

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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In re: BAYCOL PRODUCTS LITIGATION) MDL No. 1431
) (MJD)
)
) 10:00 a.m. o'clock
) February 1, 2002
) Minneapolis, MN
)

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE
(MOTION TO APPOINT LIAISON AND LEAD COUNSEL)

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS: CHARLES ZIMMERMAN, ESQ.
RICHARD LOCKRIDGE, ESQ.
SAMUEL HEINS, ESQ.
SHAWN RAITER, ESQ.
MICHAEL MC SHANE, ESQ.
JOSEPH SNODGRASS, ESQ.

ON BEHALF OF THE DEFENDANTS: ADAM HOEFLICH, ESQ.
PETER SIPKINS, ESQ.
TRACY VAN STEENBURGH, ESQ.
GARY MC CONNELL, ESQ.

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1 THE CLERK: Multi-District Litigation No. 1431.

2 Please state your appearances for the record.

3 MR. HEINS: Good morning, Your Honor, on behalf
4 of plaintiffs, Samuel Heins.

5 MR. MC SHANE: Good morning, Your Honor, Michael
6 McShane on behalf of plaintiffs.

7 THE COURT: Good morning.

8 MR. RAITER: Good morning, Your Honor, Shawn
9 Raiter on behalf of the plaintiffs.

10 MR. SNODGRASS: Joseph Snodgrass on behalf of the
11 plaintiffs.

12 THE COURT: Good morning.

13 MR. ZIMMERMAN: Charles Zimmerman on behalf of
14 the plaintiffs.

15 MR. LOCKRIDGE: Richard Lockridge on behalf of
16 the plaintiffs.

17 MS. VAN STEENBURGH: Tracy Van Steenburgh on
18 behalf of the defendant, GlaxoSmithKline.

19 THE COURT: Good morning.

20 MR. HOEFLICH: Good morning, Judge. Adam
21 Hoeflich of the Bayer Corporation.

22 THE COURT: Good morning.

23 MR. MC CONNELL: Good morning, Your Honor, Gary
24 McConnell. I'm in-house attorney for Bayer Corporation.

25 THE COURT: Good morning.

1 MR. SIPKINS: Good morning, Your Honor, Peter
2 Sipkins on behalf of Bayer.

3 THE COURT: Good morning. On December 18, 2001,
4 the Multi-District Litigation Panel transferred to this
5 Court the Baycol litigation matters.

6 On December 19, 2001, the Court had -- well, was
7 informed of it by counsel Zimmerman, Lockridge and Sipkins
8 in a telephone conference that we had on the 19th.
9 Essentially, I'll have counsel make sure the record is
10 clear on what that conversation was.

11 On January 16, 2002, the Court issued an order
12 regarding pretrial matters in this matter. And then on, I
13 believe, on the 19th of January, the Court issued an order
14 setting down this hearing, which was to determine the
15 composition of the plaintiff's Executive Committee, whether
16 or not there was going to be a lead counsel or co-lead
17 counsel or Steering Committee or Executive Committee or
18 Lead Counsel Committee, and I've requested that any
19 applications be supplied to the Court. A number of
20 applications were supplied for liaison counsel and lead
21 counsel, plus several for -- to be on the Executive
22 Committee.

23 The Court will at some juncture this morning have
24 the counsel that are wishing to be lead counsel and liaison
25 counsel come forward and state their positions. There is

1 some disagreement on the -- how the committee should be
2 handled, whether or not there should be co-counsel, co-lead
3 counsel. There is disagreement on how the Executive
4 Committee or Steering Committee or Lead Counsel Committee
5 should be formed and the -- so, I would like to hear your
6 thoughts on that; also, dealing with the diversity of
7 representation of the plaintiffs for that Executive
8 Committee; and also dealing with the willingness and
9 availability to commit time to this project, the ability to
10 work and cooperate with others; and, especially, of course,
11 with the defense; and any and all professional experience
12 in this type of litigation.

13 Before we call counsel forward, I have -- I
14 believe you received a two-page sheet -- a two-page
15 document from me stating that there is going to be a web
16 page for this litigation, on our court web page, and that
17 will be available on Monday, February 4th.

18 The web page, what I'm envisioning is that the
19 web page will include -- will include the orders and
20 minutes from any hearings, a calendar of any matters coming
21 forth before the Court, contacts between the IS Department
22 and chambers, FAQ dealing with any questions that any of
23 the plaintiffs or defendants may have, answering those
24 questions, and we will have transcripts of all hearings on
25 the website, and these transcripts will be done on an

1 expedited basis and will be borne by the parties. So, the
2 plaintiffs and defendants, once we get the lead counsels
3 set up for both the defense and for the plaintiffs, they
4 will meet and deal with the costs of the transcripts
5 because I want those transcripts on the website so any and
6 all parties can log into our website and see what happened
7 in court.

8 There will be the docket that will be -- I
9 believe it will be either updated daily or it will be
10 instantaneous and any current events -- current
11 developments in the litigation will be placed on that
12 website. I'll also take any suggestions from you, the
13 parties, dealing with anything else that should be on that
14 website.

15 Page 2 of the document that I've handed to you
16 remains for the counsel that will be either the liaison
17 counsel and/or lead counsel dealing with electronic service
18 between the parties. I was contacted early on, I believe
19 in December, by one of these firms, giving some information
20 about their product. I've had my IS Department look into
21 others to make sure -- other services, and I believe this
22 is a short list of the services that are available to
23 plaintiffs in dealing with making sure that the documents
24 are served to all the parties in this case.

25 That's all I have to say on those issues.

1 In dealing with the hearing, let's get right into
2 it. I'm going to ask Mr. Zimmerman and Mr. Lockridge to go
3 first in their presentation, and Mr. Heins will go second
4 and then we will go from there. Good morning.

5 MR. ZIMMERMAN: Good morning, Your Honor, nice to
6 see you.

7 THE COURT: Nice seeing you.

8 MR. ZIMMERMAN: May it please the Court and
9 counsel --

10 THE COURT: I can say this is a great moment for
11 me because Mr. Heins and Mr. Zimmerman are classmates of
12 mine. We went through law school together and Legal Aid
13 and a number of things in law school, and who would imagine
14 some years later that we would all be here. Welcome.

15 MR. ZIMMERMAN: And I appreciate that, Your
16 Honor. It's a similar kind of moment, and I've had many
17 thoughts about it as I'm sure you have as well. Very
18 ironic in some ways and very nice.

19 Your Honor, we've presented the Court with a
20 submission which we call a report. Because of your
21 introduction, I want to explain a little bit more history
22 than I had originally anticipated so it gets on the record
23 so there are no misunderstandings.

24 THE COURT: I would appreciate that.

25 MR. ZIMMERMAN: Okay. This is a mass tort

1 involving the drug Baycol. It involves personal injury and
2 it involves people's health and life. This is not a
3 financial case. This is not a case of corporate misdeed in
4 the sense of money being extorted or inappropriately
5 handled. It's a case of people's lives, their kidneys,
6 their livers, their lives and their muscles. That's what
7 Baycol may have injured, allegedly.

8 This case has generated a tremendous amount of
9 interest around the country because in August, I believe
10 it's August of last year, Bayer, the maker of Baycol,
11 withdrew the product from the market. And when that
12 happens, that creates a lot of concern among people who
13 obviously had been prescribed the product, and lawyers get
14 involved in the retention, being retained by clients around
15 the country who may have been affected.

16 It's different than a securities case or an
17 antitrust case or even a consumer fraud case because
18 parties go to their lawyers or lawyers seek out clients
19 through advertisement and these cases come to your office.
20 And lawyers around the country have to what we call vet
21 these cases and determine do we have a viable claim, what's
22 the statute of limitations, who might be sued, and how are
23 we going to get organized to pursue it.

24 At some point, then, if there are lots of cases
25 that get filed around the country there becomes a -- in the

1 federal system or they get moved to the federal courts,
2 which is normally the case against a national drug company
3 -- in this case, an international drug company, it goes
4 through a removal process and gets in the federal courts
5 and we have an MDL hearing based upon petition.

6 We filed an MDL petition before the panel along
7 with, I'm going to say twelve other lawyers around the
8 country, it could have been more, but that's a fairly
9 accurate number, to try and have this discovery process and
10 have the coordination of the litigation consolidated in one
11 district. It's very common. We did in Breast Implants and
12 Telectronics and Phen-Fen. In every one of the major drug
13 failures in the country and product failures it normally
14 gets coordinated because you can't be going off and doing
15 it singularly in different courts.

16 We argued, then, before the panel in November,
17 and there were a number of arguments. I think Bayer had
18 asked for Chicago, Ken Moll, who is applying for an
19 additional position, asked for Chicago. People asked for
20 New Jersey, California, whatever. We presented -- I
21 actually presented arguments in New Orleans to bring it to
22 Minnesota. And the basic argument that I made to the Court
23 was we have a new courtroom, we have a very fine system, we
24 have a wonderful Court, and we are set up to do it with a
25 very good docket and a very organized system, and we are

1 going to utilize technology, as the Court has preempted,
2 with all that you have set up today so that we can use the
3 system we have through our new courthouse and through our
4 experienced Judge to disseminate information and be
5 centrally located and do the right thing for all of these
6 cases that are still with clients -- excuse me, with
7 lawyers around the country.

8 Lo and behold, that argument won the day and the
9 case got transferred to Minnesota. The day it got
10 transferred I got a call from a colleague saying it got
11 transferred to Minnesota. I was sitting in my driveway
12 about to leave for the office and it happened to be Diane
13 Nast called me and said you won, it's coming to Minnesota.

14 I came to the office, and I think I talked to
15 Dick and I called Peter and we said we should inform the
16 Court, and I think that was the 19th of December. I didn't
17 want to call without defense counsel. I asked Peter if we
18 could make the call -- Peter Sipkins, I apologize Your
19 Honor, whom I've known for many years and we called and
20 informed the Court that the case had been transferred to
21 Your Honor. I think at that time Your Honor was a little
22 taken aback by it because you were not aware of the
23 transfer and we sent a copy over to you.

24 During that conversation, I said to you that we
25 were going to have a meeting, I didn't know when it would

1 be, but it would be within thirty days to try and let
2 people know the case is coming to Minnesota and try to
3 organize ourselves --

4 THE COURT: I should tell you I knew, but I
5 hadn't seen the order. I couldn't tell you until I saw the
6 order.

7 MR. ZIMMERMAN: Okay. I figured there is a
8 better system of communication, Your Honor. At any rate,
9 I'm sure you were elated. And we had then set a meeting
10 for, I believe, the 19th of January.

11 Now, prior to that time, we had been researching
12 the science, talking to other lawyers, and there had been
13 two seminars on Baycol, one in San Diego that I attended,
14 and another one, I believe, in Philadelphia that I did not
15 attend, on the issues of what's the science and what are
16 the claims, and it's very common in these mass torts to
17 have those happen.

18 I was asked then to be a speaker --

19 THE COURT: Mr. Moll indicates that he had.

20 MR. ZIMMERMAN: That was an informal one. He
21 just called up a bunch of lawyers and he did have a meeting
22 in Chicago, I think, in September. It was very informative
23 and he did a very nice job. And I've worked with Mr. Mall,
24 and I know him quite well and these are the kinds of ways
25 that we exchange information so we can all kind of stay on

1 the curve. Otherwise, what I'm saying is it's different
2 than in many cases where only the lead lawyers really are
3 in the know. Here, everybody has to stay in the know
4 because they have clients with problems and they have to be
5 in communication with them.

6 At any rate, I went and scheduled this January
7 19th meeting in Minneapolis, and I sent a notice. I
8 think -- I don't know if I gave the Court a copy of the
9 letter, but basically a generic letter saying we're having
10 a meeting to try and deal with the issues of organization
11 in Minneapolis on the 19th. Please come, and if you know
12 anybody else who has a case, please give them a copy of
13 this letter because we want everyone to participate.

14 We sent that letter to everyone we knew about
15 from the MDL list and anyone else who at that time called
16 us because now they knew it was coming to Minneapolis and
17 we added them to our list and we sent it to, I would say, a
18 hundred plus people.

19 We then had the meeting on January 19th. Prior
20 to January 19th, I called -- I learned that Mr. Heins, who
21 had filed the case, I think on January 9th, his case in
22 Minnesota, then filed his petition to be lead counsel, I
23 think on the 15th or 16th of January -- 14th, I can't
24 remember exactly the date. I learned of his filing and I
25 called him on the phone as soon as I learned of the filing

1 and said come to the meeting on the 19th. I think this was
2 the night before the meeting, because it's the first I
3 heard that he had made a filing. I wasn't aware of his
4 presence and I had never seen him at any of these other
5 meetings.

6 We then had this meeting on the 19th. And the
7 meeting of the 19th was held at the top floor of the IDS
8 Center in that banquet room. We had a hundred, I believe,
9 13 or 115 people attend. Prior to that, and I think this
10 is important, I spoke at the Baycol meeting in -- that
11 Mealey's had in San Diego on the 16th or 17th, and I got up
12 before the lawyers assembled, and I said we are having a
13 meeting in Minneapolis, if you're interested in
14 participating in the MDL, come, or at least tell us how you
15 would want to participate in the MDL. I think there were
16 250 lawyers in attendance, some obviously defense counsel,
17 some insurance counsel, mostly plaintiffs' lawyers. I was
18 asked to speak on the MDL issues.

19 We then had the meeting on the 19th. At the
20 meeting on the 19th, we had a very comprehensive and very
21 organized, and I might say, a very cordial meeting. We
22 started at nine in the morning and we ended about noon and
23 we discussed potential issues. We discussed
24 confidentiality, CMO's, Case Management Orders, ways to
25 organize, what the manual said, what your order said. In

1 fact, at that time we passed out in the booklet a copy of
2 the Court's order which I think came in the night before or
3 two days before. And we attempted at that time to reach
4 consensus on leadership.

5 The reason we wanted to reach consensus on
6 leadership right away was because we knew there were lots
7 of state court cases going at the same time.
8 Philadelphia -- excuse me, Pennsylvania, where you can't
9 remove because Bayer has offices there, had an active state
10 group of cases going forward. We knew a lot of California
11 lawyers were filing their cases in Philadelphia to stay in
12 state court. We knew that they were working with Adam --
13 the office of the Bartlit firm which is lead counsel, I
14 believe, lead counsel for Bayer, and perhaps with Mr.
15 Sipkins office to try and get early discovery and try and
16 get -- I'm not going to say a leg up, but getting their
17 cases moving. So we wanted to make sure that we could act
18 and have some color of office, so we tried to organize
19 ourselves and bring before the Court our report, which I
20 said to you I would provide to you after the meeting of
21 what, at least, the consensus of that group was about how
22 the case should be at least led.

23 We had a democratic selection process. Although
24 I chaired the meeting, I did not run every part of the
25 meeting. What I did was I introduced doctors to talk about

1 the medicine. I introduced somebody from the FDA to talk
2 about the removal of the product from the marketplace. I
3 introduced people to talk about the way the documents
4 should be organized, whether we should be on CD's, and how
5 we can disseminate them quickly and efficiently. Talked a
6 little about how I thought the Court might approach the MDL
7 from the standpoint of technology. I think we sent someone
8 over to look at the technology in this courtroom to report
9 to the group on that, blah, blah, blah.

10 We had open invitation, then, for leadership, and
11 I was nominated along with Mr. Lockridge to serve as lead
12 counsel. We took a vote and the vote was unanimous and
13 there were no dissents, and I reported that to the Court.

14 We then, from that point, asked certain people if
15 they would be interested in -- excuse me, we asked everyone
16 if they would provide us with how they would want to serve
17 on committees and in what capacity they were going to
18 serve. If they participated in MDL, how they would like to
19 participate. We got, I think, 95 responses and we have
20 organized them. I haven't provided these to anyone yet.
21 These are internal, but I just want to show the Court that
22 these forms were filled out by counsel asking for committee
23 assignments or whatever capacity they wanted to serve,
24 providing us with their e-mail address and fax address for
25 quick communication. We received 95 responses back.

1 Now, that doesn't mean we will have a committee
2 of 95, but at least we know where people wanted to serve
3 and what kinds of participation and cooperation we were
4 going to get. There are lawyers out there with thousands
5 and thousands of cases and some with few and some with
6 many.

7 All the major players that I'm aware of during my
8 fifteen years of experience practicing in mass torts were
9 present at this hearing -- this meeting. Stan Chesley,
10 which I think is considered a major player, Elizabeth
11 Cabraser, Diane Nast, Danny Becnel, blah, blah, blah, blah,
12 blah. All of the Turner Branch, a lot of Louisiana
13 lawyers, lot of California lawyers, a lot of New York
14 lawyers. People from the Robins firm were there. People
15 from the Larson King firm were there. All of these people
16 were there and, essentially, providing their insight and
17 guidance and then their affirmation that they thought Dick
18 Lockridge and I would be appropriate people to lead this
19 case in the MDL, subject to having an advisory, and a very
20 strong advisory committee called the PSC.

21 Every case that I've been involved in, and I've
22 been involved in most of the major ones in the country,
23 Norplant, Propulsid, Breast Implants. I wasn't on the
24 committee in Phen-Fen, but I was heavily involved in
25 Phen-Fen. Telectronics, I was on the committee. Schwan's,

1 Sara Lee, Malt-o-Meal, all these major personal injury mass
2 tort cases we've always had some kind of committee
3 structure. The more cases, the more diverse the spread of
4 the cases around the country, the more people you want to
5 include on the plaintiffs' steering comming because you
6 want to have diversity regionally. Texas is always a big
7 player. They need to be represented. Louisiana is a huge
8 player. You might ask why so many people from Louisiana.
9 Because the biggest advertiser, there are three out there
10 in the country. One of the biggest advertisers in the
11 country is Morris Bart. Morris Bart advertises for cases
12 and gets tons of them, and he has five or six lawyers and
13 he's in Louisiana. And he advertises nationally, and he
14 has four or five people in Louisiana that he refers these
15 cases to. One of them, Danny Becnel, has represented to me
16 he has 10,000 cases in his office being reviewed.

17 So, that's why there is a large number of cases
18 in Louisiana because Morris Bart is from Louisiana,
19 advertises nationally, and then refers those cases to a
20 group of lawyers in Louisiana. Some of them have been
21 represented to be on the committee or been asked to be on
22 the committee and some have not. A couple of them are
23 applying even though they were asked to be on.

24 So, after the meeting at twelve o'clock on the
25 19th, we then asked about 20 -- 15 or 20 people, I can't

1 remember, if they would be interested in serving on
2 plaintiffs' steering committee with no commitment that this
3 would be the entire committee or necessarily that this
4 would be the final committee, but asking if they would be
5 willing to serve on an interim committee because we wanted
6 to get going. We needed to have conversations with defense
7 counsel.

8 Frankly, I've two conversations was defense
9 counsel, and you correct me if you find something I say to
10 be inappropriate, but I went down and had dinner with Adam
11 and his partner, Phil Beck, to talk about our cases and
12 what was going on in Chicago with the organization of the
13 cases from the defense point of view, what's going in
14 Philadelphia, what's going on in Texas and the state
15 cases. And I had a meeting again last -- this week when I
16 happened to be down there for another hearing to talk about
17 preliminary issues. They were clear that they didn't want
18 to give me any color of office, that they were only talking
19 to me in my individual capacity. They knew that I had been
20 voted by the group to be lead counsel, but they weren't
21 prepared to confer that on me in any way, shape or form,
22 but at least we built up the dialogue and had the
23 conversation in their offices in Chicago.

24 Incidentally, their offices are very
25 interesting. The conference room is about the size of this

1 room that they have a big basketball court in there with
2 lines painted on there and you can shoot baskets.
3 Interesting place to have a meeting, I would say. I was
4 duly impressed.

5 MR. HOEFLICH: I take it relevance objections are
6 not in order in this court.

7 THE COURT: Just as long as it wasn't a tennis
8 court.

9 MR. ZIMMERMAN: No tennis court. Don't let out
10 my secret, Judge.

11 At any rate, the point of that is we were
12 beginning to cooperate with no color of office, and I think
13 they would tell you that our cooperation has been pretty
14 good, quite good.

15 I have had dialogue, also, with Mr. Heins about
16 these issues, and I'll get into that later. But I want the
17 Court to know that I did call him and invited him. We have
18 had dialogue, and Sam and I have known each other a long,
19 long time and I have a tremendous respect for Sam, Mr.
20 Heins, for what he has done in the antitrust and securities
21 areas. I hope he has respect for me for what I've done in
22 the mass tort area, but I have no disrespect for Sam. I
23 think he -- his petition will stand on its merits and I
24 hope mine stands on mine.

25 We then picked a PSC that I thought was national,

1 diverse because we have a national and diverse case. We
2 have people who come from all walks of life. Some will say
3 some aren't as experienced as others. I think some will
4 say Mr. X isn't as experienced as Mr. Y. Mr. Y is not on
5 the committee, why aren't I. I thought, frankly, we should
6 have some youth, younger people who maybe haven't been in
7 this game for fifteen or twenty years, but a little bit
8 younger who can learn the ropes and be in these cases
9 because they know what they are doing. They come from
10 firms that have had enormous experience, but maybe they are
11 not the, you know, the person with thirty years
12 experience. We have people of many years experience. We
13 have people of different ethnic backgrounds. We have
14 different religious backgrounds. We have men. We have
15 women. It was my feeling that it is important all the
16 time, but it's especially important in a big national case
17 where you are representing a cadre of clients out there
18 whose names you don't know yet who are represented by
19 lawyers, some of whom you know and some of whom you don't
20 know, that you have a diverse group that can communicate
21 and coordinate with these people when and as the time
22 comes. Because, remember, our goal here under lexicon is
23 to coordinate and organize the case to the discovery,
24 prepare some of the science, take the depositions, organize
25 the case, and if necessary, it goes back to the district

1 where they came from for trial.

2 This is not like your typical securities case
3 where essentially the lead counsel and the small group of
4 people run the case, get it done, resolve it one way or the
5 other and people can either get checks or they get a notice
6 of dismissal. These cases are tremendously different. You
7 were communicating constantly with your locals and with
8 your other counsel because they are communicating
9 constantly with their clients about their injuries, their
10 medical records, the doctor's reports. They're hurting.
11 And some of these people have family that are dead. There
12 are a hundred confirmed deaths around the world. We don't
13 know if that's going to be more or less, and thousands of
14 injuries. There are a lot of problems out there and we
15 have to be sensitive to that and the way we communicate and
16 the diversity of the group which we put together.

17 I don't think this group is bloated. I think we
18 have seventeen or eighteen people. We may add more,
19 frankly.

20 THE COURT: 16 plus --

21 MR. ZIMMERMAN: Two.

22 THE COURT: Plus two.

23 MR. ZIMMERMAN: Eighteen people. In Breast
24 Implants I think we had twenty-two. Phen-Fen they had a
25 smaller group. I'm in Propulsid in New Orleans and we have

1 a group of twelve. It's all different on what the Court is
2 comfortable with, what counsel is comfortable with and how
3 many cases there appear to be because you want to be
4 diverse. And if you look, we've got New Mexico, we've got
5 California, we've got Texas, Alabama, Mississippi,
6 Louisiana, Florida, New Jersey, Minnesota. I mean we are
7 very diverse in geographic.

8 THE COURT: There is -- this is an issue. You
9 have a large -- you are proposing a large PSC. Other
10 counsel saying that it should be smaller. You are saying
11 whatever the Court feels comfortable with. Well, I want to
12 hear from you why there should be a large committee, other
13 than just saying this is a diverse committee.

14 MR. ZIMMERMAN: Here's why.

15 THE COURT: That doesn't --

16 MR. ZIMMERMAN: That's one reason. Maybe I
17 overemphasized. You have a lot of people out there. You
18 have to coordinate in various regions. We have an issue in
19 Philadelphia. We have an issue in Texas. We have an issue
20 in California. We have to have people on the ground who
21 can go and be -- who are conversant and know the lawyers in
22 these states and in these regions to get them to cooperate
23 with us and get them to have one single set of deposition
24 protocols, one single set of document protocols. They want
25 to produce documents once. They want the CEO to be deposed

1 once. They don't want every state and every case to have
2 the right to do that. So we have to have people who can
3 work with, say, Philadelphia where we know we have a large
4 group of cases, Texas where we know where we know we have a
5 large group of cases, etc.

6 The second reason you want to have a bigger
7 committee, Your Honor, is there is a ton of work to do and
8 it's diverse work. You have science. You don't have
9 science in other cases. You have science.

10 THE COURT: Tell me what kinds of committees,
11 subcommittees you are thinking about.

12 MR. ZIMMERMAN: The ones I'm thinking about, and
13 again it's not cast in concrete. You have to have a
14 discovery committee. That's obvious. But there is three
15 kinds of discovery. There is direct discovery. There is
16 foreign discovery because we've got a German company. And
17 you've got third-party discovery -- detail people, people
18 who are distributors of the product and not the
19 manufacturers of the product. One of the issues here is
20 how did they market this product. What did they tell the
21 detail people. What did the detail people tell the
22 doctors. All of that discovery is somewhat specialized.

23 People who have done that kind of discovery asks
24 those kinds of questions in Propulsid or Rezulin or the
25 other drug cases. They were the experienced people you

1 want to call upon to do it in this case. You don't want to
2 recreate the wheel. It's expensive and it's time
3 consuming. So, you have a committee of people who have
4 done those kinds of things under the supervision of the
5 leadership.

6 The second thing you need -- so you have this
7 discovery committee with various steps. The second thing
8 you need is you need a science committee. There are 400
9 published articles on Baycol right now if you did a
10 med-line search. We have compiled a CD -- actually two
11 CD's of all of these articles, and they have to be read and
12 searched and reviewed.

13 The new science that's being done now, not
14 necessarily reported yet, but is out there being done or
15 the science that was never completed, because who knows why
16 and there is a lot of strange reasons why some science was
17 not completed, has to be reviewed, has to be discovered,
18 has to be understood. Science is not easy in medicine.
19 You have to have people who understand the science, who
20 have been around the science, who understand the
21 terminology, doing the review of articles, looking at the
22 science issues and taking the science depositions.

23 You have discovery -- you have the FDA issues.
24 You have FDA foreign which have all kinds of different
25 names in different countries and you have the FDA here.

1 What did they know? Why did they approve it? Why did they
2 take it off the market? Taking the depositions of the FDA
3 people and getting Freedom of Information Act requests is
4 not easy. They will resist everything. Why? Because they
5 want to do it once. They want to do it right. They want
6 to protect all of the secrecy and integrity of the FDA.
7 And they don't, frankly, don't want to get in the middle of
8 litigation.

9 You need specialists to have power, for instance,
10 who's with our -- who has agreed to participate is a former
11 FDA, not consultant, but he worked at the FDA. He's been
12 working with us in Propulsid. He's been working with us in
13 Rezulin, and he has agreed work with us in Baycol to help
14 us through that maze. That's significant, Your Honor,
15 because those of important issues.

16 Then you have what I call "trial issues." Trial
17 counsel issues which are really Daubert, which is a huge
18 issue everywhere. Is the science good? Is it credible? Is
19 it peer reviewed? Is it admissible? That's the huge
20 issue. It was in Breast Implants and it will be in every
21 medical case coming down the line. The Eighth Circuit law
22 is emerging in that area. Judge Rosenbaum just issued a
23 very interesting opinion in a case we were trying over
24 there involving another drug that, you know, we think is
25 pretty good law.

1 There is a preemption issue of if the FDA
2 approves a drug is there a preemption. So, you have all
3 this kind of delicate, technical question of Daubert and a
4 summary judgment and issues having to do with technical
5 medical questions that will be before the Court in the form
6 of evidence admissibility. So we have to have a trial
7 team. We have to have a courtroom team that's different
8 than, for instance, the science team. They are different
9 skills. The science are more science types. The trial
10 guys are admissibility types, especially on the Daubert
11 question.

12 The next thing you're going to talk about, Your
13 Honor, is the settlement because there will be discussion
14 of a settlement. You want the people that have structured
15 these major deals around the country to be available. Stan
16 Chesley, Elizabeth Cabraser, in some ways myself. I was on
17 the settlement committee in Breast Implants. I was on the
18 settlement committee in Tobacco. I know some of the issues
19 in the resolving of complex cases. You have to have a
20 specialized committee to involve itself with the settlement
21 of complex cases. You've got all the problems of trying to
22 settle a big case where there is injury. There may be
23 medical monitoring. There may be different kinds of
24 injuries. How do you gradate? How do you grid it? These
25 are very complex issues. Quite frankly, there is nobody

1 more experienced in that in the country than Stan Chesley,
2 and he's on the team. And you need a settlement team.

3 And then, Your Honor, you also need -- one of the
4 most important is kind of what I talked about earlier what
5 is the state and federal coordination. This is the key in
6 MDL's today. It never used to be, but it is. There is a
7 whole group of lawyers that want to stay in state court and
8 they're going to stay in state court. There is a whole
9 group of lawyers that think that the MDL is where Article
10 III Judges can do the best to help resolve these issues
11 nationwide, and you have to have coordination between that
12 and that's sensitive.

13 I know something about that, Your Honor, because
14 I have spoken on that subject. I've written on that
15 subject. And that's kind of an area that I purport to know
16 something about. It's essentially people skills and sort
17 of cooperative skills. How do you get people who have
18 different issues in the same case, but they all want
19 different things because they have a different view on how
20 to get their results. How do you get them to cooperate on
21 certain basic things. Federal and state coordination is
22 the key to doing that, and you have to have people that
23 understand that. You have to be willing to bring to the
24 Judge ideas.

25 Maybe we should have a joint status conference

1 with the Philadelphia court where we all sit in the
2 courtroom. And Judge Pointer did that with breast
3 implants. And we talked how we could work together. I got
4 to tell you that works pretty darn well. You get both the
5 state Judge and the federal Judge to be there talking to us
6 about how we can work together and how stepping on each
7 other toes really isn't going to get us where we need to
8 get, folks. And I got to tell you that changes a lot of
9 minds.

10 You get people to talk about methodologies that
11 are common so the CD's that they delivered to us is in the
12 same format that they delivered to the Philadelphia group,
13 so, they're also readable by any group of lawyers in the
14 country so they're not in diverse format.

15 The indices get delivered at the same time that
16 the documents get delivered so you just don't have a group
17 of documents that you can't read and can't search, but you
18 bring the indices in. That kind of coordination in the
19 discovery, and that kind of federal and state coordination
20 so it's not done twice helps them because they don't have
21 to do it twice. Keeps them focused on getting to the end
22 and keeps the state and federal from, you know, trying to
23 one up one another and keeps it on a level playing field so
24 everybody has an equal justice before the law and equal
25 opportunity to have their case appropriately resolved

1 whether that be through settlement or whether that be
2 through trial.

3 Other committees that I see as being very
4 important have to do with briefing, I mean just basic
5 briefing. We're going to have, you know, briefs all the
6 time coming out, and there are people who are very good at
7 writing briefs. I ain't one of them. I know how to argue
8 a brief, I think, but I'm not the best brief writer on the
9 planet. You have to have good writers and briefing, and we
10 call that the law committee in the MDL context.

11 The law committee does the briefing, or at least
12 writes the briefing in a consistent way. Knows how many
13 pages the Court wants. Knows how many to deliver and pulls
14 the arguments appropriately together. These are very
15 important.

16 THE COURT: Font size is very important.

17 MR. ZIMMERMAN: In some courts it is. And I know
18 some law from this district about pages.

19 THE COURT: I don't want any --

20 MR. ZIMMERMAN: And electronic filing. And one
21 of the things I argued to the panel, and I hope I can
22 deliver this, is that we want to be a high-tech case, at
23 least as high tech as the lawyers and the Court feel
24 comfortable with so we can do e-filing. We can use the
25 Verilaw or what other systems we want to use. We use them

1 in many cases. We can post the orders appropriately. All
2 that technology. So there is a technology committee. When
3 I say a committee, I don't mean ten people. It could be
4 only one person. But you get your best -- not just your IT
5 people, but your lawyers who are really conversant in this
6 stuff to talk it out, and you'll be surprised at how many
7 different expertise there are. I'm not the most -- I'm
8 pretty technological in the fact that I can use it, but I
9 don't have the vast understanding that many lawyers have.

10 I know there is a guy in New York, Seeger and
11 Weiss, his name is Dave Buchanan, and he's just a whiz and
12 a lawyer at setting up these technologies that talk to the
13 different courts and talk to the different lawyers because
14 everyone of us are on e-mail. Everyone of us should be
15 getting this stuff at the front end. If we set it up right
16 with the technology committee, and run it right, we aid the
17 Court, we aid the orderly process, and we aid the lawyers.
18 That's another committee. And is fifteen people or sixteen
19 people too much for that? Absolutely not. We've had much
20 larger committees than that. We've had some smaller, but
21 they're never less than ten, and they are always around in
22 the teens. And there is a little bit of necessity to reach
23 out, as I said geographically, so that nobody feels that
24 they don't have somebody close by that they can talk to.

25 There is another thing that probably the Court

1 may or may not have thought about. I certainly have, which
2 is called an Administrative Committee. You want to watch
3 people's hours. You want to watch people's costs. You
4 want to watch -- you want to get reports on a regular basis
5 to what people are doing because everybody is an
6 independent contractor. I don't want if I'm leading the
7 case, a lawyer in wherever, Seattle, to be running around
8 putting lots of time into the case in something we don't
9 want them to do, because at the end of the case they are
10 going to want to get paid for that time. So, how do you
11 protect against that? You have monthly reporting. To
12 whom? Somebody who's looking at it. Lead counsel
13 obviously has an oversight to that, but you have to have an
14 administrative committee or administrative person who
15 collects those hours, who looks at it, and makes the report
16 and lets people know that this is on track or this is out
17 of track so that I can say, oh, Mr. Smith, you have an
18 awful lot of hours this month, or, Mr. Jones, you haven't
19 been working at all. Why are you here? You should
20 resign.

21 I told the group if you work and you want to
22 participate, there will be work. But if you sign up to get
23 a title and you don't work, I'm going to ask the Court to
24 have you removed because we don't need dead weight. So you
25 have to be monitoring that. Somebody has to look at it.

1 Somebody looks at in my office every month, I can tell you
2 that, for our a fifteen lawyers. And somebody has to look
3 at it from a committee basis. You call that the
4 Administrative Committee.

5 There is a final issue that may or may not have
6 been on the Court's radar screen called third-party pay
7 order, the subrogation claims. That's a whole another set
8 of facts -- excuse me, not facts, but a whole another
9 theory, and that's basically the insurance companies coming
10 in. They come in now or they come in later and say,
11 listen, we paid for these drugs, we want our money back.
12 It's not a personal injury case. It's an economic case.
13 But it's part of the MDL case, or it should be part of the
14 MDL case because they either come in at the time there is
15 money on the table or you deal with them now. They want to
16 do discovery. They want to know the facts. They want to
17 beat these guys up and find out why, what they did, what
18 they knew, when they knew it. We coordinate that. It's a
19 different kind of theory. It's third-party payor, third
20 party discovery, and that's a separate group.

21 And along with that and subsumed with that is
22 also the consumer case. There is a consumer case out
23 there. California has a statute called 17200. It's
24 essentially a consumer statute, not dissimilar to a
25 consumer fraud statute where essentially you are bringing a

1 claim of fraud that they produced a product that -- that
2 Bayer produced a product that wasn't worthy of being paid
3 for because it didn't work. So, there is a consumer case
4 out there. The Court may dispense with it. The Court may
5 deal with it. The Court may find that it doesn't hold or
6 it may find that it does hold. But some group of lawyers
7 has to be focused on that to make sure that that claim gets
8 properly presented to the Court. So, that third-party
9 payor and those consumer cases, they're there and have to
10 be dealt and it's somewhat specialized.

11 Lastly, Your Honor, there is an International
12 Committee. We've got international claims. We've got
13 people in different countries and Ken Moll has been leading
14 that up, and he filed an international class. I have not
15 seen that work. That's not to say I couldn't. There are a
16 lot of things that I haven't seen work to work. But that
17 case has to be handled.

18 How is that going to be handled? A lot of these
19 people have been working in the Ford Firestone case. And I
20 believe there is an international case in that if I'm not
21 mistaken. I believe there might be an international case
22 there. I know Ken Moll has a lot of international cases in
23 Ford Firestone. He's trying to do it here. It's got to be
24 dealt with. It's got to be dealt with. And I told Ken,
25 and I'm a little bit disappointed because I know Ken and I

1 worked with Ken in Sara Lee. I said, Ken, you're going to
2 be Chairman of the subcommittee, if I'm to lead, on
3 international and he felt he had to file his papers and
4 that's fine, I don't have any problem with that. If I'm
5 chosen to be the lead he will be running or head of that
6 International Subcommittee because that issue has got to be
7 teed up and dealt with.

8 It's about committing the time. It's about
9 cooperation, and it's about experience in this type of
10 litigation. And I think that's why you need a committee of
11 fifteen. These people aren't going to do -- or eighteen.
12 These people aren't going to do this totally full time with
13 the possible exception of me. If I'm appointed lead, I
14 will commit that I will put in at least 70 percent of my
15 time in this case. Maybe more. I'm only on one other
16 plaintiff's steering committee at this point and time and
17 that's the Propulsid case where I'm on the steering
18 committee. All my other steering committees, my tobacco
19 cases have all resolved, thank God. Other cases for which
20 I serve on national plaintiffs' steering committee are
21 essentially resolved are the Malt-o-Meal cases are
22 resolved, which was a large case. Our Marvin case, which
23 is the windows case, is resolved.

24 So, from my firm you are looking at the person
25 you are going to see being here doing the work, organizing

1 the case and committing the time. We have the resources.
2 I guess what that means is you have the people, space and
3 the money.

4 THE COURT: And that deals with the liaison.

5 MR. ZIMMERMAN: Okay. I'll deal with that space
6 issue in a minute and the experience. All I can do is
7 proffer the resumes of the people that we proffered. These
8 are people that have been involved every day in a major
9 drug and device litigation in this country. They involve
10 personal injury to people and involve their lives and their
11 health, and they have had incredible results from fires,
12 the MGM fires and Puerto Rico fires, plane crashes to toxic
13 torts to breast implants to Phen-Fen to Rezulin to
14 Telectronics to heart valves to Bayer. These people have
15 done it. They've resolved it. They've been wrapped up and
16 they've been appropriately compensated and appropriately
17 before the Court for scrutiny by major cases. These are
18 the people that have done it, and these are the people that
19 we are trying to bring on board with diversity and with
20 youth and active participants.

21 My strengths, Your Honor, I believe, is I bring a
22 cooperative spirit, an ability to get people to do what I
23 ask by example, by doing it as well as I can myself, by
24 being in the trenches and by asking and demanding the best
25 people. That's what -- that's what I bring to the table.

1 I've reached out and asked for consensus. I've
2 reached out in every direction and asked for cooperation.
3 We've met and we've conferred and we've resolved. I think
4 that shows the cooperation and that shows the strength of
5 our commitment to the time and commitment of the
6 resources.

7 MDL are unique animals. They have a uniqueness
8 to them that are extremely exciting, but they are fraught
9 with issues that come up that you never thought of. Two,
10 five years ago, six years ago no one talked about federal
11 and state coordination. No one thought about certain
12 things are going to happen in this case. How about
13 translating of documents from German into English.

14 New things happen. You have to be prepared to
15 innovate. You have to be prepared to reach out. You have
16 to be prepared to cooperate. You have to be prepared to
17 say I don't know the answer and I want others to work with
18 me to help. That's why we're asking for a larger
19 committee. A diverse group of people that bring in
20 different expertise. People that have chosen us to lead
21 because they believe in us, and people that have chosen to
22 participate in this MDL as opposed to the state actions.

23 We want to work with the state people. One of
24 the big issues before this Court would be how would we get
25 the state people to work with us. But I'm confident, based

1 upon the start that we've had that we can do it.

2 We have had had 113 people attend our
3 organizational meeting. They are all behind us and they
4 are all willing to work. We've got eighteen people that
5 are stepping forward to be on the committee. We're happy
6 to listen to any other suggestions how to work that
7 committee better. If there are suggestions, it's never
8 stagnant.

9 I was not elected to the original PSC in the
10 breast implants, but I was added later. I was not added to
11 the original Executive Committee in tobacco, but I was
12 added later and that's because some people come forward and
13 do yeoman's work. And they come forward and they need to
14 be given the titles. Maybe they didn't have it at the
15 front end.

16 It's not a perfect slate. It's the best we could
17 do. It's flexible, but I think it's what the Court wants,
18 and it's a slate of people who commit the time and the
19 experience and will cooperate.

20 THE COURT: Dealing with the issue of co-lead
21 counsel --

22 MR. ZIMMERMAN: As opposed to singular?

23 THE COURT: Yes. You've done a nice job of -- I
24 don't know what Mr. Lockridge is going to be doing other
25 than I know that he doesn't carry bags anymore.

1 MR. ZIMMERMAN: Notice I carried mine and it was
2 very heavy. The reason I think you have co-lead counsel is
3 --

4 THE COURT: And, Mr. Lockridge, I want to hear
5 from you.

6 MR. ZIMMERMAN: It's a big case, Your Honor, a
7 big case. There's a lot of responsibility. You can't be
8 everywhere and you have a sense of -- if you're too
9 singular, your judgment sometimes becomes whatever you want
10 them to be, and your direction becomes whatever you want
11 them to be and it's really, really nice for me to have
12 another lawyer that I trust at the leadership helping make
13 important decisions. It's just the way -- I'm more
14 comfortable doing it than being just a Lone Ranger saying
15 I'm in charge, you know, the Al Haig kind of thing, I
16 guess. I like to work in these cooperative, and I've
17 always been kind of the -- sort of it's how I run the law
18 firm, if you will. I think having people that you can
19 communicate with at the top helps you to make good
20 judgment, helps you when you're mad to cool off up.
21 Helping when you're not focused to focus, helping you to
22 see the picture because you have a huge diverse group that
23 you're trying to protect and you really don't want to make
24 any mistakes.

25 I was given some advice to be singular lead, and

1 I just feel like Dick Lockridge has the kind of calm and
2 cool and collected demeanor. He's been around the block.
3 He knows everybody in the field. He's extremely well
4 respected. I have great respect for him, and quite
5 frankly, when we first started this MDL, when we first made
6 the panel argument, it was Dick and I who sat down and said
7 should we move for Minnesota, and if so, how should we
8 argue it and are we in this together. And I guess for me
9 to say, now Dick, I've got a little more experience in this
10 and you step back because -- it's just not my way. I don't
11 think he should step back. I think that he's a terrific
12 lawyer. He's well known in this district. He's well
13 known to a lot of people around the country, and I think it
14 would be extraordinarily helpful to me to have a
15 co-leadership if the Court would embrace that.

16 THE COURT: Now, I appreciate that, and I
17 certainly know Mr. Lockridge and have great respect for
18 him.

19 In your papers that you filed, I want you to talk
20 to me a little bit more about how you would coordinate with
21 the PSC, because in your papers you just leave it for one
22 sentence -- you shall from time to time consult with the
23 committee.

24 MR. ZIMMERMAN: Good question. Happy to respond.

25 THE COURT: And that has grave implications.

1 MR. ZIMMERMAN: The way that I do it would be
2 this, and I would sort of go off to Sam -- the Judge
3 Pointer model.

4 Hopefully, the Court will set periodic status
5 conferences. That would be my hope that we have it whether
6 beginning monthly or every six weeks or eight weeks, but
7 regularly scheduled plaintiffs' case status conferences
8 where we come before the Court and we have an agenda that
9 we provide to the Court in advance, and in that agenda we
10 have all kinds of things. So, we don't have to file
11 motions. We have to file motions, but we don't have to
12 notice them up for different dates and keep calling your
13 calendar clerk. We have a date where we're going to be
14 before the Judge. Say it's February 1st today, and it's
15 March 3rd next month and April 5th the next month, we all
16 know. We schedule and put things on the agenda.

17 The plaintiffs' Steering Committee then does a
18 couple of things. They have an in-person meeting before
19 the status conference, always. So the night before, we
20 come in and we have a meeting. But whether it's an all day
21 meeting or half day meeting the night before the status
22 conference to talk about all the things that are on the
23 status conference that are before the Court and how we are
24 going to present it and argue it, blah, blah, blah.

25 One of the things Sam Pointer did that I thought

1 was extraordinary, and I don't know if this Court is
2 comfortable doing that, is Sam Pointer required we have a
3 cocktail party and that we ask the defense counsel and the
4 plaintiffs' counsel to show up and we discussed issues at
5 the cocktail party that are going to be before the Court.
6 And you know something, a lot of the things got resolved
7 that way. And it was a very interesting concept.
8 Frightening at first, but he made it such that we
9 understood, at least the night before, we had some
10 contact.

11 At any rate, and then you have everybody's e-mail
12 address and everybody has got a committee, and each member
13 of the PSC is a co-chair along with perhaps somebody who's
14 not on the PSC of the committee. Let's say Ted Parr, who's
15 on the FDA, is not on the PSC, but he would be in my
16 judgment on an FDA or science committee. He may be the
17 chair -- co-chair and a member of the PSC would be a
18 co-chair, and they would do their work and report at the
19 open PSC meeting which you have by conference call on a
20 periodic basis and you set them up. Just like in our
21 office we have weekly litigation group meetings, let's say
22 it's the Malt-o-Meal case, every week we have the
23 litigation group meet at a certain time and discuss where
24 we are with the case. While people are out doing work,
25 then they come back and report. That's how you run a PSC.

1 You have weekly or bi-weekly meetings of the PSC where you
2 meet not in person but by conference call or video
3 conference which a lot of us have now, and you discuss what
4 the different committees are doing and what are the issues
5 and what are the problems. And you meet periodically and
6 then you meet in person before the status conference, and
7 normally, you have a meeting after the status conference to
8 discuss what our agenda is going to be for the next thirty
9 days. And it's very organized. And I found in my working
10 environment that that's the way you get the most out of
11 your committee by meeting and discussing, by
12 communicating.

13 In the Propulsid case every document that gets
14 filed, every letter that gets sent, every communication is
15 e-mailed to the entire committee. And I know everything
16 that's going on and every piece of paper that's moving back
17 and forth in this case because I get an e-mail copy as it
18 goes, and that's what we should do. And that's what most,
19 if not every lawyer in this case has the capability to do.
20 They want to be informed. You're only as good of a worker
21 on the PSC as you are informed. If you're not informed,
22 you're out of the loop. If you stay informed you're in the
23 loop.

24 So you meet by conference call. You meet in
25 person before the status. You have the status. And we

1 have a social night the night before. We have the status
2 and then you have a small chalk talk afterwards and you go
3 about your assignments and you go back and do it again.
4 That's how it works. And I think that's a good way to do
5 it. You know, you may meet more frequently on certain
6 issues. If the Daubert issue is getting teed up, you may
7 have lots of meetings over that. These are committees that
8 meet as opposed to the PSC.

9 I hope that somewhat answers the question.

10 THE COURT: It does.

11 MR. ZIMMERMAN: There's more to it than that, but
12 you got to remember that not everyone on the PSC works a
13 hundred percent of their time on the case. They have
14 associates. They have other people doing different
15 things. So, everybody's got an office hierarchy at the
16 same time.

17 So, that's sort of it in less than a nutshell,
18 Your Honor. I guess it would be a whole bag of peanuts.
19 But, again, I feel like we --

20 THE COURT: Before you finish your summation,
21 there is one objection that says that some of the members
22 of the PSC that you've listed don't have that many cases
23 and have been double counted to obtain a seat on the
24 plaintiffs' steering committee. I need a response to
25 that.

1 MR. ZIMMERMAN: We did not do a census of
2 anybody. People represented at various times what they
3 have and what they don't have in terms of number of cases.
4 It's really not the driver of the decision making. But the
5 driver of the decision making is not how many cases you
6 have. It's not how many people are in your cache of
7 clients. It's what expertise do you bring to the PSC.

8 Diane Nast, if you look at her resume, I don't
9 care if she has one case or a thousand cases, I would like
10 her to be on the team that I would put together because of
11 her vast knowledge of the area of law that we're in, mass
12 tort, coordination of MDL litigation and the resolution of
13 complex cases.

14 Now, I also want people that have lots of cases,
15 but that's not the exclusive driver, because people with
16 lots of cases can tell you what the problems are. It's not
17 scientific, but if someone has 5,000 cases and they're back
18 office and their nurses and whoever are working these cases
19 up are telling you what they're seeing, it's very helpful
20 for us to understand that. It's not scientific, but it
21 gives us information about the kinds of complaints, the
22 kinds of medicine that's going to be involved and the kinds
23 of reporting of symptoms, but you don't need a hundred
24 thousand cases. There's no magic number as long as you
25 have people with lots of case.

1 So, let's say my firm had ten cases, we have
2 more, but let's we have ten cases, and Danny Becnel's firm
3 had 10,000 cases. That doesn't qualify either one of us.
4 It is what has my career been focused on in terms of the
5 work I've been doing and the kinds of issues I've been
6 confronting in my career and why would I be a good leader
7 or proponent of this -- or sponsor of this case and what
8 expertise does Danny bring in. And, yes, you want to have
9 cases. Yes, you want to have members of the PSC that have
10 real interests, but the number of cases they have, I don't
11 think is the driver. I think what's the driver is your
12 breath of experience and your commitment.

13 One of the things that Judge Fallon told us in
14 the PSC in Propulsid is he said, listen, Mr. Zimmerman, if
15 you're going to be on this PSC, I don't want to see Gordon
16 Rudd coming in here for the meetings. I want to see you.
17 I'm picking you. So, if you're going to be on this PSC, I
18 want your commitment to be here.

19 It's the same thing here. If I'm picking, I keep
20 using Diane Nast because I think she's brilliant. I don't
21 want Roda, her partner. I don't want him, I want her. And
22 that's what I'm asking of these people because I'm picking
23 them for their expertise. Their staff can back them up.
24 But these are the people we want. We want to see the
25 first-line people before this Judge and before this court

1 and in this PSC, and I think that's what I asked and
2 demanded from the PSC.

3 So, it's not the number of cases. It's really
4 how much expertise and experience and diverse experience
5 that you bring to the game to cover all the bases.

6 THE COURT: Anything else that you wish to add in
7 summation?

8 MR. ZIMMERMAN: Only, Your Honor, that I think
9 we've put a group together that has got a proven track
10 record that's involved the most difficult and complex mass
11 tort cases that have come down the judicial pike in the
12 last fifteen years. I think we have a proven track record,
13 and we are ready to bring that orderly resolution and
14 orderly process to this court. And I stand before this
15 Court as someone who began this case in our district,
16 someone who argued the case to the panel, someone who has
17 organized in a democratic process the case, someone who's
18 reached out to everyone to participate, someone that --
19 participants with the cases I trust and believe in, and
20 someone who's committing to this Court that I will be here
21 and see it through to the end and commit all the resources
22 and all the strength I have to do honor to the Court and do
23 honor to the case and do honor to the clients. Thank you.

24 THE COURT: Mr. Lockridge.

25 MR. LOCKRIDGE: Thank you, Your Honor. First of

1 all, let me say I second everything that Mr. Zimmerman has
2 had to say. And I should also note that if we are both
3 fortunate enough to be appointed co-lead counsel in this
4 case that normally only one of us will speak, but it did
5 seem today to be appropriate since we're both seeking to be
6 co-lead counsel, too, to speak and I certainly will not
7 duplicate -- try not to duplicate anything Mr. Zimmerman
8 said. I might try to amplify a couple of points.

9 First of all, to your question of co-lead
10 counsel, I certainly would note that it is the practice in
11 large MDL cases throughout the United States and in this
12 district and virtually all cases to have co-lead counsel.
13 It is the norm without question and Judges around the
14 country accept that.

15 In this district our firm is co-lead counsel on
16 three or four, Select Comfort with Judge Doty. I see Judge
17 Donovan Frank has had the Digi case where we were co-lead
18 counsel. We were co-lead counsel in the MSG litigation
19 pending before Judge Magnuson. So, it is simply the norm.

20 I do note that counsel, who is Mr. Heins, noted
21 two cases where there was sole counsel selected. One of
22 those, the Wire Bound Boxes case before Judge Murphy back
23 in 1989, which I'm very well familiar with. I remember the
24 argument because Vance Opperman and I handled that case and
25 we were opposing a gentleman by the name of Gigspeck -- or

1 I should say Mr. Gigspeck came in from Chicago to try and
2 oppose us and it was a colorful hearing, if you will. But
3 in any event, the proposal to have co-lead counsel was
4 never submitted to Judge Murphy at that time and Vance
5 Opperman was selected sole co-lead counsel. As far as I
6 know --

7 THE COURT: I read the opinion by Judge Murphy.

8 MR. LOCKRIDGE: Thank you, Your Honor.

9 THE COURT: I could tell it was quite colorful.

10 We didn't know if this one would be just like that or not.

11 It was interesting.

12 MR. LOCKRIDGE: I don't believe this one will be
13 nearly as colorful, Your Honor.

14 On a flat class that order that was referenced
15 was never an operative order because that case was
16 transferred out to Pittsburgh, Pennsylvania. Our firm was
17 very active in that case, and, ultimately, there were four
18 co-lead counsel appointed in that case.

19 I want to just amplify on a couple of other
20 points that have been mentioned here. I will freely
21 concede that Mr. Zimmerman has more experience in the mass
22 tort area than I and our firm do, but we also have an
23 extensive amount of experience in the area. We are
24 handling a large number of Phen-Fen cases. We have been
25 have your actively involved in the Rezulin case before

1 Judge Lewis Kaplan out in New York City. And we have been
2 and remain very, very heavily involved in the Propulsid
3 litigation which is in New Orleans. Indeed, for a period
4 of time, we've had lawyers basically living down there.

5 We were on the Science Committee and Discovery
6 Committee and the Class Action Committee in the Propulsid
7 litigation. And I think that it is a testament to my
8 experience and our firm's experience in this area of mass
9 torts that the 113 -- or actually I thought 123 attorneys
10 that were assembled there in the IDS Center, I believe, on
11 the 17th or 18th of January, did unanimously agree that
12 their preference was to have Mr. Zimmerman and myself as
13 co-lead counsel. And, in, particular, Stan Chesley,
14 Elizabeth Cabraser and Diane Nast strongly supported both
15 of us, all of whom I have worked with on a number of cases
16 over the years. And frankly, it's a privilege to work with
17 people like that.

18 I would emphasize a couple of other points about
19 all of the work that our firm and Mr. Zimmerman's firm has
20 done on the case and working up the case in particular. We
21 have worked with two former FDA attorneys in working on the
22 case which was -- we filed our case, I believe, on
23 September 5th, and there was a large amount of work done
24 before that case was filed, and then thereafter, also.
25 And, obviously, FDA discovery, which is exceedingly tricky

1 and very difficult because the FDA does not like to give up
2 their people for depositions or their documents which is
3 very key to this case.

4 As Mr. Zimmerman observed, we collectively hired
5 medical experts, one of whom spoke to the assembled group
6 at the IDS Center.

7 So, Mr. Zimmerman and I have been in this one
8 together. We made a lot of arguments in the briefs, not
9 the least of which was the importance of the technology,
10 the qualifications of this Court, the experience of this
11 Court, including the experience this Court had when it was
12 a Hennepin County Judge. We went on and on about what a
13 great airport we had even. I did note, by the way, in the
14 MDL order that the Court emphasized the technology of the
15 this court, too, as was one of the factors and one of the
16 issues which I've read a lot of MDL orders and I think that
17 was the first time I've ever seen that.

18 It is a fact that we have between our two firms
19 and the firms that are supporting us literally tens of
20 thousands of claimants. Now, they're not on file because
21 there is no reason to be on file unless there is a statute
22 issue. But there are tens of thousands of claimants that
23 are in back of us.

24 Let me go through my notes, Your Honor, to see if
25 there is anything else.

1 To the extent that the Court is at all concerned
2 about the manpower, the person power that we have, our
3 firm, of course, has twenty-nine lawyers. You will see
4 before this Court if we are appointed co-lead counsel,
5 either myself or, as Mr. Zimmerman noted, himself, I am
6 taking a very, very active role and will in this case if
7 selected as co-lead counsel.

8 I would note, Your Honor, that Newberg on Class
9 Actions, well, obviously, the Court has the discretion, and
10 I would refer Your Honor to Section 9.35 in Newberg on
11 Class Actions which says that courts should always
12 encourage the counsel themselves to agree on lead counsel
13 while imposing its own choice only in extraordinary
14 circumstances.

15 Now, here we almost got an agreement. I believe
16 -- I note that we have 112 or 113 law firms in back of us,
17 and I believe that Mr. Heins and the Larson King firms are
18 the only ones that are actively actually opposing our
19 position.

20 Your Honor, I believe that we have done it the
21 right way here. We have worked from the get-go to be
22 cooperative. We have reached out to the people. We had
23 our meeting. We had a large reception the night before the
24 meeting. Everybody that we knew of was involved in the
25 case was invited to, and I have spoken personally with

1 Arnie Levin in Philadelphia who was handling many of the
2 Philadelphia cases whom I have known for twenty-five years
3 and is obviously going to be a critical factor -- key
4 factor in coordination.

5 I believe that we have done it the right way,
6 Your Honor. And I would request that you appoint myself
7 and Mr. Zimmerman as co-lead counsel.

8 THE COURT: Let's take a ten-minute break and
9 hear from Mr. Heins and from the other participants here,
10 Larson.

11 (Recess taken.)

12 THE COURT: Mr. Heins.

13 MR. HEINS: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. HEINS: Your Honor, what we have proposed
16 does not exclude anyone. We don't attempt to exclude Mr.
17 Zimmerman, Mr. Lockridge or any of their colleagues. What
18 we have proposed, I think, calls upon practical experience
19 over the years in organizing complex cases in my experience
20 of it before this Court and around the country.

21 There is some truisms which I think all of us who
22 do this work know, and I think they, if I may put them
23 before Your Honor, I think they illuminate what we are
24 about here today.

25 It is, I think, between the proposals before Your

1 Honor. There is squarely put the question of what is the
2 real purpose of organizing plaintiffs' class counsel in one
3 of these cases. Is the object, the paramount object the
4 benefit of the class to achieve the best result with the
5 most efficient prosecution of the litigation at the least
6 expense, or must there also be an element of the political
7 consensus building that brings together with a whole series
8 of cross steels and arrangements and understandings a
9 structure for presentation to the Court.

10 Now, in my experience of doing these cases, for
11 example, the Travel Agent Commission case before Judge
12 Rosenbaum, we at the end of the day, chaired that case. I
13 was liaison counsel and chief trial counsel, and ultimately
14 settled the case. And in that matter, it was simply
15 recognized all around that it was necessary to have
16 somebody lead it, to have somebody convene the meetings, to
17 have somebody make use of all the resources of all the
18 firms who were at the table. And we know, from experience,
19 that not all law firms and not all lawyers which come
20 forward in these large matters and vigorously seek position
21 are as capable as all of the others. It's sort of a
22 volunteer system in some ways. And judgments ultimately
23 have to be made about who's actually doing the work, who's
24 effective, who's devoting the resources to the case, and
25 who's falling away from the case, or who never started in

1 the beginning.

2 Now, I have, as, of course, we are all aware,
3 known Mr. Zimmerman for more years than I care to think
4 about since law school. Mr. Lockridge has been a partner
5 of mine for many, many years, and I think we can all count
6 ourselves as friends. And I have great esteem for them and
7 what they have accomplished in the Bar, and I appreciate
8 the kind things they have to say about me. I don't propose
9 to exclude them or ask the Court to exclude them from the
10 organizational structure. What I propose is that the Court
11 establish a skeletal structure which can then go forward in
12 a systematic way to examine who are the players who have
13 come forward in the case and to make suggestions to the
14 Court for the Court's approval of who ought to be in what
15 role, rather than have it be a matter of meetings and side
16 bar conversations and ex parte conversations between
17 lawyers and all that sort of things.

18 What I propose is that there be judicial
19 supervision of the process. And I think this is really
20 what the complex rules contemplate. The rules say at
21 Section 20.224, negotiations and arrangements among
22 attorneys in which the Judge is not made aware may have a
23 significant effect on the positions taken in these
24 proceedings. For these reasons the Judge needs to take an
25 active part in making the decision on the appointment of

1 counsel and deferring to proposals by counsel without an
2 independent examination and so on and so forth.

3 I'm not suggesting that the Court would simply
4 accept what's offered. But it seems to me the proposal we
5 have made --

6 THE COURT: Whether I appointed you, I accept
7 that without question.

8 MR. HEINS: Thank you, Your Honor. I appreciate
9 that if I prevail.

10 THE COURT: I've done it in the past and you know
11 that, so.

12 MR. HEINS: Yes, thank you, Your Honor. What we
13 are trying to put before the Court is a structure that
14 would permit a real survey of all of the universe of
15 lawyers who are bringing these cases.

16 It is the case that I have received telephone
17 calls from a number of lawyers around the country, both
18 lawyers who have class action cases which have been MDL
19 here and lawyers who have multiple, very many in some
20 instances, private plaintiff cases pending or to be
21 pending. And the suggestion has been made to me that all
22 of the organizational effort which has been so articulately
23 described here this morning is not all inclusive. There
24 are many law firms which are -- believe that they are on
25 the outside of that. That they would not meaningfully

1 participate in that. That they wish to have a role in this
2 case.

3 And it seems to me that the credibility of
4 whatever leadership that is, in fact, put in place here
5 could well turn on the process that the Court now adopts
6 going forward in structuring the leadership of this case.
7 I think that the proposal we have put before the Court
8 would invite and welcome the participation of Mr. Lockridge
9 and Mr. Zimmerman, and their views and their experience
10 would have a significant role. There are many other people
11 who also wish to have a significant role.

12 If, under the direction of the Court, a meeting
13 were convened and there were solicited the views of
14 everyone, not just groups of people who may have worked
15 together on preceding cases, but people -- everybody at the
16 direction of the Court is asked to submit their views, then
17 it seems to me by the time that process works through and
18 it's reported to the Court, there can be a credible,
19 meaningful structure proposed that encompasses all, that
20 does not seek to exclude any.

21 It seems to me that, obviously, the highest
22 objective for all of us in the courtroom has to be serving
23 in this kind of endeavor leadership serving the best
24 interests of the clients, both in terms of the efficient
25 prosecution of the cases as to cost, but also in terms of

1 achieving the best results and the most credibility, if you
2 will, with the Court and with the defendants as well, and
3 the way to do that is to be more inclusive rather than less
4 inclusive.

5 On the question of committee structure, it seems
6 to me, Your Honor, there is a very strong argument to be
7 made here, that sprawling and complex though this case may
8 be, it is nonetheless one lawsuit. One lawyer will stand
9 before you making arguments that are key, and one set of
10 lawyers must understand the evidence, must gather the
11 evidence, must analyze it, that our meets of lawyers,
12 eighteen law firms, or twenty, or thirty or how many are at
13 the end of the day not the most efficient way to do
14 discovery as to one set of documents, one set of science,
15 one set of damage methodologies, one set of each of the
16 facets of the case.

17 Somebody at the end of the day who is in a
18 position of authority must understand what the case is
19 about and must understand the evidence. And that in my
20 experience of it, cannot occur when large numbers of law
21 firms send large numbers of document reviewers to a distant
22 document review locale, or even a local one, and they all
23 sit there and read documents and they do coding and it all
24 gets computerized, and there is a certain rhythm to it, and
25 ultimately, that work often falls upon the least

1 experienced in the law firms. It just happens. The result
2 is a certain level of diffusion. And the more people that
3 you have involved in trying to get meetings together and
4 trying to get people to come on board behind a proposed
5 leadership structure, the more obligation there is on the
6 part of the leaders to see to it that hours are afforded to
7 everybody who's been a supporter. I mean it's natural and
8 it's human, and there is nothing at all wrong with it,
9 except that it's not the most efficient way to run a
10 lawsuit. What's necessary is to have highly skilled and
11 experienced people running what are often turning out to be
12 kind of scut work functions like document review, evidence
13 gathering. Those functions, if you have multiple people to
14 whom you have to be passing out work as a matter of
15 obligation, those functions which are key in many cases are
16 not going to be done in the most efficient way.

17 If the Court can rely upon counsel who are
18 responsible, taking a leadership role and understanding the
19 optimal way to gather evidence and to prosecute a case, the
20 result will be better for the class. The work will be done
21 better. And that's at the core of what we have proposed.

22 In sum, what I believe we propose doesn't exclude
23 anybody to the contrary. It's all inclusive. It does not
24 contemplate willy-nilly armies of lawyers where they are
25 not necessary.

1 THE COURT: Well, you say it doesn't exclude
2 anybody, but you are talking about a committee of four.

3 MR. HEINS: Four co-lead counsel, Your Honor.

4 THE COURT: A committee of four.

5 MR. HEINS: Four co-lead counsel who could take a
6 very active role in the process and could amongst them
7 divide up in the logical committees and keep control of
8 those committees. Ultimately, the case has to be
9 controlled. It is simply -- in my experience of it, and
10 I've been at it for as many years as I think my two
11 distinguished colleagues. You can't have eighteen or
12 twenty or twenty-five or thirty people pulling a case
13 together. It doesn't happen. Somebody has to be ready to
14 talk settlement if that's the way the case goes. Somebody
15 has to be ready to talk trial. Someone has to understand
16 the case. Someone has to be marinated in it and have a
17 real conception of what the detail is, and that somebody,
18 those people have to be at the top of the case with the
19 authority to run it and the authority to pick the right
20 people for the jobs. That's the core of the proposal I put
21 before you.

22 There is no particular magic. The proposal is
23 very general. We have drawn it, as the Court is aware of,
24 from prior orders of this Court and other Judges of this
25 Court have entered. I'm certainly open and amenable to

1 suggestions for modifications that would improve it. I'm
2 sure there are some. But the core of it is it should be
3 all-inclusive. Nobody should be excluded and it should be
4 an efficiently run MDL. It should not be an army that's
5 all come together in the hopes of picking up hours in the
6 case.

7 THE COURT: Thank you.

8 MR. HEINS: Thank you, Your Honor.

9 THE COURT: All right. Good morning.

10 MR. RAITER: Good morning, Your Honor. I'm Shawn
11 Raiter from the Larson King law firm here in St. Paul.

12 I just want to make it clear that we are not here
13 opposing Mr. Zimmerman's submissions or Mr. Lockridge's
14 submission. I think as Mr. Lockridge suggested, we are
15 here because we do believe this is a complex case. It's a
16 case that's going to involve tens of thousands of
17 claimants, we believe. It's going to involve hundreds of
18 thousands and millions of documents being produced by
19 Bayer, third-party defendants and potential foreign
20 corporations as well as Glaxo. And regardless of the
21 structure that Your Honor imposes in this case, you need a
22 liaison counsel. And what we have done is made a
23 submission to be that liaison counsel. We think we are
24 uniquely situated to do that for a number of reasons.

25 One of the factors that Your Honor asked us to

1 discuss is the commitment to this litigation. My law firm
2 is headquartered in St. Paul. We have about thirty-five
3 lawyers in St. Paul, dozens of paralegals. Dale Larson is
4 really our leader from the firm. He had been at Robins,
5 Zelle, Kaplan and Larson. We have done mass torts for
6 years, decades. I hope that I am one of the younger people
7 that Mr. Zimmerman was referring to earlier, although my
8 wife may disagree at times.

9 We are here under an assumption that this lawsuit
10 or this litigation is going to be -- to need to be managed
11 and will involve significant communication issues, document
12 management issues, scheduling issues. We do have claimants
13 from around the country. We have got Bayer here, both from
14 the United States side of the Atlantic as well as the
15 European side.

16 So, our law firm submitted this petition because
17 we wanted to play a significant role in coordinating and
18 that is because we have done that in the past. That's what
19 we do now.

20 We have over 400 people who have retained us to
21 represent them individually in cases against Bayer and
22 Glaxo and whoever the other defendants might be. We have
23 hundreds of others whose cases we are analyzing and
24 considering. We have made a significant investment in this
25 litigation in that we filed suit in the District of

1 Minnesota in October. Supported the petition brought by
2 Mr. Zimmerman and Mr. Lockridge to bring these cases here.
3 And we continue to believe that this is a great place to
4 resolve this litigation.

5 So, we have already, as a law firm, committed to
6 being here to represent individuals. And now we want to
7 also commit to representing the MDL folks as well, the
8 other folks who aren't here but whose cases are to come
9 through the Multi-District Litigation.

10 The manual for complex litigation talks about
11 liaison counsel, what the obligations are and
12 responsibilities. Your Honor is familiar with that.

13 One of the things that is important is that the
14 manual talks about the fact that it usually is a good idea
15 to have liaison counsel be local to the Court, which we
16 are. We also have offices elsewhere -- Boston, Dallas,
17 Miami, San Francisco, but we're headquartered in St. Paul.

18 We have the resources to commit to this. We have
19 over sixty lawyers, approximately sixty lawyers total in
20 our law firm. We've the computer database systems
21 necessary to manage millions of documents. We do that for
22 clients. Our firm does both plaintiff and defense work
23 which is unique, perhaps one of the few firms that does
24 that in the Twin Cities that's still around.

25 So, we have the capabilities and the

1 infrastructure here already to manage documents, to manage
2 information, to schedule, to consult with people,
3 communicate with people. We have a sophisticated
4 technology system at our firm, T-1 lines and all the things
5 you need to get information in and out to a number of
6 people.

7 We also do have storage space if the document
8 depository needed to be at our firm. We have the
9 capability to do that. We also have the capability offsite
10 downtown St. Paul at under market rates which is a nice
11 thing at times when you have to earn space. We will commit
12 whatever resources we need to handle this piece of this
13 litigation.

14 So, the only divergence between the submissions
15 here, the submission by Mr. Zimmerman and Mr. Lockridge
16 request that they also serve as liaison counsel in addition
17 to being lead counsel.

18 I don't have any input on who should be lead or
19 how many lead counsel there should be, but in any case --
20 or even how many people should be on the steering
21 committee.

22 In any case, you are going to have to have
23 liaison counsel to manage the folks, the information that's
24 coming from the steering committee and coming from the
25 subcommittees and coming from Bayer and the other

1 defendants trying to coordinate those things and that's
2 what we think we can do.

3 THE COURT: Have you worked with Mr. Heins?

4 MR. RAITER: You know, I don't don't believe that
5 I personally have although I'm sure that he's worked with
6 people from our firm.

7 Just in terms of working with people in this
8 room, I'm the liaison counsel on a class action that's
9 pending in Hennepin County District Court on the steering
10 committee with Mr. Zimmerman's firm. We worked with Mr.
11 Lockridge's firm on some opt-outs and MDL's that's pending
12 here, Lutheran Brotherhood here in the District of
13 Minnesota. We have nice relationships with those firms.

14 We certainly know the Dorsey and Whitney firm.
15 We've worked with them and against them. I know Ms. Van
16 Steenburgh and her firm and have worked with her. I don't
17 think primarily we have worked against each other.

18 So, our firm from a coordination standpoint is
19 national counsel, coordinating counsel for 3M in mass tort
20 litigation. In doing so, we coordinate the activities of
21 over sixty law firms across the United States. That's our
22 job. I'm personally involved in that and other people are
23 personally involved in that from our firm.

24 What that gives us is the perspective of what
25 does it take to communicate with people to coordinate their

1 activities make sure we are on schedule, we are on track,
2 we're all on the same page. We are very good at that, I
3 believe.

4 We also serve as national coordinating counsel
5 for several other clients as well. We have lawyers in our
6 firm who have been on MDL committees and have been lead
7 class counsel, of course, primarily Dale Larson, then
8 working down the list, two younger lawyers as well.

9 The, I think, critical role of the liaison
10 counsel is to make sure that things work smoothly in an MDL
11 proceeding of this significance that is going to be a major
12 undertaking. And that is why we did file separately
13 because we think that the lead counsel will have their
14 hands full with just the ins and outs of the cases and
15 should have another firm.

16 We believe that the representation locally is a
17 good idea as well to have the firm here, have the firm be
18 familiar with Your Honor, with the Court, with the defense
19 lawyers who will be in town here, have the capability, have
20 the database knowledge, have the document management
21 knowledge, and have the paralegals who handle information
22 well, and we have that. So I'm not here taking potshots at
23 either side. I just think we would like to be in the
24 liaison counsel position. Thank you.

25 THE COURT: Thank you. One final question for

1 those that are seeking to be lead counsel. If I make you
2 all co-lead counsel, can you work together?

3 MR. HEINS: Without question, Your Honor.

4 MR. ZIMMERMAN: Can I comment on that? Here's
5 the rub. I have no problem with Mr. Heins being on the
6 committee. I think three co-lead is problematic for two
7 reasons. One, when there are three co-leads, you are
8 shopping for consensus. You become a very inefficient
9 leadership because it becomes two to one. We tried that in
10 breast implants and it didn't work and it went to two.

11 Secondly, in a mass tort case, which is what this
12 is, this is not a class action as Mr. Heins refers. There
13 are some class elements, but basically personal injury
14 cases are mass torts and most of them are going to be
15 handled -- some of them are going to be handled within a
16 class that's monitoring, but most of the time injuries are
17 a little problematic to do in a class. So it's going to be
18 handled differently than just class litigation.

19 But in mass tort, there are people who have
20 stepped back from requesting leadership who really, if
21 there were three, would want to step forward, and that's
22 the problem I would have. If I go to some of these people
23 and say I, you know, made a deal with Sam to come forward
24 and be three, I've got --

25 THE COURT: You're not making a deal if I ordered

1 --

2 MR. ZIMMERMAN: I understand. I feel I have to
3 make the comment, Your Honor, and I am not making that
4 deal.

5 THE COURT: You are not making any deals.

6 MR. ZIMMERMAN: But that's the rub, that the
7 people who have stepped back are really possessing enormous
8 experience in these cases in the mass tort area. If this
9 were an antitrust case, if this were a straight class
10 action, no problem at all, no problem at all. In fact,
11 I've reached out to Sam several times on the telephone, and
12 even today saying is there something we can do besides
13 co-lead that we can on work with and there is no mystery to
14 that.

15 THE COURT: I appreciate that. Thank you. Let's
16 move to the defendants' side. I need to know who's going
17 to be lead counsel there and what is the set up.

18 MR. ZIMMERMAN: Can I apply, Your Honor, for
19 that?

20 THE COURT: I'm sorry?

21 MR. ZIMMERMAN: Can I apply?

22 THE COURT: I can tell, you wouldn't get it.

23 MR. HOEFLICH: Your Honor, Adam Hoeflich on
24 behalf of Bayer Corporation.

25 THE COURT: Please, come to the podium, whoever

1 is going to speak.

2 MR. HOEFLICH: Your Honor, Adam Hoeflich on
3 behalf of Bayer Corporation. My partner, Phil Beck,
4 Bartlit Beck of Chicago, will be lead counsel for Bayer
5 Corporation. He apologizes but he was unable attend.

6 THE COURT: And I couldn't change my schedule to
7 accommodate his.

8 MR. HOEFLICH: With us as counsel for Bayer
9 Corporation will be Mr. Peter Sipkins from Dorsey and
10 Whitney in Minneapolis. Also with us will be Sibley and
11 Austin from Chicago, and that would be Ms. Susan Weber, and
12 we have all entered appearances the in the case.

13 THE COURT: And you will get a letter to me with
14 that so I can -- if I can get it this afternoon so I can
15 incorporate it into my order which will come out on Monday.

16 MR. HOEFLICH: We will get that to you
17 immediately, Your Honor.

18 THE COURT: Anything else?

19 MR. HOEFLICH: There is one request that Bayer
20 Corporation would have and I hope it's something that
21 whoever is in leadership can reply to it as well.

22 We are currently scheduled to have our next
23 status conference on April 1st. There are certain orders
24 that will be helpful to enter in the case before that
25 time. For example, a confidentiality order, a case

1 management order, other things that will help us begin to
2 produce documents and to get the case moving along on the
3 same track that some of the state cases are moving along.

4 We would suggest that if the Court is available
5 we have our first conference in early March, assuming that
6 leadership is in place by then so we can try to reach
7 agreement with the plaintiffs' lawyers and present a draft
8 order to the Court.

9 THE COURT: No problem.

10 MR. HOEFLICH: Thank you, Your Honor.

11 THE COURT: Thank you. Good morning.

12 MR. SIPKINS: Good morning, Your Honor. Peter
13 Sipkins, again, on behalf of the defendant Bayer. Further,
14 what Mr. Hoeflich just said about rescheduling the
15 conference is currently set for April 1st. I simply want
16 to point out that I believe that's the day after Easter
17 weekend. And with a number of other out-of-town counsel
18 involved that would be an inconvenient date to have the
19 hearing, simply an additional reason for rescheduling.

20 Thank you, Your Honor.

21 THE COURT: Good morning.

22 MS. VAN STEENBURGH: Good morning, Your Honor.

23 Tracy Van Steenburgh from the Halleland, Lewis, Nilan,
24 Sipkins and Johnson law firm. Fred Magaziner, Robert
25 Limbacher and Hope Freiwald are with Dechert law firm in

1 Philadelphia and represent GlaxoSmithKline nationally in
2 this litigation. And our firm will be representing
3 GlaxoSmithKline locally in the litigation. And those three
4 will make an appearance, and I will forward a letter to you
5 this afternoon as well.

6 THE COURT: Thank you. Anything else? Thank
7 you. My order will come out no later than Monday by the
8 end of the business day. Hopefully, I can get it out early
9 Monday morning.

10

11

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REPORTER'S CERTIFICATE

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

CERTIFIED: _____

Brenda E. Anderson, RPR

Electronic Servicing Between Parties

The U.S. District Court, District of Minnesota has compiled this short list of private sector vendors that provide electronic servicing products. These products may be helpful to litigants involved with the Baycol MDL matter for efficiently serving documents between the parties (not the Court). This listing does not constitute an endorsement of any kind by the Court. Further, the list is not exhaustive, but represents information that has been collected by court staff. While the information may be valuable, the U.S. District Court for the District of Minnesota does not control or guarantee the accuracy, relevance, timeliness, or completeness of the information provided on the web sites.

Whenever a party seeks to file any document with the Court, the party shall deliver the original document to the Clerk of Court with a request that it be filed. The Court does not accept electronic filings at this time. Please refer to the rules on our web site for more information (www.mnd.uscourts.gov).

@Court

@Court, Inc.
www.atcourt.com

CourtLink

Lexis/Nexis
www.courtlink.com

Verilaw

Verilaw Technologies, Inc.
www.verilaw.com

WestFile

West Group
www.westfile.com