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

IN RE: ZIMMER NEXGEN KNEE	}	MDL No. 2272
IMPLANT PRODUCTS LIABILITY		Master Docket No. 11C5468
LITIGATION		Chicago, Illinois
		May 19, 2016
	)	9:34 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE REBECCA R. PALLMEYER

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1 (Proceedings heard in open court:)

2 THE CLERK: 11 C 5468, In Re Zimmer/NexGen Knee  
3 Implant for status.

4 THE COURT: Good morning.

09:34:21 5 ALL COUNSEL: Good morning, your Honor.

6 THE COURT: We should get appearances. We can begin  
7 with the plaintiffs.

8 MR. BECKER: Good morning, your Honor. Tim Becker  
9 on behalf of the co-lead counsel.

09:34:31 10 MR. RONCA: Good morning, your Honor. Jim Ronca for  
11 plaintiffs.

12 MR. MORRIS: Good morning, your Honor. Jim Morris on  
13 behalf of Jemma Goldin.

09:34:41 14 MR. PENNOCK: Your Honor, Paul Pennock for Vicki  
15 Lewis.

16 THE COURT: Okay.

17 MS. PIERSON: Good morning, your Honor. Andrea  
18 Pierson for Zimmer.

09:34:48 19 MR. BENNETT: Good morning, your Honor. Steve  
20 Bennett for Zimmer.

21 MR. MEYER: Good morning, your Honor. Peter Meyer  
22 for Zimmer.

23 MR. PRICE: Your Honor, Joe Price for Zimmer.

09:35:01 24 MS. BUTLER: Good morning, your Honor. Abi Butler  
25 for Zimmer.

1 THE COURT: All right. We're here for status, and I  
2 do have the parties' proposed agenda for this morning's  
3 conference. Why don't we begin -- I guess what I'd like to do  
4 is begin with status reports on the Goldin and Lewis  
5 litigation, maybe beginning with Goldin.

09:35:18

6 MS. PIERSON: Your Honor, if I might start, you may  
7 recall, your Honor, that three weeks ago, Mr. Millrood and the  
8 lawyers for Ms. Lewis and Ms. Goldin stood before you, and  
9 they assured you that these cases would go to trial in the  
10 fall. They told you that they had retained and discussed the  
11 cases with experts and that they were prepared to proceed.

09:35:35

12 Your Honor, I'm deeply troubled to report to you that  
13 we learned yesterday afternoon that the Lewis case will not  
14 proceed to trial and, in fact, is likely to be dismissed, and  
15 we learned a few days ago, maybe a week or more ago, that in  
16 the Goldin case, the plaintiff will not pursue a high-flex  
17 theory either and that the plaintiffs believe it is a Track 2  
18 case, not a Track 1 case.

09:35:53

19 Judge Pallmeyer, I took Ms. Lewis's deposition just  
20 last week on Tuesday, and, frankly, it took me about five  
21 questions to confirm that Ms. Lewis had never used high  
22 flexion in her daily activities either before or after she  
23 received her Zimmer implant. A simple conversation with  
24 Ms. Lewis was all it took to confirm that she was not, in  
25 fact, a case that fits the theory advanced by Dr. Brown and

09:36:11

09:36:29

1 Dr. Feto.

09:36:46

2 Mr. Pennock called me last evening and reported that  
3 he had learned just yesterday that Dr. Feto had spoken with  
4 Ms. Lewis and she told him the same thing. Having had a  
5 conversation with Ms. Lewis, it was clear that she did not  
6 achieve high flexion at any time either and that that could  
7 not possibly be the cause of the loosening of her femoral  
8 component.

09:37:00

9 I'm less familiar with the Goldin case. Mr. Bennett  
10 has been conferring with Mr. Morris on that matter, but my  
11 understanding, your Honor, is that upon conferring with his  
12 own experts, Mr. Morris has learned that in the Goldin case,  
13 the source of her loosening was her obesity. It was not, in  
14 fact, anything to do with the design of the component or  
15 having achieved high flexion.

09:37:16

16 We think it's important that you hear from the  
17 lawyers who represent Ms. Goldin and Ms. Lewis, given the  
18 conversation that we had with you just a month ago about these  
19 cases, but neither case will be tried in the fall or is  
20 appropriate for trial, given the confirmation of these facts  
21 within the last few days.

09:37:31

22 The parties have conferred, the leadership of the  
23 parties have conferred, your Honor, and we'd ask that after  
24 you have that conversation with the lawyers for Ms. Lewis and  
25 Ms. Goldin that we have an opportunity to talk with you in

09:37:44

1 chambers about what this means for the greater MDL and the  
2 impact that it has with respect to the Court's trial schedule.

3 THE COURT: All right. Thank you.

4 MR. PENNOCK: May I proceed?

09:38:02

5 THE COURT: Sure.

6 MR. PENNOCK: Paul Pennock for Vicki Lewis.

7 Judge, I'm going to have to, if I may, go over some  
8 of the facts of the chronology here with respect to this  
9 matter.

09:38:17

10 First I'll state some quite a good deal of surprise  
11 at counsel's tone because it certainly was not in any way the  
12 tone with which my information was received by her when I  
13 called her last evening within 10 minutes of speaking to my  
14 expert after he had examined Ms. Lewis. In any event, it is  
15 what it is.

09:38:39

16 The Lewis case, after it was selected, we, of course,  
17 immediately began to work it up, and I've been working  
18 extensively on it since early April or, well, mid-March. I  
19 know it was selected in early February.

09:38:56

20 Before yesterday, I had met with Dr. Feto on two  
21 occasions in my office to go over the case and also at his --  
22 near his office to go over the case and discuss the details of  
23 the case and the chronology and the facts as we understood  
24 them, as well as the X-rays, including the -- ultimately we  
25 had a conversation with him on X-rays that were belatedly

09:39:21

1 discovered by the implanting doctor.

09:39:40

2 In my conversations personally with Dr. Feto and  
3 discussing what we knew from Ms. Lewis from our conversations  
4 with her as well as her fact sheet where issues concerning  
5 full flexion are addressed, he had no issues at all, nor did  
6 I, that this case was going to be a problem in terms of  
7 flexion. In other words, did she achieve this flexion on some  
8 regular basis such that the self-loosening potential nature of  
9 this device was thus instigated and loosened, and that's what  
10 happened.

09:40:02

11 I met with him last on May 6th in person, and we were  
12 both completely comfortable that based on what we knew, I had  
13 previously been out and met personally with the client in mid  
14 or early April and went over the facts with her in person, and  
15 there was no doubt in my mind that the type of activity she  
16 had been engaging in as a prep cook with Appleby's both in  
17 Virginia and in Columbus, Ohio over a period of about 16 or  
18 18 months, as well as a second job at McDonald's were creating  
19 the type of -- the type of stresses on the knee that would  
20 have implicated the design defect in this case.

09:40:24

09:40:51

21 So we had her deposition last week, and as  
22 Ms. Pierson notes, she was questioned, of course, on the  
23 flexion issues. I did not find the questioning to be so  
24 probing as to give me any great concern. There were questions  
25 that I think were contradictory to some degree to what she had

09:41:14

1 told me, but there were questions about whether she did  
2 squatting -- I don't have the list here, but I was not -- I  
3 did not walk out of the deposition thinking that all was lost  
4 based on the questioning.

09:41:31

5 Certainly like any deposition, particularly of  
6 clients, I walked out thinking, okay, we're going to have to  
7 be dealing with some cross-examination on -- on the nature of  
8 the answers and so forth. It was kind of standard fare for  
9 me, and I apologize for being so longwinded, but I just felt  
10 the brunt of an unsuspected attack here.

09:41:51

11 So I had Dr. Feto examine her because we have the  
12 expert report deadline coming up. I don't think even  
13 Ms. Pierson can question the diligence with which I have been  
14 pursuing this case in my office. We have been working very  
15 hard and extensively, and I've personally been handling these  
16 things.

09:42:09

17 Dr. Feto examined her on -- today is Thursday -- on  
18 Tuesday, and I was in Lafayette, Louisiana in court until  
19 about 6:00 p.m. Central Time on Tuesday. I received an e-mail  
20 from my paralegal that he had heard from Dr. Feto, and he  
21 had -- Dr. Feto needed to speak to me and had concerns as to  
22 whether he could support the case.

09:42:29

23 Subsequently, on Wednesday, I got back -- I missed my  
24 plane Tuesday night. I got back on Wednesday about 1:30 or  
25 2:00 in the afternoon. I immediately tried to set up a call

09:42:51



1 with Dr. Feto. I was ultimately able to speak to him at about  
2 7:00 last night Eastern Time and had a fairly detailed  
3 discussion with him as to why he thought he could not support  
4 the case based on the history that he took from the plaintiff.

09:43:14

5 He specifically advised me upon specific questioning  
6 from me that this was -- ultimately, he would not issue a  
7 causation report, that he could not do so because he did not  
8 have the facts from the plaintiff herself that would support  
9 this ongoing flexion during that period of 18 months or two

09:43:36

10 years.

11 I was, needless to say, surprised, very disappointed,  
12 and not a little bit aggravated, and -- but I also asked him  
13 if he thought this was simply his view of the world and maybe  
14 I could -- there would be another expert that might look at  
15 things differently, and he did not think so.

09:43:57

16 I do have, contrary to perhaps counsel's view of  
17 Dr. Feto, I have great respect for him, and in my dealings  
18 with him over the last couple of months, I've felt that he's a  
19 straight shooter, and I felt at that time, after consulting  
20 with my partners in my office, that in looking -- I already  
21 knew we didn't have a failure-to-warn case here in my view --  
22 I'm sorry. We didn't have a failure-to-warn case on obesity,  
23 and so I called Andrea because I did not want to spring on  
24 them this morning the conclusions that we reached last night.

09:44:18

09:44:43

25 I wanted her to have the opportunity to speak with her

1 colleagues and her client before coming in here today.

2           So I have not met or consulted or spoken to and  
3 advised Ms. Lewis yet. That's a conversation that's going to  
4 be very difficult, but without an expert, I don't know where  
09:45:01 5 to go here. And, you know, I think the judge -- I hope the  
6 judge is aware, I was not only fully willing and ready and  
7 able to try this case, I was very much looking forward to  
8 trying this case, and --

9           THE COURT: You know, I know that Ms. Pierson would  
09:45:18 10 like to respond, and I'm sure that you have more to say, and  
11 I'm sure I'll hear more from the PSC.

12           Let me just point out that this difficult  
13 conversation you're about to have with your client is one that  
14 I naively believed would have happened so long ago, and I fear  
09:45:47 15 that your case, that Ms. Lewis's case will be like so many I  
16 have, dozens, maybe more than a hundred, in which counsel come  
17 and say we can't go forward with the case, we can't find an  
18 expert, we want out, and I don't want to make lawyers go  
19 forward with a case that they feel has no merit. I think  
09:46:05 20 there are real ethical problems there.

21           But you know what happens? The client is -- has the  
22 rug pulled out from under him or her, whether validly or  
23 invalidly, they feel terrible, terrible anger at the system,  
24 and they aim that anger in part at me for allowing the lawyers  
09:46:23 25 to leave them, abandon them, in situations where they had been

1 led to believe or had come to believe that they had a basis  
2 for going forward.

09:46:37

3 I have an MDL, and I'm going to end up in this case  
4 in this courtroom with dozens, maybe more than a hundred,  
5 unrepresented individuals. This is -- this is completely  
6 contrary to what I understood the process to be. I feel a  
7 real sense of responsibility to these people. I'm going to do  
8 what I can to have this -- to resolve their cases in a fair  
9 way. But I fear that your situation will be like so many  
10 others, where Ms. Lewis is going to be telling me don't let  
11 him withdraw, don't let him dismiss my case, I want to go  
12 forward. I understood I had a case here.

09:46:56

09:47:12

13 And then the argument has to come from me in which  
14 I'm trying to explain, I, who know very little about this,  
15 what the loosening theory was all about, why perhaps their  
16 case doesn't fit that criteria, why, without an expert you  
17 ordinarily cannot proceed in a products case, et cetera. It's  
18 just -- you know, Ms. Pierson has her own objections. Those  
19 go in an entirely different direction, and they have validity,  
20 too.

09:47:34

09:47:49

21 I've got to tell you from the Court's perspective,  
22 this is extremely unsettling. It's now been not months,  
23 years, years in which I would have expected that the clients  
24 were advised all along, here's the situation, here's what  
25 we've got to know about, here's what we're going to have to

1 prove, here's what we're going to need in order to go forward,  
2 you understand all that, and I discover that so often they  
3 don't.

09:48:01

4 Now, it sounds like there may be a bit of a dispute  
5 about what actually happened at the deposition. You're saying  
6 you thought the deposition was, you know, a little on -- not  
7 quite as wonderful as you would have hoped, but Ms. Pierson  
8 said within five questions, she was able to determine your  
9 client never got high flexion, and you're saying you only  
10 learned from Dr. Feto in an examination that occurred very  
11 recently.

09:48:13

12 For a case that's supposed to go to trial this fall,  
13 why wouldn't the expert have seen her months ago? I -- among  
14 the things we need to address, I don't mean you personally,  
15 some of the things all of us need to address is what should we  
16 be doing about all of these unrepresented individuals? Is  
17 this problem going to be simply let the lawyers walk out and  
18 I've got to handle on my own? That's not -- that's not what I  
19 signed up for, and I don't think it's appropriate.

09:48:32

09:48:49

20 And I think it's wrong. I think it's wrong. Whether  
21 or not in any individual case it's the appropriate thing, we  
22 are now creating an image where what happens in these MDLs is  
23 that people just kind of hope for the best and pull away when  
24 things go wrong. That's not the way litigation should be  
25 handled. That's not the way -- that's not a way of showing

09:49:05

1 responsibility to the system or to the clients.

2 I'm sorry to vent. I'm very disappointed to hear  
3 that the Lewis case is not going forward. I don't know what's  
4 going to happen on Goldin. I had this time set aside. I want  
09:49:24 5 bellwether trials. I want them very much. I want to resolve  
6 this.

7 These -- some of these plaintiffs have been waiting  
8 for years. They've been sitting there ruminating about how  
9 bad their knees feel and they wanted this resolved and we've  
09:49:36 10 been telling them we've got a system in place, we'll get this  
11 going, we're thinking of you, only to discover, no, we're  
12 really not making progress because so many of these cases go  
13 away or don't go away but the lawyers go away.

14 MR. PENNOCK: Judge, if I may just reply briefly.

09:49:53 15 THE COURT: Sure.

16 MR. PENNOCK: I don't want the Court to be left with  
17 the impression that my office and myself have not been in  
18 touch with Ms. Lewis. We -- the facts as she related them to  
19 us were fully supportive of a history that could have resulted  
09:50:08 20 in the loosening of this device from the defect.

21 That is what we were told. That is what we  
22 understood. That is what we operated on. That is why we have  
23 been spending all the time, money and energy over the last two  
24 months to get this case ready since it was selected, and I was  
09:50:25 25 stunned that -- that this history taken from Dr. Feto resulted

1 in this.

2 I'm not going to -- I don't believe that Ms. Lewis is  
3 going to end up being a pro se client. I intend to discuss  
4 with her the fact that her case cannot be supported.

09:50:44

5 I believed -- first, I believed yesterday the case  
6 was meritorious. I believed it since I got in. I actually  
7 still believe it, Judge. I actually still believe that there  
8 has been some massive disconnect between Ms. Lewis and  
9 Dr. Feto. I saw the disconnect on her deposition. You can

09:51:02

10 watch the video, and both Andrea Pierson and I agreed, I think  
11 there's a big communication disconnect.

12 But what can I do at that point? Tell my expert to  
13 go re-question the person to get the words that he needs to  
14 hear? I couldn't do that.

09:51:18

15 THE COURT: Are you saying that Dr. Feto's analysis  
16 of your client is different from that of her treating  
17 physicians?

18 MR. PENNOCK: No. Her treating physicians have not  
19 been deposed yet. I don't know what --

09:51:30

20 THE COURT: Do the records show that, according to  
21 the treating physicians, she had high flexion and she now just  
22 doesn't remember and Dr. Feto thinks she never did?

23 MR. PENNOCK: The records do not show or reflect that  
24 she had high flexion outside of the exam room, but in the exam  
25 room, they showed that she had high flexion. But that's when

09:51:46

1 they're taking the leg and actually assisting it through the  
2 angles to see how far, with some soft assistance, if you will,  
3 can they get the leg to flex.

09:52:01

4 That was reflected in the records, and we had that,  
5 and that was one of the reasons we were comfortable with the  
6 case and thought it was an appropriate case, but our  
7 conversations and understandings from the client, as well as  
8 the fact sheet and so forth, we -- and the history, her job  
9 history, it all was adding up that this was a case that was  
10 meritorious, and let's go try this case.

09:52:18

11 THE COURT: In that case, maybe Dr. Feto is wrong.

09:52:35

12 MR. PENNOCK: Maybe Dr. Feto is wrong. I did not  
13 meet with him. I felt it incumbent. I couldn't come here  
14 today and sit here, having had that conversation with Dr. Feto  
15 last night, without having told my adversaries, lead counsel,  
16 and, of course, the Court. If I was going to be telling the  
17 Court, I had to tell them.

09:52:53

18 So, you know, this occurred all between the hours of  
19 7:00 and 8:00 p.m. last night, and Dr. Feto, maybe his history  
20 was -- he's a very thorough guy. I don't know. I haven't met  
21 with him, but it certainly has occurred to me that, you know,  
22 somehow or another, she was disconnecting on the questioning  
23 that was happening with Dr. Feto.

09:53:14

24 Ms. Pierson could not deny that the disconnect during  
25 her deposition with her questions was all day long. And so

1 that's occurred to me, but I didn't know what else to do at  
2 this juncture. If I start trying to retread things, I don't  
3 think that that's -- that that's appropriate.

09:53:29

4 THE COURT: You've read my ruling on Dr. Feto's  
5 *Daubert* motion.

6 MR. PENNOCK: I saw that a couple months ago, Judge.

09:53:44

7 THE COURT: All right. Well, tell me this: If you  
8 were sitting in this chair, what would you do to get cases for  
9 bellwether treatment? What would you do? Besides what I have  
10 done, what the lawyers have recommended very effectively that  
11 I do? What would be the appropriate way to find a case that I  
12 can be confident is going to be tried absent somebody dies?

09:54:04

13 MR. PENNOCK: I think that's a very good question for  
14 this particular litigation. I've been involved in many  
15 bellwether programs before. I have never had to stand before  
16 a Court and say this. I've never even had to come close to  
17 this situation in 23 years of doing this type of work.

18 THE COURT: That must mean --

19 MR. PENNOCK: In terms -- I'm sorry, your Honor?

09:54:17

20 THE COURT: That must mean that the way this case has  
21 been handled is somehow aberrant, so I would like to know what  
22 I should be doing to ensure that I don't have this problem  
23 anymore because I thought I had taken the appropriate steps  
24 months ago, years ago.

09:54:31

25 MR. PENNOCK: Your Honor, I'm not saying that you did



1 not, and I don't think that there was anything wrong with the  
2 handling of this case that resulted in the very unfortunate  
3 situation I'm in right now, but I'll tell you that what I am  
4 doing is that I am going to -- I already gave instructions  
09:54:48 5 last night, I'm having every one of my clients interviewed  
6 fully and completely -- and they have been already, Judge. I  
7 don't want the Court to think that this hasn't happened, but  
8 obviously there's some disconnects that are going on.

9 We are going to be evaluating every case to determine  
09:55:05 10 whether or not we can and therefore need to have -- engage an  
11 expert now on the individual case. It's a very costly  
12 endeavor, not typically done at this point until a case moves  
13 to trial. In mass torts it's not -- it would almost sometimes  
14 be impossible to have every case individually evaluated by an  
09:55:26 15 expert unless and until it's moving into a discovery pool or a  
16 trial pool.

17 THE COURT: This is not a mass tort.

18 MR. PENNOCK: Well, that is true. It's not a huge  
19 one. That's true.

09:55:39 20 MS. PIERSON: May I respond, your Honor?

21 THE COURT: Sure.

22 MR. PENNOCK: So in terms of --

23 THE COURT: These are individual cases consolidated  
24 for pretrial discovery before me. They're individual cases  
09:55:48 25 with individual clients who individually have a right to

1 justice. That's what this is.

2 MR. PENNOCK: I agree with that, Judge, completely and  
3 wholeheartedly. What I meant was that until this point, I did  
4 not see any need to have these, each and every one of these  
09:56:06 5 client's cases evaluated by an expert witness at this point.  
6 I don't -- that is simply my point.

7 At this -- now, do I think that that is true that I'm  
8 going to do that? I have to do that now. I have to because  
9 of the circumstances the way they developed in this case that  
09:56:22 10 were so surprising to me -- and I've done quite a bit of this  
11 work -- that I have to move to a different approach to make  
12 sure that the next case up, which is Joas that I have, the  
13 next case up is Joas.

14 I've been dealing with summaries and had phone calls  
09:56:38 15 on Joas last night and e-mails this morning because  
16 obviously -- I'm not as frustrated as the Court, and I don't  
17 have any basis to be as frustrated as the Court, but I'm  
18 certainly frustrated and I'm certainly fearful that I do  
19 not -- I have to take steps to guarantee that I am not in this  
09:56:59 20 situation ever again in this litigation or any other  
21 litigation.

22 I already sent out a memo to my entire department,  
23 all of my attorneys, laying out how -- some of these concerns  
24 and the developments here to ensure that our procedures do not  
09:57:16 25 ever allow this to happen again. I don't think there was a

09:57:35 1 failing here. I will be able to document for the Court the  
2 communications with this client, including my own personal  
3 in-her-home communications in early April, but clearly  
4 something needs to change because here we are in this very bad  
5 situation.

6 MR. MORRIS: Your Honor, may I be heard before we get  
7 the ship too far out into the ocean?

8 THE COURT: Sure.

09:57:45 9 MS. PIERSON: I'd like to respond on Lewis, and then  
10 Mr. Morris can address on Goldin.

11 THE COURT: Goldin? All right. I'll hear a response  
12 on Lewis.

13 MS. PIERSON: Just a couple of points, your Honor.

09:57:55 14 We very much appreciate the professional courtesy  
15 that Mr. Pennock extended by contacting us as soon as he had  
16 spoken to Dr. Feto, so I do want to be clear that he is  
17 absolutely correct when he says once he had that conversation  
18 with his expert, he called me immediately thereafter, and --  
19 and we appreciate that.

09:58:08 20 As it relates to the Lewis case, what's lacking  
21 though, your Honor, is any suggestion that someone spoke to  
22 Ms. Lewis early on and she said that she did things that were  
23 high flex and somehow I missed that in the deposition and  
24 Dr. Feto missed asking that right question, whatever it was,  
09:58:28 25 in his examination.

1 I mean, the fact of the matter is, I spoke with her  
2 for seven-and-a-half hours. I don't know how long Dr. Feto  
3 spent with Ms. Lewis. It's very clear to me that she did not  
4 use high flex in her daily activities at any point in time  
5 before or after she got her device.

09:58:43

6 But you asked the question about, you know, what to  
7 do in the position that you're in. And, your Honor, we're now  
8 up to 17 cases that have been picked by Zimmer, that have been  
9 picked by you, that have been approved by the leadership of  
10 the PSC, and we're in the exact same position after multiple  
11 orders from you on this point.

09:58:59

12 We believe it is time for a true Lone Pine order.  
13 There are 350 cases that are left before your Honor, or  
14 approximately, where the plaintiffs' lawyers say those cases  
15 include high flex, they include loosening, and they'll be  
16 pursued on a theory of high flex consistent with what you  
17 heard in Batty.

09:59:18

18 It's time for a true Lone Pine order where, in fact,  
19 an expert would need to look at those cases and confirm that  
20 they will support that theory. Then your Honor and the  
21 parties can choose from that pool of cases where there is  
22 truly a factual basis to proceed, prima facie evidence, to  
23 proceed. From that pool, we should choose the cases to be  
24 tried.

09:59:33

25 THE COURT: All right. Mr. Becker? I guess you're

09:59:49

1 up next.

2 MR. BECKER: Sorry.

3 Well, it's been an interesting morning. We learned  
4 about this late last night, early this morning.

10:00:02

5 So let me address two issues. First was your  
6 concern, which I share as well. What do you do with pro se  
7 plaintiffs?

10:00:22

8 So I can share with you, and I believe this to be if  
9 not correct a hundred percent, pretty darn close, that in  
10 terms of the leadership and the co-leads in this case that  
11 less than 10, 12 percent of their cases that ultimately made  
12 it on to your pro se list were -- came via motions to  
13 withdraw, that we were able to get most of our clients to  
14 dismiss their claims, and part of that may be because we're on  
15 the front lines and we understand the cases the best.

10:00:44

16 The problem, however, with the mass tort or MDL  
17 system is that it has many, many virtues which both sides  
18 embrace, and it has some underlying problems that have been  
19 created lately that you are now experiencing. So what

10:01:06

20 Mr. Bennett and I endeavored to do to reflect the concern that  
21 you articulated, which frankly I share as well, which is why  
22 only a handful of my clients were truly presented as motions  
23 to withdraw, was to create the two-track system such that  
24 those clients who had honest-to-goodness disputes with their

10:01:30

25 lawyers over the viability of the claim had an incredibly long

1 runway to be able to go and find alternative counsel, to vet  
2 the case amongst other skilled lawyers, and if unable to  
3 retain new counsel and satisfy the expert report requirement  
4 articulated in CMO 9 and 10 by September, those cases would  
5 then be dismissed.

10:01:55

6 Whether it be called failure to prosecute or just the  
7 inability to get an expert, that whole process was designed  
8 for two reasons: One, mindful of the fact that some of those  
9 clients may very well have a theory that does not fit within  
10 the general causation design defect theory that PSC and the  
11 co-leads developed, but -- but is unique to the idiosyncrasies  
12 of their cases. And so we allowed them eight months to find  
13 that.

10:02:12

14 I think in terms of fairness to those clients, that  
15 that was enough time for them. Now, I share your frustration  
16 with the system, so to speak, that too many lawyers do too  
17 little work. I don't think that's true of the vast majority  
18 of people who practice in pharmaceutical and device  
19 litigation. I think your experience is it's certainly not  
20 true of the PSC and the leadership that's appeared before you,  
21 by and large.

10:02:33

10:02:55

22 So the short answer to your question, Judge, is that  
23 come September, those folks who are pro se will have had  
24 eight months to find additional counsel or a new theory, and  
25 my suspicion is is if one of them came to you in late August

10:03:14

1 and said I finally found one and my lawyer tells me I have  
2 this theory and I believe him, that you would give them even  
3 more time.

10:03:29

4 But for the vast majority of them, at least in my  
5 experience, it is truly what you reflect, that there's a  
6 belief that they've been harmed. They feel upset, and they  
7 don't want to give up.

10:03:47

8 For that large group of clients who we who have gone  
9 to law school and practiced for decades know is not true  
10 legally, they've had due process vis-a-vis CMO 9 and 10. So I  
11 don't think you'll be belabored with hundreds of pro se  
12 clients.

10:04:10

13 With respect to your other observations about MDL  
14 process, I don't know that you get much of an argument from  
15 either Mr. Ronca, Mr. Millrood or even Mr. Pennock regarding  
16 that.

10:04:29

17 With respect to the second issue of Lone Pine, you  
18 know, I think that some of these conversations, as counsel  
19 alluded to earlier, are easier off the record, but I think  
20 just as a threshold matter, it sort of depends upon what the  
21 definition of "is" is.

10:04:53

22 We have now 30 to 40 percent of the MDL involving a  
23 recalled product. We have yet to really test that case. We  
24 haven't had a whole lot of clients drop out of that. Of the  
25 17 people that Ms. Pierson's referring to, they're not

1 5950 cases, so expanding a Lone Pine order to that recalled  
2 product doesn't seem appropriate.

10:05:14

3 We have other processes that may be used prior to  
4 requiring experts in every event; but in any event, standing  
5 before you today, less than a couple hours after Mr. Ronca and  
6 I learned of this and asking for a Lone Pine order without  
7 having a full vetting of what that Lone Pine order would  
8 include seems a little premature, which is why we asked to  
9 talk to you off the record so that we can share some of our  
10 thoughts about how we might unravel this knot.

10:05:35

11 But that being said, as somebody who has litigated  
12 this case for the last four or five years, I share the Court's  
13 frustration. I believe Mr. Pennock did everything he could to  
14 put this case forward for trial and did not want to be in  
15 front of you today telling you what he's telling you.

10:05:52

16 So, you know, our view is we think we have a process  
17 to resolve the pro se litigant issue, which is fair and which  
18 the Court adopted, and, you know, we think we have some ideas  
19 that we'd like to share with you about how we move forward  
20 from here.

10:06:09

21 THE COURT: All right. And just I do want to hear  
22 from counsel for -- it's Mr. Morris.

10:06:28

23 MR. MORRIS: Your Honor, for 30 years, I've practiced  
24 in the field of mass torts. I started out with asbestos cases  
25 in *Cimino vs. Raymark Industries*, where we represented 2600



1 plaintiffs. We got them to trial within nine months. We had  
2 plaintiffs' depositions, 1600, that took 45 minutes apiece,  
3 okay? We had a little egg timer that we would put on the  
4 table, and the defense attorney would be given 45 minutes, and  
10:06:46 5 that's it. And that's all they needed. At the end of that  
6 process, they were turning it down the last 10 or 15 minutes.

7 So the perception of what litigation entails and the  
8 reality are often very different, and I give you that  
9 background because I went from that into the Texas tobacco  
10:07:06 10 case representing the State of Texas, then into Fen-Phen, then  
11 into Prempro, along the way, Propulsid, Rezulin, numerous  
12 other drug cases, and I come here today with a wealth of  
13 experience. And I give you that background so that you  
14 understand that my perspective may be a little bit different  
10:07:23 15 than the other folks here in the courtroom.

16 I believe that plaintiffs' lawyers that represent  
17 victims are ultimately result oriented. They want a result.  
18 They want to know if their case is going to move forward, if  
19 they're going to get a trial, if their case is going to  
10:07:41 20 settle. And at the end of the day, if you have a litigation  
21 that's gone on for three or four years and there have been no  
22 settlements, there have been no verdicts or few verdicts and  
23 the verdicts have not been positive for the plaintiff,  
24 plaintiffs' lawyers go on to something else. That's a  
10:08:00 25 reality.

1           They have to do it from a financial standpoint, and  
2 even though it seems unfair to the plaintiffs that are being  
3 represented, and many times it is unfair, oftentimes in order  
4 to survive, the plaintiffs' lawyers move on to something else.

10:08:15 5           And in this particular MDL, I come here with one  
6 month of knowledge. I don't represent any bulk of clients. I  
7 have one client that they've asked me to represent,  
8 Ms. Goldin. As to those hundred pro se plaintiffs out there,  
9 I'd love phone numbers and mailing addresses so that I could  
10:08:40 10 offer my services because the only way that I stay in this  
11 long term is if I have a clientele sufficient enough to  
12 warrant my time and expense, and that's true probably of all  
13 the plaintiffs' lawyers that are in the litigation.

14           The defense position obviously is very different.  
10:08:59 15 They're not dealing with the same issues. They're not dealing  
16 with the issues that the Court has to face as to those pro se  
17 litigants. Defense counsel can just stay mum on all that, and  
18 it doesn't matter to all of them.

19           We're where the problem is, and I bring you good  
10:09:15 20 news. Despite defense counsel's representation, the Goldin  
21 case will go forward.

22           THE COURT: Good.

23           MR. MORRIS: Now, with reference to the e-mail that I  
24 sent, when I was last in this court three weeks ago, four  
10:09:31 25 weeks ago, whenever it was, your Honor was taking up a motion

1 for sanctions on behalf of an attorney who apparently either  
2 bailed on the case or he hadn't met a deadline, something like  
3 that.

10:09:49

4 And in my initial conversations, the threat of  
5 sanctions kept coming up again and again in conversations with  
6 me, and I don't like to practice law that way. I -- you know,  
7 I practice law right now in the State of California. I have  
8 previously practiced in Texas, Pennsylvania, New York, now  
9 California, I'm licensed in all those states, and to me the  
10 threat of sanctions hanging over an attorney's head definitely  
11 impacts the strategy with which the attorney employs.

10:10:10

10:10:36

12 And so I became concerned because I have a unique  
13 case. Jemma Goldin at the time of her surgery was 5'1" and  
14 weighed 296 pounds. She has a BMI in excess of 50. As the  
15 Court is well aware, Body Mass Index is something that has  
16 been considered by experts in the industry that have written  
17 epidemiological reports and studies. It's certainly something  
18 that they take into consideration, and, in fact, there are  
19 particular studies that Zimmer did where certain people were  
20 not included in the study because of their excessive BMI.

10:10:56

21 We believe that there is a valid failure to warn  
22 claim in this particular litigation, and that is exactly what  
23 I intend to pursue in the Goldin case.

10:11:16

24 I wrote an e-mail because it seemed to me, although I  
25 don't think it's clear in CMO 8, 9 and 10, it seemed to me

1 that there may be some angling towards Track 1 being only  
2 design defect cases. Well, I will tell the Court candidly  
3 that I don't believe the Goldin case, when it reaches the  
4 jury, will be a design defect case. I do think that it will  
5 be a failure to warn case, which at least, given my last  
6 reading of state product liability law which the Court will  
7 accept under *Erie*, that there is absolutely a valid claim for  
8 failure to warn, and I intend to produce an expert report by  
9 June 1 that confirms that and that lays out our theory.

10 And I look forward to seeing the Court in trial in  
11 October. And I want to advance the ball, and I'm not walking  
12 away from it, and I'd like to look at those hundred pro se  
13 plaintiffs and see how many of them have a BMI in excess of  
14 40, and if they do -- I can tell you what happens.

15 What happens is there are lawyers in the hinterlands,  
16 all over the country, and I'm not going to disparage them,  
17 they're probably fine lawyers, but they probably don't  
18 practice in product liability law on a routine basis and  
19 certainly not probably in pharmaceutical products liability  
20 law on a routine basis.

21 I can tell you I've tried many of these cases to  
22 verdict. I've won some, I've lost some. What I can tell you  
23 is that there's a pretty small collection of lawyers that  
24 actually understand the succinct issues involving the  
25 directions for use, the warnings, the learned intermediary,

1 those things that your Honor now understands the relevance of  
2 and how important they are, and some of those lawyers out  
3 there may have released clients and dismissed clients who  
4 otherwise might have a valid claim, and for those clients, you  
5 know, where do they go?

10:13:24

6 I can tell you it's almost impossible for them to  
7 find another attorney. In their local -- let's say they're  
8 from Knoxville, Tennessee. In Knoxville, Tennessee, there may  
9 be one lawyer that's ever even been in an MDL much less tried  
10 a pharmaceutical case.

10:13:39

11 When that client goes and tries to find another  
12 lawyer and they go to Joe Stevens or Betty Smith who are good  
13 lawyers that have handled medical malpractice cases, auto  
14 accidents, they've handled slip-and-falls, when they look at  
15 the case, they're going to say, it's a pharmaceutical company.  
16 They'll make me spend \$300,000 just to get that case to trial.  
17 And that's what they'll make us spend, I promise you.

10:13:56

18 That practitioner can't take that case. There's no  
19 way they can take that case, and that's what's happened to  
20 those hundred people. Those hundred people that are out  
21 there, they can't find a lawyer. The only way that their  
22 claim ever gets to resolution is through the MDL process.

10:14:14

23 That's the beauty of this process. It gives a voice  
24 and an opportunity to plaintiffs that otherwise would never  
25 see the light of day in court because it's too expensive to

10:14:33

1 take them on.

2 THE COURT: So the only -- so what you're suggesting  
3 is that I can resolve my problem by telling all these pro se  
4 individuals that you're prepared to take their case.

10:14:46

5 MR. MORRIS: Well, you know, I certainly would be  
6 prepared to evaluate their case, and whether or not I take  
7 their case is still going to be based on the facts. The  
8 devil's always in the details. I mean, no case is easy. No  
9 case comes in to you perfect and pristine like they want you  
10 to believe that they do, and you have to look at it.

10:15:04

11 You know, some cases what if they had it in for  
12 12 years and then the revision occurred? Is that a case?  
13 They're going to say, hey, it's only supposed to last that  
14 long, okay, but it may be a plaintiff that's 40 or 45 BMI. So  
15 I might say, well, you still failed to warn. And they may say  
16 there's no injury. See, that's one case that could be out  
17 there in that 100.

10:15:21

18 THE COURT: And there are going to be -- I'll tell  
19 you about another scenario you're going to see: People who  
20 will come in and say that they got the implant and within a  
21 month, it wasn't working properly. So that's not a loosening  
22 case. That's a case -- that's just not a loosening case.

10:15:33

23 MR. MORRIS: Right.

24 THE COURT: So some lawyer then says, Judge, this  
25 isn't a loosening case. I don't have an expert that's going

10:15:46

1 to support the theory that we wanted to pursue here. I want  
2 out. And the plaintiff who probably could have told the  
3 lawyer, hey, my knee has been hurting from Day 1 or from Day  
4 30, apparently that communication never happened.

10:16:02

5 I -- if there's some way ethically that I can simply  
6 post your name and number or that of, you know, 10 lawyers who  
7 are willing to look at those cases, I would be more than  
8 delighted to do it because there are a lot of people that are  
9 looking around for lawyers now and are writing me letters like  
10 this.

10:16:15

11 Here's one: "Obtaining another attorney is futile.  
12 I have been rejected by three attorneys to date. I've been  
13 told that once an attorney abandons a case, no other attorney  
14 will touch it out of professionalism to the establishment.  
15 Therefore, I ask that you reconsider your order and compel my  
16 attorney to keep my case."

10:16:27

17 MR. MORRIS: Yeah, that's exactly what I told your  
18 Honor. And, you know, that's the problem you're going to run  
19 into repeatedly, and I would think that that's more the norm  
20 than the exception.

10:16:39

21 But, you know, I don't know the way, and I will talk  
22 to my brethren at counsel table because quite honestly for me,  
23 you know, I'm like any other lawyer out there. Handling one  
24 case in an MDL is not cost effective and it's not time  
25 effective, but I'm here and I've studied this case for the

10:16:55

1 last month and I've come to believe that there are acceptable  
2 liability facts, and I think if I tried ten of them, I'll  
3 probably win five. I won't win a hundred percent, but I'll  
4 win half the time.

10:17:12

5 And, you know, what would help your Honor the most is  
6 for me to get some verdicts. If I can get some verdicts, that  
7 could change the whole approach that the parties are taking to  
8 the litigation because, No. 1, it would give us a number to  
9 evaluate as to what is a reasonable verdict going to look

10:17:29

10 like; and then, secondly, it might convince Zimmer that  
11 discussions with the plaintiffs' attorneys as to value has  
12 value.

13 THE COURT: Of course. Of course. That's the whole  
14 point of doing these bellwethers.

10:17:43

15 MR. MORRIS: Correct.

16 THE COURT: Ms. Pierson, do you want to respond?

17 MS. PIERSON: I do, your Honor. Thank you.

18 Your Honor, you may recall that the panel's order  
19 creating this MDL was to consolidate cases where there was an  
20 allegation of high -- a defect in a High-Flex device, and the  
21 device loosened.

10:17:55

22 The parties negotiated CMO 9 and your Honor signed  
23 CMO 9, and it sets out the two tracks as Mr. Becker  
24 articulated. The parties' agreement was that we would try two  
25 Track 1, High-Flex loosening cases, and then the parties would

10:18:14



1 sit down and mediate after that. That's the agreement that we  
2 reached with plaintiffs' counsel after a very lengthy  
3 discussion on a variety of topics, and it's the agreement that  
4 your Honor approved.

10:18:33

5 We are entitled to two High-Flex loosening cases  
6 before there's ever a discussion where we sit down and figure  
7 out whether any cases can be resolved. And the fact of the  
8 matter is that by Mr. Morris's own admission, Goldin is not a  
9 Track 1 case. It's not a High-Flex loosening case.

10:18:51

10 He, like possibly other plaintiffs in Track 2, has  
11 come up with another theory that he intends to pursue; but the  
12 theory that he advances to you today that for some reason the  
13 warnings that accompanied the device were defective and  
14 there's a failure to warn claim based on obesity, there's no  
15 indication that that theory is common to anybody else in this  
16 MDL at all. Like the other Track 2 cases, those lawyers may  
17 choose to pursue and plaintiffs may choose to pursue other  
18 theories.

10:19:11

19 But it is clearly not a Track 1 case. It would be  
20 inconsistent with the parties' agreement and inconsistent with  
21 the panel's order in establishing this MDL in the first place  
22 to try a one-off failure to warn claim about some aspect of  
23 the warning that's not common to anybody else in this MDL and  
24 has nothing to do with the High-Flex design.

10:19:27

10:19:45

25 You know, ultimately, there is a question of fairness

1 to the individual plaintiffs, but there's also a question of  
2 fairness as it relates to Zimmer. We've been litigating this,  
3 spending millions of dollars over the last four years on the  
4 premise that the plaintiffs had prima facie evidence of a  
5 defect in a High-Flex device when used in high flexion. And  
10:20:02 6 as of to date, despite having you picking and Zimmer picking  
7 and the plaintiffs' leadership picking a variety of cases,  
8 we've yet to find a case where that -- there is, in fact,  
9 prima facie evidence of that.

10 But we're entitled to two trials on the theory that  
11 created this multidistrict litigation in the first place and  
12 the theory that's kept us litigating at great expense and  
13 investment of time over the last four years.

14 Mr. Morris made a comment as though there's been some  
15 unfairness here to the plaintiffs' lawyers in the course of  
10:20:39 16 this litigation, and I want to make one thing perfectly clear,  
17 your Honor. The position that we are in today with pro se  
18 plaintiffs, just so you know, 79 percent of the potentially  
19 pro se plaintiffs before you were represented by members of  
10:20:58 20 the plaintiffs' steering committee.

21 These are not unsophisticated lawyers who have never  
22 participated in an MDL or who aren't familiar with the issues  
23 in the case; but even if that weren't the case, before a  
24 lawyer files the case, he has an obligation to thoroughly  
10:21:14 25 question his client, to understand whether an expert can

1 support the theory that he intends to advance, and it's not a  
2 situation where there's been some fundamental unfairness to  
3 the plaintiffs' bar in some respect. The PSC members were  
4 chosen for the PSC because of their experience and expertise  
5 in this. You may recall that you created a very large PSC.

10:21:33

6 THE COURT: Correct.

7 MS. PIERSON: We actually objected to --

8 THE COURT: Correct.

9 MS. PIERSON: -- having 16 law firms, but it was your  
10 Honor's judgment based on the arguments of the leadership on  
11 behalf of the plaintiffs that it was necessary to have all of  
12 that expertise combined to evaluate the issues in this MDL.

10:21:42

13 Ultimately, your Honor, we agree that there need to  
14 be two High-Flex Track 1 trials as soon as we're able to do  
15 that. We think it's unlikely that either Joas, Wilson or a  
16 pick by Zimmer could be ready for trial in October or  
17 November, but we're committed to working with the leadership  
18 of the PSC to figuring out -- committed to working with them  
19 to finding a schedule that would allow us to try cases within  
20 Track 1 as soon as possible.

10:22:01

21 That does not solve, though, the larger problem and  
22 the reason that I advanced the idea of a Lone Pine order, your  
23 Honor. The larger problem is that there has not been  
24 screening of the cases at the entry point, despite your order  
25 in CMO 8 to identify cases based on loosening, despite the

10:22:21

10:22:36

1 clear instructions by plaintiffs' leadership who I think have  
2 done a good job of instructing their brethren about the issues  
3 that are central to this MDL, and despite your Honor's  
4 repeated orders.

10:22:54

5 So I agree with Mr. Becker. I think it's appropriate  
6 that we sit down with you in chambers and that we work  
7 together to come up with a true Lone Pine order that will, in  
8 fact, allow your Honor to identify the group of cases that  
9 have prima facie evidence of the theory that created this MDL  
10 in the first place.

10:23:11

11 But, ultimately, that needs to include not just a  
12 vetting by the plaintiffs' lawyers because we've tried that.  
13 We tried that multiple times. It needs to include expert  
14 affidavits that, in fact, there is the prima facie evidence to  
15 support a High-Flex theory of defect. We have two cases that  
16 your Honor has identified, Joas and Wilson. Zimmer is still  
17 entitled to a pick among that group of cases, but we think  
18 it's pointless for Zimmer to try and pick another case until  
19 your Honor enters a Lone Pine order and there is a true  
20 vetting of the Track 1 cases.

10:23:26

10:23:46

21 So our request would be, your Honor, that we speak  
22 with you in chambers and we speak privately with Mr. Becker  
23 and Mr. Ronca and that we work out the terms of the order that  
24 would allow us to get to a true Zimmer bellwether pick and  
25 would create a pool from which your Honor may choose to try

10:24:02

1 other cases ultimately in Track 1.

2 At the end of the day, though, we ought to be trying  
3 cases that advance the theory that caused the panel to create  
4 this MDL in the first place.

10:24:20

5 MR. PENNOCK: Your Honor, may I say just a brief  
6 statement regarding the Goldin case?

7 THE COURT: Sure.

10:24:32

8 MR. PENNOCK: I want to inform the Court of something  
9 that I don't think anyone other than Jim Morris and I are  
10 aware.

10:24:45

11 Well over a month ago, I committed to Jim to come  
12 out, if your Honor gave me the permission, pro hac'd me into  
13 the case, to try that case with him, to bring my team out.  
14 Jim was going to be the lead lawyer, and I would be -- I'll be  
15 taking some witnesses, I assume. It's going to be up to him.  
16 And that was not a, you know, a sort of unweighty promise. I  
17 have my hotel rooms booked. They're booked, I think it's  
18 Monday, September 26th is when I arrive, and I'm not just  
19 coming myself. I committed to him that I would be bringing my  
20 NexGen team, my very trial team that we were then going to  
21 roll, following finishing Jim's case into --

10:25:07

22 THE COURT: Yours.

10:25:24

23 MR. PENNOCK: -- the Lewis case. Their hotel rooms  
24 are booked, and I could give you the booking number. It's a  
25 done deal, and that's what we were doing, and I was going to

1 be working very closely with Jim to help try that case and  
2 with the PSC leadership to help advance the cause here for  
3 everyone, everyone's clients.

10:25:42

4 So I just thought I should put that in because I  
5 can -- understandably, I know this Court is aggravated and  
6 angry, and I get that, and I want you to know the commitment  
7 that we had behind the scenes already made to this litigation  
8 and to this MDL for the fall.

10:25:59

9 THE COURT: Well, thank you, and maybe you should --  
10 you and Mr. Morris can talk about whether you -- whether you  
11 could be part of a slate of lawyers that I can tell these  
12 individuals are available.

10:26:24

13 MR. PENNOCK: And I think, Judge, a comment on that,  
14 the PSC leadership certainly can issue a communication to  
15 these people that Mr. Morris is willing to look at and  
16 evaluate their cases.

10:26:41

17 I don't -- I don't know if cases were released  
18 because of the -- because of morbid obesity or BMI of 40 or  
19 greater, but I would not disagree with Jim that I think that  
20 those women or men and women should not have been given this  
21 particular device. It should have been contraindicated in  
22 that level of obesity.

10:27:00

23 In any event, Judge, I wanted to let the Court know  
24 that this plan to try cases here and be here from September  
25 through Thanksgiving was one that was already in place.

1 Thank you.

2 THE COURT: All right. Thanks.

3 MS. PIERSON: Your Honor, just one thing that I  
4 might add on Goldin. I think the question is what will it  
10:27:11 5 tell us about the rest of the MDL trying it, and frankly the  
6 answer, your Honor, is nothing. It may tell us something  
7 about Ms. Goldin. It may tell us something about her unique  
8 circumstances, but that's true of every other case that's in  
9 this MDL, and that's not why an MDL was created.

10 I don't know Mr. Becker and Mr. Ronca's position on  
11 this, but I -- my understanding is that they agree that Goldin  
12 is, in fact, a Track 2 case and that it won't tell us anything  
13 about the remainder of the MDL and, in particular, the Track  
14 1 cases that are before your Honor.

10:27:48 15 But regardless of that, our agreement, the Court's  
16 order was to try two Track 1 High-Flex cases, and then we'll  
17 sit down and talk, and the real question is how do we get to  
18 that, and the reality is as a practical matter, we can't get  
19 to that by the October dates that your Honor has set.

10:28:07 20 We may be able to get to that, I think, by a January  
21 date, and we should work together and with your Honor, with  
22 your calendar, to get to it as quickly as we possible can. We  
23 will do that. But, you know, there are two things happening  
24 here that I think we need to address.

10:28:23 25 One is how do we get to those two cases and get to

1 them as quickly as we can, and the other is how -- how do we  
2 identify truly High-Flex Track 1 cases through a Lone Pine  
3 order.

10:28:42

4 THE COURT: All right. Well, let's take a recess. I  
5 think it might be a good idea to talk in chambers at least  
6 briefly with counsel.

7 Let me -- let's take a ten-minute recess first, and  
8 then I'll ask you to join me in chambers.

9 MS. PIERSON: Thank you, your Honor.

10 (Which were all the proceedings heard.)

11 CERTIFICATE

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

14 /s/Kathleen M. Fennell

July 12, 2016

15 \_\_\_\_\_  
16 Kathleen M. Fennell  
Official Court Reporter

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Date

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