

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Levaquin Products
Liability Litigation

File No. 08-md-1943
(JRT/AJB)

Minneapolis, Minnesota
October 1, 2012
2:22 P.M.

BEFORE THE **HONORABLE JOHN R. TUNHEIM**
UNITED STATES DISTRICT COURT JUDGE
(STATUS CONFERENCE)

APPEARANCES

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Via Telephone:

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KEVIN FITZGERALD, ESQ.
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TINA OLSON, ESQ.

For the Defendants:

JOHN WINTER, ESQ.
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2:22 P.M.

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(In open court.)

4

THE COURT: You may be seated. All right. Good afternoon, everyone.

6

All right. Let's get started here. It's Multi District Litigation Number 08-1943, In Re: Levaquin Products Liability Litigation. We're going to go through attorney appearances first in the courtroom and first for the plaintiffs' attorneys, please.

10

11

MR. GOLDSER: Good afternoon, Your Honor. Ron Goldser for plaintiffs.

12

13

MS. GENEVIEVE ZIMMERMAN: Good afternoon. Genevieve Zimmerman for plaintiffs.

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MR. KRIESER: Good afternoon, Your Honor. Peter Krieser, and I'm an attorney admitted to practice before this Court, but I'm also a plaintiff.

17

18

THE COURT: Very well.

19

MR. BINSTOCK: Susan Bieniek representing Peter Krieser.

20

21

MR. JOHNSON: Charles Johnson representing plaintiffs.

22

23

MS. HAUER: Stacy Hauer representing plaintiffs.

24

25

MS. JOHNSON: Good afternoon, Your Honor. Caia Johnson representing plaintiffs.

1 THE COURT: All right. Now, for the defendants
2 in the courtroom?

3 MS. VAN STEENBURGH: Good afternoon. Tracy
4 Van Steenburgh on behalf of the defense.

5 MR. WINTER: Good afternoon, Your Honor. John
6 Winter representing defendants.

7 THE COURT: Let's go to those on the phone now.
8 Go ahead.

9 MR. SAUL: Good afternoon, Your Honor. Lewis
10 Saul for the plaintiffs steering committee. We couldn't
11 hear what was being said in the courtroom. I don't know if
12 that will change as we move forward.

13 THE COURT: It will when we make sure people are
14 in front of microphones, Mr. Saul.

15 MR. SAUL: Thank you.

16 THE COURT: Sorry about that.

17 MR. FITZGERALD: Good afternoon, Your Honor.
18 Kevin Fitzgerald for the plaintiffs and PSC.

19 MR. RASMUSSEN: Good afternoon, Your Honor.
20 Kristian Rasmussen for plaintiffs.

21 MR. TERRY: Good afternoon, Your Honor. Eric
22 Terry for plaintiffs.

23 MR. MALONEY: Your Honor, Tim Maloney for
24 plaintiffs.

25 MR. BROSS: Good afternoon, Your Honor. Bill

1 Bross for plaintiffs.

2 THE COURT: Okay. Do we have, and then
3 representing any other plaintiffs' attorneys on the phone?

4 All right. How about defendants' attorneys?

5 MR. IRWIN: Good afternoon, Your Honor. Jim
6 Irwin.

7 THE COURT: All right. Very well. Thank you,
8 everyone.

9 We'll make sure we speak into the microphones, so
10 those of you on the phone can hear, and it's helpful for us
11 here because we occasionally get some feedback if you just
12 put your phone on mute, and then if you're going to talk,
13 you can press it off and then speak, and we will give you,
14 if you're on the phone, an opportunity to speak whenever
15 you wish.

16 Just tell us you wish to say something, but in
17 the meantime if you keep it on mute, then things will work
18 better here in the courtroom.

19 So Mr. Goldser?

20 MR. GOLDSER: Thank you, Your Honor. The agenda,
21 of course, has been filed. There is one significant item
22 that is not listed on the agenda that I would like to take
23 up first, and that is the subject of settlement. We're
24 going to do things a little bit out of order today based on
25 my conversations with Ms. Van Steenburgh.

1 I'm going to tell you a little bit about the
2 current status of settlement and talk about one of the
3 settlement related issues.

4 Ms. Van Steenburgh has for you a presentation on
5 the number of pending cases and various categories into
6 which they fall so that you know what the landscape looks
7 like, and then there will be some discussion about
8 litigation issues, what cases remain for litigation, whose
9 they are, and how we go forward with them.

10 Most of the agenda items that you will see are
11 repeats from prior status conferences, so I'm sure there
12 will be updates on those. I know Ms. Van Steenburgh will
13 want to speak to some. I anticipate Mr. Saul will want to
14 speak to some.

15 As I think the Court has become aware from
16 discussions with Chief Magistrate Judge Boylan, there were
17 further settlement discussions last week. We have been
18 focusing on the cases of six law firms. All but
19 Mr. Binstock are either here today or represented on the
20 phone.

21 A tentative agreement has been reached, and it is
22 in the current -- currently in the process of being
23 drafted. We hope to see that draft in short order. So we
24 think that we have resolved the inventories of those six
25 firms.

1 I know from speaking with Mr. Winter and also
2 from e-mails that I have received from many counsel with
3 cases in the MDL, there is interest in exploring settlement
4 on the part of many cases, but I don't believe that all
5 cases have yet reached the stage of being interested in
6 discussing settlement, that there are some that will still
7 want to go forward with litigation.

8 I think Ms. Van Steenburgh can give you a better
9 handle than I can on what those cases are, which brings me
10 to the subject of amended pretrial number 3 and the
11 assessment question. I think you're also aware that this
12 has been presented to former liaison counsel in New Jersey,
13 Mike London and Rick Meadow.

14 They have settled their cases, as you know, and
15 they have since been relieved of their duties as liaison,
16 but because they're the ones with the only existing
17 settlement agreement in hand, they're still shepherding the
18 question of settlement through in New Jersey.

19 We think that there is a tentative agreement
20 reached on a set of core issues with regard to the
21 assessment question. Mr. London and Mr. Meadow are
22 currently querying New Jersey counsel to see if it is
23 acceptable to them. If it is, the idea is that there would
24 be simultaneous orders entered both here and in New Jersey
25 addressing this issue so that the courts, state and federal

1 courts, don't have to confront the question of
2 jurisdiction, you know, who has got jurisdiction over what
3 case.

4 So hopefully we will have, if not identical,
5 equivalent orders so that the jurisdiction issue will
6 become moot.

7 THE COURT: You said that that's being reviewed
8 now with other plaintiffs' counsel in New Jersey. Is there
9 any kind of a deadline here, or what's the anticipated time
10 line?

11 MR. GOLDSER: Yes. The original deadline for
12 briefing was September 27th, and they have requested a
13 three-week extension. I don't know what that date is off
14 the top of my head, but that would be our deadline.

15 I spoke with Mr. Winter outside before we started
16 today, and he advises that the agreement in New Jersey has
17 just been signed, that money will not transfer hands for 60
18 days, so that there doesn't seem to be an exchange of money
19 imminently due and that we can present to the Court an
20 agreement, hopefully within the three-week period.

21 If for any reason that agreement is not reached
22 and money is about to change hands, either with the New
23 Jersey folks or anyone else, and I don't believe there is
24 anyone ahead of the curve from New Jersey, Mr. Winter tells
25 me that he will advise us and the Court two weeks prior to

1 the transfer of any money so that in the event we don't
2 have an order, we can be sure that the Court will enter
3 some kind of order, an interim order, perhaps, or whatever
4 is necessary at the time to ensure that we don't have any
5 issues that arise from the transfer of money.

6 I saw Mr. Winter shaking his head yes, and I
7 would just like to have of him confirm that is true on the
8 record.

9 MR. WINTER: Your Honor, we said that last time
10 we were here, and we'll say it again.

11 THE COURT: Very well.

12 MR. GOLDSER: So I believe that concludes what I
13 would like to present unless the Court has some question
14 about those issues, and I will turn it over to
15 Ms. Van Steenburgh to talk about case numbers.

16 THE COURT: I may have some more as we go on, but
17 let's hear from Ms. Van Steenburgh.

18 MS. VAN STEENBURGH: Thank you. Good afternoon,
19 Your Honor. The resolution of the cases last week has
20 affected the case count, that and also the Court's order on
21 severance of the multi plaintiff complaints. So I prepared
22 a Power Point that I think if we march through this you can
23 see how it's going to change the configuration of the
24 cases. Let me get this set up.

25 What we have done, Your Honor, is we have taken

1 all of the cases, and we have looked at the number of cases
2 that are currently filed, and that's a little different
3 than sometimes Mr. Essig has given the number of cases
4 served, but because a fair number of cases were re-filed
5 after your order on the severance of the multi plaintiff
6 cases, we took the number of filed cases because it will be
7 easier when the numbers all work together.

8 The number of plaintiffs currently are 2,254, and
9 that was the result of the multi plaintiff complaints. So
10 with the effect of the case resolution, and what I'm going
11 to do, I think the easiest way to go about this is show
12 what happens with the resolution, show what happens with
13 the order on the severance.

14 And then we will be left with three buckets: The
15 Minnesota cases, the forum non conveniens cases and the
16 cases that will be subject to remand, and we can look at
17 each one of those and see how many cases are left in each
18 of those categories. I think it will be helpful to the
19 Court to know kind of where each of those cases or where
20 those lie.

21 At any rate, with the case count down from the
22 resolution, that reduced the number of cases by 845. Same
23 number of plaintiffs have come down in that amount. That's
24 a 45 percent decrease in the number of cases in plaintiffs.
25 The order on the severance didn't affect the number of

1 cases.

2 What it has done, really, is affect the number of
3 plaintiffs, and what we had happen, and if I can give you a
4 little bit of detail on the next page. These were all of
5 the cases by case name that housed either 89, you know, 90
6 plaintiffs, a few had two or three, but those were all of
7 the multi plaintiff cases, and the original number of
8 plaintiffs, there were 483.

9 The ones that have not been re-filed now add up
10 to 356. I have an asterisk there because there are a
11 couple of firms that could file yet today a few more. We
12 doubt that they will, but this was the cut-off day, the
13 last day, and what we have left are complaints that have
14 been re-filed are 127.

15 So that includes the original named plaintiff
16 plus the re-filed ones. So you'll see that by virtue of
17 your order, over 350 cases will automatically be dismissed
18 from the MDL. So when you put that together, resolution
19 plus the order, the case count is 1,036 cases and 1053
20 plaintiffs.

21 The difference between those actually lies in
22 something that happened at the very beginning before there
23 was an MDL. That is, there were a few lawsuits filed by I
24 believe Mr. Saul's office that contained multiple
25 plaintiffs, and I'm not sure anything has been done with

1 those, so there are a few that make up the difference that
2 are still outlying, but otherwise, the numbers are much
3 closer.

4 What that leaves us with are three categories,
5 and the first category are those Minnesota
6 resident/Minnesota filed cases. We have now gone down by
7 virtue of the resolution from 32 cases that we were
8 starting to commence discovery on down to 10, and there are
9 also only four law firms that are involved now at this
10 point.

11 Six of the cases are represented by the Lewis
12 Saul & Associates Law Firm, and Mr. Saul, I know you don't
13 have this in front of you, but I think you would probably
14 concur that it's Sharon Johnson, Edward Karkoska, Richard
15 Kirkes, Darlene Melland, Douglas Olson and Robert
16 Reichgeld.

17 Of those, Your Honor, I will talk a little bit
18 more about where we are in discovery in a short while, but
19 this just kind of summarizes here. Johnson Becker has two
20 current Minnesota cases that are set to go to trial in
21 March. We are talking with them as a, about a possible
22 resolution, so that has an asterisk next to it.

23 Also, there is one Solbert Stewart case, and
24 again, we are talking with that firm about a resolution of
25 that firm and another one, so again an asterisk, and the

1 last one is Mr. Krieser's case, and he is here today, and
2 his case is a Minnesota resident/Minnesota filed case.

3 With respect to, just to give you an idea as to
4 where we are on discovery in all those cases, the next
5 slide shows. I have contacted Mr. Saul and Mr. Fitzgerald
6 to ask for updated depositions of those plaintiffs who were
7 actually in Phase I.

8 As you recall, there were some plaintiffs from a
9 while back, and that would include Johnson, Karkoska and
10 Olson. We have one deposition in the Olson case left to
11 take. We believe we will be ready to move for summary
12 judgment by the November deadline in that case.

13 Mr. Kirkes, as I understand it, is still
14 impaired, and I don't know what the status of his health
15 is. The Melland and Reichgeld cases are new cases in the
16 sense that they had not -- there had not been previous
17 discovery in those cases.

18 We have gotten a PFS. Authorizations are out.
19 We are collecting medical records, and we will be able to
20 work those cases up in time for a March trial date, so all
21 of the Lewis Saul cases would be ready.

22 Mr. Krieser's case, we're getting going on that
23 case. We've gotten a PFS. We have gotten authorizations
24 and information from him, and we will pursue that as well,
25 and that will be ready to go in March as well. So of the

1 cases left, these are the cases that would be subject to
2 discovery and would be set for that March 2013 trial date.

3 THE COURT: This is excluding the ones that there
4 are some discussions going on?

5 MS. VAN STEENBURGH: Yes. That would be
6 excluding the three cases for which there is discussion,
7 and if that discussion doesn't come to fruition in the next
8 week or so, we will put those cases back on and finish the
9 discovery in those cases as well.

10 The next category are the forum non conveniens
11 cases, and as the Court knows, we have a fair number of
12 those. Currently, the total number of cases is 1490, and
13 that includes those cases that were re-filed after the
14 severance order, and it excludes the ones that will be
15 dropped out.

16 What we forecast, however, because of the
17 resolution of many of the cases is that number of cases
18 will drop down to 774. There have been so many cases
19 resolved in connection with the six law firm resolution
20 that this number will drop quite a bit because so many of
21 them involved plaintiffs who were from other jurisdictions.

22 Of the remaining cases, over 500 of them are
23 represented by two law firms. So we have a fair number
24 involving just two law firms, one of which I believe has
25 over 400 and the other has 160 some. So that makes up the

1 bulk of the forum non conveniens cases that we would say
2 are subject to transfer under 1404.

3 With respect to those that are, were transferred
4 into this MDL, the total number was 356, and again, we're
5 forecasting that number to go down to 237 as a result of
6 the resolution of the cases last week.

7 So there will be fewer cases on remand, and
8 again, I believe, let me look at my notes here, on remand
9 there are approximately three firms that have 109 of those
10 cases, and then there are some hit or miss cases that make
11 up the rest.

12 I should back up for a minute. On the forum non
13 cases, as I mentioned, over 500 are two firms, and then 110
14 remaining cases are collectively represented by five firms.
15 So many of those cases either in the forum non conveniens
16 category and also the remand are represented by very, very
17 few law firms at this point.

18 One other thing that the Court had been
19 interested in and we had pushed with respect to discovery
20 is the status of the plaintiff fact sheets, and I wanted to
21 give the Court the report on what was going on with those
22 in the second deficiency mode. 119 have been sent out.
23 The number that actually are outstanding now given the case
24 resolution is 67.

25 We believe there will be another 59 that will be

1 sent out by the end of the year given the pace at which
2 we're not getting the response PFSs. So if you combine
3 those two lower numbers, that is how many will be out by
4 the end of the year in terms of second notices that we will
5 be sending out on those cases for purposes of dismissal or
6 not, depending on what the Court does with its order.

7 So I just wanted to at least let the Court know
8 that things are coming down. Some of the categories have
9 larger numbers, but with the resolution, a fair number of
10 cases, over 800, will have been resolved, and so that will
11 lower the total number.

12 THE COURT: For the law firms that have not,
13 their clients have not settled, are there discussions
14 planned, or is that not in the cards for the near future?

15 MS. VAN STEENBURGH: For a couple of the law
16 firms there have been some intimation that there may be
17 settlement. At least one of the law firms, there hasn't
18 been anything of late in terms of settlement.

19 THE COURT: All right. Thank you.

20 MS. VAN STEENBURGH: Mm-hmm.

21 MR. GOLDSER: Well, Your Honor, I'm not sure
22 where we go from here. It may well be that we have covered
23 most things that we need to take up today. In terms of
24 your last question, I know that we had informed the MDL
25 plaintiffs' bar about the existence of the settlement, the

1 tentative settlement agreement that has been reached so
2 that they would hear about it from us first before hearing
3 about it today, and many have responded to me saying
4 they're interested in beginning conversations.

5 Many of those are one and two and three
6 plaintiffs firms, not surprisingly. I know many such firms
7 have reached out directly to Ms. Van Steenburgh or
8 alternatively Susan Sharko in New Jersey because some of
9 the cases are in New Jersey as well.

10 So it's really hard to know which firms' cases
11 are not in discussion or about to be in discussion as we
12 sit here, other than certainly clearly the Minnesota
13 resident/Minnesota filed cases of Mr. Saul's and
14 Mr. Krieser, those seem to have current life for
15 litigation.

16 But where we go with remand or 1404 issues really
17 turns an awful lot on where ongoing discussions, settlement
18 discussions, go. So, you know, I'm not sure how much
19 activity we want to undertake on that in the next 30 or 60
20 days until some of the dust settles and we see who is
21 interested, who is not interested, who we can get resolved,
22 who we can't get resolved in that time frame.

23 But I certainly know that those firms that want
24 to continue on with the litigation ought to have their day
25 in court, ought to follow through with the deadlines that

1 were set at the last status conference.

2 Given that Mr. Saul and Mr. Krieser and
3 Ms. Bieniek are here, if there are questions or concerns
4 about those deadlines and what's going to happen next, I
5 would like to leave the floor open for them to raise any
6 questions or Ms. Van Steenburgh to follow up on any
7 deadline issues that exist.

8 Otherwise, I feel like I've concluded what I need
9 to present to the Court from my perspective, but I
10 certainly leave it open to them to discuss with you
11 whatever they need.

12 THE COURT: All right. Mr. Saul, do you have
13 anything to raise?

14 MR. SAUL: I don't at this time. Maybe
15 Mr. Fitzgerald who is here with me does.

16 MR. FITZGERALD: Your Honor, we do have six of
17 the Minnesota resident/Minnesota filed cases. Mr. Kirkes
18 has passed away, and I expect that that case will likely be
19 dismissed, and a couple of the other cases will also likely
20 be dismissed.

21 We're in the process of speaking with the
22 families about the status of litigation and the discovery
23 that needs to be done in these individual cases moving
24 forward, so we may have some updates for the Court at the
25 next status conference about our six cases, but I would

1 expect that that number will get whittled down even further
2 moving forward.

3 THE COURT: Mr. Winter, do you have something?

4 MR. WINTER: Yes, Your Honor. As

5 Ms. Van Steenburgh pointed out, the Minnesota cases are the
6 Minnesota cases which we're going to have to deal with.

7 THE COURT: Right.

8 MR. WINTER: But in the two buckets of either
9 remand or forum non conveniens, those need to be addressed,
10 and when Ms. Van Steenburgh said 500 plus of the 700 forum
11 non conveniens are with two firms, those two firms are
12 Mr. Saul's firm and the Carey firm.

13 You know, we have been very frank with certain
14 law firms. If you want to resolve your cases, we will
15 resolve your cases. Those two law firms, Judge, are not in
16 that category.

17 So I think we do need to address that issue
18 because from our perspective our goal is to have six months
19 from now to have whatever cases you have left here in
20 Minnesota, but everything else have been addressed and
21 dealt with however you decide to deal with them, and I
22 think that is, you know, an efficient way to do this.

23 This MDL will be less than five years old. There
24 were a lot of cases, and I think that should be all of our
25 goals. So what we would like to do is have those two law

1 firms, Carey and Saul, respond as we have suggested.
2 Either you consent to the remand, or we have to litigate
3 forum non conveniens.

4 Whether they want to tell us that in two weeks or
5 30 days, that's Your Honor's prerogative, obviously, but I
6 think we need that type of deadline. Then on remand, close
7 to half of the cases to be remanded are mostly with those
8 firms.

9 And, you know, we can figure out the process, but
10 that should be something where within 90 days, just to pick
11 a date, we should be starting to remand to be able to do
12 this so that you have whatever you have left after the next
13 trial.

14 THE COURT: All right. Anyone else?

15 MS. BIENIEK: Susan Bieniek with regard to Peter
16 Krieser's case in Minnesota.

17 THE COURT: All right. Why don't you come on up
18 to the lectern, if you would.

19 MS. BIENIEK: We have just done the plaintiff
20 fact statement, and we haven't had a chance yet to talk
21 with Ms. Van Steenburgh regarding potential settlement. So
22 we are at that phase, just so the Court is aware.

23 THE COURT: Okay. All right. Thank you.

24 So in terms of choosing cases for March for the
25 trial date that the Court had set, and obviously, there are

1 some cases remaining that fall within the category that we
2 had identified. Was it seven, or is it ten? I'm not sure.

3 MS. VAN STEENBURGH: Ten.

4 THE COURT: Ten that are proceeding for
5 discovery. What is the date we should shoot for for
6 deciding which case or cases will be on tap for March?

7 Mr. Winter?

8 MR. WINTER: I would say sometime between the
9 next 45 and 60 days, Your Honor. I think we should be
10 early December at the latest having picked whatever we're
11 going to pick so that we could complete whatever discovery
12 is needed to be done in terms of experts and have
13 everything on schedule for that March date.

14 THE COURT: Will we know what we need to know
15 about each of those plaintiffs by early December? Anyone
16 can answer that.

17 MR. FITZGERALD: Your Honor, this is Kevin
18 Fitzgerald. I thought and recalled at the last status
19 conference that we had talked about a date in early January
20 for, as far as case selection for the March trial, and we
21 were, we were moving forward under the impression that that
22 was the time frame that we were, you know, working under.

23 THE COURT: That time frame is fine with the
24 Court. I just want to make sure that there is enough time,
25 both to adequately assess these potential plaintiffs' cases

1 on the part of the plaintiffs and the defense as well, and
2 so the Court can have a little time to decide which one or
3 ones to go forward with.

4 So we had probably set a date in the first week
5 in January for either the parties to agree or for the Court
6 to have a selection and some description of the cases so
7 that I can decide how to proceed.

8 MR. GOLDSER: At the last status conference, Your
9 Honor, the minutes reflect that you entered a summary
10 judgment motion deadline of November 26th, and it says, the
11 Court also anticipates deciding by January 1 which case or
12 cases will be tried on March 5th.

13 THE COURT: Well, if we can have whatever in by
14 January 2nd, and then the Court will decide shortly
15 thereafter, and then we'll have the March lineup set then.
16 Is that all right? January 2nd, Mr. Fitzgerald, okay with
17 you?

18 MR. FITZGERALD: That is fine with us, Your
19 Honor.

20 THE COURT: All right. Sounds good.

21 Okay. And as to the remand and forum non
22 conveniens issue, at some point in time, if there are not
23 further resolutions, we're going to have to address that.
24 I think that Mr. Goldser's suggestion of letting the dust
25 settle a little bit is probably good, but at some point in

1 time, we're going to need to move toward addressing those
2 issues.

3 Perhaps we should just set another status
4 conference in about a month, and we will be in a better
5 position to set deadlines for that particular issue to be
6 teed up and resolved.

7 Does that sound okay?

8 MR. SAUL: That's okay, Judge. This is Lewis
9 Saul.

10 MR. WINTER: That's fine.

11 MR. SAUL: But the forum non conveniens issue has
12 been fully briefed for Your Honor.

13 THE COURT: Right. I do think before we spend a
14 significant amount of time there, we will see what happens
15 over the next three to four weeks, but then the Court would
16 be prepared to take that up at that point in time, and if
17 there is any argument, we can have that at the next status
18 conference.

19 All right? Other issues we should be talking
20 about today?

21 Mr. Goldser, any more issues on your list there?

22 MR. GOLDSER: Nothing that I have, Your Honor.

23 THE COURT: Okay.

24 MS. VAN STEENBURGH: Nothing here, Your Honor.

25 THE COURT: Mr. Saul or Mr. Fitzgerald?

1 MR. SAUL: Nothing, Your Honor. Thank you.

2 MR. FITZGERALD: No, Your Honor.

3 THE COURT: How about any of the rest of you that
4 are either on the phone or here?

5 Okay. Well, let's set a time for a status
6 conference then. We could do it either during the week of
7 the 29th of October or the week of November 5th. Is one
8 better than the other?

9 MS. VAN STEENBURGH: I would personally prefer
10 the week of the 29th. I have to be out of town the
11 following week.

12 THE COURT: After submitting an absentee ballot,
13 I'm sure.

14 MS. VAN STEENBURGH: This is true.

15 MR. SAUL: We were going to suggest November 5th.
16 I have to be out of town the week before.

17 THE COURT: The entire week, Mr. Saul?

18 MR. SAUL: No. I think it's Wednesday, Thursday
19 and Friday.

20 THE COURT: How about Tuesday, the 30th of
21 October, would that work?

22 MR. SAUL: I think that would work.

23 THE COURT: All right. Okay. Let's set it for
24 Tuesday the 30th of October. Let's see. How about 2:30
25 that day? Does that sound okay?

1 MS. VAN STEENBURGH: That works, Your Honor.

2 THE COURT: Will that work with travel, Mr. Saul?

3 MR. SAUL: Yes.

4 THE COURT: All right. Let's set it for 2:30 on
5 Tuesday, the 30th of October, and I think we will be in a
6 position to be able to move forward at that point in time
7 and have a little bit more knowledge about what is going
8 on, so all right.

9 Anything else for today?

10 MR. GOLDSER: Nothing, Your Honor.

11 MS. VAN STEENBURGH: No, Your Honor. Thank you.

12 THE COURT: Anything from anyone on the phone?

13 All right. Thank you, everybody. We will be in
14 recess and will be continued until the next hearing that
15 will be set in about a month. So we'll see you all. Thank
16 you.

17 MR. GOLDSER: Thank you.

18 MR. WINTER: Thank you, Your Honor.

19 MR. FITZGERALD: Thank you, Your Honor.

20 THE CLERK: All rise.

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I, Kristine Mousseau, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-entitled matter.

Certified by: s/ Kristine Mousseau, CRR-RPR
Kristine Mousseau, CRR-RPR