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1 (The following was heard in open court at
2 10:15 a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated, and welcome to
6 a hot courtroom. That is the temperature. All right.
7 It's a pleasure to see many of your familiar faces and
8 many new faces.

9 We're happy to engage counsel on behalf of
10 their respective clients in moving the remaining cases
11 in the Avandia MDL-1871, to resolution one way or
12 another, meaning by that in case it's not understood,
13 that it is our function to case manage these matters
14 and move cases through discovery, decide motions, set
15 rulings, and provide guidance for the resolution of
16 cases, in addition to trying cases that cannot resolve
17 by any other means.

18 So there's three ways to resolve a case, and
19 you are all attorneys that know this. You either try
20 it, you settle it, or you are decided on motions, and
21 we are prepared to do all of the above in the
22 appropriate case for the remainder of the cases that
23 are left here.

24 To start out, I would like to address the
25 status of the number of cases that are left here, and

1 I'm going to ask GSK, Ms. Gussack, if you would address
2 that first.

3 MS. GUSSACK: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. GUSSACK: Thank you. We have, as you
6 know, had a recent increase in the number of cases in
7 the MDL as a result of the transfer of cases removed
8 from California and, therefore, the current number of
9 cases is hovering around 3,200 cases in the MDL.
10 Although the number of cases in discovery group D and E
11 are decidedly fewer, as I think the Court is aware. In
12 fact, in discovery group B there is only one case that
13 has been advanced for trial, the Bork (ph) case.

14 THE COURT: Just let me clarify this. When
15 you say 3,200 cases in the MDL, do you mean plaintiffs
16 or cases? Because the way they're filed in the
17 California and Illinois and some other jurisdictions,
18 they are multiple parties.

19 MS. GUSSACK: Correct, Your Honor, it's 3,264
20 plaintiffs.

21 THE COURT: Much fewer cases.

22 MS. GUSSACK: Correct. I believe they are 65
23 total cases in the non-discovery group settings. 3,011
24 of those plaintiffs, 54 of the cases, are cases from
25 California, in which the Napoli, Restaino, Lu (ph)

1 filings and I think there's one pro se amongst them.
2 There are four cases, or 246 plaintiffs that have been
3 transferred from Illinois, the Saleem, Kuato (ph)
4 cases.

5 (Pause in proceedings.)

6 MS. GUSSACK: So the remand motion, just to
7 turn to, you know, what is the status of those cases
8 that have been recently transferred, there are remand
9 motions pending, and I think that's an item on the
10 agenda that's described at some length, as to the cases
11 transferred from California. There is no remand motion
12 pending as to the Illinois cases, the 246 plaintiffs
13 that I referenced from Saleem, Kuato.

14 THE COURT: And the California cases
15 surrounding the McKesson issue is now fully briefed
16 except for the possible plaintiff's response to the
17 supplemental authority that GSK has provided --

18 MS. GUSSACK: With one --

19 THE COURT: -- last week I believe.

20 MS. GUSSACK: With one addition, Your Honor.
21 I don't believe that the Restaino -- I'm sorry.

22 (Pause in proceedings.)

23 MS. GUSSACK: Oh, I'm sorry. Yes, Your
24 Honor, let me clarify that. I think that the Napoli
25 filings, the 837 plaintiffs, have not refiled in this

1 court the remand briefs that they had previously filed.

2

3 But Your Honor is correct, that the last
4 filing made here was GSK supplemental submission, and
5 there's been no response to that. And if Your Honor is
6 interested at this point, Mr. Fahey can give a report
7 on the discussion of those transfers, having attended
8 Judge Burrow's status conference in California just two
9 days ago.

10 THE COURT: All right. We can do that now.

11 MR. FAHEY: Okay. Thank you, Your Honor.

12 THE COURT: Good morning.

13 MR. FAHEY: As Ms. Gussack said, the majority
14 of the cases that will have a remand motion in this
15 court originating in California, Judge Burrow was aware
16 of those. We told those -- told Judge Burrow when
17 those cases were first filed.

18 We also told him that we were going to remove
19 them, both on Kappa (ph) grounds and also based on what
20 we believed was a fraudulent joinder of McKesson, and
21 reminded him and told him that the reason why we were
22 doing the McKesson removal was because for four years
23 in this court --

24 A SPEAKER: Excuse me. I can't hear anything
25 that's going it. It sounds like some people are

1 talking, but I can't pick it up.

2 MR. FAHEY: Is that better? Well, I'll do --
3 oh, you want it -- okay, sure.

4 (Pause in proceedings.)

5 THE COURT: Who is speaking on the telephone?
6 This is Judge Rufe. I don't think they can hear me.

7 (Pause in proceedings.)

8 A SPEAKER: Your Honor, we can hear some of
9 what you're saying but by no means 100 percent.

10 THE COURT: Well, I can't account for the
11 volume. I think we have it up as far as we can get it.

12 A SPEAKER: Okay.

13 THE COURT: So whatever you can do on your
14 end. We will all be speaking into the microphone
15 because we do have a number of attorneys on the
16 telephone. We haven't gone through the roll yet, but I
17 did want to get a status report in. Can you hear me
18 now?

19 A SPEAKER: That's much better, Your Honor.
20 Thank you very much.

21 THE COURT: All right. Well, we'll address
22 our comments directly to the microphone right in front
23 of our mouths.

24 MR. FAHEY: Okay. I'll continue. This is
25 Sean Fahey for those on the phone. So we told Judge

1 Burrow that we were going to remove the cases both on
2 Kappa and on McKesson, McKesson because in the four
3 years that we were in California there was no
4 discussion of McKesson after you remanded the cases
5 four years ago. And so obviously we're very conscious
6 of that decision you made four years ago, but we
7 believe there's reasons for taking a fresh look at that
8 based on what's happened in the past four years.

9 So Judge Burrow is aware of that decision.
10 He was anxious to get a report of the proceedings here.
11 I'll just maybe broaden the report to just talk about
12 some of the things he's just recently done to try to
13 marry his procedures with Your Honor's procedures
14 because there was a concern that if the procedures
15 weren't uniform, there would be an incentive for people
16 to, frankly, dump cases that wouldn't survive here in
17 California.

18 THE COURT: And Judge Burrow had coordinated
19 with this Court for years --

20 MR. FAHEY: Yes. And he --

21 THE COURT: -- in this matter.

22 MR. FAHEY: -- was very clear on Wednesday
23 that he would like that to continue. I think he would
24 welcome a call, you know, in whatever normal format
25 that Your Honor discusses these issues with Judge

1 Burrow. I think he was very appreciative of those
2 discussions and --

3 THE COURT: Just to be clear on this record
4 because there are a lot of people involved in today's
5 proceeding that have not been involved in case --

6 MR. FAHEY: Sure.

7 THE COURT: -- management of the MDL before.
8 And when we speak about coordination with a state court
9 judge we're not talking about substantive rulings.

10 MR. FAHEY: Correct.

11 THE COURT: He's talking about coordinating
12 discovery and timing of discovery and cross-noticing
13 and all the things we do in preparation for resolution
14 of the cases.

15 MR. FAHEY: Exactly, Your Honor. And so, as
16 Ms. Gussack said, there were three sets of cases
17 removed from California. The first set is being led up
18 I believe by Ms. Beasely who is here today. The second
19 group is by the Restaino firm. The briefing or the
20 majority of the briefing in those two cases has largely
21 been complete with the exception of the potential
22 response to our supplemental notice.

23 The Napoli group of cases, for reasons that
24 are not entirely clear to us yet, they have not refiled
25 the remand motion that they previously filed in

1 California. And so at some point, I think Your Honor
2 will have the briefing completed in all three sets of
3 those cases. The issues are identical in all of them,
4 frankly, and so when that briefing is completed we
5 would be happy to have oral argument on those issues so
6 we can go into much more detail about why we think
7 these removals are appropriate and valid.

8 THE COURT: All right. Thank you, Mr. Fahey.
9 I really do want to give the Beasely and Restaino
10 representatives a chance to talk. Right now, we're
11 still working on status. We won't go into merits. And
12 if the parties agree, later on we can hear oral
13 argument on the fully briefed cases, but I don't wish
14 to chop the similar issues one from another. So we
15 probably will not do that today. But just so that I
16 can learn who you are. Ms. Beasely?

17 MS. BEASELY: Yes, Your Honor?

18 THE COURT: Good morning. I just wanted to
19 see who you were. And who is here from the Restaino
20 firm?

21 MS. RESTAINO: Lauri Restaino from Restaino
22 Law.

23 THE COURT: Nice to meet you, too. Thank
24 you.

25 MS. RESTAINO: Thank you, Your Honor.

1 THE COURT: All right. Any more on the
2 status of cases? You talked about, Ms. Gussack, 65
3 cases in the non-discovery pool, that is outside of
4 what is currently being worked through to trial?

5 MS. GUSSACK: Let me put it this way, Judge,
6 and let's see if they add up. I think we have one
7 discovery group D trial case, one discovery group D
8 that's not a trial case, pro se.

9 There are 17 discovery group E cases that are
10 proceedings through discovery towards expert reports,
11 and then there are the 65 non-discovery group cases
12 that account for the 3,264 plaintiffs.

13 THE COURT: Okay. I tend to look at the as
14 filed California cases and Illinois cases as one
15 massive case for now because that's how it's filed and
16 transferred to the MDL. It is actually helpful to know
17 how many actual plaintiffs there are.

18 But, it's my understanding, if I recollect
19 this correctly, that in California not all of them need
20 to be residents of California. So, potentially, I'm
21 not sure where those cases would eventually be tried.

22 MR. FAHEY: All 50 states, Your Honor.

23 MS. GUSSACK: You're quite right, Your Honor,
24 that most of them, in fact, are not California-based
25 plaintiffs, and the only other caveat I would point out

1 is that of those 3,264 plaintiffs recently transferred,
2 those Illinois cases, four of them, are not subject to
3 removal challenges, remand challenges, 246 plaintiffs.
4 So those are separate from the California transfer
5 filings.

6 THE COURT: Okay. Thank you. Mr. Kiesel,
7 let me turn to you. Good morning.

8 MR. KIESEL: Good morning, Your Honor.

9 THE COURT: Do you have any -- on that
10 limited issue, on the numbers of cases, status of
11 cases, do you have any additional information?

12 MR. KIESEL: Your Honor, Paul Kiesel,
13 plaintiffs' liaison counsel in this litigation. I
14 think that our numbers are fairly accurate. It tends
15 to be a moving target, so when we get to discovery
16 group D and we had six cases, now we are down to one
17 case and discovery group E is a moving target. I
18 actually had ten discovery group E. But, I think in
19 total you have a pretty good perspective on what the
20 numbers are nationally, Your Honor.

21 THE COURT: Thank you. Thank you. I would
22 like to address the joint report and agenda that was
23 provided, and I'd also like to note that also in
24 attendance at this morning's status conference is the
25 special master, Mr. Merenstein. Good morning.

1 MR. MERENSTEIN: Good morning, Your Honor.

2 THE COURT: And we did just receive a new R
3 and R concerning Santa Clara County. So we will talk
4 about that later. And the first matter on the joint
5 report and agenda is presented as oral argument for
6 Santa Clara versus GSK. We know that we set that
7 definitely for 11:30 so that the California parties can
8 be video conferenced in. So we will move on to discuss
9 other matters on the agenda.

10 MR. MERENSTEIN: Thank you, Your Honor.

11 THE COURT: And I did see counsel in the back
12 of the courtroom stand earlier.

13 MR. SACKS: Yes, Your Honor, this is Shayna
14 Sacks from Napoli (inaudible). My understanding is we
15 did file the remands for the California cases. I'm
16 going to look into that right now and --

17 THE COURT: No, the question is whether it
18 was refiled here in the MDL.

19 MS. SACKS: I believe it was. My records say
20 it was done on October 15th I believe. Sorry, November
21 15th.

22 THE COURT: Well, everyone's going to have to
23 check on that.

24 MS. SACKS: Okay, no problem.

25 THE COURT: Good.

1 MS. SACKS: Thank you.

2 THE COURT: Thank you. Perhaps you can look
3 on your ECF and see what the docket number is.

4 MS. SACKS: I will. Thank you.

5 THE COURT: Thank you. All right. The
6 identification of who is present is very helpful to
7 this Court because there are a number of you that are
8 here on behalf of your own cases and not necessarily
9 MDL-wide purposes.

10 And this is becoming I think with some of the
11 issues that I see being raised an interesting issue for
12 the Court because, as you know, some time ago when this
13 Avandia MDL was seriously winding down except for some
14 class actions and third party payor cases, we saw no
15 further need for a plaintiff steering committee to do
16 the work of the MDL and, therefore, disbanded it
17 retaining an advisory committee for common fund issues
18 and the like.

19 And I see today that we have two
20 representatives here. Of course, Mr. Kiesel, you are
21 also on that committee, but Ms. Nast is here, Mr. Corr
22 is here, and I appreciate you being here.

23 We are looking at the FDA announcement, the
24 safety announcement most recently released in the
25 press, and that's about all I have the information of

1 on it. It's a New York Times article. But I think
2 it's becoming more publicized. And I'm looking at the
3 belief that GSK has to ask this Court to give all
4 plaintiffs 60 days to submit supplemental expert
5 reports. That's one way of doing it in light of that.
6 We have to talk about this, and now is as good a time
7 as any, because we don't really have a clarified
8 plaintiffs' position because it would be you, Mr.
9 Kiesel, who are the plaintiff.

10 But I think that we need a lot of input here.
11 And I'm also looking at this and saying if we go a
12 certain route, and I'm addressing this on a case
13 management level, not a substantive level at this time,
14 but I think it would be problematic to have too many
15 individual positions on this.

16 We did do general science on MI a long time
17 ago, and does this impact on that? We see that there
18 are issues here to address substantively. But how to
19 do it is my case management role, and I'd like to hear
20 the parties out on that.

21 MR. KIESEL: If I might, Your Honor, Paul
22 Kiesel for plaintiffs. Initially, I think that
23 although this has been out about a week, November 25th
24 is when the FDA issued this bulletin.

25 THE COURT: That's right.

1 MR. KIESEL: I don't believe, Your Honor,
2 that it's going to be necessary for you to have general
3 causation Daubert-type motion practice again. I think
4 you've got the science. It's been argued the Court's
5 made it's rulings.

6 There may be specific causation questions,
7 which would be the individual lawyers who would be
8 responding to those issues and not a general causation
9 Daubert-type hearing again.

10 Should the Court want to do that, I'd be
11 fully prepared on behalf of the plaintiff community to
12 put on general Daubert arguments one more time. I
13 don't think that's necessary. I want to brief that
14 issue if the Court thought it was appropriate, but if
15 it's necessary, we could certainly have a point person.

16
17 Mr. Rosamond (ph) who is here and has been
18 working with me for the last four years on this
19 litigation, he's gone to London with me on depositions
20 involving the record study, is fully capable and
21 experienced in arguing before this Court that general
22 causation motion, should it be necessary.

23 But, again, I don't think, given where we are
24 in this litigation, that reopening general causation is
25 an appropriate way to proceed, and should the Court

1 feel it necessary, I would handle that on a case by
2 case basis. We'll provide to all plaintiffs' counsel
3 the experts that we've utilized in the underlying MDL.
4 They're welcome to the reports and they're welcome to
5 use them as their own individual experts should it be
6 necessary, Your Honor.

7 THE COURT: And even if it were not
8 necessary, what is the plaintiff's position on the
9 additional supplemental expert reports. Wouldn't
10 plaintiffs want to have the opportunity to produce a
11 supplemental report to make sure that after all the
12 work they do to get discovery completed and get to
13 summary judgment on those they wish they had done so,
14 because wouldn't that be beneficial to some, maybe not
15 all, but to some?

16 MR. KIESEL: I guess the question is -- the
17 pre-condition to that question is that, in fact, the
18 FDA's recent announcement has impact on this litigation
19 with respect to the MI claims or the other causation
20 issues that are being presented by the plaintiffs, and
21 I'm not certain, Your Honor, that it actually does.

22 A record was completed at the time that Joe
23 Zonies and Tom Cartmell argued the underlying Daubert
24 motions. The science was there, the experts relied on
25 it, so I think that this alleged readjudication of the

1 endpoint for heart attack with this drug doesn't really
2 change the underlying issues the Court has already
3 addressed.

4 If you felt it appropriate, we certainly can
5 and we have the experts available. Once we do the due
6 diligence on the FDA's announcement to provide
7 supplemental expert reports, we can certainly do that,
8 but I'm not sure it's necessary, Your Honor.

9 THE COURT: Well, what's very interesting
10 here is I have GSK's position on this and their
11 request. I don't have a briefing. I don't have
12 anything more in my intellectual arsenal than a New
13 York Times press release. So I need more, and if it
14 were to be fully briefed, I would give each side an
15 opportunity to tell me what it's really based on.

16 MR. KIESEL: Correct, Your Honor. And I
17 think our response in the status conference statement
18 is we have just learned of this information ourselves,
19 we are evaluating it just as the Court is, and we need
20 to really dig into it.

21 There are certain things we need to do
22 fundamentally to look at the foundation of the basis
23 for this release and whether or not it's a political
24 release or it really is a substantive medical opinion
25 that's being offered by the FDA here, Your Honor.

1 THE COURT: Well, I'm sure that in some
2 regards there has to be an alignment of the fact that
3 the FDA never really fully pulled Avandia from the
4 market, and now they're eliminating the restrictions
5 that they -- the warnings that they put on it. So I
6 think that that bears some substantive discussion on
7 possibly revisiting Daubert, even if it is in a
8 specific causation way.

9 MR. KIESEL: Again, if the Court felt it
10 appropriate, we would be certainly willing to and my
11 firm would be happy to take on the responsibility of
12 presenting that issue to this court.

13 THE COURT: All right. Ms. Gussack, would
14 you like to respond? Thank you, Mr. Kiesel.

15 MS. GUSSACK: Thank you, Your Honor. I can't
16 think of anything I would rather talk about than the
17 recent FDA announcement. And I would simply correct
18 Mr. Kiesel, there is no alleged readjudication of
19 record.

20 There was by the Duke Cardiac Research
21 Institute a readjudication of all of the data that was
22 in record, and FDA's conclusion announced, and I would
23 like to hand up to the Court so that you are relying or
24 at least --

25 THE COURT: Something more than the New York

1 Times.

2 MS. GUSSACK: -- reviewing something other
3 than the New York Times --

4 THE COURT: Thank you.

5 MS. GUSSACK: -- the FDA's decisional memo
6 and their safety alert, and certainly we will brief
7 this for the Court as the Court directs.

8 But, most critically, what FDA said is that
9 the data currently available to FDA, which includes
10 record and the readjudication by the Duke Cardiac
11 Research Institute and all of the analysis that it has
12 done, including over the last three years since this
13 Court held daubert proceedings, has caused it to
14 conclude that there is no increased risk of
15 cardiovascular death or heart attacks or major
16 cardiovascular adverse outcomes associated with Avandia
17 in comparison to any other routinely used oral
18 anti-diabetic, citing to Metformin and SU.

19 Most critically, for the purpose that we
20 raise this today, the FDA directed that it doesn't want
21 the meta analysis, which was the heart of the
22 plaintiffs' Daubert argument, that the meta analysis
23 was sufficient to show an increased risk of Avandia and
24 heart attack, that that meta analysis is not probative
25 and should not be contained in the warnings going

1 forward with Avandia, and as the Court already pointed
2 out, restrictions on its use will be lifted.

3 It is the province, I think, of this Court to
4 look at the quality of the science as it exists. And
5 it's, therefore, our view that the plaintiffs should be
6 given an opportunity to supplement their reports, but
7 that it is appropriate in the individual cases coming
8 before the Court for trial, including the Bork case
9 most -- I think soonest, but in other cases, to look at
10 the science as presented with current information. And
11 there is ample support in Daubert proceedings where new
12 important information is available that Daubert gets
13 revisited to reflect the current views of the science.

14 THE COURT: Of course, I think you will agree
15 that in Daubert we dealt with not conclusions on the
16 science, but the methodology.

17 MS. GUSSACK: Absolutely, Your Honor.

18 THE COURT: And that methodology is either
19 reasonable and accepted in the legal sense or not. And
20 how does this record -- what do you call it?

21 MS. GUSSACK: The --

22 THE COURT: Readjudication of the record
23 trial, how does it impact on that limitation of what a
24 court does in Daubert?

25 MS. GUSSACK: I believe, Your Honor, when you

1 were addressing Daubert originally, concluded that
2 there was no question that having a randomized clinical
3 trial was the best quality evidence one could have
4 about whether there was, in fact, causation.

5 And you were presented during hearings with
6 questions about the record clinical trial and questions
7 about its methodology, and those questions have been
8 addressed. The Duke readjudication was an effort to
9 take that data and to alleviate the questions about the
10 methodology employed in that clinical trial, and was so
11 persuasive in its analysis that the advisory committee
12 to the FDA and then, subsequently, the FDA itself
13 concluded that it is probative, reliable, and far more
14 meaningful than the meta analysis, which is what the
15 Court was, I think, focused on as of the time January
16 of --

17 THE COURT: Well, the Court's focus on any
18 particular factor had to impact and be relevant to the
19 methodology that the experts were using to formulate
20 their opinions. And, of course, that methodology
21 calculation is based on what did they use to formulate
22 their opinions, which is I think where you're going.

23 MS. GUSSACK: Exactly.

24 THE COURT: But I don't necessarily know
25 where an expert who may have reached a conclusion

1 before this would change their position and/or how they
2 would change their position if the methodology was the
3 same. So I guess that's the -- I'm trying to
4 crystalize the issue here that would have to be
5 addressed in a general Daubert regurgitation, or does
6 it slip into the specific science issues of individual
7 cases now?

8 MS. GUSSACK: Fair enough, Your Honor. I
9 think there are several kinds of general causation
10 challenges that remain to be had. The initial one was
11 with respect to heart attacks solely. So there are
12 cases that are coming before Your Honor that -- and, in
13 fact, the Bork case is not a heart attack, it is a
14 sudden cardiac death, and there has been no Daubert
15 challenge as to the opinions offered both generally and
16 specifically as to that. So that is a case in which a
17 Daubert challenge would be appropriate regardless of
18 what happened before.

19 THE COURT: Right.

20 MS. GUSSACK: There are stroke cases coming
21 in discovery group E that we have no had subject to a
22 Daubert challenge, and I'm not even sure as I last
23 looked at the discovery group E cases if there are any
24 heart attack cases in which we would urge a revisiting
25 of the prior Daubert ruling.

1 But we certainly believe that it's
2 appropriate because with additional data shouldn't
3 plaintiffs' experts want to evaluate whether that, in
4 fact, affects their judgment about the quality of the
5 evidence and the methodology with which they credit the
6 data? You would expect, I would think, that any
7 reputable scientist would want to look at the totality
8 of the evidence and determine whether it affects their
9 judgment.

10 Certainly, our view is and buttressed by
11 FDA's recently conclusion, that the meta analysis is
12 insufficient poor quality data in the face of the
13 robust kind of clinical trial data that record and the
14 readjudication provides.

15 THE COURT: So it can be done in a general
16 and specific sense, but in case-specific matters that
17 are in line --

18 MS. GUSSACK: Exactly.

19 THE COURT: -- for --

20 MS. GUSSACK: Which will have far reaching
21 implications for other cases similarly situated.

22 THE COURT: Well, for the consolidated
23 plaintiffs' positions, which an MDL is responsible to
24 allow, it seems to me I'm faced with a case management
25 decision to reconstitute on a limited basis a plaintiff

1 steering committee, giving Mr. Kiesel full reign to put
2 together a group of attorneys to deal with this issue.

3 I would hate to see this being litigated
4 piecemeal all over the country in various forms and
5 piecemeal here. I would not want that. I do want a
6 comprehensive approach. But it's still going to be
7 absolutely relevant to specific causation in any one of
8 the claimed injuries.

9 MS. GUSSACK: Absolutely. In any of the
10 cases coming up there will be specific causation
11 challenges that will need to be addressed. But there
12 is in the cases coming up as well and these are, of
13 course,

14 non-MI cases, a need to look at the general causation
15 opinion that supports those specific causation issues.

16 We raise this only, Your Honor, so that we
17 could one, give the plaintiffs the opportunity to
18 supplement their reports if they want, and we could
19 arrange with the help of the special master case
20 management that would allow for the corresponding
21 response from GSK.

22 But more critically, I think if we met and
23 conferred about what an appropriate process is for
24 raising this issue and then, ultimately, if we can't
25 find consensus, brief for Your Honor the reasons for a

1 renewed Daubert challenge as to MI. But I think
2 probably more likely, the initial renewed -- the
3 initial challenge will not be a renewed one, but a new
4 one as to the issues coming up, for instance, in the
5 Bork case and then in the stroke cases that follow.

6 THE COURT: Okay. And the 60-day
7 supplemental expert report request that you're making,
8 is that on all cases or is that only on those cases
9 that are now in a position to be in one of the
10 discovery pools and a trial pool?

11 MS. GUSSACK: Only the discovery group cases
12 in D and E, which are a defined number.

13 THE COURT: You're not considering any
14 revised Lone Pine one or two response?

15 MS. GUSSACK: Well, Your Honor, we actually
16 are considering that. But we thought first that we
17 should address the issues coming up on the discovery,
18 the fact and expert discovery that's in discovery group
19 D and E. The Lone Pine issues, which are I think the
20 subject of another item on the agenda we do want to
21 address more completely.

22 THE COURT: All right. Thank you. Mr.
23 Kiesel, I saw you stand up so I know you want to reply.

24 MR. KIESEL: Okay. I think we're not far
25 off. THE COURT: I agree.

1 MR. KIESEL: If the Court feels it's
2 appropriate, then we would ask that there be briefing
3 on why we ought to revisit the issue of general
4 causation for MI based upon the readjudication of
5 record. So I don't think we need to do anything more
6 than if the Court wants to brief that.

7 THE COURT: But if Ms. Gussack has just said
8 it wouldn't be on general Daubert, it probably is not a
9 relitigation, if I have that correctly. But I think
10 everybody should be briefing their positions on this to
11 clarify --

12 MR. KIESEL: I agree.

13 THE COURT: -- what exactly it is that
14 defendants may be seeking here. I know it will. this
15 release of information, this readjudication out of
16 Duke, will impact any plaintiffs' and defendant's
17 expert opinion. As to what and how I cannot predict,
18 but it needs to be considered.

19 MR. KIESEL: There's no question that it will
20 be a factor at some point in time with some expert
21 opinion. He'll have to respond to what this
22 readjudication means in any individual case, I agree.
23 To the extent that we have to go beyond that and the
24 Court is looking at a wholesale reevaluation of an
25 already heard general Daubert challenge, then I think

1 we can approach that, and as I say, I'm not happy to,
2 but I am pleased to take on the responsibility should
3 the Court wish me to, to respond to that for the
4 plaintiffs.

5 THE COURT: Well, I would appreciate it if
6 you would think about how in your status on this issue
7 how you would go about that because I really do have to
8 consider reconstituting, as I said, on a limited basis,
9 plaintiffs' steering committee members.

10 I want them to be funded out of, you know,
11 whatever expense fund there is, to be able to do this
12 appropriately in whatever division of injuries is
13 claimed. Yet at the same time, we're left with so few
14 cases other than the newly removed ones here that I
15 don't know about the resources available, so we have to
16 look at all of that.

17 MR. KIESEL: And I've carried on my role with
18 respect to all of the plaintiff attorneys the same way
19 I did two years ago when I was lead. I work with every
20 plaintiff lawyer, whether they're a pro se litigant,
21 most importantly the pro se litigants, or their
22 attorneys who have one or 2,000 cases, to coordinate
23 with them, to keep them informed, and ultimately to
24 develop a strategy that brings this MDL to a close in a
25 reasoned way so that plaintiffs who have claims have

1 them heard and GSK at the certain point can have this
2 matter resolved, Your Honor.

3 THE COURT: Well, I appreciate that, too.
4 Sometimes I think leaving you alone is not fair of me,
5 but I know that you have resources.

6 MS. GUSSACK: Your Honor, let me just clarify
7 because I think Mr. Kiesel probably appreciates the
8 following. Both plaintiffs and defendants at the time
9 of the Daubert proceedings agreed on what the quality
10 and hierarchy of evidence was.

11 Both plaintiff and defendant's experts agreed
12 that the gold standard for quality evidence as to
13 causation was randomized clinical trials. It was true
14 at that time of the Daubert hearing that the
15 plaintiffs' experts had criticisms of GSK's clinical
16 trial, the record trial. It is the readjudication by
17 Duke that validates and confirms the reliability of
18 that.

19 So if both parties understand and agree about
20 the hierarchy of that evidence, it's hard to imagine
21 that plaintiffs' experts wouldn't want an opportunity
22 to acknowledge that additional data and consider it in
23 offering their opinions, which is why we have offered
24 this revised proposed schedule.

25 I raise this point only because I think it

1 goes critically to the general causation challenge that
2 we need to make, regardless of whether it's a stroke
3 case or a sudden cardiac death case or, in fact, and MI
4 case that may come forward.

5 But, I appreciate that Your Honor wants to
6 have some kind of integrated coordinated presentation
7 of these issues. We had anticipated that we would be
8 making a Daubert challenge in the first case that is
9 scheduled to advance to trial. But we will confer with
10 Mr. Kiesel about whether there should be a broader
11 based challenge in which we look at all of the issues
12 or whether it's best to do it in individual cases on a
13 general and specific basis.

14 THE COURT: I think that there's much to
15 chisel away at in addressing how to actually consider
16 this issue, which we know at some point was going to
17 have to be considered. It should be.

18 And it also occurred to me as I was reviewing
19 the agenda item that it would be unfair if this Court
20 did not allow plaintiffs' experts to review this
21 readjudication and opine on it in some way. It has got
22 to be valid in terms of cross-examination. It would be
23 valid in terms of reconsideration of their own
24 position, and all of that could only strengthen
25 plaintiffs' case in some cases and weaken it in others.

1 But that's why I think it would be
2 preferable, and this is a musing, it is not -- I don't
3 mean amusing, A-M-U-S-I-N-G, it is the musing of this
4 Court that plaintiffs should be granted leave to do
5 this. I mean I could just as well see plaintiffs
6 wanting to ask the Court for leave to file a
7 supplemental expert opinion to address this.

8 MR. KIESEL: And I would just simply say,
9 Your Honor, that to the extent that the experts'
10 opinions would change as a result of the actions of the
11 FDA, there's no question that the plaintiffs' experts
12 would want to supplement their reports.

13 I did the depositions of Professors Holme and
14 Pocock (ph), the designer of this record study and the
15 lead statistician on the study. So we've heavily
16 looked at record, its design, its power.

17 The experts, our experts, already have all
18 that information to the extent -- and we haven't
19 reviewed the FDA's recent findings -- they changed
20 their opinions, we certainly would like the opportunity
21 to supplement our reports that are consistent with this
22 opinion.

23 THE COURT: Then why don't the parties do
24 what you do so well, meet and confer, and I'll refer
25 this part of it, a schedule, to our special master, to

1 work out how you wish to approach this, because I have
2 on problems at all with granting leave to any
3 plaintiffs that want to revise or supplement their
4 expert opinions based on the readjudication.

5 Where it takes us I'm not absolutely clear
6 on, although it should be considered and it will be.
7 Let's make it less chaotic and let's make it a matter
8 of creating a record here in this MDL that is clear for
9 purposes of review, clear for courts who are trying
10 these cases when they are ready to be tried, and if I
11 need to revise a ruling, I have to be receptive to that
12 possibility, and I certainly will make rulings if they
13 are presented to me. Right now, I don't have a
14 motion. We have a discussion. This is what the status
15 conference is for, and I do appreciate this. And we
16 will be anxious to hear from counsel.

17 If you could possibly within 30 days give me
18 a report if you have a joint report as to how you wish
19 to proceed on this, either by motion or granting leave
20 by stipulated order to have plaintiffs' experts, if the
21 plaintiffs choose, to file supplemental expert reports
22 based on this. It doesn't open the door to everything
23 else I don't think. It's just this readjudication. So
24 let's keep it confined to that unless there's reason
25 otherwise, which I'm not aware of.

1 MR. KIESEL: Well, do you want us to work
2 with the special master --

3 THE COURT: I do.

4 MR. KIESEL: -- in coming up with that report
5 and recommendation?

6 THE COURT: I do.

7 MS. GUSSACK: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. KIESEL: On another point, you touched on
10 it, Your Honor, I might as well approach it now, it
11 deals with the issue, of course, of costs and withheld
12 funds and the work that we have done.

13 THE COURT: Right.

14 MR. KIESEL: Most importantly, with respect
15 to costs we have incurred, and the easiest think for me
16 to do, which I have been doing, is simply writing
17 checks, whether it's at times to the special master,
18 although we got that straightened out, or it's to the
19 document repository which is running at about \$10,000 a
20 month. And so it's a process where we have, the
21 Kiesel firm has been funding the litigation in part
22 because my respect for Mr. Corr and Ms. Nast and not
23 wanting to disturb the fund that's been set aside from
24 the underlying litigation that we set aside for use of
25 future administrative costs. But to the extent we have

1 these ongoing issues, and there are cases --

2 THE COURT: Aren't you now incurring
3 administrative costs?

4 MR. KIESEL: Yes, Your Honor.

5 THE COURT: Okay. The future is now.

6 MR. KIESEL: It is and that's why it's a good
7 time to have this conversation.

8 THE COURT: Okay.

9 MR. KIESEL: So what would the Court like me
10 to do with respect to presenting. I can certainly send
11 to the special master or to Andy --

12 THE COURT: Well, it's really the accountant
13 that reviews that.

14 MR. KIESEL -- Andy Churles.

15 THE COURT: No, he only does the payment.

16 MR. KIESEL: Allen Winniker (ph).

17 THE COURT: Allen Winniker. But I think that
18 we should be addressing a procedure for you. Now, the
19 old procedure set by PTO for the payment of cost is the
20 common fund expenses are certainly appropriate, but I
21 would like to hear from the protectors of the common
22 fund.

23 MR. KIESEL: Perfect.

24 THE COURT: Ms. Nast, do you have a position
25 on this?

1 MS. NAST: I haven't thought about it. I
2 mean we've talked about it in the past. I haven't
3 thought about it. But, the money that's in the common
4 fund was put there by assessing cases that are gone,
5 and they put that money in the common fund to fund what
6 had gone up to the point where when Your Honor awarded
7 the counsel fees.

8 So we are accumulating, as you know, from
9 continued pay ins from those settled cases, we continue
10 to accumulate funds which Andy Charles is paying out
11 quarterly to comply with your orders.

12 I haven't talked to my colleagues about this
13 at all. I do think that there's a dividing line
14 between what's happened to create that common benefit
15 fund and what's happening here. I don't know what that
16 dividing line means. We need to talk about it among
17 ourselves.

18 But, I can understand the argument that I
19 know will be made that the common benefit fund is and
20 was to cover the cases that are settled, that they
21 raised -- that that's how the fund was raised. I don't
22 know where that leaves us.

23 THE COURT: All right. You do need to talk
24 to the --

25 MS. NAST: Yes.

1 THE COURT: -- rest of the committee --

2 MS. NAST: Yes.

3 THE COURT: -- that you chair and address
4 this with Mr. Kiesel. It seems to me though that as
5 settlements keep pouring in and common fund assessments
6 keep adding to that coffer, whatever the balance is I
7 do not remember, but I do get reports from Mr. Churles,
8 who is the trustee of that, it seems to me that this is
9 ongoing litigation that requires substantial resources.

10 And, again, if it's common -- if it is -- if
11 it is appropriate to find that it is unfair to have Mr.
12 Kiesel's firm fund the entire plaintiffs' litigation,
13 and --

14 MS. NAST: With that I totally agree.

15 THE COURT: -- I believe that is, and no one
16 should be, you know, in opposition to that, then we
17 have to look for an alternative.

18 MS. NAST: I agree with --

19 THE COURT: And that alternative --

20 MS. NAST: -- that as well, Your Honor,

21 THE COURT: -- may very well be me
22 reconstituting now with the newly found litigation, not
23 the individual cases litigation, but the common
24 interests that are being presented, we might have to
25 reconstitute the PSC, and then that's another matter.

1 MS. NAST: Well, that's an interesting point
2 because I mean, as I said, I totally agree Mr. Kiesel
3 should not be funding this litigation. When we --
4 with the first half or three-quarters or whatever we
5 want to call it, the first part of the case, the
6 steering committee each put up a considerable amount of
7 money --

8 THE COURT: Right.

9 MS. NAST: -- and that amount of money was
10 used to fund the litigation. And right now, there's no
11 mechanism in place to fund, so we need to discuss that.

12 THE COURT: Yes, not without the Court adding
13 new persons --

14 MS. NAST: Right.

15 THE COURT: -- to a plaintiff steering
16 committee for a limited purpose or not. But it seems
17 to me that we're reacting. It's the tail wagging the
18 dog here. We're reacting to this because of new issues
19 that have just developed, and I think that's our role,
20 to deal with what is going on right now.

21 MS. NAST: Yes, and those issues, new Daubert
22 or a new round of Daubert hearings, Daubert hearings
23 are incredibly expensive.

24 THE COURT: Expensive and time --

25 MS. NAST: Time consuming.

1 THE COURT: -- consuming and very intensive.
2 We know how much time even this Court spent on it, and
3 that was nothing compared to what the attorneys did for
4 their clients. So we --

5 MS. NAST: Anyway, I will consult with my --

6 THE COURT: -- don't want anyone being in a
7 position, such as you, Mr. Kiesel, or anyone else, to
8 be funding that alone. That's not what our intention
9 ever was, so we have to revise.

10 MS. NAST: I will confer with my colleagues,
11 including Mr. Kiesel, of course, and we'll maybe come
12 up with a suggestion.

13 THE COURT: All right. I appreciate that.

14 MS. NAST: Okay.

15 THE COURT: Thank you. All right. Moving
16 down the agenda, we now get to Roman numeral III I
17 believe, motions ripe for decision, ripe or not, they
18 are motions that are outstanding. And there are
19 motions to dismiss in discovery group E.

20 GSK has posed those motions on a variety of
21 grounds. There is the Salim Beasley cases, which we
22 are going to address, but have oral argument
23 separately. The Restaino cases where I think that
24 those refiled motions to remand are not quite fully
25 briefed. And Kuato, Salim cases, which is GSK's

1 motions for orders to show cause.

2 So let's address the discovery group E cases,
3 and which of GSK's team would like to do that?

4 MS. GUSSACK: Thank you for giving us the
5 option. Your Honor, I think you'll see from the item
6 on the agenda that we have identified the Blumenfeld,
7 Decuir, Douglas, Rodriguez, and Sanchez cases as all
8 motions to dismiss that are fully briefed or in which
9 plaintiffs did not file a response, and we're simply
10 flagging for the Court that they are ready to be
11 addressed.

12 If the Court would like to hear argument or
13 has a question about any of the bases for the motions,
14 we're happy to provide it. I don't even know if
15 counsel for each of these actions is present today.

16 THE COURT: Some of them are not, some of
17 them are. As far as the Blumenfeld case, I don't think
18 counsel is here.

19 (Pause in proceedings.)

20 THE COURT: No.

21 MR. KIESEL: Your Honor, might it be
22 worthwhile to just identify -- have the folks identify
23 if they're here, on what case they're here on so we can
24 get a sense of counsel either --

25 THE COURT: Yes, I have three lists of

1 counsel here and I can't put them all together on the
2 spot. So on --

3 (Pause in proceedings.)

4 THE COURT: Is Robin Switzenbaum (ph) here?
5 I didn't think so.

6 (Pause in proceedings.)

7 THE COURT: Do we have a status report on
8 that case?

9 (Pause in proceedings.)

10 THE COURT: I do not know who is representing
11 the Blumenfeld plaintiff in this matter if they are
12 here. But I don't have any response to my call. Of
13 course, the plaintiff did not file a response either.

14 MS. GUSSACK: Right, which was due two months
15 ago from now, or almost two months I think. This was
16 about substituting of a party, and the plaintiffs have
17 no responded.

18 THE COURT: Because of an estate issue,
19 correct?

20 MS. GUSSACK: Exactly.

21 THE COURT: All right. We will table that
22 for the moment. And then the next on your list, is
23 that Decuir?

24 MS. GUSSACK: Yes. I believe plaintiffs'
25 counsel is Lisa Jones.

1 THE COURT: Is Lisa Jones present?

2 MR. DECUIR: Your Honor, I am co-counsel on
3 that case. I am Mr. Decuir, Your Honor, and I'm --

4 THE COURT: Hello.

5 MR. DECUIR: -- presently on that case.

6 THE COURT: I thought the name was familiar,
7 counsel. And you are the plaintiff as well?

8 MR. DECUIR: Yes, Your Honor.

9 THE COURT: And you're representing yourself?

10 MR. DECUIR: Yes, Your Honor.

11 THE COURT: Okay. Then I don't think we got
12 a response to the motion.

13 MR. DECUIR: I've never received a copy of
14 the motion, Your Honor. The attorneys for GSK have
15 chosen to avoid me, although I was designated to
16 receive the motion, I have never received a copy of the
17 motion.

18 THE COURT: But you are represented by
19 co-counsel.

20 MR. DECUIR: Yes, Your Honor.

21 THE COURT: And what is the status of that,
22 because every motion is listed on ECF, and whether
23 you're pro se or you're your own attorney or not,
24 there's no way you cannot get notice of a motion if you
25 check the docket.

1 I don't know what happened here, but personal
2 service, it has been months since this has been
3 pending. The response was due to the motion to dismiss
4 for failure to state a claim under 12(b)(5) and 9(b) on
5 August 16th, three months ago, four months ago.

6 MR. DECUIR: I have not seen a motion, Your
7 Honor. I apologize to the Court. I thought Ms. Jones
8 was handling it. She came up with some personal
9 physical problems, and I had to take over, and she
10 forwarded me some a lot of stuff, but not a motion to
11 dismiss.

12 THE COURT: Well, there's a problem there
13 between you and your attorney, and I would like to have
14 a response before I rule on a substantive motion.

15 MR. DECUIR: Yes, Your Honor.

16 THE COURT: So you need to address it. And
17 I'm glad you're here because I'm not sure you would
18 know this. But if you're co-counsel, and you just told
19 me you were and you're in the docket --

20 MR. DECUIR: Yes, Your Honor.

21 THE COURT: -- because I saw your docket, you
22 need to, sir, you need to be responsible for yourself.

23 MR. DECUIR: Yes, Your Honor.

24 THE COURT: Okay?

25 MR. DECUIR: All right.

1 THE COURT: I'll give you that opportunity,
2 but I need to figure out --

3 MR. DECUIR: We will respond --

4 THE COURT: -- how this is -- how this is
5 going to move forward because if Ms. Jones is not
6 actively representing you, she really should not be
7 responsible on the docket. But I would prefer that you
8 had counsel other than yourself. It's not easy to
9 represent yourself, even if you know and are trained as
10 a lawyer.

11 MR. DECUIR: I understand that, Your Honor.
12 I just was forced -- kind of forced into the situation
13 because of her medical condition and problem.

14 THE COURT: Well, okay. You might want to
15 contact her, and I'm sorry to hear that she's ill, and
16 tell her that the Judge wants to know if she's going to
17 be able to continue or whether you want to seek new
18 counsel, and then we can figure out where we're going
19 with this.

20 MS. GUSSACK: Your Honor --

21 THE COURT: Ms. Gussack?

22 MS. GUSSACK: -- we're sympathetic to the
23 circumstances described. May we seek a deadline by
24 which this has to happen so that we can determine
25 whether the case is moving forward?

1 THE COURT: I think that a two-week deadline
2 to notify the Court and GSK as to whether or not Ms.
3 Jones is going to be representing you.

4 MR. DECUIR: Yes, Your Honor.

5 THE COURT: She should be withdrawing her
6 appearance. You still remain as counsel of record, but
7 you have 30 days to get new counsel --

8 MR. DECUIR: Thank you, Your Honor.

9 THE COURT: -- if that's the situation. All
10 right? And then we will decide who is responsible to
11 respond to this motion. Without a response I am within
12 my rights to grant the motion as unopposed, but I have
13 to also review the merits. I need a response.

14 MR. DECUIR: Yes, Your Honor.

15 THE COURT: Okay?

16 MR. DECUIR: Within 30 days.

17 THE COURT: Yes, but she has to notify the
18 Court within 14 days.

19 MR. DECUIR: Within 14 days.

20 THE COURT: Thank you. All right. We'll
21 move on?

22 MS. GUSSACK: The Douglas case, Your Honor, I
23 believe plaintiffs' counsel is the Stevenson Law Firm.

24 MR. STEVENSON: Good morning, Your Honor,
25 Marcus Stevenson.

1 THE COURT: Good morning. Now, this is fully
2 briefed and it's a motion to dismiss for failure to
3 comply with several pretrial orders. What's the
4 problem?

5 MR. STEVENSON: The certification wasn't
6 filed. The records that I thought we needed in order
7 to comply with that we didn't have. We placed an order
8 for them. They weren't in within the time period to
9 allow a physician to provide the certification. In
10 fact, the remaining records came into my office on
11 Wednesday.

12 THE COURT: Do you have the records?

13 MR. STEVENSON: I have them in electronic
14 form, yes.

15 THE COURT: And you filed these in this year,
16 2013.

17 MR. STEVENSON: I did.

18 THE COURT: And -- well, the certification,
19 meaning Lone Pine two, is that what you're referring to
20 --

21 MR. STEVENSON: The physician --

22 THE COURT: -- or Lone Pine one?

23 MR. STEVENSON: -- certifications.

24 MR. HAMILTON: Lone Pine one, Your Honor.

25 THE COURT: It's Lone Pine one. You're

1 really early in the stage. I think that we need to set
2 a deadline for you, too. That's the only way to
3 evaluate the substance of a claim, it's the only way
4 GSK knows how to respond to your claims.

5 MR. STEVENSON: Don't disagree, Your Honor.

6 THE COURT: Okay.

7 MR. STEVENSON: And in all fairness, my
8 response to the motion was I understand that there are
9 deadlines, I don't have the information, I cannot
10 file -- I can't provide it if I don't have the
11 information. I understand the Court has got to make a
12 ruling and my client is aware.

13 THE COURT: If I make a ruling and say that
14 you are out of time, that could have dire consequences
15 for your clients.

16 MR. STEVENSON: Yes, Your Honor.

17 THE COURT: And I refrain from making
18 decisions for expediency. That's not how I do things,
19 and GSK doesn't even make motions in the history of
20 this MDL, they don't make motions on that basis unless
21 they've tried repeatedly to get these particular
22 documents.

23 Now, how does it take you so long? You filed
24 the claims. You filed the complaint. Don't you have
25 those lined up before you file?

1 MR. STEVENSON: I do not have all the records
2 that I thought the physicians would need in order to be
3 able to provide the certification in the time that the
4 Court has ordered.

5 THE COURT: Well, I don't know how long your
6 physicians need to finalize, but we have to -- we have
7 to hear from GSK on this. How long have you been at
8 this?

9 MS. GUSSACK: Your Honor, we have been
10 seeking this information since March of 2013. We have
11 been engaged in numerous correspondence, meet and
12 confers, and advising counsel that they have failed to
13 meet their obligations.

14 And I must say, and I think that because this
15 has significant implications for the 3,200 additional
16 plaintiffs who are before this Court, to not have these
17 records before you file a lawsuit to bring to this
18 Court a claim, to cause a defendant to incur expenses
19 in defense, and not have the basic medical records that
20 support your claim, is really unconscionable in our
21 view. And given this amount of time and effort and
22 expense, we really cannot see why we are -- why GSK is
23 being forced in this position to be un -- beyond
24 reasonable.

25 I think Your Honor quite correctly points out

1 that GSK has been extremely reasonable in its overtures
2 to plaintiffs' counsel about deficiencies and bringing
3 motions. And here we sit well over six months in the
4 push/pull of trying to get the basic factual
5 information we are entitled to in order to evaluate the
6 claim.

7 MR. STEVENSON: May I respond, Your Honor?

8 THE COURT: Yes, in a moment. Are you
9 including in this lack of information plaintiffs' fact
10 sheet?

11 MS. GUSSACK: Yes, Your Honor. We have not
12 received a fact sheet, basic medical records, a
13 physician certification, and we have not -- the
14 plaintiff, despite our many overtures, has not cured
15 any of the deficiencies.

16 MR. STEVENSON: May I respond, Your Honor?

17 THE COURT: Yes, you may.

18 MR. STEVENSON: They were just served in
19 July. I haven't had any conversations with defense
20 counsel in March of this year or any other
21 communications by them. I served a plaintiff fact sheet
22 in a timely manner. There are deficiencies for which
23 we received memos. We responded. We supplemented the
24 information.

25 I actually had a conversation with one of the

1 defense counsel. Our certificate wasn't filed in time.
2 I haven't -- contrary to the motion, I haven't ignored
3 their responses. In fact, each time they have sent me
4 something I have either called them, e-mailed them, or
5 had a conversation about it.

6 So while I am understanding the defense's
7 position as it relates to the totality of cases in this
8 matter, as it relates to Ms. Douglas it's a simple
9 issue. There were records, additional records that I
10 would need for a physician to provide a certification.
11 I could not get those records, and although I tried,
12 they came in after the deadline for me to respond to
13 the motion, which is why my response is what it is.

14 I have told the Court in full candor I
15 understand and so does my client what that means. But
16 the representation that they have tried over the course
17 of the last six months is not accurate as it relates to
18 this particular patient.

19 MS. GUSSACK: Your Honor, the case was filed
20 in February of 2013, and promptly thereafter GSK
21 informed the plaintiffs of their obligations to meet
22 all of the obligations with respect to plaintiff fact
23 sheets, basic medical records, and physician
24 certifications.

25 I do stand corrected. We did receive a fact

1 sheet at some point and we identified numerous
2 deficiencies, and that has also been the subject of
3 ongoing discussion with plaintiffs' counsel.

4 THE COURT: So we're up to the missing
5 certification?

6 MS. GUSSACK: Yes, Your Honor.

7 THE COURT: That's what's missing?

8 MS. GUSSACK: And the medical records.

9 THE COURT: And the medical records --

10 MS. GUSSACK: And the deficiencies that
11 haven't been cured.

12 THE COURT: Okay. The medical records that
13 were recently received that you now have digital
14 medical records, right?

15 MR. STEVENSON: Yes, Your Honor.

16 THE COURT: And those can be given over
17 forthwith and your expert can be reviewing them and you
18 can have a report in 30 days, can't you?

19 MR. STEVENSON: Yes, Your Honor.

20 THE COURT: The certification?

21 MR. STEVENSON: Yes.

22 THE COURT: I would hate to think that when
23 someone files a lawsuit they do so on a bare bones
24 allegation that their client at some point ingested
25 Avandia. We have a lot of cases that are general, too

1 general to withstand scrutiny and review by this Court.
2 But, how you get passed that generality if it exists is
3 to provide backup. It's all about proof and the
4 plaintiff --

5 MR. STEVENSON: I understand.

6 THE COURT: -- has the burden. And in the
7 MDL, regardless of whether -- because you said two
8 things, counsel. You said that they didn't contact
9 you, but then you said well, I have been every time I
10 was contacted giving them more and talking to somebody
11 or writing an e-mail, so there has been communication
12 between these --

13 MR. STEVENSON: I don't --

14 THE COURT: -- parties.

15 MR. STEVENSON: I don't disagree. There were
16 communications beginning in July. I was trying to
17 serve the defendant. I could not serve the defendant.
18 It wasn't until the end of July that I had any
19 communication from defense counsel regarding this case
20 and that, in fact, is when our communications began.

21 THE COURT: And where was --

22 MR. STEVENSON: I didn't mean to misrepresent

23 --

24 THE COURT: Where was the Douglas case filed
25 originally?

1 MR. STEVENSON: Originally in the Northern
2 District of Texas.

3 THE COURT: And when was it transferred to
4 the MDL?

5 MR. STEVENSON: It was refiled in February I
6 believe of this year, in the beginning of the year.

7 THE COURT: Okay. Once you're in the MDL,
8 counsel, you're on notice to follow the procedures.

9 MR. STEVENSON: Understood.

10 THE COURT: Okay? You don't sit and wait --

11 MR. STEVENSON: Understood.

12 THE COURT: -- because anybody who thinks
13 they're sitting and waiting, and you're just the
14 unlucky example right now, so that one day you can
15 hopefully get remanded to try your case in state court,
16 you have got to pass muster here first.

17 MR. STEVENSON: Yes, Your Honor.

18 THE COURT: And 30 days is it, no extensions.

19 MR. STEVENSON: Thank you, Your Honor.

20 THE COURT: You're welcome. We'll commit
21 that to a written order. And that's not only to
22 provide the necessary physician certification, but to
23 cure the deficiencies that have been noted by GSK.

24 MR. STEVENSON: Yes, Your Honor.

25 THE COURT: Very good. Thank you.

1 MR. STEVENSON: Thank you.

2 THE COURT: I think it was a good idea that
3 you were here. All right, the Rodriguez matter.

4 MS. GUSSACK: I believe plaintiffs' counsel
5 is from Fears Nachawati. There's a motion, Your Honor,
6 in which plaintiffs have not filed a response as of the
7 due date of October 22nd.

8 THE COURT: Is there anyone here on behalf of
9 Benito Rodriguez? All right, we will pass on that.
10 And GSK's motion to dismiss for failure to comply with
11 PTO-786 and 121, Yolanda Sanchez.

12 MS. GUSSACK: Same counsel, Your Honor, from
13 Fears Nachawati. In this case, it was -- it was
14 responded to and the briefing is complete before the
15 Court.

16 THE COURT: Is Attorney Garnett Hendricks or
17 Nabeel Nachavatti (ph) here?

18 (Pause in proceedings.)

19 THE COURT: All right. We will decide that
20 on the breaks.

21 (Pause in proceedings.)

22 THE COURT: That also goes for Rodriguez and
23 Blumenfeld. All right. What else needs to be
24 addressed today on the Salim Beasely cases that
25 implicate the refiled motions to remand?

1 MS. BEASELY: I have something to add, Your
2 Honor. May I --

3 THE COURT: Yes, please come forward.

4 MS. BEASELY: I did think the motions to
5 remand --

6 THE COURT: We're not going to be able to
7 hear you unless you're at the microphone, please.

8 MS. BEASELY: Just some background on me.
9 Out of 37 cases, 33 of our cases are up for motion to
10 remand. I thought that it was fully briefed until they
11 filed a supplemental authority earlier this week. I
12 intend to reply to that, so I would ask that you not
13 have oral argument or decide until I get a chance to do
14 that.

15 THE COURT: You may apply.

16 MS. BEASELY: Okay.

17 THE COURT: How long do you think you need?

18 MS. BEASELY: Next week. I was going to C
19 plead and attach the brief.

20 THE COURT: All right. So within 14 days --

21 MS. BEASELY: 14 days, okay.

22 THE COURT: -- you can reply.

23 MS. BEASELY: Okay. And then while I'm up
24 here, our other four cases also have a motion that's
25 pending. It's a motion that was filed by the defense.

1 It's a motion for an order to show cause.

2 The plaintiffs' position on the agenda is
3 more of a procedural summary because at the time that I
4 was inserting that information, they were saying our
5 brief was untimely.

6 But, substantively, our position is that it's
7 the defendant's burden to establish affirmative
8 defense, such as statute of limitations. We briefed
9 that. They haven't replied, so I would say that that
10 motion is fully briefed.

11 THE COURT: You do need to talk about the
12 motion for order to show cause. Let me just put that
13 aside for a minute --

14 MS. BEASELY: Okay.

15 THE COURT: -- until I get through the remand
16 motions. I think it's an interesting situation. But
17 that's implicated in another matter as well.

18 MS. BEASELY: The motion to remand?

19 THE COURT: No. Your cases are also
20 implicated in the failure to submit required materials.

21 MS. BEASELY: Right. You know, that was a
22 surprise to me. I've met and conferred repeatedly with
23 defense counsel about the rolling production that
24 started this month and that we would produce in the
25 cases at a rate of 200 a month, and we had a choice of

1 what cases to choose from, whether it was the 200 that
2 were not up for remand or the 2,000 that were up for
3 remand, because it was getting difficult
4 administratively to focus on just a tenth of our cases
5 in a different way than the rest of the docket.

6 And so they agreed that we could do -- for
7 now at least that we could do -- we could choose any of
8 our cases to do the production. And I thought
9 production meant production, plaintiff fact sheet,
10 basic medical records, and if it was one of the cases
11 that wasn't up for remand, we would get a physician
12 certification setup for that. We have a cardiologist.
13 And the reason that we didn't do it is I didn't -- is
14 that not all of our Illinois cases were in that first
15 batch of 200. Does that make sense?

16 THE COURT: Somewhat.

17 MS. BEASELY: Okay.

18 THE COURT: I'd like to hear from GSK on
19 this.

20 MS. BEASELY: Okay.

21 THE COURT: Mr. Fahey?

22 MR. FAHEY: Your Honor, there is a piece of
23 agreement here and a piece of disagreement, so let me
24 just talk about what we agreed on. We agreed that they
25 were having problems collecting medical records and

1 completing fact sheets in a timely way.

2 And as Your Honor mentioned earlier, we
3 agreed to, in a spirit of cooperation, allow them to
4 stagger those productions so that there were 200 per
5 week. This only related to the fact sheet and basic
6 medical record requirement. They then asked -- the
7 original -- the first 200 were going to come from
8 Illinois.

9 They then called and said we can't get all of
10 the Illinois so can we stagger them across
11 jurisdictions. I don't think it had anything to do
12 with the way they administer it. It was a question of
13 whether they have the records or not, and I think what
14 we're seeing early in this set of cases is the same
15 thing that you just discussed with other counsel.
16 People are filing cases before they have the backup to
17 support them.

18 But we were very clear through all of those
19 discussions that the Lone Pine certification
20 requirements would not be altered in any way because
21 for the Illinois cases that are not going to be
22 remanded because the remand was already rejected by the
23 Illinois courts, they're here for good. There's 250
24 roughly plaintiffs that are here for good. Those Lone
25 Pine certifications need to be submitted on time, as

1 well as the Lone Pine two certifications to the extent
2 that they were required.

3 THE COURT: So if there's a rolling
4 production of 200 at a time, that is separate and apart
5 now from the cases that are here not subject to
6 removal?

7 MR. FAHEY: Your Honor, we could have taken
8 that position, but out of respect for the difficulty
9 that they appeared to be having, we said you have 250
10 that are here. They're not going anywhere. Those
11 should be the first 200 that you provide. We'll give
12 you credit and say rather than start producing from
13 California yet, you can use those first 253 to fill out
14 that first month of 200. But then they came back and
15 said we can't do that. And so then we allowed them to
16 also include some California plaintiffs in that first
17 200 for the fact sheet and basic medical records.

18 But we made it very clear, we have the e-
19 mails that I could not have been clearer, I mean this
20 does not change your Lone Pine certification
21 requirements because we know those need to be done on a
22 timely way, and those are really going to help decide
23 whether theses cases move forward.

24 Now, what they're presenting now is a
25 practical problem with their agreement that we -- or

1 their request that we agreed to, which is they don't
2 have records to support those Illinois cases.

3 Now, I can't help them with that. I mean
4 they -- we were very clear about what they could get an
5 extension for and what we wanted to keep on a pattern.
6 And I think what you're seeing now is just the
7 difficulty in supporting and living up to the
8 obligations in the MDL.

9 THE COURT: So, there are actions with
10 multiple plaintiffs, some of which have supporting
11 documentation or allowed to be produced on a rolling
12 basis, and some of which those plaintiffs do not. I
13 can't dismiss a case and now down to dismissing a name.

14 MR. FAHEY: No, and, Your Honor, I think
15 probably the best path forward for these cases is to
16 come up with some process that either they are
17 voluntarily dismissed by the plaintiff, who to Ms.
18 Beasley's credit, understands that she is not intending
19 to move forward with cases that she can't find support.
20 I think the only quarrel we have is that analysis
21 should have been done before they were filed.

22 But I think we're in agreement when there's
23 no records that the cases are going to be dismissed.
24 But it's just a question of whether we're going to need
25 to file motions to, frankly, allow the plaintiffs to

1 have an opportunity to respond to that and for Ms.
2 Beasley to show that she was unable to get the records.
3 You know, sometimes that's important for a plaintiff's
4 lawyer to say that they had the opportunity to respond
5 and the plaintiff was unable to give them the records.

6 So I'm not sure the ultimate path this will
7 take, but I do think that there is going to be a large
8 number of those 3,000 plaintiffs, not just with Ms.
9 Beasley, but with all the other two groups that are not
10 going to be able to survive the basic requirements,
11 either here or in other jurisdictions.

12 THE COURT: Well, it's always important to
13 the Court to cull out the wheat from the chaff.

14 MR. FAHEY: Right.

15 THE COURT: And this is an example of why it
16 must be done. And the example of how it must be done
17 is set out in multiple pretrial orders already
18 established. I can't start changing those orders
19 because of late filed difficulties.

20 So we need an approach here that is fair, and
21 I have no doubt that counsel is being diligent and in a
22 predicament here. But one of the problems is the way
23 the cases are allowed to be filed in other
24 jurisdictions is not how the MDL recognizes them and
25 can act on them. And if these cases, any of them, are

1 not subject to remand any longer, I am more inclined to
2 enter a severance order and require that they be
3 refiled separately by individual plaintiffs and/or
4 families.

5 MR. FAHEY: Yes, and, Your Honor -- I'm
6 sorry.

7 THE COURT: And I have done that repeatedly
8 over the history of this MDL by pretrial order, and it
9 is something that I do when I'm sure it's no longer
10 subject to remand. Otherwise, it would be a wasted
11 effort and an expensive effort.

12 And in the alternative, the cases either get
13 voluntarily dismissed within a certain time period or
14 they're severed and refiled. And that gives you time
15 to get the records and see what you have, Ms. Beasely.

16 MS. BEASELY: We would appreciate that.

17 THE COURT: Could you do that in 30 days, at
18 least to --

19 MS. BEASELY: For all of them?

20 THE COURT: -- those cases that are not
21 subject to remand?

22 MS. BEASELY: I could try really hard.

23 THE COURT: 45 days?

24 MS. BEASELY: 60 would be nice.

25 THE COURT: Well, it depends on how

1 productive this little exercise is. But I have to
2 straighten out our roles here and know which cases
3 we're pulling from to discover and to --

4 MS. BEASELY: Absolutely.

5 THE COURT: -- move forward to trial.

6 MS. BEASELY: We have the same objective.

7 THE COURT: All right.

8 MS. BEASELY: We're culling.

9 THE COURT: 60 days all right?

10 MR. FAHEY: I think that's fine, Your Honor.

11 THE COURT: All right. That's the
12 alternatives to the non-remanded cases. Now, as to the
13 others, I think you have to keep moving on that rolling
14 production.

15 MS. BEASELY: Absolutely. That's our
16 agreement.

17 THE COURT: All right. We'll commit that to
18 writing.

19 MR. FAHEY: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. FAHEY: I did note or update the Court on
22 one question relating to the Napoli remand filings. We
23 did comb the -- I think the issue was they were not
24 filed in the MDL docket, they were filed -- I think the
25 process was to file in the MDL docket and

1 simultaneously in an individual docket when they were
2 re-filed.

3 They were not filed in the MDL docket, so we
4 just found them in some individual dockets. We'll get
5 in our response, which is going to be similar to our
6 responses in the other two sets of remand cases.

7 THE COURT: Okay.

8 MR. FAHEY: I'm not sure for a fact yet that
9 they we're refiled in all the individual cases, but we
10 can run that down and just confer with the Napoli firm
11 to make sure that we --

12 THE COURT: That they do a file --

13 MR. FAHEY: -- get that briefing completed
14 and get them also filed on the MDL master --

15 THE COURT: That's also --

16 MR. FAHEY: -- master docket.

17 THE COURT: -- a PTO requirement --

18 MR. FAHEY: I know, Your Honor.

19 THE COURT: -- that we found necessary to
20 impose about four years ago because of the confusion --

21 MR. FAHEY: Exactly.

22 THE COURT: -- and the notice issues that
23 counsel was talking about before. Everything is on
24 ECF.

25 MR. FAHEY: Okay. Thank you, Your Honor. We

1 will confirm.

2 THE COURT: Thank you. Anything else, Ms.
3 Beasley?

4 MS. BEASELY: That's it.

5 THE COURT: All right, thank you. Yes,
6 counsel?

7 MS. SACKS: I can have the firm re-file it in
8 the MDL today if Your Honor would like.

9 THE COURT: I think you have to.

10 MS. SACKS: No problem. And they were filed
11 in all the individuals.

12 THE COURT: That's fine. But you should
13 understand that when you get through the large number
14 of cases, even though most of them are resolved, it is
15 very hard to get through the dockets, and it's the main
16 docket, 1871 that is required, as well as the
17 individuals.

18 MS. SACKS: Absolutely. It appears to be an
19 oversight, but I'll speak to attorney.

20 THE COURT: I'm glad that that mystery is
21 solved.

22 MS. SACKS: Thank you.

23 THE COURT: Thank you. All right. We know
24 that we said 11:30 for a certain oral argument, and we
25 will have to break our status discussion on everything

1 else, take a brief recess, and setup the Santa Clara
2 motion for argument on video.

3 MR. VALE: Thank you, Your Honor. I know the
4 clients are standing by, so I think we need just the IT
5 people here to dial into them. I don't know how to do
6 it, but we're ready to go.

7 THE COURT: Okay. Well, since I'm not
8 productive and helpful in such a process, I will take a
9 moment.

10 (Recess, 11:33 a.m. to 11:50 a.m.)

11 THE COURT: Are you ready?

12 MR. VALE: We are ready.

13 THE COURT: The part of the proceeding now to
14 address oral argument on GSK's motion for partial
15 summary judgment, that is to limit the scope of Santa
16 Clara County's claims in their respective action is
17 ready to begin, and we have on the screen
18 representatives of Santa Clara County. Welcome. I
19 think I --

20 SPEAKER 1: Thank you.

21 SPEAKER 2: Thank you.

22 THE COURT: I think you may have participated
23 before in another circumstance here in court, and I am
24 still Judge Rufe.

25 SPEAKER 1: And thank you, Your Honor, for

1 accommodating us by video conference.

2 THE COURT: It is our pleasure. Thank you.
3 Mr. Vale, you will proceed on behalf of the defendant.

4 MR. VALE: Thank you very much, Your Honor.
5 Anthony Vale on behalf of GlaxoSmithKline. As Your
6 Honor knows, this is an action in which the County of
7 Santa Clara has filed a one count complaint against GSK
8 under California's false advertising law.

9 The county is bringing this action on behalf
10 of the people of the State of California, and in that
11 capacity on behalf of the people of the State of
12 California, the county seeks restitution and civil
13 penalties.

14 Now, the attorney general of California --
15 sorry for pausing here, but we really -- it was working
16 a minute ago.

17 (Pause in proceedings.)

18 MR. VALE: I do have plan B, Your Honor,
19 which is I do have some --

20 THE COURT: Hard copy?

21 MR. VALE: -- hard copy which I could put on
22 the Elmo.

23 THE COURT: But the --

24 MR. VALE: Okay. No, it looks like we're --

25 THE COURT: I think you have it.

1 MR. VALE: We've got it here. So, Your
2 Honor, the attorney general of California also brought
3 an action against GlaxoSmithKline also under the false
4 advertising law and also in the name of the people of
5 the State of California.

6 The people of the State of California
7 represented by the attorney general of California
8 settled and resolved those claims on behalf of the
9 people a year ago, and the settlement is reflected in a
10 state court judgment entered in San Diego County about
11 a year ago on November 15, 2012. And pursuant to that
12 judgment, we call it a final judgment, and it's
13 attached to our moving papers, pursuant to that final
14 judgment, GSK agreed to an injunction. It's called
15 compliance provisions in the final judgment, and made a
16 payment.

17 Now, I believe there's no dispute here that
18 the judgment applies. So the question for the Court
19 turns on the language of the final judgment, and it's
20 the language of the final judgment by which the claims
21 of the people of the State of California were settled
22 with one relevant exception, which I'm going to get to.

23 And as we're going to see from the language
24 of the judgment, I'm going to put that up in a minute,
25 but the language of the judgment provides that the only

1 claims not released by the people of the State of
2 California, in other words, the only claims that remain
3 for the county to bring on behalf of the people of the
4 State of California, are those claims seeking relief
5 based, one, on exposure of county residents to alleged
6 false advertising and, secondly, in favor of residents
7 of the county.

8 And the slide, incidently, with the map there
9 shows Your Honor where the County of Santa Clara is.
10 It's the county of which San Jose is the main city,
11 just south of San Francisco.

12 So this slide illustrates the result of the
13 judgment. In other words, it shows that the claims
14 that are remaining are those claims that can be brought
15 on behalf of residents of the county. It's a little
16 hard to see it on the screen there, but, Your Honor,
17 what we're trying to illustrate is that a payor in the
18 county, and up there we've shown the Santa Clara family
19 health plan and illustrated patients in the County of
20 California.

21 So the county, on behalf of the people of
22 California, can ask the Court to award restitution in
23 favor of a payor in the county or in favor of residents
24 of the county. But, and this is why we're here, the
25 county's lawyers are trying to expand this action to

1 non-residents of the county.

2 In other words, the county is asserting that
3 the exclusion in the final judgment allows the county
4 to ask this Court, or the court in the Northern
5 District of California if it's remanded, to award
6 restitution in favor of non-residents.

7 So the next slide illustrates the difference,
8 or the expansion that the county is arguing for.

9 (Pause in proceedings.)

10 MR. VALE: Sorry about that. I think it's
11 just a lot slower when we've got the feed coming in
12 from California.

13 THE COURT: I think so.

14 MR. VALE: Here we are, all right.

15 THE COURT: But, you know, I do have that
16 relevant portion included in the briefing --

17 MR. VALE: Yes. So I'm --

18 THE COURT: -- so I can --

19 MR. VALE: -- going to go through that in a
20 second, but I just wanted to illustrate why this is
21 important.

22 So under the county's position, how they
23 would want to expand this action is to expand it so
24 that the county could ask the Court to award
25 restitution in favor of persons, not just resident of

1 outside the county in California, but payors way
2 outside California. And we've illustrated that showing
3 Humana based in Kentucky or Wellpoint in Chicago,
4 United Health in Minnesota. So that's how this action
5 would be greatly expanded were the Court to agree with
6 the county's position.

7 So let's turn to the language of the
8 judgment, which is what controls here.

9 (Pause in proceedings.)

10 MR. VALE: I hesitate to press the button
11 again in case I go two slides forward. Maybe I'll
12 press it one more time.

13 (Pause in proceedings.)

14 MR. VALE: Okay. Oh, it did go two forward.
15 I think the slide will come up, but let me tell you,
16 Your Honor, what the structure of the judgment was
17 because before we dive into the weeds of the exact
18 language that's important, I see it's up on the screen
19 now.

20 Here's the structure of it. The structure of
21 it is that the people of the State of California, the
22 very same plaintiff in this case, because the county is
23 proceeding on behalf of the people of the State of
24 California, the people released GSK from liability
25 under the false advertising rule, and that's in

1 paragraph 10.

2 But the release has an exception, or an
3 exclusion as it's called. And there are some --
4 there's two or three of them, but there's only one that
5 counts here, and it's in paragraph 11E of the final
6 judgment, and we've put that up on the screen.

7 So I'll read it and then I'll draw Your
8 Honor's attention to the key words. So, "Excluded from
9 the release are any claims that have been brought by
10 the Santa Clara County council's office as of the date
11 of the entry of judgment for violations of the false
12 advertising law concerning all covered conduct" --
13 that's relating to Avandia -- "as defined in this
14 judgment." And here's the key language. "To which
15 persons resident in the County of Santa Clara were
16 exposed, this exclusion applies to and in favor of only
17 persons or entities resident in the county."

18 So there are two important limitations on the
19 claims that have been left for the county to bring on
20 behalf of the people. And the limitations are one, it
21 must be based on exposure to persons resident in the
22 county.

23 And, secondly, the exclusion from the release
24 applies only to and in favor of only persons or
25 entities resident in the county. So what that means is

1 that the claims the county can bring here in the name
2 of the people, the claims not released, are claims for
3 restitution for residents of the county. So the
4 release did not allow the county to bring claims for
5 restitution in favor of non-residents.

6 THE COURT: Mr. Vale, could I ask you --

7 MR. VALE: Yes.

8 THE COURT: -- to throw in another term there
9 that I think is relevant to our decision, "covered
10 conduct."

11 MR. VALE: Okay. Covered conduct is conduct
12 relating to the marketing of Avandia. So in other
13 words, this talking about Avandia as opposed to some
14 other medicine.

15 THE COURT: And where is that covered conduct
16 allowed to be conducted? Where does it take place in
17 the AG settlement because we're talking about
18 promotional practices and dissemination of information,
19 which is probably not mass marketing, but is probably
20 going doctor to doctor.

21 MR. VALE: Yes.

22 THE COURT: But I don't know that.

23 MR. VALE: The conduct to which -- or under
24 the false ad -- the false advertising law applies only
25 to conduct in the State of California. In other words,

1 the State of California can't bring an action based on
2 conduct that took place in Pennsylvania.

3 So the conduct must have occurred in the
4 State of California for the false advertising law to
5 apply, just as Pennsylvania's unfair trade practices
6 and consumer protection law could apply only to conduct
7 in Pennsylvania.

8 So despite this language of the final
9 judgment, the county wants to expand the action so that
10 the Court could award restitution to non-residents if
11 based on prescriptions written in the county.

12 So, for example, if a prescription were
13 written in the county but paid for by a payor like
14 Humana in Kentucky or United Health in Minnesota,
15 according to the county, that would be permissible.
16 But to get there, the county needs to have the
17 exclusion re-written and --

18 THE COURT: Are you actually arguing that the
19 address of a payor, whether it's -- not an individual,
20 but an insurance company, would negate a claim by a
21 resident of Santa Clara County?

22 MR. VALE: I'm sorry, Your Honor, just state
23 the question --

24 THE COURT: If Humana --

25 MR. VALE: Yes.

1 THE COURT: I don't know why you chose
2 Humana. Can we say Blue --

3 MR. VALE: Well --

4 THE COURT: -- Cross Blue Shield?

5 MR. VALE: Yes.

6 THE COURT: Maybe they don't operate in
7 California. Say someone that's not involved in
8 litigation in the MDL, okay?

9 MR. VALE: Yes.

10 THE COURT: If Blue Cross Blue Shield,
11 registered state by state I think --

12 MR. VALE: Yes.

13 THE COURT: -- pays for the medicine
14 Avandia --

15 MR. VALE: Yes.

16 THE COURT: -- for a resident of Santa Clara
17 County, wouldn't that be covered conduct, because they
18 didn't prescribe it. They didn't have anything to do
19 with citing that the patient living in California,
20 Santa Clara County, California, would take it. They're
21 simply paying for it.

22 MR. VALE: Well, the language of the
23 judgment, Your Honor, says that the exclusion applies
24 only in favor of residents of the county. So what that
25 means is where the people of California ask that the

1 Court enter an order or restitution in favor of a
2 person in interest, that's the language in the false
3 advertising law, that person in interest must be a
4 resident of the county under the language of the
5 judgment. That's the only plausible meaning of the
6 term "in favor of a resident of the county."

7 THE COURT: I understand, because you're
8 trying to exclude third party payers and insurance
9 companies and the like from the definition of
10 "residents" because, of course, that's not what the
11 attorney general's action was meant to cover. They
12 excluded that as residents. The residents that I see
13 are people and entities, residents and entities, of
14 Santa Clara County that are excluded, not who pays the
15 bill.

16 MR. VALE: Right. In other words, GSK and
17 the people of the State of California represented by
18 the attorney general of California settled all false
19 advertising law claims for civil penalties --

20 THE COURT: Right.

21 MR. VALE: -- and for restitution except. So
22 what's the except, or what's excluded from that
23 release? And what's excluded from that release is an
24 action brought on behalf of the people of the State of
25 California by the County of Santa Clara with two

1 limitations based on exposure by residents of the
2 county to alleged false advertising and for an order of
3 restitution in favor of residents of the county. So
4 you can't under the language of the judgment, you can't
5 have an order of restitution in this action in favor of
6 somebody outside the county.

7 Now, just to be clear, I don't think Your
8 Honor is confused about this, but we're not saying a
9 claim by Humana or anybody else is released by this
10 judgment. What we're talking about is whether the
11 people of the State of California under the false
12 advertising law may seek an order of restitution in
13 this action in favor of people outside the county.

14 THE COURT: All right.

15 MR. VALE: And so another way to look at
16 this, which we illustrate on this slide, is that if the
17 county's -- the county's view, what they are arguing is
18 well, if it's a transaction in the county, if it's a
19 prescription written in the county, well, then
20 restitution can be awarded to people whether they are
21 in the county or outside. But as we illustrate here,
22 that would require a rewriting of the exclusion.

23 So in short, Your Honor, we believe that the
24 plain language of the judgment governs our motion. A
25 lot, or not a lot, some that's been written in the

1 briefs about California law and exactly what the
2 requirements are. We don't think that Your Honor needs
3 to delve into that because the plain language of this
4 judgment is very clear.

5 So unless Your Honor has any questions,
6 that's our position, and we're asking that Your Honor
7 grant partial summary judgment in favor of
8 GlaxoSmithKline in accordance with our motion.

9 THE COURT: I would like to pose a question
10 to you as to the timing of this motion.

11 MR. VALE: Yes.

12 THE COURT: If, in fact, it were to be ruled
13 on now --

14 MR. VALE: Yes.

15 THE COURT: -- as you're seeking, is it
16 because it would clarify discovery moving --

17 MR. VALE: Yes, Your Honor.

18 THE COURT: -- forward?

19 MR. VALE: Yes. That's why we feel this is -
20 - I mean it's a legal issue, so it doesn't require any
21 discovery to decide it. But it is very important
22 really for two reasons, Your Honor.

23 Firstly, with respect to the scope of
24 discovery and, secondly, with respect to the size and
25 scope of the case which would have an effect on expert

1 reports, for example.

2 So we believed when that judgment was entered
3 a year ago that this case was now clearly confined to
4 the county, exposure in the county, a possible order
5 for restitution in favor of patients or payors in the
6 county. That's what we believed.

7 But then in the course of discussion, shall I
8 say, with the county's council, it turned out they had
9 a different view of this and wanted to expand the
10 action beyond the county.

11 So if they were right, yes, it certainly
12 would change discovery and it certainly would change
13 the overall scale of the case, which would have a
14 significant effect. And that's why we brought this
15 motion to Your Honor because we feel it's important to
16 have it decided.

17 THE COURT: Do you think, Mr. Vale, that
18 there is reason for this Court to recognize that in
19 this day and age interstate commerce and internet
20 advertising and everything that connects us
21 internationally as well as transcontinentally have an
22 impact on the identity of what is a resident, because
23 if you're a resident, that is a taxpaying resident of
24 Santa Clara County, for example, and you suffer from
25 diabetes and your doctor recommends and prescribes for

1 you Avandia use, and you happen to be insured by a
2 multi-national company that will cover your
3 prescription costs in part or in whole, and they're not
4 located in Santa Clara County, do you think that
5 excludes that restitution claim?

6 MR. VALE: Yes, Your Honor, under the
7 language of this judgment because under the language of
8 the judgment the people of the State of California have
9 settled all claims for restitution and GSK has agreed
10 to an injunction and has paid money to settle those
11 claims.

12 But the word "restitution" is used in the
13 judgment, so our client paid money to settle claims for
14 restitution on behalf of everybody except, this was the
15 carve out so that the Court could still, if it found
16 the case proved, and that it was equitable, it's an
17 equitable cause of action, award restitution in favor
18 of residents of their county.

19 THE COURT: All right. So are you saying
20 also that the attorney general settlement with GSK,
21 including other provisions other than 11 and 11E, that
22 define residents qualifying payment of restitution as
23 having to be physically located in the State of
24 California, absent Santa Clara County?

25 MR. VALE: Your Honor, I'm not 100 percent

1 sure, but I don't think the final judgment had any
2 provision for should we say the location or identity of
3 the persons to whom the attorney general of California
4 could make a restitutionary payment.

5 What the judgment said was that the money
6 paid by GSK could be used by the attorney general of
7 California for a number of different purposes including
8 restitution.

9 THE COURT: Okay. So there was no such
10 argument or definition in that agreement that said Blue
11 Cross Blue Shield or any other coverage had to be paid
12 by an entity within the state, which I think it would
13 have to be registered there anyway, and to operate, to
14 be licensed, to do insurance in a state because it goes
15 state by state, even though it's a national company,
16 that wasn't a qualification, that wasn't a further
17 definition that --

18 MR. VALE: I don't think that --

19 THE COURT: -- restricted recovery.

20 MR. VALE: -- that was -- I did read the
21 judgment again either last night or this morning and I
22 know that there was a provision in there that allowed
23 the money paid by Glaxo to be used for restitution, but
24 I don't think there was anything in there that defined
25 exactly how the California attorney general might spend

1 the money.

2 THE COURT: Okay. Thank you.

3 MR. VALE: Have I answered all Your Honor's
4 questions?

5 THE COURT: So far.

6 MR. VALE: Okay.

7 THE COURT: Mr. Kiesel?

8 MR. KIESEL: Thank you very much, Your Honor.
9 (Pause in proceedings.)

10 THE COURT: Your clients have been there the
11 whole time, you know.

12 MR. KIESEL: Oh, I know. I've --

13 THE COURT: Okay.

14 MR. KIESEL: They're always there --

15 THE COURT: They're always there.

16 MR. KIESEL: -- sitting on the shoulder.

17 THE COURT: And they're always in this court.
18 See, it's just that little piece up at the top of the
19 courtroom.

20 MR. KIESEL: Precisely. Your Honor, when we
21 originally got GSK's motion it seemed to suggest that
22 the actual exposure needed to be in the county of Santa
23 Clara to the unfair marketing practice that we allege.
24 And, in fact, in our opposition we said there's nothing
25 that limits the source of the exposure to Santa Clara.

1 And, in fact, in their reply they acknowledge
2 that, in fact, the exposure need not be limited to just
3 what is seen in Santa Clara because the campaign was
4 not just a statewide, but a national campaign. And
5 where an individual may have been exposed is a
6 question, but one that we don't have to answer here
7 because the exposure is simply one of a national
8 perspective.

9 Covered claims, Your Honor, when they defined
10 "covered conduct," it's paragraph D of the judgment, it
11 says "Covered conduct shall mean promotional practices
12 and dissemination of information by GlaxoSmithKline,
13 LLC, regarding Avandia in the United States." It's the
14 entire country. They defined it as not covered claims
15 within Santa Clara, but the United States is the scope
16 of what they are identifying as being covered conduct.

17 This is very simple, Your Honor, and I'm not
18 altogether sure why this motion is being brought in the
19 way it is. We are defining our people's claim as all
20 residents and entities in the County of Santa Clara.
21 How we're going to do that, Your Honor, is look at
22 doctors who wrote prescriptions. We're going to look
23 at pharmacies who filled prescriptions all in the
24 County of Santa Clara, nowhere else. That's how we're
25 going to do it. Doctors who wrote prescriptions that

1 are Santa Clara-based doctors and Santa
2 Clara-based pharmacies, it's for the benefit of the
3 residents of --

4 THE COURT: So you agree with GSK on that?
5 Well, they would call it a limitation, you would call
6 it a definition?

7 MR. KIESEL: I wouldn't even call it a
8 limitation. I would simply say the scope of how are
9 you going to identify who the residents are, how are
10 you going to identify who to include in your
11 restitution claim?

12 It's going to be based upon doctors writing
13 prescriptions in Santa Clara, and it's going to be
14 based upon pharmacies filling prescriptions in Santa
15 Clara, nothing more. And that's for the benefit of the
16 residents of the County of Santa Clara, for the people
17 of the State of California.

18 So to try to go one step further and go yeah,
19 but you know what, Mr. Kiesel, you're insured by Blue
20 Cross and Blue Cross isn't a Santa Clara entity, it's a
21 New Jersey-based insurance company who you've been
22 playing premiums to, who has got an obligation
23 contractually to cover your cost of medicine, so we're
24 not going to reimburse you what Blue Cross paid because
25 they're a New Jersey company, they're not a Santa Clara

1 County resident.

2 But, Your Honor, the benefit is upon me. I'm
3 the patient. I've received the medication. Perhaps my
4 doctor is the one who is marketed. My doctor is the
5 one who recommended Avandia. My doctor was the one who
6 got the messaging from the company, and the mere fact
7 that my insurer happens to be an out-of-state or
8 out-of-county insurer doesn't take away from the fact
9 that I receive the benefit. I'm the patient. That's
10 the medicine I received and that's the loss I suffered.
11 And, in fact, the benefit that GSK got was because of
12 my residency in the County of Santa Clara.

13 THE COURT: All right. But, this claim is
14 for restitution, and restitution is computed by how
15 much was paid, and that usually leads to the next
16 question who paid it, because if you are successful,
17 who are you paying the restitution to?

18 MR. KIESEL: And the short answer is you're
19 paying it back to the patient. The patient may have a
20 contractual obligation to reimburse the insurer for
21 monies that the patient receives for benefits that were
22 provided in any third party case where there's a third
23 party action against someone for injury.

24 But I don't believe the Court needs to get
25 into the fine distinction of who actually paid for the

1 medication. It's for the residents. The benefit GSK
2 got was from the residents, and we're only focusing on
3 the residents of Santa Clara, nobody else.

4 And so I was a little surprised because
5 there's nothing in the final judgment that limits the
6 identity of the purchasers of the product only Santa
7 Clara County residents or entities. It doesn't say
8 that. It simply says it is -- it only includes
9 residents and entities, and we are only residents or
10 entities will be making a claim for restitution for
11 goods that they actually purchased in the County of
12 Santa Clara.

13 Where the source of funds came from, Your
14 Honor, I don't really think that that's a necessary
15 discussion. Maybe I'm a county resident and my parents
16 paid for the medication for me, they sent a check from
17 New Jersey or they paid it on a credit card in the
18 county, but they cover my medical because I don't have
19 the financial wherewithal to do it. That's not what
20 this settlement deal was about.

21 The attorney general carved out the County of
22 Santa Clara itself, a fairly unique effort on the part
23 of our attorney general. I'm supposed to give a nod to
24 the fact that the county had been litigating this case
25 for many years before the attorney general came in and

1 settled the entire State of California's action for
2 restitution of \$7.3 million. That number hadn't been
3 mentioned, although it was on the slide.

4 The number of sales in the State of
5 California exceed a half a billion dollars, if not
6 perhaps a billion dollars in total sales that would be
7 subject to restitution, and the resolution was for 7.3
8 million. I can't explain why that was done, but what
9 I can say is the attorney general did the proper
10 decision to allow the county to continue to pursue its
11 individual claims for the people of the State of
12 California who are residents of the County of Santa
13 Clara.

14 And I think, Your Honor, there's nothing in
15 the settlement agreement release, the judgment that was
16 entered, that limits the source of funds for a county
17 resident as having to come from the county itself. And
18 certainly the drafters of this agreement could have
19 said in there if they wanted to that the source of the
20 funds must only come from a county resident or it's not
21 subject to restitution.

22 And I would submit, since we are agreeing, to
23 limit our claims only to county residents, only
24 prescriptions written in the county and paid for in the
25 county, that would be the scope of the claims that

1 would be eligible for restitution and, ultimately, the
2 civil penalties will be based upon, Your Honor. And
3 I'm happy to respond to any questions you might have.

4 THE COURT: It's an overall question that I
5 have concerning the AG's settlement. And absent these
6 discrepancies which I have to resolve on a legal basis,
7 statutory construction, whatever is reasonably
8 interpreted here, it causes concern to the Court that
9 there would be at first blush competing actions that
10 you filed first on behalf of not just Santa Clara, but
11 everybody in California, and then the attorney general
12 superimposed its will and filed or just agreed, as
13 other attorney generals have done.

14 And where that left you -- and this carve out
15 seems to be specifically written for the Santa Clara
16 County litigation.

17 MR. KIESEL: It's the first time, Your Honor,
18 at least in my history that the attorney general has
19 resolved a claim either individually, for the state, or
20 as a part of a multi-state settlement where a specific
21 plaintiff, in this case, the County of Santa Clara, on
22 behalf of the people of the county was carved out.

23 But I believe it was a nod that, essentially,
24 the county residents should be entitled to restitution
25 and civil penalties for the damages that occurred

1 within that venue, which is the County of Santa Clara.

2 THE COURT: Well, whatever their reasons,
3 they carved it out.

4 MR. KIESEL: Correct.

5 THE COURT: And kudos to your negotiation
6 skills, Mr. Kiesel. But does that mean that attorney
7 generals state-wide agreements with the defendant to
8 resolve all such claims, including your false
9 advertising claim here, should be necessarily given
10 less impact and less import because there is one county
11 that moved forward earlier or at the same time,
12 whatever occurred, and decided to assert its own
13 rights?

14 I mean I could see on a policy level a
15 precedential problem with this, the precedent that
16 there would be no finality in an AG state-wide
17 settlement.

18 MR. KIESEL: This is unique to California,
19 Your Honor, and the reason why is the county itself, as
20 you recall, is not a plaintiff because the county would
21 have to show reliance and, therefore, with respect to
22 our complaint, we did not go that route.

23 This is a public enforcement action which the
24 State of California allows us to pursue through
25 business and professions, but the county council is

1 called out as someone who can actually prosecute a
2 claim on behalf of the people, which is precisely what
3 we did and had been doing for three years before the
4 attorney general, on behalf of the people she
5 represented, chose to resolve the claims for in the
6 manner that she did.

7 I don't think this is anything the Court
8 needs to be concerned about, future precedential
9 issues. It's a uniquely California claim, and one
10 typically where the attorney general would come in,
11 resolve it for the entire state. You wouldn't have a
12 subsequent action filed by a county after the state has
13 already resolved the claims because I would imagine
14 there would be a full and final release of all claims.

15 In this case, the attorney general was aware
16 of the fact the county had brought this action.

17 Now, the attorney general could have, thought
18 it would have been fairly devastating to the client,
19 could have resolved the entire state claim. The
20 attorney general has the right on behalf of the people
21 arguably to do that, but chose here not to, Your Honor.

22 And so I don't think the Court needs to be
23 concerned about any impact of its decision here because
24 the political entities have worked with each other and
25 are not overlapping on each other but are, in fact,

1 providing discreet areas that they are litigating their
2 claims in.

3 THE COURT: I understand that. Thank you.

4 MR. KIESEL: You're welcome, Your Honor.
5 Thank you very much.

6 THE COURT: Thank you. Mr. Vale, do you have
7 a brief response?

8 MR. VALE: Very briefly, Your Honor. The
9 basic principle that is important here is that
10 GlaxoSmithKline bought peace from the people of the
11 State of California pursuant to that judgment with a
12 very limited exception.

13 And so we bought peace on restitution claims
14 by everybody in the State of California even if they
15 could theoretically exist, claims on behalf of people
16 outside the State of California with a very limited
17 exception, and the exception was for claims where there
18 was to be an order or claims seeking an order of
19 restitution in favor of residents of the county.

20 So that's what we left ourselves exposed to
21 under this judgment, claims for restitution in favor of
22 persons or entities, residents in the county. Under
23 that agreement, that final judgment, we did not leave
24 ourselves exposed to claims brought by the people of
25 the State of California for restitution in favor of

1 residents of San Matteo County, San Diego County,
2 Kentucky, Pennsylvania.

3 So, Your Honor, we ask that you enter an
4 order along the lines that we have suggested in our
5 motion. Thank you for listening to us this morning.

6 THE COURT: Thank you, Mr. Vale. But, you
7 know, I don't see a big final difference between your
8 two positions except for who paid and where they may be
9 located.

10 MR. VALE: Well, it's in whose favor any
11 order of restitution can be made.

12 THE COURT: Well, if the cases filed on
13 behalf of the people --

14 MR. VALE: Yes.

15 THE COURT: -- and the people are to be
16 deemed residents of Santa Clara County or an entity in
17 Santa Clara County, then the relief of restitution has
18 to be to those same people, does it not?

19 MR. VALE: Well, the term "the people" of the
20 State of California, in effect, means the state, so
21 this action is brought in the name of the state. But
22 pursuant to this exclusion, the only claims left that
23 may be asserted or the only relief that can be
24 requested is an order or restitution in favor of
25 residents of the county.

1 THE COURT: And if it's a pleading or
2 terminology problem that still exists in light of the
3 AG contractual obligation that GSK has, and I believe
4 the AG has, the reality is that it's the people of
5 Santa Clara County under the rubric of the people of
6 California that are left to do this. So it's a
7 question of who is the plaintiff.

8 MR. VALE: Well, it's very clear who the
9 plaintiff is here. The plaintiff is the County of
10 Santa Clara suing in the name of the people of the
11 State of California. So that much is clear, and as I
12 say --

13 THE COURT: Well, it was initially. But now
14 that --

15 MR. VALE: Well --

16 THE COURT: -- is no longer going forward by
17 agreement.

18 MR. VALE: Well, the county's own claim Your
19 Honor dismissed, but still under the false advertising
20 law, this claim is being asserted in the name of the
21 people of the State of California, which --

22 THE COURT: Okay.

23 MR. VALE: -- is --

24 THE COURT: I know that.

25 MR. VALE: -- you know, the statute allows

1 that.

2 THE COURT: I know that, but --

3 MR. VALE: Yeah.

4 THE COURT: -- Mr. Kiesel is not even arguing
5 that in his brief for today. He's saying residents of
6 Santa Clara County, are you not?

7 MR. KIESEL: I am, Your Honor. It -- they
8 actually brought it on behalf of the people, but the
9 attorney general limited that to the County of Santa
10 Clara.

11 THE COURT: And you're willing to abide by
12 that limitation?

13 MR. KIESEL: Precisely, that's --

14 THE COURT: So aren't you closer together
15 than you think?

16 MR. VALE: Well, I don't think so because I
17 think what Mr. Kiesel would say is that in this case,
18 the Court may enter an award of restitution in favor of
19 somebody outside the county, because under the false
20 advertising law, restitution has to be to a person in
21 interest. That's the terminology in Section 17535 of
22 the false advertising law. You can make an order to
23 restore, that's the restitution part of it, to restore
24 to a person in interest.

25 So the question here is -- the judgment, in

1 effect, says that a person in interest must be a
2 resident of the county. You can't make an order of
3 restitution sort of in the air. It has to be to a
4 person in interest, and per the final judgment, a
5 person in interest must be a resident of the county.
6 That's how it fits together.

7 THE COURT: It sounds like we're debating the
8 definition of a "class."

9 MR. VALE: Definition --

10 THE COURT: And I know this isn't a class
11 action, but it sounds as if we're trying to define the
12 class in a way that everyone can move forward on the
13 discovery in a sensible, relevant way.

14 MR. VALE: Yes, Your Honor, Your Honor is
15 correct. It's not a class action, but it is very
16 important in the sense that, as I say, the false
17 advertising law permits an order for restitution only
18 in favor of a person in interest, and we say that
19 person in interest must be a resident of the county, so
20 that would necessarily exclude patients that live in
21 San Matteo County, but it also excludes Humana or
22 United Health or Cigna or Aetna or somebody else
23 that --

24 THE COURT: But it shouldn't exclude a
25 resident of Santa Clara County who had their script

1 filled on location --

2 MR. VALE: No, no --

3 THE COURT: -- in San Francisco.

4 MR. VALE: -- we're not saying that. No.

5 THE COURT: Where they purchase it, right?

6 MR. VALE: If the resident of Santa Clara
7 County happened to be insured by Humana, we're not
8 saying that that patient's co-pay, whatever they paid,
9 is not recoverable because that patient is a person in
10 interest from whom money arguably has been taken by a
11 violation of the act.

12 So if they paid \$100 for the prescription,
13 whatever, then they would be a person in interest in
14 whose favor restitution could be ordered.

15 THE COURT: And on that I know there is no
16 disagreement. So where does the next --

17 MR. VALE: Well, the disagreement --

18 THE COURT: -- step --

19 MR. VALE: -- is like --

20 THE COURT: -- lead.

21 MR. VALE: -- if the prescription costs \$300
22 and the resident of the county paid \$100, but Humana
23 paid 200, well, Humana is not covered by this because
24 you cannot have an order of restitution in favor of
25 Humana here because they're not a resident of the

1 county. So county residents are persons in interest
2 from whom, according to the County's theory, money has
3 been acquired by means of a violation of the act.

4 THE COURT: As opposed to the \$300
5 prescription being the amount of sought restitution and
6 Humana can assert its lien against its insured?

7 MR. VALE: Well, no, Your Honor, under the
8 false advertising law the patient may recover the money
9 that the patient has put out, in my example, \$100.

10 THE COURT: Then why are we even talking
11 about insurance coverage? Why does it matter if it's
12 only -- MR. VALE: Well, if

13 THE COURT: -- when the patient paid out of
14 pocket?

15 MR. VALE: All right. Let me give you --

16 THE COURT: Which I'm not sure it is, but
17 I'll give you --

18 MR. VALE: Let me give Your Honor an example.

19 THE COURT: -- that for now.

20 MR. VALE: If the patient was insured by the
21 Santa Clara family health plan, which is a Santa
22 Clara-based payor, and let's just say the prescription
23 costs 300 --

24 THE COURT: And a resident of Santa Clara
25 County, so you can't compare that to the Humana

1 situation.

2 MR. VALE: Well, I just want to be -- I'm
3 going to make the -- so the prescription costs \$300.
4 Let's say the patient pays \$100 and the Santa Clara
5 Valley health plan pays 200. They are both, under the
6 county's theory of violations of the false advertising
7 law, a person in interest from whom money has been
8 taken. So the order of restitution could be \$100 to
9 the patient and \$200 to the Santa Clara family health
10 plan.

11 If the insurer were say Humana --

12 THE COURT: Or Blue Cross Blue Shield.

13 MR. VALE: -- under the same, or Blue Cross
14 or anybody else outside the county, well, the patient
15 could get the \$100 because that is money that the
16 patient has lost, but the patient hasn't lost the \$200
17 that was paid by the insurer. So that's where
18 the difference is. And the order of restitution, if
19 any, has to be in favor of somebody from whom money has
20 been taken. In this case, it's the patient, \$100, but
21 they haven't lost the 200 that was paid by somebody
22 from out of state.

23 THE COURT: Okay. So to test your theory I'm
24 going to ask Mr. Kiesel, do you agree?

25 MR. KIESEL: That's where we disagree. And

1 I'll --

2 THE COURT: Okay.

3 MR. KIESEL: I will explain why, but that's
4 exactly the disagreement.

5 THE COURT: We've gotten down to it. Thank
6 you, Mr. Vale.

7 MR. VALE: Well, at least I've clarified it,
8 but that -- yes, this is important because the language
9 of the judgment fits exactly with the false advertising
10 law and this term, a "person in interest," and under
11 the judgment, that person in interest must be a
12 resident of the county.

13 THE COURT: All right. Thank you.

14 MR. KIESEL: Your Honor, I appreciate that
15 because I think you narrowed down precisely what the
16 dispute is, and it's that one single key issue.

17 The way we're going to determine what the
18 amount in restitution is is simply we'll be able to use
19 IMS data that aggregates all sales done in the County
20 of Santa Clara. It looks at the doctors who wrote
21 prescriptions and it looks at the sales that were made
22 and it's going to come up with a number.

23 THE COURT: Right.

24 MR. KIESEL: 30 million, 40 million, it's
25 going to be a number. Now, defendant would say well,

1 wait a minute, that number of \$50 million, that's not
2 really the number.

3 THE COURT: It has to be reduced.

4 MR. KIESEL: Right.

5 THE COURT: I know, the defense position
6 would be that number has to be reduced by the amount
7 that was paid by non-residents.

8 MR. KIESEL: Correct, so that your co-pay was
9 really four dollars, so before we could ever get this
10 done, we need to know what every single person's co-pay
11 is. We need to know what that individual paid for that
12 product.

13 But, Your Honor, the judgment itself doesn't
14 go into that detail. And, quite frankly, the benefit
15 conferred upon GSK for sales made in the County of
16 Santa Clara for the benefit of residents is what the
17 residents paid for their prescription of this drug in
18 the county because their doctor wrote the prescription.

19 THE COURT: Well, then I'm going to need some
20 precedent from the State of California's case law or
21 relevant Ninth Circuit case law that says that the
22 patient paid what its insurance company paid. Actual
23 pay versus the price is two different numbers.

24 MR. KIESEL: Well, we have something called
25 the collateral source rule in California, and the

1 collateral source rule is you can't look to insurance
2 to give the wrongdoer the benefit of what the plaintiff
3 incurred damages for.

4 The collateral source rule essentially does
5 not allow the defendants to get the benefit of the fact
6 that I have insurance. My insurance can never be
7 mentioned in California, and the fact that I had
8 insurance pay benefits is never to be considered when
9 it comes to damages. What is considered and is
10 important is what is the actual amount paid.

11 THE COURT: But what do you do with the
12 excess? Do you give it to the individual residents
13 even though they are not out-of-pocket?

14 MR. KIESEL: I would submit this, Your Honor,
15 and, in fact, that's a question that courts struggled
16 with. And the answer is this. If my insurance company
17 paid, hypothetically, \$300 for that prescription and,
18 hypothetically, my co-pay was four dollars so that my
19 out-of-state insurer paid \$296, as an insured, I have a
20 contract with my insurer that if I receive money back
21 for something that they paid a benefit for that I had a
22 third party claim on, I'm obligated under my contract
23 with the insurer, whether it happens or not, to
24 reimburse the insurer.

25 But the key is this on insurance. The

1 defendants may not get the benefit of the fact that the
2 plaintiff was or was not insured. And we don't need to
3 go to that level here, Your Honor, because we agree
4 it's for residents of the County of Santa Clara for
5 purchases made in the County of Santa Clara.

6 And to go to the next level of where was it
7 purchased from is not a part of the equation with
8 respect to restitution, nor is there anything in the
9 judgment that was entered here that suggests, though
10 they may have attempted to do that, that it has to be
11 limited to specifically what the resident paid
12 themselves.

13 If they wanted to say that, if they wanted to
14 carve that out and say it's what the resident paid him
15 or herself that's to be considered, they could have put
16 that in the language at the final judgment. It's not
17 there.

18 We agree on everything but the source of the
19 funds used to purchase the drug for which we're
20 entitled to restitution. And I would submit if the
21 Court wants, we could certainly give you further
22 briefing on what your obligations as an insured are to
23 your insurer.

24 But, GSK should not get the benefit of the
25 fact that someone does or does not have insurance

1 because they got the benefit of all the dollars from
2 the County of Santa Clara residents, Your Honor.

3 THE COURT: I don't need extra briefing on
4 that because we deal with that issue in multiple cases
5 and we know what the obligation is. And there are
6 cases within this MDL asserting that right. And those
7 kinds of cases seem to duplicate what you're trying to
8 do here in getting a larger number in your restitution
9 based on the purchase price.

10 Even if that's allowed, I am also aware
11 because I can't wear blinders in competing litigation
12 they're going after the same amount of money. So it is
13 a particularly interesting issue right now.

14 MR. KIESEL: But I'll point out one thing
15 that's really important. These are not bodily injury
16 claims. This is a civil enforcement action by the
17 people of the State of California for individuals who
18 purchased this drug. It may be that not a single one
19 of these patients actually has a claim.

20 THE COURT: I'm not referring to bodily
21 injury claims that are competing. I'm referring to the
22 competing insurance claims.

23 MR. KIESEL: The third party payor kind of
24 claims.

25 THE COURT: That kind, okay?

1 MR. KIESEL: Understood. Well, I think your
2 Court -- Your Honor, you certainly have a handle on how
3 we have narrowed down this issue. I think the facts
4 are well before you and I think it's appropriate under
5 the circumstances the way the settlement agreement and
6 judgment was entered into here that all of the damages,
7 all of the purchases made by residents of the County of
8 Santa Clara be a part of the damages model for
9 restitution from the defendants here.

10 THE COURT: Thank you.

11 MR. KIESEL: Thank you.

12 THE COURT: And thank you, counsel. Please
13 come up again, Mr. Vale, because I feel that this oral
14 argument has helped this Court clarify a few of its
15 questions.

16 MR. VALE: Your Honor, I certainly don't --
17 Your Honor has given us a lot of time. I just wanted
18 to let Your Honor know that we have addressed in our
19 briefs the basis for restitution, and I think we quote
20 a case here from the California Court of Appeals where
21 we say "The object of restitution is to restore the
22 status quo by returning to the plaintiff funds in which
23 he or she has an ownership interest."

24 So to get restitution, that's coming from the
25 word "restore" that I referred, it has to be to a

1 person in interest, and that means somebody that had an
2 ownership interest.

3 So in my example, the patient had an interest
4 and a \$100 co-pay, but the patient didn't have an
5 interest, an ownership interest in the \$200 that the
6 insurer paid. So we addressed that.

7 THE COURT: And that also produces another
8 set of complications because if you limit discovery to
9 the actual amount paid by an individual resident
10 consumer or patient, and then the insurance company
11 contract demands payment of its lien, there's no way
12 that that's equitable because they paid much more than
13 what would be received by the resident. So it's first
14 a discovery case management problem, and secondly, it's
15 a real practical difficulty in assessing what is fair
16 restitution.

17 MR. VALE: Yes. Just again to be really
18 clear about this, Your Honor, I mean what we're talking
19 about here is claims under one California statute, the
20 false advertising law, brought by the people of
21 California seeking an order for restitution.

22 So the fact that an out-of-state insurer may
23 not be entitled to restitution doesn't say anything
24 about whether that out-of-state insurer has a claim
25 based on some other law or some other theory, and Your

1 Honor has referred to that.

2 So I think it's important to think here in
3 this sort of equitable action under the false
4 advertising law that the California courts have defined
5 fairly clearly a limited type of person that can get
6 restitution, and it's a person in interest, and that
7 means somebody that had an ownership interest in the
8 money that is to be restored.

9 THE COURT: Thank you. Thank you very much,
10 counsel. Let's see if your clients need any questions.

11 MR. KIESEL: Any questions from the peanut
12 gallery?

13 SPEAKER 1: No, we're fine here. Thank you.

14 THE COURT: Thank you very much.

15 MR. KIESEL: Thank you so much, gang.

16 THE COURT: We're going to take this matter
17 under advisement. Would there be additional briefing
18 requests by either party?

19 MR. KIESEL: None from us, Your Honor.

20 MR. VALE: I think we've covered it, Your
21 Honor.

22 THE COURT: I think you have. Thank you,
23 counsel. So we will take this under advisement. And
24 we no longer need the video conference. We still need
25 the attorneys who asked to participate by telephone,

1 some of whom have not addressed the Court yet. So we
2 will need to switch gears for a moment. Let's take a
3 brief recess.

4 (Recess, 12:43 p.m. to 12:49 p.m.)

5 THE COURT: Counsel, we will go back on the
6 record, please.

7 (Pause in proceedings.)

8 THE COURT: I would like to be of some
9 assistance to those attorneys who must leave, but until
10 you leave I would like to address as many of you and
11 your cases possible. And I think that it is important
12 that we not neglect those of you that came here from
13 some distance to address any questions about your case.

14 So before I talk about some other overriding
15 general issues, I would like to address any attorney
16 who would like to identify themselves, tell me what
17 case they are attorney of record on and representing,
18 and the status of that matter, and we'll start with
19 you, sir.

20 (Pause in proceedings.)

21 MR. REILLY: Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 MR. REILLY: My name is Jeff Reilly from
24 Dupris and Kimbro in Marietta, Georgia. We represent
25 Hal Crawford and Gene Crawford in their claims against

1 GlaxoSmithKline. Hal Crawford's claim stems from a
2 stroke he had resulting from taking Avandia, and his
3 wife's claim stems from loss of consortium.

4 We just got pulled onto this case, Judge, and
5 trying to get our head above water, and I'm going to be
6 stopping by the clerk's office to file my -- or get my
7 ECF registration. We'll be filing our entry of
8 appearance shortly thereafter. I just wanted to make
9 the Court aware that we are here today and that we're
10 going to move this process along and get caught up with
11 opposing counsel.

12 THE COURT: When was the Crawford case filed?

13 MR. REILLY: It was filed in July of 2013 and
14 transferred here. I believe the exact date, don't
15 quote me on it, is August 8th, 2013.

16 THE COURT: That sounds right.

17 MR. REILLY: And then we got pulled onto the
18 case November 15th I believe of 2013.

19 THE COURT: All right.

20 MR. REILLY: And we've been -- we worked over
21 the holiday in trying to get caught up.

22 THE COURT: Do you know the status of the
23 case in terms of a plaintiff's fact sheet being
24 provided --

25 MR. REILLY: We provided the --

1 THE COURT: -- or anything else?

2 MR. REILLY: -- plaintiff's -- well, the
3 plaintiff's face sheet was provided before we got on
4 this case is our understanding, and we haven't heard
5 differently from opposing counsel. We provided the
6 physician certification of Avandia when we got into the
7 case. We coordinated with Mr. Crawford's treating
8 physician and sent that out to opposing counsel.

9 THE COURT: All right. So things are moving
10 along just as they should be?

11 MR. REILLY: Yes, we're trying to get it
12 moving along quick, but I believe discovery ends in
13 their case on February 5th, 2013, and we're going to
14 try not to have to extend that.

15 THE COURT: Good. Is there any question that
16 the defense has concerning this case?

17 MS. GUSSACK: No, Your Honor. I believe that
18 we do have information on the fact sheet and basic
19 medical records from counsel.

20 THE COURT: Thank you very much, counsel.

21 MR. REILLY: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. CORR: Your Honor, before we go on, just
24 as a general matter. I tried to talk to everybody, but
25 there has to be an entry of appearance in some of these

1 cases, and the ECF is important, and I'm happy to stay
2 and talk to everybody about what to do. I just want to
3 want to make sure everybody knows to do that.

4 THE COURT: Well, I know you have another
5 appointment --

6 MR. CORR: Yes.

7 THE COURT: -- but we can make a blanket
8 statement here that any attorneys that are new to this
9 process need to file their entry of appearance formally
10 with the clerk of the court, which is just downstairs
11 on the second floor, and you must be on ECF
12 notification. So you must be registered to ECF.

13 And as far as this Court is concerned, you
14 can tell the docketers that you don't have to pro hac
15 vice in if you were already attorney of record. Now,
16 if you're new attorneys, enter your appearance.

17 But I don't know if there's any problems with
18 -- someone mentioned something about not being allowed
19 to sign up for ECF, but I'm not sure why that is.

20 MR. CORR: There should be -- it's a simple
21 form and it should be down in the clerk's office, but
22 as I leave I'll actually stop down and I'll talk to Tom
23 Dempsey about that and let him know that attorneys may
24 be coming down. It's a simple form. You should stop
25 in and fill it out.

1 THE COURT: Okay.

2 MR. CORR: Okay.

3 THE COURT: And then could you please
4 identify yourself for the record very quickly?

5 MR. PEARCE: Good afternoon, Your Honor. My
6 name is Russell Pearce and I represent William Rita who
7 represents the plaintiff, Flor (ph) Hernandez.

8 THE COURT: Hernandez.

9 MR. PEARCE: Yes.

10 THE COURT: Do you know the number of that
11 case?

12 MR. PEARCE: Sorry.

13 THE COURT: If you have it.

14 MR. PEARCE: No, I believe it's in --

15 THE COURT: Is that --

16 MR. PEARCE: -- discovery group E.

17 THE COURT: -- Flor Hernandez? Okay.

18 MR. PEARCE: E, yes.

19 THE COURT: Now, that was filed back in 2010.

20 MR. PEARCE: Correct.

21 THE COURT: And who is the pro se? William
22 Rita?

23 MR. PEARCE: He's not pro se. He is the
24 attorney representing Flor Hernandez.

25 THE COURT: And you are here for --

1 MR. PEARCE: On his --

2 THE COURT: -- Mr. Rita?

3 MR. PEARCE: -- behalf, yes.

4 THE COURT: Okay. Do you know the status of
5 the discovery in that matter?

6 MR. PEARCE: I know that authorizations have
7 been provided as recently as December 5th, and
8 furthermore, depositions have not been held of the
9 plaintiff.

10 THE COURT: All right. Is there anything
11 that GSK requires in the Hernandez case that needs to
12 be addressed?

13 MS. GUSSACK: No, Your Honor, I think that
14 finally receiving authorizations last night will allow
15 us to immediately initiate this getting records and
16 taking depositions.

17 THE COURT: Thank you. Mr. Pearce, are you
18 helping to facilitate that?

19 MR. PEARCE: Yes, Your Honor.

20 THE COURT: Is your appearance in this matter
21 the responsible act that has provided those records?

22 MR. PEARCE: Well, I know that I am appearing
23 today per diem for Mr. Rita.

24 THE COURT: Well, you can see the kind of
25 expectations that this Court has --

1 MR. PEARCE: Yes.

2 THE COURT: -- and the MDL orders command.
3 And I appreciate your involvement.

4 MR. PEARCE: Okay.

5 THE COURT: Thank you.

6 MR. PEARCE: Thank you very much.

7 (Pause in proceedings.)

8 MR. ENRIGHT: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. ENRIGHT: Thomas Enright of Parrillo,
11 Weiss & O'Halloran in Chicago. I represent Donald
12 Mergener (ph). That case number originally was L --
13 I'm sorry, 11-CV-1417.

14 THE COURT: Yes, I have it.

15 MR. ENRIGHT: It's a group C case. We have
16 done -- we've done the deposition of the plaintiff and
17 his wife. We've done half of the deposition of his
18 treating cardiologist. That was actually supposed to
19 go this morning, the second half. And there wasn't --
20 and that would have been in Florida, which would have
21 been preferable I guess. And we were also going to
22 take his primary care physician yesterday, but those --

23 THE COURT: Now, you said that's group C. I
24 have --

25 MR. ENRIGHT: It was group --

1 THE COURT: -- it on a document here that
2 says it's group E.

3 MR. ENRIGHT: I don't -- unless it was --

4 THE COURT: I --

5 MR. ENRIGHT: -- changed. I don't think --

6 MR. KIESEL: I think C became E, Your Honor.

7 MR. ENRIGHT: C became E? Oh, okay.

8 THE COURT: Okay.

9 MR. ENRIGHT: Okay.

10 THE COURT: That -- I just like to --

11 MR. ENRIGHT: Sure.

12 THE COURT: -- all of us to be on the same
13 page.

14 MR. ENRIGHT: And I think we've given GSK
15 everything that they've needed so far to proceed with
16 the deposition so --

17 THE COURT: And you are proceeding in the
18 middle of depositions.

19 MR. ENRIGHT: We are in the middle of
20 depositions.

21 THE COURT: Anything more that's needed here?

22 MS. GUSSACK: No, Your Honor, I think that's
23 an accurate report.

24 THE COURT: Thank you.

25 MR. ENRIGHT: Thank you, Your Honor.

1 THE COURT: And, you know, after you do this
2 identification on the record, you are free to be
3 excused. Enter your appearance and safe travels.

4 (Pause in proceedings.)

5 MR. DAMERON: Hi, good afternoon, Your Honor.
6 Matthew Dameron from Stevie, Segal, Hanson in Kansas
7 City, Missouri. We are counsel for Stacy Loreno in
8 Loreno versus GSK, it's case number 12-3683. This is a
9 consumer class action on behalf of Missouri residents,
10 and it is referenced in paragraph 5C of the joint
11 report and agenda.

12 THE COURT: Yes.

13 MR. DAMERON: We believe that that paragraph
14 accurately represents the status of our case.

15 THE COURT: Okay.

16 MR. KIESEL: Your Honor, if you don't mind, I
17 think what we want to do is have the individual lawyers
18 who had cases come up first before we do the class
19 action, if that would be okay.

20 THE COURT: I would prefer that.

21 MR. DAMERON: Okay, sorry, Your Honor.

22 THE COURT: I do want you to hang in a little
23 bit longer.

24 MR. DAMERON: Sure, of course.

25 THE COURT: Thank you, counsel.

1 MR. DAMERON: Thank you, Your Honor.

2 MR. KIESEL: Thank you.

3 (Pause in proceedings.)

4 MR. KONAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. KONAN: Reyanne Konan from the Reyanne
7 Konan Law Office, I represent Victor Bautista (ph),
8 case numbers 13-CIV-5384.

9 THE COURT: Yes.

10 MR. KONAN: I submitted my fact sheet and
11 there was some deficiency. I think I was -- I'm
12 speaking right now with Nicole Aiken, Esquire, from
13 GlaxoSmithKline, so she submitted everything I think
14 December 4th, and I'm waiting for them to give me their
15 okay to see if it's fine. I also submitted my
16 physician certification, so that's where this case
17 stands at this point.

18 THE COURT: And that means that you're
19 complying with the rules and the pretrial orders.

20 MR. KONAN: Yes, Your Honor.

21 THE COURT: And are you entered as your
22 appearance?

23 MR. KONAN: Not yet, Your Honor. I will do
24 it as of now on the second floor.

25 THE COURT: I appreciate that.

1 MR. KONAN: Thank you.

2 THE COURT: Does GSK have any other
3 requirements?

4 MS. GUSSACK: No, Your Honor.

5 THE COURT: All right. So your case will
6 move along as it should. Thank you.

7 MR. KONAN: Thank you. Have a good day, Your
8 Honor.

9 THE COURT: You, too.

10 (Pause in proceedings.)

11 MR. LEVITT: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. LEVITT: My name is Mark Levitt. I'm
14 here for the co-counsel with the Friday firm, Friday
15 and Cox in Pittsburgh, Pennsylvania. We have one --
16 well, two plaintiffs, Linda and John Shatz (ph).
17 That's docket number 12-CV-148, Shatz versus
18 GlaxoSmithKline. This is a bone case, osteoporosis
19 case, and we have taken depositions and the case is
20 moving forward. There are no issues that I know of.

21 THE COURT: All right. And all of your
22 documents, your client's documentation, have been
23 provided?

24 MR. LEVITT: Yes, Your Honor.

25 THE COURT: Thank you. Is there anything

1 else that GSK would add at this point?

2 MS. GUSSACK: No, Your Honor.

3 THE COURT: Thank you very much.

4 MR. LEVITT: Thank you, Your Honor.

5 THE COURT: Counsel?

6 MR. JOHNSON: Good afternoon, Your Honor. My
7 name is Frank Johnson. I'm pro se. My case number is
8 2:10-CV-02125. I have presently received a letter from
9 Pepper Hamilton specifically stating that I needed to
10 supply PTO-155 for them because they did not have a
11 physician certification.

12 However, I have a question because I have a
13 physician certification that was supplied with my other
14 forms on January 13th, 2011, and I wanted to know if
15 they're referring to the same one or if there's a
16 question --

17 THE COURT: Perhaps counsel can review that
18 document and see if it is the same, if there's --

19 MR. HAMILTON: Yes, Your Honor.

20 THE COURT: -- been a question.

21 MR. HAMILTON: Let me clarify. Mr. Johnson
22 recently informed us that he's now alleging that he
23 suffered an MI, a myocardial infarction. Because of
24 that he now qualifies under the Lone Pine two, and so
25 we've requested that report, as opposed to the PTO-121,

1 Lone Pine one, he's referring to.

2 THE COURT: All right. That would be
3 confusing to a pro se. Are you trained in the law,
4 sir?

5 MR. JOHNSON: No, I am not, Your Honor.

6 THE COURT: Is it possible that you could
7 obtain counsel and retain them to represent you in this
8 matter?

9 MR. JOHNSON: I'm working on it. I told him
10 that I did reserve the right -- we did depositions
11 midway through last month, and I'm working on someone
12 picking up this case.

13 THE COURT: All right.

14 MR. JOHNSON: But I'm following up on it on
15 my own right now.

16 THE COURT: So do you understand why GSK
17 asked for a new --

18 MR. JOHNSON: That's exactly the
19 clarification --

20 THE COURT: -- certification?

21 MR. JOHNSON: -- that I was asking for --

22 THE COURT: Good.

23 MR. JOHNSON: -- that they were asking for
24 one in addition to this. But you're saying that you do
25 have this, correct?

1 THE COURT: Well, he has to see that.

2 MR. JOHNSON: Okay.

3 THE COURT: What I think counsel just said is
4 that they had the first one.

5 MR. JOHNSON: Okay.

6 THE COURT: But then your claim of injury
7 changed or added MI --

8 MR. JOHNSON: Understood.

9 THE COURT: -- myocardial infarction, and
10 that means you need to support that.

11 MR. JOHNSON: Additional one because it
12 wasn't supported in the previous certification.

13 THE COURT: Yes, Mr. Johnson.

14 MR. JOHNSON: That's all I wanted.

15 THE COURT: Thank you, sir. And that's all
16 that's needed right now, counsel?

17 MS. GUSSACK: Yes, Your Honor.

18 THE COURT: Very good. And back to the class
19 action.

20 (Pause in proceedings.)

21 THE COURT: Traci Rezvani, I recognize you.
22 I think counsel wanted to identify himself --

23 MS. REZVANI: Yes.

24 THE COURT: -- for the record. I don't think
25 we were arguing any matter --

1 MS. REZVANI: No, and I think that the status
2 report essentially states out everything Your Honor
3 knows about these cases, and Mr. Dameron can add on to
4 Marino if Your Honor has any questions.

5 I just wanted to let Your Honor know that in
6 speaking with Mr. Vale during the break, on the third
7 party payor 1292 motion, we've asked and GSK has agreed
8 for an additional one-week extension, so we'd like to
9 make a verbal motion on that. And we'll submit the
10 requisite order for Your Honor's consideration.

11 THE COURT: All right. I would be happy to
12 grant another week's extension on that.

13 MS. REZVANI: All right, thank you.

14 THE COURT: Thank you.

15 MS. GUSSACK: Your Honor, I know there are
16 counsel on the phone. I didn't know if there were any
17 counsel for individual plaintiffs before you turned
18 back to the --

19 THE COURT: Thank you. Is there anyone on
20 the telephone that represents an individual case or
21 cases that would like to address the Court at this
22 time? This is the Judge speaking. Is there anybody
23 left on the telephone? We know you're --

24 MR. TRAWICK: (Inaudible). This is David
25 Trawick representing (inaudible) Huggins. We don't

1 have anything to add. Thank you.

2 THE COURT: And what case is that again? Mr.
3 Huggins' case? All right.

4 MR. TRAWICK: That's correct.

5 THE COURT: And that's in -- I see it's filed
6 in 2012. Anything that the defense is still requiring
7 in that matter?

8 (Pause in proceedings.)

9 MR. TRAWICK: No, Your Honor. And I know --
10 I think -- I believe, anyway, I saw a status report on
11 Huggins. Did I not?

12 MS. GUSSACK: Yes, Your Honor.

13 THE COURT: Yes. Thank you. Thank you,
14 counsel.

15 MR. TRAWICK: Thank you, Your Honor.

16 THE COURT: You may remain on the line, but
17 if you have other things to do, you may also exit.
18 Okay?

19 MR. TRAWICK: Okay. Thank you very much,
20 Your Honor, and thank you for your courtesy in
21 permitting us to attend by phone as well.

22 THE COURT: You're welcome. Is there anyone
23 else on the telephone?

24 MR. BRUEHL: Your Honor, this is Curtis
25 Bruehl. I have the Lawson Bore (ph) case, which is

1 item six on the agenda. I don't know if you're going
2 to get to that or you would like to discuss it now.

3 THE COURT: We will be getting to that as an
4 agenda item.

5 MR. BRUEHL: Okay.

6 THE COURT: Is there another individual case
7 that is not listed as an agenda item?

8 MR. BRUEHL: Your Honor, I have four other
9 cases and there are no special issues with those.

10 THE COURT: Okay.

11 (Pause in proceedings.)

12 MR. McCORMICK: Your Honor, Brian McCormick
13 from the Schell firm here in Philadelphia. Lawrence
14 Jones was here and had to leave to catch a plane, but
15 he asked me -- he actually just called and asked me to
16 give you a report on his case and find out if anything
17 from GSK was needed, but he wanted to let you know he
18 had been here this morning and had to run. He's a
19 Kentucky lawyer.

20 THE COURT: Is that the Richard Plap --

21 MR. McCORMICK: His case is -- Richard
22 Plaphert (ph) --

23 THE COURT: -- Plaphert case?

24 MR. McCORMICK: -- case, 114931.

25 THE COURT: Yes.

1 MR. MCCORMICK: So he just wanted to give you
2 notification that he was here and if you needed
3 anything, GSK can let me know and I'll let him know.

4 THE COURT: And does GSK have any
5 requirements in that case?

6 MR. MCCORMICK: I believe depositions have
7 been taken and records have been produced.

8 MS. GUSSACK: Additional depositions are
9 being taken, Your Honor. I think we've addressed the
10 problems that had existed.

11 THE COURT: Thank you.

12 MR. MCCORMICK: Thank you.

13 THE COURT: Thank you, Mr. McCormick. I'm
14 going to welcome you back up here to the podium,
15 counsel.

16 (Pause in proceedings.)

17 MR. DAMERON: Good afternoon again, Your
18 Honor. Matthew Dameron from Stevie, Segal, Hanson in
19 Kansas City on behalf of Stacy Loreno case, 12:3683.
20 And, again, we believe that the -- we filed our amended
21 complaint in November pursuant to the parties'
22 stipulation. We anticipate a motion to dismiss from
23 GSK and we will respond accordingly.

24 THE COURT: Yes, that date comes by next week
25 unless extended. And this is a similar action to prior

1 consumer class actions, correct?

2 MR. DAMERON: Correct, it's a one count class
3 action filed under the Missouri Merchandising Practices
4 Act, Your Honor.

5 THE COURT: Okay. Thank you, counsel.

6 MR. DAMERON: Thank you.

7 THE COURT: Anything else that GSK would like
8 to add?

9 MS. GUSSACK: No, Your Honor, except why
10 counsel sounds like he should be on the radio instead
11 of in this courtroom.

12 MR. DAMERON: It's my cold voice, that's all,
13 Your Honor.

14 THE COURT: Very well. I'm sorry for that,
15 but it sounds great.

16 MR. DAMERON: No worries. Thank you.

17 THE COURT: All right. Shall we get back to
18 the agenda items and see if we can get through these?

19 (Pause in proceedings.)

20 THE COURT: Well, we understand that there is
21 an extension agreed to in the third party payor cases
22 on GSK's motion to amend the orders to certify for an
23 interrogatory appeal. Is the briefing going to be
24 completed on that issue quickly?

25 MS. REZVANI: The idea --

1 THE COURT: That's the one-week extension?

2 MS. REZVANI: Correct. Right now, the
3 opposition is due December 13th with a one-week
4 extension, and we're looking at the 20th. I hope
5 that's not falling on a weekend. I don't think it is.

6 THE COURT: No, it's --

7 MS. REZVANI: So --

8 THE COURT: -- a Friday.

9 MS. REZVANI: Okay. So we'll have an
10 opposition on the 20th, and I believe GSK had wanted a
11 reply brief, so I'm going to leave that to Tony.

12 MS. GUSSACK: Your Honor, a brief reply may
13 be warranted, in which case we would try to have it by,
14 you know, early January so that we could have all of
15 the briefing tied up for your consideration.

16 THE COURT: That would be good considering
17 the holidays --

18 MS. GUSSACK: Right.

19 THE COURT: -- and the intervening days that
20 are missed by all of us.

21 MS. GUSSACK: And I think as a result, Your
22 Honor, I don't think -- I don't know whether we've
23 discussed this with counsel. Forgive me if I'm
24 repeating, but I think it would make sense to stay the
25 requirement to answer any of the complaints until after

1 the court has had an opportunity to address the 1292.

2 MS. REZVANI: Yes, we discussed it before the
3 hearing and we agree with that.

4 THE COURT: All right. Could you propose a
5 stipulated order, please, to that effect?

6 MS. REZVANI: Absolutely.

7 THE COURT: Okay. Thank you.

8 MS. REZVANI: And we'll work with GSK to make
9 sure that the schedule for the reply doesn't hit the
10 holidays, so we're --

11 THE COURT: Well, I would suggest January 6
12 because that's when I'll be back to read it.

13 MS. REZVANI: Very good.

14 MS. GUSSACK: Was it last year, Your Honor,
15 that you had occasion to join us earlier in January
16 for -- I can't -- it seems like --

17 THE COURT: No, it was years --

18 MS. GUSSACK: It's blurred.

19 THE COURT: -- before. I have been known to
20 work on a holiday. It wasn't January 1st, but January
21 2nd, my anniversary, that I came in to meet with
22 counsel and Mr. Juno and my law clerk. So, yes, that's
23 happening, but not this year.

24 Okay. Thank you. All right. We've already
25 dealt -- I'm in Roman numeral V. I think we're done

1 with all of those and we're onto Roman Numeral VI, the
2 Loston (ph) Bork, Jr. versus GSK case, and I think
3 there was reference to an upcoming schedule for motions
4 in that matter. Right?

5 MS. GUSSACK: Yes, Your Honor, and I believe
6 Mr. Bruehl is on the phone with respect to the Bork
7 case. We discussed earlier this morning, and I think
8 we will be reaching out to Mr. Bruehl directly to talk
9 about whether he wants to seek additional time to
10 supplement his expert reports or whether we will stick
11 to the original schedule.

12 It is our intention to advance a request for
13 Daubert hearings on this sudden cardiac death injury
14 case. And I think you had asked that we confer with
15 the special master on a schedule that makes sense.

16 THE COURT: I have asked and I do confirm
17 that request. Mr. Bruehl, is it? Are you on the phone
18 still?

19 MR. BRUEHL: Yes, ma'am. Yes, Your Honor.

20 THE COURT: Okay. Did you want to ask the
21 Court of anything of concern or are you on track and
22 did you hear us earlier when I referred future
23 discussions on a schedule to Master Merenstein? Were
24 you able to hear that?

25 MR. BRUEHL: Your Honor, unfortunately, I've

1 been unable to really hear what counsel has said or
2 what you just said. I think we're having some
3 technical difficulties. But I'm happy to defer to Mr.
4 Kiesel as far as what the coordination of Daubert
5 schedule needs to be, but I don't have any questions.
6 If there's a specific question that I can answer, I'm
7 happy to do so.

8 THE COURT: All right. The discussion
9 earlier, this is the Judge, surrounded the need to deal
10 with the issue of the readjudication of the record
11 study, and giving plaintiffs an opportunity to have
12 their expert report supplemented and in what time frame
13 if they chose.

14 We haven't ruled on the exact parameters, but
15 we think that that would be fair. It is very possible,
16 if not probable, that the defense here will be seeking
17 additional Daubert proceedings, whether they be labeled
18 general or specific to your case.

19 So we are in the process of reorganizing the
20 plaintiffs' ability, that is the plaintiff steering
21 committee ability, to respond on a general level to
22 general Daubert inquiries. That is a problematic one
23 for the MDL, but we have to deal with it.

24 But as far as individual cases are concerned,
25 we are happy to grant each and every individual

1 plaintiff an opportunity to supplement their expert
2 report. Does that help you understand what we had
3 talked about?

4 MR. BRUEHL: Yes, Your Honor, from what I can
5 hear, I think I have an understanding. I guess my only
6 issue would be as far as in the Bork case specifically,
7 our specific causation expert is Dr. Skorsky (ph), who
8 is also a general liability expert, and his deposition
9 is coming up.

10 And to the extent that he needs to be
11 prepared to be deposed upon the generic liability
12 aspect of it and the readjudication of the record
13 study, I think that needs to be done in a coordinated
14 fashion along with -- along track with what the initial
15 discussion this morning was in reference to.

16 THE COURT: Well, that is a logical question.
17 What happens to the scheduled deposition if we're in
18 the throes of deciding how to deal with in a fair way
19 to both sides the additional information that is now
20 available?

21 I would suggest that along with Master
22 Merenstein's charge here to work out a schedule, that
23 those depositions be included in them, because I think
24 it is a very valid question to be asking right this
25 moment. It doesn't seem to me that you could go

1 forward on the deposition without redoing it.

2 So perhaps counsel will all agree to briefly
3 postpone that until at least there's a decision made as
4 to whether or not there will be a plaintiffs'
5 supplemental expert report. I'm getting nods here from
6 GSK.

7 MS. GUSSACK: Yes, Your Honor.

8 THE COURT: Yes? Okay. So I hope you can
9 hear that, Mr. Bruehl, but maybe offline you can
10 discuss this with Mr. Merenstein and GSK. All right?

11 MR. BRUEHL: All right, Your Honor. Thank
12 you.

13 THE COURT: Thank you. Is there anything
14 else you needed to have addressed, sir?

15 MR. BRUEHL: No, ma'am, unless there is
16 something that the Court needs from me.

17 THE COURT: No, thank you, sir.

18 MR. BRUEHL: Thank you.

19 THE COURT: All right. Now, I think we did
20 deal with the remaining discovery group cases initially
21 in your status report, Ms. Gussack?

22 MS. GUSSACK: Yes, Your Honor.

23 THE COURT: And so we've covered 6B, and the
24 request for extension of discovery in certain cases,
25 and GSK is requesting a 60-day extension. And that's

1 for general purposes, is it not?

2 MS. GUSSACK: For fact discovery that has
3 been difficult to obtain, yes.

4 THE COURT: Well, I would rather extend your
5 discovery period, case-specific discovery than have you
6 forced into filing multiple motions to dismiss, which
7 then causes further delay. So I'll grant that
8 extension if you would propose an order.

9 MS. GUSSACK: Thank you, Your Honor.

10 (Pause in proceedings.)

11 THE COURT: And I know that Mr. Merenstein
12 already agrees with that extension because he said so
13 in this report, status report.

14 All right. Is there any other matter other
15 than one that we glossed over earlier concerning the
16 rule to show cause?

17 MS. GUSSACK: I think that's the remaining
18 issue, Your Honor, the rule to show cause in the --

19 THE COURT: Statute of limitations issues.

20 MS. GUSSACK: -- on the statute of
21 limitations, correct. And while we just received
22 plaintiffs' brief and opposition and haven't had an
23 opportunity to respond, and I certainly don't intend to
24 make this an occasion for oral argument. I think the
25 question that was raised was why, you know, and I think

1 you heard from plaintiff's counsel that there was
2 opposition because this was, you know, the procedure is
3 burden shifting.

4 I just want to make clear that the complaints
5 that we received that are the subject of this order to
6 show cause do not identify the injury, the date of
7 Avandia use, the date of the alleged injury.

8 And in light of the fact that they were filed
9 five years after this Court has already said in its
10 opinion that one reasonably should have been on notice
11 as of 2007, it seemed to us an efficient and expedient
12 way for this MDL Court to say it's time for the
13 plaintiffs to bear the burden of demonstrating that by
14 providing that information and a showing that they are
15 not barred by the statute. And if they can make that
16 showing, obviously it's our burden to challenge that.
17 But it is the extraordinary circumstances here of these
18 very, very late filings in the absence of any
19 information that would suggest that they shouldn't, on
20 their face, be presumed to be time barred.

21 THE COURT: You know, I would think that this
22 is an appropriate request at various times on a case
23 management level, and certainly if you did receive a
24 complaint that indicated usage and dates of usage, you
25 would then have enough information to ask the next

1 question. But a plaintiff's fact sheet at a minimum
2 has to show that.

3 MS. GUSSACK: Yes.

4 THE COURT: As I recall the plaintiff's fact
5 sheet. So is the problem partially resolved if the
6 feet are held to the fire of these late filing
7 plaintiffs to give you a fact sheet?

8 MS. GUSSACK: Your Honor, I think if the fact
9 sheets were being provided in a timely manner in which
10 we could evaluate that, I don't think we would be
11 asking for the order to show cause.

12 But at this point, where Your Honor can see
13 that six to nine months of wrangling in order to get
14 basic information, which is at an enormous cost to the
15 defendant, is really simply unfair.

16 Now, just looking at filings that are five
17 years after what was a seminal event and that this
18 Court has concluded at least in several jurisdictions
19 should have been sufficient to put any plaintiff on
20 notice, it seems unreasonable to require GSK to engage
21 in the six to nine-month battle to get fact sheets and
22 basic information in order to test the simple concept
23 of whether the cases should be barred.

24 And in order for this Court not to become the
25 dumping ground of all stray filings these many years

1 later, we are seeking innovative ways to assure prompt
2 attention to this issue.

3 THE COURT: I saw that as an effort to assist
4 the MDL in managing the new cases, the influx of new
5 cases. I also know that many of -- well, I think all
6 of your motions for an order to show cause are relative
7 to cases that are subject to a motion to remand
8 decision.

9 MS. GUSSACK: No, these are the excluded
10 cases.

11 THE COURT: No?

12 MS. GUSSACK: The order to show cause is as
13 to the Illinois cases, in which remand was rejected
14 by --

15 THE COURT: Okay.

16 MS. GUSSACK: -- the transferor court, and
17 that's why we seek it. And, of course, I think GSK has
18 some significant concern that the plaintiff's failure
19 to scrutinize these cases before filing has been a
20 perennial problem.

21 But to compound that problem at this late
22 date, these many years later, without any evidence of
23 when the injury occurred, makes the cases suspect. And
24 we're looking for the most cost effective way
25 consistent with the Court's rules and procedures.

1 And Judge Weinstein, in an MDL facing similar
2 circumstances, entered the kind of order that we are
3 seeking here I think in an effort to deal with a very
4 similar practical problem.

5 THE COURT: The cases that we discussed
6 earlier with Ms. Beasely -- on those cases out of
7 Illinois that are not subject to remand because that
8 was denied --

9 MS. GUSSACK: Right.

10 THE COURT: -- there, didn't we reach a
11 partial agreement?

12 MS. GUSSACK: Yes, those are the ones where
13 she is working to provide Lone Pine certifications.

14 THE COURT: So she's pass -- these are not those cases
15 because --

16 MS. GUSSACK: This is the same -- this is the
17 same category of cases. And so what we will have --
18 sorry, I mean we're really trying to short circuit what
19 is -- if we had nothing more than dates of injury and
20 dates of use, even before we have to wait 60, 90 days
21 in order to get the Lone Pine certifications, we would
22 have a pretty good idea whether we were saying 50
23 percent of these are barred by the statute, 75 percent
24 of them, so we would know what we were dealing with.
25 But these are the same cases I think that the Court

1 provided counsel 60 days to provide Lone Pine
2 certifications.

3 THE COURT: So the motion for an order to
4 show cause couldn't shorten that time period? That
5 would be in favor since --

6 MS. GUSSACK: Well, not against the back drop
7 of what occurred this morning.

8 THE COURT: So perhaps this is premature. We
9 can hold it until -- we just agreed 30 and 60 days,
10 didn't we?

11 (Pause in proceedings.)

12 MS. GUSSACK: I think, Your Honor, the
13 murmuring amongst counsel is the simple -- the Lone
14 Pine certification obviously requires medical
15 certification and medical records and the like. This
16 is a prima facie showing of date of injury and date of
17 use so that in an even earlier time the ability to
18 evaluate whether the case is barred.

19 THE COURT: Which to me comes with the
20 initial filing of the plaintiffs' fact sheet, that's
21 what it comes with because that's how you identify who
22 you're dealing with in what category.

23 MS. GUSSACK: Typically, you would expect to
24 see it in the complaint.

25 THE COURT: Well, in these mass filed

1 complaints, I don't think that happens.

2 MS. GUSSACK: That's -- that has been our
3 experience.

4 THE COURT: So let me think about how to time
5 that. I do want to know myself what kind of cases and
6 how many cases we have to deal with.

7 MS. GUSSACK: Well, and I appreciate, Your
8 Honor, at least as to the agreement that was reached,
9 and I certainly don't want to put Ms. Beasley in a
10 position where she asked for the 60 days and the Court
11 gave it, but I think this is an issue that we are going
12 to be extremely vigilant about raising with respect to
13 the 3,000 other cases here, which is why are we being
14 forced to invest resources against a batch of cases
15 that may not, on their face, even withstand the most
16 mild scrutiny as to their timeliness, even before we
17 get to basic fact sheets and medical records and the
18 like.

19 THE COURT: I understand the request, I do.
20 I will take that matter under advisement and figure out
21 how to fairly do this in an expeditious way that
22 doesn't exactly turn the burden of proof on its head,
23 and I don't think that's what you intended. I look
24 upon this not as a legal issue, but one of case
25 management.

1 MS. GUSSACK: Thank you, Your Honor.

2 THE COURT: Okay. So I think that gives me
3 the right to impose here. Is there anything else we
4 should be addressing. Mr. Merenstein?

5 MR. MERENSTEIN: I don't want to detain
6 everyone, Your Honor. I would just note, as I think
7 you did a few hours ago, that in the Santa Clara case
8 that --

9 THE COURT: Yes.

10 MR. MERENSTEIN: -- I just recently a few
11 days ago submitted an R and R with an agreement upon
12 case management order --

13 THE COURT: Your 23rd R and R.

14 MR. MERENSTEIN: Yes. And it's a very simple
15 CMO. I commend the parties for working cooperatively
16 to come to an agreement on this. It, essentially, sets
17 forth the conclusion of fact discovery in the Santa
18 Clara case over the next three and a half, four months,
19 and then the scheduling of expert discovery.

20 THE COURT: And I imagine that this
21 stipulated and very reasonable case management order in
22 that case would go even more smoothly if the Court
23 could efficiently and expeditiously enter a ruling on
24 the scope of the discovery as it relates to the ruling
25 before us.

1 COUNSEL: I would actually say it would be
2 essential to prepare the expert reports that are
3 scheduled for April 1st that that happens, Your Honor.

4 THE COURT: So we will. We will address
5 that. And I see no reason why we shouldn't adopt and
6 impose this case management order number one to guide
7 the parties in their ongoing progression of discovery.

8
9 COUNSEL: I agree. And my thanks to the
10 special master because this came down to one single
11 word and the special master got that resolved, so I
12 thank all of the parties.

13 THE COURT: Well, he is known to do the
14 impossible. Thank you. Is there anything else to
15 address? All right. I think it's time. The clock
16 says 1:30. We've been at this for hours with a few
17 minor breaks.

18 I've enjoyed today. I always enjoy seeing
19 counsel and having the opportunity to participate
20 together in what is a long struggle. But I see
21 accomplishment, and I thank you all.

22 MR. KIESEL: Thank you, Your Honor.

23 MS. GUSSACK: Thank you.

24 THE COURT: Happy holidays.

25 ALL: Same to you, Your Honor.

1 (Recording was turned off from 1:26:12 to
2 1:26:17)

3 THE COURT: And what case are you here on?

4 MR. SUTTER: It's Bauerman (ph) case. It's
5 an illegal (inaudible) case arising under state law
6 from Arkansas. It's sort of a stepchild of this
7 proceeding, but I've been here and I just wanted to --
8 if I missed the call, your call on my case, I'm sorry.

9 THE COURT: Well, I think our callers in have
10 difficulty hearing us. And what would you like to
11 report to us, counsel?

12 MR. SUTTER: Yes, ma'am. There is a motion
13 to dismiss my complaint for failure to stay the claim
14 and that issue has been certified out of another MDL
15 court, the Western District of Louisiana, the Arkansas
16 Supreme Court, and it's pending acceptance by the
17 Arkansas Supreme Court this week actually. And the
18 Arkansas Supreme Courts -- the complaints are virtually
19 identical, and the Arkansas Supreme Court's decision on
20 this issue will likely decide the legal issues for this
21 Court. So that's all I had to say, Your Honor.

22 THE COURT: Yes, and I believe you gave us a
23 status report on that?

24 MR. SUTTER: Yes, ma'am, I did.

25 THE COURT: Yes, and I have read that. And

1 would there be anything that the defendant would like
2 to add to that report?

3 MS. GUSSACK: Well, Your Honor, I'm a little
4 confused. The plaintiff has admitted that his claim is
5 moot here. We have a motion to dismiss in light of our
6 resolution, both with the State of Arkansas, but
7 because he has acknowledged that it's moot, I'm not
8 sure what counsel is asserting here, but we don't think
9 that there's a live viable cause of action.

10 THE COURT: Would you explain the mootness
11 issue, Ms. Gussack? I don't know where he's admitted
12 it's moot.

13 MS. GUSSACK: Perhaps counsel I think is
14 address the fact that he's now raising his issues in
15 another court.

16 THE COURT: The Arkansas Supreme Court?

17 MS. GUSSACK: Yes.

18 THE COURT: Okay. I am a little confused
19 about this. The plaintiff, Mr. Bauerman, has sued
20 Tecada Pharmaceuticals in Arkansas, and I think
21 that's --

22 MR. SUTTER: Yes, Ma'am.

23 THE COURT: -- what's before the court there,
24 right?

25 MR. SUTTER: Yes, ma'am.

1 THE COURT: And that is Actos? Are you
2 involved in Mr. Bauerman's case in Actos?

3 MR. SUTTER: Yes, yes, ma'am.

4 THE COURT: The Actos MDL. But --

5 MR. SUTTER: Yes, ma'am.

6 THE COURT: But how does that make this case
7 moot in the Avandia MDL?

8 MS. GUSSACK: My --

9 MR. SUTTER: Well, it doesn't make it moot,
10 Your Honor. It just addresses the precise legal issue
11 raised by the defendants in this case. The pending
12 motion to dismiss raises various legal arguments that
13 are going to be addressed by the Arkansas Supreme Court
14 because of the unique nature of the claim brought.

15 Mr. Bauerman is bringing this as a taxpayer
16 of the State of Arkansas, not as an individual. And
17 the precise question is whether or not the complaint
18 states a claim under our Arkansas constitution. And if
19 the Arkansas Supreme Court rules in the Actos case that
20 it does not state a claim, then my complaint doesn't
21 state a claim in this case either.

22 THE COURT: So it's possible moot depending
23 on what Arkansas does, meaning that you would withdraw
24 this complaint or agree that if you lost in the Tecada
25 case, you would similarly lose here but --

1 MR. SUTTER: Yes, ma'am.

2 THE COURT: -- not necessarily. So I don't
3 know if "moot" is the word.

4 MS. GUSSACK: Well, I think, Your Honor, from
5 our perspective, and our motion has been pending I
6 think for awhile, the multi-state resolution that GSK
7 achieved, including with the State of Arkansas, we
8 believe extinguishes a claim that this lawyer is
9 seeking to bring, and that is the subject of our
10 motion.

11 I think that we have also received indication
12 that if that counsel recognizes that his claim is moot
13 in light of that resolution, quite apart from whatever
14 legal just -- determination is made in the Actos
15 litigation.

16 But I don't think any action is required now
17 and I think counsel is suggesting that he wants to hear
18 what the Court does in the Actos.

19 THE COURT: And GSK does not agree we should
20 delay our ruling?

21 MS. GUSSACK: I don't think we're bound by
22 that and I think that our motion is well-framed.

23 THE COURT: Well, we are not bound by that,
24 although the State Supreme Court of Arkansas would be
25 an important judicial body to rule on such an issue.

1 It is not necessarily dispositive to this Court.

2 But I will review again, it has been awhile
3 since I looked at those pleadings. Although this was
4 filed in 2012, I think the motion was filed fairly
5 quickly after its filing.

6 We will look at that because it does
7 implicate some of the very same issues that we heard
8 argument on today concerning the County of Santa Clara
9 and the state attorney general's action there.

10 So I will look forward to reviewing that and
11 ruling on it, or I'll notify counsel that I would
12 prefer to delay and see what the Arizona Supreme Court
13 says, but I'm not sure that that is my resolution.
14 I'll just give you a heads up on that, okay?

15 MR. SUTTER: Yes, ma'am, thank you.

16 THE COURT: Thank you, Mr. Sutter. Is there
17 anything else?

18 MR. THORN: Your Honor?

19 THE COURT: Yes.

20 MR. THORN: I apologize. This is Jeffrey
21 Thorn for (inaudible). I also -- it's been very
22 difficult for me to hear anything that's being said in
23 the conference. I just wanted to make sure that you
24 didn't need any further status updates from Grossman,
25 which is the case that was transferred to your court

1 late August or early September of this year.

2 THE COURT: Let me just see, counsel. The
3 Grossman case --

4 MR. THORN: It's Grossman, it's 13-CV-11770.
5 And we provided a status update --

6 THE COURT: Which I don't seem to have here.
7 But in any event, are there any requirements that have
8 not yet been met in this matter?

9 MR. THORN: We filed a fact sheet or served a
10 fact sheet on the defendant, Your Honor, and they
11 contacted us I believe the day before yesterday, but
12 we've had no substantive communication with them as to
13 additional discovery they might want.

14 THE COURT: I'm getting a nod from Ms.
15 Gussack that things are moving along in fine shape,
16 sir. Thank you.

17 MS. GUSSACK: No issues.

18 MR. THORN: I apologize.

19 THE COURT: I'm sorry about the acoustics.
20 This is something I can't control. I don't know how to
21 make the sound system better for the telephoning
22 attorneys and participants.

23 But I hope that all of the orders that we
24 enter pursuant to our discussions here today will be
25 reviewed online in the docket. I hope that will be

1 satisfactory.

2 MR. THORN: Okay. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. SUTTER: Thank you, Your Honor.

5 THE COURT: Is there anyone else on the
6 telephone that would like to address the Court?

7 MR. ROBERTS: Well, this is Gary Roberts and
8 my case is Linda Rico, but I've suffered from the same
9 thing. I can hear everybody on the telephone, but I
10 cannot hear what's going on in the courtroom. I can
11 pick up occasional words, most of the words from Your
12 Honor, but that's limited. I don't think there's
13 anything of importance that needs to be addressed in my
14 case, but I'm here.

15 THE COURT: Thank you, Mr. Roberts. Is there
16 anything in the Linda Rico case that is wanting as far
17 as the defense is concerned?

18 MS. GUSSACK: Not that I'm aware of, Your
19 Honor. No, not within plaintiff's control. I think
20 we're dealing with the challenges of scheduling
21 depositions.

22 THE COURT: Thank you. I hope depositions
23 will be scheduled expeditiously. Thank you, Mr.
24 Roberts.

25 MR. ROBERTS: Thank you, Your Honor.

1 THE COURT: Is there anyone else on the
2 telephone?

3 (No response heard.)

4 THE COURT: All right, I think that may be
5 it. Success. Now we're adjourned.

6 ALL: Thank you.

7 (Proceedings adjourned, 1:36 p.m.)

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CERTIFICATION

I, Michael Keating, 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.

Date

1/10/14

Michael Keating

Michael D. Keating