



APPEARANCES: (continued)

For the Petitioner: BRYAN F. AYLSTOCK, ESQUIRE  
Aylstock, Witkin, Kreis &  
Overholtz, PLLC  
17 East Main Street  
Suite 200  
Pensacola, FL 32502

STEVEN J. CORR, ESQUIRE  
Jones Day  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071

For the Respondent: THOMAS V. GIRARDI, ESQUIRE  
(Appearing by Video) KEITH D. GRIFFIN, ESQUIRE  
Girardi/Keese  
1126 Wilshire Boulevard  
Los Angeles, CA 90017

For GlaxoSmithKline: NINA M. GUSSACK, ESQUIRE  
Pepper Hamilton, LLP  
3000 Two Logan Square  
18th and Arch Streets  
Philadelphia, PA 19103-2799

- - -

Audio Operator: Erica Pratt

Transcribed by: Donna Anders

- - -

Proceedings recorded by electronic sound  
recording, transcript produced by computer-aided  
transcription service.

- - -

1 (The following was heard in open court at  
2 12:32 p.m.)

3 THE COURT: Good afternoon, everyone.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated.

6 Can -- can our California litigants please be  
7 seated. Can you hear me?

8 MR. GIRARDI: Thank you, Your Honor.

9 THE COURT: All right. I guess you can hear  
10 me. That's good.

11 This is a motion -- well, there are two  
12 matters before the Court today involving essentially the  
13 same parties, and we issued an order to show cause  
14 requested by the Plaintiffs' Advisory Committee in the  
15 Avandia MDL 1871, that is, 2007-1871, Document Number  
16 3901, which was filed on the 13th of March.

17 And in that regard we have present those  
18 persons that have filed the motion for order to show  
19 cause as well as the respondents, and I have received a  
20 response, and we're going to be taking testimony on that  
21 today as to the allegations and the responsive  
22 allegations.

23 But for the record, we have Dianne Nast  
24 present.

25 MS. NAST: Yes, Your Honor.

1 THE COURT: Good morning.

2 MS. NAST: Good morning.

3 THE COURT: Vance Andrus.

4 MR. ANDRUS: Yes, Your Honor.

5 THE COURT: Good morning.

6 Bryan Aylstock, good morning.

7 MR. AYLSTOCK: Good morning, Your Honor.

8 THE COURT: Tom Cartmell is not here today.

9 MR. ZONIES: Mr. Cartmell is on trial, Your  
10 Honor.

11 THE COURT: Thank you. And that leads me to  
12 you, Joseph Zonies.

13 MR. ZONIES: Good morning, Your Honor --

14 THE COURT: Good morning.

15 MR. ZONIES: -- or afternoon.

16 THE COURT: And we did not request that Paul  
17 Kiesel as the adjunct member of the Committee be present  
18 today. Did anyone hear from him?

19 MS. NAST: No, we -- we did not. He's not --  
20 I don't know if he's -- I don't think he's on the  
21 Advisory Committee. He's on the Fee Committee. So we  
22 did not ask him to come.

23 THE COURT: And also we have present Steve  
24 Corr.

25 MR. CORR: Yes, Your Honor. Good morning.

1 THE COURT: And on behalf of respondent in  
2 this matter, who is present by video?

3 MR. GIRARDI: Your Honor, Thomas Girardi is  
4 present.

5 MR. GRIFFIN: Your Honor, Keith Griffin is  
6 also present.

7 THE COURT: Thank you. And that's the one  
8 matter. As to the second matter, we've been asked to  
9 enter a temporary restraining order in a -- I would call  
10 this a related matter which is why we scheduled it for  
11 today.

12 And that is that in that matter, the  
13 petitioner is GlaxoSmithKline, the defendant in the MDL  
14 that is known as Avandia, and its counsel, Pepper  
15 Hamilton counsel, have filed for injunctive relief in  
16 the nature of emergency relief, and that is a matter  
17 that is a little more, not complicated, but a little  
18 more concerning the actual terms of the settlement under  
19 a Master Settlement Agreement.

20 And the response has been received, and we're  
21 also going to entertain argument and limited testimony  
22 on that.

23 I need to be sure that this Court maintains  
24 proper jurisdiction to enter any relief in this, and the  
25 one overriding concern I have is the Master Settlement

1 Agreement. I do not have a copy of it. And to do that,  
2 I would -- to have that, it would help me and I'd also  
3 need to know what other Courts may be doing about this  
4 at the request of any of the parties. And so we will  
5 address that in turn.

6 But, for now, I would like to address the  
7 motion for order to show cause. Mr. Griffin and Mr.  
8 Girardi, are either of you or both of you represented by  
9 any other counsel, or are you representing yourself?

10 MR. GIRARDI: Your Honor, no, we -- we're  
11 here. We're not represented by anybody else.

12 THE COURT: All right. Now, let's begin by  
13 having the petitioners in that matter address why they  
14 felt the need to ask the Court to intervene and enter an  
15 order to show cause. Mr. Zonies, Ms. Nast, who is going  
16 to address this at first?

17 MS. NAST: Good morning again, Your Honor.

18 THE COURT: Good morning.

19 MS. NAST: We have, if the Court permits it,  
20 we have evidence that we would like to present on this  
21 matter. We're assuming subject to whatever the Court  
22 rules, that Mr. Girardi will lead off as it's -- he's  
23 been ordered to show cause, and then we would follow.

24 THE COURT: All right.

25 MS. NAST: Okay.

Petitioner's Opening Statement

7

1 THE COURT: Would you like to present an  
2 opening statement then?

3 MS. NAST: We've asked Mr. Zonies to present  
4 the evidence. I don't think we intend to present an  
5 opening statement.

6 MR. ZONIES: I could summarize for the Court  
7 and for Mr. Girardi as well, if the Court would like,  
8 what we intend to show.

9 THE COURT: I think that would be appropriate.

10 MR. ZONIES: Good afternoon, Your Honor. Joe  
11 Zonies on behalf of the Avandia Plaintiffs' Advisory  
12 Committee.

13 Your Honor, we -- we were informed by the  
14 Master, Mr. Chirls, and also by GSK that during the  
15 resolution process of the Girardi Keese Avandia cases  
16 that Girardi Keese, the firm, had expressed some  
17 reservations about complying with PTO 70 in making an  
18 assessment on the cases that they resolved with GSK and  
19 Avandia.

20 It became clear that, in fact, that Girardi  
21 Keese was going to take the position that they did not  
22 owe that assessment, so that is why we brought before  
23 the Court the motion for an order to show cause to try  
24 to understand more clearly the position of Girardi  
25 Keese.

## Petitioner's Opening Statement

8

1           What we will intend to demonstrate for the  
2 Court is, is that in the initial order appointing PSC  
3 members in this case, one of the initial Plaintiffs'  
4 Steering Committee members was indeed Paul Sizemore who  
5 at the time was a partner or in some way, shape or form  
6 affiliated as an attorney with the Girardi Keese firm as  
7 is demonstrated on the order appointing Mr. Sizemore.  
8 It says Paul Sizemore, Esquire, Girardi Keese.

9           Simply due to the appointment of Mr. Sizemore  
10 as a PSC member under the Court's PTO 70 order,  
11 paragraph three, a PSC member -- all cases in which a  
12 PSC member has a financial interest are deemed covered  
13 claims or covered cases, and therefore, an assessment is  
14 due on those. Frankly, we think that's largely the end  
15 of the story right there.

16           However, at some point in time Mr. Sizemore  
17 did leave the Girardi Keese firm. This was after  
18 Girardi Keese paid the initial assessment as a PSC  
19 member through a firm check and made numerous  
20 submissions for cost, et cetera, from the PSC from the  
21 common fund. When Mr. Sizemore left the Girardi Keese  
22 firm, Mr. Griffin and -- both Mr. Griffin and Mr.  
23 Girardi attended numerous PSC meetings where  
24 presentation of common benefit work was put forth.

25           As evidence of that, we have numerous



1 documents, but the most compelling of which is Mr.  
2 Griffin's signature on PTO 70 participation agreement.  
3 If the Court recalls under PTO 70, if a firm desires to  
4 use common benefit materials created by the PSC, that  
5 firm is required often to sign a participation  
6 agreement. That was attached to PTO 70, and under that  
7 participation agreement, the firm agrees that all of the  
8 cases in which it has a financial interest are subject  
9 to the assessment. We have that document as well.

10 We also will show for the Court that, as a  
11 regular course of business, Mr. Andrus would send to Ms.  
12 Gussack and GSK's counsel a list of attorneys who had --  
13 who the PSC believed had committed to paying the  
14 assessment at that time. Those letters were also cc'd  
15 to the attorneys on the list, and they were asked if  
16 they had any disagreements, that they should come  
17 forward at the time, so that we could assess whether or  
18 not their concerns were real, and we could address them  
19 appropriately and ensure that those attorneys did not  
20 then receive work product.

21 Mr. Girardi was sent at least two of those  
22 letters that we'll show to the Court, and we've never  
23 received at that time any response to those letters  
24 wherein they were objecting.

25 While in his affidavit, Mr. Girardi says that

1 he -- all of his cases were in California. That's not  
2 true. There's certainly cases that are on the suspense  
3 docket here, while his settlement is pending, where this  
4 Court deemed it appropriate to put them in  
5 administrative suspense. We can reflect the docket  
6 number for that.

7 And then we also, if necessary, have  
8 additional emails demonstrating their use of the entire  
9 trial package put together by the PSC.

10 Numerous -- every deposition that the PSC took  
11 was listed as a potential exhibit in the California  
12 cases, and to my knowledge, Your Honor, I believe we'll  
13 be able to show that the Girardi Keese firm, absent the  
14 work of Mr. Sizemore when he was at the firm, did not  
15 take a single liability deposition of a GSK corporate  
16 witness other than in a case specific arena, that Mr. --  
17 that Girardi Keese intended to and did designate experts  
18 that this Court knows well, because this Court did  
19 Daubert for Dr. Jewell, Dr. Brinton, Dr. Parisian, and  
20 those were the experts that, amongst others, that the  
21 MDL had worked up that Girardi Keese had listed and  
22 intended to use at their trials and in response to  
23 summary judgment motions in California.

24 So in addition to being a PSC member,  
25 executing the participation agreement, I believe we may

1 be able to show they also executed PTO 10. There was a  
2 vast use of PSC material, created material in the  
3 California cases.

4 Also with Mr. Robins, we have Justin Kaufman  
5 from Heard Robins here who will testify about the Heard  
6 Robins, while a PSC member in this Court, and as the  
7 Court knows, Mr. Robins had California cases and very  
8 actively worked with Mr. Girardi and all of the  
9 California counsel in using primarily PSC-generated and  
10 MDL-generated materials.

11 As far as I know, all the documents were  
12 actually documents with AV-MDL numbers, Avandia-MDL  
13 numbers on them that Mr. -- that Girardi Keese intended  
14 to use at their trial.

15 THE COURT: Thank you.

16 MR. ZONIES: Thank you.

17 THE COURT: Mr. Girardi, would you like to  
18 make an opening statement?

19 MR. GIRARDI: Yes, Your Honor, if I could.

20 THE COURT: Please proceed.

21 MR. GIRARDI: First of all -- yes, Your Honor.

22 First, I would like to thank the Court for  
23 letting us do it this way. We only had one day notice,  
24 Your Honor. I take these things very seriously, but it  
25 was very accommodating of you to let us attend the thing

1 for the Justice and so forth.

2 Your Honor, here's the story. We filed our  
3 cases in 2008 in California. We did not know if they  
4 were going to be transferred to the MDL. We were  
5 successful to keep the cases here. Sizemore was with us  
6 about four months before he was terminated -- or he  
7 left. And then all of the litigation took place in  
8 California.

9 Judge Elihu Berle was appointed by the  
10 Presiding Justice to handle these cases, and he handled  
11 them from 2008 until today. The fact of the matter is  
12 we made 105 court appearances before Judge Berle. The  
13 other fact is that we totally prepared these cases  
14 outside of any influence of the MDL.

15 We did request documents and as the defendant  
16 in the case said, would you mind just -- we've already  
17 produced documents. Would you mind getting a copy of  
18 those instead? So that was the big document situation  
19 that we got. That was an accommodation to the  
20 defendant. They had already produced them, so they said  
21 just get a copy of them.

22 Now then, we then handled every ounce of this  
23 case ourselves. Every motion that was filed was us.  
24 Every defense of every motion was us. And for the past  
25 six or -- six years, this is what we've done.

Respondent's Opening Statement

13

1           Also, Your Honor, we advanced \$14 million in  
2 costs in this case. With respect to the preparation, we  
3 got our own experts, because, quite frankly, we -- we  
4 know what to do, and we paid our own experts. If, in  
5 fact, we were part of this hearing, it's surprising that  
6 when the case -- when they settled the case, they didn't  
7 call us and say where do we send the check? They had  
8 nothing to do with -- with the resolution of this case  
9 with us either. As a matter of fact --

10           THE COURT: Who -- who is they? Who is they?  
11 I'm sorry, I'm just trying to follow you.

12           MR. GIRARDI: The MDL Committee, Your Honor.

13           THE COURT: The Plaintiffs' Steering Committee  
14 or the Plaintiffs' Advisory Committee?

15           MR. GIRARDI: Everybody that --

16           THE COURT: I'm just curious because --

17           MR. GIRARDI: I'm sorry, Your Honor, that --

18           THE COURT: -- how would they know about your  
19 Master Settlement Agreement?

20           MR. GIRARDI: I'm sorry, Your Honor. Please  
21 repeat that for me. I'm so sorry.

22           THE COURT: How would that particular group  
23 know about your Master Settlement Agreement with GSK?

24           MR. GIRARDI: The terms and conditions of our  
25 settlement have nothing to do with the terms and

1 conditions of the MDL from the standpoint of what the  
2 people got, et cetera. I personally negotiated the  
3 settlement. I criss-crossed the country five times, had  
4 specific meetings with respect to the settlement.

5 And quite frankly, Your Honor, I believe the  
6 evidence is we got four times as much money for heart  
7 attacks as the MDL, because of the preparation and work  
8 that we did, along with investing \$14 million of the  
9 firm's own money for the proper cost of preparing the  
10 case.

11 THE COURT: Well, as I understand it ---

12 MR. GIRARDI: Now --

13 THE COURT: -- Mr. Girardi, as I understand  
14 the process over the last seven years in this MDL, the  
15 PSC did not direct any particular firm's settlement  
16 agreements, did not intervene or interfere even when  
17 requested in other firms' negotiations with GSK. So  
18 you're not in any different position than any other one  
19 of them who had their firms and their firms' cases  
20 settled with GSK.

21 Those are separate. So I just want to clarify  
22 here that that will never be a ground in this proceeding  
23 upon which you can prevail.

24 So why don't you go back to whether or not you  
25 used the material and the discovery that was amassed in

1 the MDL for your cases?

2 MR. GIRARDI: Your Honor, thank you. Excuse  
3 me, Your Honor, for stepping on your line.

4 We did all of our own discovery. We have all  
5 of our own experts. Your Honor, I don't think any of  
6 the -- the members of this Committee before this Court  
7 put in \$14 million. I don't think any of them made 105  
8 court appearances, and I don't think any of them  
9 achieved the result that we achieved for our people  
10 because of those things.

11 So now then, a couple of issues. There is an  
12 issue that before we knew that we were able to keep the  
13 cases in California, Sizemore worked for four months or  
14 so while he was still with our firm. He was granted  
15 \$200,000, and we told that we didn't -- we didn't agree  
16 to it, we don't want it, we weren't part of it, and they  
17 kept the \$200,000 that they assigned to Sizemore while  
18 he was with our firm.

19 After he left our firm, he did work, and he  
20 picked up a couple of million bucks out of the -- out of  
21 the fees. But while he was with us, it was very  
22 nominal, and, Your Honor, we did sign an agreement,  
23 there is no question about it, but the agreement only  
24 pertains to those cases that we actually had at that  
25 time. The actual number of those cases is 240 cases

1 which were approved, that's all, out of the more than  
2 2,500 cases that we handled.

3 So for -- for us now to be asked to turn over  
4 \$10 million to these folks that didn't do a darn thing  
5 for us -- and as I say, with respect to the documents,  
6 this was just a suggestion of the defendant, that says,  
7 listen, we've produced these. Just -- let's get a copy  
8 of those, and we said fine, that was fine with us, as  
9 opposed to having them then go again and produce yet  
10 another round of documents.

11 None of our experts interfaced with any of  
12 their experts. We prepared the cases ourselves, and as  
13 I said, at a massive expense. So if -- if the Court is  
14 going to say we have to turn over \$10 million, it seems  
15 to us that it would be reasonable that they would have  
16 to reimburse some of our \$14 million of expense.

17 Because the reason we achieved this phenomenal  
18 result for our clients, much different than the results  
19 there, was because of what we did not only with respect  
20 to the negotiations, what we did with respect to  
21 procuring the great experts across the world, and how we  
22 presented the case, Your Honor. That's the truth.

23 THE COURT: Well, I expect to hear you testify  
24 about that and whatever documentation you can present  
25 from your video conference process, we will try and



Respondent's Opening Statement

17

1 facilitate for you. But I do see Nina Gussack on behalf  
2 of GSK?

3 MS. GUSSACK: Your Honor, if I may just be  
4 heard briefly, I'd like to remind Mr. Girardi and  
5 perhaps the Court may want to caution Mr. Girardi, that  
6 the terms of his settlement are confidential.

7 The Court has placed the pertinent documents  
8 under seal, and to the extent that there are terms,  
9 financial variables, they are to be maintained as  
10 confidential. I don't think that impairs Mr. Girardi's  
11 ability to make his argument, but I'd appreciate it if  
12 there was greater concern about the confidentiality of  
13 the terms.

14 THE COURT: Did you hear that, Mr. Girardi?  
15 Could you hear that clearly?

16 MR. GIRARDI: I did, Your Honor, and we were  
17 just -- we were just telling the Court, we don't intend  
18 to spread this to anybody. On the other hand, if you  
19 have to make a decision, I think it's important that you  
20 know what went on. But this is just to you, Judge.  
21 This is -- Your Honor, this isn't -- I didn't mean to  
22 say Judge. I -- that is the --

23 THE COURT: Well, I did not -- I did not  
24 previously seal this proceeding, and we're making a  
25 record of it obviously, and that record would be open to

1 the public. Therefore, it would be best if you didn't  
2 mention amounts or particular terms of your plea  
3 agreement unless they are directly related to the issue  
4 at hand.

5 And I think you are also under a misconception  
6 that other attorneys here, even on the PSC, are privy to  
7 or have access to your particular Master Settlement  
8 Agreement. That is not so. Under our Rules, we have  
9 never allowed that, and no one's ever sought to breach  
10 it. So the assumption that everybody knows is clearly  
11 not one that is entertained in this Court, because  
12 that's something that has to be proven. It's not so  
13 unless it's proven. Okay?

14 So there may be some misapprehensions here,  
15 and that's why testimony is always better to clarify  
16 what really is the true state of the facts. And it is  
17 accurate that Mr. Sizemore was named as to the original  
18 PSC when he was a member of your team, your law firm. A  
19 partner, is that correct?

20 MR. GIRARDI: He was not. He was not a  
21 partner.

22 THE COURT: He was not a partner?

23 MR. GIRARDI: No.

24 THE COURT: What was his position at that  
25 time?

Respondent's Opening Statement

19

1 MR. GIRARDI: He was a lawyer who worked for  
2 the firm.

3 THE COURT: Would you call him a shareholder  
4 or an associate or an intern? What do you call him?  
5 What was his position?

6 MR. GIRARDI: I suppose associate would be  
7 what -- what I would call him.

8 THE COURT: All right.

9 MR. GIRARDI: As I say, he was only there for,  
10 I believe, four months during the course of this.

11 And, Your Honor, the agreement that was signed  
12 only applied to cases that we had at that time, and that  
13 agreement is very clear, and, maybe, Your Honor, you  
14 would permit us to file with the Court something more  
15 detailed for you to look at before making your decision.  
16 I know you have a busy calendar and so forth, but we  
17 would like to put forth some of this to you before you  
18 make a decision to charge us \$10 million for people who  
19 didn't do any --

20 THE COURT: Well, you keep saying 10 million,  
21 and I don't have -- I will not decide this on numbers.  
22 That's not what I'm being asked to do here. I'm being  
23 asked to rule on exactly what happened, not how much you  
24 pay. All right?

25 I don't arbitrate under any Master Settlement

1 Agreement, Mr. Girardi. That is not included in  
2 anyone's agreement or I would never have approved it.  
3 That's for a board of arbitration, so as to the amount,  
4 that's not what's going on here.

5 It is clearly laid out in the motion here  
6 that, one, you did use, utilize MDL materials,  
7 discovery, amass expertise. Your employees did the  
8 same. And whether or not you having later cases in the  
9 California system negates that is really the issue that  
10 you're trying to get me to address, and I will. I think  
11 so because initially your firm, as far as the docket is  
12 concerned, had filed lawsuits directly into the MDL, not  
13 removed from the California State Court, isn't that so?

14 MR. GIRARDI: Your Honor, I think maybe  
15 Sizemore did. I -- Your Honor, I can't answer that. I  
16 don't want to mislead the Court.

17 THE COURT: Okay. That'll be a matter of --  
18 of some proof when the dockets are presented, but we  
19 shouldn't have to get to that. Because you can agree,  
20 can you not, without wasting more time, that Mr.  
21 Sizemore worked for you and he was appointed as a member  
22 of the PSC at the time he worked for you, and he  
23 conducted all of his PSC activities for the time that he  
24 was employed by you as a member of the MDL and your  
25 firm?

## Respondent's Opening Statement

21

1 MR. GIRARDI: Your Honor, all of the  
2 activities is the only thing I would question. He was  
3 part of that Committee for four months, I think it was,  
4 and he -- the Committee awarded him \$200,000 during that  
5 time frame that we said we don't want it, and the  
6 Committee still has it. So --

7 THE COURT: And that is really not -- not  
8 related to the issue at all. That is a separate matter,  
9 and I think --

10 MR. GIRARDI: Well --

11 THE COURT: -- this is about use of MDL-  
12 acquired expertise and information. MDL includes both  
13 parties in the MDL, the plaintiff as well as the  
14 defendant, and we are going to address it on that level.  
15 I really don't care how much money he made or didn't  
16 make. It's really not relevant. The point is, what is  
17 relevant is that he did actively engage in the work of  
18 the MDL as a member of the PSC, and I think we better  
19 take it from there.

20 So what would you like to present in terms of  
21 documents and testimony, because when we get to  
22 testimony now, that was your opening statement, we'll  
23 have to place you under oath, Mr. Griffin as well, if  
24 you're going to testify, Mr. Griffin. Mr. Girardi?

25 MR. GIRARDI: Your Honor, we could look at the

1 agreement that was -- that we entered into which clearly  
2 states it only affects those cases that we had at that  
3 time which I indicated to the Court that there were some  
4 four hundred and some cases, I believe, Your Honor, of  
5 which 225 were actually -- actually made the cut. And  
6 the agreement only talks about those cases that we have  
7 at that particular time.

8 The language on -- on page two, the second  
9 paragraph, clearly says that the -- it applies to the  
10 cases that we -- that we have a financial interest at  
11 the time we're doing this agreement.

12 So if, in fact, there is a claim during the  
13 four months of Sizemore, and this agreement which  
14 indicates those cases, I think that the only valid and  
15 appropriate and fair way to do this in light of what we  
16 did in these cases, all of our efforts, would be to  
17 assess us for the cases that actually were handled at  
18 the time that this agreement was signed pursuant to the  
19 terms of the agreement.

20 THE COURT: What was the date of your  
21 agreement, please?

22 MR. GIRARDI: Bear with me, please, Your  
23 Honor. I'm sorry. Okay.

24 MR. GRIFFIN: Your Honor, this is Keith  
25 Griffin. It's dated May 12, 2009.

1 THE COURT: The Master Settlement Agreement?  
2 Is that what you're reading --

3 MR. GRIFFIN: No. No, Your Honor. No, Your  
4 Honor. I'm reading from the -- the agreement that Mr.  
5 Zonies referenced in his opening statement of a  
6 participation agreement that was signed by -- by me,  
7 Keith Griffin.

8 THE COURT: No. We're getting too many things  
9 mixed up. Would both of you rise to be sworn in,  
10 please. We can do that long distance.

11 COURTROOM DEPUTY: Please raise your right  
12 hand.

13 THE COURT: Did they hear you?

14 THOMAS GIRARDI, Respondent, Sworn.

15 KEITH GRIFFIN, Respondent, Sworn.

16 COURTROOM DEPUTY: Thank you.

17 THE COURT: Thank you.

18 All right. We know which one is which. We've  
19 been introduced. I would like to clarify this before  
20 you go any further. Mr. Girardi is talking about an  
21 agreement. Is that PTO 70, a participation agreement of  
22 any other sort or is it the Master Settlement Agreement?  
23 Which is it?

24 MR. GRIFFIN: Your Honor, it's a participation  
25 agreement that -- that Mr. Zonies had mentioned in his

1 opening statement. It's dated the 12th day of May,  
2 2009.

3 THE COURT: And what is it called?

4 MR. GRIFFIN: It's called Attorney  
5 Participation Agreement, Your Honor.

6 THE COURT: And it is entered pursuant to what  
7 pretrial order? Is it in there? I don't have a copy of  
8 it yet, because you're long distance --

9 MR. GRIFFIN: I understand, Your Honor.

10 THE COURT: -- so you're going to have to read  
11 it to me. You'll have to read it to me.

12 MR. GRIFFIN: Yes. I don't -- I don't believe  
13 it was filed. I think Mr. Zonies in their papers they  
14 filed referenced it, and said because of the sensitive  
15 nature of the document, that they would produce it to  
16 the Court upon request. I assume Mr. Zonies has a copy  
17 of it there in the courtroom.

18 THE COURT: Well, it would be good, because of  
19 the distance, if you read it to me, so we know that  
20 we're talking about the same document, Mr. Griffin.

21 MR. GRIFFIN: Very well, Your Honor. It's a  
22 four-page document.

23 It starts, "This Attorney Participation  
24 Agreement is made this 12th day of May, 2009, by and  
25 between the Plaintiffs' Steering Committee, PSC,



1 appointed by the United States District Court for the  
2 Eastern District of Pennsylvania in MDL Docket Number  
3 1871, and" -- and then it lists participating counsel,  
4 which on my copy is blank.

5 And then it says, "Whereas, the United States  
6 District Court for the Eastern District of Pennsylvania  
7 has appointed Rachel Abrams, Vance Andrus, Bryan  
8 Aylstock, Marc Grossman, W. Mark Lanier, David P.  
9 Matthews, Shannon Medley, Karen Menzies, Michael Miller,  
10 Benedict Morelli, Dianne Nast, Tracy Rezvani, J. Paul  
11 Sizemore, Fred Thompson and Joseph Zonies to serve as  
12 members of the PSC to facilitate the conduct of pretrial  
13 proceedings in the Federal actions relating to the use  
14 of Avandia.

15 "Whereas, the PSC in association with other  
16 attorneys working for the common benefit of plaintiffs,  
17 the common benefit attorneys have developed or are in  
18 the process of developing work product which will be  
19 valuable in the litigation of State and Federal Court  
20 proceedings involving claims of Avandia, Avandamet  
21 and/or Avandaryl, hereinafter collectively referred to  
22 as Avandia induced injuries, the common benefit work  
23 product and; whereas, the participating counsel are  
24 desirous of acquiring the common benefit work product  
25 and establishing an amicable working relationship with

1 the PSC for the mutual benefit of their clients.

2 "Now, therefore, in consideration of the  
3 covenants and promises contained herein and intending to  
4 be legally bound, hereby, the parties agree as follows:

5 "This agreement incorporates by reference any  
6 order of the Court regarding assessments and  
7 incorporates fully herein all defined terms from such  
8 orders.

9 "Number two. This agree applies to each and  
10 every claim, case or action arising from the use of  
11 Avandia in which the participating counsel has a  
12 financial interest, whether the claim arose -- whether  
13 the claim, case or action is currently filed in State or  
14 Federal Court or is unfiled or is on a tolling  
15 agreement, hereinafter collectively be assessed cases.

16 "Paragraph three. With respect to each and  
17 every assessed case, participating counsel understand  
18 and agree that defendants and their counsel will hold  
19 back a percentage proportion of the gross recovery that  
20 is equal to seven percent of the gross monetary  
21 recovery, the assessment. Of that amount, four percent  
22 shall be deducted from the attorney fees and three  
23 percent from the client's share of the gross monetary  
24 recovery.

25 "Defendants or their counsel will deposit the

1 assessment in the plaintiffs' litigation expense fund.  
2 Should defendants or their counsel fail to hold back the  
3 assessment for any assessed case, participating counsel  
4 and their law firm shall deposit or cause to be  
5 deposited the assessment in the fund.

6 "It is the intention of the parties that  
7 absent extraordinary circumstances recognized by MDL  
8 1871 Court order, such assessment shall be in full and  
9 final satisfaction of any present or future obligation  
10 on the part of each plaintiff and/or participating  
11 counsel to contribute to any fund for the payment or  
12 reimbursement of any legal fees, services or expenses  
13 incurred by or due to the PSC, participating counsel  
14 and/or any other counsel eligible to receive  
15 disbursements from the fund pursuant to an order of the  
16 Court regarding assessments of the fund.

17 "Number four. The participating counsel on  
18 behalf of themselves, their affiliated counsel and their  
19 clients, hereby grant and convey to the PSC a lien upon  
20 and/or security interest in any recovery by any client  
21 who they represent or in which they have financial  
22 interest in connection with any Avandia induced injury  
23 the full extent permitted by law in order to secure  
24 payment of the assessment. The participating counsel  
25 will undertake all actions and execute all documents

1 that are reasonably necessary to effectuate and/or  
2 perfect this lien and/or security interest.

3 "Number five. The amounts deposited in the  
4 fund shall be available for distribution to  
5 participating counsel pursuant and subject to any order  
6 of the Court regarding assessments or the fund.  
7 Participating counsel may apply to the Court for common  
8 benefit fees and reimbursement of expenses provided that  
9 participating counsel, A, were called upon by the PSC in  
10 writing to assist in performing its responsibilities; B,  
11 expended time and efforts for the common benefit; and,  
12 C, timely submitted such time and expenses in accordance  
13 with the Court's orders or in the absence of such  
14 orders, the procedures established by the PSC.

15 "Number six. This agreement is without  
16 prejudice to the amount of fees or costs to which  
17 participating counsel may be entitled to in such an  
18 event.

19 "Number seven. Upon request of the  
20 participating counsel, the PSC will provide within a  
21 reasonable time to the participating counsel to the  
22 extent developed the common benefit work product,  
23 including access to the PSC's virtual depository; and,  
24 if and when developed, a complete trial package.

25 "Number eight. As the litigation progresses

1 and common benefit work product continues to be  
2 generated, the PSC will provide participating counsel  
3 with such work product and will otherwise cooperate with  
4 participating counsel to coordinate the MDL litigation  
5 and the State litigation for the benefit of the  
6 plaintiffs.

7 "Number nine. No assessments will be due by  
8 the participating counsel on any recoveries resulting  
9 from a medical malpractice claim against treating  
10 physicians.

11 "Number ten. Both the PSC and the  
12 participating counsel recognize the importance of  
13 individual cases and the relationship between case  
14 specific clients and their attorneys.

15 "The PSC recognizes and respects the value of  
16 the contingency fee agreement as essential in providing  
17 counsel to those who would not otherwise avail  
18 themselves of adequate legal representation, and it is  
19 the intent of the PSC to urge the Court to not interfere  
20 with any such agreement so long as they comport with  
21 applicable law or bar rules."

22 And then there's a signature block for the  
23 Plaintiffs' Steering Committee signed by Vance Andrus,  
24 and then it says participating attorneys, and it's  
25 signed by me, Your Honor, Keith Griffin.

1 THE COURT: And, again, that's in the year  
2 2009?

3 MR. GRIFFIN: Yes, Your Honor, May 12, 2009.

4 THE COURT: All right. Now, perhaps, Mr.  
5 Girardi, you could tell me the agreement that you  
6 referred to earlier this morning was this participation  
7 agreement or a subsequent Master Settlement Agreement?

8 MR. GIRARDI: Your Honor, it's this agreement.  
9 It says those cases that we have in the -- it says --  
10 it's very clear that it only applies to those cases on  
11 the date of this agreement that we have. It doesn't say  
12 cases down the road that you're going to get or anything  
13 like that.

14 THE COURT: You're still arguing to me the  
15 interpretation of the 2009 signature of your employee  
16 there, Mr. Griffin, and I am asking you a direct  
17 question as to the date of your Master Settlement  
18 Agreement, sir. Mr. Girardi.

19 MR. GIRARDI: Your Honor, could I ask Mr.  
20 Griffin.

21 THE COURT: Yes.

22 (Pause in proceedings.)

23 MR. GIRARDI: August of 2012 I'm informed.

24 THE COURT: And would you agree also -- I'm  
25 just trying to get some facts to see if they could be

1 stipulated to -- that as of now in the MDL, you have a  
2 number of cases subject to an administrative suspense  
3 order that I signed on behalf of a stipulation presented  
4 by Mr. Girardi, Mr. Griffin and Mr. Zucker and Ms.  
5 Gussack. And these include a number of cases -- they go  
6 for a page and so, 20-some cases, that are presently in  
7 your settlement agreement and most of them go up to  
8 dates filed in this MDL, 2008 through 2011. Would you  
9 agree with that?

10 MR. GIRARDI: Yes.

11 MR. GRIFFIN: Yes, Your Honor.

12 THE COURT: All right. And these are placed  
13 in administrative suspense pursuant to the Master  
14 Settlement Agreement, correct?

15 MR. GRIFFIN: Correct. Well, they were placed  
16 in suspense in order to effectuate the Master Settlement  
17 Agreement.

18 THE COURT: Right. And a number of these  
19 cases were filed directly into the MDL by your firm, is  
20 that correct?

21 MR. GRIFFIN: Yes, that is true. I believe --

22 THE COURT: And a number of those cases were  
23 also transferred to the MDL from other District Courts  
24 and they are included in that same list, correct?

25 MR. GRIFFIN: Yes, Your Honor.

1 THE COURT: All right. So you're really not  
2 attempting to tell me that the cases in your Master  
3 Settlement Agreement are State cases before Judge Berle,  
4 correct? Although they include State --

5 MR. GRIFFIN: I'm sorry, Your Honor. We  
6 didn't hear that.

7 THE COURT: -- they -- the Master Settlement  
8 Agreement includes State cases as well, correct?

9 MR. GRIFFIN: Yes, it does.

10 THE COURT: And it also includes tolled cases,  
11 cases that you had agreement with GSK need not be filed?

12 MR. GRIFFIN: Your Honor, I don't believe -- I  
13 don't believe we had any cases on a tolling agreement at  
14 the time of the MSA.

15 THE COURT: But you initially did?

16 MR. GRIFFIN: There initially were cases on  
17 tolling agreements years before the MSA was entered  
18 into.

19 THE COURT: Well, we'll have to hear some  
20 testimony on that if you can't agree on a date. I'm  
21 trying to figure out when some of these were filed  
22 because it seems to be important to Mr. Girardi.

23 And is it accurate that Judge Berle is not  
24 overseeing any part of your Master Settlement Agreement?

25 MR. GRIFFIN: That is correct. He does not



1 have a role in overseeing our Master Settlement  
2 Agreement.

3 MR. GIRARDI: Your Honor, that isn't -- Your  
4 Honor, I have to correct that. Justice Edward Panelli,  
5 retired from the California Supreme Court, and Justice  
6 John Trotter have worked with respect to the settlement  
7 agreement, with respect to these people, as special  
8 assistants at our cost not at the Court's cost. So in  
9 that regard, there was activity from Judge Berle to  
10 permit this sort of assistance with respect to the  
11 agreements.

12 THE COURT: With respect to the Master  
13 Settlement Agreement?

14 MR. GIRARDI: With respect to --

15 THE COURT: Are you saying that you had  
16 private mediators? Is that what you're telling me?

17 MR. GIRARDI: Yes. Yes, Your Honor.

18 THE COURT: Other than the mediators that were  
19 appointed in the MDL?

20 MR. GIRARDI: Oh, yes, Your Honor. In other  
21 words, we didn't attend any mediations with the MDL. We  
22 had all of our conferences, all of our settlement  
23 conferences directly with the representatives with the  
24 defendant. We weren't -- we didn't participate in any  
25 settlements. Then with respect to Justice Panelli of

1 the California Supreme Court and the Presiding Justice  
2 Trotter, they were then involved in the mediation  
3 process.

4 THE COURT: And you --

5 MR. GIRARDI: And continue to be.

6 THE COURT: -- you could choose that -- you  
7 could choose that, right? That is not -- you weren't  
8 directed to do that? You chose to do that? And you  
9 asked Judge Berle for approval?

10 MR. GIRARDI: Yes.

11 THE COURT: To do that?

12 MR. GIRARDI: Yes.

13 THE COURT: But as a result of your mediation,  
14 and I expect that that included GSK, so we'll hear from  
15 them on that, Judge Berle still didn't sign the  
16 settlement agreement that came out of that, did he?

17 MR. GIRARDI: No, Your Honor, he did not.

18 THE COURT: All right. What else would you  
19 like to present by way of testimony or documents, Mr.  
20 Girardi?

21 MR. GIRARDI: Your Honor, I think that's our  
22 story. Our story is we did it, we put out all the money  
23 for it, and the agreements we signed were very limited.  
24 They were not agreements that permeated all 2,800 cases.

25 THE COURT: That's the case. The respondent

1 rests, and we will ask the parties to present further  
2 evidence. So I would like to know who would like to  
3 proceed first?

4 MR. ZONIES: Your Honor, if I could have a  
5 minute to consult with my counsel --

6 THE COURT: Yes.

7 MR. ZONIES: -- my fellow counsel.

8 (Pause in proceedings.)

9 MR. ZONIES: Your Honor, our first witness had  
10 to run to the -- he'll be right back.

11 THE COURT: All right. Let me ask GSK, you're  
12 here as an interested party, and of course, the second  
13 matter before the Court is your motion. So we asked you  
14 to be present. The Court was interpreting affidavits  
15 and other documentation that had been submitted earlier  
16 as to the state of the MDL record, cases that were filed  
17 here initially, cases that were removed here, that were  
18 part of the Girardi Keese firm.

19 Did you agree or disagree with any of those  
20 statements? Because I really did take them from Mr.  
21 Zucker's affidavit.

22 MS. GUSSACK: No, Your Honor. I believe that  
23 both Mr. Griffin and the affidavit accurately states,  
24 cases were filed directly in the MDL, some were  
25 transferred here, others were participating in the

1 Master Settlement Agreement with Mr. Girardi, with other  
2 lead plaintiffs' counsel's name.

3 THE COURT: All right. Now, can you tell me  
4 if there were any tolling agreements with the Girardi  
5 firm cases --

6 MS. GUSSACK: I can't --

7 THE COURT: -- and claims?

8 MS. GUSSACK: -- I can't say with certainty,  
9 Your Honor. I believe at the outset that there were  
10 tolling agreements and then they were -- became filed  
11 claims.

12 I would clarify, Your Honor, that we are an  
13 interested party to the extent that one of the issues in  
14 the Master Settlement Agreement requires that we address  
15 the issue of the holdback of the common benefit fee and  
16 that's been a point in contention. I believe Mr.  
17 Griffin quite accurately states Judge Berle has no role  
18 in overseeing the Master Settlement Agreement. Justice  
19 Trotter and Justice Panelli are private mediators at  
20 JAMS.

21 They were selected by Mr. Girardi to help him  
22 assist in the allocation and implementation of his  
23 Master Settlement Agreement. There is no effectuating  
24 order by Judge Berle as to that assignment that Mr.  
25 Girardi made of these two private former Justices.

1 THE COURT: And to clarify, GSK did not  
2 mediate the cases before either of those retired  
3 Justices?

4 MS. GUSSACK: No, Your Honor. They were not  
5 mediators. We negotiated directly with Mr. Girardi, and  
6 Justice Trotter and Justice Panelli were appointed by  
7 Mr. Girardi to assist him in effectuating the  
8 settlement, to review claims and to allocate, as I  
9 understand it.

10 But there is no Court that has any role in the  
11 oversight, implementation or effectuation of this  
12 settlement agreement, and it's why we came here because  
13 we believe that the Court does have an interest for a  
14 variety of reasons we can discuss after the common  
15 benefit phase.

16 THE COURT: All right. Then I have to ask  
17 you, Mr. Girardi, by what notion do you state that Judge  
18 Berle appointed the JAMS mediators to what is an  
19 internal process, as I understand it, between you and  
20 your clients, an administrative process if you will,  
21 when you have so many clients as you did?

22 MR. GIRARDI: As Your Honor I think -- you  
23 know, Your Honor, I think that's accurate. We advised  
24 Judge Berle that we were going to use Justice Panelli  
25 and Justice Trotter because of the complicated nature of

1 the settlement not only with respect to assistance in  
2 any sort of negotiations that came up, but also to make  
3 sure the clients were treated fairly and felt that they  
4 were treated fairly.

5 So I would like to correct myself, Your Honor.  
6 We did not have him sign a formal, "I hereby appoint,"  
7 but we did advise the Judge and he thought this was a  
8 terrific idea. And we could have given him the document  
9 to appoint them to assist in the case, but we did not.

10 THE COURT: But he did not --

11 MR. GIRARDI: But that's a good point.

12 THE COURT: -- but he did not even attempt to  
13 approve it formally. It's a heads-up, and that's about  
14 what it is, because you at all times have the absolute  
15 right to hire whoever you chose from the private sector  
16 to administrate the claims within and against your own  
17 clients, because, obviously, when you have aggregate  
18 settlements, that's necessary, isn't it?

19 MR. GIRARDI: Well, I think that's -- I think  
20 that's true. But in light of the fact that there could  
21 have been issues that would be raised with respect to  
22 the settlement agreement, we wanted to make sure that  
23 Judge Elihu Berle was very comfortable with the fact  
24 that Presiding Justice Trotter and Justice Panelli were  
25 involved in the situation.

1 THE COURT: Except that --

2 MR. GIRARDI: And --

3 THE COURT: -- except that Judge Berle doesn't  
4 have anything to do with your settlement agreement. He  
5 didn't sign it, did he?

6 MR. GIRARDI: No.

7 THE COURT: He wasn't going to sign it, was  
8 he?

9 MR. GIRARDI: Well, he only had something to  
10 do with the settlement agreement insofar as all these  
11 cases were under his jurisdiction, and if we made a  
12 representation to him that we think we have an agreement  
13 with respect to settlement, et cetera, it became his  
14 business with respect to the settlement. So I don't  
15 think we could --

16 THE COURT: Well, if you say all of his cases,  
17 Mr. Girardi, you can't include the Federal cases,  
18 because by my order, they can't be subject to a State  
19 Judge's coordination or authority, and Judge Berle who  
20 worked very closely with me throughout the MDL really  
21 never breached that particular term of my orders.

22 So I'm not sure what's in your mind, but I  
23 have to stop it right there, because you can't argue  
24 that he was supervising your litigation, your mediation,  
25 when GSK wasn't part of it. They weren't part of it,

1           were they? You hired JAMS to do private administration  
2           of the claims and how you would parse out the money that  
3           GSK was willing to give you lump sum between your  
4           various clients, is that correct?

5                         MR. GIRARDI: Your Honor, not quite. Justice  
6           Panelli and Justice Trotter were very much engaged in  
7           the discussions with the defendant in terms of resolving  
8           issues that came up between us and them. So they --  
9           they know the defendants by their first name in terms of  
10          going back and forth with respect to issues and so  
11          forth. So that did take place.

12                        THE COURT: Are you telling me --

13                        MR. GIRARDI: But you're right about the  
14          Federal --

15                        THE COURT: Wait a minute. Are you telling me  
16          that your negotiation with GSK went through JAMS as a  
17          mediator when -- before you signed a Master Settlement  
18          Agreement? Is that what you're telling me?

19                        MR. GIRARDI: Your Honor, I don't -- I don't  
20          think I quite understand the Court's question. I'm  
21          certainly not trying to misrepresent anything. We  
22          entered into --

23                        THE COURT: I'm trying to clarify this, Mr.  
24          Girardi, because I think we only have so many minutes  
25          left in this -- in this proceeding, and I'm going to ask



1           you one more time. Before you --

2                       MR. GIRARDI: All right.

3                       THE COURT: -- signed a Master Settlement  
4 Agreement, who negotiated that with GSK?

5                       MR. GIRARDI: We did.

6                       THE COURT: Did you go to any mediator  
7 whatsoever before that Master Settlement Agreement was  
8 signed?

9                       MR. GIRARDI: Your Honor, I think we did,  
10 because it took some time for the Master Settlement  
11 Agreement. But, Your Honor, I'm not going to stake my  
12 political and legal reputation on that, Your Honor. I  
13 can't answer. But there was a long period of time  
14 between the time the negotiations started till the time  
15 the thing ended out.

16                      And did we actually sit down paragraph by  
17 paragraph with any of those people? No, I don't think  
18 so. On the other hand, did we discuss the concepts with  
19 Justice Panelli and Justice Trotter before the matter  
20 was consummated? The answer to that question, Your  
21 Honor, is yes. And did Judge --

22                      THE COURT: And I have asked you repeatedly to  
23 tell me if the mediators were involved with GSK. I care  
24 not what you used them for unless it was between you and  
25 GSK. That is what I am asking you, sir. I don't know

1           why that's complicated.

2                       MR. GIRARDI: Your Honor, there was a lot of  
3           communication with GSK and Justice Trotter.

4                       THE COURT: Was there --

5                       MR. GIRARDI: As a matter of fact, the last  
6           conversation -- the last conversation --

7                       THE COURT: Okay. That's enough.

8                       MR. GIRARDI: -- took place a week ago.

9                       THE COURT: That's enough.

10                      MR. GIRARDI: I'm sorry.

11                      THE COURT: All right. That is not  
12           negotiation. That is clarifying who is claiming what  
13           injury. I'm too well versed in the actual MDL work here  
14           to believe anything else. So, please, choose your words  
15           carefully, Mr. Girardi. You don't want to make a  
16           mistake here and neither do I, quite frankly.

17                      All right. Present your witness, Mr. Zonies.

18                      MR. ZONIES: Thank you, Your Honor. Call Mr.  
19           Vance Andrus to the stand, Your Honor.

20                      COURTROOM DEPUTY: Please raise your right  
21           hand and place your right hand on the Bible.

22                      VANCE R. ANDRUS, PETITIONER'S WITNESS, SWORN.

23                      COURTROOM DEPUTY: Please state your full name  
24           for the record.

25                      THE WITNESS: Good morning.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DIRECT EXAMINATION

BY MR. ZONIES:

Q Good afternoon, Mr. Andrus.

A Good afternoon.

Q Could you please state your full name for the record.

A My name is Vance Robert Andrus.

Q Mr. Andrus, we're going to try to move through this rather quickly, but first of all, what was your role, if any, in the Avandia litigation?

A Yes, sir. I was appointed by this Court to be a member of the Plaintiffs' Steering Committee. I had the privilege of serving as the co-lead counsel along with Bryan Aylstock in that role until such time as the Court ultimately replaced us with other members, and then I continued to serve as a member of the PSC Advisory Committee from that date to this.

I also served on and continue to serve on the PSC Fee Committee.

Q Mr. Andrus, I'd like to hand you an exhibit.

MR. ZONIES: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. ZONIES:

Q Mr. Andrus, I've handed you a document. It's

1 actually from the -- Document Number 108 from this MDL's  
2 docket. Do you recognize that document?

3 A I do.

4 Q And what is that?

5 A For the benefit of Mr. Girardi who may not have a  
6 copy of it, this is the original order of this Court. I  
7 suspect the Court could take judicial notice of it, but  
8 it's Document 108 filed in MDL 1871, dated 9th, April,  
9 2008. It is the original order under which the Court  
10 appointed the original Plaintiffs' Steering Committee in  
11 this MDL.

12 MR. ZONIES: Your Honor, I'd move admission of  
13 Exhibit 1 and ask the Court to take judicial notice that  
14 it is, indeed, Document 108 from the Court's docket, the  
15 original order appointing the Plaintiffs' Steering  
16 Committee in MDL Number 1871, In re Avandia Marketing  
17 Sales Practices.

18 THE COURT: Those requests are approved. The  
19 Court has pulled the very same order from the docket  
20 this morning, and it is identical. We will take  
21 judicial notice of my appointment to those members of  
22 the Plaintiffs' Steering Committee, one of which is  
23 Number 12, J. Paul Sizemore, Esquire, Girardi Keese Law  
24 Firm.

25 (Petitioner's Exhibit 1, Document 108 from MDL

1 Number 1871, is admitted into evidence.)

2 MR. ZONIES: Thank you, Your Honor.

3 BY MR. ZONIES:

4 Q Mr. Andrus, what's the date of the order appointing  
5 Mr. Sizemore of the Girardi Keese firm to the PSC?

6 A The date was April 9th, 2008.

7 Q Prior to that appointment to the PSC, Mr. Andrus,  
8 did indeed the PSC, who ultimately became the PSC  
9 members, perform any work to further the Avandia  
10 litigation prior to this appointment?

11 A They did. If I may explain, in May of 2007, the  
12 Nissen article which first discussed the relationship  
13 between Avandia and an increased risk of heart attacks  
14 was published.

15 A substantial number of attorneys self-  
16 organized under the leadership of myself and Mr.  
17 Aylstock, and that included Mr. Sizemore, our working  
18 group worked independently of but also directly with GSK  
19 prior to the creation of the MDL by the JPML, subsequent  
20 to the creation and actually negotiated with GSK certain  
21 terms involving, for example, plaintiff fact sheets,  
22 prior to the date of this order.

23 So we started working in approximately July or  
24 August of 2007.

25 Q And during the period of time where there was work

1 before Mr. Sizemore was appointed to the PSC, Mr.  
2 Andrus, was he at that time also with the Girardi Keese  
3 firm as far as you know?

4 A Yes, to my knowledge.

5 Q What was your understanding of Mr. Sizemore's  
6 position with the Girardi Keese firm?

7 A Mr. Sizemore took the position he was a partner. He  
8 freely acknowledged he was not a shareholder or equity  
9 partner, but he presented himself as a partner of the  
10 firm. Whether or not he was, I don't know.

11 Q You had no reason to doubt Mr. Sizemore was indeed a  
12 partner with the firm?

13 A I had no reason to doubt anything. He filed his  
14 application with firm stationery and on firm letterhead,  
15 and he acted at all times as though he was authorized to  
16 -- to do work and represent the firm.

17 Q Did he appear to have the apparent authority to bind  
18 the firm?

19 A I think so.

20 MR. ZONIES: May I approach the witness, Your  
21 Honor?

22 THE COURT: You may.

23 BY MR. ZONIES:

24 Q Mr. Andrus, I've handed you Exhibit 2. It's a  
25 document entitled, Attorney Participation Agreement, and

1 I believe the terms of this agreement were read in whole  
2 this morning. Do you recognize this document?

3 A I do. This is the document, Document Number 2  
4 you've handed me is the document that Mr. Griffin read  
5 to the Court and which bears his signature and my  
6 signature.

7 Q And what is your understanding of what this document  
8 is?

9 A Well, this is an Attorney Participation Agreement.  
10 It's dated May 12th, 2009, which I think is subsequent  
11 to the date that Mr. Sizemore departed from Girardi  
12 Keese, so this document was signed by Keith Griffin as a  
13 representative of Girardi Keese afterwards.

14 Just two notes. One, I think I've seen a copy  
15 of this document where on page one it has Mr. Griffin's  
16 name penciled in, inked in, and I've seen a version of  
17 it without it. I don't know, Mr. Griffin, if the one --  
18 which one you read, whether it had your name inked in on  
19 the same page or not. The one you've given me does not  
20 have his name on it, but it has both his signature and  
21 his name printed on the last page, and there was a  
22 reason for that.

23 Q And what was the reason for that?

24 A In May of 2009, the Plaintiffs' Steering Committee  
25 held a highly confidential full-day seminar in which we

1 were going to discuss strategy and tactics for use in  
2 connection with the ongoing litigation against GSK that  
3 was to be held here in Philadelphia as I recall. I was  
4 in charge and had directed that the participation  
5 agreement be prepared, and one be prepared for each  
6 attorney who -- who declared that they would attend, but  
7 I wanted their names typed on because attorneys are  
8 notorious for their signatures.

9 And I'd already had one bad episode of that at  
10 an earlier meeting, and so I had one printed. I had Mr.  
11 Aylstock's secretary print one for each person. This is  
12 the one that Mr. Griffin -- was printed for Mr. Griffin  
13 and which Mr. Griffin signed when he and Mr. Girardi  
14 both attended that -- that seminar.

15 MR. ZONIES: If I haven't moved for admission  
16 of Exhibit 2, Your Honor, I do so now.

17 THE COURT: Any objection?

18 MR. GIRARDI: No. No objection.

19 THE COURT: Thank you.

20 BY MR. ZONIES:

21 Q Mr. --

22 THE COURT: Number 2 is admitted.

23 MR. ZONIES: Sorry, Your Honor.

24 (Petitioner's Exhibit 2, Attorney  
25 Participation Agreement, is admitted into evidence.)



1 BY MR. ZONIES:

2 Q Mr. Andrus, could you please read the first  
3 paragraph, paragraph number one, of the participation  
4 agreement?

5 A The paragraph numbered one?

6 Q Yes.

7 A The paragraph numbered one says, "This agreement  
8 incorporates by reference any order of the Court  
9 regarding assessments and incorporates fully herein all  
10 the defined terms from such orders."

11 Q It -- was the Court's order, PTO 70, about  
12 assessments?

13 A It was indeed Pretrial Order Number 70. It was  
14 signed 26th, August, 2009, and addresses the issue of  
15 common benefit fees and assessments.

16 Q Now, we haven't heard from Mr. Girardi about Mr.  
17 Griffin's position with his firm. Do you understand  
18 that Mr. Griffin is an associate or intern with Girardi  
19 Keese?

20 A Mr. Griffin to my understanding certainly is an  
21 associate -- he was then. He may now be a partner. If  
22 so, congratulations, Keith, but -- and, if not, Girardi,  
23 you ought to make him a partner. He's a good man.

24 MR. ZONIES: Your Honor, may I approach --

25 THE COURT: Yes, you may.

1 MR. ZONIES: -- the witness? Thank you.

2 BY MR. ZONIES:

3 Q Mr. Andrus, I've handed you what has been marked as  
4 Exhibit 3. Could you describe what Exhibit 3 is,  
5 please?

6 A Exhibit 3 is a letter from me as Chair and lead  
7 counsel of the Plaintiffs' Steering Committee dated  
8 August 31st, 2009, to Ms. Nina Gussack with Pepper,  
9 Hamilton, which discusses certain aspects of PTO 70.

10 MR. GIRARDI: No objection.

11 BY MR. ZONIES:

12 Q And what was the date of that letter?

13 A August 31st, 2009.

14 MR. ZONIES: Your Honor, I'd move admission of  
15 Exhibit 3.

16 THE COURT: Any objection?

17 MR. GIRARDI: I have no objection.

18 THE COURT: Thank you. Number 3 is admitted.

19 (Petitioner's Exhibit 3, letter dated 8-31-09,  
20 is admitted into evidence.)

21 BY MR. ZONIES:

22 Q Mr. Andrus, what was the purpose of Exhibit 3?

23 A Under PTO 70, cases which were subject to an  
24 assessment, a seven percent assessment, were defined as  
25 "covered cases" and there were various ways cases could

1 be considered covered cases. For example, all cases of  
2 all the PSC members were covered cases, but there were  
3 other ways.

4 One of the provisions of PTO 70 provided that,  
5 while not required to do so, the PSC could from time to  
6 time send to GSK a letter listing those cases which it  
7 believed -- cases or attorneys or law firms which it  
8 believed to be covered by PTO 70. GSK had an interest  
9 in that because under PTO 70, GSK is jointly and  
10 severally liable with whomever owns, owes the  
11 assessments if there is a -- if there is a determination  
12 by this Court that the assessment is due.

13 So it was an accommodation to GSK that I sent  
14 this letter in which I say that a member of each of the  
15 firms listed on Exhibit A is either a member of the MDL  
16 PSC or has signed either the protective order or the  
17 participation agreement.

18 The participation agreement we're referring to  
19 is your Exhibit 2, and the protective order is an  
20 endorsement to PTO 10 which sought to protect as  
21 confidential all of the documents that were delivered in  
22 the litigation, and which by its own terms, applies to  
23 all PSC members and their law firms.

24 Q It's --

25 A So I was sending them a list of lawyers and law

1 firms.

2 Q Okay. And it's fair to say that this was your  
3 representation to GSK that these attorneys were bound by  
4 PTO 70 and needed to pay the assessment for all covered  
5 claims, correct?

6 A Yes, but with one additional point. As the letter  
7 points out, it speaks for itself, but as it points out,  
8 I copied every one of these law firms through their  
9 managing partner or their PSC member so that there --  
10 there would not be a dispute later. Here's -- here's a  
11 copy. If you have a problem, contact us. And --

12 Q And by that, you're referring to that second  
13 paragraph that begins with, "By copy"?

14 A Yes, "By copy, we are informing all counsel listed  
15 on Exhibit A of this communication."

16 Q And what's the next sentence, sir?

17 A "Should any of them disagree with our designation of  
18 their cases as covered claims, we invite them to contact  
19 me to discuss the matter."

20 Q Thank you. And if you turn to the list that is  
21 attached as Exhibit A.

22 A Okay. I've got it.

23 Q Is Girardi Keese one of the firms on that list?

24 A Yes, sir.

25 Q Whereabouts, in the middle of that first column,

1 right?

2 A Yes, sir, on the left-hand side in the middle of the  
3 column.

4 Q Would it have been your habit and practice in your  
5 business then to have forwarded this to Girardi Keese to  
6 see if they had objection to their being listed as  
7 someone who was obligated to pay the assessment on their  
8 cases?

9 A Yes, sir.

10 Q Do you believe you did so?

11 A I know I did so.

12 Q Did you ever receive any objection from Mr. Girardi?

13 A No.

14 Q Until recently?

15 A Not until these proceedings.

16 MR. ZONIES: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. ZONIES:

19 Q Mr. Andrus, I've handed you what's been marked as  
20 Exhibit 4. Could you describe that document, please?

21 A Exhibit 4 is another letter, virtually identical to  
22 Exhibit 3. Exhibit 3 was dated August 31st, 2009.  
23 Exhibit 4 is yet another letter I sent to GSK, care of  
24 Ms. Gussack, dated September 21st, 2009, to -- I mean,  
25 it may be -- yes, it's exactly the same, and it has a

1 different Exhibit A because it may have additional or  
2 different PSC members or counsel that we think their  
3 cases were covered.

4 Q And is Girardi Keese listed indeed on Exhibit A for  
5 that document, that letter as well?

6 A Let me look. Yes. And you can see Exhibit A on  
7 Number -- Exhibit Number 4 is laid out differently -- in  
8 a different manner column-wise than Exhibit 3, but, yes,  
9 they are listed.

10 Q And to your knowledge, did you ever receive any  
11 notice or objection from Mr. Girardi or the Girardi  
12 Keese firm about whether or not they believed they owed  
13 the assessment at that time?

14 A I did not receive any such objection.

15 Q And, Mr. Andrus, because you didn't receive any  
16 objection, did the PSC continue to share information to  
17 your knowledge with the Girardi Keese firm?

18 A Indeed they did, both before and after Mr. Sizemore  
19 departed. While Mr. Sizemore was an employee of Girardi  
20 Keese, he was Chair of our Science Committee. He was  
21 our head science guy at that time and was involved in  
22 all discovery at -- and had access to all documents and  
23 all work product.

24 MR. ZONIES: May I approach, Your Honor?

25 THE COURT: Yes.

1 BY MR. ZONIES:

2 Q Mr. Andrus, I've handed you a document marked as  
3 Exhibit --

4 A -- 5.

5 MR. ZONIES: I move admission of Exhibit 4,  
6 Your Honor, the letter from Mr. Andrus dated 9-21-09,  
7 to, amongst others, Mr. Girardi and Girardi Keese.

8 THE COURT: Is there any objection?

9 MR. GIRARDI: No, Your Honor.

10 THE COURT: Thank you. 4 is admitted.

11 (Petitioner's Exhibit 4, letter dated  
12 September, 2009, is admitted into evidence.)

13 BY MR. ZONIES:

14 Q Mr. Andrus, I've handed you what's been marked as  
15 Exhibit 5. It is Document Number 495 from this Court's  
16 docket in the In re Avandia MDL, and it's entitled  
17 Pretrial Order Number 70. Do you see that?

18 A I do.

19 Q Mr. Andrus, if you could turn to page five of PTO  
20 70, please.

21 A I have.

22 Q Page five of PTO 70 has section three entitled  
23 covered claims, is that correct?

24 A That's correct.

25 Q And what do you understand a covered claim to mean?

1 Is that a claim upon which an assessment is otherwise  
2 due?

3 A It is.

4 Q And covered claims, according to Exhibit 5 include,  
5 for example, under 3A, all claims in cases where the  
6 attorney has signed a participation agreement, is that  
7 right?

8 A No. Actually, A goes further than that. Under  
9 paragraph 3A, it's "all claims now or hereafter subject  
10 to the jurisdiction of this Court."

11 It's not just limited to present claims.  
12 It's, "all claims now or hereafter which are," and then  
13 there are three things, "subject to an MDL supervised  
14 settlement, claims on tolling agreements, and all claims  
15 in which a PSC member has an interest."

16 Q So there, for example, includes claims on tolling  
17 agreements and those in which a PSC member has a  
18 financial interest, correct?

19 A That's correct. And under paragraph B, it even --  
20 it even applies to claims "filed in another jurisdiction  
21 provided, either one, the attorneys are subject to the  
22 protective order, or, two, the attorneys have signed the  
23 participation agreement."

24 And part of that is the attorneys are either  
25 members of the PSC or have signed the participation



1 agreement.

2 Q Then by participation agreement, you mean the  
3 Exhibit -- an example that is Exhibit 2 signed by Mr.  
4 Griffin, correct?

5 A That's correct. That -- the agreement that Mr.  
6 Griffin signed -- excuse me -- is actually attached to  
7 PTO 70 as an exhibit. So, in other words, when the  
8 Court signed PTO 70, the Court created the participation  
9 agreement.

10 And the distinction between them is this. A  
11 confidentiality order protects the confidentiality of  
12 certain information. That's PTO 10. PTO 70 declares  
13 that certain claims are covered -- it speaks for itself  
14 -- and those claims are subject to an assessment.

15 One of the ways a claim becomes a covered  
16 claim is if the claim is represented by an attorney who  
17 signed the participation agreement. So what's the  
18 participation agreement? Well, the participation  
19 agreement is a private agreement -- again, it speaks for  
20 itself -- but it's a private agreement between the  
21 parties, the Plaintiffs' Steering Committee and the  
22 attorney signing it in which, in return for subjecting  
23 his clients' claims to PTO 70, the attorney acquires  
24 access to all work product of the Plaintiffs' Steering  
25 Committee.

Mr. Andrus - Direct

58

1 MR. ZONIES: May I approach the witness, Your  
2 Honor?

3 THE COURT: You may.

4 MR. ZONIES: Move for admission of Exhibit 5,  
5 Your Honor.

6 THE COURT: Any objection?

7 MR. GIRARDI: No objection.

8 THE COURT: Exhibit 5 will also be admitted.  
9 Thank you.

10 (Petitioner's Exhibit 5, Pretrial Order Number  
11 70, is admitted into evidence.)

12 BY MR. ZONIES:

13 Q Mr. Andrus, I've handed you a document that's -- I'm  
14 marking here as Exhibit 6. Do you have that in front of  
15 you?

16 A Yes, sir.

17 Q Exhibit 6 is Document Number 2740 in this Court's  
18 docket for the Avandia litigation. It's dated 10-9-  
19 2012.

20 A Yes, sir.

21 Q What do you understand Exhibit 6 to represent?

22 A Exhibit 6 is the stipulation and order to place in  
23 administrative suspense certain cases which were on the  
24 docket, which cases were filed by Girardi Keese and  
25 which were on the active docket in this MDL as of that

1 date. So they're being suspended pursuant to a Master  
2 Settlement Agreement Girardi Keese entered into with  
3 GSK.

4 Q And do you see the numbers on some of these cases,  
5 2:08 --

6 A Yes.

7 Q -- 2:11 or 11. What do you understand those 08 and  
8 11 to mean?

9 A The Court allocates docket numbers by the date on  
10 which they were filed, and so those cases were filed in  
11 2008 through 2011. That's my understanding of the  
12 Court's numbering system.

13 Q And then it's signed on the second page, the  
14 stipulation and order to place in administrative  
15 suspense, is that right?

16 A That -- yes.

17 Q And what's the -- what is the -- is the Girardi  
18 Keese firm listed on that signature block?

19 A It is.

20 Q And what's the date of that signature of either Mr.  
21 Girardi or Mr. Griffin in this stipulation filed in this  
22 MDL for the 20-plus cases that were active in this MDL  
23 from 2008 through 2011 while these PSC members were  
24 working?

25 A It's 10-4-12, October 4th, 1912 -- I mean, 2012.

Mr. Andrus - Direct

60

1 MR. ZONIES: And, Your Honor, I'd move  
2 admission of Exhibit 6 and ask the Court to take  
3 judicial notice of it as part of the Court's docket.

4 THE COURT: Any objection?

5 MR. GIRARDI: No objection, Your Honor.

6 THE COURT: All right. We will grant those  
7 requests.

8 (Petitioner's Exhibit 6, stipulation and order  
9 dated 10-4-12, is admitted into evidence.)

10 BY MR. ZONIES:

11 Q Mr. Andrus, do you believe that Mr. Girardi and  
12 Girardi Keese should pay an assessment on the cases that  
13 they settled in the Avandia litigation?

14 A I do. Pursuant to PT --

15 MR. GIRARDI: Well, I object -- I object to  
16 the question, Your Honor. That isn't his decision.  
17 It's yours.

18 THE COURT: Mr. Zonies.

19 MR. ZONIES: Your Honor, actually, I'll  
20 withdraw that question and keep putting on some more  
21 evidence. I'm finished with this witness for the time  
22 being.

23 THE COURT: Very well. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

1 Oh, I'm sorry. Did you have any cross-  
2 examination?

3 MR. GIRARDI: Yes, Your Honor.

4 THE COURT: Okay. I'm sorry. You were going  
5 to remind me to do that. I'm aware of the time. Don't  
6 I have a 2:00 sentencing? Do I have a sentencing? At  
7 3:00? Okay. We have some time. Proceed please.

8 MR. GIRARDI: Thank you very much, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GIRARDI:

11 Q Sir, those 20 cases you just talked about, those  
12 were the only cases that were addressed on that  
13 particular document, right?

14 A Yes. But the document speaks for itself, but I  
15 think that's a fair characterization, Mr. Girardi, and  
16 that document only refers to those cases.

17 Q All right.

18 THE COURT: And there's 25, Mr. Girardi.

19 BY MR. GIRARDI:

20 Q It doesn't refer to the -- I'm sorry.

21 THE COURT: There's 25 -- there's 25.

22 BY MR. ZONIES:

23 Q It does not -- it does not include the 2,700 cases  
24 that were pending in the California Court, that  
25 particular document?

1 A No. The particular -- that is --

2 Q Okay.

3 A -- pardon me. You asked a double negative. Let me  
4 -- let me try to answer it. The document you're  
5 referring to refers only to the 25 cases listed on the  
6 document and to no other cases, that is correct.

7 Q All right. Thank you very much. Then the other  
8 document that Mr. Griffin signed --

9 A Yes.

10 Q -- only applies -- only applies by its terms to  
11 those cases that the firm has a financial interest at  
12 this time, at the time of the signature, isn't that  
13 true?

14 A Well, Mr. Girardi, your objection to Mr. Zonies'  
15 prior question probably applies. That's ultimately  
16 something for the Court to decide. I don't read -- you  
17 and I read -- read that document differently. I read  
18 the participation agreement that Mr. Griffin signed,  
19 together with PTO 70 and PTO 10, I read all three  
20 together. And read together --

21 Q All right.

22 A -- they -- if I may, read together, I think it's a  
23 fair interpretation to say, no, it applies to all cases,  
24 and the reason for that, if I may explain, is because  
25 you --

1 MR. GIRARDI: Well, I'll object -- I'll object  
2 to that. He's answered the question.

3 THE COURT: Well, actually, you did ask him to  
4 answer the question, and he's explaining his answer.  
5 Overruled. You may answer, Mr. Andrus.

6 MR. GIRARDI: Okay.

7 THE WITNESS: The reason for that, Your Honor,  
8 is the bell -- just as the bell can't be unrung, once  
9 one shares common benefit -- a common benefit work  
10 product with another, the other then knows and  
11 understands. I disagree with Mr. Girardi that he didn't  
12 use our stuff because I think he did and I think our  
13 evidence can demonstrate that.

14 But the point is that Mr. Girardi himself, Mr.  
15 Griffin himself, attended strategy conferences in which  
16 there was a full explication of all the trial strategy,  
17 tactics, documents. They were provided copies of all of  
18 our documents, and that enures to the benefit of every  
19 client that he has, not only those in 2008 or 2009, but  
20 every one to the very last one. And that, Mr. Girardi,  
21 is why I respectfully disagree with your interpretation.

22 BY MR. GIRARDI:

23 Q Well, sir, the document says, by its terms, and the  
24 only document that you have a signature on of Keith  
25 Griffin says that -- it provides that there is an

1 interest only in those cases that the firm has a  
2 financial interest, and the date of that document was  
3 the 12th day of May, 2009. Isn't that what it says,  
4 sir?

5 A No, that's not what it says. Paragraph --

6 Q Okay. Would you do this for me, then --

7 A Okay. Let's read it.

8 Q -- would you -- would you read paragraph two --

9 A Yes. Okay.

10 Q -- to her Honor?

11 A I will. "This agreement applies to each and every  
12 claim, case or action arising from the use of Avandia,  
13 in which participating counsel has a financial interest,  
14 whether the claim, case or action is currently filed in  
15 State or Federal Court or is unfiled or is on a tolling  
16 agreement."

17 It doesn't say anywhere, as of this date. It  
18 doesn't refer to, in the future, in the past.

19 Q Now, sir, I think you read the -- you read what I  
20 asked you to read.

21 A Okay.

22 Q The fact of the matter is that this doesn't apply to  
23 cases that somebody is going to get the next year,  
24 according to its very terms?

25 A I disagree, and I'd like to explain why.



1 Q Okay. Well, that's all right. You disagree; that's  
2 good enough. Did --

3 A I --

4 THE COURT: Mr. Girardi --

5 BY MR. GIRARDI:

6 Q -- did you make the 105 --

7 THE COURT: -- Mr. Girardi.

8 MR. GIRARDI: I'm sorry, Your Honor.

9 THE COURT: You are debating --

10 MR. GIRARDI: Yes, Your Honor.

11 THE COURT: -- you are debating with the  
12 witness. And if you are going to ask questions like  
13 that, then the witness gets to debate back. You may  
14 answer.

15 THE WITNESS: Mr. Girardi, regardless of our  
16 debate about whether the participation agreement, under  
17 its own words, applies to only present or present and  
18 future cases, regardless of that, PTO 70 trumps it, and  
19 PTO 70 applies to all Avandia claims now or hereafter,  
20 subject to the jurisdiction of this Court.

21 And these claims are subject to the  
22 jurisdiction of this Court, because Mr. Griffin signed  
23 the participation agreement, because Mr. Sizemore was a  
24 PSC member, and was a PSC member from April until the  
25 following January -- I mean, was a member of your firm,

1 and because of Pretrial Order Number 10.

2 I -- I'm sorry, Your Honor. I don't want to  
3 debate with Mr. Girardi about that. We just have a  
4 disagreement about what it means.

5 BY MR. GIRARDI:

6 Q The \$200,000 that apparently Sizemore was entitled  
7 to, was never paid to our firm, isn't that correct?

8 A That's incorrect. Your firm rejected the payment.  
9 Your firm submitted common benefit time, at least  
10 through the time that Mr. Sizemore left. That time,  
11 ultimately, was adjudicated and was subject to an order  
12 of this Court, awarding your firm a common benefit fee  
13 of \$200,000, the check for which you did return and said  
14 words to the effect, we don't want this or this -- this  
15 isn't ours or please, keep this money. And you sent the  
16 money back.

17 Q And then, your common benefit fees were -- amounted  
18 to \$17,150,000?

19 A I -- well, I don't --

20 Q Did they or not?

21 A No, I -- I don't recall it being that big, and I  
22 wish it was. I don't recall it being that big a number,  
23 but the award -- no, I don't think my award was that  
24 amount. I think it was less than that. I think it was  
25 still much larger than the one you're talking about, and

1 it's contingent in part on the ultimate collections,  
2 which the Common Benefit Assessment Fee Fund acquires.  
3 So the answer is, no, I haven't been paid \$17 million.

4 Q Did you put out 14 million in costs in the case?

5 A Well, I don't know. Did you -- our Plaintiffs'  
6 Steering Committee, I believe --

7 Q No, sir, you.

8 A Me, personally? No.

9 Q Yes.

10 A No.

11 MR. GIRARDI: I have nothing further, Your  
12 Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. ZONIES: Just one question, Your Honor.  
15 I've made the mistake of saying that.

16 REDIRECT EXAMINATION

17 BY MR. ZONIES:

18 Q Mr. Andrus, to your knowledge, does the allocated  
19 amount for the Girardi Keese firm remain in trust,  
20 awaiting Girardi Keese's decision to -- whether or not  
21 he would like to change his mind?

22 A It does. The fund administrator has placed that  
23 money in suspense, and he does -- well, he -- he is  
24 simply holding it until there is a resolution by this  
25 Court as to whether or not -- I don't know -- as to the

1 disposition of it, whatever that might be.

2 MR. ZONIES: Nothing further for this witness,  
3 Your Honor.

4 THE COURT: Anything further, Mr. Girardi, for  
5 this witness?

6 MR. GIRARDI: Nothing -- nothing further, Your  
7 Honor.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 MR. ZONIES: Your Honor, I call Mr. Justin  
12 Kaufman from the Heard Robins law firm.

13 JUSTIN KAUFMAN, PETITIONER'S WITNESS, SWORN.

14 COURTROOM DEPUTY: Please state your full name  
15 for the record?

16 THE WITNESS: Justin Kaufman.

17 THE COURT: Would you please spell your last  
18 name?

19 THE WITNESS: K-A-U-F-M-A-N.

20 DIRECT EXAMINATION

21 BY MR. ZONIES:

22 Q Good afternoon, Mr. Kaufman.

23 A Good afternoon.

24 Q Could you please describe for the Court what you do  
25 and with whom you do it?

1 A Sure. I am a partner with the law firm Heard Robins  
2 Cloud. I am out of the Santa Fe, New Mexico office. My  
3 partner, Bill Robins, was a member of the Plaintiffs'  
4 Steering Committee in the Avandia litigation. Bill and  
5 I worked together on the Avandia litigation from 2011,  
6 from the time Bill was appointed to the PSC, through the  
7 time that we settled our Avandia cases in January of  
8 2012.

9 That settlement came about shortly before we  
10 were ready to try our first bellwether case in the  
11 California JCCP.

12 Q So, you -- Heard Robins and you, personally, worked  
13 on cases that were, indeed, in the California JCCP,  
14 along with some of Mr. Girardi's cases, is that right?

15 A That's right.

16 Q Were you actively involved in that California  
17 litigation?

18 A We were.

19 Q You heard testimony perhaps today from Mr. Girardi,  
20 under oath, that he did not use or utilize any of the  
21 MDL work product or experts or documents, other than  
22 receiving those documents that were generated, and the  
23 work done here in the MDL, have you heard that testimony  
24 today?

25 A I have.

1 Q Do you agree with that?

2 A I don't.

3 Q Why not?

4 A Starting in the middle of 2011, there were a number  
5 of cases that were chosen as trial pool cases in the  
6 California JCCP. Our firm represented clients in that  
7 trial pool, as did Mr. Girardi's firm. When the cases  
8 were chosen as trial picks, all of those cases, and all  
9 of those plaintiffs' firms worked together on all of  
10 those cases.

11 All of those cases faced summary judgment  
12 motions from the defendant, and together, all of the  
13 plaintiffs' lawyers worked together to oppose those  
14 summary judgment motions. In opposition to those  
15 summary judgment motions, all of the plaintiffs' lawyers  
16 utilized MDL work product that had been developed since  
17 you and Mr. Andrus and Mr. Aylstock and everyone else  
18 had begun the MDL shortly in the middle of 2007 and all  
19 of the work product that had been developed up until  
20 that point.

21 And so when the summary judgment motions came  
22 up in California, the pleadings very much relied upon  
23 the evidence that was developed by the MDL, and our  
24 firms collectively filed pleadings relying upon that  
25 work product.

1 Q And by our firms, who do you mean?

2 A The Heard Robins firm, the Girardi firm, as well as  
3 other firms that had represented clients in the  
4 California JCCP, as well as clients in the MDL.

5 Q And you were personally involved in these  
6 litigations in California?

7 A We were, yes.

8 Q Do you know, for example, whether or not the Girardi  
9 Keese firm relied upon experts that had been developed  
10 completely in the MDL?

11 A Yes. We relied upon a handful of experts, in  
12 particular, in order to oppose the summary judgment  
13 motions that were filed by GSK. There were three  
14 experts who we used to file declarations in California  
15 in support of our summary judgment oppositions.

16 Those experts were Dr. Suzanne Parisian, Dr.  
17 Elliot Brinton and Dr. Nicholas Jewell. They filed  
18 declarations in our cases in California, and we, in  
19 opposition to the summary judgment motion, cited and  
20 relied upon those declarations in support of our  
21 oppositions.

22 Q And Dr. Jewell is a biostatistician, is that right?

23 A He is, yes.

24 Q And Dr. Jewell was the biostatistician that this  
25 Court held Daubert hearings on, and he came and he

1 testified. And he was able to get past Daubert  
2 challenges in the MDL?

3 A Yes, that's correct.

4 Q The same with Dr. Elliot Brinton?

5 A Yes.

6 Q Dr. Elliot Brinton testified before this Court in  
7 the Daubert hearings?

8 A That's right.

9 Q And the same with Dr. Parisian, as well, correct?

10 A Yes.

11 MR. ZONIES: May I approach, Your Honor?

12 THE COURT: You may.

13 (Pause in proceedings.)

14 BY MR. ZONIES:

15 Q Mr. Kaufman, I have handed you what's been marked as  
16 Exhibit 6 -- 7?

17 MS. NAST: 7.

18 THE COURT: 7.

19 BY MR. ZONIES:

20 Q Exhibit 7. Do you see that document?

21 A Yes.

22 Q And Exhibit 7, actually, the lead page on it says,  
23 Exhibit C, is that right?

24 A Yes.

25 Q And what do you -- can you describe, please, what



1 Exhibit 7 is?

2 A Exhibit 7 is the plaintiffs' exhibit list that was  
3 filed in a case captioned Nancy LeVoise (ph) -- I don't  
4 know if I'm pronouncing that correctly -- versus GSK.

5 Q And can you describe, please, what that document is?

6 A This is an exhibit list that was filed by the  
7 plaintiffs in the LeVoise versus GSK case. It lists  
8 some 2,300 or 2,400 documents as exhibits in that case.

9 Q Do you know who counsel was on the LeVoise case?

10 A It was the counsel for the Girardi Keese firm.

11 Q This is the Girardi Keese client in the JCCP?

12 A It's one of their clients, yes.

13 Q And there -- as you pointed out, there are over  
14 2,395 exhibits listed on this -- on this exhibit list  
15 for that trial, is that right?

16 A Yes.

17 Q And the -- did you have any role in creating this  
18 exhibit list?

19 A Yes. This document took some years off of my life.  
20 This was an exhibit list that began in the MDL. At the  
21 time when the MDL prepared it, it had some 1,000  
22 exhibits on it. And in the time that Bill Robins and I  
23 were working in the MDL, as well as in California, we  
24 added approximately another 1,000 documents to this list  
25 in preparation for the California trial settings.

1 Q Okay. And to your knowledge, did Mr. Girardi or his  
2 firm have any input into this exhibit list?

3 A This exhibit list was provided to the Girardi firm,  
4 as it was prepared by our firm, leading up to our trial.  
5 There may be documents on this that Mr. Girardi's firm  
6 added to. I don't see them, but for the most part,  
7 given the MDL numbers on this document, I know that  
8 these are documents from the MDL that we provided in the  
9 list itself.

10 Q And when you say, from the MDL numbers on the  
11 document, what do you mean?

12 A The documents are listed by Bates number, and the AV  
13 MDL Bates numbers are Bates numbers that were applied by  
14 GSK when GSK produced the documents to the Plaintiffs'  
15 Steering Committee in the Avandia MDL. That's how they  
16 designated their documents.

17 Q And do you see any documents on here that say AV-CA-  
18 JCCP?

19 A I don't.

20 MR. ZONIES: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. ZONIES:

23 Q Mr. Kaufman, I have handed you --

24 MR. ZONIES: Your Honor, I move for admission  
25 of Exhibit 7.

1 THE COURT: Any objection?

2 MR. GIRARDI: We have no objection. No  
3 objection.

4 THE COURT: Thank you. It is admitted.

5 (Petitioner's Exhibit 7, trial exhibit list,  
6 is admitted into evidence.)

7 BY MR. ZONIES:

8 Q Mr. Kaufman, I have handed you Exhibit 8. Do you  
9 have that in front of you?

10 A Yes, I do.

11 Q And what is Exhibit 8? What is your appreciation of  
12 what Exhibit 8 represents?

13 A Exhibit 8 is a joint witness list for trial that was  
14 filed in the California JCCP, relating to the case,  
15 Nancy LeVoise versus SmithKlineBeecham/GlaxoSmithKline.

16 Q And again, what is your understanding of who the  
17 counsel is for Ms. LeVoise?

18 A My understanding is that, counsel for Ms. LeVoise  
19 was the Girardi Keese firm. And this -- this document,  
20 witness lists for trial, has a complaint filed date.  
21 What is that date that that was filed in California? Do  
22 you see that on the first page, under the caption,  
23 Witness Lists for Trial?

24 A The complaint file date is May 19th, 2009.

25 Q Okay. And than what is the trial date?

1 A April 11th, 2012.

2 Q All right. And let's take a look at some of the  
3 plaintiffs -- well if you turn to the second page,  
4 actually, there is a signature block. Do you see that  
5 signature block, the second one down?

6 A Yes.

7 Q And who does it purport to be the signature of on  
8 the document?

9 A It looks like Keith Griffin.

10 Q At what law firm?

11 A At Girardi Keese firm.

12 Q And listed as attorneys for the plaintiff in the  
13 case?

14 A Yes, Nancy LeVoise.

15 Q Exhibit A is the plaintiff's trial witness list, do  
16 you see that?

17 A Yes.

18 Q All right. Now, there are a number of -- in column  
19 three, there appear to be, like, time numbers. Do you  
20 know what those are?

21 A Yes. Those are the deposition cut times for each of  
22 these witnesses, so when we were preparing for trial and  
23 did deposition cuts for each of these witnesses, when we  
24 were preparing to play their videos during trial, those  
25 are the time lengths for those videos.

1 Q Okay. And did you actually participate in the  
2 creation of this document and, also, the cutting of  
3 those depositions?

4 A Yes.

5 Q And I just want to go through a few of these, if we  
6 can, Mr. Kaufman. The first one that says, Susan  
7 Abelson, R.N., plaintiff's treating physician, do you  
8 see that?

9 A Yes.

10 Q You understand that that's Ms. LeVoise's doctor in  
11 the case?

12 A That's my understanding, yes.

13 Q Okay. So I am going to call things like that case  
14 specific, and then, if we talk about somebody like  
15 Allaster Benbot (ph), that's a GSK employee. Do you see  
16 that second one?

17 Yes, and Dr. Benbot was a witness whose  
18 deposition I took in the UK. Do you recognize -- do you  
19 know if Girardi Keese had any role, whatsoever, in the  
20 deposition of Mr. Benbot, that GSK employee?

21 A I don't believe they did, no.

22 Q Okay. So, I'll call things like that, sort of the,  
23 general liability witnesses. Does that make sense to  
24 you, the distinction?

25 A Yes.

1 Q Okay. So, Joanna Bulsreck (ph), do you know whether  
2 the MDL or Mr. Girardi and Girardi Keese took that  
3 deposition?

4 A Counsel for the MDL took that deposition.

5 Q Okay. Mr. Cardinale (ph), in particular?

6 A Yes.

7 Q Okay. And these are -- these are plaintiff's trial  
8 witnesses, the witnesses that, apparently, Girardi Keese  
9 intends to call at his trial in California, correct?

10 A That's my understanding, yes.

11 Q All right. The next GSK employee is David Brand  
12 (ph). Do you know if the MDL took that deposition or  
13 was it Girardi Keese?

14 A The plaintiffs' lawyers and the MDL took the  
15 deposition of David Brand.

16 Q Elliot Brinton, it says, plaintiffs' expert. We  
17 discussed Dr. Brinton a little earlier. Do you know if  
18 Dr. Brinton was, indeed, found by, worked up and  
19 presented by the MDL at a Daubert hearing in the MDL or  
20 did Mr. Girardi and Girardi Keese do that?

21 A No. Dr. Brinton's work on this case was worked up  
22 through the MDL and was subject to Daubert hearings,  
23 here, in this Court, and he survived those hearings.

24 Q And, then, if we look at -- I'll just summarize --  
25 Buckingham, Caponie, Carr, all the ones that say GSK

1 employee, Kollitz, Kekettle, Koler, Rahl, even these  
2 third-party witnesses like, Marty Fried, Jeffery Fried,  
3 Dr. Garnier, the CEO at one point in time, Dr. Gavin,  
4 GSK's expert, Dr. Gibbs, do you know who prepared and  
5 took the depositions of all of those people that I just  
6 listed? Was it MDL lawyers or was it Mr. Girardi and  
7 Girardi Keese?

8 A These would all be MDL lawyers.

9 Q And if we turn to the next page, would that same  
10 thing be true for every witness on that next page, other  
11 than the case specific witnesses, as far as you know?

12 A That's true. As far as I know, that's true.

13 Q So, Dr. Hefner, David Harrison, Mark Hiese, Dr.  
14 Holme, were the MDL -- do you know, whether or not --  
15 indeed, you may know this. Do you know whether or not  
16 the MDL flew to the UK to take the deposition of Dr.  
17 Holme?

18 A I do know that the MDL flew to the UK to take the  
19 deposition of Dr. Holme.

20 Q Do you know, did Girardi Keese pay any of the  
21 expenses associated with that trip?

22 A I don't know if they did.

23 Q Dr. Jewell is an MDL expert, is that right?

24 A Yes.

25 Q And I could go on through this list. I don't want

1 to take up too much more of the Court's time.

2 Dr. Steven Nissen, do you know if Girardi  
3 Keese had any part or any role in any of the depositions  
4 of the general liability experts and/or the general  
5 liability, general causation expert witnesses listed as  
6 their plaintiffs' experts in their California trial  
7 case?

8 A To my knowledge, they did not.

9 Q Thank you.

10 MR. ZONIES: I would move admission of Exhibit  
11 8, Your Honor.

12 THE COURT: Any objection?

13 MR. GIRARDI: No objection.

14 THE COURT: Thank you. It's admitted.

15 (Petitioner's Exhibit 8, trial witness list,  
16 is admitted into evidence.)

17 MR. ZONIES: I have nothing further for the  
18 witness, Your Honor.

19 THE COURT: Thank you. Cross-examine, please?

20 MR. GIRARDI: Very well.

21 CROSS-EXAMINATION

22 BY MR. GIRARDI:

23 Q We were in the California cases about three years, I  
24 think, before you came into them, isn't that correct?

25 A I think that's right, yes.



1 Q And you had nothing to do with the settlement  
2 negotiations of our cases with the defendant, isn't that  
3 correct?

4 A That's correct.

5 Q And as a matter of fact, we had our own -- we made  
6 our own demands for documents, of which the defendant  
7 said, please just get those from the MDL. You know  
8 that, don't you?

9 A I didn't know that. I know that our firm made those  
10 documents available to you. The MDL documents, we made  
11 them available to you and your firm.

12 Q Right. And that is because, the defendant said, we  
13 don't want to do this again. We've done it. We  
14 appreciate the fact that you're entitled to it, but  
15 we've already done it, so please, get a copy of these  
16 documents. That's what happened, isn't it?

17 A I don't know that.

18 Q Okay. And, then, of the major witnesses that are  
19 going to put the case together, for example, Dr.  
20 Maracangus (ph), he was the key guy for the plaintiffs'  
21 case, wasn't he?

22 A I'm sorry, could you say that name again?

23 Q Maracangus.

24 A I don't know who that is.

25 Q Okay. And the fact of the matter is, that we've

1 made requests of the defendant to take some of these  
2 party -- some of their own employee depositions, and they told  
3 us that they didn't want to do that because the parties  
4 had been deposed already, and would we please get the  
5 depositions that are already on file, isn't that true?

6 A I don't know that.

7 Q Okay. You, certainly, did not participate in the  
8 workup of any of our cases for trial, did you?

9 A I did not participate in the workup of the case  
10 specific elements of your cases, no.

11 Q And you did not assist in the 14 million in costs  
12 that we incurred to properly develop these cases, right?

13 A I don't know anything about your spending on your  
14 cases, no.

15 Q Okay.

16 MR. ZONIES: Nothing further, Your Honor.

17 THE COURT: Thank you. Any redirect?

18 MR. GIRARDI: Nothing, Your Honor. Thank you.

19 You may step down.

20 (Witness excused.)

21 THE COURT: Mr. Zonies?

22 MR. ZONIES: If I may have a moment, Your  
23 Honor?

24 THE COURT: You may.

25 (Pause in proceedings.)

1 MR. ZONIES: Nothing further. From the  
2 plaintiffs, there may be something.

3 MR. GIRARDI: Nothing further from the  
4 Plaintiffs' Advisory Committee, Your Honor, except that  
5 we do intend to file a petition for our fees and costs  
6 associated with having to travel to this hearing and  
7 work today.

8 THE COURT: All right. So, the petitioner,  
9 the Plaintiffs' Advisory Committee rests, at this time.  
10 Mr. Girardi, do you have any rebuttal evidence to  
11 present?

12 MR. GIRARDI: No, Your Honor.

13 THE COURT: All right. Then, the record is  
14 closed, as to documents and exhibits and testimony.  
15 However, I will give you that opportunity to give me a  
16 brief on whatever you think needs to be supplemented, by  
17 way of argument, Mr. Girardi. I think I understand your  
18 argument, but I'd like you to get it all in line. As  
19 long as you have --

20 MR. GIRARDI: All right.

21 THE COURT: -- a full copy of all of the  
22 exhibits that I think were just introduced here.

23 MR. GIRARDI: Your Honor, I'll be very -- I'll  
24 be very brief. Your Honor, there is no question that  
25 Sizemore worked for us for four months. There is no

1 question about it. There is no question that he was  
2 gone after that, with another law firm, and he billed  
3 for the other law firm, not for us. There is no  
4 question that there is one document that covers cases  
5 that we actually had, at the time of the signing of the  
6 document.

7 It didn't cover other documents. It didn't  
8 cover other cases. It just covered those particular  
9 cases. We also admit that there were 20 cases that were  
10 on a holding pattern. And I think it's appropriate that  
11 the cases that we actually had, at the time that the  
12 first agreement was signed by Keith Griffin, and there  
13 is no further signatures, that those are part -- they  
14 should be subjected to the fee.

15 And I think the 20 cases that are in your  
16 Court, obviously, have to be subjected to the fee. With  
17 respect to all of the others, the rudimentary stuff that  
18 we received from the Committee, really, was just to  
19 duplicate -- just to save the defendant from having to  
20 do it again, with respect to our requests.

21 The key, in this case, were the fact of our  
22 negotiations, the fact of how we built up all of our  
23 cases. It didn't have anything to do with the MDL, and  
24 the fact of the matter is, we spent a fortune to do it,  
25 to make sure our clients were well taken care of. And

1 for the MDL to weigh in, to ask for all of this money  
2 from us, other than the cases that were in our  
3 possession at the time the agreement was signed, and the  
4 20 before the Court, we think is truly inappropriate,  
5 we'll submit.

6 THE COURT: Thank you. Would you like to  
7 submit any additional briefing?

8 MR. ZONIES: I'm sorry, Your Honor, you cut  
9 out there.

10 THE COURT: Would you like to submit any  
11 additional briefing, before I render --

12 MR. ZONIES: Yes, Your Honor, that would be  
13 wonderful if you would --

14 THE COURT: That's what I said earlier.

15 MR. ZONIES: -- if you would give us the  
16 chance.

17 THE COURT: You are permitted to do that.

18 MR. ZONIES: Okay, Your Honor, we accept the  
19 nice invitation.

20 THE COURT: You're welcome.

21 MR. GUSSACK: Your Honor, would we be given an  
22 opportunity, then, to reply?

23 THE COURT: Yes, you would.

24 MR. GUSSACK: Thank you.

25 THE COURT: And I will set that, how about

1 seven days, so you can review all of the documents,  
2 here, and give me your best argument?

3 MR. GIRARDI: Your Honor, I appreciate that.  
4 Seven days is fine.

5 THE COURT: All right. And another seven  
6 days, if you need it, thereafter, and I will review  
7 those documents and make my decision. So --

8 MR. GRIFFIN: Your Honor, could we ask --

9 THE COURT: Yes, Mr. Griffin?

10 MR. GRIFFIN: Your Honor, may we ask a member  
11 of either of the two sides there to send us a copy of  
12 the exhibits that were entered into evidence today?

13 MR. ZONIES: We'll get those out tonight to  
14 you.

15 THE COURT: Yes. Those will be FedEx'd to you  
16 tonight.

17 MR. GRIFFIN: Thank you, Your Honor.

18 THE COURT: You're welcome. And with that,  
19 the motion on the Rule to Show Cause is held in abeyance  
20 and under advisement, pending final briefing. I do not  
21 believe we will need another hearing, however. As to  
22 the exhibits, they will be formally presented by FedEx  
23 from the PAC to Girardi Griffin, but I believe you have  
24 access to just about every one of them already, because  
25 they're all of record in one Court or another. Now,

1 with a three minute interruption -- let's make it five  
2 -- I know I have a criminal proceeding at 3:00, but I do  
3 want to address the next matter. We have got to address  
4 that, first and foremost.

5 So can everybody take five minutes, please?  
6 Thank you.

7 (Recess, 2:23 p.m. to 2:34 p.m.)

8 THE COURT: Good afternoon, again.

9 MR. ZONIES: Good afternoon.

10 MR. GUSSACK: Good afternoon.

11 THE COURT: At this time -- please be seated,  
12 everyone -- we will be addressing GSK's motion, which  
13 is, in the first instance, asking for a temporary  
14 restraining order, and I would like to address this as  
15 the claim to compel arbitration and to enjoin initiation  
16 or pursuit of litigation, filed by GSK.

17 It has been responded to by Mr. Girardi, so we  
18 would like to ask GlaxoSmithKline, Ms. Gussack, to  
19 address this matter, in the first instance. Please lay  
20 out -- we already have an idea of the procedural  
21 posture, here, but please, as quickly as you can, let's  
22 get to the heart of the matter, which is, as I  
23 understand it, to be the Master Settlement Agreement  
24 that was signed by Girardi Keese on behalf of their  
25 respective clients in which GSK and Girardi Keese

1 decided that they would settle all of their Avandia  
2 claims, dated 2012, had also included -- does also  
3 include an arbitration provision to which the parties  
4 agree that they will submit differences of position as  
5 to actual amounts, per case, and you have asked to  
6 compel that arbitration.

7 MR. GUSSACK: Thank you, Your Honor. Mr.  
8 Girardi and Mr. Griffin, good afternoon. May I  
9 approach, Your Honor?

10 THE COURT: You may.

11 MR. GUSSACK: I believe that you said that the  
12 Court did not have the Master Settlement Agreements  
13 available to it. Of course, these are being submitted  
14 under seal, and while I enjoyed having the presence of  
15 my colleagues, and the plaintiffs' bar present, I am  
16 going to maintain a very strict confidential discussion  
17 of these terms, so that I am not in violation of the  
18 confidentiality terms, and I am confident that Mr.  
19 Girardi and Mr. Keese will do the same.

20 Your Honor, in a nutshell, we come to you  
21 simply for the Court to compel the arbitration provision  
22 that, as you noted, is present in the Master Settlement  
23 Agreement. I find this to be a, somewhat, anomalous,  
24 circumstance.

25 Here, I stand, 60,000 plus cases resolved on



1       behalf of GSK, amongst the most challenging, aggressive,  
2       assertive, creative plaintiffs' counsel in the country,  
3       in which GSK has managed to resolve, with a variety of  
4       terms and agreements over time, even as we dealt with  
5       the terms and the implementation effectuation of these  
6       agreements, never has GSK been in a position where it  
7       has not been able to achieve, successfully, the  
8       implementation of the Master Settlement Agreement.

9               This Master Settlement Agreement was entered,  
10       as the Court is aware, in August, 2012. A year after it  
11       was entered into, Mr. Griffin advised us that he still  
12       did not have all of the information about all of the  
13       plaintiffs that was necessary. We understood that.  
14       That happens frequently. We worked with Mr. Girardi and  
15       Mr. Griffin, and their selected facilitators, Justice  
16       Trotter and Justice Panelli, to assist, to respond and  
17       to implement.

18               I have to tell the Court that, at every turn,  
19       when we did not agree with Mr. Girardi or Mr. Griffin's  
20       interpretation of provisions, we would be told that Mr.  
21       Girardi was going to file ex parte proceedings before  
22       Judge Berle, with respect to claimants in the  
23       settlement. We reminded Mr. Girardi, on multiple  
24       occasions, that there is an arbitration provision.

25               And as recently as January, I believe, of this

1 year, I wrote Mr. Girardi, and I said, Your Honor, "If  
2 we are unable to resolve the matters that are impeding  
3 resolution, I am going to remind you about paragraph  
4 five and ten of the Master Settlement Agreement, where  
5 we are supposed to jointly agree upon an arbitrator and  
6 submit our differences to arbitration", all differences.  
7 Whether it's about qualification; whether it's about  
8 leal interpretation, we are supposed to submit them to  
9 arbitration.

10 I received no response from Mr. Girardi, until  
11 I received a unilateral demand of ADR for ten claimants  
12 of what is supposed to be a Master Settlement Agreement  
13 that covers over 4,000 claimants. In the course of the  
14 last two years, we have managed to qualify and agree on  
15 some portion of those 4,000 claimants, and we have, in  
16 fact, advanced a substantial portion of dollars in  
17 partial payment of those claims.

18 But the differences that continue to plague  
19 us, including the common benefit fee, including lien  
20 issues and including the qualification of the remainder  
21 of the affected claimants has resulted in our standoff,  
22 at this time.

23 I cannot say that anyone has ever called me  
24 despicable or accused my client of being fraudulent in  
25 the course of negotiations about the implementation of a

1 settlement agreement, but I stand before you so accused,  
2 GSK so accused, and our concern that no Court has any  
3 interest in this agreement, other than this Court,  
4 because of the MDL claimants who are part of it, because  
5 of the common benefit fee that impedes forward movement,  
6 because of the lien resolution issues that this Court is  
7 familiar with. There is no Court that is sitting as a  
8 qualified settlement fund judge.

9 Judge Berle, as you heard, under oath from Mr.  
10 Griffin, has no supervisory authority over this matter.  
11 And all we seek from this Court, Your Honor, is the  
12 effectuation of the arbitration provision under the MSA.  
13 This Court need not decide the application of any term,  
14 but simply allow the parties to do what they contracted  
15 to do, which was to arbitrate the differences.

16 And to the extent that we have a difference  
17 about which arbitrator, I would be happy to suggest that  
18 Special Master Merenstein help us work through that  
19 issue.

20 We sought a TRO, Your Honor, simply because in  
21 the last few weeks, Mr. Girardi continues to threaten us  
22 with ex parte proceedings before Judge Berle as to this  
23 settlement agreement and claimants within it. And it is  
24 our view that the status quo should hold, that we would  
25 be caused irreparable harm, should there be fractionated

1 litigation of this issue, and that we simply need to  
2 proceed under the terms of the MSA and arbitrate our  
3 differences.

4 Frankly, Your Honor, I would like to suggest,  
5 and I've told Mr. Girardi this as recently as last week,  
6 I think the issues that separate us are modest. I have  
7 consulted with Justice Trotter, his designated  
8 settlement assistant, to identify issues, and yet, we  
9 have not found common ground. I am happy to take those  
10 issues up with Special Master Merenstein, with Justice  
11 Trotter and Special Master Merenstein. I am willing to  
12 do anything I can to be relieved of the cloud that has  
13 burdened us on this settlement agreement.

14 But, Your Honor, if that is not going to be  
15 forthcoming promptly, then, I would simply ask that our  
16 papers, which seek to compel arbitration, be considered  
17 promptly, and that we be permitted to select a CPR  
18 arbitrator that we sought for the entire agreement or  
19 have the benefit of a third-party's assistance,  
20 enjoining to a neutral arbitration venue.

21 THE COURT: All right. Thank you. Can you  
22 just inform the Court, has there been any document or  
23 litigation filed before any California Court, Federal or  
24 State, concerning this matter?

25 MR. GUSSACK: Your Honor, as recently as last

1 evening, when we checked, no -- no document had been  
2 filed by Mr. Girardi. However, three letters that I  
3 have received in the last ten days, threatened that an  
4 ex parte hearing was sought, had been scheduled for  
5 March 24th, and actually, on prior dates, I've been told  
6 that Mr. Girardi had reported me to the District  
7 Attorney's Office in California, but I have not seen any  
8 such papers.

9 And, Your Honor, if I might hand up my request  
10 to -- the request to -- if the Court would like them, I  
11 certainly can hand up to the Court, the correspondence,  
12 both, seeking the appointment of an agreed upon  
13 arbitrator and the letters from Mr. Girardi, suggesting  
14 that he was proceeding, ex parte, in California. But,  
15 to answer the Court's question, as far as I know, no  
16 document has been filed in Judge Berle or in California,  
17 as to the settlement agreement.

18 THE COURT: And is the request of this Court,  
19 for a temporary restraining order, which, of course, is  
20 extraordinary, in terms of its timing, is that based on  
21 the alleged repeated threats, Ms. Gussack, to go  
22 elsewhere? Is that to maintain the ability of this  
23 Court to interpret its own orders and enforce its own  
24 Rules or is it something else? I just need to know what  
25 the TRO basis is.

1 MR. GUSSACK: Yes, Your Honor, it's as -- it's  
2 for both grounds. It's to allow this Court to enter --  
3 to order arbitration, so that we may proceed to resolve  
4 an agreement that implicates the interests of this  
5 Court, both because of the MDL plaintiffs that are  
6 within the settlement, because of the orders of this  
7 Court, and because we seek, in diversity, this Court's  
8 jurisdiction over this matter, and to implement the  
9 settlement terms.

10 It is also because we believe that to have  
11 piecemeal litigation of State Courts, regardless of  
12 where they sit, in which there is conflicts between what  
13 a State Court Judge may conclude about Your Honor's  
14 orders or lien resolution or common benefit fee or  
15 whether this should be subject to arbitration as it  
16 plainly must be by the terms of the order, would be  
17 irreparable harm and should not be tolerated.

18 THE COURT: All right. Can you please state  
19 for the record the date upon which the Court approved  
20 the stipulation on this Master Settlement Agreement for  
21 the record.

22 MS. GUSSACK: Well, Your Honor, the  
23 stipulation and order placed the cases in administrative  
24 suspense as a result of the settlement was dated in  
25 October 4th, 2012.

1 THE COURT: Were there any other documents  
2 approving the stipulation of the Master Settlement  
3 Agreement or any other cases? Which, by the way, if  
4 it's the same order that you're referring to that was  
5 introduced in the companion litigation heard earlier  
6 today, has 25 cases on it, not 20, just wanted to again  
7 clarify that.

8 MS. GUSSACK: Yes. Thank you, Your Honor.  
9 I'm not aware of any other order entered in this Court  
10 with respect to notification of the settlement and civil  
11 suspense. I believe Judge Berle similarly has put in  
12 suspense the cases that were filed before him.

13 THE COURT: But is there any way that Judge  
14 Berle has signed a comparable agreement in California?

15 MS. GUSSACK: No, Your Honor. I'm not aware  
16 of any order entered by Judge Berle with respect to the  
17 settlement.

18 I believe Mr. Girardi notified Judge Berle of  
19 the settlement, notified him that he intended to use  
20 Justice Trotter and Justice Panelli to assist him in the  
21 effectuation of the agreement, and, in fact, the  
22 settlement agreement contemplates that Justice Trotter  
23 and Justice Panelli will certify the qualification of  
24 claimants to meeting the terms of the settlement  
25 agreement.

1                   While that has not occurred, I'm not aware of  
2                   any order entered by Judge Berle with respect to any  
3                   term or approval of the settlement.

4                   THE COURT: Thank you.

5                   MS. GUSSACK: Thank you, Your Honor.

6                   THE COURT: Mr. Girardi, would you like to  
7                   respond, please?

8                   MR. GIRARDI: Yes. Thanks very much, Your  
9                   Honor.

10                   Your Honor, first of all, we're named  
11                   personally here, and it seems that California  
12                   jurisdiction would be appropriate. This case has gone  
13                   on for five and a half years before one Court. That one  
14                   Court has handled all the issues that have arisen, and  
15                   it seems to us that clearly this -- this matter properly  
16                   belongs where the case has been handled for the five and  
17                   a half years, in which the Judge is familiar with all of  
18                   the settlement agreements. Contrary to counsel's --

19                   THE COURT: Is there another settlement  
20                   agreement other than the Master Settlement Agreement,  
21                   Mr. Girardi? Is there another one floating around  
22                   somewhere in space?

23                   MR. GIRARDI: No, Your Honor.

24                   THE COURT: Other than the one that's file  
25                   here in Court?



1 MR. GIRARDI: That's the only one.

2 THE COURT: Well, then, how does --

3 MR. GIRARDI: He has been --

4 THE COURT: Fine. What else do you want to  
5 argue to the Court?

6 MR. GIRARDI: Well, here's the -- here's the  
7 problem. This settlement is the total con game. I've  
8 never gone through such despicable conduct in my life as  
9 here. This company admits they owe money and then they  
10 don't pay it. These clients have been out there for a  
11 year and a half now as all of the nonsense of -- of this  
12 company has taken place. So they don't -- they don't  
13 simply want to pay.

14 I don't blame them, but they shouldn't have  
15 entered into the agreement if they didn't want to pay.  
16 And we have to get this issue heard to show that the --  
17 the objections, Your Honor, I could spend a lot of your  
18 time, but you have a 3:00 -- have been totally absurd.

19 THE COURT: I'm not going to be the arbitrator  
20 that gets appointed here, so don't bother with that.  
21 But you have to explain to me how you have not agreed to  
22 submit to the arbitration clause that is clearly in the  
23 Master Settlement Agreement that you and Mr. Griffin  
24 acknowledge covers all of your claimants.

25 MR. GIRARDI: Your Honor, I don't think it

1 covers fraudulent conduct, that's the only thing.  
2 Everything else it does. And then what we did, we said,  
3 listen, this case is pending in California. Here is the  
4 alternative dispute resolution. We demand that  
5 arbitration be forwarded to alternative dispute  
6 resolution.

7 We've got 60 retired Judges. We didn't select  
8 any Judge, and -- to get the ball rolling. They then  
9 write to alternative dispute resolution saying,  
10 absolutely not, we refuse to go to arbitration. So I  
11 need -- I need a Court order from these people to make  
12 them pay what they said they agreed to pay. And the  
13 common benefit fund is not an issue. They withheld  
14 that. We agreed that they would withhold that until you  
15 made a decision and so forth. So that doesn't hold  
16 anything up.

17 The fact of the matter is, in writing, they  
18 agreed they owed these sums, and in writing, they  
19 refused to pay it. So we can't -- I can't live this  
20 way. These people have been waiting for this money now  
21 for two years since we told them of "the settlement,"  
22 and I have to get --

23 THE COURT: Do you agree -- do you agree, Mr.  
24 Girardi, with Ms. Gussack's representation just now  
25 heard in Court that there are ten of your clients at

1 issue here?

2 MR. GIRARDI: Oh, no, Your Honor. Those are  
3 just the ones we -- we initially filed on. There are  
4 1,400 of the cases that are at issue.

5 THE COURT: As to which ones get how much  
6 money? Is that what you're talking about?

7 MR. GIRARDI: Yes, I would say, each -- that  
8 they -- that they qualify to start with. Besides that,  
9 there's another 90 cases that they wrongfully did not  
10 permit recovery that we have all the documents on. They  
11 have all the documents on. It was just a con game.  
12 That's the truth.

13 THE COURT: Then why -- why are you not  
14 agreeing to end this impasse and submit to a neutral  
15 arbitrator as outlined in the Master Settlement  
16 Agreement? It would seem to me that you and GSK will  
17 not agree. So someone in the middle has got to help you  
18 both. Why wouldn't you agree to that, sir? That's why  
19 we're here today.

20 MR. GIRARDI: Your Honor, if the question is  
21 directed to me --

22 THE COURT: That's why we're here today.

23 MR. GIRARDI: -- if the question is directed  
24 to me --

25 THE COURT: It is.

1 MR. GIRARDI: -- we think it's -- we think  
2 that it's appropriate for a case that's been in the  
3 California Courts for five and a half to six years  
4 should be arbitrated in California, because that's where  
5 the case is. And we even told them, we'll go to ADR,  
6 that's -- or to JAMS or to anybody, any place. We said  
7 that.

8 THE COURT: Now, really, just talking in  
9 general terms, you hired JAMS to work for you. That  
10 would not make them a neutral, would it? You must have  
11 thousands of other arbitrators that you could call a  
12 neutral, but JAMS wouldn't be one of them. Besides, it  
13 says right in the Master Settlement Agreement -- is it  
14 paragraph ten -- that, "They will be excluded from the  
15 determination of who is to be a neutral arbitrator."

16 MR. GIRARDI: Your Honor, that's why --

17 THE COURT: Don't you want to proceed under  
18 this?

19 MR. GIRARDI: -- I'm sorry, Your Honor, I  
20 didn't mean to --

21 THE COURT: Don't you want to proceed under  
22 this?

23 MR. GIRARDI: Your Honor, I -- Your Honor, I  
24 really don't because of the fraud, and I think we have  
25 real causes of actions due to fraud. On the other hand,

1 I'm the one that said to them, let's arbitrate it, and  
2 we gave them this -- there's a list of 65 arbitrators in  
3 ADR, not JAMS, Your Honor -- ADR. It's the most  
4 respected organization out here, and they told us to  
5 pound salt.

6 THE COURT: All right. I am going to ask for  
7 the letters that you referred to, and I am going to  
8 evaluate this case right now, not on the ultimate  
9 decision but on whether or not a TRO should issue. It  
10 is clear to me that Mr. Girardi does not intend to  
11 subject his cases to the MDL supervision for whatever  
12 reason. However, this Master Settlement Agreement  
13 belongs nowhere else. So I am assuming jurisdiction.

14 And whether California law applies or not to  
15 these arguments will be a matter that you can brief.  
16 However, a TRO has been requested, and I assume that is  
17 to get this thing moving. So let's see what you have to  
18 give me.

19 MS. NAST: Thank you, Your Honor.

20 I'm going to hand to the Court and I know that  
21 Mr. Girardi has a copy of my January 28, 2014 letter  
22 seeking a discussion to agree on a joint neutral  
23 arbitration, a neutral, for purposes of arbitration  
24 under the agreement, Mr. Girardi's March 5th, 2014  
25 letter in which he, on behalf of ten claimants,

1 unilaterally advises that he's using ADR, and then our  
2 March 10, 2014 letter to Mr. Girardi and to Mr. Griffin  
3 identifying our request that we are submitting the  
4 entire Master Settlement Agreement and all terms and all  
5 claimants to the International Institute for Conflict  
6 Prevention Resolution known as CPR, Your Honor, our  
7 motion to compel arbitration and the TRO is in  
8 diversity, a breach of contract action and seeking to  
9 enforce the arbitration that is the basis -- the law  
10 that is applicable here is Delaware law.

11 And there is no pending lawsuit in California  
12 that would make this settlement subject to California  
13 law or any special California proceedings. Let me hand  
14 these up.

15 THE COURT: Thank you. These letters have  
16 been identified by date and by subject matter, Mr.  
17 Girardi. Do you have any question as to whether or not  
18 you received these letters?

19 MR. GIRARDI: No, Your Honor. We received  
20 them. We don't want to go there because they're all  
21 hooked up with -- with defendant corporations all over  
22 the world. I know that. We need somebody --

23 THE COURT: Well, I know -- I know who is not  
24 hooked up with any corporation, and that is our Master.  
25 So we can off you the neutral that would be Bruce

1 Merenstein, the Special Master in Avandia, but I would  
2 not force you into any one place. I just don't see how  
3 you can't try to resolve this with getting a neutral  
4 arbitrator. I don't want to be the one in a position to  
5 choose that, but for now, I am going to grant the  
6 temporary restraining order.

7 It is a temporary restraining order, because  
8 it will enjoin you, Mr. Girardi, and your employees,  
9 your agents and assigns, from filing or pursuing  
10 litigation against GSK in violation of the terms of the  
11 Master Settlement Agreement entered between you and GSK  
12 -- there is no question about that on this record -- for  
13 the reasons set forth that were set forth right here in  
14 Court.

15 I know that you think that this Court is  
16 depriving you of your choice of forum, but that is not  
17 an issue on choice of law. The contract between you and  
18 GSK needs to be interpreted and only this Court should  
19 be doing that, and I am willing to give you another  
20 seven days from today to brief all of the issues that  
21 you think are appropriate, if you can't resolve within  
22 24 hours a neutral to which you can both submit the  
23 remaining claims, either ten or 1,400, it doesn't matter  
24 to me. So I will require your response as to that issue  
25 within 24 hours.

1           If that is not to be an agreement, then I will  
2           consider appointing Mr. Merenstein in any event as the  
3           neutral, because somewhere, somehow there has to be a  
4           forum to address this impasse. And charges of  
5           despicable conduct or fraudulent conduct are really  
6           something that need to be proven in court, and I'm not  
7           taking a position with that. But I will say that out of  
8           60,000-plus, 65,000, even higher-plus settlements, that  
9           GSK has arranged with State and Federal claimants,  
10          whether they had cases in the MDL or not, I've never run  
11          into this problem.

12           So this is a new one, and all of a sudden  
13          fraudulent conduct after they've paid out, you'll have  
14          to prove that, sir. But if you think that they're  
15          holding back because they don't want to pay you, then  
16          get before an arbitrator, get rid of the reasons that  
17          you think they're holding on to it, and then see where  
18          you are.

19           Everybody else has gone through this process,  
20          Mr. Girardi. I'm not so sure why you can't. I think  
21          you're a bright man. You're obviously successful, got  
22          Mr. Griffin assisting you. It's time. Let's get this  
23          over with. You already have an agreement. Let's make  
24          sure that it's honored, and that's all we're going to do  
25          on this matter today.



1 MR. GIRARDI: Your Honor, that's what we  
2 wanted to do, is honor the agreement so we could get the  
3 money for these poor people we represent.

4 THE COURT: I hope you recognize that that's  
5 my goal. We're adjourned.

6 MS. GUSSACK: Thank you, Your Honor.

7 (Proceedings concluded at 2:59 p.m.)

8 \* \* \*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25I N D E XPETITIONER'S OPENING STATEMENTPAGE NUMBER

By Mr. Zonies

7

RESPONDENT'S OPENING STATEMENTPAGE NUMBER

By Mr. Girardi

11

PETITIONER'S WITNESSESDIRECT CROSS REDIRECT RECROSS

Vance R. Andrus

By Mr. Zonies

43

67

By Mr. Girardi

61

Justin Kaufman

By Mr. Zonies

68

By Mr. Girardi

81

PETITIONER'S EXHIBITSADMITTED INTO EVIDENCE

1 Document 108 from MDL Number 1871

45

2 Attorney Participation Agreement

48

3 Letter dated 8-31-09 from Vance Andrus

50

4 Letter dated 9-21-09 from Vance Andrus

55

5 PTO 70 of MDL 1871

58

6 Document 2740 of MDL 1871

60

7 Trial exhibit list

78

8 Joint witness list

80

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

I, Donna M. Anders, 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.

4/2/14  
Date

Donna M Anders  
Donna M. Anders