

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF INDIANA
3 SOUTH BEND DIVISION

4
5 IN RE: BIOMET M2a-MAGNUM CAUSE NUMBER
6 HIP IMPLANT PRODUCTS LIABILITY 3:12MD02391
7 LITIGATION

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10 FEBRUARY 4, 2013

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE ROBERT L. MILLER, JR.

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1 **THE COURT:** Good afternoon.

2 This is MDL2391, our Cause Number 12MD2391, **In Re:**
3 **Biomet M2a Magnum Hip Implant Products Liability Litigation.**

4 First of all, I hope you all appreciate the
5 demonstration we've put forth as to why the MDL Panel always
6 holds its January meeting in warm places. It's so you folks
7 don't have to deal with this travel.

8 First of all, congratulations to everyone who got
9 here, and my sympathies to everyone who is stuck in
10 airports, and I understand there are a few of you.

11 Let's see. Mr. Lanier, you are here in person for
12 Plaintiffs.

13 Mr. Anapol, do I understand correctly that you are
14 on the phone from someplace or another?

15 **MR. ANAPOL:** I am, Your Honor, and my apologies for
16 not being there.

17 **THE COURT:** Well, I don't think you could do much
18 about it.

19 And do I understand correctly that Mr. Dassow is on
20 the line, also?

21 **MR. DASSOW:** Yes, Your Honor, that's correct.

22 **THE COURT:** All right.

23 **MR. DASSOW:** Thank you, Your Honor.

24 **THE COURT:** Is Mr. Hovde with you or are you the
25 only liason counsel on the line today?

1 **MR. DASSOW:** I'm the only one on the line today,
2 sir.

3 **THE COURT:** Okay. And let me ask those who are
4 present and counsel, let me invite you folks to state your
5 appearances for the record.

6 **MR. FLOWERS:** Good morning, Your Honor, or good
7 afternoon.

8 Pete Flowers for the Plaintiffs.

9 **THE COURT:** Mr. Flowers.

10 **MR. KREIS:** Good afternoon, Your Honor.
11 Douglass Kreis for the Plaintiffs.

12 **MS. HUTSON:** Good morning.
13 Shelley Hutson for the Plaintiffs.

14 **MR. ROBINSON:** Good afternoon, Your Honor.
15 Dan Robinson for Plaintiffs.

16 **MR. MEADOW:** Good afternoon.
17 Rick Meadow from the Lanier Law Firm for the
18 Plaintiffs.

19 **THE COURT:** Okay.

20 **MR. ARSENAULT:** Good afternoon, Judge.
21 Richard Arsenault for Plaintiffs.

22 **THE COURT:** Okay.

23 **MS. ANDREWS:** Good afternoon, Your Honor.
24 Anne Andrews for Plaintiffs.

25 **MR. THORNTON:** John Thornton for the Plaintiff.

1 **MR. BROWN:** Alex Brown for the Plaintiffs, Your
2 Honor.

3 **MR. PRESNAL:** Justin Presnal for the Plaintiffs,
4 Your Honor.

5 **MS. HOEKSTRA:** Jennifer Hoekstra for Plaintiffs,
6 Your Honor.

7 **THE COURT:** Okay. Thank you.

8 On the Defense side, we have present in court John
9 La Due and Erin Linder Hanig.

10 And am I correct in assuming that Mr. Winter is on
11 the phone someplace unreachable from here today?

12 **MR. LaDUE:** He is driving between Detroit and here,
13 Your Honor. He hopes to make it, but he asked us to carry
14 on if he could not.

15 **THE COURT:** Okay. I will tell you, this morning,
16 all fourteen of our jurors managed to get here on time. The
17 attorney who had a one o'clock sentencing was fifteen
18 minutes late, so go figure.

19 First of all, I commend everybody who participated
20 in putting the submission together for court today. You
21 folks really, obviously, have worked very hard to find areas
22 of agreement, and I'm quite impressed with the job you've
23 done.

24 I have the agenda that Mr. Dassow sent. The first
25 was the stipulated CM02. I have read it. I've got a

1 question or two, but it looks fine to me. I see it's an
2 agenda item.

3 Mr. Lanier, was there something to add to it?

4 **MR. LANIER:** Your Honor, the CMO2 is in basic good
5 shape.

6 We were going to see if you would indulge us to
7 discuss the Plaintiffs' fact sheets for just a few moments.

8 **THE COURT:** Sure. Let me pull it out here so I --
9 Am I correct; the Defense didn't have anything to
10 add on Agenda Item 1, did you?

11 **MR. LaDUE:** No, Your Honor.

12 **THE COURT:** Okay. Then let's move to Agenda Item
13 Number 2, which is the Plaintiffs' fact sheet.

14 **MR. LANIER:** Your Honor, I have five children, and I
15 have taught my children no means no, and I'm not here to
16 press beyond that with you without some measure of
17 trepidation, but I did want to revisit the subject with you,
18 briefly, if I might, and I thank you for hearing me.

19 **THE COURT:** Let me just tell you I have no problem
20 with your doing that because I was looking simply on a
21 spectrum between the Plaintiffs' and the Defendant's. I
22 thought that the more detailed Plaintiffs' -- Defendant's
23 approach was better, but not necessarily the best that we
24 could do, so I expected that we might have some follow-up.

25 **MR. LANIER:** Well, with that guidance, Your Honor,

1 then I will cut to the chase. And excuse me, but I take
2 seriously the charge of candor to the tribunal and so I want
3 to tell you where my concerns are and just be blunt about
4 it, if I might.

5 One of the things that, as leadership in an MDL, I
6 think we are responsible for doing -- and we've got the
7 Plaintiffs' Executive Committee here, as well -- is trying
8 to make sure that your Court has enough mass and momentum to
9 where your Court is the driving force in this litigation,
10 assuming that that's the Court's predilection. And if it's
11 not, then the Court can say so. But toward that end, there
12 is a natural -- in Texas, we would say, "Burr under the
13 saddle," but there's probably a more apropos snow mechanism.

14 **THE COURT:** I understand that we're under the snow.

15 **MR. LANIER:** Okay. Yeah, because it was 72 when I
16 left this morning in Houston.

17 As plaintiffs' lawyers, we're taught from an early
18 age to go find the forums we're most comfortable with and to
19 file our pleadings there, and we're taught that's not forum
20 selection as much as it is a duty, and there's always a
21 natural hesitancy by some plaintiffs' lawyers to involve
22 themselves in an MDL which was not the choice of the
23 lawyers, per se, but, rather, the direction of a panel.

24 We, of course, as a corporate body, are delighted to
25 be in your Court. We think this is a splendid place to be,

1 but we've got a responsibility of convincing all of the
2 other Plaintiffs' lawyers not to go file their cases in
3 state court but to file them in the MDL because we're going
4 to move it with rapidity and fairness and bring it to
5 resolution.

6 I think, if I read your order right, your goal is to
7 make sure there's as much information out there to help us
8 move to resolution, which is a super plan and one that we
9 certainly agree with, but what we're trying to parse
10 carefully among the Plaintiffs' Bar is the perception among
11 a number of lawyers that might be along this line.

12 Here's a twenty-page fact sheet that conservatively
13 will take four to six hours per fact sheet to fill out.
14 When you're asking a seventy-year-old man what the address
15 is of his high school, that seventy-year-old man is not
16 going to readily know it, generally, and will have trouble
17 figuring out if his high school even exists anymore, and, if
18 so, it takes multiple phone calls, and that's just one out
19 of almost two hundred questions.

20 So the lawyers will sit there, and they'll do the
21 math off this, and they'll say, "This is going to take six
22 hours per questionnaire. I've got one hundred cases to
23 file. I'm going to have to do it within ninety days.
24 That's six hundred hours, if it works. I'm going to have to
25 hire five part-time people. I'm going to have to fire them

1 when it's over. I'm going to have to" da, da, da, da, da,
2 da.

3 So I think it might behoove all of us in the
4 litigation if the Court would allow me the deference of give
5 me one week to submit to you an Alternate Plan B where I
6 will take earnestly your desire to see as much information
7 as can possibly be put out there in a good time fashion.
8 Also, grant me the leniency of not doing it in ninety days.
9 As your order suggested, it may take more time. You already
10 foresaw that. But, I mean, the Defendants want 120 days to
11 do the four-page fact sheet. We've got twenty pages. We're
12 going to need some time on that.

13 But if you would indulge me to submit in good faith
14 to you and to the other side, perhaps, some middle ground
15 where we try to provide not the austere fact sheet that
16 we're using in **Pinnacle**, not the kitchen sink that we have
17 here, but something that seems workable where I can say to
18 the Plaintiffs' Bar, "Hey, this information is important
19 information. It's relevant information. The Judge is
20 requiring this because it's going to move us more rapidly
21 towards evaluating this case to see if we can settle it."
22 That's a good motive.

23 That's a good -- everything would make this a lot
24 better for us as the Plaintiffs' Bar and the Executive
25 Committee, if you would give me the deference of at least

1 filing that and letting me see if I could persuade you there
2 is a middle ground.

3 **THE COURT:** Okay. And your concern, as I understand
4 it -- I can probably say it more bluntly than you can --
5 your concern is that too detailed a fact sheet will drive
6 attorneys who would be filing these cases into state courts,
7 and then either we have an entirely separate fifty MDLs
8 floating around out there or we have remand issues after
9 removals?

10 **MR. LANIER:** Yes. Yes, and you've said it very
11 well.

12 And I can add, I mean, that the other thing that's
13 going to happen is we're going to get these facts sheets,
14 and our clients are going to wind up saying, "I don't know,"
15 to a bunch of stuff, and you're going to get deficiency
16 notices sent in, and you're going to have your court
17 personnel squeezed and all of that mess. But you all do
18 your homework well, and I'm not insinuating you wouldn't be
19 able to do your stuff timely.

20 But I think it's a win, win, win, win, win if we
21 take an approach that says, you know, for example, on a lot
22 of this, "Here are medical authorizations. Here are medical
23 records. We'll scour through them, but you scour through
24 them, too, Defendants," which they will do, "and you can
25 figure out if there's ever been a complaint of a blood

1 pressure reading that was above 120 over 80, as opposed to
2 us reading through it to see if there's ever been a
3 complaint that's 120 over 80."

4 Those are the types of things that would be very
5 beneficial and I do think would help the critical mass of
6 this litigation, and I would try to do it in good faith with
7 the Defendants, recognizing what information helps move us
8 forward, I guess.

9 So thank you for hearing me out on that. I
10 apologize for revisiting it.

11 **THE COURT:** No. Again, I wasn't identifying the
12 Defendant's tender as the perfect one, just indicating that
13 I thought we needed more than what was in the Plaintiffs',
14 closer to the Defendant's.

15 Ms. Linder, as I recall, you addressed this at the
16 last conference, so let me hear from you as to whether you
17 are agreeable to another week to try here.

18 **MS. LINDER HANIG:** Judge, Biomet doesn't have an
19 objection to giving the Plaintiffs another week to do
20 another amended proposal, but we do continue to believe that
21 all the information that is proposed in Biomet's Plaintiffs'
22 fact sheet is all within the permissible scope of discovery.
23 We believe all of those questions are reasonably calculated
24 to lead to the discovery of admissible evidence. We think
25 it will help upfront for the very reasons that you stated in

1 your January 29th order, which are that more extensive fact
2 questions upfront streamline the discovery process. They
3 also help the parties and the Court assess the individual
4 Plaintiffs' claims and then pick bellwethers, which, I
5 think, is the point that we're trying to get to. So our
6 position hasn't changed since the last conference, but we
7 don't object to another --

8 **THE COURT:** Especially recognizing how well you
9 folks have done at agreeing, I will allow the extra week.
10 In fact, let me run it out to the middle of next week. I
11 don't want to have something that people aren't quite happy
12 with just because you asked for too little.

13 **MR. LANIER:** Thank you, Judge.

14 **THE COURT:** So let's see. This is the 4th. The
15 11th.

16 How about Thursday, the 14th then?

17 **MR. LANIER:** That would be fantastic, Your Honor.
18 Thank you.

19 **THE COURT:** All right. So Plaintiffs are given
20 until February 14th to submit a revised proposed Plaintiff
21 fact sheet, taking into account the concerns expressed in
22 the Court's advice, I guess, is what we'd have to call that.

23 **MR. LANIER:** All right.

24 **THE COURT:** I see your ESI order, your preservation.
25 Those looked fine to me.

1 Was there anything further that anybody wanted to
2 discuss?

3 Mr. Flowers?

4 **MR. ARSENAULT:** Richard Arsenault, Your Honor.

5 **THE COURT:** Oh.

6 **MR. ARSENAULT:** I think we have reached an agreement
7 or we have reached an agreement with regard to the
8 production of the ESI. The only thing that remains
9 outstanding, so to speak, is the ongoing dialogue we'll have
10 with regard to the predictive coding, which is this
11 artificial intelligence that's going to be used by the
12 Defendant to collect the documents.

13 In other litigations, **Actos**, for example, it's a
14 collaborative process, and my understanding is the
15 Defendants will be looking at our requests for production of
16 documents to be instructive in terms of what we think the
17 issues are. It's kind of an issue driven, artificial
18 intelligence type process, so there'll be ongoing dialogues,
19 we understand, with the Defendants with regard to the
20 predictive coding process, but in terms of a protocol for
21 the production of the ESI, that's been agreed to.

22 **THE COURT:** Okay. Anything further from the Defense
23 on that?

24 **MR. LaDUE:** None, Your Honor.

25 **THE COURT:** Preservation. It looked like you're all

1 on the same page on that at this point.

2 **MR. LANIER:** Yes, Your Honor. It's my understanding
3 that the preservation order is basically agreed to by the
4 parties at this point, and I think we're in good shape
5 there, so that's good news, as well.

6 **THE COURT:** All right.

7 **MR. ANAPOL:** Let me interject, if I can, Your Honor.
8 It's Mr. Anapol on the phone.

9 **THE COURT:** Sure.

10 **MR. ANAPOL:** Mr. Flowers is in the courtroom.

11 And I may be confused now, but, as last I recall,
12 you had taken it under advisement, the preservation order
13 itself, but we're in basic agreement. The remaining issue
14 is whether there's more than one way in which a device can
15 be properly preserved, and I'm not sure we had a final
16 ruling on that.

17 **THE COURT:** Yeah. Let me tell you, because I
18 dropped the -- well, I can't say I dropped the ball. I got
19 hit by too many tacklers in the last month, but I retained
20 the ball.

21 I worked on it a little bit over the weekend, trying
22 to basically edit down what the Plaintiffs submitted in
23 their tender, because I do think, from my recollection of
24 the conversation we had a month ago, I indicated -- and, if
25 not, I certainly thought, thought I had indicated -- that I

1 don't think I have the discretion to tie the hands of
2 Plaintiffs to have to use what the Defendant has to use.

3 And I understand that the Defendant's 522 says this
4 is the protocol they have to use, but my concern was tieing
5 the Plaintiffs' hands to the same thing, because I think
6 they've got a right to use anything that **Daubert** allows, and
7 so what I've been trying to do, and simply ran out of time,
8 was try to revise what was tendered a little bit to indicate
9 that this wasn't a ruling on admissibility, but the
10 Plaintiffs had to use a protocol that did not involve
11 destructive testing, using those that you folks tendered
12 before as exhibit whatever it was as examples, not tieing
13 anybody to anything and trying to follow generally what was
14 submitted.

15 So, again, I take responsibility for that. It's
16 been a busy four weeks, and, hopefully, I'll have something
17 out to you even before Mr. Lanier gets his proposed revised
18 fact sheet to me.

19 Mr. Flowers?

20 **MR. FLOWERS:** Yeah, we're on the same page, Your
21 Honor. We're just looking for our ability to do
22 nondestructive testing and not have to follow their exact
23 protocol, so thank you.

24 **THE COURT:** Okay. And is that the Defendant's
25 recollection of the last session?

1 **MR. LaDUE:** That's where we left it off, Judge, and
2 we're still in the same spot we were in before. We're still
3 obligated to follow the 522 order, and until we see either
4 the details of the proposal or the Court's decision, we
5 can't really know whether that conflicts with what we're
6 supposed to do under the 522 order.

7 **THE COURT:** All right. I probably shouldn't have
8 taken it on myself, and I've learned a lesson, because you
9 folks turn them out a lot better than I do, but I'll try to
10 get something out -- the trial looks like it's going to go
11 all week this week, but I should be able to get something
12 out early next week, and, again, I'll put it out for comment
13 and see if anybody has any improvements to make.

14 **MR. FLOWERS:** Thank you, Your Honor.

15 **THE COURT:** I'm sorry for leaving that open when you
16 folks have handled everything else.

17 Then we have the discovery schedule, and that was
18 one of the things I was going to ask about before I printed
19 out the agenda.

20 Mr. Lanier?

21 **MR. LANIER:** Yes, Your Honor.

22 We have been in communication and trying in good
23 faith to move forward in that regard. We've got some
24 smaller issues, but there is a lot of positive, and I think
25 if we could put a couple of issues in front of you, could

1 get some guidance from you, I suspect that we can put
2 together something that we could all agree on.

3 Toward that end, one of the requests of the
4 Defendants is a science hearing, a science day, for lack of
5 a better way of saying it. They have proposed that we do
6 that in May of this year. And to the extent that that
7 science day is an opportunity for each side to take thirty
8 minutes in front of the Court and sort of fill you in on
9 some of the mechanics of what's going on and the basics of
10 the position, that would be fine. We recognize that the
11 Defendants will not have completed their document production
12 until probably July, so, certainly, that's not a time where
13 the Plaintiffs would be in a position to bring in experts,
14 to put on an in-depth **Daubert**-type case, but if it's limited
15 to thirty minutes or forty-five minutes a side, information
16 to the Court, we would be prepared to do that in May, if the
17 Court would like. Anything more extensive than that, of
18 course, we'd need to move much later in the process.

19 Toward that end, we do believe that we would like to
20 be taking depositions a bit earlier than the Defendants have
21 indicated. We will need documents presented or produced for
22 those witnesses that we want to depose, but some of the
23 witnesses are just 30(b)(6) deposition notices, and the
24 Defendants have suggested that those wait until the summer
25 and later. We see no reason to be waiting. We think we can

1 be started with that now.

2 The same is true for interrogatories and requests
3 for production. We don't see the need to wait until the
4 summer. We can move those now.

5 The reason I don't think that those are difficult
6 issues is because those are all things we can move forward
7 on sooner. The big challenge to me would be harder dates
8 like when do you have the bellwether protocol in place and
9 when do you start looking at trying these cases, and our
10 calendar seems to run parallel, roughly, to the Defendants
11 in that regard, looking at trying to have a bellwether
12 protocol in case maybe by next January so that we could then
13 look at the Court's schedule and decide how long is needed
14 to discover those bellwether cases in detail and then
15 prepare for trials in your Court.

16 Of course, I know that a number of judges seem to
17 also be looking at the idea of doing some type of summary
18 jury trials, things of that nature. If this Court's
19 interested in those or the parties were interested in those,
20 we would engage in discussion and could fit those into the
21 schedule, as well.

22 So I think, long story short, the only area of
23 serious discord, other than us wanting to move up some dates
24 so that we can begin our discovery sooner, is the
25 Plaintiffs' fact sheet issue of ninety days or not versus

1 120 days. We're not trying to push the Defendants into that
2 too quickly for them. If they need 120 days, that's fine,
3 but we'll be candid with the Court and tell you what we'll
4 need for our Plaintiffs' fact sheets once we know what it
5 looks like.

6 So, in short, looking at January for a time of
7 bellwether protocol in place. Before that time, we need to,
8 the parties need to, get together a deposition protocol,
9 because we should start depositions fairly soon. And all of
10 the lawyers in these cases are so experienced, that
11 shouldn't be a problem doing that and submitting it to you
12 as an agreed order.

13 So my hope would be, if these guidelines work okay
14 with you, in four weeks or whenever our next conference is,
15 we should, ahead of that time, have an agreed order in front
16 of you to sign on all of these dates.

17 **THE COURT:** Thank you, sir.

18 Ms. Linder, or, Mr. LaDue, anybody in position to
19 speak? I hope.

20 **MR. LaDUE:** Judge, last time we talked about this,
21 we did, the Defendants, propose some date ranges, many of
22 them the same as what Mr. Lanier just discussed, and we
23 really haven't had a chance to dialogue back and forth on it
24 and develop some more refined dates.

25 So I do want to say that I think probably we'll need

1 longer than thirty minutes to make the science day valuable
2 to the Court, so that's something we'll have to discuss. I
3 wouldn't want to agree to limit it to a thirty-minute
4 presentation. I don't think we can do it justice in that
5 short period of time, but that's certainly something we can
6 discuss if we can continue to dialogue on this. We've done
7 well with the other things we've been talking about, and I
8 think we should be able to resolve these issues and propose
9 a schedule for the Court to look at on all of these events
10 that Mr. Lanier just discussed.

11 **THE COURT:** Thank you, sir.

12 I think for the -- just, again, throwing this out
13 for guidance, I think January, to put the bellwether
14 protocol in place, seems reasonable, given the discovery
15 that has to be done between now and the time we do that.

16 For the science day, I don't want the science day to
17 be a **Daubert** hearing. I have this feeling that I'm going to
18 have a few of those, as it is, so, I guess, while I don't
19 want to crimp anybody with thirty minutes, if you think
20 you're going to need longer, I would prefer more basic so
21 that I can get into, if there are discovery disputes, those
22 with a little more understanding, but I don't view it as a
23 **Daubert** hearing or a summary judgment ruling or anything of
24 that sort, just to basically let me understand what each
25 side contends and what the science behind it deals with.

1 And I know there was a little bit of that in your
2 original submission, so I won't be coming into it completely
3 cold, but I guess I would rather do it sooner rather than
4 later and maybe not limit it to thirty minutes a side but,
5 hopefully, get it done in a half day.

6 I would tell you that May probably will work pretty
7 well just because it's chopped up on my calendar with a
8 circuit conference and various activities, so May might be a
9 good time for me to find a half day that isn't going to have
10 juries waiting like today.

11 **MR. LANIER:** Okay.

12 **THE COURT:** As far as the depositions, I think I
13 indicated to you at the previous conference that one of my
14 concerns when I was on the Panel was that we kind of put
15 these things into suspended animation while the Panel deals
16 with what to do and then if there's time to get everybody
17 together in the Plaintiffs' Executive Committee, and it
18 seems to me, just guessing, knowing when the Panel acted --
19 my guess is that the petition -- and I don't even know which
20 side asked for the centralization, and I'm not going to ask,
21 but I assume that had to have been done around August, just
22 for the Panel to be able to deal with it at the end of
23 September or beginning of October, so August would be almost
24 a full year with no discovery taking place. And I
25 understand a certain period of suspended animation is needed

1 and helpful in the long run, but I would prefer that we not
2 have the case on ice for a year before we get going with
3 something. Obviously, we've made good headway in the last
4 four weeks, but the next step or pretty close to the next
5 step then would be the beginning of the discovery period.

6 Does that help?

7 **MR. LANIER:** That's a huge help, Your Honor, and
8 we'll talk and try and have you an agreed order on all of
9 these matters ASAP.

10 **THE COURT:** Okay. I wanted to ask one thing. In
11 the Case Management Order, it provides everything is stayed
12 on the remand motions.

13 I assume that the remand motions are going to -- at
14 least until we get up to speed and can tell everybody, "Tell
15 me why this ruling is wrong or that ruling is wrong," if
16 there's already a ruling that looks like it goes against a
17 movant or for a movant, that first month or month-and-a-half
18 of dealing with remand motions can be pretty slow.

19 What is your contemplation as to when the remand
20 motions would become ripe or have you thought about that at
21 this point?

22 **MR. LANIER:** Your Honor, from the Plaintiffs'
23 side -- am I okay speaking here or would you rather have me
24 there?

25 **THE COURT:** Yeah, there is fine.

1 **THE COURT:** I began the session by saying this is
2 why the MDL Panel doesn't hold hearings in this part of the
3 country in January or February.

4 Anyway, he has a paragraph on short-form complaints
5 and short-form answers, which, I assume, is not new to you
6 folks, but it was new to me, and I was wondering if anybody
7 thought that would be helpful in this case or if both sides
8 think it would be helpful, I guess, because I don't want to
9 do it over somebody's objection.

10 **MR. LANIER:** Your Honor, the short-form complaint
11 formed two purposes for the plaintiffs' Bar historically.
12 One is it was a whole lot easier to prepare because there's
13 not a lot in it, and the second is it provided a form
14 complaint so that the defendants could answer a suitable
15 federal court answer to that form complaint, hence, a
16 short-form answer.

17 We've kind of moved past that in the last year or so
18 because everybody's using word processors, and it's really
19 not that hard to do your long complaint, your short
20 complaint, your medium complaint, or whatever your system
21 happens to have.

22 Now, it doesn't give the benefit to the defendants
23 of having one complaint that they can go after on 12(b)(6)
24 grounds or one complaint that they can have a form answer
25 to, so what we have typically done and what we would

1 certainly be willing to do in this case for the Defendants
2 is just say, "We're not going to fuss over your answers.
3 You don't have to answer each one of these, specifically,
4 denying or agreeing to each allegation, until we get our
5 trial cases selected for bellwether, and, at that point in
6 time, we can do a complaint. If you want to do the 12(b)(6)
7 motions or whatever motions you want to do, fine." At that
8 point in time, you can put together an answer suitable for
9 federal court and I won't say kick the can down the road,
10 but -- what we basically found is it works well if the
11 parties -- we're not moving for default judgment on
12 anything. If they don't answer a complaint, we're going to
13 figure out how to get it to them and say, "Hey," you know,
14 "six months ago, you never answered us. Please, you know,
15 just make sure you've got an answer on file, so if the world
16 gets hit by a bus, people know you didn't die with a
17 default."

18 But, basically, I don't know that a short-form
19 complaint really helps us anymore, and I don't think that
20 we're insistent on an answer from them, so I'm not sure it
21 helps the Defendants either.

22 If the Court would like us to do it, we can do it.
23 It's not a problem. We send it out to all of the
24 Plaintiffs' Bar by word processor, and that's the form we
25 use, but we're not insistent on answers right now and can,

1 certainly, do that in an appropriate time and place down the
2 road, depending on --

3 **THE COURT:** Your preference would be not to at this
4 point?

5 **MR. LANIER:** Yeah. To us, it's just needless
6 paperwork right now, but --

7 **THE COURT:** Mr. Winter?

8 **MR. LANIER:** -- we don't mind. I mean, we can do --
9 anything the lawyers --

10 **THE COURT:** Not a powerful objection.

11 **MR. LANIER:** Yeah. Yeah. Yeah.

12 I mean, the reason it doesn't bother us is it's our
13 secretaries and legal assistants who do it -- it's not like
14 the other things we have to do ourselves -- but we don't
15 want to unnecessarily just do it just to do it.

16 **THE COURT:** Mr. Winter, any strong feelings one way
17 or the other?

18 **MR. WINTER:** Not really, Your Honor.

19 We've, actually, started to file answers in all of
20 the cases when the answers were due. There are maybe four
21 different complaints that almost all the cases follow, so
22 it's a template for us at this point. If it makes sense to
23 suspend that template for the time being, we're happy to do
24 that.

25 **THE COURT:** It doesn't sound as though it would be

1 terribly helpful to either side, and I threw it out only --
2 this isn't something that I've been dreaming of being able
3 to do for the last several years, so I will just set that
4 aside.

5 Other than setting the next conference, that's all I
6 have.

7 Is there anything further for the Plaintiffs or the
8 Steering Committee, anybody?

9 **MR. LANIER:** Nothing further, Your Honor.

10 **MR. LaDUE:** Nothing, Your Honor.

11 **THE COURT:** Well, thanks to all of you for fighting
12 the weather to get here. I commend your determination
13 because it wasn't easy today.

14 Let's pick a date, trying to -- and what I had hoped
15 to do was to alternate phone or not phone.

16 Do you want to stay with the in-person conferences?
17 This will be in spring. Do you want to stay with those for
18 a while at least?

19 **MR. LANIER:** I think for at least the lead lawyers,
20 the liaison counsel and perhaps even the Executive
21 Committee, it's a good thing to do, because it also gives
22 the Executive Committee a time for us to meet centrally, and
23 it gives us a chance to face-to-face with the parties. And
24 so if the others could attend by phone, that's always nice
25 for them to know that they can listen in, the rest of the

1 Plaintiffs' Steering Committee, but for us to attend in
2 person, I think, is actually more helpful for the
3 litigation.

4 **THE COURT:** Okay. We may as well keep it in person.
5 How would you look for March 18th? That's a Monday,
6 and I wouldn't have to move much for a 1:00 hearing.

7 **MR. ANAPOL:** Mr. Anapol on the phone.
8 It works for me, Judge.

9 **MR. LANIER:** Your Honor --

10 **MR. DASSOW:** That works for me.

11 This is Rob Dassow.

12 **MR. LANIER:** -- if it works for everybody else, I
13 don't want to be the stick in the mud. But if the 11th or
14 25th Mondays or even the -- would work? I have a commitment
15 the 18th that I would be loath to break, but I'm not really
16 that vital to the party. I just like coming up here.

17 **THE COURT:** I can do the 25th. My calendar would
18 work.

19 Mr. Anapol, how about you?

20 **MR. ANAPOL:** I would prefer the 11th or the 18th.
21 The 25th is a little tough for me.

22 Is the 11th an option, Judge?

23 **THE COURT:** Yeah. Let me look at it here.

24 **MR. LANIER:** Your Honor, let's just stick with the
25 18th. Anapol owes me one of these because he didn't show up

1 today, and I can skip, and he can handle it. Let's stick
2 with your first choice then, Your Honor.

3 **THE COURT:** Does that work for the -- certainly,
4 it's going to work better for everybody than today did, I
5 imagine.

6 Did you want to doublecheck with the Steering
7 Committee, Mr. Lanier, or are you just working with whoever
8 can be here?

9 **MR. LANIER:** No. Our view is Anapol didn't show up
10 today and Dassow didn't show up today, and it serves them
11 right to suffer, so I will commit them to being here in
12 person on the 18th.

13 **THE COURT:** Let's stick with 1:00, unless people
14 have found that flight schedules make that hard.

15 **MRS. POTTS:** You have a sentencing at 1:00.

16 **MR. ANAPOL:** That's great, Judge. Thank you.

17 **THE COURT:** That's far enough down the road that we
18 can adjust that.

19 So we'll do the next one May 18th -- did I say,
20 "May"?

21 **MR. LANIER:** March.

22 **THE COURT:** -- March 18th at -- you know what? I
23 just looked at February 18th, so let me just doublecheck the
24 18th of March. Yeah. No, that's fine, so we'll do one
25 o'clock. We'll hold it in person.

1 And, again, if you folks can set up the call for
2 people who can't be here so they can monitor, if they want.

3 If you find -- and, I gather, this is mostly the
4 Plaintiffs' side -- that people don't care to do that, let
5 us know, and we can stop that. Otherwise, we'll put on the
6 docket sheet or the Website, I mean, the number to call into
7 for the --

8 **MR. LANIER:** Thank you, Judge.

9 **MR. DASSOW:** Your Honor, this is Rob.

10 I'll be sure to do that.

11 **THE COURT:** I'm sorry. I can't -- you're going to
12 have to get closer to your microphone.

13 **MR. DASSOW:** Yes, Your Honor.

14 It's Rob.

15 I will make sure that's done, like I have been,
16 about a week prior to the hearing, with the telephone number
17 and everything.

18 **THE COURT:** Okay. Thank you.

19 And, again, thank you for the work and the agreement
20 you've done over the last twenty-eight days. It's been very
21 helpful.

22 I look forward to seeing you in March, and things
23 should be better by then. There's only three days left in
24 winter.

25 **MRS. POTTS:** All rise.

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(All comply;
Proceedings concluded.)

CERTIFICATE

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

DATED THIS 7TH DAY OF MARCH, 2013.

S/S DEBRA J. BONK

DEBRA J. BONK
FEDERAL CERTIFIED REALTIME REPORTER