

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

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IN RE:	:	NO. 13-MDL-2436
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TYLENOL (ACETAMINOPHEN)	:	
MARKETING, SALES	:	Philadelphia, Pennsylvania
PRACTICES AND PRODUCTS	:	May 21, 2013
LIABILITY LITIGATION	:	10:04 a.m.

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TRANSCRIPT OF CASE MANAGEMENT CONFERENCE
BEFORE THE HONORABLE LAWRENCE F. STENGEL
UNITED STATES DISTRICT JUDGE

- - -

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1 (The following was heard in open court at
2 10:04 a.m.)

3 THE COURT: -- begin by thanking you for your
4 various submissions, the joint proposed agenda and your
5 excellent position statements which have given me plenty
6 of things to read on the train. I spend a lot of time
7 on trains, so this is just a wonderful thing to do on
8 the train and at home and elsewhere. So I feel pretty
9 informed about the case, thanks to your submissions.

10 I wanted to introduce to you a couple of the
11 people who work with me who you'll be in regular contact
12 with.

13 Laura Buenzle is to my left and is our
14 courtroom deputy and basically runs the criminal side of
15 my docket. Hopefully, none of you will have involvement
16 there, but she also manages the courtroom and keeps our
17 record when we have proceedings in the courtroom.

18 Pat Cardella is in the middle here. She's my
19 civil deputy, and you'll be in touch with her on a
20 regular basis. She coordinates all of our civil
21 litigation and is available to you to answer questions
22 about scheduling and procedure and the like.

23 And then Molly Campbell is over here to the
24 right. She is a law clerk and will be leaving us at the
25 end of this summer, so I think you'll have some contact

1 with Molly, and Molly and I have to decide which of our
2 incoming clerks gets to have the most contact with you
3 over the next year or two. But Molly's been very
4 involved in this case to date, and she's available to
5 you if you have questions again that would be
6 appropriate for a law clerk.

7 I sit in this courthouse mostly. I also have
8 responsibilities in Reading. If you misbehave, I'll
9 start to convene conferences in Reading, but I --
10 actually, my address in the AO directory is Reading
11 because a couple of years ago I was assigned there as a
12 duty station because we had no one to cover Reading. I
13 go there on occasion now, but mostly I'm here.

14 So you should address correspondence, if
15 anything has to be delivered or anything of that nature,
16 it should come to this courthouse. If not, it will sit
17 in Reading until somebody gets there.

18 We have a website for the Eastern District.
19 We have a section of that website that's devoted to this
20 case. I believe that's up and running, and that has a
21 brief introduction to the case. It's similar to Judge
22 Rufe's website in -- do you have it, Pat? Thanks.

23 Thank you.

24 (Pause in proceedings.)

25 THE COURT: It will be up by tomorrow. Okay.

1 And it's just got a very brief summary of the case, and
2 then it will have pretrial orders. It will have
3 transcripts. If we get to writing opinions, the
4 opinions will be posted there, so -- and then there will
5 be a section for contacts.

6 If you have any concerns about the website,
7 feel free to call Pat Cardella or Molly Campbell about
8 that. All right. So it's on the Eastern District
9 website. It's www.paed.uscourts.gov and then there's a
10 list of MDLs on that website.

11 What I'd like to do is simply follow your
12 joint proposed agenda. I have a couple of things to add
13 as we go. And what I'm going to do is as we get to
14 certain topics ask you to explain just on our record and
15 for my benefit just what your position is, and we'll
16 have a discussion about where we can go with each of
17 these -- each of these points.

18 The first item is the Court's expectations for
19 professionalism, civility and overall conduct. This is
20 a complex, interesting and very worthwhile case. I
21 think it will require, as these MDLs do, the best
22 efforts of the Court and counsel to bring it to a good
23 resolution.

24 I know some of you a little bit, I know all of
25 you by your excellent reputations. My expectation

1 simply is that you conduct yourselves in this case
2 consistent with those excellent reputations, and I think
3 we'll be fine.

4 The Manual for Complex Litigation has some
5 great language about counsel's obligations. I'm sure
6 you're familiar with those sections.

7 It talks about, "Counsel needing to fulfill
8 their obligations as advocates in a manner that will
9 foster and sustain good working relations among fellow
10 counsel and with the Court, the need to communicate
11 constructively and civilly with one another and attempt
12 to resolve disputes informally as often as possible.
13 Counsel should avoid unnecessary contentiousness and
14 limit the controversy to material issues genuinely in
15 dispute."

16 So that would really be what I would expect in
17 terms of professionalism and civility. I'm fairly blunt
18 about talking to people if I think that that's not
19 happening, and we'll have an adult conversation about it
20 and then we'll move on with our lives, okay.

21 And I understand in cases of all sizes and
22 shapes that there are opportunities for contentious
23 behavior. These are -- we have an adversary system.
24 That's how -- that's how it goes, and if I need to step
25 in to resolve a dispute, I'm happy to do that. What I

1 expect from you is candor about your position and where
2 you agree and where you disagree with your opponent, and
3 then we'll handle it on that basis. Okay.

4 Later on in the agenda I wanted to talk about
5 discovery masters and so forth. There appears to be a
6 cottage industry of MDL discovery masters. I've been
7 getting solicitations from people, some known to me,
8 some not, and we may need to involve a discovery master.
9 You probably know more about that than I do. So if
10 there is a growing discovery dispute, we can certainly
11 involve a master.

12 My preference would be to follow the procedure
13 that you've outlined in the agenda, and that is submit a
14 summary of the discovery dispute to me. In my policies
15 and procedures on our website, that's how we handle
16 discovery disputes in an average civil case. I don't
17 want lengthy briefing or exhibits or -- I want a simple
18 statement of the discovery dispute, and then I'll either
19 get you here in the courtroom or in chambers or more
20 likely on the phone because we're at different parts of
21 the country, some of us, and see what we can work out.

22 If I'm unable to do that or if it's growing to
23 a point where there needs to be a substantial investment
24 of time in reviewing documents and the like, I'll
25 involve one of our Magistrate Judges here or we'll talk

1 about a discovery master.

2 So that's -- I think we'll just, for the time
3 being, see what I can do with resolving any discovery
4 disputes and I have some experience in that and I'm
5 happy to address that myself. But if I need to pass it
6 along to somebody else, my first choice would be to one
7 of the Magistrate Judges here who are free to you and to
8 your clients and also very, very good. And if it's
9 something where we have to involve one of these
10 discovery masters who are very anxious to help you and
11 help me, then I'll do that. All right. But I'll
12 consult with you before I would appoint anybody.

13 Okay. The appointment of liaison counsel and
14 a Steering Committee, I have your applications and your
15 submissions, and I thought I would just give each side a
16 brief opportunity to present about that. I don't see
17 anybody here to object. I certainly will give anybody
18 an opportunity to do that, but I don't see there to be
19 too many competing applications. There was one
20 application for the Steering Committee from the
21 plaintiffs' side and one application for lead and
22 liaison counsel on the plaintiffs' side and on the
23 defense side.

24 So just very briefly, I'd like to hear from
25 you about that. So on the plaintiffs' side, Mr. Berman.

1 MR. BERMAN: Yes, Your Honor. And may I ask
2 whether you prefer me to address you from the podium or
3 from my table.

4 THE COURT: I think the table is fine. As
5 long as you're near a microphone and Laura can pick up
6 what you're saying, we're good.

7 MR. BERMAN: All right. I appreciate that,
8 Your Honor. And let me start by stating as well that we
9 appreciate your comments about acting professionally and
10 with civility in this case, and on the plaintiffs' side,
11 I can represent that the plaintiffs will endeavor to
12 live up to all of your expectations with respect to
13 those requests.

14 THE COURT: Thank you.

15 MR. BERMAN: Thank you.

16 With respect to the appointment of a Steering
17 Committee and liaison counsel, as you may be familiar,
18 Your Honor, the resumes and qualifications of our slate
19 appears beginning on page 19 of the response that the
20 plaintiffs had filed to the motion to stay proceedings
21 that was filed by the defendants. We propose a slate
22 consisting of seven individuals, myself, Clay Milling,
23 who is sitting to my right and who is an attorney from
24 Georgia; Dianne Nast, who is an attorney in
25 Philadelphia.

1 And we had alerted Your Honor that in light of
2 the agenda order requesting that there not be
3 duplication of appearances and be mindful of the
4 efficiencies, we had communicated with the other members
5 of the proposed slate to ask for their authority for us
6 to appear on their behalf in lieu of a number of people
7 appearing here unnecessarily, and we hope Your Honor
8 appreciates that we were trying to abide by your
9 request.

10 THE COURT: Right.

11 MR. BERMAN: The other members are Gil Gainer,
12 an attorney also from Atlanta, Georgia; Chris Seeger
13 from New York; Leonard Davis from New Orleans; and James
14 Green from Washington, DC.

15 As I started out by saying, appearing on page
16 19, we have provided snapshots, if you will, of the
17 qualifications of all of us in terms of handling complex
18 litigation, class actions, MDL matters, pharmaceutical
19 litigation. I think we have assembled a preeminent team
20 to participate in the case, but more so than just the
21 credentials of us as a team in terms of past history,
22 what I do want to point out is that we have been working
23 on the Tylenol litigation at least since 2010.

24 We pointed out in our papers that litigation
25 was commenced before Judge Higbee in Atlantic County in

1 New Jersey prior to the establishment of this MDL and
2 the team has been working on the cases since that time.
3 And as a result of that, we have done a tremendous
4 amount of work in terms of learning the science, getting
5 the production of documents, beginning to take certain
6 depositions, et cetera. I think that puts the team that
7 we propose in a unique position to be able to manage
8 this litigation because we are well ahead of anybody
9 else who has not yet been litigating these types of
10 cases.

11 I'd like to point out, in fact, that both Clay
12 Milling and Gil Gainer had been litigating these cases
13 even prior to the 2010 cases that were litigated -- that
14 are being litigated in Atlantic County in New Jersey,
15 and they bring with them even more years of experience
16 knowing the science and the mechanisms of the issues
17 that are being presented in this case.

18 We had also proposed a state liaison counsel
19 who is proposed as David Buchanan. He is with the
20 Seeger Weiss firm in New York, and he has been the, if
21 you will, de facto co-lead counsel or lead counsel
22 appearing before Judge Higbee in the Atlantic County
23 litigation and has substantial experience as well in
24 pharmaceutical litigation and has been involved, in
25 particular, in the Tylenol litigation since at least

1 2010 with us.

2 I'm happy to review at greater length the
3 information provided in our documents if the -- Your
4 Honor cares to hear that, but I thought -- I wanted to
5 at least give you just sort of an overview as to how it
6 is that we came about to propose this slate, our
7 historical knowledge and experience of the case, the
8 fact that we have filed virtually all of the cases that
9 are in this MDL, I think there may be one or two cases
10 that were transferred as a tag-along, have most of the
11 cases that are filed in New Jersey. These firms have
12 the financial ability to see this case through.

13 We have already set up the document depository
14 utilizing Crivella West which is a document management
15 service to manage the approximately six million
16 documents that we've already secured. So as I've said,
17 if there is more information that Your Honor would care
18 to hear, I'd be pleased to discuss that with you, but I
19 was hoping you would understand our position and our
20 slate based on this.

21 THE COURT: Right. I've been through your
22 papers carefully and wanted simply to hear from you
23 today about this. I don't hear from or I'm not aware of
24 anybody else who would oppose this or which wishes to be
25 lead counsel, right?

1 MR. BERMAN: That's true, Your Honor. We've
2 surveyed the docket in accordance with the time frame
3 you had established for any opposing slates or
4 oppositions. Of course, there have been none that have
5 appeared on the docket.

6 And I might add that there is actually an AAJ
7 Litigation Group that exists for Tylenol litigation, so
8 other firms who might have some interest are aware of
9 this case and none have stepped forward to seek a
10 leadership position, and that would lead us to believe
11 that any who have cases to file are satisfied by their
12 silence in our appointment as the -- as the slate.

13 THE COURT: All right. Okay.

14 MR. BERMAN: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Berman.

16 And, Ms. Jones, you also have a motion for --
17 or an application for a lead and liaison counsel.

18 MS. C. JONES: Yes, Your Honor. My name is
19 Christy Jones. I'm with the Butler, Snow law firm from
20 Jackson, Mississippi.

21 We have had the privilege for some time of
22 representing Johnson and Johnson and McNeil in the
23 Tylenol litigation for at least as far back as Mr.
24 Berman has referenced this morning and have tried at
25 least one case in the past.

1 With me today are my partners, Alyson Jones
2 and Michael Hewes who have been intimately involved, and
3 I confess to Your Honor, more involved in the
4 negotiation of the actual details of the various orders
5 and so forth than I.

6 We have also proposed the appointment of David
7 Abernethy who is with the Drinker Biddle firm here in
8 Philadelphia as the liaison counsel to work primarily
9 with Alyson Jones on a -- from a day-to-day
10 administrative procedural matters to make sure that
11 there's someone here locally and to make sure that
12 things can be moving along.

13 Unfortunately, Mr. Abernethy is in this -- in
14 another courtroom in this building before Judge DuBois
15 this morning and could not be here. His partner,
16 Meredith Reinhardt, is with us.

17 As Your Honor is well aware, Novartis and
18 Perrigo were also defendants in this MDL but fortunately
19 for them and perhaps unfortunately for us, having very
20 few cases here, and therefore we have taken the lead on
21 this, but I'll allow -- with the Court's permission,
22 them to speak for themselves.

23 THE COURT: Okay.

24 MS. C. JONES: Happy to provide any additional
25 information that Your Honor would request or need,

1 but --

2 THE COURT: Well, thank you. I've been
3 through the papers that you filed and I think they're
4 very complete.

5 MS. C. JONES: Thank you.

6 THE COURT: Okay. Do you have a proposed
7 order for the appointment of lead and liaison?

8 MS. C. JONES: I apologize, Your Honor. We
9 ended up here without one. I told Molly -- Ms. Campbell
10 already this morning that we will have it to her
11 tomorrow, if that's acceptable.

12 THE COURT: Okay. That's fine, that's fine.
13 Well, I reviewed the papers and I thank you for your
14 presentations this morning, and I'm happy to sign the
15 order appointing the proposed plaintiffs' Steering
16 Committee and leadership positions as outlined in the
17 application and in the proposed order.

18 And the proposed order also contains a
19 statement of the duties and responsibilities of liaison
20 counsel and the Steering Committee which I take it is
21 somewhat standard.

22 MR. BERMAN: Yes, Your Honor. And our firm
23 being in Philadelphia, the Levin Fishbein firm, feels we
24 are in the best position to act as the liaison --

25 THE COURT: Right.

1 MR. BERMAN: -- and take on that role.

2 THE COURT: I think that makes sense.

3 MR. BERMAN: Thank you, Your Honor.

4 THE COURT: And I think it's important to have
5 that liaison with the State Court litigation as well, so
6 we'll appoint --

7 MR. BERMAN: Mr. Buchanan is being nominated,
8 yes.

9 THE COURT: -- Mr. Buchanan from the Seeger
10 Weiss firm.

11 MR. BERMAN: Yes. Thank you, Your Honor.

12 THE COURT: Okay. And I will certainly
13 appoint Ms. Jones and Butler Snow in their application
14 for lead and liaison counsel, and if you can submit to
15 me a proposed order, we'll get that signed tomorrow.

16 MS. C. JONES: I will, Your Honor. And
17 perhaps I wasn't clear. Our proposal is a little bit
18 different for both lead and liaison.

19 THE COURT: Yes.

20 MR. C. JONES: Mr. Abernethy would actually --

21 THE COURT: Right.

22 MS. C. JONES: -- be the local lawyer here --

23 THE COURT: He would be the liaison counsel,
24 right.

25 MR. C. JONES: Yes, Your Honor.

1 THE COURT: Okay. Moving to agenda item
2 three, the plaintiffs' proposed case management order
3 sent to McNeil. The case management orders one, two and
4 I believe three are already of record in this litigation
5 here in the Eastern District and should be posted on the
6 website. So we're really talking about case management
7 orders which would relate to a plaintiff fact sheet, an
8 order relating to privilege, an order relating to direct
9 filing and to master pleadings in a complaint.

10 So could counsel just address that item at
11 this point? What's your plan for these next several
12 case management orders?

13 MR. BERMAN: Yes, if I may, Your Honor, again
14 Laurence Berman.

15 As you have perceived, Your Honor, on the
16 plaintiff side, we have been attempting to move this
17 case along quickly even prior to this initial case
18 management conference, and that resulted in the entry of
19 the CMO one, two and three that you mentioned.

20 We then moved on to seeking CMOs by agreement
21 with defendants relating to items such as the plaintiff
22 fact sheet, privilege, a direct filing complaint
23 mechanism and then the utilization of a master complaint
24 with a short form complaint.

25 We brought all four of those issues fairly

1 forward until we've reached the point where the
2 defendants had some concerns, and I'll let them
3 elaborate on this, but they had some concerns as a
4 matter of procedure about agreeing to case management
5 orders with our group where we had not been authorized
6 as the Steering Committee to speak for the litigants in
7 the case. So that sort of caused an abrupt stoppage of
8 our ability to bring closure to these issues.

9 Some of these issues may have one or two
10 tweaks that are necessary and we may be able to
11 consummate that quickly now that we have appointments of
12 the leadership. Some we are maybe a little further
13 apart in the issues which we will dig into and attempt
14 to resolve. If we're not able to, we would like to
15 follow the Court's suggested procedure for a short
16 letter brief describing the areas of controversy and see
17 if there might be an ability to hammer out the details
18 that are in dispute.

19 With respect to a plaintiff fact sheet, that
20 is somewhat familiarly used in MDL litigation. It
21 provides the defendants with agreed-upon basic
22 information about the plaintiffs in the case in lieu of
23 serving interrogatories and requests for production of
24 documents. Because it's an agreed-upon document, it
25 will avoid objections to interrogatories or responses in

1 interrogatories that might not provide the kind of
2 information that is typically desired.

3 So in other words, with the agreement of the
4 form of the plaintiff fact sheet, there are -- there is
5 very specific information that is provided that the
6 parties agree is typically essential for the evaluation
7 of a case like this. And it's undisputed -- there will
8 be no objections. It'll be turned over along with the
9 authorizations to obtain the medical records. And it
10 works fairly well.

11 I've been involved in using it for many years
12 in other complex litigation, and I think it's just a
13 matter of the details of whether there are a few items
14 that are being requested in the document that the
15 parties might have a dispute as to whether it's really
16 relevant or appropriate or whether it should be an
17 omnibus production of information or whether it might be
18 limited. And I allude to certain psychological issues
19 in these cases where -- that had been sort of a
20 stumbling block prior to the stay that was enacted.

21 With respect to privilege, similarly, we have
22 brought that proposed CMO quite along. There were
23 perhaps two points still to be negotiated. Leonard
24 Davis from the New Orleans firm of Herman, Herman and
25 Katz, who is now appointed to the Steering Committee,

1 had been spearheading that effort along with, I believe,
2 Alyson Jones and others on the defense side.

3 And I think Mr. Davis is ready to take up
4 where he left off with the lifting of the stay, and if
5 that cannot be resolved, again we would like to be able
6 to resort to the Court's -- to the Court for a letter
7 brief of some sort to see if we can't narrow that issue
8 down for the Court.

9 Similarly, the direct filing, the order with
10 respect to that was whether to permit plaintiffs from
11 out of state to direct file in the Eastern District of
12 Pennsylvania and how that might react or reflect on
13 Lexicon and venue issues with respect to where a case
14 might be tried once the pretrial proceedings are
15 concluded on a case. I'm sure Your Honor's familiar
16 with the Lexicon Rule, and if a case had been initiated
17 in a foreign Federal Court and transferred here as a
18 tag-along, then typically at the conclusion of the
19 proceedings for that case, it would be remanded --

20 THE COURT: Right.

21 MR. BERMAN: -- to the transferor Court unless
22 there was some other agreement.

23 We don't necessarily want to lose that, but to
24 expedite moving cases along and not have them delayed
25 going through the panel, a direct filing option becomes

1 available whereby cases can be here quickly, filing fees
2 are here, the initial docket is set up here, but we
3 don't necessarily want to waive any of the Lexicon
4 rights.

5 THE COURT: Right. So at some point we would
6 determine, if necessary at a later conference, where
7 these cases should be tried.

8 MR. BERMAN: Yes, Your Honor.

9 THE COURT: Right. Okay.

10 MR. BERMAN: Yes.

11 THE COURT: It seems to make sense.

12 MR. BERMAN: And then finally on this list was
13 a CMO for a master complaint and a short form complaint
14 with a proposed master answer. As we discussed in
15 various paperwork submitted to the Court, these are
16 essentially product liability pharmaceutical cases, and
17 depending on the laws -- the laws of the various states,
18 you have negligence, strict liability, warranty,
19 consumer protection type claims.

20 THE COURT: Right.

21 MR. BERMAN: Use of the master complaint would
22 include all such types of counts in a long form
23 complaint, and then depending upon the plaintiffs'
24 rights to assert various claims, they would have a
25 check-off that would demonstrate which of those counts

1 or claims or theories would apply to the case.

2 The master answer would generally be an answer
3 to the master complaint if the defendants are so
4 agreeable.

5 Finally, not in our paper but something that
6 we have been working on is a preservation order for the
7 preservation of documents, and, obviously, a required
8 litigation hold that we assume is in place. We haven't
9 brought that quite as far forward yet but it is an
10 additional order that we would like to continue to work
11 on and bring to Your Honor's attention about as quickly
12 as possible.

13 THE COURT: All right. Thank you.

14 MR. BERMAN: I believe that's a rundown of the
15 proposed orders that we have been working on, Your
16 Honor.

17 THE COURT: Okay. Ms. Jones.

18 MR. C. JONES: Yes, Your Honor. First if I
19 might, you mentioned the case management orders that
20 have already been entered, and with the Court's
21 permission, I believe, CMO two and three, although I may
22 be mistaken on that number, I think that those were
23 entered in with the captions from the originally filed
24 cases.

25 And with the Court's permission, I would like

1 to submit a simple substitute order that bears the MDL
2 caption rather than the caption that was actually
3 entered with the plaintiffs' caption, so that, frankly,
4 I'm thinking downstream years from now probably if these
5 cases are ever transferred out to some other venue, that
6 we clearly have an order that bears the MDL caption on
7 it, if that's acceptable to Your Honor.

8 THE COURT: I think that's fine.

9 MR. BERMAN: Yes. Plaintiffs agree with that,
10 Your Honor, and I alluded to that in our -- in the joint
11 agenda in Section 3A on page two stating that the CMOs
12 have been entered in the first 21 cases utilizing those
13 captions.

14 We were not sure whether with the creation of
15 the MDL, whether it transferred over to an MDL caption,
16 but we do agree that the CMO should apply across the
17 board to all cases in the MDL, and if it requires
18 substitution of the MDL caption to make that occur, we
19 could revise the caption of the order at Your Honor's
20 request.

21 THE COURT: Okay. In looking --

22 MR. C. JONES: Your Honor, the first order was
23 dated -- it's case management order number two. It's
24 filed February the 28th.

25 THE COURT: Right. That looks like it's at

1 the individual 2012/2013 docket numbers.

2 MS. C. JONES: Exactly.

3 THE COURT: Right.

4 MS. C. JONES: And I think all we want to do
5 is just to -- if we can submit an agreed substitute
6 order, CMO, that bears the MDL caption, I think we'll
7 all be happy with that --

8 THE COURT: That makes sense.

9 MS. C. JONES: -- if that's acceptable to Your
10 Honor.

11 THE COURT: That's fine.

12 MR. BERMAN: Yes. I believe it's a
13 housekeeping matter, Your Honor, and not knowing how the
14 docket is reflecting the entry of the order, it's a
15 matter of clarifying that.

16 THE COURT: Sure. I think that's fine.

17 MR. BERMAN: Thank you.

18 THE COURT: I think that's fine.

19 MS. C. JONES: Okay. With -- if I can go back
20 then and address the points that Mr. Berman raised. It
21 is correct that they sent certain documents to us and
22 because we were concerned about who was actually going
23 to be appointed the leadership with the authority to
24 negotiate, we suggested that we thought that it would be
25 better to wait until the Court had actually entered the

1 order.

2 With that, I think that we will be able to
3 resolve the vast majority of the issues that are
4 outstanding, and, in fact, I think there are very few
5 issues that are outstanding with respect to the
6 plaintiff fact sheet, the privilege log, the direct
7 filing order and the master complaint. There are some
8 individual issues, one of those that relates to the
9 plaintiff fact sheets that we have not resolved yet is
10 that we have asked for psychiatric records. The reason
11 for that, Your Honor, is that while in other litigation
12 those very often contain highly confidential and
13 privileged material that are unrelated to the facts of
14 the litigation.

15 In this litigation, particularly we know and
16 it's -- it's replete in the literature that there are a
17 certain number of death cases or overdose cases that are
18 actually attempted suicide cases and so those records
19 do, in fact, become relevant in these cases. We're
20 going to try and work that out with the plaintiffs and
21 see if we can resolve that, but that is the one
22 principal issue that is still outstanding there.

23 The second -- I think the privilege log is
24 simply in -- it's in negotiation, and hopefully that
25 won't have any issues.

1 As to the direct filing order that Mr. Berman
2 issued, there are some what I might call wordsmithing
3 related to the proposed order. There are relatively
4 complicated venue and Lexicon issues that Mr. Berman
5 raised, and while I think we'll be able to work those
6 out, I think both parties want to make sure that we're
7 clear on exactly what the order actually does say.

8 And then the master pleadings and complaint,
9 we've been furnished a copy of that, and while I
10 generally would like sometimes to object to the contents
11 of the complaint, in most cases, the plaintiffs get to
12 at least allege early on what they want to allege --

13 THE COURT: Right.

14 MS. C. JONES: -- and then we'll deal with
15 that. So I am confident that the vast majority of those
16 issues will be resolved, and what I would suggest, Your
17 Honor, is perhaps that we -- if we want to set a date,
18 30 days from now, whatever, to submit the orders or
19 any --

20 THE COURT: Right. That --

21 MS. C. JONES: -- remaining disputes to Your
22 Honor, we'll do so.

23 THE COURT: -- that was my next question. How
24 long will it take you, for example, to put together the
25 plaintiff fact sheet and these other proposed CMOs?

1 MR. BERMAN: As I had said, Your Honor, they
2 were pretty far along other than negotiating the final
3 tweaks, and if the final tweaks are not able to be
4 resolved, to present it to Your Honor. So I think 30
5 days would be adequate time whereby we'll either know
6 that we have agreements or we have very limited issues
7 that need to be presented to Your Honor.

8 THE COURT: Okay. I'm contemplating a follow-
9 up conference in -- toward the end of June. So could we
10 have it for then? I mean, we talked about having a
11 monthly conference.

12 MS. C. JONES: I would think so, yes, Your
13 Honor.

14 THE COURT: And I think actually we were
15 hoping to do it June 24th which is a Monday at 11:00
16 here in the courtroom. So could we shoot for June 24th
17 to have all these things ready?

18 MS. C. JONES: I think we can, Your Honor. My
19 question is, would Your Honor wish us to actually have
20 submitted those to Your Honor in advance of the 24th? I
21 would assume you would like to have seen them.

22 THE COURT: I would hope so, yes.

23 MS. C. JONES: And the question is at what
24 point would Your Honor like to see those? I mean, I
25 suspect there's not going to be any particular need for

1 rebuttals back and forth. Each one of us will have our
2 position, and I just -- it really -- to have an agreed
3 order or our positions, and I was hoping that perhaps
4 maybe a week beforehand we could --

5 THE COURT: I think that works. Yes.

6 MS. C. JONES: -- submit it to Your Honor,
7 would that --

8 MR. BERMAN: I think we can work with that,
9 Your Honor.

10 THE COURT: Okay.

11 MR. BERMAN: As I said, we're far along, we
12 either know we have an agreement or we don't, and we
13 should know that within two or three weeks.

14 THE COURT: How about the Wednesday before the
15 conference?

16 MS. C. JONES: That -- I mean, that's fine.

17 THE COURT: That gives me Thursday, Friday and
18 the weekend to go over it. Okay.

19 MS. C. JONES: That would be fine, Your Honor.

20 MR. BERMAN: So that will be about June --
21 about June 19th, I think, Your Honor?

22 THE COURT: I think that's right.

23 MR. WEINKOWITZ: And, Your Honor -- Mike
24 Weinkowitz -- as we get things done, we'll just, if it's
25 okay with the Court, we'll just submit them on a rolling

1 basis?

2 THE COURT: Absolutely. Yes, absolutely.

3 MR. WEINKOWITZ: Okay.

4 THE COURT: Okay. Happy to have things early,
5 no problem.

6 MS. C. JONES: And I think, Your Honor, the
7 only other issue that -- other than those that Mr.
8 Berman raised, and as he said, he's not raised with us
9 the issue of the preservation order, so I'm not sure
10 what they have in mind.

11 As Your Honor knows, we set out in both these
12 papers and our position statement, a form of Tylenol
13 litigation has been in existence for 20 years. It's a
14 very unusual MDL proceeding involving injuries that have
15 been known for a while and litigation that's been around
16 for a while. And we've tried to set forth for Your
17 Honor the fact that we have actually produced all of the
18 documents that we have up through 2006. We have
19 everything that's still in existence, most of which have
20 been subject to litigation holds that date back in some
21 cases as long as 20 years.

22 Obviously, there may be some holds in some of
23 that, but if they're holds, they're holds simply because
24 there are holds to the best of my knowledge, not because
25 there's been anything that's been retained. So I'd say

1 that simply to say that I'm not sure that there's a need
2 for a preservation order separate to this. We clearly
3 had litigation holds in place. We have produced
4 everything without withholding for privilege or review
5 documents that were in existence before 2006.

6 So we're certainly happy to entertain whatever
7 the plaintiffs want to submit on that, but I'm not sure
8 that that's actually necessary, as I've stated, things
9 as they are.

10 THE COURT: Okay. All right. Can you discuss
11 that and let me know if we have to make a decision about
12 litigation holds that -- on information that has not
13 already been subject to a hold I take it?

14 MS. C. JONES: Well, let me make myself clear.
15 There are litigation holds in place, there's no question
16 about that.

17 THE COURT: Okay.

18 MS. C. JONES: It's just that I'm not sure
19 what additional order they're suggesting and I'm
20 certainly happy to consider any additional order, but I
21 want the Court to understand that at least as of a
22 certain point, we have produced absolutely to our
23 knowledge every document that we have without regard to
24 privilege or other matters.

25 MR. BERMAN: If I may, Your Honor --

1 THE COURT: Yes.

2 MR. BERMAN: -- it is true that defendants
3 have not yet seen the proposed preservation order, so
4 this conversation may be a little bit premature. It is
5 something we were -- are working on. When they see that
6 document, they may say we've already complied with
7 everything that's in here, we have no objection to its
8 entry. They may say something else, but it is a little
9 premature at this moment to be talking about it.

10 Mr. Milling has knowledge, maybe more so than
11 myself, about the status of discovery and litigation
12 holds because of his involvement before -- even
13 preceding the 2010 litigation. But I don't think it
14 would be fruitful to discuss that at this point now.

15 THE COURT: Okay.

16 MR. BERMAN: I think it would be better for us
17 to send our papers and then see where we go.

18 THE COURT: All right. See where you are when
19 you've exchanged those --

20 MS. C. JONES: That's fine.

21 THE COURT: -- and then if we have a dispute,
22 we'll deal with it. Okay. Thank you.

23 MR. BERMAN: Thank you, Your Honor.

24 MS. C. JONES: Thank you, Your Honor.

25 THE COURT: Item four on the agenda is the

1 identification of current State Court Tylenol liver
2 damage cases, for example, California and New Jersey,
3 and opportunities for coordination between State and MDL
4 actions.

5 I know there are cases pending before Judge
6 Higbee in New Jersey. I take it that's what you're
7 talking about.

8 MS. C. JONES: Right, Your Honor. I mean, I
9 think that what we've done is we've actually submitted
10 for Your Honor attached to that a listing of all of the
11 cases that remain --

12 THE COURT: Yes.

13 MS. C. JONES: -- that remains current --

14 THE COURT: Yes.

15 MS. C. JONES: -- as of today. That means we
16 have 80 MDL cases, two Philadelphia State Court cases,
17 four California cases, 15 New Jersey cases and one Texas
18 case.

19 MR. BERMAN: Your Honor, we attached to the
20 joint agenda as Exhibit A I believe this listing of
21 cases. I have another copy which is not updated from
22 May 15, but it's a nice color if yours is not in color
23 and it makes it easier for you to differentiate --

24 THE COURT: All right. Mine is in color,
25 that's right.

1 MR. BERMAN: Yours is in color, too. I will
2 give Ms. Jones then a color copy.

3 MS. C. JONES: Thank you.

4 THE COURT: Well, what do we need to do in
5 terms of coordination with these State Court cases?

6 MR. BERMAN: Well, if I may, Your Honor, the
7 bulk of the State Court cases at this moment are in New
8 Jersey, and let me back off -- back up a little bit and
9 speak a moment about the Pennsylvania cases.

10 It's represented in the joint agenda and we
11 believe this will continue to occur, that any cases that
12 are filed in Philadelphia County, if they do present
13 diversity of citizenship, the cases will be removed to
14 this Court and become part of the MDL. That has been
15 the practice so far and that is what has created the
16 roughly 80 cases pending here.

17 There is one case in Philadelphia County where
18 there is not diversity of citizenship. It was brought
19 by a New Jersey plaintiff and with a New Jersey
20 defendant, that case is not removable. There is a
21 discovery schedule that was entered that contemplates a
22 trial, if I'm correct, maybe in October, 2014, under the
23 typical two-year program that the Court of Common Pleas
24 utilizes for trial dates. There has been some recent
25 discovery -- written discovery in that case, but not

1 much more has occurred.

2 We've had some discussions about possibly that
3 case being dismissed without prejudice and refiled
4 elsewhere, but those discussions have not yet culminated
5 in any agreement. So my expectation is, is there will
6 be not much to coordinate with Philadelphia. That one
7 case is brought by the same group of plaintiff
8 attorneys, so to the extent that there's generic
9 discovery taken here, experts, et cetera, that can be
10 coordinated subject to the varying evidentiary and Rules
11 of Procedure for State law as compared to the Federal --
12 the Federal Court.

13 In New Jersey, there are approximately 15
14 cases. The present status is that they are all pending
15 in front of Judge Carol Higbee in Atlantic County.

16 Recently the defendants filed two motions. One
17 particular case, the case brought by a plaintiff, Ms.
18 Lynch, which was brought more recently -- I believe it's
19 a 2012 or 2013 case, and the date of filing would be
20 identified on the chart, a motion was filed to transfer
21 that case to Middlesex County in New Jersey on the basis
22 of venue. The response date for the plaintiffs is May
23 23. So that has not been decided yet.

24 There was also a recent motion filed by the
25 defendants for centralization management of the cases in

1 New Jersey with a suggestion that the cases be
2 transferred to Middlesex County as well. The plaintiff
3 response to that is scheduled for June 10. So that's
4 the status, the procedural status of the New Jersey
5 cases. Judge Higbee is still managing the cases subject
6 to any orders that might be entered on those -- on those
7 motions.

8 Discovery has been served and exchanged in New
9 Jersey. The six million documents that we speak about
10 was produced there. We have discussed in our -- in our
11 papers the idea of accepting New Jersey discovery but
12 subject to a non-waiver of rights we may still have to
13 the extent the scope of discovery is different,
14 entitlements to discovery is different.

15 And for one example, the New Jersey cases
16 involve, more or less, a single ingredient Tylenol
17 product meaning it was Extra Strength Tylenol or Regular
18 Strength Tylenol and not a composite product such as
19 Tylenol Cold or Tylenol Sinus or whatever. In the MDL,
20 there are cases that involve the composite products of a
21 multi-ingredient product.

22 So there may be cases that end up being filed
23 like that in New Jersey, but we have to obviously
24 preserve our rights in the MDL, representing potentially
25 hundreds of plaintiffs who may claim injuries based on

1 ingestion of a composite product instead. But we still
2 think there's room for the coordination, possibly cross-
3 noticing of depositions, et cetera, in the New Jersey
4 litigation.

5 The California cases, as a quick synopsis, my
6 understanding it was filed in State Court in California.
7 It was removed to Federal Court. It was suggested to be
8 a potential tag-along to the MDL, however, the
9 plaintiffs in that litigation were successful in
10 litigating a remand motion, and the case was transferred
11 back to State Court in California. I believe there's
12 only four cases at this point, so they have not created
13 a mass tort type program in California.

14 California does have what's called a JCCP
15 Program, which is a mass tort style program, but I'm not
16 sure if they have enough weight of cases yet in order to
17 qualify for that type of treatment. We've reached out
18 to the California counsel. They have said to us that
19 they'd be willing to cooperate and would like to benefit
20 by the discovery here, but, again, that's a coordination
21 with counsel alone and not a formal coordination through
22 a mass tort program that's been established there.

23 And then lastly there is a Texas case of which
24 we are not all that familiar with and have not had
25 contact that I'm aware of --

1 MR. MILLING: We'll be reaching out --

2 MR. BERMAN: -- but we will reach out to them,
3 similar to what we did with respect to the California
4 litigation.

5 THE COURT: What's the -- where are we in the
6 time frame in New Jersey? I mean, is that case
7 approaching trial? Is it still in discovery?

8 MR. BERMAN: Well, I can probably answer that,
9 but not as exquisitely as Mr. Milling can --

10 THE COURT: Okay. Good morning, Mr. Milling.

11 MR. BERMAN: -- so I will defer to Mr.
12 Milling.

13 MR. MILLING: Good morning, Your Honor. And I
14 don't think -- exquisite's kind of a high bar.

15 We were -- the first case was filed in 2010.
16 Discovery was ongoing, and our initial -- Judge Higbee
17 had selected four cases in sort of a -- somewhat of a
18 bellwether process to move forward with the trial. It
19 was supposed to take place this May. We ran into some
20 technicalities with the documents and that's been pushed
21 back. We currently do not have a trial date.

22 But the big picture, I think, and I may be
23 right and I may be wrong, is that -- is that there's the
24 reproduction that's referenced in the papers as ongoing.
25 In fact, Your Honor, I just received in my office the

1 third batch of documents yesterday. I'm not sure, Ms.
2 Jones, how many are -- I can't remember how many there
3 are.

4 And just to be clear, and it may be too much
5 detail, but these documents that are being referenced,
6 I've actually been to the Port Washington facility, the
7 documents that we're talking about generally are what
8 are -- what we have been calling in this litigation the
9 pre-2006 documents, and they're all housed in boxes in
10 Fort Washington. And it's my understanding and I may be
11 wrong, that those boxes represent either exclusively or
12 primarily single ingredient Tylenol documents that have
13 been retained. And I'm not sure -- I'm not 100 percent
14 sure of that, but that's my understanding having done it
15 this far.

16 I believe that we could -- what our plan would
17 be was -- would be in terms -- coming back to
18 coordination is, we will accept those documents, but
19 there are, I think as we said in the papers here, they
20 are identifiable, which we believe, gaps. I think Ms.
21 Jones, then we're working through adverse event forms
22 that have been submitted to the FDA, the backup
23 documentation to that, to see what investigation was
24 done by the company in terms of determining the cause of
25 the adverse event.

1 We believe that there will be -- that there
2 should be -- we think -- Johnson and Johnson documents
3 as the parent corporation which sells Acetaminophen
4 called Paracetamol all over the world, and we don't
5 believe we've received those documents. And as we look
6 at our vendor and talk to our vendor about the documents
7 that have been imported as we get closer and closer to
8 the dose reduction which just happened, we have a very
9 strong downward trend in documents.

10 So there's small gaps, but I think -- I think
11 if we step back and put them into buckets, we're going
12 to be able to identify what we need, and then we could
13 begin to agree on it or come to Your Honor and see
14 whether Your Honor believes they're relevant or not.

15 MS. C. JONES: Your Honor -- oh, I'm sorry --

16 THE COURT: Go ahead, Ms. Jones. Yes, go
17 ahead.

18 MS. C. JONES: -- I want to get back. Your
19 original question I think was -- was the extent to which
20 we need to get coordination with the State Court.

21 And from my standpoint, from our standpoint,
22 the defense standpoint, what we are most concerned about
23 and what frankly we may need to reach out to Your Honor
24 for some assistance with, is that we do whatever we do
25 one time. So that the documents that we have already

1 produced in New Jersey, for example, the plaintiffs have
2 agreed to accept those as we go forward. If there are
3 depositions or additional depositions of company
4 witnesses, we do hope to cross-notice those. We would
5 hope to have the procedure in place so that those
6 depositions are taken one time for all purposes.

7 And I will just be candid with Your Honor,
8 that we have found in other litigations that sometimes
9 it's helpful for the MDL Court to reach out to some of
10 the State Court Judges and to ask for their cooperation.
11 I don't think that we are at that stage now. There have
12 been MDL Courts who have held joint, you know, science
13 day or other type of hearings with State Courts. I
14 think this is far too premature.

15 And, frankly, I think it's premature for us to
16 discuss Mr. Milling's suggestion that there are
17 documents out there that haven't been produced until we
18 actually know what the products were that the plaintiffs
19 took in this litigation that will, to some extent,
20 define the scope of discovery.

21 But I think going back, the main question is,
22 as we move forward and get past the document production
23 issue, we may be asking Your Honor to help us coordinate
24 some with the State Court so that if, in fact, there are
25 depositions held, whether they be experts or companies

1 or whatever, we can do them one time for all purposes in
2 order for judicial efficiency.

3 THE COURT: Are you defending in all of these
4 other cases?

5 MS. C. JONES: I am.

6 THE COURT: Okay. All right. So you have
7 the --

8 MS. C. JONES: I used the, "I am." We are.

9 THE COURT: Right, right. Okay. So you have
10 the New Jersey cases, the Texas cases --

11 MS. C. JONES: That's correct.

12 THE COURT: -- the California cases and --

13 MS. C. JONES: That's correct.

14 THE COURT: -- yes, okay. Okay. Well, that's
15 a help. Right, that's a big help.

16 MR. BERMAN: Your Honor, if I may --

17 THE COURT: Yes.

18 MR. BERMAN: -- again just to reiterate, we
19 are willing to cooperate towards the coordination. It's
20 simply a matter of whether there might be little
21 variances in the rules --

22 THE COURT: Right.

23 MR. BERMAN: -- of the various jurisdictions,
24 and we have to preserve those rights which may require
25 segmenting parts of depositions or something of that

1 sort. Similar with the document production, to the
2 extent that the MDL may be broader, we want to make sure
3 that the MDL document production is complete for MDL
4 purposes.

5 THE COURT: Okay.

6 MR. BERMAN: But we certainly are willing to
7 coordinate and make an effort, and with our collective
8 firms' roles in the New Jersey litigation right now, I
9 think we'll be in a position to coordinate.

10 THE COURT: When you talk about the
11 reproduction of documents, are you talking about
12 producing documents in this case that were already
13 produced in the New Jersey case, or where does that come
14 from?

15 MS. C. JONES: No, Your Honor. We have gotten
16 to the point that we've used the term, so that it's
17 probably confusing to everybody. But if I can go
18 through, and I'm subject to being corrected, but the
19 documents that the plaintiff is talking about or
20 documents that were collected prior to 2006, they were
21 all kept in paper form just because we used to not have
22 anything but paper. They were housed in boxes. All of
23 those have been produced. At --

24 THE COURT: Are those the Fort Washington
25 documents?

1 MS. C. JONES: Yes, Your Honor. Those we were
2 then ordered to produce electronically, so they were
3 reproduced. And when we use the term reproduced
4 electronically, they were -- they were reproduced
5 electronically and then there were some complaints about
6 the quality of some of the scanning --

7 THE COURT: So what were they, scanned and
8 then reproduced? Okay.

9 MS. C. JONES: -- the scans and so forth. So
10 when we're talking about reproduction, thus far, we've
11 talked -- we're talking about reproduction of the same
12 documents that have already been produced, and I think
13 that it's -- that the plaintiffs are all in agreement
14 with us that those documents are going to be used in the
15 MDL litigation without the necessity of a "reproduction"
16 if you will of those documents simply for MDL purposes.
17 Does that -- does that make sense?

18 MR. MILLING: It does, although I think
19 subject to one minor overuse of the word reproduction.

20 What happened, Your Honor, is at the beginning
21 of this litigation, the documents were produced by the
22 defendants to the plaintiff in electronic format, and a
23 dispute arose regarding our ability to search and
24 organize the documents and whether or not the documents
25 were produced in a fashion that allowed us to, for

1 example, see one document followed by the next document
2 in somebody's file, for example. And that dispute
3 resulted in an order that was entered by the State Judge
4 in December or January to reproduce the electronic
5 documents, and that is ongoing right now --

6 THE COURT: Okay.

7 MR. MILLING: -- with some again getting a
8 little bit -- some subsets of those documents being held
9 back such as adverse events until we work through those
10 issues.

11 THE COURT: Okay.

12 (Pause in proceedings.)

13 THE COURT: All right. I think that sums up
14 the coordination between the State and the MDL action.

15 What about the status of discovery in these
16 pending matters, which I guess we've already touched on
17 somewhat, but that's item five on the proposed agenda.

18 MR. BERMAN: Your Honor, I would suggest that
19 some of the discussion we've had would be redundant to
20 the topic under number five in that we have discussed
21 the notion of using a plaintiff fact sheet for plaintiff
22 discovery. We've discussed in terms of coordination the
23 document production. So other than maybe elaborating a
24 little bit on what's contained in this section, I'm not
25 sure if there's too much more for us to say.

1 THE COURT: Okay.

2 MR. BERMAN: The initial 21 cases did have
3 initial disclosures made pursuant to Rule 26. There
4 were initial disclosures by the defendants. Again, all
5 this proceeded the establishment of this MDL.
6 Interrogatories were served, but we're now working on
7 substituting the fact sheet for that in terms of the
8 case specific discovery.

9 THE COURT: All right. Ms. Jones.

10 MS. C. JONES: One thing that we have not
11 spoken about -- I do intend to address with Mr. Berman
12 -- he mentioned the initial disclosures. We would like
13 to be relieved of the obligation to file initial
14 disclosures going forward and would suggest that that's
15 unnecessary in this MDL. We'll work through that with
16 Mr. Berman, or if not that, to file a single joint
17 disclosure. But we will work through that with him in
18 the context of talking about the master complaint and
19 master answer if that's acceptable with Your Honor.

20 THE COURT: That makes sense, for something
21 that's really been ongoing for a period of time.

22 MR. BERMAN: We're open to that, Your Honor.

23 THE COURT: Okay. There's a mention in the --
24 in your papers about the production of 122 transcripts,
25 106 depositions and 16 trial transcripts as well as 62

1 sets of exhibits over the past 20 years. I mean,
2 what --

3 MS. C. JONES: Yes, Your Honor. Those are --
4 those are, as I mentioned early on, we're in kind of a
5 unique situation in that, you know, Tylenol has been
6 around for 50 years. There's been litigation cases
7 pending, one off cases here and later over the last 20
8 or 25 years, and various depositions have been taken in
9 that litigation over a period of time. Those
10 depositions have been produced and the exhibits to those
11 depositions, to the extent that we could identify the
12 exhibits that were there with those transcripts, that's
13 the transcripts that those refer to.

14 Now, there have also been a handful of
15 depositions that have actually been taken in the
16 depositions -- excuse me -- in the litigation in New
17 Jersey thus far. But the vast majority of those
18 transcripts that we're talking about, some of them go
19 back as far as probably 20 years.

20 THE COURT: Okay. All right. Well, I think
21 we'll just accept the discussion that we've had on item
22 four as pertinent to item five as well, and perhaps when
23 we get together in a month, there will be more to talk
24 about in terms of the current discovery plan and the
25 status of discovery.

1 The stay, I mean, that's item six. I think
2 it's appropriate to lift the stay, right?

3 MR. BERMAN: I think all parties agree, Your
4 Honor. Thank you.

5 THE COURT: Okay. Okay. And you can move
6 forward with any responsive pleadings or these master
7 pleadings.

8 MS. C. JONES: Your Honor, may I object? I
9 want to make sure that I understood your suggestion. In
10 terms of -- did you -- did I understand you to say you
11 intended to lift the stay?

12 THE COURT: Well, I think that makes sense at
13 this point.

14 MS. C. JONES: But I guess my question is, and
15 it really relates to where we're going in terms of --
16 for example, the plaintiff fact sheets being substituted
17 for interrogatories. And it seems to me -- what I was
18 going to suggest to Your Honor is not that we leave the
19 stay in place forever and ever, but in fact that we
20 agree upon a scheduling order and a case management
21 order moving forward so that we do agree upon the
22 plaintiff fact sheet, for example, in lieu of them
23 having to answer interrogatories --

24 THE COURT: Right.

25 MS. C. JONES: -- and if, in fact, we are

1 required to answer interrogatories or requests for
2 admissions, that those be filed in the MDL as one
3 proceeding so we do it one time as opposed to in all the
4 individual cases.

5 THE COURT: Are there outstanding
6 interrogatories now?

7 MS. C. JONES: There are.

8 THE COURT: In these cases that have now
9 become the MDL or are they in the New Jersey cases?

10 MS. C. JONES: There are some outstanding
11 interrogatories and requests for admissions --

12 THE COURT: All right.

13 MS. C. JONES: -- going both ways. And what I
14 would suggest is perhaps that -- I know the plaintiffs
15 want the plaintiff fact sheets to be substituted for the
16 interrogatories to the plaintiffs, so that they wouldn't
17 have to respond to the individual interrogatories, and
18 in terms of any discovery to the defendants, we would
19 much prefer to be responding in the MDL one time as
20 opposed to in the individual cases. I think we can work
21 that out. I just want to bring that to Your Honor's
22 attention.

23 THE COURT: Right. I'm hopeful that you'll
24 get together and talk about a discovery plan --

25 MS. C. JONES: Exactly.

1 THE COURT: -- and I don't -- I don't know
2 that that should involve the insistence on answers to
3 discrete sets of interrogatories in certain suits. It
4 seems to me that's not productive.

5 MS. C. JONES: That was all I wanted to bring
6 to Your Honor's attention --

7 THE COURT: Right.

8 MS. C. JONES: -- is that we agree upon a
9 discovery plan and that it's unnecessary for either side
10 to respond to individual discoveries until we get that
11 worked out.

12 THE COURT: Okay. I think that's fine. I
13 think that's fine.

14 MS. C. JONES: Thank you, Your Honor.

15 MR. BERMAN: From the plaintiffs' perspective,
16 Your Honor, yes, I think development of a discovery plan
17 is the best approach, and maybe it's semantics when we
18 speak about lifting the stay, maybe not a generic
19 lifting of the stay as though there were no guidance for
20 a discovery plan being that this is an MDL and would
21 require certain different management techniques than
22 would be used in a single binary litigation.

23 THE COURT: I guess technically if there's a
24 stay, there's no real motivation for you to come up with
25 a plaintiff fact sheet. I mean, if we have a stay on

1 discovery, there's a stay on discovery, and I'd rather
2 see you proceed with that.

3 MS. C. JONES: No, absolutely, Your Honor. I
4 wasn't suggesting that. I mean, I certainly anticipate
5 that there will be discovery. I just did not want us or
6 the plaintiffs to be required to respond to discovery in
7 individually filed cases that have now been consolidated
8 before this Court.

9 THE COURT: Right. And I think in the next
10 month as we work through this joint discovery plan
11 toward the goal of the plaintiff fact sheets that we
12 should sort of just not answer those interrogatories.
13 Are we okay with that?

14 MR. BERMAN: Right. So that would be the
15 distinction then between the generic discovery and the
16 case specific discovery.

17 THE COURT: Yes, yes.

18 MR. BERMAN: Okay. That would be fine.

19 THE COURT: Could you comment on the plans
20 down the road for the bellwether trial pool and where
21 that -- how that affects scheduling and how that affects
22 discovery?

23 MR. BERMAN: Yes, Your Honor. I think if we,
24 as we've articulated in the joint agenda on the
25 plaintiffs' position, typically in a large MDL, and we

1 expect there will be many more cases to be filed here,
2 the parties will provide the plaintiff fact sheet for
3 the individual cases, so that there's some baseline
4 discovery information provided to the -- to the
5 defendants. From that baseline discovery information,
6 the parties can select certain cases as proposed
7 bellwether cases for further development for potential
8 trial.

9 It would be a matter of discussion as to
10 whether it would be two a side, three a side, four a
11 side or whatever the number might be, but then those few
12 cases would be fully discovered with the idea that they
13 would provide a cross-balance, cross-reference as to the
14 types of cases that are being presented in this
15 litigation, so that in the event those cases were to
16 try, it would provide some guidance as to how to assess
17 and evaluate other cases which would fall under the
18 umbrella of the character of the cases that were
19 selected as the bellwether cases.

20 Our proposal on the plaintiffs' side would be
21 that, while the plaintiffs would provide the fact sheet
22 and the medical records to facilitate the identification
23 of the appropriate cases for the bellwether process,
24 that once the cases that would proceed in the bellwether
25 process were selected, then it would be only those cases

1 that would go to the full-blown discovery of full
2 depositions, the number of depositions of fact witnesses
3 for a particular bellwether plaintiff, treating
4 physician depositions, experts, et cetera. All the
5 while moving along on a parallel track would be the
6 generic discovery which would include the development of
7 generic expert discovery that would have more of a
8 cross-reference to all cases in the MDL.

9 THE COURT: All right.

10 MS. C. JONES: I'm sorry.

11 THE COURT: Go ahead, Ms. Jones.

12 MS. C. JONES: Well, you know, each Court does
13 this a little bit differently depending upon the facts
14 of the individual litigation. Because this case is a
15 little bit different from other MDL cases, I think we're
16 going to at least suggest to the Court that there are
17 some differences, if you like, perceived, it would help
18 streamline this litigation I believe and help us
19 identify what the facts really are.

20 And I say that, because as we've already told
21 Your Honor, as Your Honor is well aware, Tylenol's been
22 a product that's been around for 50, 60 years, and the
23 knowledge of liver damage associated with an overdose
24 has been around for 40 years. So it's a very different
25 situation from what you generally see.

1 We believe that the identification -- the
2 completion of the plaintiffs' fact sheets and the
3 collection of the medical records is going to be crucial
4 to allow us to identify what the issues are, to allow us
5 to help identify whether or not there are different
6 pockets, if you will, of plaintiffs with different
7 issues, that will help us streamline the issues.

8 And what I think we're going to suggest,
9 although it may be frankly premature at this point, is
10 that there may be some preliminary motion hearings built
11 in that would result in the disposition of a fair number
12 of these claims if, for example, there are Statute of
13 Limitations issues there or there are others where the
14 warnings were adequate as a matter of law given the
15 timing of when they were taken.

16 We obviously can't identify what those issues
17 are now, but I think to take Mr. Berman's example,
18 probably what generally happens is you get the medical
19 records. The plaintiff -- the Court sets a scheduling
20 order, and we can perhaps in this discovery plan begin
21 to put this together. The scheduling order would
22 provide that once we obtain copies of the medical
23 records, we have so long to evaluate them, and then each
24 party would select a particular number of cases --

25 THE COURT: Can you do me a favor and get just

1 in front of the microphone.

2 MS. C. JONES: I'm sorry. I apologize.

3 THE COURT: You don't have to lean in, but --

4 MS. C. JONES: That's all right.

5 THE COURT: There you go.

6 MS. C. JONES: I'm sorry for walking around.

7 THE COURT: That's okay.

8 MS. C. JONES: I forget it's Federal Court.

9 There's a larger group of cases that's
10 initially selected that may be as many as 40 plaintiffs
11 from which some preliminary discovery is done. It may
12 be the plaintiff's deposition and the prescribing --
13 well, it wouldn't be a prescribing doctor's deposition
14 but perhaps the treating doctor's deposition and two or
15 three depositions.

16 And then after that, that period of time would
17 take six months or whatever it is, after that, then
18 there would be a further winnowing down into the trial
19 select cases where defendants might pick ten and the
20 plaintiffs might pick ten, and that group of cases would
21 be those that would have the true development of the
22 expert discovery and more extensive discovery from which
23 the Court would at some point establish a motion
24 deadline and select those cases set for trial.

25 And the only reason -- I know -- I think we're

1 talking about semantics, Mr. Berman and I are talking
2 about a lot of the same things, except that I anticipate
3 that there will be more steps in that process I think
4 than perhaps Mr. Berman suggested. What I suggest is
5 that as we try and work out our master discovery plan
6 that we try and look towards a scheduling order that
7 accomplishes some of that, looking at some of the other
8 things that have been identified, and maybe we'll be in
9 a better position to talk about that at the next case
10 management conference or two.

11 THE COURT: Okay. If we go with the
12 bellwether model, how long does it take for counsel to
13 come to some agreement typically as to what the
14 bellwether case list would be?

15 MS. C. JONES: To be -- oh --

16 MR. BERMAN: Well -- Ms. Jones.

17 MS. C. JONES: -- to be candid, I mean, we're
18 talking about to collect the medical records themselves,
19 you get the plaintiff fact sheet and then you get the
20 medical records, at a minimum -- at a minimum, we're
21 talking about six months to get the medical -- just to
22 get the medical records all in.

23 And then after that, you know, you have the
24 discovery. Depending upon the number of cases that you
25 are -- you agree upon to be discovered will determine,

1 frankly, how long that initial discovery period will
2 last. But I don't know of any MDL Court that -- in
3 which I've been involved, where the first trial took
4 place in less than about 18 months.

5 MR. BERMAN: I mean, I would essentially
6 agree, Your Honor, that with the development of a
7 discovery plan, we can try to project out the dates.
8 The fact sheet will be the initial document along with
9 the medical authorizations. Typically what will happen
10 then is, the defense will use the authorizations to
11 begin to track down the production of those medical
12 records.

13 The vendor services that provide medical
14 records sometimes can do so within 30 or 60 days,
15 sometimes it's longer. When you receive the medical
16 records, you may find that there's holes in the -- gaps
17 in the records that are produced. And this -- so this
18 collection process necessarily takes time, and it could
19 be expedited only so much.

20 Once that's done, I think we will have to get
21 together as to the appropriate number of cases that
22 might fit into a bellwether pool and whether certain
23 cases are similar, and we would consolidate them even
24 for trial because they present similar issues and it
25 might make sense, be efficient, to have two or three

1 plaintiffs or whatever tried at the same time utilizing
2 the generic evidence at the same time and the similarity
3 of their -- of their situations.

4 As I had said previously, I think our
5 discovery plan will have to address both the
6 individuality of the case specific discovery. All along
7 the generic discovery is still moving forward, because
8 without the foundation of the generic discovery, the
9 case specific discovery cannot proceed to a trial.

10 THE COURT: Right. Item seven on the agenda,
11 development of a proposed discovery plan, we've pretty
12 much touched on that. You'll get together in the next
13 month and we'll meet June 24th to talk about how far
14 you've gotten with that discovery plan.

15 And then we've touched on the bellwether trial
16 plan as well, and I think I have your position on that.

17 Is there anything else that you would like to
18 discuss on those item -- agenda items seven or eight
19 that we haven't touched on this morning?

20 MR. BERMAN: I don't believe so, Your Honor.
21 Thank you.

22 THE COURT: We're good?

23 MS. C. JONES: No, Your Honor.

24 THE COURT: Okay. And if we meet on June 24,
25 a Monday at 11:00 in the morning here in this courtroom,

1 does that suit everyone?

2 MS. C. JONES: It does us, Your Honor.

3 MR. BERMAN: Yes, Your Honor.

4 THE COURT: All right. Okay. The next item
5 on the agenda was a tolling agreement. We have a pretty
6 clear difference of opinion.

7 MR. BERMAN: I'm not sure if it presents an
8 issue for Your Honor at this time. We wanted to place
9 it in the agenda that the plaintiffs have been thinking
10 about that. Ms. Jones mentioned that some cases, they
11 may choose to raise a Statute of Limitations defense.
12 There are various Statute of Limitations that will
13 apply, depending on the resident citizenship of the
14 plaintiff, with some states like Florida having a four-
15 year Statute of Limitations, and there are discovery
16 rules.

17 We thought we -- we would like to engage in
18 discussions with the defendants about a possible tolling
19 agreement. We see their response in the agenda, but if
20 there's some progress along those lines, and if there's
21 an issue that we think Your Honor might be able to help
22 with --

23 THE COURT: Okay.

24 MR. BERMAN: -- we would like to reserve the
25 right to raise it again.

1 THE COURT: Why don't you explore that and we
2 can talk about where you are with that in a month. Ms.
3 Jones.

4 MS. C. JONES: We will be happy to explore it.
5 I will tell Your Honor that our -- the client's general
6 position is not to agree to a tolling agreement because,
7 I mean, frankly, the Court --

8 THE COURT: I wouldn't think so, right.

9 MS. C. JONES: -- I mean, the client needs to
10 know what the scope of the litigation is --

11 THE COURT: Right.

12 MS. C. JONES: -- and in the absence of that,
13 so while we are happy to discuss it, I don't want to
14 mislead the Court into thinking that we're likely to be
15 in agreement.

16 THE COURT: Okay. Thank you.

17 Item 12, expedited discovery procedure and
18 page limitations, we touched on that early on. If there
19 is a discovery dispute after a good faith effort to
20 resolve the dispute, the moving party will submit by
21 email a two-to-three-page letter brief describing the
22 dispute, the party's position and requesting a
23 conference call. I think that's -- that's just fine. I
24 mean, that's how I would prefer you to do it. And then
25 we'll get you on the phone, or if we're close to a

1 conference, we'll just put you on the agenda for the
2 conference.

3 MR. BERMAN: Just for a clarification if I
4 may, Your Honor --

5 THE COURT: Yes.

6 MR. BERMAN: -- would the papers be submitted
7 in chambers then and not filed on the docket, or what
8 would your preference be with respect to that?

9 THE COURT: Well, I don't think there's any
10 need to put it on the ECF docket. I would just send it
11 to chambers. If we need to go the full-blown motion,
12 response, briefing route, then we'll put it on the ECF,
13 and --

14 MR. BERMAN: That's fine.

15 MR. WEINKOWITZ: And, Your Honor, who's your
16 preference as to who the email should go to?

17 THE COURT: Well, that's -- I have a note
18 here. It should go to the chambers account which Pat
19 will give you that very long email address, and I'd like
20 a copy to the law clerk's email address and a copy to my
21 personal email address, okay. But it should go to
22 chambers so that the people who schedule things know
23 what's going on, and then it should go to the law clerk
24 so she can get right to the substance of it.

25 MR. WEINKOWITZ: Thank you, Your Honor.

1 MS. C. JONES: And, Your Honor, may I ask a
2 question about that?

3 THE COURT: Sure.

4 MS. C. JONES: We had suggested that Your
5 Honor's -- what we understood Your Honor's rules to be
6 would probably be satisfactory, and I'm not sure that I
7 understand whether you're suggesting that we adopt the
8 plaintiffs' position here which is somewhat -- not much
9 different but a little bit different from what I
10 understood the Court's rules to be --

11 THE COURT: It's a little different, right.
12 We don't specifically address email submissions in our
13 policies and procedures. I'm -- frankly, those were
14 written nine years ago and we use a lot more email now.
15 So I'm happy to get that submission by email to the
16 chambers account and then we'll print what we need to
17 print from that.

18 MS. C. JONES: Fine.

19 THE COURT: Okay. Is there anything else we
20 can discuss today at this initial case management
21 conference?

22 MR. BERMAN: Not from the plaintiffs' side,
23 Your Honor. We appreciate the opportunity to have been
24 before you today, though.

25 THE COURT: Okay. Ms. Jones?

1 MS. C. JONES: I don't think there's anything,
2 Your Honor. I'm looking around at my co-counsel and
3 none of them are suggesting that there's anything at
4 this stage. We do appreciate, Your Honor, I know we're
5 going to have to work through a number of different
6 things, and I think that -- with the plaintiffs'
7 counsel, and I'm sure that by the time we come back the
8 next time, we'll have some suggestions. But we
9 appreciate Your Honor's time.

10 THE COURT: I'm sure you will. And we'll get
11 a scheduling order out to you that puts this on the
12 docket then for -- or the calendar for June 24th. All
13 right. And thank you again for being here. I know a
14 number of you have traveled great distances to do that,
15 and your paper submissions have been very helpful and I
16 look forward to working with you in this case. Okay.
17 If there's no other business, we'll be adjourned. Thank
18 you very much. Okay.

19 MS. C. JONES: Thank you very much.

20 MR. BERMAN: Thank you, Your Honor.

21 (Proceedings concluded at 11:27 a.m.)

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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.

5/28/13
Date

Donna M. Anders
Donna M. Anders