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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GADOLINIUM-BASED
CONTRAST AGENTS PRODUCTS
LIABILITY LITIGATION
(MDL Number 1909)

Case Number 1:08-gd-50000
Monday, May 2, 2011
1:10 p.m.

TRANSCRIPT OF PRETRIAL PROCEEDINGS
BEFORE THE HONORABLE DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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21 Proceedings recorded by mechanical stenography; transcript
22 produced by computer-aided transcription.

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1 THE COURT: All right. Good afternoon,
2 everyone, those of you here in the court and on
3 the -- appearing by telephone. I want to welcome everyone.

4 We haven't had one of these for about a year.
13:07:11 5 It's not because people haven't been working very hard.
6 It's because for various reasons we didn't feel it was
7 necessary to have one, but this one was scheduled and there
8 was some question about postponing it, but I felt it was
9 important to go forward.

13:07:33 10 And I've asked Magistrate Judge Baughman to
11 sit up here with me. He's the assigned Magistrate Judge on
12 this MDL, and there may be a role for him in further
13 proceedings, so I wanted everyone to get a chance to meet
14 him and have him get a chance to understand what's going on.

13:07:55 15 I appreciate the status reports and the
16 various submissions and tables of cases. I have a good feel
17 for what's been done and what remains to be done.

18 It appears that with respect to Bayer,
19 Mallinckrodt and Bracco, things are moving, are moving along
13:08:30 20 fine and the Court really doesn't need to do anything at
21 this point other than maybe schedule something with one law
22 firm.

23 With GE, the Court has reviewed the status of
24 the cases. There are approximately seven or eight what I'll
13:08:56 25 call large inventories remaining. The Court is actively

1 involved in settlement discussions with two of those
2 inventories and I've scheduled a third one for the first
3 week of June.

4 With three others, I've been advised that
13:09:16 5 there have been meetings and discussions. There's one firm,
6 the Parker Waichman firm, where apparently there have been
7 phone calls but not much has happened.

8 And I see Mr. Ismail is here for Bayer.

9 Have you -- have you had active discussions
13:09:36 10 with that firm?

11 MR. ISMAIL: Yes, Your Honor, although we have
12 not resolved any cases with them.

13 THE COURT: All right. Well, I think it's
14 important that before we leave -- who is here for the Parker
13:09:48 15 Waichman firm?

16 MR. McCAULEY: Patrick McCauley, Your Honor.

17 THE COURT: Mr. McCauley, I think it's
18 important, I want actual meetings to be set, all right,
19 before you leave today.

13:10:02 20 So I want you to sit down with Mr. Ismail and
21 Mr. O'Donnell and actually set meetings. I don't care where
22 they are, but I want something set within the next month
23 with both of them where you or someone from your firm sits
24 down with them and actively meets, after you've exchanged
13:10:21 25 whatever information needs to be exchanged, and have actual

1 settlement discussions.

2 MR. McCAULEY: Yes, Your Honor. We've had one
3 prior meeting with Mr. O'Donnell and there was a scheduling
4 conflict between us.

13:10:31 5 THE COURT: Yeah, I understand, but it's going
6 to be, you know, it's going to be done or else I'm just
7 going to have to pick a date out and direct that it happen
8 that date. And I don't want that to happen.

9 So before you leave today, sit down with
13:10:44 10 Mr. O'Donnell and Mr. Ismail and pick a date and that will
11 be it. And I want that to happen. Okay?

12 MR. McCAULEY: Absolutely, Your Honor.

13 THE COURT: All right. And then is
14 Mr. Williamson here or someone from his firm?

13:11:12 15 MR. KERENSKY: Mike Kerensky, Your Honor, for
16 Mr. Williamson.

17 THE COURT: All right. Mr. Kerensky.

18 THE CLERK: He needs to come up to the podium.

19 THE COURT: We're going to have to figure out
13:11:26 20 something to do with your firm's cases, and I may take a
21 little break or we may do it after I excuse everyone else
22 and sort of figure out what to do.

23 But --

24 MR. KERENSKY: Mr. Ismail and I have worked on
13:11:44 25 a CMO to do some preliminary fact discovery. Right now GE

1 is resisting that, but we've been working on that trying to
2 figure out --

3 THE COURT: Well, the issue there is I think
4 both Bayer and GE dispute the diagnosis for every one of
13:11:58 5 your cases.

6 MR. KERENSKY: Which is the reason we have
7 agreed in principle to try and do some fact discovery, see
8 if we can get some movement on that issue.

9 THE COURT: Well, I don't know about fact
13:12:07 10 discovery.

11 I've got a suggestion as to what to do, but
12 we've got to come up with something. There are about ten or
13 twelve cases and they are at a standstill.

14 MR. KERENSKY: Agreed.

15 THE COURT: So I'm going to come -- I'm going
13:12:19 16 to come back to you.

17 You're in sort of a category of one.

18 MR. KERENSKY: Thank you.

19 THE COURT: All right. Well, yes, Ms. Levine.

13:12:31 20 MS. LEVINE: Heidi Levine for GE.

21 I just wanted to clarify that GE has not
22 resisted the approach that Mr. Ismail and Mr. Kerensky have
23 discussed, but we have a separate process through
24 Mr. O'Donnell that we were attempting to see, as with other
13:12:47 25 cases, if that worked out, and thought we would approach

1 that issue next if something didn't resolve otherwise.

2 So I just wanted to clarify the record.

3 THE COURT: All right. Well, look, if the
4 first step is some preliminary exchange of information, that
13:13:08 5 should happen. All right? I mean, that should happen for
6 Mr. Kerensky, for both Bayer and GE.

7 I mean, is there -- and maybe, maybe that's
8 all we should do, and then come -- then revisit this when
9 the information's been exchanged.

10 MR. KERENSKY: All right, Judge. Well, we
11 provided them with our slides and our reports of our
12 biopsies which confirmed the diagnosis.

13 Where we got stuck was they didn't want to
14 give us their reports of their review of our slides. They
13:13:38 15 just tell us they disagree.

16 That's where the diagnosis issue is.

17 That's where we get stuck.

18 THE COURT: All right. You're stuck with
19 Bayer on that.

13:13:50 20 What about with GE, what's happened?

21 MR. KERENSKY: Same.

22 THE COURT: What's been exchanged?

23 MR. KERENSKY: Same, Judge.

24 THE COURT: All right. Ms. Levine, is
13:13:58 25 that -- is it correct that you've received their slides,

1 their diagnosis, you've reviewed it, but you don't want to
2 reciprocate? Or what's going on?

3 MS. LEVINE: I think it's fair to say that
4 we've deferred to Bayer.

13:14:14 5 Mr. Ismail and I have spoken, and he has taken
6 the lead on that issue, and we are, you know, dual-tracking
7 this case.

8 And we're open to suggestions and have had
9 discussions with Mr. Kerensky.

13:14:32 10 THE COURT: Well, I'll tell you what we're
11 going to do. After, I think after we conclude, I'm going to
12 sit down with you and Mr. Ismail and Mr. Kerensky and see if
13 we can get this moving forward.

14 MR. KERENSKY: Thank you, Your Honor.

13:14:54 15 THE COURT: All right. Then I guess there are
16 some 60 or 70 cases that involve plaintiffs' lawyers or
17 firms basically with one or two cases, and I know the
18 parties have been discussing how to deal with these.

19 And I'm open to suggestions, and I think I
13:15:31 20 want to encourage those discussions to keep going, and come
21 up with some mechanism to address them.

22 The one thing that is clear to me is that no
23 one can try their way out of this MDL, and particularly if a
24 lawyer has one or two cases. The costs are prohibitive to
13:15:56 25 gear up, discover, and try one of these cases.

1 And so just remanding the case accomplishes
2 nothing. It will go to a Judge who has little or no context
3 or background, who will probably put this case at the bottom
4 of his or her pile and it will just sit there, and then at
5 some point the Judge is going to bring it up and say, "Well,
6 why don't you try and settle this?"

7 So you will be back to where you are now two
8 years down the road.

9 So that isn't -- that isn't really a recourse
10 that's going to help either the plaintiff or the defendant,
11 so I'm not really inclined to do that.

12 And I'm also of the mind that it's going to be
13 very difficult to settle or mediate these cases in
14 isolation. From my experience, it's much easier to settle a
15 pool of cases, 10, 20 or more, than one or two because they
16 are so idiosyncratic.

17 And it seems to me the parties should maybe
18 figure out a way to pool these and then, you know, if you
19 can settle 30 or 40 in a block, then it will be up to the
20 plaintiffs to how to allocate the money. And obviously, you
21 know, there will be trade-offs or compromises.

22 But the problem with individual cases, you're
23 going to have some where the defendants are going to say
24 there should be little or no compensation and the
25 plaintiff's going to agree -- disagree, but the defendant's

1 not going to allocate not much money.

2 And so if you pool the cases, you're more
3 likely to get something done.

4 So I think the first step is definitely to
13:17:47 5 exchange information so that both sides are in a position to
6 fairly evaluate those cases. But, for example, if you've
7 got a case where the defendant thinks that there's a statute
8 of limitations issue and doesn't want to pay anything, well,
9 plaintiff is not going to dismiss that case.

13:18:07 10 So if you're talking about mediating that
11 case, I don't know what you do. You put that with 20 or 30
12 other cases and then you've got something to talk about.

13 So that's my, you know, that's my thought.

14 But I'm really looking, looking for ideas.
13:18:26 15 And I know some are in the filings and maybe we can have
16 some general discussion about that, particularly those
17 plaintiffs that have individual cases.

18 But just, you know, remanding them to some
19 other Federal Judge halfway across the country is not a good
13:18:43 20 way to get your case resolved.

21 So --

22 MR. WEINBERGER: Your Honor, may I address the
23 Court with respect to those last comments?

24 THE COURT: Yes, Mr. Weinberger.

13:18:58 25 MR. WEINBERGER: Thank you. Peter Weinberger

1 on behalf of the plaintiffs and the PSC.

2 Your Honor, you've already addressed to
3 where -- pretty much where we stand with respect to Bracco
4 and Bayer and Mallinckrodt, so I want to address my comments
13:19:15 5 now with respect to GE.

6 And as the Court knows, we have submitted a
7 proposal to GE that calls for an exchange of information,
8 particularly with respect to product identification similar
9 to what we have worked out and always operated under with
13:19:39 10 respect to the co-defendants.

11 And of course, Your Honor, as our submission
12 suggests and indicates, that requires good faith on behalf
13 of both sides in providing information particularly with
14 respect to product ID, and we are waiting for GE's response
13:19:58 15 with respect to that.

16 I talked to Mr. O'Donnell just before this
17 hearing began, and as I understand it they are looking at
18 our proposal very seriously.

19 To assist the Court in determining whether or
13:20:15 20 not our proposal -- which calls for this exchange of
21 information followed by mediation by the Court, and to the
22 extent the Court is not or cannot be available with respect
23 to certain inventories or with respect to individual cases,
24 a referral to a Special Master mediator -- I think it's
13:20:36 25 really important for the Court to hear a couple of different

1 scenarios with respect to plaintiffs' lawyers who have cases
2 that have not yet been resolved.

3 And so we have very short presentations by
4 four plaintiffs' lawyers who represent plaintiffs in
5 different situations.

13:20:57

6 Howard Nations, Howard Nations, who as you
7 know has a group of -- you know, I hesitate, I always
8 don't -- I don't like the word "Inventory." I don't like
9 the word "Group" because, you know, these are individual
10 plaintiffs and their families. And I, frankly, think that
11 from our perspective the use of the word "Inventories" is
12 somewhat degrading to them because they are all individual
13 people with individual injuries and individual families.

13:21:13

14 But Mr. Nations represents 17 or 18 people,
15 and I think it would be helpful for the Court to hear from
16 him.

13:21:35

17 We also have Peter Keith who represents a
18 plaintiff by the name of Finan who -- which is a confounded
19 case -- who has been successful in resolving his case with
20 Bayer but unsuccessful with respect to GE.

13:21:54

21 We have attorney John Suthers here who
22 represents a plaintiff by the name of Deal, and Claudine
23 Homolash who represents a plaintiff by the name of Yang.

24 And these are going to be short presentations,
25 but I think, Your Honor, if it gives you some context -- it

13:22:12

1 will give you some context as to why our proposal is an
2 appropriate way of moving this MDL forward towards
3 resolution.

4 We are mindful of the fact, Your Honor, that
13:22:35 5 immediate remands of cases places the Court and Courts
6 around the country in a difficult situation, and so our
7 proposal calls for mediation of cases before a plaintiff can
8 then come to the Court and request remand of their case.

9 As you know, we have two separate filings with
13:22:58 10 respect to motions for remand: A filing on behalf of the
11 PSC in which we have six cases still pending that request
12 trial settings, and then we have a separate filing by the
13 DeCarli and Johnson law firms on behalf of their client.

14 We are not asking that the Court rule on those
13:23:21 15 motions at this point -- I know the Court hasn't even
16 required a response -- but the content of those motions very
17 well sets forth the problems that we have when we don't have
18 trial settings.

19 And knowing full well that it is this Court's
13:23:45 20 desire to use its resources to conclude this MDL, our belief
21 is that our proposal moves that ball substantially, and we
22 are happy to answer any questions that you have or that GE
23 may have with respect to that proposal.

24 You know, it is -- I'm sure there is some meat
13:24:13 25 that needs to be added to the bones of that proposal, but I

1 think conceptually it's easy to understand and clear in its
2 intent.

3 So if I may, Your Honor, I'd like to turn the
4 podium over to Mr. Nations at this point.

13:24:26 5 THE COURT: Okay. All right.

6 MR. NATIONS: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Nations.

8 MR. NATIONS: I'm Howard Nations.

9 First, with respect to the Court's inquiry of
10 what happens to the lawyer with one or two cases, it goes
11 back to a federal court and he's just there at the bottom of
12 the docket. Let me make clear that this Plaintiff Steering
13 Committee has worked extremely hard and has come up with an
14 excellent work product.

13:24:57 15 And we have -- we understand that our duty is
16 not just to our own clients. As members of the Plaintiffs
17 Steering Committee, we owe a duty to everyone who is paying
18 money into the common benefit fund. So we have a -- we have
19 an excellent trial packet that is ready to be used in any
13:25:13 20 case by any attorney in the United States.

21 We also have a core group of PSC attorneys who
22 are perfectly willing to go in and assist in any trial we
23 get in any court in the United States, so they will not, if
24 you remand one or two cases, they will not be left alone.

13:25:33 25 THE COURT: Oh, I -- Mr. Nations, I know that.

1 The issue is that one of my colleagues is
2 going to get this case, wonder what the heck to do with it,
3 try and fit it in among all his or her other cases, and it's
4 not likely to get prompt attention.

13:25:51 5 I'm confident that it would get good lawyering
6 on both sides. I'm not the least bit worried about that,
7 but thank you for bringing that up.

8 MR. NATIONS: Okay. Well, let me -- let me
9 suggest that we look at the landscape from the viewpoint of
13:26:07 10 these individual plaintiffs, some 147 of them.

11 Right now most of them are living in constant
12 pain. They're deteriorating physically, they are
13 deteriorating emotionally, and they are deteriorating
14 financially every day.

13:26:22 15 And this type of injury doesn't just injure
16 these plaintiffs. It injures the entire family.

17 I have a request for a trial setting pending
18 for Carson Hammersley. Carson Hammersley is 38 years old.
19 He is -- he probably won't see the end of this year. We've
13:26:40 20 had two emergencies this year where we thought this was the
21 end for him.

22 He has a nine year old daughter who has given
23 up her youth. She comes home every day straight from school
24 to take care of her daddy because she knows that this is the
13:26:54 25 last and only opportunity she has to be with him.

1 It's injuring families.

2 I've been asked to discuss my docket briefly
3 as an exemplar of the problems facing others.

4 I have 37 cases. I had 37 cases initially on
13:27:07 5 my docket. I settled 12 cases with Bayer and Mallinckrodt
6 to date. I have a few cases left with them, but on each of
7 those cases we're in good faith settlement negotiations and
8 there's a legitimate reason why each of those has not
9 settled.

13:27:22 10 On the other hand, with GE I have 19 cases
11 pending. I have presented full documentation, video
12 settlement demand letters. I've made individual demands on
13 each of those cases. I've met seven -- I met seven times,
14 and at this point in time I've never had a legitimate offer
15 out of GE.
13:27:42

16 I had a request for an eighth meeting, Your
17 Honor, and I had to reply by saying Einstein's second
18 greatest discovery was that insanity is doing the same thing
19 over and over and expecting a different result. So I
13:27:59 20 requested then that we meet with the Judge, that we mediate
21 with you, Your Honor, and they refused to do so.

22 At the risk of belaboring the obvious, the
23 only basis upon which GE is settling cases is with trial
24 settings or with judicial intervention and usually with
13:28:17 25 both.

1 As of today, there's only one -- in the MDL
2 there's only one case set for trial. The bellwether case is
3 set at the end of October. Now, we don't need Nostradamus
4 to tell us that in the last week of October that docket will
13:28:34 5 settle. That's a PSC member. That's the last bellwether
6 case.

7 The problem with it is this, Your Honor: Look
8 at what the bellwether cases have been worth to our
9 individual plaintiffs, and that is nothing, because they
13:28:46 10 haven't established any value of cases.

11 The individual plaintiffs are looking at that
12 bellwether case in late October saying "So what? So it
13 settles? We fast-forward to October 30th and where are we?
14 We're here, we have no cases, we have no trials, we have no
13:29:04 15 bellwethers, we have no remands." They have absolutely
16 nothing, but by that time we will have additional dead
17 plaintiffs.

18 I mean, it's just that -- it's harsh, but it's
19 just that simple.

13:29:16 20 Their only chance for justice, Your Honor,
21 with GE is to get the program that we have suggested which
22 is to get mediations, to get judicial intervention either
23 with Your Honor or with a Special Master. With the threat
24 of remand, possibly cases will settle. With actual remand,
13:29:39 25 these cases go back for trial. When they get a trial

1 setting, the cases will settle because GE will not try these
2 cases. They simply will not put this in front of a jury.

3 So in this, this is a classic case, Your
4 Honor, where justice delayed is definitely justice denied.

13:29:58 5 Thank you, sir.

6 THE COURT: Okay. Thank you, Mr. Nations.

7 MS. HOMOLASH: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MS. HOMOLASH: Claudine Homolash with Sheller
10 law offices.

11 We represent Dr. Shuin-lin Yang who is a
12 plaintiff in this litigation.

13 Your Honor, Dr. Yang is one of the earlier
14 cases that was filed in the MDL, Dr. Yang's case.

13:30:29 15 We have attempted on numerous occasions to
16 settle Dr. Yang's case. We actually met with Mr. O'Donnell
17 in person on two separate occasions; once before retired
18 Federal Judge Diane Welsh. On both occasions, Dr. Yang
19 traveled close to an hour with the assistance of his wife.
13:30:54 20 Dr. Yang is wheelchair-bound and has advanced NSF.

21 Both of our settlement meetings with GE have
22 been completely unsuccessful.

23 Most recently, I'd like to represent to the
24 Court that when we met with GE's counsel, we were and our
13:31:22 25 client was faced with the threat to his face that he would

1 not get a trial date. Now, I find that disgraceful.

2 He left the mediation more than upset. He's
3 sick enough as it is. And to be threatened that he's never
4 going to see his day in court and basically told "This is
13:31:50 5 what you're going to get" is, you know, it's unjust.

6 And short of, you know, intervention by Your
7 Honor, we don't see any other, you know, out.

8 We understand that Your Honor is not willing
9 at this time, it sounds like, to remand the cases, but, you
13:32:15 10 know, our hands are tied at this point.

11 And, you know, based on Your Honor's
12 statements, you know, I understand that you're saying that
13 maybe we should group our cases in order to resolve them,
14 but we have been successful settling a small number of cases
13:32:35 15 with Bayer. And I ask the Court why are we not successful
16 doing the same with GE? Why is GE any different?

17 So, Your Honor, on behalf of Dr. Yang I would
18 ask that the Court would step in and mediate this case
19 privately.

13:32:58 20 If not, we would ask for the Court to be -- or
21 the case to be remanded to the Eastern District of
22 Pennsylvania so Dr. Yang can get his day in court before he
23 passes away.

24 Thank you.

13:33:13 25 THE COURT: Okay. Thank you.

1 MR. SUTHERS: May it please the Court, Your
2 Honor, I'm John Suthers and I speak today on behalf of those
3 of us with two or fewer cases in this MDL.

4 I represent a lady named Patricia Deal. It's
13:33:32 5 what we call a GE-only case. GE is now and has always been
6 the only defendant.

7 Product identification in my case was
8 substantiated approximately 18 months ago. I have a
9 clinical diagnosis of NSF by a treating physician. I have a
13:33:50 10 pathological diagnosis of NSF by Dr. Shawn Cowper, whom Your
11 Honor may recall is one of the leading experts in the world
12 on NSF.

13 When Your Honor scheduled this large group
14 conference, I contacted GE's resolution counsel and
13:34:04 15 suggested we stay over after the conference and have the
16 Court mediate our case. GE's response was that it did not
17 wish to bother the Court with only one case.

18 So those of us with two or fewer cases, Your
19 Honor, we welcome the Court's involvement in mediation,
13:34:27 20 whether it be Your Honor, the Magistrate or a Special Master
21 who has familiarity with these cases and the value of these
22 cases.

23 However, if there remains a genuine dispute, a
24 genuine dispute, Your Honor, about the value of the cases
13:34:44 25 after mediation, we respectfully urge the Court to remand

1 the cases.

2 And I say this with all due respect: We can,
3 we can try the cases in the remand venues. Where I practice
4 in the Southern District of Georgia, we have what is called
13:35:03 5 a rocket docket, and civil cases can be tried to a verdict
6 within nine months of filing or remand.

7 So we do have the resources, we do have the
8 will, and we're all prepared to participate in good faith in
9 mediation, but we ask the Court to consider the alternative
13:35:25 10 if mediation is unsuccessful.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Suthers.

13 MR. KEITH: Good afternoon, Your Honor. Peter
14 Keith on behalf of Kelly Finan. I appreciate the
13:35:42 15 opportunity to speak briefly to the Court.

16 Ms. Finan, her case was filed in the District
17 of Maryland, I believe it's number 50 on GE's list, and hers
18 was one of the group of cases included in the motion for
19 trial dates or remands that were filed several months ago.

13:35:58 20 She's 27 years old. She's someone who has
21 been known to our law firm ever since her birth. Her father
22 is a graduate of Maryland law school and her grandfather was
23 a Maryland appellate judge.

24 She's currently permanently disabled,
13:36:11 25 wheelchair bound because of her NSF. She's on morphine

1 daily and is still struggling to make it as a school teacher
2 in an elementary school in a rural Maryland county.

3 This is a case in which product ID has been
4 confirmed as to all her scans. Her NSF was confirmed by
13:36:29 5 biopsy, and it's a confounded case where the precipitating
6 scan was a GE Omniscan scan.

7 About a year ago, Your Honor, demand letters
8 went out to both GE and Bayer, and I think the way the
9 defendants responded is significant. Bayer and Mr. Ismail
13:36:45 10 responded very quickly within a few weeks. The PSC, through
11 the efforts of Mr. Skikos, helped to facilitate a settlement
12 and GE has been dismissed in our case -- and Bayer, excuse
13 me, has been dismissed in our case.

14 In contrast, GE was silent. A year went by
13:37:01 15 with no answer. After the last large group conference,
16 having heard Your Honor's comments, I sent an e-mail to
17 Mr. O'Donnell asking him whether he would be willing to have
18 the Court mediate our case.

19 I was told that Mr. O'Donnell was meeting in
13:37:16 20 Atlanta on other cases. I flew down to Atlanta and had a
21 very polite and congenial discussion with him and his client
22 over the course of about two hours.

23 I do think we have started good faith
24 negotiations, but we are still very far apart. And ours is
13:37:34 25 one of those individual cases, Your Honor, that is very

1 serious because it involves a young lady who will be
2 wheelchair-bound and disabled for the rest of her life.

3 So I, too, welcome the intervention of this
4 Court, the Magistrate Judge, a Special Master. And as with
13:37:48 5 the prior speakers' comments, in the District of Maryland if
6 this case were to be remanded I'm sure that it would get
7 attention.

8 So I appreciate the Court's efforts. I know
9 how difficult it must be to manage this particular MDL. And
13:38:01 10 I agree with Your Honor that sequential trial dates are just
11 not going to be able to do it.

12 Thank you.

13 THE COURT: All right. Thank you, Mr. Keith.

14 MR. O'DONNELL: Your Honor, may I briefly
13:38:12 15 address --

16 THE COURT: Yes, I was going to ask GE if they
17 wanted to say anything, so yes, Mr. O'Donnell.

18 MR. O'DONNELL: The comments were largely
19 settlement-oriented, Your Honor. I thought I would address
13:38:24 20 it just briefly.

21 I'll just go in order, Your Honor.

22 With regard to Mr. Nations, we've had, as he
23 indicated, we've had multiple meetings. I've flown to
24 Houston multiple times. He's come up to Denver. We were
13:38:39 25 set to meet last night. Howard had to change his flight

1 so -- and did not get in until close to midnight, so we
2 agreed to meet later today hopefully.

3 So I think that addresses Mr. Nations' issues.

4 He did indicate that there was no legitimate
13:39:07 5 offer. That is, from our perspective, untrue, Your Honor.
6 There is a pending offer which I think is no less legitimate
7 than their demand.

8 We're in settlement negotiations. To
9 characterize a pending offer as not legitimate is not
13:39:23 10 particularly useful and will not advance the ball, Your
11 Honor, particularly, as Your Honor knows, having been
12 involved in a number of the mediations, we have been faced
13 with what I think Your Honor would characterize as
14 illegitimate demands.

13:39:40 15 I don't think GE has ever made an illegitimate
16 offer, as is borne out by the number of settlements that we
17 have been able to achieve.

18 With regard to the Yang case and Ms. Homolash,
19 I've gone to Philadelphia twice, met Dr. Yang and his wife,
13:39:56 20 have developed what I thought was a good rapport, a
21 sensitive rapport with them.

22 And given the allegation, Your Honor, I would
23 ask that Your Honor at your earliest convenience call former
24 Federal Judge Diane Welsh and confirm that she pulled me
13:40:11 25 aside after the mediation as we were leaving and thanked me

1 and Mr. Goodman for our thoughtful and sensitive approach
2 with Dr. Yang under the circumstances.

3 To come in here and tell Your Honor that
4 something else happened is inappropriate and improper.

13:40:30 5 And I would ask that Your Honor do that with
6 your former colleague, Judge Diane Welsh from Philadelphia.

7 With regard to Mr. Suthers, I'm a little
8 surprised Mr. Suthers showed up today because we've had a
9 hard time getting him to the other side of his state.

13:40:50 10 We were in Atlanta. Mr. Goodman and I were
11 there April 7th and 8th, Your Honor, and we've tried to set
12 mediations with Mr. Suthers. He said he wanted them to be
13 in Savannah. I was unable to schedule that. I said we
14 would be on the other side of the state April 7th and 8th.

13:41:07 15 We've actually settled most of the cases that
16 Mr. Goodman. And I traveled from Denver, me, and him
17 Connecticut, to Atlanta. We've settled those cases.
18 Perhaps Mr. Suthers wouldn't have had to come here today if
19 he had shown up in Atlanta on April 7th or 8th.

13:41:23 20 With regard to Mr. Keith, I think his
21 description was completely accurate that we had cordial and
22 professional meetings. It was a pleasure meeting Mr. Keith
23 for the first time.

24 We have been waiting for a response to our
13:41:40 25 offer. We're in the midst of negotiations and Mr. Skikos

1 has been conferring with Mr. Keith and had a conversation
2 with me.

3 I fully expect us to have continued
4 negotiations, and I do think Mr. Keith comes in good faith.
13:42:00 5 And understand that he's trying to do his best to represent
6 his client as we are, also.

7 Your Honor, GE is willing to meet with any of
8 the lawyers in the jury box or outside in this courtroom at
9 a time convenient. We are willing to do that. I've said
13:42:18 10 that before. That continues to be our position. And we're
11 willing to do so in good faith.

12 It's our goal and I assume the goal of most of
13 the lawyers in this courtroom to try to resolve the cases on
14 behalf of our respective clients. We are committed to doing
13:42:36 15 so. The unique thing about the cases remaining in this
16 case, Your Honor, is the fact that they have not settled.
17 We've settled most of the cases.

18 We've resolved over 450 cases to date, Your
19 Honor.

13:42:50 20 Thank you very much.

21 THE COURT: Okay. Thank you, Mr. O'Donnell.

22 Well, it's not my intention to dictate exactly
23 how the bulk of this MDL is going to be handled. I think
24 it's worked best when I've stepped back and let all these
13:43:19 25 fine lawyers we have on all sides do their job. And then I

1 only step in if things break down.

2 And I would say this: I want -- and I've said
3 this from the outset -- that GE has retained Mr. O'Donnell
4 as settlement resolution counsel. He has settled a large
13:43:46 5 number of cases on his own with his colleagues.

6 At certain times when the negotiations have
7 reached an impasse, both sides have requested a mediation
8 with me. I've always been able to schedule it within a
9 month; sometimes less. And I remain available to do that.

13:44:05 10 If there are too many for me to do
11 efficiently, Magistrate Judge Baughman is available and/or
12 the parties can, you know, the Court can hire with the
13 parties' payment a Special Master to assist in that, and
14 that's a possibility, whether it's a group of cases or an
13:44:27 15 individual case or one or two cases.

16 So I guess I want -- I want all counsel who
17 are interested in resolving their case to contact
18 Mr. O'Donnell. He's here. If you don't have a meeting set
19 up, he'll set one up for you.

13:44:51 20 If you have one, you should endeavor to make
21 it productive. If it breaks down or you reach an impasse,
22 then the parties should contact me and I'll figure out who
23 should mediate it. The first choice is me. The second is
24 Judge Baughman. And if there are too many, then we will
13:45:16 25 hire a Special Master and have him or her take a crack at

1 it.

2 But it's important that there be a full
3 information exchange so that both sides know what, what the
4 case -- what the particular factors of that case are and so
13:45:33 5 no one's shooting in the dark.

6 So I guess, Mr. Nations, you should meet with
7 Mr. O'Donnell tonight and both sides should endeavor to move
8 forward.

9 I think, Ms. Homolash, I don't know
13:46:08 10 what -- you know, I don't want to jump in the middle of your
11 discussions. I think if you've -- if you feel you've
12 reached an impasse, then you and Mr. O'Donnell should decide
13 what to do. And if you want me to take a crack at your
14 case, I can do that.

13:46:27 15 MS. HOMOLASH: Thank you, Your Honor.

16 THE COURT: Mr. Suthers, I'm not sure what
17 happened. I suggest that, you know, Mr. O'Donnell is here.
18 You contact him and figure out when you can get together,
19 whether it's here, whether it's in Georgia, whether it's in
13:46:42 20 Denver, whatever, and do that.

21 And Mr. Keith, you're in the middle of
22 discussions so I'm not going to do anything further.

23 So, you know, it may be that the most
24 efficient thing is for Mr. O'Donnell and his colleagues to
13:47:01 25 set aside three days in a specific location and those

1 plaintiffs, you know, come and mediate their cases if they
2 want to do so. I don't know.

3 But it's -- I think the process works best if
4 both sides try and resolve the case themselves, and if you
13:47:21 5 need -- if that doesn't work, then -- then I'll figure
6 something else out.

7 MR. WEINBERGER: Your Honor, may I respond for
8 just a moment to your comments?

9 THE COURT: Yes.

13:47:32 10 MR. WEINBERGER: Thank you, Your Honor. Peter
11 Weinberger.

12 I appreciate full well the Court's comments.
13 We are now at May 2nd, some six weeks, five weeks since our
14 last telephone conference on March the 31st at which point
13:47:53 15 in time the Court heard GE indicate that they wanted
16 to -- the additional time to resolve cases and to, quote,
17 unquote, clean up the docket.

18 To my knowledge, in the last five weeks there
19 has been little progress in resolving additional cases, let
13:48:21 20 alone the resolution of additional cases. There may be
21 several, and Mr. O'Donnell knows better than I, and I'm sure
22 he will respond when I'm finished.

23 The point is this, Your Honor: The purpose of
24 our proposal was to put in place a process once a particular
13:48:43 25 plaintiff's lawyer and GE reached an impasse, and it seems

1 to me from discussions that the PSC has had with lawyers all
2 around the country, many of whom are represented here today,
3 that that is where most of the plaintiffs are with GE: At
4 impasse.

13:49:08 5 There is too large a gap to fill, for whatever
6 reasons.

7 You know, there may be issues that GE has that
8 may or may not be legitimate. The fact of the matter is
9 there's an impasse.

13:49:22 10 And to simply suggest, Your Honor, that we go
11 back to have more meetings with GE on an individual basis
12 simply moves the ball in terms of time frame down the road,
13 but doesn't move the ball on the cases hardly at all, and
14 which is the whole reason for our proposal; because I think
13:49:51 15 we are already at the point where we need to implement a
16 more formalized process with mediation, and narrow the
17 issues on each and every case and set a time limit for that.

18 And to the extent that resolution cannot take
19 place, then the Court will have to deal with the case or
13:50:25 20 cases back on the litigation front.

21 And so our hope is, and let me ask you this,
22 Your Honor, or let me suggest this to you: If there's
23 anything about our proposal that the Court is uncomfortable
24 with or believes is not -- will not be fruitful towards
13:50:50 25 moving the MDL forward, of course we are interested in the

1 Court's opinion about that and, you know, obviously will
2 consider a modification of our proposal.

3 But it seems to me that our proposal can have
4 the effect of moving things forward, and I would ask Your
13:51:16 5 Honor that you give General Electric -- GE has had our
6 proposal since Tuesday. They've had it in writing since
7 Wednesday. I realize they had a number of people that they
8 had to meet with and discuss this proposal with, and I
9 understand that they intend to get back to us on whether
13:51:36 10 they agree to it or some modification of it.

11 I would ask that that be done forthwith so
12 that we can then sit down with you to hammer out a process
13 that has some, some structure to it beyond just what the
14 Court has suggested which is further meetings
13:51:57 15 with -- face-to-face with Mr. O'Donnell and his settlement
16 team.

17 MR. O'DONNELL: Your Honor, may I briefly
18 respond?

19 THE COURT: Yes. Yes, Mr. O'Donnell.

13:52:07 20 MR. O'DONNELL: Your Honor, over the last four
21 or five weeks, I by myself or with Mr. Goodman of the
22 company have met in six cities with 21 firms.

23 We've made offers on about 85% of those cases
24 thus far. We've settled with four lawyers in the last two
13:52:35 25 weeks.

1 And with respect to the process, as I said
2 earlier, we are considering the process. We do need time to
3 discuss it internally. We are together here during the
4 course of today and tomorrow.

13:52:52 5 There were multiple discussions with
6 Mr. Weinberger and Mr. Skikos last week which I thought were
7 productive and moved the ball forward.

8 I think we need one or more of those
9 discussions, but we would like to, you know, move that
13:53:09 10 process forward, also, Your Honor.

11 Thank you.

12 THE COURT: All right.

13 MR. O'DONNELL: I don't know whether
14 Ms. Levine had something on the litigation side.

13:53:17 15 MS. LEVINE: Your Honor, just quickly from the
16 litigation side, to respond to Mr. Weinberger's suggestion
17 that there's an impasse, since March, in addition to the
18 work that Mr. O'Donnell and our clients have done, we've
19 received about five dismissals. We expect up to perhaps ten
13:53:37 20 additional dismissals on product ID in the next few weeks.

21 We served more than 40 defense fact sheets.
22 We've been working on resolving plaintiff fact sheet
23 deficiencies from the March 31st supplement.

24 For more than 80 plaintiffs, each one with
13:53:57 25 whom we've met and conferred, we've been able to

1 successfully resolve any disagreements, and all four
2 defendants are continuing to clean up the docket in various
3 ways.

4 We're also moving forward on dual tracks with
13:54:11 5 Mr. Tisi on the Marino case. So in addition to preparing a
6 response, and again taking seriously the PSC's proposal and
7 we will prepare a response shortly, so that's what we've
8 been doing on the litigation side.

9 THE COURT: All right. Thank you.

13:54:29 10 What I think I want to do is I want to allow
11 the parties about two more weeks to talk and see if they can
12 come up with a joint proposal.

13 I think this MDL has -- when it's worked best
14 is when I've given the parties enough time to do what they
13:54:53 15 do best, and then I only step in if things break down.

16 So things haven't broken down. There's some
17 good proposals and people need to think and react.

18 I think the key is, I mean, the plaintiffs'
19 proposal is that I or someone mediate groups of cases and I
13:55:15 20 think, you know, we have to figure out how you -- you know,
21 how many in a group and how you group them and who groups
22 them, if that's what you're talking about.

23 And I think that's, that's a possibility. I
24 mean, it certainly is possible to mediate individual ones,
13:55:32 25 but it's very, very difficult because of the individual

1 features and factors that are in each case. It makes it
2 very hard to settle a case singly.

3 I'm not saying it's impossible, but it's
4 extremely difficult. It may be necessary to do certain
13:55:53 5 cases individually. I'm not ruling it out.

6 So today's the 2nd. I guess I would like a
7 joint report by close of business on Monday, May the 16th,
8 I'd say by 4:00 o'clock.

9 I'd like a joint report. And ideally if
13:56:18 10 you -- if the report is "Here's the proposal," I cannot
11 imagine that I won't just sign off on it.

12 If it's, you know, "Here's where we are but we
13 can't agree on something," then I'll figure out what to do.
14 I may get you on the phone. I may have you in. I may just
13:56:38 15 at that point finish it myself. I'm not sure. I'll see
16 where it is.

17 So by 4:00 o'clock on the 16th.

18 All right. I think, Mr. Nations, I'd like you
19 to stick around a little bit afterward. I may want to talk
13:57:26 20 to you and Mr. O'Donnell, and just find out sort of from
21 each of you exactly where you are and if there's anything I
22 should do at this point.

23 And then, Mr. Kerensky, I need to talk to you
24 and Ms. Levine and Mr. Ismail to see what I can do to
13:57:45 25 further that process.

1 And then, of course, while this is happening,
2 I do encourage individual counsel to initiate or continue
3 their discussions with Mr. O'Donnell and to take them as far
4 as they can because the more people that are able to resolve
13:58:14 5 their cases, the better.

6 All right. I guess, Ms. Homolash, I'd like
7 you to stick around, too. I haven't had any involvement
8 with Dr. Yang's case. I may want to talk to you for a
9 minute, also.

13:58:45 10 All right. Anyone else want to, at the urge
11 of opening it up to about a hundred different people, is
12 there anyone else?

13 I mean, a lot of you are here maybe for the
14 first time so I appreciate that, and in fact that's one of
13:59:12 15 the main reasons I didn't want to postpone this conference.
16 First, people had made plans to come, but more important, we
17 hadn't had one for a while and I know some of you have
18 clients who are wondering, you know, "What the heck is
19 happening with my case? The fact that three or 400 other
13:59:32 20 cases are settled is nice, but my case is the one I care
21 about," and they've been asking you to move it forward.

22 So I thought it would be pretty difficult if
23 you had to call and say, "Well, the Judge has postponed the
24 conference again." That would put you in an awkward spot.
13:59:49 25 That's another reason I went forward with this, so that you

1 can at least report that the MDL is moving forward with
2 respect to your case.

3 So is there any -- anyone else want to say
4 anything?

14:00:03 5 MR. BURG: Your Honor, Peter Burg.

6 THE COURT: Yes, Mr. Burg.

7 MR. BURG: If I may address the Court briefly.

8 As co-lead of this litigation, I continually
9 get calls, and anticipatory in a small group of cases, and I
14:00:17 10 get calls from these folks that have one or two cases who
11 meet with Mike O'Donnell -- and I've known Mike for many
12 years and I'm sure Mike is doing his best to deal with these
13 cases in good faith.

14 But when -- Bill Dowd, who is over here, and I
14:00:36 15 are working on Glen Tintera's case, and Glen is 79 years old
16 now, Bill?

17 And Mike and I have talked about the case and
18 we don't seem to have any, any disagreement on whether it
19 meets the hurdles, the requirements on the front end that
14:00:50 20 Ms. Levine has worked with us on, but because it's alone or
21 because a group only has one or two cases, there has been an
22 inability to get traction.

23 And what I really want to do is speak on
24 behalf of those that are here and that aren't here and say,
14:01:11 25 you know, Your Honor has a lot of historical knowledge, even

1 though a lot of these resolutions may have been in groups,
2 Your Honor has some insights into where these cases may or
3 may not be appropriately valued for resolution.

4 And so I would implore you to at least
14:01:31 5 contemplate involvement in these individual cases because I
6 do think you can bring great value just because of your
7 knowledge of the parties, your knowledge of the history of
8 the litigation, and your knowledge of what issues really do
9 have merit and what issues may not.

14:01:47 10 So on behalf of everyone here and my role, I
11 wanted to at least make sure that the record was clear in
12 that regard.

13 Thank you, Your Honor.

14 THE COURT: Well, thank you, Mr. Burg.

14:01:57 15 I said I have not ruled out mediating
16 individual cases. I'm just saying that I'm not sure it's
17 the most effective way to do it, but I haven't ruled it out.

18 And, in fact, I had actually set one, without
19 going into details, I had actually set one because it
14:02:20 20 appeared to be necessary. We then were able to resolve it
21 without actually going forward. But Mr. O'Donnell knows
22 what I'm talking about. I actually set an individual
23 mediation, and I was ready, ready to go forward.

24 It turned out that we were able to resolve the
14:02:40 25 group that included that case, but it looked like we were

1 not going to be able to without setting the individual one.

2 So I was ready to mediate a case.

3 So --

4 MR. MATTHEWS: Judge, Dave Matthews.

14:02:58 5 May I?

6 THE COURT: Yes, Mr. Matthews.

7 MR. MATTHEWS: Judge, we have recently set a
8 mediation I think for the first week of June.

9 THE COURT: June 7th, I believe, right.

14:03:06 10 MR. MATTHEWS: That's correct.

11 And I guess it's my thought, just to let the
12 Court know -- and it's similar to what other plaintiffs'
13 lawyers have said today -- that my clients are angry and
14 getting angrier by the day. They are obviously very sick
14:03:20 15 and dying.

16 My opinion is we are so far apart on values, I
17 will certainly be here in good faith on the 7th, but the
18 point is we have not seen eye-to-eye on whether there is a
19 case of NSF, whether there's a statute of limitations
14:03:36 20 defense that is viable or not, and ultimately we are so far
21 apart on the values on this case that I do not see
22 resolution occurring.

23 And again not to be disrespectful of the
24 process, I will certainly be here and with good faith and an
14:03:51 25 open mind do my best.

1 However, they have told me, GE has told me to
2 my face that certain of my clients don't have NSF. In light
3 of the fact that I'm looking at a biopsy that says
4 differently, I don't see where we come to a resolution with
14:04:07 5 this issue.

6 The Court has said in previous hearings that
7 it's not the Court's position to determine if a client has
8 NSF or not, and I respect that.

9 There have been discussions about possibly
14:04:17 10 taking a case that the defendants don't think is NSF or
11 defendant thinks they have a defense of an SOL and bundling
12 them with other cases where we might be able to push forward
13 a resolution.

14 I find that fraught with many ethical issues.
14:04:33 15 If they have a difference of opinion whether my client has
16 NSF or not, that case needs resolution in a trial Court.

17 I am asking the Court if there is not a
18 resolution by the 7th of June with my cases, that this Court
19 either sets, in the *Lexicon*-less problem of, for the Garcia
14:04:55 20 case which is filed here in this court, the plaintiff
21 resides in the Northern District of Ohio, to set that case
22 for trial immediately. And I believe Mr. Gornick has
23 another plaintiff similarly situated.

24 In addition to that, the remaining
14:05:08 25 defendants -- I'm sorry -- the remaining plaintiffs

1 immediately be remanded for trial.

2 I understand the Court's position that
3 they -- you believe that certain Courts are busy; your
4 colleagues, I think you refer to them, are busy. And some,
14:05:22 5 certainly in Houston, Texas, we have criminal dockets
6 because the border is real problematic, but there are many
7 jurisdictions and venues where there's not a problem.

8 I would ask this Court for immediate remand
9 upon a failed resolution attempt on June 7th.

14:05:38 10 If that is not the Court's -- and I would like
11 to know if the defendants, if defendants have a problem with
12 that very proposal, that is if we can't, after several
13 meetings with GE, unsuccessful meetings, mediation with this
14 Court in this court, whether they will then agree to an
14:05:57 15 obvious need for resolution at the trial Court level.

16 Thank you.

17 THE COURT: Well, all right. I understand
18 your request, and my hope is that we will be successful on
19 June 7th. If we're not, we'll have to see what to do.

14:06:13 20 I can tell you that in every pool of cases
21 I've mediated -- I think the smallest is about 12 or 13, the
22 largest is more than 60 -- there have been cases where GE
23 said, "Well, you know, on some of these we've got statute of
24 limitation defenses. On some of these there's a question
14:06:39 25 about diagnosis." There have been various issues and we

1 have resolved those as part of a pool.

2 And it's up to the plaintiffs' counsel how to
3 allocate the money at the end of the day, and plaintiffs'
4 lawyers have managed to do that.

14:06:56 5 So there have been disputed issues of fact
6 with certain of the cases and disputes about how serious the
7 NSF was, and those would have had to be resolved if the
8 cases were tried. But since you have a wide range of cases,
9 it becomes easier to settle. So that's why I've done them
14:07:15 10 in a group.

11 I mean, there's, you know, I'll throw out one
12 other possibility that no one has suggested but I'll just
13 throw it out, that if mediation fails, another option is
14 baseball-style arbitration with no appeal. I've found that
14:07:36 15 the reason that's a very successful approach is that it
16 tends to produce a lot of settlements because both sides,
17 instead of having to take extreme positions, have to take
18 very reasonable positions, and very often the reasonable
19 positions are extremely close.

14:07:51 20 And when the parties see that, they just say
21 "Well, you know, we should have done this from the start and
22 just settled." But that is a possibility, whether in a
23 group or in an individual case.

24 And I would, if the parties agree, I would do
14:08:06 25 it and there would be no appeal, and I'd pick the position I

1 thought was closest and most reasonable, be it one or the
2 other.

3 So I thought of that over the weekend as a
4 possibility. Obviously that requires everyone's agreement.
14:08:22 5 The Court clearly can't dictate that. But as I said,
6 everyone's urging remands and you think you'll get quick
7 trials, whatever.

8 I -- you know, that may happen; that may not.
9 And clearly at a certain point, the way MDLs work, if the
14:08:40 10 Court has done everything that an MDL Court can do and
11 there's nothing more that can be done, obviously they get
12 remanded, but we're nowhere near that point now.

13 All right. So then I appreciate
14 everyone -- yes, Mr. O'Donnell.

14:08:59 15 MR. O'DONNELL: May I respond just very
16 briefly?

17 THE COURT: All right.

18 MR. O'DONNELL: Not to you, Your Honor, but to
19 other counsel.

14:09:05 20 THE COURT: Okay. Thank you, Judge Baughman.

21 MR. O'DONNELL: Judge, I just wanted to
22 respond to Mr. Burg and Mr. Matthews very briefly.

23 We have several remaining cases with
24 Mr. Burg's office. He is co-counsel with Mr. Dowd. We had
14:09:20 25 the pleasure of meeting Mr. Dowd and his brother in

1 St. Louis last week, settled a case with his brother who is
2 in the same law firm.

3 I met Mr. and Mrs. Tintera. I had a very
4 pleasant conversation. I was prepared to have settlement
14:09:40 5 discussions. I was told that they were not in a position
6 yet to have settlement discussions.

7 We have been waiting. Mr. Burg called me a
8 month or so ago and wanted -- said he was co-counsel, wanted
9 to have additional discussions. Said he, in addition to
14:09:57 10 those two cases, had one other case with a "difficult"
11 client.

12 We talked about doing a mediation. I offered
13 to go to somewhere in Texas that I had never heard of to
14 have this mediation, and I asked for proposals for a
14:10:15 15 mediator so that we could, in effect, assist him -- and,
16 therefore, the parties -- with this particular difficult
17 client.

18 With regard to Mr. Matthews, there will be at
19 least one party that will show up in good faith ready to
14:10:34 20 settle on June 7th, Your Honor. We've got a chance if there
21 are two parties. Somewhat pessimistic given Mr. Matthews'
22 statements.

23 He said his clients are angry. Your Honor, my
24 clients aren't enjoying this litigation much either because
14:10:51 25 they believe they have a terrific product that's helped

1 millions of people.

2 And we've settled over 450 cases. Again we
3 think we can settle the rest, but it's going to require good
4 faith on the part of both sides; not just General Electric,
14:11:11 5 Your Honor.

6 Thank you.

7 THE COURT: Okay.

8 MR. BURG: Your Honor, I have an obligation, I
9 think, to respond to Mr. O'Donnell's comments --

14:11:20 10 THE COURT: All right.

11 MR. BURG: -- on the mediation issue, if I
12 may, because it's a case that was referenced where there
13 are, in my opinion, high expectations on both sides that
14 lead to impasse.

14:11:32 15 The whole idea of mediation and why it's in
16 our proposal as a last resort to see if we can get
17 resolution is to see whether GE will move, to see whether
18 plaintiffs that may have expectations that are reasonable or
19 unreasonable will move to bring closure to the case and
14:11:54 20 resolution.

21 The dilemma we have is that if there is no
22 closure through that process and we reach out to
23 Mr. O'Donnell to try and get this, that one case, resolved
24 as well as others, I've made demands on the other two cases,
14:12:14 25 am awaiting a response, have not had a response, but I think

1 what is important -- and it goes to the PSC's proposal, Your
2 Honor, which I ask you to think about over the next two
3 weeks, which is that when mediation proves that there is an
4 impasse, there has to be some ability to turn to a client
14:12:34 5 who says "All I want, all I've waited for for the last four
6 years, five years, is a chance to either settle my case or
7 get my day in court," and where we are right now is if GE
8 says "No, we're not going to pay that on the case," the
9 client is then left with a position of "Okay, I'm stuck."

14:13:03 10 And what I'm finally going to ask the Court
11 and my concluding remark is we need to unstuck some of these
12 folks.

13 THE COURT: Well, I've thrown out a number of
14 possibilities, so again I'm going to wait and see what the
14:13:16 15 parties produce over the next two weeks with their
16 discussions. I'm not going to dictate anything at this
17 point.

18 All right. Well, I appreciate everyone's
19 appearance today, particularly those of you who came in
14:13:31 20 person and those of you who are on the phone. And it's my
21 job to move this MDL forward for everyone and that's what
22 I'm endeavoring to do.

23 So with the exception of the few people I need
24 to stick around, everyone else can -- can leave. Thank you.

14:13:50 25 MR. O'DONNELL: Thank you, Your Honor.

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MR. BURG: Thank you, Your Honor.

(Proceedings concluded).

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

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