

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : MDL NO. 07-MD-1871
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AVANDIA MARKETING, :
SALES PRACTICES AND : Philadelphia, Pennsylvania
PRODUCTS LIABILITY : September 19, 2012
LITIGATION : 10:22 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE CYNTHIA M. RUFÉ
UNITED STATES DISTRICT JUDGE

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1 (The following was heard in open court at
2 10:22 a.m.)

3 THE COURT: We have a very busy day ahead of
4 us and it has already started. I thank counsel for the
5 revised joint agenda that was just presented to me, and
6 we will follow it. It does incorporate most of the
7 items that the Court wants to address, and those are
8 numerous.

9 We have not met in a while, yet much has
10 happened. Some things still are yet to be. So, let's
11 talk about how we accomplish the remaining matters that
12 require our attention.

13 First, I would like to hear if there is any
14 report from the liaison counsels. I see that Mr. Corr
15 here.

16 MR. CORR: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. CORR: No, I don't have anything to
19 report. I think Mr. Kiesel is going to handle the
20 items that are on the agenda as we go through it.

21 THE COURT: All right. Mr. Kiesel, you have
22 met with representatives of GSK, and do you have
23 anything you would like to address directly right
24 now?

25 MR. KIESEL: Thank you, Your Honor, good

1 morning.

2 THE COURT: Good morning.

3 MR. KIESEL: I think with respect to what I
4 address to the Court it would be a case management
5 concept with respect to the remaining cases. If you
6 want me to do that now I am happy to present that to
7 the Court.

8 THE COURT: Let's get right in to it.

9 MR. KIESEL: Great. Well, the reality is,
10 Your Honor, and this is really a testament to the good
11 work of this Court and to all the counsel involved, you
12 have taken what was an MDL of 65,000 cases and have
13 reduced that to a number of 499. Those 499 cases are
14 representative of the four law firms, all of whom are
15 here today.

16 So, I mean, you have the unique opportunity
17 here to have all of the remaining cases before you
18 today and develop a mechanism to resolve those last
19 remaining actions.

20 So, as coordinating counsel I have spent the
21 last six or so weeks frequently speaking with the four
22 firms and discussing with them a protocol to try to
23 reach a resolution for those 499 cases. First and
24 foremost, it is important to note that these are legacy
25 cases. These are not newly filed actions for the most

1 part.

2 There may be 59 cases that are part of Mr.
3 Diaz's pool of 374 that are newly joined to his
4 inventory, but for the most part these are legacy cases
5 that have been around for many years and for one reason
6 or another have not reached resolution.

7 With that in mind, Your Honor, I think the
8 first request that we would have to the Court is to use
9 the good offices of Pat Juneau, who has been so
10 successful in resolving over 20,000 cases.

11 Having met with the four firms this morning,
12 they are all prepared to go to New Orleans because we
13 understand he is fully engaged with the BP case, but,
14 they are prepared to go down to New Orleans and meet
15 with him and see if that would be a first best step to
16 reach a resolution on those last remaining actions.
17 If the Court wanted to stop there --

18 THE COURT: No, Mr. Kiesel, just name the
19 four firms, please, so we have a record.

20 MR. KIESEL: I will.

21 THE COURT: All right.

22 MR. KIESEL: The firms are the Diaz firm, the
23 Baum Hedlund firm, the Angelos firm, and the Ferrara
24 firm. Those are the four firms. There were others,
25 Jayne Conroy, Weitz & Luxenberg. Those cases have now

1 all resolved. So, these four firms control the balance
2 of the 499 remaining cases.

3 So, quite frankly, Your Honor, I think before
4 I would propose to you case discovery, a bellwether
5 trial, or any other process that would bring those
6 cases towards a much more defined world, I would like
7 to suggest to the Court, and see what GSK's response
8 is, is to say let's try mediation with these cases.

9 If it works, fantastic. If not, we could
10 come back to you in short order to find an alternative
11 protocol.

12 THE COURT: All right. Mr. Kiesel, thank
13 you. Let's see what GSK's position is.

14 MS. GUSSACK: Good morning, Your Honor.

15 THE COURT: Good morning, Ms. Gussack.

16 MS. GUSSACK: I think Mr. Kiesel is
17 optimistic on his numbers of what remains in the MDL
18 and the number of firms involved.

19 Our records reflect, Your Honor, and I think
20 the docket would reflect that there are over 45
21 different plaintiffs' lawyers who control cases in the
22 MDL, and that the number remaining in the MDL is above
23 600, as well as the fact that there are, I think, close
24 to 100 that are the subject of transfer on their way to
25 the MDL, so that cases continue to be filed and

1 transferred here.

2 I think Mr. Kiesel may also be high on the
3 number of cases that were in the MDL completed, but we
4 take the point that it has been a tremendously
5 successful effort.

6 THE COURT: Actually, I thought he included
7 those state claims and un-filed cases here, and that is
8 about the number that the Court had in its head.

9 MS. GUSSACK: I think that reflecting the
10 state court numbers is probably where the difference
11 is.

12 In any event, Your Honor, I don't think there
13 is any disagreement between the parties as to the
14 valuable contributions that Pat Juneau has made, and as
15 GSK has said on multiple occasions if there are
16 individual counsel with cases that want to be the
17 subject of discussion with Pat Juneau that GSK is
18 available to do that, and mindful of Mr. Juneau's
19 schedule eager to have those discussions.

20 We have had the basic premise set by this
21 Court that if one is to have a resolution discussion
22 with Mr. Juneau all cases in which you have an interest
23 must be presented, that you can't have some cases
24 subject for resolution and others remain extant either
25 in state courts or being held back.

1 That continues to be a principle that we
2 think needs to be advanced here in discussions with Mr.
3 Juneau.

4 THE COURT: It has always made sense to the
5 Court, and the Court has got to respect each side's
6 strategies and needs for their clients, but GSK has
7 approached the settlements in this matter on an
8 inventory basis.

9 That inventory including all of the cases in
10 one law firm's or conglomerate of law firms' inventory
11 including state cases, including un-filed claims, state
12 and federal. That's why there was a tolling agreement
13 in so many cases.

14 We have learned to be very respectful of that
15 position because it is one that has created a means and
16 a mechanism to actually deal with many more cases than
17 just a few. It was helpful in many instances in
18 approaching the mediation in that fashion.

19 That is not how we approach litigation, of
20 course, that's case-by-case. We don't try cases
21 together, we don't group them, we don't lump them, so
22 this is the only time, and the only instance, and
23 circumstance in which inventories of cases would be
24 collected and submitted.

25 That is the premise upon which we have

1 appointed Pat Juneau the settlement master in our
2 orders and in our practice. So, I hope that that
3 continues.

4 But, I do want to hear from Mr. Kiesel or any
5 of the four firms or more that were involved in this
6 request to see Mr. Juneau to see if that is an agreed
7 line item, because we need to resolve this before we
8 spend time thinking that mediation will work, at least
9 the attempt to mediate, and then finding out otherwise.
10 Mr. Kiesel?

11 MR. KIESEL: Thank you, Your Honor. Let me
12 just respond to Ms. Gussack's remarks, because I know
13 that there is some disagreement with the total number
14 of cases that remain before the MDL.

15 The schedule which was presented to this
16 Court did, in fact, have as many as 40 law firms and a
17 total of 565 actions. The majority of those are
18 individual law firm, one case per firm, some that are
19 in the process of resolving. The reality is the four
20 firms here represent the vast majority of the inventory
21 before this Court.

22 I think Mr. Diaz would be good to respond to
23 that, and I am certain that any of the other firms that
24 have an interest would pleased to discuss this with the
25 Court. Mr. Diaz?

1 THE COURT: I would welcome your response,
2 Mr. Diaz.

3 MR. DIAZ: Your Honor, good morning.

4 THE COURT: Good morning.

5 MR. DIAZ: In response to the Court's
6 request, George and I met last night. We had some
7 discussions, and of course we continued those
8 discussions this morning.

9 We think that it would be helpful if we
10 brought the firms together along with Mr. Juneau in a
11 mutual location, preferably New Orleans because that is
12 where he is located, and make one effort at trying to
13 get these settled.

14 The lawyers in the groups are not opposed to
15 a settlement. We understand that that is what the
16 Court would like to accomplish and finish up the
17 Avandia MDL.

18 THE COURT: I don't choose one over the
19 other.

20 MR. DIAZ: I understand.

21 THE COURT: But, I provide the means for
22 both.

23 MR. DIAZ: That's fine.

24 THE COURT: Litigation and settlement.

25 MR. DIAZ: Yes.

1 THE COURT: Of course, it is only responsible
2 to attempt a resolution by settlement before years of
3 litigation.

4 MR. DIAZ: We are prepared to do that and
5 make one last effort to try to get these cases
6 resolved.

7 THE COURT: Did I hear you say bring the
8 firms together, Mr. Diaz?

9 MR. DIAZ: The four firms are willing to talk
10 together. I think it would be helpful if the Court
11 thinks that is a meaningful way to do it. Nina and I
12 spoke after you and I spoke, and she expresses some
13 concerns that there is some disagreements between the
14 firms.

15 But, if we are going to try to get the
16 remaining cases settled, there is four firms that have
17 the majority of the cases and I think that it would be
18 helpful for those firms to come together and try to
19 find a mutual solution to all the cases.

20 THE COURT: Well, I can't say that that has
21 been the practice with Mr. Juneau or this Court before,
22 except in one circumstance when it was at the end of a
23 very long effort individually, but it was a matter of
24 convenience for this Court. As a matter of fact, it
25 was over the New Year's holiday, I remember that.

1 MR. KIESEL: As do I, Your Honor.

2 THE COURT: This courthouse was open, at
3 least my jury room was open, and yet that is not
4 actually the normal practice for Mr. Juneau or the
5 Court.

6 So, I would like to hear GSK's response as to
7 joint or mass mediation of these four firms or not,
8 because on an inventory basis not all cases are alike,
9 yet there has to be a common basis to approach these
10 cases.

11 MR. DIAZ: Your Honor, one of the things that
12 we do feel that all of the four firms have in common is
13 that these are remaining cases that are very
14 substantial cases that involve real people that have
15 real injuries and significant damages.

16 Now, Mr. Juneau is very busy because of BP,
17 and that was one of the reasons why we suggested coming
18 together, because we know his time is limited, that we
19 had agreed to travel to New Orleans for his
20 convenience.

21 The cases are different, the attorneys are
22 different, and the actions are different, but we all
23 have one mutual thing in common, and that is that there
24 is approximately, we calculate, approximately 500 cases
25 that are remaining and there can be and should be a

1 global resolution to all of them.

2 We are prepared to do that, we are willing to
3 engage the Court's help and Mr. Juneau's help.

4 THE COURT: All right.

5 MR. DIAZ: Thank you.

6 THE COURT: Thank you. Ms. Gussack.

7 MS. GUSSACK: Your Honor, I would note, and I
8 am sure Mr. Corr would join in advising the Court that
9 all of the cases that were before this MDL involved
10 real people with significant views about their claims.
11 These cases are no different than those that have
12 preceded them in that regard.

13 It is GSK's view and has been the position
14 that they have taken with each of the counsel that we
15 are prepared to have individual discussions with Mr.
16 Juneau about individual groups of cases, and we
17 maintain that position today.

18 For all the reasons that the Court
19 articulated earlier, that if all of your cases are
20 brought before Mr. Juneau with us, we have a very good
21 track record of being able to be reasonable in those
22 discussions and achieve success and resolution.

23 But, there is nothing that is unique or
24 distinguishing about these cases that would suggest
25 that they should be approached as a group.

1 In fact, while it is a subsequent agenda
2 item, the ability for resolution to occur frequently is
3 the result of knowing more about the individual cases,
4 not less when they are lumped together.

5 So, having a track in which there is
6 case-specific discovery advancing at the same time that
7 discussions are occurring has been and proven to be
8 very productive. So, we renew our invitation to
9 utilize the good services of Mr. Juneau on a
10 counsel-by-counsel basis.

11 THE COURT: Would you agree that the cases
12 that are being referenced here, the cases between these
13 four law firms are documented enough for you to have
14 meaningful discussions?

15 MS. GUSSACK: They vary significantly, Judge.
16 One of the individuals referenced has a small number of
17 cases, I think 30 or so. I think we have sufficient
18 information as to those, but as Mr. Diaz knows he has
19 over 380 or so and I think we only have information as
20 to a subset of those.

21 I think 80 of his cases haven't even reached
22 the MDL yet or have their most basic factual
23 information presented. So, we are in varying degrees
24 of knowledge about the individual cases.

25 THE COURT: All right. I always thought that

1 it was more helpful to settlement if the pretrial
2 orders that were in place had been complied with. At
3 least you would know what you are dealing with.

4 MS. GUSSACK: Well, that is quite right, Your
5 Honor, and, in fact, in some of these cases we have
6 motions to dismiss for failure to comply with those
7 pretrial orders.

8 Obviously, we think that there are defenses,
9 meritorious defenses to them on an individual basis.
10 So, knowing more about that and being able to have
11 informed discussions I think has proven to be very
12 productive in reaching resolution.

13 THE COURT: There were a group of motions to
14 dismiss that were acted on this week. I don't know how
15 many are outstanding, if you have outstanding motions.
16 I think most of them have been dealt with.

17 MR. LEHNER: Your Honor, I think according to
18 the agenda that you have it did deal, and this is under
19 item two, the Lone Pine II motions.

20 THE COURT: Yes.

21 MR. LEHNER: You did deal with the first
22 motion. 13 cases were dismissed. There is still
23 pending our motion with respect to the Ferrara law firm
24 with respect to 20 plaintiffs, and then --

25 THE COURT: Those were just filed.

1 MR. LEHNER: That was filed --

2 THE COURT: As to the experts.

3 MR. LEHNER: As to the experts. The Ferrara
4 one was filed, I think, several weeks ago and I think
5 their response was provided and we are now going to be
6 filing a reply brief.

7 But, the motion with respect to the Diaz firm
8 and the 95 plaintiffs was just filed, so they have no
9 really appropriate time as to respond to that.

10 THE COURT: Do you contemplate additional
11 motions?

12 MR. LEHNER: Yes. Yes, there are numerous
13 and we are doing it on a rolling basis, and it has to
14 do with the fact that some of these Lone Pine reports
15 are due on a rolling basis, as well.

16 So, as we get them in we are evaluating them
17 and looking at them with respect to the Lone Pine and
18 other dispositive motions with respect to other issues
19 in the cases.

20 THE COURT: Well, GSK, it certainly is your
21 right and obligation to be filing whatever motions are
22 deemed appropriate by counsel. However, does it
23 interfere in any way with your agreement to submit to
24 Mr. Juneau's master ship in terms of attempts to
25 settle?

1 MS. GUSSACK: No, Your Honor, we are prepared
2 to do both.

3 THE COURT: All right. You always have been
4 in the past, but I see that this could cast a different
5 light if counsel for the plaintiffs don't quite
6 understand which they should do, go to New Orleans or
7 answer these motions.

8 I am not criticizing, but I think that we
9 established some time ago that we were on a dual track,
10 and that dual track does not veer off in any other
11 direction except straightforward.

12 MS. GUSSACK: Right.

13 THE COURT: It is never going to cross each
14 other. It is just that we don't think, given the time
15 that we have been working on this MDL, it is five years
16 now -- well, actually we have been actively working on
17 it for four and a half, but it was established in
18 October of 2007 by the MDL panel. We think that we
19 have to encourage both venues for resolution.

20 MS. GUSSACK: Exactly.

21 THE COURT: Yet, in the middle of those is a
22 bellwether or trial schedule that counsel have
23 contemplated the Court addressing.

24 I see all of these matters as blending, which
25 is why we are discussing it in this manner, because of

1 something doesn't settle it has to get tried, and it
2 has to get tried where the Court has jurisdiction.

3 I realize that Mr. Diaz, at least for your
4 firm, you said you had a number of clients that would
5 waive Lexicon. Is that still the case?

6 MR. DIAZ: Yes, Your Honor.

7 THE COURT: I don't know what GSK's position
8 is on waiving Lexicon, but I would need those cases
9 identified and see if that is truly going to give me
10 the jurisdiction that I need.

11 MR. DIAZ: Your Honor, we would suggest they
12 identify six of our cases. We would ask that we may be
13 allowed -- you allow us to identify six ourselves, put
14 those together. We are willing to waive Lexicon on
15 those cases and let Her Honor try the cases.

16 THE COURT: Okay. We are willing to do that
17 if it doesn't resolve.

18 MR. DIAZ: All right.

19 THE COURT: If it left standing after the
20 motions. We are willing to do that. As to which of
21 those cases they are, we have always had a practice
22 here of submitting these through a comprehensive order
23 for discovery motions, Daubert and otherwise, and then
24 trials.

25 I would like to continue to utilize the

1 services of Mr. Merenstein as our discovery master to
2 assist in that regard. I think it is best that you
3 talk first, but then we will expect that you meet with
4 him and develop that kind of protocol at the same time
5 we are talking about settlement.

6 MS. GUSSACK: Your Honor?

7 THE COURT: Does that make sense?

8 MS. GUSSACK: GSK would like to evaluate the
9 proposed waiver of Lexicon because I think we want to
10 make sure that we can confer jurisdiction on the Court,
11 and obviously that is something that is a meaty issue
12 to be confident about.

13 Number two, we proposed in our case
14 management order fact-specific discovery to occur
15 across various plaintiffs' cases. Certainly, if Mr.
16 Diaz has the most there will be more in his cases, but
17 I don't think we should omit the attention of
18 working-up other cases, some of which are even older in
19 filing, and work-up a protocol so that we have a
20 selection of cases to pull from for bellwether.

21 THE COURT: Those fact-specific discovery on
22 those cases does not have to be in a case that I am
23 trying. That is not necessary for the bellwether trial
24 list to dictate the discovery cases, because when these
25 cases, if they don't resolve they get remanded.

1 MS. GUSSACK: Right.

2 THE COURT: Then there will be discovery and
3 ready to go.

4 MS. GUSSACK: Thank you, Judge, because I
5 think that was, in fact, the thrust of our CMO was that
6 it should not be limited to the trial cases, and I
7 appreciate that clarification.

8 We were actually advancing exactly as you
9 described, that there should be case-specific of a wide
10 swath of cases and also have a plan for trial selection
11 of cases.

12 THE COURT: All right.

13 MS. GUSSACK: Thank you.

14 THE COURT: We have said in the past that
15 without the original numerous bodies that were
16 available to work on these in the plaintiffs' steering
17 committee, because we saw discreet inventories of cases
18 with capable lawyers to run those cases and work those
19 cases, that we think the same.

20 Those attorneys that are attorneys of record
21 should be handling these cases. This discovery is done
22 for those cases. It is obviously going to be a benefit
23 to those cases and not necessarily everybody. We are
24 not doing general Daubert anymore, not on MIs at any
25 rate.

1 So, if we are still concentrating on MI
2 cases, because those have always been I think the most
3 valuable in terms of settlements and/or potential
4 claims in a trial, we still think that is the way to
5 go, because those have not been tried yet anywhere.
6 Not here, not anywhere.

7 MR. KIESEL: Your Honor, thank you. What I
8 might suggest to the Court is this. Certainly, GSK
9 could bring their challenges to PTO-155 and the
10 declarations that were case-specific discovery done on
11 those individual plaintiffs is that you allow a 60 day
12 window to have Pat Juneau either collectively or
13 individually have the four firms appear before him,
14 while at the same time GSK can bring whatever
15 dispositive motions it thinks appropriate under
16 PTO-155, and then revisit in 60 days where this
17 inventory is and find out whether bellwethers are
18 appropriate, whether individual case-specific discovery
19 should be done.

20 But, it gives us one final window to bring it
21 to closure while still bringing dispositive motions if
22 appropriate as a way to potentially close the
23 litigation down.

24 THE COURT: I appreciate that. I think that
25 is a sensible approach, that is that a deadline or a

1 timeline that GSK in their experience here thinks is a
2 good one. 60 days for Mr. Juneau seems appropriate to
3 me.

4 MS. GUSSACK: Your Honor, I am happy to
5 discuss with Mr. Kiesel a schedule that would allow for
6 a window of time to allow Mr. Juneau to devote some of
7 his time to these matters, again on an individual
8 lawyer-by-lawyer basis.

9 But, I would point out to Your Honor that
10 some of the counsel who have participation in cases in
11 the MDL are also aggressively litigating in the state
12 courts and seek to advance cases to trial in state
13 court.

14 So, there is an imbalance in the proposal
15 that the 60 days would freeze everything in the MDL,
16 as the state courts continue to advance towards
17 trial.

18 So, I think that is one of the issues that we
19 have, is we are happy to have -- we are litigating in
20 some places. As you say, we are on parallel tracks,
21 and so I think that we need to take into account what
22 makes sense, because we certainly have no interest in
23 having the MDL become the tail of litigation, where it
24 has been so central to litigation elsewhere.

25 THE COURT: We respect that a state court

1 might want to clear its docket. However, on an
2 inventory mediation schedule and approach it does not
3 make sense to try one case and then submit the rest to
4 inventory mediation.

5 MS. GUSSACK: That has been our position.
6 So, we are happy to -- as to those who are prepared to
7 put all of their cases in and focus their efforts on a
8 discussion with Mr. Juneau, we are happy to do that and
9 to construct that window of opportunity that Mr. Kiesel
10 is referring to. But, that may not be true for all
11 counsel being referenced.

12 THE COURT: The Court can clarify this
13 particular issue by order, because I think we have had
14 to do that before. But, I believe we had approved it
15 by agreement. Counsel previously have agreed to put
16 all of their cases into the inventory to be submitted
17 to mediation.

18 Whether it was with Mr. Juneau, or before
19 that with the Court, or before that with Mr. Shestack
20 and Mr. Merenstein and the Court, that is how we had
21 approached it.

22 Other judges, state judges, were happy to
23 continue their trial list or schedules in favor of
24 that when those particular cases were involved in the
25 inventory. We had never required it as an order.

1 However, if GSK has that as premise for
2 mediation it seems to me mediation will fail otherwise,
3 it won't even start. Judges, no matter where we sit,
4 do not like to waste court resources. If a case can be
5 settled it should be settled.

6 So, I think that I am going to give all
7 counsel a chance to clarify, maybe not this moment, but
8 clarify, plaintiffs' counsel, whether or not they are
9 going to apply these rules and accept them, because
10 that is the premise that GSK is requiring now.

11 We don't think that we can order otherwise.
12 I think that would be an abuse of my discretion. Mr.
13 Kiesel?

14 MR. KIESEL: Your Honor, I would ask the
15 Court's indulgence. If you could give us five minutes,
16 I can meet with all of the counsel and report back to
17 the Court whether GSK's position in having all of the
18 inventories before Pat Juneau is acceptable. I think
19 only five minutes will be required.

20 THE COURT: But, it actually requires that
21 state litigation, that is actual trial of cases, is
22 postponed.

23 MR. KIESEL: I will say this, Your Honor.
24 I think, because I do not want to try to dictate what a
25 state court judge with his or her docket in the state

1 court.

2 THE COURT: No, we can't control that,
3 either, and we don't try to.

4 MR. KIESEL: As the Court knows, often times
5 trial dates dictate the momentum of resolution. So, if
6 there are lawyers here that have cases that are
7 imminently ready for trial, I suspect those counsel may
8 want to front load their settlement discussions,
9 assuming they all bring the cases in, before Pat
10 Juneau.

11 But, I don't want to, and I am not sure that
12 we could tell a state court judge how the docket should
13 be managed, but I would represent to the Court if I
14 have the consensus of the group that inventories will
15 come.

16 GSK and those lawyers can work out the
17 timing, but that is probably the best that we can do
18 today.

19 THE COURT: Well, I agree with you, Mr.
20 Kiesel. What I think we need is a meeting of the minds
21 of all counsel. I will give you time to do this,
22 longer than five minutes. Not in the middle of this
23 conference, but this is a premise.

24 I can tell you directly that even though some
25 state judges had postponed their trial lists several

1 times because of mediation efforts, they were happy to
2 do that at my request because counsel said that they
3 wanted to try to settle. Counsel said that, the Court
4 didn't order them into mediation.

5 But, there came a time when the trial had to
6 be dealt with, and Judge Burrell was picking a jury.
7 But, I called him and said guess what, it is settled.
8 He said thank you so much, so no California case has
9 been tried yet.

10 I know that judges can work together through
11 our communication, but we have to communicate what is
12 truly going on in a totally clear way. I think that in
13 the first instance GSK paying, willing to go to
14 mediation, which means they are willing to pay
15 something here is saying we want to do all the cases
16 for that attorney's inventory if we possibly can.

17 You won't be able to do that if one case is
18 being tried in that inventory. It just won't happen.
19 They won't sit at the table, so let's be realistic
20 here.

21 MR. KIESEL: I certainly agree with that.
22 Now, having said that, there are four firms, and of
23 those four firms there is only one of those four firms
24 as I understand it that may have a state-based case
25 with an imminent trial date.

1 So, we can actually look at the other 75
2 percent of the firms, the three firms that don't have
3 it, and certainly address those directly.

4 THE COURT: Right, you can.

5 MR. KIESEL: I don't want to penalize, say,
6 Mr. Diaz's firm because he does not have that
7 situation.

8 THE COURT: Well, you know, I don't think
9 anybody has suggested that everyone be together on
10 this, except for these four firms. So, there would be
11 no penalization, not from this Court, not from GSK, not
12 from Mr. Juneau, no one if they are handled as separate
13 inventories, and there should not be any, anyway.

14 I mean, obviously we are looking for complete
15 clarity here and we are looking for complete submission
16 to the earnest attempt, the earnest attempt to resolve
17 it, that's all.

18 MR. KIESEL: What I can tell this Court is
19 having met with the firms this morning, the three of
20 the four firms that have over 400 cases are prepared to
21 put their entire inventories into settlement
22 discussions with Mr. Juneau as the first step to
23 resolution.

24 THE COURT: All right. Mr. Fahey?

25 MR. FAHEY: Your Honor, briefly. Good

1 morning, Your Honor.

2 THE COURT: Good morning. You are the one
3 that knows those trial lists, too.

4 MR. FAHEY: I do, I do, Your Honor. In fact,
5 we are going to be in one of those courts. Let me
6 maybe just give you a quick rundown of where we are in
7 the state courts.

8 I am a direct benefactor of your coordination
9 with Judge Burrell because I was in California when the
10 cases settled, I gotto come home to see my family.

11 We are down to 11 cases in California from
12 numbers that were much larger than that. There are no
13 trial imminent. We are meeting back with Judge Burrell
14 in January to report on our efforts to try to get those
15 last 11 resolved.

16 We are done with Philadelphia and Judge Moss.
17 We have no cases pending there, that is closed, and so
18 the only state court litigation where we really have
19 active litigation is in Saint Clair County, Illinois,
20 and there is a trial date presently set for November
21 5th.

22 We filed a motion to continue that trial, in
23 part based on the judge's own schedule and in part
24 based on how much work we still need to do before that
25 trial is ready to be tried.

1 We are going to argue that motion tomorrow,
2 and if it is okay with Your Honor I would like to alert
3 the court to the availability of Your Honor to discuss
4 coordination with the court should the court want to
5 have those coordinations.

6 THE COURT: The judge's name is?

7 MR. FAHEY: Judge Cueto, C-U-E-T-O.

8 THE COURT: Is this the judge that is
9 retiring?

10 MR. FAHEY: Yes.

11 THE COURT: All right.

12 MR. FAHEY: So, it seems like we have a very
13 nice opportunity to use this 60 day window. If the
14 parties agree, I am sure the judge would be more than
15 happy, given his personal circumstances.

16 THE COURT: Okay. Well, this is Mr. Baum's
17 case.

18 MR. FAHEY: Yes.

19 THE COURT: Mr. Baum can deal with you on
20 that and give me then a heads-up.

21 MR. FAHEY: Yes, I think Mr. Baum is actually
22 here in the back. I don't know if you have any
23 thoughts now.

24 THE COURT: Hello.

25 MR. BAUM: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. BAUM: Would you like to hear our
3 response to that?

4 THE COURT: I would love to hear your
5 response.

6 MR. BAUM: We are not in a position to agree
7 to delay the trial. We have filed paperwork.
8 Actually, if I can come up?

9 THE COURT: You will be heard better on the
10 electronic sound recording system if you do.

11 MR. BAUM: Up here?

12 THE COURT: Yes.

13 MR. BAUM: We filed a opposition to the
14 continuance of the trial and want to proceed as quickly
15 as possible. We are not able to separate, not able to
16 require the state court cases to be included in a
17 mediation with Juneau.

18 THE COURT: Does that mean that you don't
19 wish to resolve the state court cases through
20 mediation?

21 MR. BAUM: Not through -- as I understand it
22 right now with my co-counsel in the state court he
23 would not submit his cases to Mr. Juneau. His
24 preference is to proceed with his trial and not
25 continue the trial. Hopefully, that answers your

1 question.

2 THE COURT: Well, it does. I think it is a
3 complication, but I certainly do appreciate your
4 response.

5 MR. BAUM: Okay.

6 THE COURT: I think we all have to deal with
7 that, and it is going to be up to the state court judge
8 then. I am very careful not to usurp or even appear to
9 usurp any state court judge's authority. I work too
10 well with them and I value that relationship.

11 But, they may see the writing on the wall, I
12 don't know. Maybe Judge Cueto will choose to make a
13 decision for some other reason that has nothing to do
14 with the MDL, so, you know, I can't tell what will
15 happen.

16 I don't know what the arrangements, or
17 agreements, or the hierarchy of counsel are in that
18 case or the state cases, but if there is a relationship
19 with the MDL in any way it seems to me that you have a
20 conflict here.

21 There is an opportunity to do something for a
22 number of clients that is held up by one, and I don't
23 know if that produces a conflict or not, but I think it
24 may.

25 MR. BAUM: With the other three firms who are

1 prepared to submit their entire inventory to some form
2 of mediation there is no conflict.

3 THE COURT: They are not part of my remarks
4 here.

5 MR. BAUM: So, to that degree you could
6 advance that ball that way. Relative to the cases
7 where I have an interest, I am not the lead counsel in
8 the state court cases.

9 THE COURT: Who is?

10 MR. BAUM: Steve Johnson. The case that is
11 going to trial involves a man who is in last stage
12 hospice care, and so it is very important to his family
13 and to his counsel that his trial proceed now while he
14 is alive.

15 THE COURT: All right.

16 MR. BAUM: So, if that means carving us out
17 separately from the other three firms, that to me would
18 be the solution.

19 THE COURT: As I said earlier, Mr. Baum,
20 there is not four firms going together to mediation
21 here.

22 MR. BAUM: I understand.

23 THE COURT: Everyone, every firm's inventory
24 is invited in. I would like to think that every single
25 case is invited in. But, they sit with Mr. Juneau and

1 GSK separately at the table unless there is another
2 reason to mingle, and that has to do with agreements
3 between counsel.

4 MR. BAUM: Well, I --

5 THE COURT: Which the Court hates to get in
6 the middle of.

7 MR. BAUM: Okay.

8 THE COURT: You know, agreements between
9 counsel as to who has an interest in whose cases, and
10 who referred this case to this case, and I don't think
11 we have to say more about that right now.

12 MR. BAUM: Well, I hope you appreciate our
13 position.

14 THE COURT: I see you are in a difficult
15 position, sir.

16 MR. BAUM: And for the need for this
17 particular case to go forward now, the one that is in
18 state court.

19 THE COURT: I think that is up to another
20 judge.

21 MR. BAUM: Okay.

22 THE COURT: Thank you, Mr. Baum.

23 MR. BAUM: Thank you, Your Honor.

24 MS. GUSSACK: Your Honor, a point of
25 clarification perhaps from Mr. Baum, it is our concern

1 that the reason that his co-counsel is not willing to
2 subject their cases to Mr. Juneau is because of the
3 confusion about whether they would be subject to the
4 common benefit fee, despite the fact that Mr. Baum has
5 obviously been participating in the MDL and assisting
6 them.

7 So, if there is clarification that needs to
8 be provided to these state court litigants about the
9 fact that they are subject to the common benefit fee,
10 and obviously a subject that we have no authority or
11 position about.

12 I think it might be helpful because from what
13 we understand I think Mr. Baum's careful phrasing here
14 suggests that his co-counsel have a reason not to want
15 to subject themselves to the jurisdiction of this MDL
16 and its settlement master for reasons that we are not
17 clear about.

18 MR. BAUM: To answer that, Your Honor?

19 THE COURT: Yes, Mr. Baum.

20 MR. BAUM: There is not, as far as I know, an
21 opposition to the common benefit fee, if there is any
22 obligation to pay that. They are taking advantage of
23 the work product from the MDL experts and understand
24 that they have an obligation to pay the fee.

25 THE COURT: All right. I appreciate that

1 clarification. Mr. Fahey, you had stood.

2 MR. FAHEY: Yes, I just want to alert the
3 Court to one other issue that you may get a call about.
4 Your Honor may not remember, but probably would
5 remember the name of Dr. Freed.

6 He was assigned to (inaudible) a company
7 about seven or eight years ago, but the plaintiffs had
8 made, after deposing him once had made six different
9 attempts in this Court to re-depose him.

10 Your Honor ruled three times that he had been
11 deposed enough, and Mr. Shestack also ruled three times
12 that enough was enough. The plaintiffs, Mr. Baum's
13 firm, I believe, in Illinois have sought to take his
14 deposition again.

15 We understand Mr. Freed's counsel in Boston
16 is going to be opposing that subpoena that was issued
17 to Dr. Freed in Massachusetts, which is where Dr. Freed
18 is, to try to say enough is enough.

19 So, that Massachusetts court may give Your
20 Honor a call just get some of the very long history
21 about Dr. Freed and how he was deposed, and how many
22 times they have tried to come back and how many times
23 you have said no here in federal court.

24 MR. BAUM: Again, in response to that --

25 THE COURT: Thank you.

1 MR. BAUM: Dr. Freed's counsel has agreed to
2 three hour deposition. I don't understand.

3 MR. FAHEY: Well, he has filed a motion to
4 quash your subpoena, so I don't think he has agreed to
5 it.

6 MR. BAUM: No, he has filed a motion to quash
7 other state court subpoenas. He has agreed. He says
8 that in his motion paperwork.

9 MR. FAHEY: Yes. I think, Your Honor, one of
10 the issues is Mr. Baum had worked out a plan to depose
11 him for three hours, but then all of the other
12 litigants who you may remember, Mr. Robbins and others,
13 that have active state AG cases were trying to add onto
14 that.

15 THE COURT: Okay.

16 MR. FAHEY: One of the deals that Dr. Freed's
17 counsel had with Mr. Baum is that it would be enough.
18 Three hours would be the end, and it is obviously not
19 the end. Now, they are trying to take him for two or
20 three days.

21 So, the whole issue of Mr. Baum's deposition
22 and the state AG depositions are now before the Court
23 in the context of that motion. So, you may get a call.
24 I just wanted to alert you that there is a lot of
25 history here.

1 Most of the people that are trying to get his
2 deposition now were here when the other hearing were
3 happening, but if you just got a call out of the blue
4 on Friday I just didn't want you to be surprised about
5 it.

6 THE COURT: This is the matter that, as I
7 recall, Mr. Robbins withdrew from the court in New
8 Mexico where it was being litigated. So, he did honor
9 the rulings of this Court as to Dr. Freed, and every
10 other jurisdiction coordinated the discovery with this
11 Court.

12 MR. FAHEY: That's right, Your Honor.

13 THE COURT: So, having never heard from Saint
14 Clair County they are free to disregard, but it was a
15 priority that this MDL coordinate with as many state
16 courts as possible in terms of discovery as well as
17 other matters.

18 MR. FAHEY: Right.

19 THE COURT: As well as mediation.

20 MR. FAHEY: In fairness to the Saint Clair
21 court, the commission that they issue is really just
22 you can go out and try to get it. There is really not
23 a lot of litigation in Saint Clair, or for that matter
24 in Mississippi where I think one of the state attorney
25 general's subpoena is issued from.

1 The litigation is really going to be in
2 Massachusetts where Dr. Freed lives and where they are
3 going to try to effectuate service and require them to
4 appear.

5 THE COURT: I see.

6 MR. FAHEY: So, I think Your Honor's point is
7 well taken that there has been a ton of discovery here.
8 Mr. Merenstein can attest to that and I know Your Honor
9 can attest to that, as well. There is very little that
10 people really need to be deposed about after five years
11 of discovery.

12 But, if that issue does come up we just
13 wanted to make sure that Your Honor was aware that they
14 may come to you and ask you for some insight into the
15 history there.

16 THE COURT: We will make sure we have a
17 complete list of prior orders to convey.

18 MR. FAHEY: Okay.

19 THE COURT: But, no one has contacted the
20 Court.

21 MR. FAHEY: Okay. Your Honor, just for the
22 record, so you don't have to go searching to start,
23 there was an October 30th, 2009 order that was by Mr.
24 Shestack in a report and recommendation.

25 Your Honor adopted that order, or that report

1 and recommendation on December 3rd, 2009. The PSC
2 renewed the request on December 7th, 2009, which was
3 rejected by Mr. Shestack.

4 The Court then rejected that renewed request
5 on December 9th, 2009. Then it was renewed again on
6 May 25th of 2011. Mr. Shestack rejected it on that
7 date, and then Your Honor adopted the recommendation of
8 Mr. Shestack on October 24th, 2011, which I think is
9 the time that you are referring to when Mr. Robbins
10 agreed to stand down in New Mexico.

11 THE COURT: Thank you.

12 MR. KIESEL: Your Honor, I am standing only
13 because this was not an issue that I had even remotely
14 planned on preparing for today, and it is the first I
15 am hearing of a dispute.

16 I am not even sure what these orders relate
17 to, whether it is Mr. Freed or other witness
18 depositions. I am not sure because I haven't looked at
19 this particular issue.

20 Two notes. One is that obviously the judge
21 in East Saint Clair County was not part of the process
22 that was ongoing so it may not be aware of what the
23 history was. I'm not suggesting the court shouldn't be
24 made aware of that history, but that judge I suspect,
25 was acting in an innocent capacity.

1 THE COURT: I am not even certain that the
2 judge has ruled on this.

3 MR. FAHEY: No, you are right, Your Honor.
4 In terms of the issue that is going to be ruled on, and
5 I am not asking the Court for any ruling here, I just
6 wanted to alert them --

7 THE COURT: I know you are not.

8 MR. FAHEY: -- that there is an argument in
9 Massachusetts, and the Massachusetts court is going to
10 then be ruling on whether the deposition should go
11 forward.

12 THE COURT: Right.

13 MR. FAHEY: That hearing is Friday.

14 THE COURT: I think the real thrust of all of
15 this is that in the history of the MDL we have always
16 sought to have the members of the MDL comply with this
17 Court's rulings, and not attempt to do one thing here
18 and something different elsewhere that was not in
19 coordination.

20 However, that was not a rule, that was not an
21 order. It was how we wanted to proceed, and it has
22 been honored in the past. This is what is being
23 brought to my attention.

24 Whatever another judge does, either federal
25 or state, they are going to make the rulings on the

1 record before them. They do not have to care what we
2 have done.

3 On the other hand, it doesn't make sense to
4 ignore what has been done in favor of a rote response.
5 I don't know, I think we spent enough time on this
6 right now. But, I think we better move onto our other
7 agenda items.

8 I think we will be seeking clarification in
9 writing from each law firm that wishes to submit their
10 case, cases, or inventory of cases to mediation before
11 Pat Juneau to notify first Ms. Gussack and Mr. Lehner,
12 and second this Court in writing so that I may give Mr.
13 Juneau a proper list.

14 Implicated in that is a complete list of
15 cases that are in that inventory, whether they be
16 filed, whether they be claims, whether they be state or
17 federal, and that is how you start.

18 *** BRAD STARTS 11:10:23

19 (11:10:30)

20 MR. KIESEL: Do you want the list or a state
21 case, MDL case, essentially lay out in the grid what
22 the status is of each of those cases, Your Honor?

23 THE COURT: I think so, because, I don't
24 think they are too numerous here to do that. I think
25 that would be required, but GSK knows cases and claims.

1 They have gotten paperwork on some that are not filed.
2 I don't think anything else is tolled, though. There
3 are no more tolled matters.

4 So, I think in every settlement that hit a
5 snag it was because cases had to be listed and
6 identified as being a potential claim, and obviously
7 the filed cases are easier to document.

8 Okay. Now, is there anyone here who has a
9 question about that that may be interested in
10 submitting to mediation, and anyone from the Ferrara
11 firm or Angelos firm is also free to speak up.

12 MR. PARKER: Your Honor, good morning.

13 THE COURT: Good morning.

14 MR. PARKER: Aaron Parker with the Angelos
15 firm. I don't have a question about that and we will
16 be glad to get that list and confirm (inaudible) George
17 what arguments were in.

18 I want to circle back very briefly to before
19 the other sidebar when we talked about the original
20 letter that was submitted to the Court regarding the
21 potential for cases in the discovery, for 30 cases.

22 Six of those were ours, I believe. Six might
23 have been Mr. Diaz's firm and I think it was
24 proportional. It kind of got run over a second ago in
25 the midst of everything else that was going on,

1 bellwether discussions and the rest of it.

2 We have some -- it is difficult to proceed
3 with -- Paul has been great, Mr. Kiesel has been great
4 as liaison counsel without a PSC. The reason that you
5 are hearing kind of the four firms kind of morphing
6 together is out of the dissolution of the PSC and the
7 Court saying, you know, you all better get to
8 California and learn about these cases, you know, we
9 did. That's where we met each other.

10 THE COURT: Did I say that?

11 MR. PARKER: It was a part of, you know --

12 MR. CORR: I think Paul said she said that.

13 MR. KIESEL: I never said that.

14 MR. PARKER: You said it close to February
15 14th that counsel expected to proceed on their own
16 cases and to be prepared to litigate. To that end you
17 said, and this was to me, you know, that the good work
18 by the PSC is available to be learned. So, what
19 happened was we took Your Honor's advice and went to
20 learn that and met other like firms that were still
21 hanging out in the process.

22 So, we do talk amongst ourselves and while we
23 are not a PSC we are aware of what is going on in terms
24 of litigating cases and trying to push these things
25 forward.

1 To that end, though, I would suggest that
2 perhaps a conversation between Ms. Gussack and some of
3 these firms regarding the breadth of the proposed case
4 specific discovery might be a possibility.

5 I think six is over broad. Two of the six
6 that they have listed are stroke cases. Those were
7 never -- we never even got to a Daubert, upon my
8 understanding, with the previously disbanded PSC. I
9 would submit that there might be some other
10 mechanisms --

11 THE COURT: You keep saying dissolved,
12 disbanded. I simply did not reconstitute it because
13 there were discrete inventories of cases. Every case
14 almost was lawyered up and they were subject to be
15 remanded.

16 So, I didn't see the need to be running up
17 the PSC work that could and had to be done by the
18 lawyers who were in charge of those cases. So, I
19 didn't exactly dissolve anything. I didn't throw
20 people out the door.

21 MR. PARKER: Right.

22 THE COURT: Everybody had settled out.

23 MR. PARKER: I understand. There is not a
24 note of implicit (inaudible) in there. It is just I am
25 trying to understand how to best proceed with the four

1 firms that are left with the larger cases.

2 For instance, with the suggestion from
3 opposing counsel to do case specific discovery on say
4 30, a mechanism for us to discuss with them either
5 through Mr. Kiesel or a conference call between the
6 four of us and them about maybe narrowing that down to
7 two or three would make sense, because in light of what
8 they are suggesting and the time frame they suggested
9 would seem more workable, moving those forward and the
10 bellwether forward and settlement forward, that those
11 are all kind of part and parcel of the same issue.

12 THE COURT: I have to agree that you all need
13 to be part of this conversation and that is why I am
14 referring this entire scheduling issue to our master
15 and you are to participate in that.

16 MR. PARKER: Thank you, Your Honor.

17 THE COURT: All right. You have clients that
18 you need to represent. Every one of you lawyers has
19 their own clients. You've got to be concerned about
20 them and working their cases.

21 MR. PARKER: Sure, I understand. To clarify,
22 we have complied with the Lone Pine order. We have put
23 forward the expert reports on our cases. We have
24 worked our cases. It is not that they are tailing back
25 because they haven't been worked.

1 It is just trying to understand in light of
2 the way we are currently set up in terms of
3 communicating with the Court, with opposing counsel
4 with Mr. Kiesel as liaison, and with things like the
5 proposal from opposing counsel that went out that has,
6 you know, our four firms basically with the request for
7 30 case specific discoveries and no mechanism really to
8 globally answer back to that other than you getting
9 four separate letters which didn't make much sense to
10 all of us, there has to be some way.

11 So that is what we have been trying to do is
12 to speak with a voice where it is common, but not that
13 our cases are inter-mixed or that there is agreements
14 between counsel. I just want to make sure that's clear
15 to the Court.

16 What you are seeing is we are trying to best
17 find a way to deal with the reality of this with the
18 liaison counsel, but not an official PSC at this point.

19 THE COURT: I appreciate that. All right.
20 So, we are all clear? You will all be submitting to
21 Mr. Merenstein?

22 MR. CORR: Just one thing from me, Your
23 Honor.

24 THE COURT: Yes, Mr. Corr?

25 MS. GUSSACK: That is that we have been

1 talking about these four firms and I just want to make
2 clear. This order for Mr. Juneau to be the settlement
3 master is a standing order.

4 THE COURT: It is.

5 MR. CORR: I get calls from the individual
6 people on that list and they want to know what to do.
7 I usually refer them, actually, to GSK first, to call
8 GSK to talk to them or submit to Pat Juneau, but talk
9 to them before we do that. I think that's the better
10 process. I just want to make sure that's --

11 MS. GUSSACK: Yes, Your Honor. It has always
12 been the view and the practice that talking with
13 counsel for GSK directly in the first instance can
14 address a lot of the issues, and in some instances it
15 would make sense to then proceed to ask for Mr.
16 Juneau's services.

17 MR. CORR: Especially for the single cases.

18 MS. GUSSACK: I appreciate Mr. Corr's point
19 which is that there are not four firms here. There are
20 over 45 firms that are involved --

21 THE COURT: That's right.

22 MS. GUSSACK: -- and I want to be attentive
23 to the needs of all of the litigants in the MDL.

24 THE COURT: And some of those may need to be
25 on a bellwether list and a discovery list.

1 MS. GUSSACK: Yes, Your Honor, that's exactly
2 right.

3 THE COURT: All right. So, the case
4 management order will come. Let's deal with the next
5 agenda item. I think we have covered Loan Pine two
6 motions as we have listed it in the agenda.

7 Motions to dismiss were mentioned. There are
8 two motions to dismiss pending because of discovery
9 concerns, and is there anyone here from the Tyner Law
10 Firm, or is Mark Ciliate (ph) here? Okay. We will rule
11 on those if there is no other resolution of those
12 matters.

13 Then, we do have a pro se plaintiff who is
14 facing a summary judgment motion and we will have to
15 rule on that since I think briefing is long closed. We
16 were hoping there would be an attorney that would take
17 that up, but unfortunately --

18 MS. GUSSACK: Well, I think, Your Honor,
19 actually the briefing isn't closed, but we simply
20 wanted to alert Your Honor to the fact that this pro se
21 claimant has a fully executed release in a settlement.
22 The claimant has been so advised and yet continues to
23 litigate and we are filing papers in order to frame
24 this issue for the Court --

25 THE COURT: All right.

1 MS. GUSSACK: -- at the earliest possible
2 time.

3 THE COURT: And if you need to file any of
4 those documents under seal it would be understandable
5 and approved by the Court.

6 MS. GUSSACK: Thank you, Your Honor.

7 THE COURT: All right. Now, the next line
8 item in the joint agenda submitted to the Court is a
9 motion to alter or amend the order or judgment. Mr.
10 Kiesel filed this to amend the Court's August 7th, 2012
11 order which granted GSK's summary judgment motion on
12 statute of limitation grounds as to certain claims, and
13 that has not yet been responded to.

14 MR. CORR: That's correct, Your Honor. GSK
15 filed their opposition. We filed, I believe last
16 night, a request for leave to file a reply which is
17 currently before the Court. We will wait and see what
18 the Court's determination is on that before we go any
19 further.

20 THE COURT: Okay. And, yes, I see on my
21 docket sheet here, 9/18, motion for leave to file a
22 reply in support of. I haven't had a chance to see
23 that, but it is listed on my freshly printed out
24 docket.

25 All right. Now, let's talk about something

1 that is a little bit more complicated and this leads us
2 to a larger issue that is facing a number of the law
3 firms.

4 The Miller law firm and the Branch law firm
5 have each filed motions to enforce the settlement
6 agreements on behalf of certain of their Avandia
7 clients.

8 We have received responses not only from GSK,
9 but also from the counsel for certain third party
10 papers, at least as regarding the Miller law firm's
11 motion to enforce the settlement agreement.

12 This is a problematic matter, is it not, made
13 a little bit more complicated by the decision of the
14 Third Circuit in Humana, which is now still in the
15 appellate courts. So, it is not yet back in my
16 jurisdiction as a case.

17 MR. ZUCKER: The Third Circuit has issued its
18 mandate to this Court as a consequence. It is reversed
19 on remand.

20 THE COURT: Do I know what GSK is doing next?

21 MR. ZUCKER: GSK is planning to petition the
22 Supreme Court for cert. The cert petition will be due
23 the first week in November. For the record, Your
24 Honor, Ken Zucker representing GSK.

25 THE COURT: Yes, Mr. Zucker, which is why I

1 hesitate to barrel forward in respect of what the
2 appellate courts may or may not do.

3 However, we would like to try to resolve this
4 and I know that all counsel, in particular through Mr.
5 Merenstein's guidance, have really tried to resolve the
6 basic problem here, and that is what do you do with the
7 liens of third parties, usually insurers, medical
8 insurers, and it has been a problem that has been
9 stymieing several cases.

10 I received some time ago a protocol that was
11 developed under the leadership of Vance Andrus and a
12 number of other lawyers in conjunction with Mr.
13 Lawrence who represents Humana and United and Mr.
14 Merenstein.

15 This protocol is detailed, it is a voluntary
16 program. I have reviewed it. It is a beautiful
17 example of what creative and intelligent and caring
18 attorneys can do to resolve the problem. GSK was in on
19 this to a certain degree because their neck is on the
20 line right now. They can't win no matter what they do.

21 If they don't pay they are subject to motions
22 to enforce settlements. If they do pay individual
23 attorneys firms on behalf of their clients they are
24 possibly subject to fines and penalties and they can't
25 win no matter what they do right now.

1 So, everybody's efforts to deal with this on
2 a voluntary basis have been, I think, a marvel. The
3 results should be applauded and should be used by all
4 mass tort programs as far as I am concerned.

5 But, first of all, I think on this record,
6 which will be reviewed by others who can't attend
7 today, I have asked Mr. Andrus to explain, very
8 briefly, explain the program that was developed here
9 through the master's offices. r. Andrus?

10 MR. ANDRUS: Yes, Your Honor. Briefly, Your
11 Honor, Vance Andrus for the plaintiffs state made me
12 promise I wouldn't tell a story about a dog or my
13 daddy.

14 Quite simply put, Your Honor, under the
15 direction and instructions of this Court a negotiating
16 committee was created to meet with Special Master
17 Merenstein to meet with representatives of certain
18 health care providers, we refer to them as Rawlings,
19 that's the name of one of the firms that represents
20 these various health care providers and the meet with
21 GSK which was a fully engaged participant in the
22 process to see if there was a non-litigious resolution
23 which could be made of claims of lien rights on behalf
24 of health care insurers who paid for services that
25 were rendered to people who ultimately received

1 settlements.

2 At the time, and I think this is critical for
3 the Court to recognize, there are two blended types of
4 claims here. At the outset we were focused on what
5 they refer to as commercial lines, or you might
6 consider private healthcare insurance policies.

7 I personally have an insurance policy from my
8 insurance company or my firm does and I am covered. I
9 am covered as an individual under the healthcare that
10 you usually think of.

11 Separate and apart from that, another group
12 of insurers were what is known as MAOs, medicare
13 advantage organizations are Medicare Part C providers.
14 Now, who are they? Well, when you reach 65 you are
15 entitled to medicare. You automatically get medicare
16 Part A, you can sign up for Part B, there are other
17 parts.

18 Part C is a system in which private companies
19 bid with the government to provide the medicare
20 services reducing the administrative costs of medicare
21 and they then issue policies which cover the medicare
22 needs of those people.

23 This case, this exercise in this PLRP started
24 with a case filed by Humana as a class action on behalf
25 of all Medicare Part C providers. This Court will

1 recall that they sued GSK and they said GSK you are
2 responsible to us to pay us back for any amounts that
3 we may have had to pay to these people and oh, by the
4 way, don't make any more payments.

5 GSK's position was twofold. First, that they
6 had no such rights under the medicare law, something
7 this Court is very familiar with because this Court
8 ruled on it.

9 Second, no, you are not entitled to the list
10 of names of people we paid, because that's
11 confidential, and that is between us and them. We will
12 honor any lien that you file with us with a name and a
13 person and an individual and an amount and if you hit
14 one of my people we will hold their money, but
15 otherwise we are going to go forward.

16 In the meantime, this entire negotiation came
17 to a head both with the commercial lines and the
18 Medicare Part C. The parties with the able assistance
19 of Mr. Merenstein, through an extraordinary number of
20 very contentious and difficult negotiations with
21 competent counsel and the expenditure of a lot of
22 emotion, ultimately negotiated a settlement, one which
23 my father would be proud of because it was one that
24 everyone left away mad. That settlement, there is just
25 a couple things about that.

1 So, first of all, it was going to be totally
2 voluntary. Individuals who settled their claims could
3 volunteer to give their names to the insurers in return
4 for which they got certain benefits like a cap at 50
5 percent of their exposure, like the right to audit the
6 claims of the company -- I mean a discount of 50
7 percent and a cap of 15 percent of their exposure.

8 So, there was a trade off. Unfortunately,
9 two things happened and it is important for the Court
10 to understand that the act of opting out by United
11 Healthcare and by Humana is not the sole problem we
12 face here.

13 The first thing that happened is the Third
14 Circuit issued a ruling saying that Humana and other
15 Medicare Part C carriers had the same rights as
16 medicare in a certain limited way to assert claims.

17 It did not address the issue of notice. I
18 think GSK believes the issue of notice is still open
19 and at some point they've got to come forward and put
20 in the names of the people they claim, because that
21 hadn't been resolved, but that came now.

22 Then at that very time, I hope
23 coincidentally, Humana and United opted out of the
24 program that we had developed, immediately after the
25 Third Circuit ruled.

1 Humana and United make a substantial, but
2 certainly not huge, percentage of the participants in
3 the private lien resolution program. The private lien
4 resolution program continues today and continues to
5 work. Law firms are signing on to it, their clients
6 are signing up, the process is working. Humana and
7 United have left the settlement.

8 Ultimately, the problem that, as I appreciate
9 GSK faces, is not with the commercial lines, not with
10 the individuals, but with respect to the Medicare Part
11 C programs.

12 Clients who sign up for the PLRP and go
13 completely through the entire process and clear
14 waivers, they get through the private liens, the
15 commercial lines, they get through the Medicare Part C,
16 they come out the other side with not a mark on them.
17 GSK won't or can't pay them. and that's where we are
18 today. That is why Mr. Miller is here.

19 Now, why can't GSK do that, because GSK says
20 that not 100 percent of all Medicare Part C insurers
21 are participants. Not only Humana and United have
22 left, but there are others who were never a part of it.

23 Under the Third Circuit we need guidance,
24 Judge, can I pay these people, can I not, do they have
25 to give me notice, if so, when? Those issues have not

1 been resolved, and I think that's what led GSK to its
2 position to tell Mr. Miller, I am sorry, and Mr. Miller
3 pretty righteously says that sounds like your problem,
4 and Your Honor, that's where we are today.

5 THE COURT: Thank you, Mr. Andrus, and thanks
6 for your work and your leadership in developing this
7 voluntary protocol.

8 MR. ANDRUS: Thank you, ma'am.

9 THE COURT: Mr. Miller, I would like to hear
10 from you.

11 MR. MILLER: All right, Your Honor, thank
12 you, very much. First of all, Your Honor, it is great
13 to be back in the courtroom.

14 THE COURT: It is good to see you, too.

15 MR. MILLER: And it was an honor to be on
16 your plaintiff's steering committee. Thank you for the
17 trust and I hope I fulfilled that.

18 THE COURT: You have.

19 MR. MILLER: Mr. Zucker has been a reasonable
20 fellow in this whole thing, Your Honor. I am going to
21 say that first and foremost, we were all grappling with
22 the problem. I won't reiterate it because Mr. Andrus
23 did a fabulous job.

24 I am here today on behalf of these 229 folks
25 for no other reason because I need to go back and tell

1 them I went to Philadelphia for you and I am trying to
2 get you paid, because at the end of the day this comes
3 down to individuals just like the cases you talked
4 about that haven't settled.

5 They went to the program. We agree with the
6 Court, Mr. Andrus, that was an amazing piece of work on
7 behalf of everybody. These people have been to the
8 program and there are no identifiable liens.

9 So, I will take one instance, the fellow that
10 went to the Virginia Bar because has got \$32,000 being
11 held and doesn't believe me when I tell him I am not
12 keeping his money, I want you to get your money, and he
13 says well, I don't have any liens and I said I know, I
14 ran you through the program and they said you don't
15 have any liens either.

16 Well, then why don't I get my money and I
17 said well, there is this Third Circuit opinion and
18 there has been some turmoil on the whole thing, but I
19 filed this motion and I am going to go up and see the
20 Court and we are going to do whatever the Court tells
21 us.

22 So, with that said, that is where we are. We
23 think they have done everything they need to do under
24 the settlement. We do appreciate Mr. Zucker and GSK's
25 situation. We look for guidance to the Court and we

1 will follow it. That's where we are.

2 THE COURT: Thank you.

3 MR. MILLER: All right, Your Honor, thank
4 you.

5 THE COURT: Thank you, Mr. Miller. Now, may
6 I hear the response from GSK even though I have
7 reviewed the papers? Is there any ability of GSK to
8 pay the settlements agreed upon for those claimants who
9 are not subject to liens as far as anyone knows?

10 MR. ZUCKER: Thank you. Mr. Fahey made sure
11 that I said at the outset, Your Honor, that that is the
12 issue. What we have here is we have a private lien
13 resolution program that was advanced by Mr. Andrus with
14 indeed the active participation and cooperation of
15 counsel for the carriers that are sitting in the
16 courtroom.

17 The lien resolution program, however, only
18 addresses the medicare advantage organizations that are
19 represented by these counsel, approximately 50 of them.
20 There were 400 to 500 medicare advantage organizations,
21 and they potentially have these rights notwithstanding
22 that they have not appeared to GSK or appeared to this
23 Court, but have rights and GSK arguably has the
24 obligation to locate them and determine whether they
25 have liens and resolve those liens. If GSK does not do

1 that GSK faces potential double liability for not
2 ensuring that that lien is resolved.

3 So, when Mr. Miller says that there are no
4 liens for the individuals who haven't been paid, that's
5 not actually the case. These individuals have been
6 identified by the Garrison Resolution Group that
7 handles the resolution as enrollees in a medicare
8 advantage program.

9 They have not had a lien attached by any of
10 the 40 to 50 carriers represented by the Lowey
11 Dannenberg and Rawlings group, but there is a very real
12 possibility that they are represented by another
13 carrier that has a claim and if GSK pays in the absence
14 of satisfying that claim, GSK would have double
15 liability.

16 So, that's what needs to be addressed and
17 that's what I think counsel for the carriers and
18 certainly GSK believes that Special Master Merenstein
19 may help the parties come up with a mechanism to
20 address medicare advantage organizations that are not
21 represented by the Lowey Group and also help facilitate
22 getting United Health and Humana, both the punitive
23 class representatives from the two actions brought
24 against GSK, back within a private lien resolution
25 program that will address their lien claims.

1 THE COURT: I appreciate that too. Well, who
2 is here from the Lowey Group?

3 MR. COHEN: Your Honor, I am Richard Cohen.

4 THE COURT: Hello, Mr. Cohen.

5 MR. COHEN: May I approach?

6 THE COURT: Please do.

7 MR. COHEN: Your Honor, I appreciate all of
8 the kind words that have been said about the lien
9 resolution process and I agree with you, it is
10 extraordinary what we have accomplished, and I think
11 there is work left to be done, and I don't think there
12 is any limit to what we can accomplish.

13 What exists right now is an imbalance of
14 information and you keep hearing that well, these other
15 350 MAOs haven't stepped up and asserted their liens,
16 and that's because they don't know and they can't know,
17 and Mr. Miller knows who -- Mr. Miller's 239 clients
18 know who their MAOs are. They know who they are and
19 they can contact their MAOs and say we are settling and
20 if you have any liens assert them.

21 In the normal circumstance of subrogation or
22 reimbursement, if somebody breaks a leg, that's a red
23 flag to an insurer that there was an accident and that
24 there may be a responsible third party. Instantly a
25 letter goes out to them saying you were treated at a

1 hospital for a broken leg, what happened, was anybody
2 else responsible? Now, the insurer knows to pursue its
3 reimbursement or subrogation rights.

4 Heart attacks and strokes are not like that.
5 These are invisible torts to the MAOs, to the insurers.
6 So, the refrain of well, you know, if you can sort out
7 out of the millions of heart attacks and strokes that
8 occurred which ones are caused by a tort as opposed to
9 natural causes, then your lien will be honored.

10 Well, it just can't happen that way and that
11 has been the whole problem with this litigation since
12 it began. We tried on a voluntary basis to elicit the
13 identity of the settling claimants just like they did
14 with government medicare, do it with us, but there was
15 an idea that perhaps they didn't have to, and I can't
16 blame lawyers if they thought that it wasn't their
17 legal obligation, that they would try to avoid it.

18 But, we are not the ones who delayed this.
19 For two years the plaintiffs firms thought that perhaps
20 through litigation they could avoid these obligations,
21 and it turns out that, you know, at least right now it
22 looks like perhaps they can't.

23 We are willing to get back with the special
24 master and get this resolved. All we need is
25 disclosure transparency under any protective orders

1 whatsoever. All we want is payment of the obligations
2 to which we are legally entitled to, nothing more,
3 nothing less.

4 If we do it on a fully transparent basis it
5 will get resolved. The people who volunteer -- the
6 other problem is is that while Mr. Miller's clients who
7 volunteered and I salute them for that, the reason that
8 not everybody is in the lien resolution program is that
9 it provides for a free pass for those who don't
10 volunteer and their law firms, if their law firms can
11 get enough volunteers up, and that was a term that
12 was -- that at least if present, Humana and United, did
13 not want to go for.

14 So, there is work left to be done before the
15 special master. We have made remarkable progress. I
16 think we can get this all resolved, but it is going to
17 require some transparency.

18 If the Third Circuit case was remanded to
19 this Court, Glaxo asked us for an extension of time to
20 answer, so the issue will be joined next week, and if
21 it becomes apparent that there is going to be
22 disclosure under whatever protective confidentiality
23 provisions, we will agree to anything reasonable.

24 Once it is apparent that there will be
25 disclosure, I think this whole problem is going to

1 vanish because everybody is just going to say well, if
2 it is going to be disclosed let's get this show on the
3 road.

4 We will disclose who our insurers are and we
5 will bang, bang, boom. We will get in front of the
6 magistrate and we will just have a -- we will have a
7 mill and we will get all of these hold backs resolved.

8 THE COURT: I am not aware, counsel, that the
9 Third Circuit spoke in any way to notification.

10 MR. COHEN: They did not.

11 THE COURT: And I am not aware that that was
12 even an appellate issue. So, any of this really just
13 needs to be either worked out by consensus or the Court
14 will have to have the issue framed to it to rule on it
15 when I have jurisdiction clearly in my hands.

16 The mandate may have issued, but if there is
17 going to be further appeal which is parties rights, I
18 respect that. But, it seems to me that proposals of
19 all sides are based in reason and I think in this case
20 common sense, because that is the only way we are all
21 going to get through this.

22 We are dealing with federal regulations on
23 top of a number of other protocols and laws and then
24 interpretations, and it doesn't always make sense.

25 However, I am perfectly willing to resubmit

1 this to Mr. Merenstein if he will take on this chore
2 again and work with all of you. I think he actually
3 likes some of you, I know I do, and see if further
4 chiseling away at the fringes and then get to the heart
5 of what I am hearing is that notification issue.

6 Who has got the first responsibility, is
7 there another way around that and, you know, we touched
8 on this in arguments earlier when the case was still
9 here, and there are HIPAA regulations and provisions.
10 There are attorney-client privilege issues.

11 There are all types of hindrances and
12 obstacles, but I know that we can forge ahead, I know
13 we can. Mr. Merenstein, do you think that this can be
14 worked on anew?

15 MR. MERENSTEIN: I do, Your Honor. I mean,
16 initially, I would just say with Your Honor's
17 indulgence that I am going to take the Fifth on who I
18 like working with and who I don't like working with.

19 THE COURT: Good idea.

20 MR. MERENSTEIN: But, that said, I mean I
21 will second what everybody has said, certainly what Mr.
22 Andrus said most extensively is that Mr. Andrus and his
23 colleagues in the Avandia Plaintiffs' Bar that we are
24 working with him, Mr. Zucker and his colleagues,
25 counsel for GSK, Mr. Cohen and Mr. Lawrence and the

1 others who are representing the health care plans
2 worked very hard, diligently for essentially a year to
3 reach what I think is a very good resolution.

4 As Mr. Andrus said nobody was happy with it,
5 but everybody was happy enough to sign on the dotted
6 line. I can't imagine that we can't resolve the Humana
7 and United Healthcare issue. They opted out of that
8 resolution.

9 I have not had a chance to sit down with all
10 of the parties and certainly counsel for Humana and
11 United Health to see why they opted out, to figure out
12 what we need to do to resolve that and to resolve the
13 issue of getting Mr. Miller and other plaintiffs who
14 have settled, other plaintiffs' counsel's clients paid.
15 I think we could resolve that.

16 I think one thing is that there should be no
17 preconditions as there usually are in these types of
18 mediation in terms of disclosure. If that is something
19 that Mr. Cohen and Mr. Lawrence want to bring to the
20 table we will talk about that, but I think if we sat
21 down I think we could get this all resolved.

22 MR. COHEN: I think it is certainly best
23 resolved consensually rather than having to frame the
24 issue before Your Honor, because that is uncertainty
25 for both sides.

1 THE COURT: It is and look at the litigation
2 that ensues. However, we do what we have to and
3 counsel do what they have to, but if you are
4 representing discrete clients and there are other
5 programs and companies out there that may be in the
6 same boat, but you don't represent them, they are not
7 included here.

8 This resolution should be applicable, but we
9 can't deal in a vacuum with companies that aren't part
10 of this.

11 MR. COHEN: There is a way, though, Your
12 Honor, and Humana did bring it as a putative class
13 action. If, for instance, I don't know that it ends
14 that way, but there could be a settlement class and I
15 doubt we are going to see any opt-outs if that were to
16 happen, if we were to reach a consensual grid.

17 THE COURT: Tread carefully on that one,
18 because class actions by definition have to meet
19 criteria and the class has got to be identifiable and
20 still be able to have that identifiable damages. How
21 would I ever assess damages? I couldn't.

22 So, I don't want to jump the gun there, but
23 looking forward, that's an argument that you can make,
24 but the reality is two years down the pike, one year at
25 the earliest, so I am worried about that because I

1 don't see that as the role of the MDL court to hold
2 open every potential settlement because there may be a
3 Medicare C provider out there that may be entitled to
4 some claim on an individual's money.

5 I don't see how that holds GSK to be
6 responsible for coming up with that vacuum, and I know
7 that there are limits as to what plaintiffs' counsel
8 can do in certain regard.

9 So, I don't see the Third Circuit's opinion
10 as saying across the board this is required. If you
11 work on this, you may come up with something that could
12 satisfy a lot of our claims which is what I am all
13 about.

14 But, to try to solve everybody's problem
15 because you say this is a potential class, I think,
16 creates the obstacle. Maybe you need to do that, but I
17 don't see it at this moment.

18 That is so far down the pike for me as the
19 MDL judge, and I think it will prolong all of this and
20 not in a good way, but that doesn't mean that you don't
21 have responsibility to it.

22 I am not saying I am negative and I am not
23 ruling on it. It is just that's the obstacle that I am
24 seeing right now or hearing right now, but if all of
25 you are willing to go back and do this one more time

1 and give it your all, maybe we can find where this MDL
2 Court can exercise some plenary jurisdiction without
3 trying to solve the problems of the world.

4 MR. COHEN: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. ANDRUS: Your Honor?

7 THE COURT: Yes, Mr. Andrus?

8 MR. ANDRUS: If I may, just to point of
9 clarification, Mr. Cohen --

10 MR. COHEN: Should I stay?

11 MR. ANDRUS: Yes, please stay. I just want
12 to -- technically there were four opt-outs, four
13 separate companies that opted out. I understand from
14 my communications with Mr. Cohen that two of those, all
15 of his clients and Ms. Florence's clients, two of those
16 simply opted out because they chose not to participate.
17 One didn't like this kind of policy and one had such a
18 small book of business that they chose not to.

19 The two opt-outs, and I want Mr. Cohen to
20 simply confirm that for me, that are still active are
21 the other two, United and --

22 THE COURT: And Humana?

23 MR. COHEN: That's correct, Your Honor.

24 MR. ANDRUS: All right. And then, Your
25 Honor, on behalf of the negotiating committee I would

1 simply like to declare that we are prepared to return
2 to the table with no conditions. We recognize -- your
3 Court's intuition is incredible.

4 The problem with class actions is it goes way
5 down the road. My clients, for example, are not
6 members of that class, we aren't defendants. How do
7 you give them notice? How do you make them participate
8 and, second, the two entities who opted out, let's not
9 lose sight of the fact that there was a resolution for
10 them. It was there, they walked away from it and now
11 they say if you just give us the list, that's what we
12 spent two years fighting over and they walked away.

13 Now, we are going to go back in good faith
14 with no preconditions. We truly want it resolved and
15 we will be as creative as we can and we will do the
16 best we can and will report back to the Court.

17 THE COURT: Thank you.

18 MR. COHEN: Your Honor, just one fundamental
19 misperception I believe. The class I am referring to
20 is not of the settling Avandia claimants.

21 THE COURT: Oh, I know that.

22 MR. COHEN: It's of the 350 non-participating
23 MAOs.

24 THE COURT: Well, I know that.

25 MR. COHEN: Okay.

1 THE COURT: Which makes it all the more
2 mysterious as to who the defendants are. It is not
3 GSK. Is it the MDL Court, think about it, who are you
4 suing?

5 MR. COHEN: We are suing GSK.

6 THE COURT: Well, they have already paid out
7 before you took on United and Humana, so you know, I am
8 not certain that the strike is clear to me who is
9 responsible, because they have to be found to be
10 responsible in the first instance.

11 Maybe you are gathering some strength in your
12 position from an interpretation of a limited piece of
13 the litigation by the Third Circuit, but there are many
14 more issues involved in this case if it ever gets back
15 to me on remand to deal with.

16 So, time-wise, people-wise, we have to see
17 what we can do to resolve this short of that.

18 MR. COHEN: We want to, Your Honor. I mean,
19 the faster the lien is resolved the quicker my clients
20 get paid.

21 THE COURT: That's exactly right. That's
22 exactly right. I did see Mr. Zucker stand?

23 MR. ZUCKER: Yes, the most minor
24 administerial matter, Your Honor. GSK responded only
25 to the Miller motion to enforce settlement.

1 THE COURT: I know that.

2 MR. ZUCKER: Noted that the almost identical
3 Branch motion would warrant the same identical response
4 and I just want to make sure that GSK has no obligation
5 to file some further response to Branch in the Court's
6 mind to the Branch's motion to enforce?

7 MR. MILLER: I was asked by Mr. Branch to
8 speak for him today and I can speak on behalf of Mr.
9 Branch that he is willing to go back and attempt
10 resolution no preconditions as well.

11 THE COURT: Very well. I think that we could
12 entertain a stay of the litigation while you are in
13 renewed negotiations before Mr. Merenstein. But, I
14 would like a status report on this within 30 days
15 because if it is not going to work we have to do
16 something.

17 MR. ZUCKER: So, let me just ask then, by the
18 stay of the litigation currently as Mr. Cohen
19 mentioned, GSK has an answer due to the Humana
20 complaint, it is actually I think the week -- well, I
21 guess it is next week.

22 THE COURT: Oh, I thought you were talking
23 about responding to the Turner Branch motion?

24 MR. ZUCKER: I was, but in terms of does the
25 Court want GSK's answer to the Humana complaint given

1 the Third Circuit remand?

2 THE COURT: If there is an effort by
3 everybody within the next 30 days to sit down and get
4 this done and then give me a status report, I think
5 that that could operate as a brief stay. Is that all
6 right with Humana?

7 MR. MILLER: That's acceptable, Your Honor.

8 THE COURT: Thank you, very much, that is
9 gracious. I think that makes sense, but then after
10 that we will set some deadlines.

11 MR. ZUCKER: Thank you, Your Honor.

12 THE COURT: And in your status report you
13 should let me know what you suggest as deadlines.

14 MR. MILLER: Thank you, Your Honor.

15 THE COURT: Thank you. All right. Other
16 business on the agenda. We do have a conference
17 scheduled on some discovery issues in County of Santa
18 Clara which we don't have to do on this record, and we
19 would like to know if there are additional agenda items
20 that any counsel would like to bring to the Court's
21 attention.

22 MR. KIESEL: For the plaintiffs, Your Honor,
23 I am not aware of any other agenda items. Thank you.

24 THE COURT: Thank you.

25 MS. GUSSACK: No, Your Honor, I believe

1 that's what we have for the Court.

2 THE COURT: Thank you. Mr. Merenstein?

3 MR. MERENSTEIN: Nothing further, Your Honor.

4 THE COURT: All right. Then, we will take a
5 recess, we do have to come back at 1:00 for another
6 proceeding involving the plaintiffs' advisory
7 committee. However, right now, I would like to recess
8 this conference and please see Santa Clara, Mr. Kiesel
9 and GSK in my chambers.

10 MR. MERENSTEIN: Your Honor, is the plan to
11 begin at 1:00?

12 THE COURT: Yes.

13 MR. MERENSTEIN: Just so I can tell the
14 others? Okay.

15 MS. GUSSACK: Your Honor, can we just have
16 three minutes before we join you in chambers?

17 THE COURT: Absolutely.

18 MS. GUSSACK: Thank you.

19 (Proceedings adjourned at 11:54 a.m.)

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CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

9-29-12
Date


Jeff Nathanson