

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

IN RE: KUGEL MESH HERNIA *
PATCH PRODUCT * JULY 29, 2011
LIABILITY LITIGATION * 2:00 P.M.

BEFORE THE HONORABLE MARY M. LISI,
CHIEF JUDGE

(Open Session)

APPEARANCES:

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1 29 JULY 2011 -- 2 P.M.

2 THE COURT: First of all, let me thank all of
3 you who have come today. As you may know, this MDL is
4 now a little over four years old; and so by MDL
5 standards, it's probably an adolescent. And as with
6 all adolescents, it has had its tantrums and it has had
7 its growing pains and it has had its shining moments.
8 And I think we are progressing now to some very shining
9 moments in terms of resolution because that's what the
10 aim is for.

11 For those of you who do not know me, I am Judge
12 Lisi. I have been managing the MDL since it was sent
13 here by the panel.

14 To my right is Magistrate Judge Almond with whom
15 some of you have had some interaction, but Judge Almond
16 has been an invaluable resource not only to me but I
17 think to all of the attorneys with whom he has had
18 interaction on the various discovery matters and other
19 issues that have been handled throughout the course of
20 this MDL.

21 The way we handle these meetings is to run
22 through an agenda which has been posted, so all of you
23 should have had access to that on the court Web site;
24 and there's a special spot, I guess, there for the MDL.
25 So for future reference, please be sure to go to that

1 Web site and check out what is happening.

2 We'll run through the agenda. I will ask
3 counsel, primarily Mr. Hooper, Mr. Migliori, who have
4 been lead counsel in the case, to address the various
5 matters that are on the agenda; and then I will open
6 discussion for anyone who may have a question either
7 for counsel or the Court.

8 Please be aware that we are on the record so
9 that I can't have more than one of you speak at a time;
10 and if you're in the back, yell or come forward; and if
11 you would, try to remember to speak slowly so we get it
12 all down.

13 So we'll start, then, with the first item on the
14 agenda; and that is an update on settlement status,
15 which I think is something that is near and dear to
16 everyone's heart. I'm going to ask Mr. Hooper if he
17 would please address that matter.

18 MR. HOOPER: Sure. Thank you, your Honor. And
19 with respect to the agenda, my partner, Mike Brown, who
20 is co-lead counsel, will probably respond to some of
21 the other issues.

22 THE COURT: We'll let him.

23 MR. HOOPER: Thank you, your Honor. Your Honor,
24 we began settlement negotiations in earnest, I would
25 have to say it was, during the first trial but

1 certainly after the first trial, suspended I think
2 during the second trial and continued to negotiate with
3 various firms after the second trial up until we
4 actually resolved the case. So I guess the bellwether
5 process does work.

6 The parties focused on the trials, and
7 ultimately resolution was based on the current calendar
8 and resources. And I think folks were really
9 comfortable that we understood each other. Maybe we
10 didn't agree with each other, but we understood each
11 other.

12 Currently what we have done is resolutions.
13 There are basically five separate resolutions that the
14 company entered into with somewhere between 90 and 100
15 law firms involved in the five separate resolutions.

16 And we've been public about that ourselves. We
17 have publicly stated that we've resolved -- we've
18 resolved a majority of the litigation to date, and
19 we've considered how we would move forward.
20 Additionally -- I'll speak up, your Honor.

21 THE COURT: Let me just -- it's so muggy in here
22 that I asked them to turn the fans on. Can you all
23 hear okay? You know, you have a choice. Either you
24 swelter or we yell. So I guess we'll yell.

25 MR. HOOPER: Okay, your Honor. Additionally

1 we've gone forward and begun negotiations with a number
2 of other firms; but as one can imagine, trying to
3 resolve five different fairly significant settlements
4 all at the same time, which, frankly, came together
5 within a two-week period of time, has been exhaustive
6 at best.

7 We have received a number of inquiries from a
8 number of firms about going forward. The company has
9 given us the authority to move forward and have
10 negotiations with anyone.

11 To date, I believe in the negotiations that
12 we've had, only two sets of the negotiations I wouldn't
13 say have failed, but we have not come to a point where
14 we have reached an agreement.

15 So we do have ongoing discussions, your Honor,
16 and we're getting to some of the balance of the case
17 issues; but at this point I think what's good news for
18 the company and perhaps to some extent everyone else,
19 having tried a couple of cases, having reviewed
20 thousands of claims at this point, we're pretty
21 comfortable that we understand the values, at least
22 from our standpoint, and the process probably is a
23 quicker process.

24 Now, that doesn't mean we'll settle. And, in
25 fact, I'm sure we'll have disagreements over values

1 with a number of people; but the company, obviously
2 willing to discuss this publicly today, is in a
3 position where it's resolution-minded.

4 However, we have over a thousand cases, I
5 believe, that are still in the system, and we have to
6 make whatever litigation resolution decisions are in
7 the best interest of our client.

8 Thank you, your Honor.

9 THE COURT: All right. Mr. Migliori, did you
10 want to add anything to that?

11 MR. MIGLIORI: Your Honor, just that to date
12 everything's pretty much been in good faith, and
13 parallel tracks have been very helpful. But settlement
14 along with trial settings I think are the only way that
15 this can further to an end result, but to date it's
16 been very productive.

17 THE COURT: Let me just say, having presided
18 over these two bellwether cases that were tried here in
19 the District Court of Rhode Island, that I applaud
20 counsel for their selection of the bellwether cases
21 because I think both sides learned a great deal from
22 having gone through that exercise.

23 I will tell those of you who were not present
24 during those trials that they were hard fought on both
25 sides. These guys wore me out, which is a good thing.

1 And so they, I think, give a true picture of the
2 various strengths and weaknesses of both sides'
3 positions and I think gave both sides some very
4 valuable information as to how to value many of these
5 claims because, as I say, the selection process itself
6 was so well done.

7 We have discussed -- I've mentioned this to
8 counsel and I will say it here publicly today, I view
9 my job in this MDL is to bring every single one of the
10 cases that was transferred here to a resolution.

11 We have discussed on a going-forward basis,
12 well, what do we do with the cases that haven't
13 settled? And that is something that I am concerned
14 about because these cases now are aging out; but I have
15 told counsel, and I'll be prepared as soon as I get an
16 order setting out some discovery deadlines, for them to
17 start selecting some additional cases to go to trial.

18 And I've asked to have my calendar cleared for
19 the last two weeks of January, first couple of weeks of
20 February. So that's the time frame, folks.

21 And what I would urge you to do is to start
22 looking at your own inventory; and to the extent that
23 you think that you're interested in trying to resolve
24 the cases you have, by all means, contact defense
25 counsel.

1 To the extent that you are not going to be able
2 to resolve them, please be aware that I will be looking
3 for a list of cases to be developed where we can start
4 working up the case-specific discovery so that it's
5 ready for trial this winter.

6 For those of you who are not from New England,
7 January is not a nice time to be in Providence; but I
8 didn't pick it for that reason, only because that's, I
9 think, the only reasonable time frame we can talk about
10 now.

11 Does anyone have any questions about the status
12 of cases in the settlement process?

13 All right. We'll move on to Item Number 2,
14 then, which I think you may have touched on already,
15 and that is the process for future settlement
16 discussions. I think you may have touched on it.

17 MR. HOOPER: I think I've spoken to that, your
18 Honor.

19 THE COURT: Anyone with any questions on Item
20 Number 2?

21 And I guess we actually talked a little bit
22 about Number 3, also, which is what we do with the
23 cases that remain unresolved.

24 I did meet with counsel several months ago where
25 we talked about a process by which we could refine

1 where we are with those cases, and I know that many
2 letters went out from defense counsel identifying those
3 cases where there were deficiencies in the Plaintiff
4 fact sheets.

5 Those, I think, have been resolved, pretty much;
6 and I was pleased that I didn't get a bunch of motions
7 to dismiss that I would have to deal with. So I think
8 that that process is working really well.

9 And, Mr. Brown, you're going to tell us about
10 how that's proceeding.

11 MR. BROWN: Sure, your Honor. Just a quick
12 update and some statistics. We mailed out letters that
13 would affect about 793 Plaintiffs, and we have 167 of
14 people who responded and cured the deficiency that was
15 the subject of the letter.

16 There are still about 60 who have never provided
17 a fact sheet, and so we will be presenting a motion on
18 that. But in terms of the number -- and I think about
19 500 are part of the settlement, so those will be taken
20 care of as well. And then we have, frankly, just a
21 handful that we think still have some deficiencies.

22 So I think the process worked. We're not going
23 to be overburdening the Court with motions; but we do
24 have some who haven't responded at all, and we think
25 those are the subject of a motion.

1 THE COURT: Mr. Migliori, did you want to
2 respond to any of that?

3 Anyone have any questions on that process? So
4 you'll understand, what we were looking for was
5 something short of a Lone Pine order, which, frankly, I
6 was reluctant to order in this case.

7 And so instead what we devised was a method
8 whereby counsel would identify those cases with those
9 deficiencies, work with Plaintiffs' counsel in those
10 cases to address those deficiencies without involving
11 the Court, and then to take the case from that point
12 on.

13 Let's now move, then, to Item Number 4, which
14 we've touched on a little bit, and that is discovery
15 and trial selection for those unresolved cases.

16 MR. HOOPER: Well, your Honor, I think what
17 we've envisioned is getting together with liaison
18 counsel, working on an order, as you had mentioned, to
19 try to give an avenue, obviously, for both my clients
20 and the Plaintiffs to track cases or groups of cases
21 that we're unable to reach an agreement on.

22 Otherwise, we will be in the process where we
23 would probably go a year or so of just having
24 discussions before we start really dealing with folks
25 who maybe disagree with our values, we disagree with

1 their values.

2 So we would like to work with liaison counsel to
3 craft such an order. Our recommendation is that both
4 sides consider putting a fairly significant list of
5 cases together and then we have a vetting process
6 similar to the one we did with the bellwethers. Maybe
7 we would start with 10 cases each, and then we would
8 move down to a more manageable group of cases after we
9 look at the cases.

10 And I've talked to Mr. Migliori about that on
11 some levels, and we would obviously work closely with
12 Mr. Migliori to make that happen.

13 MR. MIGLIORI: Thank you, your Honor. As I
14 think I mentioned to the Court, there are quite a few
15 people here, mostly from the Plaintiffs' side. In
16 fact, I think everybody would be here from the
17 Plaintiffs' side but this row.

18 We met this morning. When we have these
19 meetings, we find it useful to get together first and
20 really see what's on everyone's mind. So we have here
21 folks that have a single case with several thousand or
22 million dollars' worth of medical bills, we have some
23 here with inventories of 150 cases or whatever.

24 So in representing the various interests here,
25 we learned this morning, we've known, that trial

1 selection is an important component, key part of any
2 resolution parallel track.

3 So there are some folks here that are really
4 ready to go right to that, and there are some folks
5 here that would like to do that here in your courtroom.
6 There are some folks here that would probably take the
7 Court up on her offer to travel to their warm districts
8 in January; but there are people here that would like
9 to proceed on a litigation approach, and there are some
10 people here that would really like Mr. Hooper's time.

11 And I explained in this meeting this morning
12 that Mr. Hooper's availability or unavailability
13 recently is mostly -- it's not to be read into; but
14 these settlements have created a tremendous amount of
15 work on both of our offices and the fact that there's
16 no response may not actually mean anything about his
17 willingness to talk about their one case or their 20
18 cases or their 100 cases.

19 So it's a long way of saying there is every type
20 of interest here represented from "let's go to trial, I
21 like that January setting" to "I'd love to sit down
22 with Mr. Hooper and ask him what he thinks of this
23 case."

24 In that regard, one of the things that we
25 resolved this morning is that we are going to collect

1 people who sort of sit in the category of "I'd like to
2 pursue the litigation route." And over the next couple
3 of weeks, we expect receiving input on types of cases
4 that folks would like to put into that process, would
5 like to go into the trial mode.

6 And I am very confident that with Mr. Hooper and
7 Mr. Brown we can come up with a system like we have now
8 twice before to come up with trial-selected cases.

9 But I did want the Court to know that all of
10 these folks sat in a very hot Biltmore conference room
11 with the same issues but really worked out for about
12 two-and-a-half hours some thoughts about how we might
13 present these issues to the Court efficiently.

14 THE COURT: And let me just say I really
15 appreciate the fact that Mr. Migliori, in advance of
16 these open meetings, has used that time and your time
17 here in Providence toward that end because I think he
18 recognizes that part of his job is to coordinate the
19 efforts so that we're working in a meaningful and
20 efficient way.

21 For those of you who want to waive lexicon and
22 try your cases here, I say terrific. For those of you
23 who don't wish to waive your lexicon rights and want to
24 go back to your home district for trial, what I have
25 told counsel, and I will say it here publicly, if I

1 haven't said it before, is that I will -- I view my job
2 as to finish this thing; and if that means I go to Iowa
3 or I go to California or wherever you came from, it
4 will be done because right now I think I'm the one
5 judge in the country who knows more about these cases
6 than anybody else, and I think that's a plus for most
7 of you. You may not think that, and that's okay. You
8 just keep that to yourselves. That means you, too.

9 So the point is, keep talking to each other and
10 understand where the Court is coming from at this
11 point.

12 Mr. Hooper.

13 MR. HOOPER: Yeah, your Honor. Because this
14 wasn't a class action, we didn't resolve a single
15 resolution, Mr. Migliori is absolutely correct. We
16 have been inundated. We did five deals in the time
17 spent on one deal.

18 So my suggestion, very practically, if you want
19 to reach me, reach Eric Gladbach, G-L-A-D-B-A-C-H, he
20 is my partner, he's egladbach@reedsmit.com, or reach
21 Jacqueline Seidel, jseidel@reedsmit.com. Copy me as
22 well.

23 But, you know, I am getting inundated. There
24 are probably 200 firms at least with one or two cases.
25 So sometimes doing five deals for thousands of cases is

1 a lot easier than doing a hundred deals of one case.
2 So please don't take it personally; but you can only
3 imagine the list at this point, and we're just doing
4 our best to dig out. Thank you, your Honor.

5 MR. MIGLIORI: For all of you who I gave John's
6 cell phone and home information, just disregard that.

7 Your Honor, in this topic, before we let go of
8 it, there's the issue of discovery, too, and I don't
9 want to let that slide.

10 There are some folks here who may not
11 necessarily get through the vetting process of the
12 trial selection but still feel they need to preserve
13 their doctor's testimony.

14 We've had this discussion multiple times; but
15 I'd like to reiterate, as I've done in the past, that
16 there's a tremendous amount of interest among this
17 entire group that certain things be allowed to go
18 forward, and I've been asked to represent that to the
19 Court today.

20 I know that that sort of triangulates and makes
21 things difficult to keep parallel tracks moving and
22 defense counsel in every direction; but as liaison, I
23 feel compelled to say that, in this context, there are
24 folks that would like to get their doctor's testimony
25 on the record.

1 There are folks here that would like to get
2 their -- there are some instances, this is actually
3 completely innocuous, but sometimes you can't get the
4 pathology in a case without a subpoena, and yet there's
5 sort of this stay of discovery.

6 So even to get the information in order to value
7 a case to give it to the Defendants in a discussion,
8 there are some discovery things that I'm sure that we
9 can actually agree to. I don't think the Defendants
10 would disagree to a subpoena for that purpose.

11 But when it comes to doctors' depositions and
12 things like that, there may be a need to have an
13 efficient way to allow people who are not on a trial
14 setting to preserve what they need to and yet still
15 focus on the cases that go through this vetting
16 process.

17 THE COURT: What I would suggest there is that
18 we use Mr. Migliori as a clearinghouse for those kinds
19 of requests so that they're presented in a coordinated
20 fashion.

21 The last thing we want is to have hundreds of
22 depositions being noticed, and then this side is going to
23 have to either get you to agree to stand down a bit or
24 come to the Court.

25 So I would say for Plaintiffs' counsel who have

1 those concerns to work through Mr. Migliori as a
2 clearinghouse and try to resolve as many of those as
3 you can amicably.

4 I understand your concerns, and I know that they
5 are real; but all I ask is that you try to do it in a
6 coordinated fashion so as not to really upset the whole
7 apple cart.

8 Mr. Brown, you're the one who's probably going
9 to have to attend those.

10 MR. BROWN: Right, so I just want to respond
11 briefly, your Honor. I think the way it has worked and
12 I think what we're envisioning for the next step is to
13 have some number of cases, 10 a side or whatever. So,
14 of course, case-specific discovery would go in that.

15 And we have the existing order whereby it's
16 stayed in non-trial cases, but I think there is an
17 exception in there for extremis cases.

18 THE COURT: There is.

19 MR. BROWN: So we contemplated that. And I
20 think in some other situation, if we were able to go to
21 the Court, that would do it; but we do have some
22 concern about just everybody who has a case.

23 So perhaps if there is a doctor who's moving or
24 is ill or something, if we could handle that on a
25 case-by-case basis because we also have as much of an

1 interest in getting some of that same information, and
2 we may make an informal request or a formal request
3 about having -- getting updated medical records and
4 scans and all of that sent to us because that helps us
5 in the evaluation for the resolution process as well as
6 trial selection, things like authorizations, details
7 that we probably can work out.

8 But it had gotten bogged down a little bit on
9 some of the other ones. So if there's a process,
10 because the Plaintiffs would have access to the medical
11 information, getting that to us would certainly be
12 helpful; and if we could at least have just a process
13 by which before people notice the depositions, that
14 would sort of be able to balance both sides' interests.

15 THE COURT: That's where talking to Mr. Migliori
16 to have him serve as the clearinghouse on that.

17 MR. MIGLIORI: Briefly, your Honor, with respect
18 to that process, when that order got in place where
19 there were 1,800 or so cases, I don't know how many are
20 left in the MDL, I don't want to guess at what the
21 settlement numbers are, but --

22 THE COURT: A substantial number.

23 MR. MIGLIORI: It's substantially not that
24 anymore. And my point being that where there was this
25 huge concern with the potential for 1,800 depositions,

1 if we're in the hundreds or low hundreds now, wherever
2 that may be, 200, 300, whatever's still left in the
3 MDL --

4 THE COURT: It's still a lot.

5 MR. MIGLIORI: -- the reality of it is that I do
6 think that the consensus from the folks that I met with
7 is that it's really not an extremis issue for a lot of
8 these folks anymore. It's sort of it's getting really
9 late and some of these doctors are moving on with their
10 practices, forgetting things, retiring, et cetera.

11 So I'm not advocating or arguing that that stay
12 is or isn't still in place or that agreement still is
13 valuable now given the context of the settlement, but I
14 would just feel that it's important on behalf of
15 everybody who's here to say there's a real need beyond
16 just an extremis need to start preserving evidence,
17 particularly of the critical doctors.

18 I don't know if it's going to be one, ten or a
19 hundred. I'm more than happy to serve as a
20 clearinghouse and try to keep that as efficient and low
21 key as possible. I just don't want it to necessarily
22 be an extremis standard against I'm trying to come up
23 with that process.

24 THE COURT: But that's what the order is at this
25 point. So if you want to go beyond that, what I think

1 you're going to have to do is, you're going to have to
2 suggest some language that changes that provision of
3 the order.

4 There are still hundreds of cases. I mean, I
5 think I'm pretty comfortable saying that here. So I'm
6 not so sure that we can do a whole lot in changing the
7 methodology; but if you have a doctor, for instance,
8 who is going to be retiring, obviously that's one of
9 those situations where I think even Mr. Brown would
10 agree, you know, yes, it's time to take the depo before
11 he closes his office.

12 MR. MIGLIORI: Well, again, I think the best way
13 to do it, instead of arguing in the sort of
14 theoretical, I will see, and I've asked folks to tell
15 me, which doctors they'd like to start preserving. If
16 there's a trend or a category of cases that I'd ask the
17 Court for 20 depositions, I'll present it in that way
18 in light of the existing order.

19 THE COURT: Well, present it to these fellas
20 first.

21 MR. MIGLIORI: Of course. Of course.

22 THE COURT: And then just present to us the ones
23 that you don't agree on.

24 MR. HOOPER: Just a point, your Honor. From
25 this day forward, we're talking about taking our

1 resources and trying to resolve with probably two to
2 three hundred law firms. We're talking about now
3 looking at 20 potential cases and tracking some of them
4 for discovery and setting them for trial.

5 It's actually about as difficult a process as we
6 had in just trying the two cases and running parallel
7 tracks. It's not that we don't want to do that, but
8 our position will be that some of the things that we've
9 dedicated in finding a process with the Court of
10 bellwether was a better process overall than if we had
11 done 3,000 depositions.

12 And while it doesn't seem like a lot, 50 is a
13 lot, but several hundred is a difficult task for any
14 law firm.

15 THE COURT: And understand, folks, and I don't
16 believe that the point of today's meeting has been lost
17 on anyone, Mr. Hooper I think made perfectly clear that
18 his client is interested in the resolution of these
19 cases short of trial.

20 He has been actively pursuing that now for the
21 past several months with some of these firms that have
22 large inventories.

23 So you all have been in this business long
24 enough to know that's where we are; and if that's news
25 to you, perhaps you need to start rethinking about

1 where you go from here.

2 For those of you who are digging your heels in
3 and saying, All we're going to do is try this, that's
4 fine; but understand that over the next six months or
5 so what I'm going to be looking for from counsel is a
6 list of cases that we're going to work up for trial.
7 That's going to divert their attention.

8 So that if you come in here with something other
9 than an extremis situation, it's unlikely that you're
10 going to get relief for a depo just because you want to
11 take it now. So that's where I'm coming from.

12 Does that take us now to Number 5, deficiency
13 letters?

14 MR. BROWN: Your Honor, I think we've covered
15 that.

16 THE COURT: Number 6, motions to remand. There
17 are a couple, a few of them out there.

18 MR. BROWN: Your Honor, there were four filed.
19 We had received orders from the Court in three of them.
20 There's one case that we can't find an order from, so
21 we assume it hasn't been issued, and it's the Sanchez
22 case; but I think that's now part of the settlement.
23 That's Mr. Alvarez's case.

24 THE COURT: In that case, we'll refrain from
25 issuing an order.

1 MR. BROWN: So I think we're up to date on all
2 that.

3 THE COURT: All right. That's great.

4 Mr. Migliori, do you want to tell us what's
5 happening with the Plaintiffs' steering committee?

6 MR. MIGLIORI: Yes. Thank you, your Honor.

7 As I mentioned, I am very willing and, in fact,
8 I think it's helpful to litigation to continue to move
9 on the way the committee has been working to get the
10 liability and common interests together with respect to
11 getting these cases ready for trial.

12 So the committee is still constituted,
13 irrespective of solutions, still constituted in the
14 same way.

15 There are a couple of law firms who now have the
16 larger inventories left that have asked, informally so
17 far, if they could join the committee, and we have in
18 the past done that. There may be some people who are
19 done that would like to step off the committee. We
20 don't know that.

21 But as currently constituted, the committee is
22 still active. It's still moving forward with common
23 benefits, still maintaining the documents, still
24 maintaining the liability materials.

25 So from my perspective, I think anybody who

1 wants to join the committee is absolutely welcome, and
2 especially if they have a significant interest in the
3 litigation going forward. So we expect a few such
4 applications.

5 THE COURT: Any questions for Mr. Migliori on
6 that point? Thank you, Mr. Migliori.

7 The last item on the agenda is one that I placed
8 on there because I thought this was a good forum in
9 which to address it. I know it has been the subject of
10 some litigation in this case, not a lot, but I think
11 it's one that everyone certainly has an interest in.

12 So I'll ask Mr. Migliori if he would tell us
13 about the status of the common benefit fund.

14 MR. MIGLIORI: Your Honor, as you know, both the
15 federal court and the state court have entered
16 essentially identical common benefit orders.

17 To date, there have been I think 13 or so cases
18 that have resolved and funded that have actually
19 resulted in common benefit assessments being paid into
20 an account.

21 Those accounts are set up. They're set up here
22 in the state of Rhode Island. I am the agent, if you
23 will, for those accounts. They are interest-bearing.
24 There are two for the state, there are two for the
25 federal court, consistent with the orders that are in

1 place.

2 And as settlements have been achieved and funded
3 so far, the appropriate percentages have been put in
4 each account for the respective case. So if a state
5 and a federal case were resolved at the same time,
6 appropriate distribution into those accounts for both
7 state and federal accounts has been made.

8 So they exist. I think it's a system that, as
9 liaison and as lead counsel, have the same
10 accountability as they would have for any common
11 benefit expense account that we maintain separate from
12 that. And I think it's working well, and I think it
13 can handle what's about to happen with the extent of
14 the common benefit assessments that would be derived
15 with these settlements.

16 THE COURT: Any questions for Mr. Migliori on
17 the status of common benefit fund?

18 Are there any other matters that anyone would
19 like to address at this time? I was going to say, what
20 did you do to them?

21 MR. GARRISON: I just have one quick question,
22 your Honor. Lew Garrison, Heninger Garrison Davis in
23 Birmingham, Alabama.

24 We were the firm that filed the motions to
25 remand or suggestions for remand which were denied.

1 Procedurally, we'd love to take your Honor up and have
2 you come down to Alabama to try our case. We're happy
3 with that.

4 THE COURT: Sure.

5 MR. GARRISON: Procedurally, do we just go
6 through Mr. Migliori on getting those cases in the
7 trial pool or how do you want us to handle that?

8 THE COURT: I think you do because I think
9 you've got to make a decision. I think you need to
10 talk with Mr. Migliori about whether you are on trial
11 track or whether you want to confer with Mr. Hooper's
12 people about trying to resolve those cases. So I think
13 that's the answer.

14 MR. GARRISON: Thank you, your Honor. We have
15 reached out to Mr. Hooper a few months ago, just
16 haven't heard back.

17 THE COURT: Well, it may take a while. So you
18 may want to think about how you want to proceed on
19 that, and I would say talk with Mr. Migliori if you
20 want to opt for trial.

21 MR. GARRISON: Thank you.

22 MR. MIGLIORI: Your Honor, in that regard, maybe
23 just for expectation purposes, if not for the court
24 order, I think over the next two weeks we could
25 probably have a pretty good idea of sort of the shape

1 of which cases may be on that track, and we'll use that
2 time with Mr. Hooper with a potential trial date of
3 January. I think within a month we need to sort of get
4 down to nuts and bolts.

5 Just for expectation purposes, we'll gather
6 cases like Mr. Garrison's and others who want to go to
7 trial. We'll give every one of them -- in fact, we'll
8 put everybody in a room and hash it out and see which
9 10 best or whatever we're going to do, we should
10 proceed with, and we hope to have sort of final say
11 within two to four weeks.

12 THE COURT: Okay.

13 MR. HOOPER: Your Honor, on that point, one
14 thing I just thought of is, it would be helpful to have
15 the list of firms that have approached about trial so
16 that when we're selecting, we're not wasting our time
17 looking at firms that perhaps would prefer to resolve
18 cases.

19 So as soon as Mr. Migliori has a list of firms,
20 we could start looking at those inventories at the same
21 time, and we may have other suggestions, but --

22 THE COURT: That makes sense. I think that
23 makes very good sense because you're going to have the
24 information first.

25 I saw another hand over here somewhere. Yes,

1 sir. Hold on a second. We'll get you the mike.

2 Sorry, it's either --

3 MR. SMALL: Your Honor, I'm Doug Small from
4 South Bend, Indiana.

5 I was wondering in terms of the case scheduling
6 process, are we looking beyond this two-week period or
7 four-week period at end of January, February to
8 schedule cases throughout the rest of the year to get
9 as many on track as possible?

10 THE COURT: Yes.

11 MR. SMALL: So what is that process going to be?

12 THE COURT: That process will probably be
13 similar to what we've been talking about here. It took
14 -- the first two bellwethers took approximately
15 two-and-a-half weeks each. So I've got to look at my
16 schedule, but what we'll be doing is to see how many
17 are lined up.

18 The first ones, as I say, I've blocked out the
19 time now for January and February, and then we'll just
20 proceed every month after that. I need to take a
21 breath in between.

22 MR. BROWN: What about us?

23 THE COURT: Mr. Brown's fine. He can go back to
24 back. Not a problem.

25 I saw a hand over here. Was that the question

1 you wanted answered? No? Anyone else with a question?
2 All right. You did a good job.

3 MR. MIGLIORI: Thank you. We sweat them out.
4 We turned the heat up.

5 THE COURT: You didn't drug them, did you?

6 MR. MIGLIORI: No, no, no.

7 THE COURT: All right. Having no other
8 questions from the group, I will thank you all for
9 coming. And, as I say, I ask you to bear with us,
10 particularly over these next couple of months where
11 it's been pretty intense over on this side with many
12 people who may or may not be in the room today with
13 whom a substantial number of cases have reached
14 resolution. That's the mode Defendants are in.

15 I will tell you that when I started this MDL,
16 never in my wildest dreams did I believe at that point
17 that we would have reached this point as quickly as we
18 have.

19 So with defense counsel working as cooperatively
20 as they have with Plaintiffs' counsel, I think that we
21 are fast approaching the time where I can say to the
22 JPML, I finished my job. Every one of them got
23 resolved.

24 And, as I say, we're trying to do it in as
25 efficient a way as we can, not only for our sakes but

1 for yours. So bear with us in our efforts to try to
2 organize this in such a fashion as to maximize the
3 outcome with little or less input from your side.

4 Thank you all. So you'll know, the notes of
5 this meeting will be -- not the transcript but the
6 notes of this meeting will be on the Web site in case
7 any of your clients are interested. That's the Court's
8 external Web site.

9 (Adjourned)

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1 C E R T I F I C A T I O N
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5 I, Karen M. Wischnowsky, RPR-RMR-CRR, do
6 hereby certify that the foregoing pages are a true and
7 accurate transcription of my stenographic notes in the
above-entitled case.

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10
11 /s/ Karen M. Wischnowsky

12 Karen M. Wischnowsky, RPR-RMR-CRR
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17 August 15, 2011

18 Date
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