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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * MDL NO. 07-MD-1842ML
*
IN RE: KUGEL MESH HERNIA *
* PATCH PRODUCTS * FEBRUARY 24, 2009
* LIABILITY LITIGATION * 1:00 P.M.
* * * * * *
* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE MARY M. LISI,
CHIEF JUDGE
(Chambers Conference)

Court Reporter: Karen M. Wischnowsky, RPR-RMR-CRR
One Exchange Terrace
Providence, RI 02903
(401) 351-8311

1 24 FEBRUARY 2009 -- 1:00 P.M.

2 THE COURT: By my calculations, actually this
3 probably should have been the open meeting, but I did
4 not style it as such because I was concerned about
5 there being a lack of notice to those folks who might
6 want to attend.

7 So you'll notice on the agenda that I've
8 denominated next month's meeting an open meeting; and
9 if you have a problem with the date, then we can talk
10 about it.

11 Let's start off with Item Number 1 on the
12 agenda, document production. Are we done?

13 MR. GRIFFIS: Wave two is complete with one
14 little, small percentage caveat. January 31st -- by
15 January 21st we produced 1.3 million pages over the
16 course of January, chiefly right at the end, and that
17 brought our total page count over the course of
18 litigation to 4.6 million pages.

19 We do have one set left to get out this week.
20 It's going to be going out, if not today, it will be
21 going out tomorrow. And these are documents from our
22 document vendor, BIA, in what they call a clean-up
23 mode.

24 They identified about 14,000 total documents. A
25 number of those are medical records, probably from

1 Plaintiffs and from ADRs that they had in-house,
2 probably medical records that we got ultimately from
3 Plaintiffs' counsel, but I'm not positive about that,
4 and then another 11,400 documents that had various
5 coding issues and that's why BIA had them bumped to the
6 end of the line.

7 Those are ready to go out, and they'll be going
8 out immediately. And that will complete wave two,
9 which is the last wave.

10 MR. MIGLIORI: I'm not sure --

11 THE COURT: Are you going to tell me there's a
12 wave three?

13 MR. MIGLIORI: I hope not, if I can give a
14 little background. Wave one was supposed to be the
15 result of the 80-some-odd search terms, and we received
16 375,000 documents by the December 1st deadline.

17 And we were told that wave two would be sort of
18 the -- what was caught in the meantime and not
19 producible by that deadline. As it turned out, it was
20 almost half the production of wave one. So we're still
21 trying to figure out what's there, and now we're
22 learning that there are going to be some more produced.

23 So I can't say that there won't be more search
24 terms and more requests. And I can anecdotally tell
25 you that we find that of the 4.6 million pages of

1 documents, there are no documents that describe any of
2 the transactions between Surgical Sense that own the
3 product line and Davol, who bought the product line in
4 2001.

5 So while we hope this is the end, we really
6 can't tell because we now have another 1.3 million,
7 about 40 percent of what we got before, pages of
8 documents to go through.

9 We promise to be as efficient as we can be to
10 figure out what's there and figure out, more
11 importantly for us, what's not there; but in searching
12 what we could in a relatively short amount of time,
13 we're already finding some things that we're interested
14 in finding that we can't find anything on. So I hope
15 there's only one more wave.

16 THE COURT: How would you propose to communicate
17 that request to Defendants to do this as expeditiously
18 as you can? Do you propose to do it on a rolling
19 basis, or do you want to wait until you complete the
20 review?

21 MR. MIGLIORI: I think a rolling basis. A
22 hybrid of sorts. I think on a rolling basis we can
23 identify things that we think need to be followed up.
24 We don't need to renegotiate the form and format
25 issues. It's just which terms can we agree to, sort of

1 "Surgical Sense" and maybe something more specific, for
2 example, about transactions to help pull up an
3 electronic response.

4 Later on in this conference, I assume we're
5 going to talk about at least concepts for case
6 management on the trial cases, and I propose that we
7 just be allowed to do sort of targeted specific
8 document requests as we find voids and we go through
9 this. We're still reviewing the 1.3 million pages we
10 got in wave one.

11 THE COURT: Let me stop you for a minute there.
12 Let's assume Mr. Migliori identifies a gap, and let's
13 take, for example, the one he's identified, the
14 Surgical Sense transaction records.

15 MR. GRIFFIS: Yes.

16 THE COURT: And if you have already produced
17 them but perhaps they just haven't found them yet, do
18 you have a means by which you can say, We produced them
19 as part of wave one and a half or whatever and here's
20 how to find them?

21 MR. GRIFFIS: We certainly have a way of saying,
22 We've produced a whole bunch of documents that meet
23 that description and here are a bunch of examples of
24 them. Obviously, we don't have everything organized
25 into categories so that we can say here is the complete

1 and exclusive list.

2 THE COURT: I'm trying to figure out how helpful
3 you can be so that we can shorten up the times on him
4 trying to find that.

5 MR. GRIFFIS: Mr. Migliori has the same search
6 capabilities that we do, though his are lagging by the
7 fact that he needs to load the documents up into them;
8 but what we would do is run word searches in the
9 production for things like "Surgical Sense" and point
10 him to the hits in the documents.

11 MR. MIGLIORI: I think this is where the old and
12 the new sort of meet. I think this has been obviously
13 very productive in an electronic sense; but at some
14 point we would want to be able to ask very targeted
15 questions, like produce any and all documents relating
16 to the transaction, and not have to be dependent on
17 whether or not we had negotiated the right search term
18 for it but simply have them reach out to all of their
19 departments, nationally, internationally, and say do
20 you have these records.

21 And if the affirmative answer to that targeted
22 question is no, we do not, then we know that that --
23 with all the benefits and all the vulnerabilities that
24 that response gives us at trial, then we at least know
25 that we've asked for a certain set of documents,

1 they've reached out, they've searched electronically,
2 they've asked with reaching out to each department,
3 each office throughout wherever, throughout the world,
4 and that they couldn't find any.

5 This is a great way to get started, but I think
6 at some point we're still entitled to discrete
7 responses that there are no documents other than this
8 for a particular issue, and we'll be as tailored and
9 focused as we can be.

10 THE COURT: How long before you load it all into
11 your system?

12 MR. MIGLIORI: We have about a million of the
13 1.3 just pushed into the system. So just getting, you
14 know, almost 50 percent of the documents into our
15 system has taken time.

16 The issue is going to be how long before we can
17 actually do something meaningful with them in terms of
18 creating dossiers and useful sort of analysis of the
19 documents, and I think that's something that we're
20 going to have right through the end of fact discovery,
21 whenever the Court sets that; but I know that within
22 the next 30 to 60 days, we can start having very
23 targeted questions, we haven't found anything on
24 Surgical Sense, we haven't found anything on this
25 individual who was in marketing, and can you give us

1 sort of a certified answer that this is all that you
2 have. We can start that process we think within 30
3 days.

4 THE COURT: Comment?

5 MR. GRIFFIS: I don't, your Honor. We'll have
6 to see what the specific requests are. I would have
7 objection to some conceivable specific requests and not
8 to others. We'll just have to take it as it comes.

9 THE COURT: Next month I'd like a report on your
10 progress in making those kinds of searches and how many
11 of these kinds of gaps that you've identified that
12 you've sent over to this side.

13 And, again, I think if all that Plaintiffs are
14 looking for is some affirmative statement by Defendants
15 that after conducting our due diligence and review of
16 the records we have nothing, then that's the end of
17 that particular issue; but I think they're entitled to
18 that.

19 And so the more streamlining you can do to get
20 through that process, the better; but I'd like a report
21 next month to hear how far along you are.

22 MR. MIGLIORI: And -- we will, your Honor. And
23 I assume that when we're asking that question, that is,
24 that follow-up question, it's not just whether or not
25 our search terms have caught it but that there has been

1 an affirmative effort within, you know, a reasonable
2 amount of time after the request to find out if there
3 are any responsive documents within the company.

4 THE COURT: Well, I think you have to do that.

5 MR. GRIFFIS: Yeah. I just want to comment that
6 we agreed to a protocol that was extremely burdensome,
7 expensive, lengthy and tedious in order to identify the
8 vast, vast majority of documents that are likely to be
9 responsive; and to the extent that Mr. Migliori
10 proposes to further burden the company with repeated
11 requests for things like all sales and marketing
12 documents, et cetera, then we would have a real problem
13 with that.

14 THE COURT: He's not going to do that.

15 MR. GRIFFIS: Very targeted, specific requests
16 we won't have a problem with.

17 THE COURT: Tell me what is going on with the
18 discovery in the state court action that Judge Gibney
19 has. Are you on the same track?

20 MR. MIGLIORI: Yeah.

21 THE COURT: Exactly the same track?

22 MR. GRIFFIS: Yes, your Honor.

23 THE COURT: Is there anything else we need to
24 say about Item Number 1 on the agenda?

25 MR. MIGLIORI: The only other thing I would

1 report is that simply many of these documents are
2 duplicates. And so a big part of our time is spent
3 what the technical people call de-duping but figuring
4 out a way to --

5 THE COURT: Have you got that?

6 MR. MIGLIORI: I'll look it up, but figuring out
7 a way to make sure we're not doing the same thing over
8 and over again.

9 THE COURT: Okay.

10 MR. MIGLIORI: But we should have an accurate
11 report to you next month.

12 THE COURT: I'm very anxious to get to Number 2
13 because, if I read this correctly, it means that you've
14 all agreed on something.

15 MR. GRIFFIS: Not quite yet, your Honor.

16 THE COURT: I knew that was too good to be true,
17 but you're close?

18 MR. GRIFFIS: Actually, I have a history that
19 long, which I will not burden you with, your Honor; but
20 in a nutshell, the Consolidated Class Action Complaint
21 was filed February 7th of last year, and since May of
22 last year, we have been in the situation that we've
23 been advised that one or more class -- putative class
24 representatives who were named in the original
25 Complaint no longer wanted to be class representatives,

1 they wanted to be substituted out.

2 There was also the matter of the French
3 Complaint, which was a class action that was filed
4 after the Master Consolidated Class Action Complaint
5 was filed. The parties discussed all of those things,
6 and in October we worked out a draft consent order,
7 which was submitted to your Honor and you entered on
8 October 31st, which dismissed two of the putative class
9 representatives, Montiel and Barrientos, consolidated
10 the French action with the Master Consolidated Class
11 Action Complaint and gave Plaintiffs 45 days to amend
12 that Complaint. They asked for an extension on that,
13 which we granted, and then --

14 THE COURT: I granted. You agreed.

15 MR. GRIFFIS: We agreed, you granted, and then
16 did not get an amendment filed, and we inquired as to
17 what was going on.

18 Mr. Wallace from the Wexler Wallace firm advised
19 me that they had additional -- at least one additional
20 putative class representative that they wanted to
21 substitute out, and he suggested to me that we just
22 stand down on the amendment for the time being.

23 We responded that that was okay with us except
24 that we were supposed to be taking discovery of the
25 putative class reps, and so we needed an understanding

1 that it wouldn't be held against us, that we weren't
2 getting that done not knowing who they were.

3 THE COURT: Sure.

4 MR. GRIFFIS: We proposed and sent over a
5 stipulation that said that; that said that when you're
6 ready to file a Second Amended Consolidated Master
7 Class Action Complaint, then we will have a reasonable
8 amount of time to conduct discovery. And he responded
9 yesterday saying that they'd like to think about that
10 and add some dates to it. So we're working on
11 continuing to discuss that.

12 THE COURT: Would you bring him a message from
13 me that says it needs to be resolved before the next
14 meeting.

15 MR. MIGLIORI: It will be resolved before the
16 week's out, your Honor. There are a couple minor
17 points. These aren't reps that no longer want to be
18 reps. These are reps who became injured, that is,
19 their latent product became an injury. So some of them
20 became individual lawsuits, and that's part of the
21 process with these reps.

22 Since the beginning, we've been trying to
23 grapple with are these ever going to become real
24 injuries.

25 THE COURT: You just don't know.

1 MR. MIGLIORI: So we've asked that we suspend
2 the amendment of those people. The problem is we just
3 got the stipulation proposal last week. It, in our
4 view, goes far beyond these issues. So we just need to
5 cull it down to the essentials.

6 THE COURT: Let's get it done so that we're all
7 playing by the same rules on this one.

8 MR. MIGLIORI: We will.

9 THE COURT: I knew that the term "agreement" was
10 too strong. Number 3, I saw the letters back and
11 forth, and I know you've wanted to try to get in to see
12 us last week. I wasn't here, and since we were going
13 to get together today, it didn't seem to me to make a
14 whole lot of sense to try to hold a meeting last week.

15 I understand where you're coming from. I'm
16 confused, however, by the Defendants' position where on
17 the one hand you say we're not going to offer anything
18 but we'd still like the opportunity to meet with Judge
19 Lovegreen and not have the individual Plaintiffs have
20 to travel here for those mediations. What do you hope
21 to gain by sitting down with him?

22 MR. GRIFFIS: Two things. One, we'd hear from
23 the Plaintiffs' counsel their analysis of the case,
24 their evaluation of the case, their assessment of what
25 they think the important issues are in the case.

1 We haven't heard that, although we've heard from
2 most of the critical -- most critical fact witnesses;
3 and second, we would hear --

4 THE COURT: If you haven't heard that, then how
5 can you say you're not going to offer anything?

6 MR. GRIFFIS: Well, we were required by your
7 Honor's order to make that call before we heard from
8 them.

9 THE COURT: Well, let me ask you this. Have you
10 asked that question of the Plaintiffs before you made
11 the determination that you would offer nothing?

12 MR. GRIFFIS: I'm not just talking about the
13 demand. I'm talking about the entire presentation that
14 they may make.

15 THE COURT: I know. Again, it gets back to
16 let's talk to each other. If you felt that the
17 materials you didn't have -- that you had did not
18 address that precise question, then that should have
19 been communicated to counsel for Plaintiffs so that you
20 could then make a more individualized assessment of the
21 case.

22 I understand what you did, and I read your side
23 of it; but if what you're telling me now is, Well, we'd
24 like to get together with the Plaintiffs' counsel and
25 Judge Lovegreen so they can tell us what the basis is

1 for their claim, why do we need to have Judge Lovegreen
2 there for you to get that information?

3 MR. GRIFFIS: Well, the second part of what
4 would be useful about the process is hearing what Judge
5 Lovegreen has to say about the cases.

6 THE COURT: But he doesn't know that either,
7 apparently, if you haven't asked that precise question
8 of the Plaintiffs so that he would be -- you'd ask him
9 to be reacting to something that he's hearing for the
10 first time.

11 MR. GRIFFIS: Well, the process that we went
12 through the first time was extremely valuable.

13 THE COURT: The process the first time were all
14 ring break cases of recalled products; and my
15 understanding is there were a couple of those,
16 particularly the one that Judge Lovegreen offered to
17 have you back on that you said no, where there were
18 tremendous medicals and very serious injuries.

19 These are different. I understand that, and I
20 understand where you're coming from. And I also
21 understand that your client has a concern about a large
22 number of filings that were generated by publicity
23 about the other cases that came in, and you're going to
24 have to sort through those.

25 What I'm trying to understand is why should I

1 make available to you the valuable time of a magistrate
2 judge to come and sit and hear for the first time what
3 could have been resolved ahead of time? I think that's
4 a waste of his time.

5 Now, he is very committed to working with all of
6 you. I spoke with him yesterday about this, and he
7 reiterated that he's very committed to working together
8 with you; but if the Defendants have already taken the
9 position that these cases are all worth zero and now
10 what you're saying is, Well, we want to hear what their
11 theory of the case is or whatever, ask them that. Ask
12 them that, have them put it to you in writing, and then
13 make your determination as to whether it's a zero case
14 or it's a \$50,000 case or it's a \$100,000 case.

15 But I think it doesn't serve any purpose for you
16 to bring in or for me to bring in a retired magistrate
17 judge who's doing this out of the goodness of his heart
18 to have the Plaintiffs' counsel at that point state
19 what the theory of the case is.

20 I think that ought to be resolved ahead of time;
21 and then I think there needs to be a reassessment by
22 both sides as to, on this side, if you folks cannot
23 identify a defect that is the cause of the injury, it
24 is a zero case.

25 And we trusted this side to go through that

1 process; and if it has not been communicated adequately
2 to the defense side what the identified defect and
3 causation is, then it's going to be a zero from their
4 side.

5 So I don't think you're ready for these
6 mediations if you haven't had that conversation.

7 MR. MIGLIORI: If I may, your Honor. Just to
8 remind the Court, before we even picked the 10 cases,
9 we did a position paper.

10 THE COURT: I know.

11 MR. MIGLIORI: We submitted a couple studies.
12 Mr. Griffis asked for more detail. We gave more detail
13 about why these are different. We literally went
14 through two or three status conferences where all it
15 was about was the theory of the case. We produced at
16 considerable expense --

17 THE COURT: Do you have an expert opinion that
18 you've provided to this side?

19 MR. MIGLIORI: We have them ready. If they need
20 a causation statement, we can. With all due respect,
21 there's no question what the theory of these cases are.
22 It's a double -- it's a dual mesh technology with
23 materials that, when combined with the PET rings,
24 necessarily buckle in a way that makes it different
25 from every other product on the market.

1 It's the only thing that's unique about this
2 litigation, and we fought over this issue at the MDL
3 panel. To suggest now that they don't understand the
4 theory of the case with these dual mesh technologies
5 after this Court has gone and figured out how to define
6 the MDL based on the dual mesh technologies and/or the
7 PET ring and now to say after making our clients submit
8 to depositions, their doctors who were very difficult
9 to corral this time around, their explanting,
10 implanting doctors, other members of the families in
11 some instances, we have traveled all over the country
12 under this court order to make this meaningful, and if
13 now we're hearing the same thing we heard at the outset
14 about why the Defendants didn't even want to do this
15 round that we haven't been specific enough, your Honor,
16 it's just a lack of interest in making these cases a
17 meaningful early neutral evaluation.

18 It should have been told to us before we
19 expended tens of thousands of dollars and hundreds and
20 hundreds of hours to get these ready; but now, quite
21 honestly, your Honor, we met two weeks ago as a group
22 of early neutral evaluation counsel, and we
23 discussed --

24 THE COURT: When you say "we met," are you
25 talking about both sides?

1 MR. MIGLIORI: No, our side, meaning we brought
2 all 10 cases, all the lawyers for the 10 cases together
3 and we talked about the cases and we talked about how
4 we work on them, we talked about reasonableness and
5 demands and all the things that the Court, I would
6 hope, would expect us to do to make this a meaningful
7 process.

8 And we had letters ready to go for demands so
9 that there would be enough time to consider an amount;
10 and the day that we were sending out those demands, we
11 received a letter saying, This is a very useful
12 process, but we're not going to pay any money. So we
13 didn't send the demands out.

14 But if we got a letter saying, Here's our
15 problems with your cases, can you be more specific why
16 a balled-up piece of mesh that was taken out of a body
17 that the doctor said was a defect isn't worth anything,
18 we would have given them back everything they learned
19 in their depositions; but some of these doctors were
20 five-hour depositions.

21 To say now they don't understand the theory of
22 the nonring break case, your Honor, with all due
23 respect, is totally disingenuous.

24 If we have a mediation -- Magistrate Lovegreen
25 was extremely helpful in sort of cutting to the quick

1 on how to value, what to look at, what a juror might
2 look at in this jurisdiction. It was very useful. But
3 to now put him and, quite frankly, to put us in the
4 process for next week to do all this, we could have
5 done this two or three weeks ago and made that time at
6 least useful discussion time.

7 We're asking your Honor that we not go forward
8 next week. It would be a waste of the magistrate
9 judge's time. If there's a need to go back to these
10 cases and do something more specific and then maybe
11 they'd reconsider their zero pay position, we'll be
12 glad to do that.

13 But to make us do that Tuesday when we've
14 already told the clients that this is a worthless
15 process, I think it's going to produce too little.

16 THE COURT: Is there, with respect to the 10
17 cases, is there or are there any of those 10 that a
18 question or two posed to the Plaintiffs' counsel would
19 be of assistance to you?

20 MR. GRIFFIS: The whole process is helpful to
21 us.

22 THE COURT: No, no, no. You missed my point.
23 If there is some piece of information that is missing
24 of everything you know about those 10 cases -- I should
25 ask, is there a piece of information that is missing

1 with respect to those 10 cases?

2 MR. GRIFFIS: Well, we --

3 THE COURT: After you've been through this
4 discovery process.

5 MR. GRIFFIS: I can think of one or two things
6 that we did not get to in discovery because we felt
7 some pressure to advise Plaintiffs as soon as possible
8 of what we found in discovery.

9 THE COURT: And what are those things that you
10 need?

11 MR. GRIFFIS: For example, we didn't get to
12 depositions of a couple of the doctors, and we don't
13 know exactly what they would say.

14 THE COURT: Now, wait a minute. That's only
15 with a couple of the cases.

16 MR. GRIFFIS: It is only with a couple of the
17 cases.

18 THE COURT: And what would you ask of those
19 doctors that you didn't get to ask?

20 MR. GRIFFIS: There is one case that was filed
21 in order to be part of the second round ADR cases in
22 which Plaintiff's counsel was retained months before --

23 THE COURT: Is that Brezeale? Is that the one I
24 read?

25 MR. GRIFFIS: Yes, your Honor.

1 THE COURT: It begins with a B. I'm probably
2 mispronouncing it.

3 MR. GRIFFIS: There were two explants done.
4 They threw out the second piece of explant material,
5 which we think would reveal that the allegedly
6 wadded-up mesh was not our product at all.

7 And it's conceivable that asking the doctor
8 that, the doctor who, you know, may well not remember
9 anything, is likely not to remember anything, but we
10 didn't actually get to that deposition. He may be able
11 to shed some light on that. The explant material
12 itself is gone. It's the most important evidence with
13 respect to that question.

14 I'd like to address Mr. Migliori's overarching
15 point. I understand very well what their general
16 causation theory is, that there are two layers of mesh
17 and the PET ring and that forms a unique defect and
18 everything else.

19 What we overwhelmingly found was that the facts
20 in these cases didn't bear that out. It did not bear
21 out that there was any defect that was any different
22 than what the literature shows, any injury that was any
23 different than what the literature shows patients are
24 at risk for following any ventral hernia surgery, any
25 abdominal surgery, frankly, and any hernia surgery with

1 any mesh of any sort.

2 The statistics are that there is a substantial
3 risk of infection, there's a substantial risk of pain,
4 there's a substantial risk of fistula, all the things
5 these Plaintiffs were complaining of; and there was
6 nothing that may be said in these depositions, nothing
7 that emerged in the facts in these depositions that
8 changed our view of what the literature showed us.

9 MR. MIGLIORI: So there's no amount of
10 information that's going to help.

11 THE COURT: I want to come back here, though,
12 because you have the burden and you're going to have to
13 come up -- I mean, a theory is a theory is a theory,
14 but you can't establish liability unless you have an
15 expert or experts who can point to some defect in the
16 product at that level. And if you have not given up --
17 have you given up your expert? You haven't done that
18 yet?

19 MR. MIGLIORI: We had expert reports ready in
20 the first round. They didn't ask for them. We didn't
21 produce them. We have experts that have opined in
22 this. We have doctors who are nonexperts giving
23 opinion that this was a defect in this round of early
24 neutral evaluation, nonretained physicians giving that
25 expert opinion.

1 THE COURT: In these 10 cases?

2 MR. MIGLIORI: In these 10 cases. There's a
3 doctor who came out in one of Alex Alvarez's cases that
4 this was caused by the product.

5 Your Honor, with all due respect, this is
6 absolutely not consistent with what just happened. If
7 they need an expert report, we'll give them consulting
8 expert reports so we don't have any problems of
9 cross-examining later.

10 My problem, your Honor, is we're being told this
11 today when mediations are supposed to be next week. If
12 their view is in this round it's not consistent with
13 how we're going to defend our cases because we're only
14 going to act as if the recall was the real problem and
15 nothing else is the problem, then tell us three months
16 ago when we have an expert available.

17 Of course we have experts. We've been vetting
18 experts for two years; but give us that benefit, give
19 our clients the benefit of the three months that we're
20 working on it. The reality is we can do it. We can
21 get an expert to opine that this is an unsafe product
22 uniquely.

23 THE COURT: I think the only way, and I realize
24 that both sides have invested a tremendous amount of
25 time, money and effort into getting these 10 cases

1 ready, that the only way that you can have a meaningful
2 discussion with Magistrate Judge Lovegreen is for there
3 to be a refinement on this question.

4 And it may well be that Plaintiffs need to, in
5 boldface print with big block letters, send it over to
6 the Defendants so that there's no question whatsoever
7 as to each one of these cases where someone has
8 expressed an opinion that a defect in the product
9 caused the injury.

10 How soon can you get that over to Mr. Griffis?

11 MR. MIGLIORI: I have to check with the expert.
12 The last time we did this, the expert reviewed the
13 first 10 bellwether cases and did it within a
14 relatively short amount of time; but we had to produce
15 all the medical records to rule things out.

16 THE COURT: I thought I heard you say that in
17 each one of these you have someone who is opining.

18 MR. MIGLIORI: We have somebody that's vetted
19 them; but if somebody's going to put it in writing,
20 even if it's going to be in furtherance of settlement,
21 even though it has all the confidentiality --

22 THE COURT: And it has to be. I want to make
23 this very clear that this is purely as part of
24 settlement mode so that it's not used for anything
25 else.

1 MR. MIGLIORI: Then we can -- again, I'll need
2 to confirm this with our experts within -- we can
3 probably get it done within 30, 45 days, and it's only
4 because there are a lot of medical records for some of
5 these folks.

6 THE COURT: Then I think you ought to go through
7 that. It's worth it to me, I think, to have you put in
8 that little bit of extra effort.

9 And then, Mr. Griffis, what I want from your
10 side is a fresh look at each one of these cases. I
11 don't want to hear that all 10 of them are zero cases.
12 You may have a couple of them where you come to that
13 conclusion, but I would find it very hard to believe
14 that all 10 that were hand-picked by Plaintiffs would
15 be zero cases after you have had a chance to digest the
16 additional materials that the Plaintiffs will supply
17 you.

18 And what I will suggest to Judge Lovegreen is
19 that he stand down at this point in time because when I
20 spoke to him yesterday, he told me that he had already
21 spent some time working up these 10 cases; and, as I
22 say, it's a waste of his time if you're going to come
23 in with zero. That doesn't do anybody any good.

24 So you are going to have some additional work to
25 do as well. I would like to revisit this issue next

1 month to find out what progress has been made so that I
2 can give Judge Lovegreen an idea as to when you will be
3 ready to come and visit with him.

4 And it may be that of the 10, only 6 or 7
5 actually have a dollar value, at least in the eyes of
6 the Defendants; but I don't see the point in bringing
7 in a magistrate judge if one side says this is a zero
8 case.

9 MR. CORY: Your Honor, I'm Ernie Cory. Do you
10 mind if I say something?

11 THE COURT: Well, yeah, I do, because I think if
12 we -- if I don't stick to these two, I'm going to have
13 a free-for-all in this. So you can discuss with
14 Mr. Migliori later, and he is not shy about letting me
15 know what's going on.

16 Number 4, this kind of gets us to what I think I
17 asked you to start thinking about one or two meetings
18 ago. I am very sensitive to the fact that this
19 particular MDL will be two years old in June. I
20 realize that it takes some time to get things moving,
21 but I think we've made tremendous progress, at least
22 with respect to paper discovery, and also probably with
23 respect to some of the other discovery that you've
24 done.

25 The Plaintiff fact sheets, I think, are a good

1 vehicle for you on that; but it seems to me that we
2 really need to start thinking about what the next phase
3 of this will look like.

4 Now, in addition to the 866 in the MDL, we have
5 how many, Barbara, that were direct file here?

6 THE CLERK: One hundred thirteen.

7 THE COURT: Wow. You're good.

8 MR. MIGLIORI: You had one more because we had
9 112 yesterday.

10 THE COURT: So there are 113 that were direct
11 filed into this court, and I think I made it clear to
12 you that any cases that would be worked up for trial
13 would have to come out of that 113 because those are
14 mine cradle to grave. And some of those I think are
15 fairly mature because there were quite a few that were
16 filed last year.

17 So let me hear what you have to say about a
18 protocol on selection. I have one in mind. Who knows,
19 maybe we'll all be on the same page.

20 MR. MIGLIORI: We exchanged some thoughts back
21 and forth, your Honor; and we're not, as you can
22 imagine, on our side.

23 Of the 113, you should know that some of those
24 were filed after the deadline that you set, so it's
25 really closer to about 104, 103 that could be part of

1 this.

2 THE COURT: It's still a good number.

3 MR. MIGLIORI: A good number. And in that, 78
4 have Plaintiff fact sheets that have been turned over
5 to the Defendants, so we have at least common ground on
6 basic information. Twenty-one of those do not have --
7 they're not due, that is, those; and we're comfortable
8 saying because they're not due yet, we don't even need
9 to consider those. We can work out of the group of 78.

10 We have exchanged with Kirby our views on the
11 best way to do it, and part of our views are borne out
12 of the early neutral evaluation process that we all
13 developed.

14 We think that the parties should submit a group
15 of five cases each where we actually work up 10 cases
16 like early neutral evaluation workup. That is,
17 Mr. Griffis is going to let me know what critical
18 Plaintiff-specific depositions he wants to take, and we
19 have sort of a front-loaded fact discovery period where
20 we get to figure out which cases are representative,
21 which are good for the litigation, which might produce
22 the desired outcome.

23 So if we each have five but have five in
24 reserve, that if something settles or gets dismissed or
25 something in the meantime, that whoever submitted that

1 case can substitute one in, then we have this sort of
2 rolling process where for the next two to three months
3 we really discover these 10 cases and then that same
4 period of time and then probably through the end of
5 August or September we continue with liability
6 depositions, the trial workup under the general case
7 management order, we could get all fact discovery done
8 by the end of, say, September; but by June, at our
9 conference in June, we can actually pick which of those
10 cases are probably representative, that is, best to --

11 THE COURT: When you say "we," are you talking
12 about a joint effort?

13 MR. MIGLIORI: I would think that we should do
14 it where we -- of the 10, as we start to discover them,
15 we see if we can agree. If we agree on some, then we
16 propose those first; and if not, then in June the Court
17 pick based on some basic information.

18 But by June we sort of pick the order of those
19 first 10 and by the end of September really have those
20 ready on a fact basis completed and do expert discovery
21 through the fall with maybe a year from now, in
22 February of '10, God willing, have a trial date.

23 THE COURT: I was hoping to move you up sooner
24 than that.

25 MR. MIGLIORI: Then even better. For us, we

1 think that by June we should be able to -- and the
2 reason why we didn't propose, although we asked for 10
3 each before, to do 20 cases is too much.

4 THE COURT: I think it's too much, especially
5 since you only have 78 of them that are really in the
6 hopper. So you're really talking about pulling 40
7 cases out if 20 on this side and 20 on this side.

8 MR. MIGLIORI: We're actually five on our side
9 and five on their side with five in reserve for each
10 one of us in case something drops out.

11 THE COURT: Have you relayed --

12 MR. MIGLIORI: We sent a letter to Mr. Griffis.
13 We had some e-mail problems, but we did get a letter
14 from him yesterday where he described a different
15 proposal.

16 MR. GRIFFIS: Actually, my different proposal
17 was sent on January 6th. I've got a couple of
18 frustrations about this process, and one is that we had
19 a proposal on the table for more than a month before we
20 got any reply at all. We didn't get any response until
21 last Friday proposing anything at all in response to
22 ours.

23 The second frustration that I have is that I
24 thought it was very clear from the last conference both
25 that the pool of cases from which both parties would be

1 available to select -- and if you'll remember, I was
2 concerned that that pool was too small, that less than
3 five percent of the total cases in the MDL were before
4 your Honor. And you said, No, you'll get to pick from
5 the cases that are before me, that will be enough.

6 And then I raised the issue of, Okay, when is
7 the cut-off for cases before you? And you said, It
8 will be December 31, 2008. And I said, Then there's
9 the issue of information, we will need Plaintiff fact
10 sheets for those. And you said, Of course you'll need
11 Plaintiff fact sheets, that will have to be worked out.

12 So our proposal on January 6th proposed, of
13 course, that all cases before you by December 31st,
14 2008, be available for us to select from so that we
15 would have a large pool to select from, not the ones
16 that we happen to have gotten Plaintiff fact sheets in,
17 and we would get Plaintiff fact sheets in all of them.

18 THE COURT: How many is that if we look at all
19 of the ones that were filed by December 31?

20 MR. GRIFFIS: By my count, the Plaintiffs, not
21 cases, 122. On January 28th we sent a letter --

22 THE COURT: When you say Plaintiffs, not cases,
23 I hope you're not including a Plaintiff who simply has
24 a derivative loss of consortium.

25 MR. GRIFFIS: I'm not.

1 THE COURT: You're talking about injured
2 parties?

3 MR. GRIFFIS: There are lawsuits that had
4 multiple parties, multiple allegedly injured Plaintiffs
5 within them. So we made our proposal on January 6th
6 asking to receive all Plaintiff fact sheets and all
7 medical records by January 15th.

8 We sent a follow-up letter on January 28th in
9 which we listed 47 Plaintiffs for which we received no
10 Plaintiff fact sheet, which was 40 percent of the
11 total; and of that, more than 25 percent of those cases
12 have Motley Rice as counsel.

13 A lot of them are newer filed cases, but still
14 we expected much faster movement on that, and still we
15 have no Plaintiff fact sheets today in 18 of those
16 Motley Rice cases.

17 THE COURT: These are cases that were filed
18 before December 31?

19 MR. MIGLIORI: Right up to December 31. They're
20 not due yet even under the rule.

21 THE COURT: When are they due?

22 MR. MIGLIORI: They're due within 90 days. Just
23 so the Court's aware, at the same time Motley Rice had
24 half of its state court inventory due under a separate
25 agreement which we were processing out at the same

1 time.

2 THE COURT: These are due by the end of March?

3 MR. MIGLIORI: Those are due, and those are the
4 21 that I represented earlier. They're not yet due.
5 Eighteen of those are Motley Rice involved cases, and
6 we're not -- they wouldn't be any of our choice
7 selection. If Mr. Griffis wants to consider those, his
8 letter to us suggested --

9 THE COURT: Those might be the very ones he does
10 want if they're ones that you don't want.

11 MR. MIGLIORI: In the letter he said --

12 THE COURT: Listen, I don't want to have both of
13 you continuing to refer to disputes that you have had
14 before coming here. Our time together here is short,
15 and let's make it productive. So if you all have been
16 sniping back and forth, that's your business. I really
17 don't want to hear about it.

18 All I want to do today is to try to come up with
19 a workable protocol. So you've got some cases that
20 you've not received Plaintiff fact sheets on, and under
21 the order they're not due until the end of March.

22 MR. GRIFFIS: With regard to that issue, we
23 would like to receive Plaintiff fact sheets, whether
24 it's on their due date under the CMO, under some
25 expedited due date, tomorrow, whatever date is fine

1 with us, and then have three weeks to complete our
2 picks from those because they may very well be cases
3 that we would like to choose.

4 We believe it would be better to have 10 picks
5 each than five picks each because there may be cases
6 that drop out during discovery or otherwise, and then
7 the parties would be left without enough to have a
8 meaningful series of trials that would inform each
9 side.

10 THE COURT: When you say 10 picks each, you're
11 then talking about submitting those to the Court and
12 having me choose the ones that are really going to go
13 to trial?

14 MR. GRIFFIS: What I originally proposed was a
15 two-step process. First, the parties would each pick
16 10, and we'd exchange our lists. If there were any in
17 common, then they would go to the head of the trial
18 list. If that didn't happen, then we would work
19 together to come up with six to eight, that was the
20 number you suggested in December, six to eight picks
21 for trial; but we would still have the lists, and we
22 would have the preliminary workups of all those cases
23 so that if something dropped off of the trial list, we
24 would have something ready to go to substitute in.

25 THE COURT: Let me ask this question because I

1 think the more cases you have in the initial pool, the
2 better. With respect to those where Motley Rice is
3 counsel of record, how soon can you get those Plaintiff
4 fact sheets in, the ones that have not yet been filed?

5 It seems to me you're close to 60 days out.
6 You're going to have to get them fairly soon anyways.
7 Can you accelerate that process to get them in by, say,
8 the first week of March?

9 MR. MIGLIORI: That's next week, your Honor.

10 THE COURT: Yes.

11 MR. MIGLIORI: I think we could try to cut --
12 right now, they're due in 30 days.

13 THE COURT: Or the second week.

14 MR. MIGLIORI: If we have 15 days, because we
15 have to get them certified. There's a lot of --

16 THE COURT: I understand that, but they've had
17 them for a while.

18 MR. MIGLIORI: This isn't sniping, your Honor.
19 We literally just produced about -- putting priorities
20 in place, we had a deadline in state court that we just
21 met with them. So we weren't trying to avoid these,
22 and it's not that we're ignoring these; but we're
23 treating the dozens of cases in the state court as a
24 priority, which we just produced over the past two
25 weeks.

1 I was in trial. In fact, I never had a chance
2 to thank the Court, but I thank the Court for extending
3 this conference to accommodate the trial I had in
4 Minnesota over the past three weeks, which is why
5 there's some delay in our communication.

6 THE COURT: I think you can accelerate --

7 MR. MIGLIORI: I think 15 days.

8 THE COURT: Fifteen days to get those Plaintiff
9 fact sheets out. Now, it being lead counsel's client,
10 I would expect that you're not going to have many
11 deficiencies in those.

12 MR. GRIFFIS: I hope not, your Honor.

13 THE COURT: Well, I don't think you will.

14 MR. MIGLIORI: I don't think so either.

15 THE COURT: Let me throw a third proposal out to
16 you; that once you have those, what I would suggest is
17 that each side independently select 10 and forward
18 those to me ex parte. I will then review them and come
19 up with the 10 that I think are representative, and
20 that will shorten up the process somewhat.

21 MS. TORISEVA: What information would you want
22 on each of those when they're forwarded to you as our
23 picks?

24 THE COURT: Probably a no more than three-page
25 description of the claims, the injuries, the amount of

1 medicals, probably something similar to what you
2 provided to Judge Lovegreen for settlement, and a
3 statement as to why you believe this would be a
4 representative case and, for the defense, why you
5 believe it's a representative case of no liability.

6 I think you can do it in three pages. You can
7 do it single-spaced. I don't care if it's
8 double-spaced.

9 MR. MIGLIORI: Do we serve each other with them?

10 THE COURT: No. I think that will just invite
11 more chatter.

12 MR. GRIFFIS: Let me just advise your Honor what
13 our proposal was because we were concerned about the
14 chatter issue and we were concerned about --

15 THE COURT: I think the time to try the case is
16 coming, and you're going to get to do that then. The
17 more we talk about trial, the less time we spend
18 getting ready for it.

19 And so I think we're at the point where it's
20 fish or cut bait time. So that's why my thought was
21 get me your 10 best, get me your 10 best without any of
22 this back and forth stuff. We're beyond that now.
23 I'll then tell you which 10 are in. And it may be a
24 surprise, it may be a disappointment, I hope so for
25 both of you because if I do it right, that's exactly

1 what I hope to accomplish.

2 MS. TORISEVA: And when do you want those?

3 THE COURT: Let's talk about when it's doable.
4 If we're going to have the Plaintiff fact sheets in in
5 15 days, that brings us to what, Barbara?

6 THE CLERK: March 8th.

7 THE COURT: Does that give you enough time?

8 MR. MIGLIORI: I'd love it if we could do the
9 15th instead of the 30th.

10 THE COURT: March 15th I think is reasonable.

11 MR. GRIFFIS: To get the Plaintiff fact sheets?

12 THE COURT: Yes. Now, we meet again on the
13 24th, so I'll ask at that point just to make sure that
14 it's been done. After you've produced the PFSS, how
15 long thereafter do you think you will need in order
16 to -- because that will widen the total pool that
17 you're working from.

18 MR. MIGLIORI: I can tell you right now, your
19 Honor, that I probably have what you want in my hands
20 for the cases that we've checked.

21 THE COURT: I thought you might.

22 MR. GRIFFIS: And we certainly don't.

23 THE COURT: You've got a pretty good idea of
24 which ones you think are not so great.

25 MR. GRIFFIS: For some of the Plaintiff fact

1 sheets that we've received, we have an idea of some
2 cases. We haven't thought about it in the format that
3 your Honor suggests, and we would certainly want three
4 weeks after receiving --

5 THE COURT: I think that's reasonable. So three
6 weeks after March 15th takes us to when, Barbara? I'd
7 like to try these cases before I take senior status in
8 seven years.

9 MR. GRIFFIS: No problem, your Honor.

10 THE COURT: You're taking senior status, also?

11 MR. HOLLINGSWORTH: I'm probably close.

12 THE CLERK: April 6th.

13 THE COURT: April 6th for the submissions, and
14 with everybody's understanding here, they are submitted
15 to me without copies to the other side, ex parte. And
16 then I'll make my pick of 10, and you won't even know
17 which ones I didn't pick. Well, you'll know which ones
18 I didn't pick. You'll know which ones, but you won't
19 know what the other ones are, and I think that's the
20 only fair and expeditious way to do it.

21 MR. MIGLIORI: From that point, we could
22 discover all 10?

23 THE COURT: Correct. And so from those 10, you
24 may have a couple that fall out. I think we'll still
25 be left with a core group of six to eight. It's a

1 guessing game at this point.

2 MR. MIGLIORI: When would we start talking about
3 the case management?

4 THE COURT: In April, at the April meeting,
5 because by then you will have submitted to me -- if you
6 get those to me by April 6th, that gives you three
7 weeks after you get the Plaintiff fact sheets. By the
8 next meeting, I should have been able to go through
9 those and get back to you the 10. Then we can talk at
10 the April meeting about discovery on those cases and
11 setting a firm trial date. I was, frankly, looking at
12 the fall for trial dates.

13 MR. MIGLIORI: You'll never hear a complaint.

14 THE COURT: It's not good to set trial dates in
15 January or February because of the weather. So if we
16 could get them rolling before that, that would be
17 better.

18 MR. MIGLIORI: You may not have considered this
19 yet, but would we anticipate yet that the list of 10
20 you would also have them ordered in terms of -- or
21 would you have them tried as a group?

22 THE COURT: No, I don't think you could try them
23 as a group.

24 MR. MIGLIORI: I mean phase it as liability for
25 the 10.

1 THE COURT: Let me think about that after I see
2 what I get from you.

3 MR. GRIFFIS: Phasing was raised last time, and
4 Mr. Migliori suggested he may want to brief the issue,
5 and that hasn't happened. So I don't think it's on the
6 table today.

7 THE COURT: If we're only talking about 10
8 cases, I don't see where we gain anything with that,
9 particularly if you expect that a couple of those are
10 going to fall by the wayside.

11 So if you're really talking about trying six to
12 eight cases, my guess is that after the first two or
13 three, you will have had enough of it.

14 MR. MIGLIORI: I'm with you. So there will be
15 an order at some point set of which ones?

16 THE COURT: Yes, and we can talk about that
17 probably in April.

18 MR. MIGLIORI: Just so we're clear, we're at a
19 point now as we're getting through the liability
20 documents that we are anxious to start deposing some of
21 the fact witnesses on the liability side, especially if
22 we're going to have a fall trial date. I assume we can
23 parallel track that and get started with that?

24 THE COURT: I think you ought to wait until you
25 see -- unless there are some people out there who would

1 be relevant to all of the cases, until you see which
2 cases are actually going to go --

3 MR. MIGLIORI: Marketing is going to be an issue
4 for all of them. There are going to be some very
5 critical issues, and I don't foresee any problem. We
6 still need to go through the 1.3 million.

7 THE COURT: Why don't you do this. Why don't
8 you start to put together a list of those individuals
9 who you think you're going to need regardless of
10 whether it's your case or his case and start -- then I
11 think you can start refining that once we look at what
12 the stable of trial-worthy cases are.

13 MR. MIGLIORI: What we'd like to do, we have a
14 list of sort of the key players that we'd like to start
15 with. Is it okay to send a letter to Mr. Griffis
16 saying, These are the ones that we'd like to start with
17 and can you check on their availability starting in
18 April?

19 THE COURT: I think you ought to do that. The
20 sooner you get started on that, the better because then
21 he can arrange to have them available. If they're
22 working in different locations, if you can bring
23 everybody in, whatever makes it easier and cheaper is
24 better.

25 MR. MIGLIORI: Thank you.

1 THE COURT: All right. Pending motions. Some
2 of these I thought we took care of.

3 MR. MIGLIORI: Some were actually ruled on
4 yesterday. There were a couple that worked themselves
5 out.

6 THE CLERK: Actually two, I think.

7 MR. MIGLIORI: There is one case, your Honor,
8 called Hadley.

9 THE COURT: Hadley I had a question about.

10 MR. MIGLIORI: It's a remand. The product is
11 not the right product, and the Plaintiff's lawyer
12 doesn't seek to contest the remand. So we think it's
13 appropriately remanded without objection.

14 THE COURT: Is this a remand --

15 MR. MIGLIORI: It's a different product.

16 THE COURT: It's a different product, but is it
17 a remand to the state court? Is that what the motion
18 is for?

19 MR. MIGLIORI: Well, I guess technically it
20 would be a transfer back to the transferee court,
21 transferor court.

22 THE COURT: Then that's different. Then that
23 has to go to the panel, I believe. So what I need from
24 you on that is a stipulation, if you both agree that
25 it's a different product altogether, is a stipulation

1 by the parties that it ought not to be part of the MDL
2 with a suggestion to the MDL panel that it be sent back
3 because they do the sending back. I don't have the
4 authority to remand on those. It has to go back via
5 the panel to the transferor court.

6 MR. GRIFFIS: We'll work out a stipulation.

7 THE COURT: It's not one where I can send
8 something back to a state court, but there's a
9 distinction that they draw there.

10 MR. MIGLIORI: I guess it would be a motion to
11 transfer.

12 THE COURT: What else do you have?

13 MR. MIGLIORI: We have two cases, Philburn and
14 Phillips, where this is a Williams Kherkher case, and
15 there have been some other issues with this, but they
16 have -- what we'd ask, your Honor, it's set for hearing
17 on a motion to show cause.

18 This really should be a motion to withdraw, and
19 we've set up a very efficient process with protections
20 for clients.

21 THE COURT: We have. Have they filed a motion
22 to withdraw?

23 MR. MIGLIORI: I'm going to instruct them to.
24 They have not, and I'm going to get with them. Again,
25 I've been out for three weeks on a med mal trial. When

1 I saw that this morning, I said let me call Amy Carter.
2 I can fix that if you can indulge me a month to get a
3 motion to withdraw it.

4 THE COURT: Take two weeks. Don't take a month
5 because if you take a month, then it gets done the last
6 day of the month. Take two weeks and get it done.

7 MR. GRIFFIS: Don, that's Philburn and Phillips?

8 MR. MIGLIORI: I have Philburn and Phillips, and
9 they're both Williams Kherkher.

10 THE COURT: Holly.

11 MR. MIGLIORI: Holly and another case, Mann,
12 this was sort of a confusion because they were together
13 and one was withdrawn.

14 THE COURT: Mann, there was a motion -- yeah.

15 MR. MIGLIORI: And we couldn't tell whether
16 Holly should have been withdrawn with it or not. And
17 we spoke with Mr. Griffis about it, and I think it's
18 appropriately withdrawn, but --

19 THE COURT: But I don't think I have a motion to
20 that effect.

21 MR. MIGLIORI: I don't think you do either.

22 THE COURT: Could you check on that,
23 Mr. Griffis?

24 MR. GRIFFIS: Our last word from
25 Cellino & Barnes, Plaintiffs' counsel, is nothing.

1 They didn't respond to our deficiency letter. They've
2 done nothing about it at all.

3 THE COURT: They sent no Plaintiff fact sheet to
4 you at all?

5 MR. GRIFFIS: That's right. They didn't submit
6 a Plaintiff fact sheet, they didn't oppose the motion,
7 they haven't communicated with us in any way about this
8 subject. If they plan to withdraw, then I would
9 suggest that it's liaison counsel --

10 MR. MIGLIORI: I can do that within two weeks as
11 well. It's Brian Goldstein. There was confusion about
12 this other case that it was tied into. So I can get
13 that resolved in two weeks.

14 THE COURT: Now, the next batch, this is the
15 Anderson group, Anderson, Cardamone, Castillo.

16 MR. GRIFFIS: There's a group Anderson, Barker,
17 Myers and Purcell. With regard to Barker and Myers,
18 Williams Kherkher told us three months ago that those
19 are to be dismissed, but they've not filed any
20 stipulation to that effect.

21 THE COURT: Would you follow up on that, also.

22 MR. GRIFFIS: And they haven't responded with
23 regard to Anderson.

24 THE COURT: They may think that they've already
25 done that, so Mr. Migliori is going to remind them that

1 they haven't. Hood has been dismissed. Barker and
2 Myers are to be dismissed, and I granted the motion
3 with respect to Cardamone, Castillo, Coleman, Franklin,
4 Lizauckus and Jones.

5 Now, Askins, Brown, that bunch, there's a motion
6 to show cause. There was a response due on the 10th of
7 November. Is this another batch that there are going
8 to be withdrawals on?

9 MR. GRIFFIS: They sent us copies of motions to
10 withdraw in the middle of December styled in Rhode
11 Island Superior Court. We pointed out to them that the
12 case wasn't pending there, and they sent us copies of
13 corrected versions. I think -- I don't think they
14 filed these things.

15 MR. MIGLIORI: I didn't know about that.

16 THE COURT: Would you follow up with them and
17 get those filed here.

18 MR. MIGLIORI: We'll do that within two weeks as
19 well.

20 MR. GRIFFIS: We've seen copies of motions that
21 would work, but they haven't been filed with the court
22 yet.

23 MR. MIGLIORI: For all those cases?

24 MR. GRIFFIS: For all those cases.

25 THE COURT: Now, Rose --

1 MR. MIGLIORI: That's withdrawn, your Honor.
2 That had to do with an expert and the ex parte order
3 about talking to treaters. We worked out an agreement.

4 THE COURT: Has an order been issued to that
5 effect?

6 MR. GRIFFIS: We have a written agreement and
7 didn't reduce it to an order.

8 THE COURT: What you ought to do because what
9 happens is on our docket, it's out there as a pending
10 motion.

11 MR. GRIFFIS: We can withdraw the motion.

12 THE COURT: I understand that, but in order for
13 it to be dead, we have to kill it. We have to do
14 something to kill it. You can't just do that.

15 So, Barbara, what you can do is do a text order
16 saying that it's been withdrawn and so it's no longer
17 active. Boykin?

18 THE CLERK: You ruled on that yesterday.

19 THE COURT: I ruled on that one. McCaffrey,
20 this is a motion to withdraw. I ruled on that one.
21 And Gama, we're waiting for a response. It's not due
22 until the end of the month.

23 MR. MIGLIORI: Your Honor, I believe in Gama,
24 according to my notes, the PFS was, in fact, submitted,
25 and it may be a nonissue.

1 MR. GRIFFIS: We did get one, yes.

2 THE COURT: You did get one?

3 MR. GRIFFIS: Yes.

4 MR. MIGLIORI: It was submitted on February 10th
5 of 2009.

6 THE COURT: Was it satisfactory?

7 MR. GRIFFIS: It was not. The original
8 Plaintiff fact sheet was due May 12, 2008. We went
9 through the deficiency process, many extensions, told
10 them we would file a motion to show cause, they were
11 silent, we filed a motion to show cause, and they
12 instantly sent us a Plaintiff fact sheet that was
13 grossly deficient, and we have advised them of the
14 deficiencies.

15 THE COURT: That one is still pending, and we'll
16 hold that to see whether or not you get -- you haven't
17 received any further response from them?

18 MS. DONALDSON: I was under the impression they
19 resolved those discrepancies.

20 MR. GRIFFIS: Not to my knowledge.

21 THE COURT: Work on that one for next time.
22 Any -- I think that's it for the agenda. Is there
23 anything anybody else wants to bring up? I hesitate to
24 ask that question.

25 MR. MIGLIORI: This is not a contentious issue.

1 It's something that's already been raised in the state
2 court. As a result of the movement in the litigation,
3 there have been discussions with some counsel about
4 resolving cases, including cases that I'm directly
5 involved in as counsel with Bob Binstock.

6 We, in the state court, have filed an
7 assented-to assessment order which preserves common
8 benefit fee and cost funds. And we just wanted to
9 advise the Court that we're about to file a similar
10 motion. We're going to file it directly with you
11 unless you give us other instruction.

12 But the discussions, at least with certain type
13 of ring break cases, are moving or at least they exist,
14 and so we want to make sure we get that out of the way.
15 So we anticipate filing within the week an assented-to,
16 that is, assented among all the Plaintiffs' committee
17 members, assessment order for your consideration.

18 MR. GRIFFIS: And we do have an objection
19 pending in the state court. I haven't seen any federal
20 version.

21 THE COURT: I'm not surprised.

22 MR. MIGLIORI: We may hear this afternoon the
23 outcome of that. It's already been argued.

24 THE COURT: It has been argued?

25 MR. MIGLIORI: Yes.

1 THE COURT: Very good. Are you all okay with
2 March 24 as a next conference day?

3 MR. GRIFFIS: Yes, your Honor.

4 THE COURT: And please note 2:00. I'm going to
5 be on trial that week. So what I'll do is try the case
6 from nine to one that day and then see you at two.
7 That will be the open session. So what I'm going to
8 want you to do in order to get the agenda out sooner --
9 Barbara, do you have your calendar handy? Because I'm
10 going to ask you to submit to me your agenda items
11 sooner than you ordinarily would because I've got to
12 get that out.

13 If you can get those in to me by the 17th of
14 March, then I can get them out on the 18th. And that
15 way if anyone is interested in coming, they'll have
16 almost a week's notice. Wait a minute. I'm looking at
17 the wrong year. I was wondering why we were meeting on
18 a Monday. Make it the 16th for the submission, and I
19 will get the agenda out by the 17th, which is the
20 Tuesday, and that will give everyone a full week.

21 And you can let people know that the next one
22 will be -- they'll know it because this has already
23 been out there on the Web site.

24 MR. GRIFFIS: Thank you, your Honor.

25 THE COURT: Thank you. Have a safe trip back.

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(Adjourned)

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C E R T I F I C A T I O N

I, Karen M. Wischnowsky, RPR-RMR-CRR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.

/s/ Karen M. Wischnowsky_____

Karen M. Wischnowsky, RPR-RMR-CRR

March 5, 2009_____

Date