On a practical level what I would propose
22 is we come back in November or December and between now and
23 then --

24 THE COURT: Sixty days would put us in November.

25 MR. YOO: -- plaintiffs do their best to get the

1 prior discovery and review it. We will do our best to start
2 rolling out additional documents. And we should be allowed to
3 start depositions of plaintiffs and prescribing doctors and
4 treating doctors. That may not be in all of the ten cases.
5 We should get started. There's no reason to wait.

6 THE COURT: I hear you.

7 Ms. Kraft?

8 MS. KRAFT: Yes, Your Honor. I would request 60 days
9 because I want to be able to meet the Court's deadline.

10 THE COURT: Okay.

11 MR. KRAFT: What I had not thought of before is the
12 fact that I'm going to have to have some amount of
13 communication with Roger Denton, and he is in a monthlong
14 trial. They're in the final days of trial prep, and the trial
15 starts Monday. And again not only he, but several others from
16 our office. So I do have to coordinate in addition to all the
17 things of handling while he's out of the office in that
18 fashion.

19 So I will work extremely hard to work through this.
20 We haven't even talked about the assessment issue with the
21 counsel; and so --

22 THE COURT: No free riders.

23 MS. KRAFT: -- talk about that. So there's just some
24 details to be worked out, and I just don't believe that I'm
25 going to be able to communicate at the drop of a hat with the

1 other lead counsel that I'm going to at least need to
2 communicate with and keep updated. And if it's done before
3 then, great. I mean, I will work hard in that regard.

4 MR. ZONIES: May I, Your Honor?

5 THE COURT: Yeah.

6 MR. ZONIES: One thing that can ease the burden on
7 Ms. Kraft and I think is also appropriate is -- and we did do
8 this in a number of Avandia cases that were ongoing outside of
9 the MDL -- is to simply have the defendants produce what they
10 have produced already to Ms. Kraft to us. And not in a
11 free-rider sense. We're happy to stay on the assessment. But
12 that way Ms. Kraft can get out of the loop at least as far as
13 documents and depositions, et cetera, because oftentimes,
14 having experienced it, the defendant has those in a much more
15 handy manner to actually just blast out.

16 THE COURT: I want to hear from Ms. Kraft and then
17 Ms. Geist as to what's workable, what's not workable.

18 MS. KRAFT: I think that's something to be talked
19 about probably privately. Again, the documents that the
20 defendants have produced -- that I don't perceive to be a
21 terrible burden on our firm because they're housed by the
22 third-party vendor; and so that's, you know, details that will
23 need to be worked out.

24 THE COURT: You'll have to work out a transition as
25 to who's going to be responsible for them and maintain them,

1 or they make a determination to terminate that relationship
2 but download it with your permission, however you guys work
3 that out. But that access has to be negotiated with you, and
4 then what you do with that access, of course, is up to you
5 all.

6 MS. KRAFT: And you're exactly right in that regard.
7 Just certain paperwork and documentation I think for the
8 protection of all parties we need to draft and process.

9 So, I mean, without walking through it with Crivella
10 West, I don't perceive that as an incredible time commitment.
11 It's the other aspects of the litigation that have been
12 developed over time. I mean, we'd want to produce it in a
13 nice organized fashion and things like that; so I just need
14 more time to make sure I'm not speaking out of turn in doing
15 that.

16 MS. GEIST: And, Your Honor, Melissa Geist. I don't
17 disagree. I think the access to the third-party vendor is
18 probably the quickest and most efficient way to proceed.

19 THE COURT: So that we don't shift the cost and
20 burden to the defendants.

21 MS. GEIST: Exactly, Your Honor, because we have --
22 you know, we have met our obligation.

23 THE COURT: Right.

24 MS. GEIST: I think it would be a little unfair to
25 have us reproduce what we had produced over, I think, five or

1 six years. So it's there. It's accessible. I think it's
2 just working through the logistics.

3 MR. ZONIES: And I've worked with Art Crivella in
4 many litigations, know Crivella West well, and we will have no
5 problem.

6 THE COURT: We have a leg up.

7 What else? What other transition issues should we
8 address while we're all together? I mean, you all should
9 obviously talk when we're done.

10 MS. KRAFT: I don't know of anything else.

11 THE COURT: One of the things is who's going to be
12 the point person? Is it this gentleman in New York, or is
13 it -- so far, counsel here today appears to be carrying the
14 laboring oar.

15 MR. ZONIES: Joe Zonies, Your Honor.

16 THE COURT: Right.

17 MR. ZONIES: Yeah. Again, I think that's probably
18 discussion --

19 THE COURT: Amongst.

20 MR. ZONIES: -- we can have about whether or not it's
21 even --

22 THE COURT: I'm not telling. I was asking.

23 MR. ZONIES: No. No. Obviously, it's on my radar.
24 It's a discussion we can have as a group that will be driven
25 in part by whether or not there's any perceived necessity to

1 do additional discovery. If there isn't, then we're all on
2 our own.

3 THE COURT: Okay. Sixty days to get back together in
4 my mind puts us November 10. 10:30 work for everybody?

5 MS. KRAFT: Yes.

6 THE COURT: Obviously, you can call in from Hawaii
7 upon a proper motion, if you wish. I mean, I think it's
8 helpful to be in person for a whole lot of reasons, but I can
9 understand if -- and that goes for everybody. If you want to
10 present, you know, a motion with an explanation for why you
11 think your personal attendance is on the balance of the
12 interest, not in your client's interest, I will entertain it
13 and we'll take it up. Hawaii, obviously, does seem to present
14 a unique financial burden.

15 And at that time plaintiffs' counsel will have worked
16 out a transition of -- and that that may include the New York
17 counsel as lead. It may include Mr. Zonies. I don't know. I
18 leave it to you all. And maybe it's premature, but certainly
19 by that date there is a determination about a transfer, the
20 discovery from the plaintiffs' steering committee to the
21 remaining plaintiffs and their counsel and a determination
22 made at that time.

23 Obviously -- and I would like to hear by the 6th of
24 November from counsel as to what they believe their status is
25 in this litigation, whether there is future common discovery.

1 That goes for both sides, what common discovery. I mean,
2 we're going to -- Ms. Geist, we're going to take you up on
3 getting this document production going again.

4 MS. GEIST: Yes, Your Honor. Just for the record, I
5 did want to state to the Court that, based on those
6 discussions we've had today, we will begin those steps and the
7 collection and the updating of the prior document productions,
8 and I should be in a strong position to report --

9 THE COURT: I don't expect you to produce anything
10 because we don't know who to give it to.

11 MS. GEIST: Exactly, Your Honor. And Mr. Strauss'
12 point, I don't know who I would be producing. I would, you
13 know, seek the Court's assistance in conducting the production
14 per the prior orders in the MDL. I will just say that now for
15 the record. That's what I anticipate. And that's how we will
16 proceed now, because I don't have anything else to go on for
17 right now, Judge. So I'm going to proceed as we have --

18 THE COURT: But you'll have an update to give us even
19 though there won't be any actual production.

20 MS. GEIST: Yes, Your Honor.

21 THE COURT: And --

22 MR. ALONSO: Your Honor, it's Andres Alonso on the
23 telephone. May I be heard briefly?

24 THE COURT: Yes.

25 MR. ALONSO: Your Honor, I think I may be a little

1 bit situated differently than the other plaintiffs' counsel
2 we've heard from on the phone today in the sense that we
3 did -- my firm did actually actively participate in the MDL;
4 and, in fact, I think we took two of the experts of the
5 defendants in the case. And I just want some guidance from
6 the Court because we do think that there is some additional
7 discovery, core discovery, that's outstanding.

8 And there was some discussion, Your Honor, with
9 defense counsel about the service of an additional ten
10 requests for production and ten interrogatories. And what I'm
11 hearing from the Court today is that perhaps we should not
12 serve those demands until we've all conferred with one
13 another, plaintiffs' counsel included, and reach determination
14 as to whether or not there needs to be more core discovery.

15 And, again, Your Honor, we may be situated a little
16 bit differently because we do believe that there is some core
17 discovery over the last two years, frankly, that we would like
18 to get and, frankly, we think we need in order to properly try
19 these cases and perhaps obtain a different result on motion
20 than was obtained in each and every bellwether case before
21 Judge Martinotti in New Jersey.

22 THE COURT: Well, I'm not going to subject the
23 defendants to multiple document requests from multiple
24 parties. So to the extent you articulated the purpose of the
25 MDL, that is, if there's a determination -- and that's what

1 the whole 60-day period is for -- that there is further common
2 discovery to be done, you will participate with everyone else
3 on November 6 and inform the Court as to what you think that
4 is and not subject the defendant to discovery requests over
5 the next 60 days, which may or may not be propounded by
6 multiple plaintiffs. We are not going to do that.

7 MR. ALONSO: Understood, Your Honor. Thank you.

8 THE COURT: This is an evaluation period, if you
9 will, towards what is left; if common discovery remains, what
10 is it; how will it be accomplished; who the new -- you may
11 have to establish a new lead counsel for the remaining
12 plaintiffs.

13 If you can't, but everyone agrees there needs to be
14 common discovery, I will do what you would do at the beginning
15 of an MDL and I will make a determination about who lead
16 counsel is. I don't want to make it complicated, but,
17 obviously, someone's going to have to speak for the group. We
18 can't have 12 voices. That defeats everything we've done to
19 this point.

20 So by the 6th I'll either get ten answers, or I'll
21 get one unified answer on behalf of the plaintiffs, an
22 evaluation and a transfer of the document depository and the
23 discovery to date to someone or all, depending on the
24 determination that we're done or we're not done. If we're not
25 done, what remains to be done that's common. And then we'll

1 get together on the 10th, and we will chart, once and for all,
2 a final path of this MDL.

3 And we're not going to do individual plaintiffs'
4 discovery in that intervening period. You can make a
5 recommendation to me like with the rest on the 6th as to what
6 you think the next step should be on behalf of the defendant
7 and in addition to completing the document production.

8 And, again, if anyone is aggrieved -- I would expect
9 counsel from New York to be front and center and personally in
10 my courtroom next time.

11 MR. ALONSO: Absolutely, Your Honor.

12 THE COURT: Especially if you're going to -- if the
13 hypothetical becomes reality and we're seeing scores of new
14 cases, it's time to make an appearance and let's have a
15 serious conversation about how we're going to proceed.

16 Anything else that I should put on the table to be
17 finished by the time we see each other again on the 10th?

18 MR. ZONIES: Nothing from us, Your Honor.

19 MS. GEIST: Nothing from defendants, Your Honor.

20 THE COURT: Very good. Thank you all very much.

21 Appreciate your time.

22 **(PROCEEDINGS CONCLUDED AT 12:00 PM.)**

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CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 59 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 24th day of September, 2015.

/s/Shannon L. White
Shannon L. White, CRR, RMR, CCR, CSR
Official Court Reporter