

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

- - -

IN RE:	:	NO. 13-MDL-2436
	:	
	:	
	:	
	:	
	:	
	:	
TYLENOL, (ACETAMINOPHEN)	:	
MARKETING, SALES	:	Philadelphia, Pennsylvania
PRACTICES AND PRODUCTS	:	June 24, 2013
LIABILITY LITIGATION	:	11:14 a.m.

- - -

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

- - -

APPEARANCES:

For the Plaintiffs:	LAURENCE S. BERMAN, ESQUIRE
	MICHAEL M. WEINKOWITZ, ESQUIRE
	FRED S. LONGER, ESQUIRE
	Levin Fishbein Sedran & Berman
	510 Walnut Street
	Suite 500
	Philadelphia, PA 19106

R. CLAY MILLING, II, ESQUIRE
Henry Spiegel Milling, LLP
Atlanta Plaza
Suite 2450
950 E. Paces Ferry Road, N.E.
Atlanta, GA 30326

WILLIAM G. GAINER, ESQUIRE
Toliver & Gainer
942 Green Street
Suite A
Conyers, GA 30012

Transcribers Limited
17 Rickland Drive
Sewell, NJ 08080
856-589-6100 • 856-589-9005

APPEARANCES: (continued)

For the Plaintiffs: DANIEL N. GALLUCCI, ESQUIRE
NastLaw, LLC
1101 Market Street
Suite 2801
Philadelphia, PA 19107

DAVID R. BUCHANAN, ESQUIRE
Seeger Weiss, LP
550 Broad Street
Suite 920
Newark, NJ 07102

JAMES F. GREEN, ESQUIRE
CHRISTOPHER VINCENT TISI, ESQUIRE
Ashcraft & Gerel, LLP
2000 L Street, NW
Suite 400
Washington, DC 20036

LEONARD A. DAVIS, ESQUIRE
Herman Herman Katz & Cotlar
820 O'Keefe Avenue
New Orleans, LA 70113

For the Defendants: CHRISTY D. JONES, ESQUIRE
ALYSON B. JONES, ESQUIRE
Butler, Snow, O'Mara, Stevens &
Cannada, PLLC
1020 Highland Colony Parkway
Suite 1400
Ridgeland, MS 39157

DAVID F. ABERNETHY, ESQUIRE
Drinker Biddle & Reath, LLP
One Logan Square
Suite 2000
Philadelphia, PA 19103-6996

APPEARANCES: (continued)

For Novartis
Consumer Health,
Inc.:

MADELINE M. SHERRY, ESQUIRE
STEPHEN J. FINLEY, ESQUIRE
Gibbons, P.C.
1700 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2769

For L. Perrigo
Company:

BRANDON L. GOODMAN, ESQUIRE
MARGARET C. O'NEILL, ESQUIRE
Goodell, DeVries, Leech & Dann, LLP
Two Commerce Square
2001 Market Street
Suite 3700
Philadelphia, PA 19103

- - -

Audio Operator: Inna Goldshteyn

Transcribed by: Donna Anders

- - -

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

- - -

1 (The following was heard in open court at
2 11:14 a.m.)

3 THE COURT: Good morning, everybody.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated.

6 All right. This is our case management
7 conference as we scheduled at our first get-together,
8 and we have an agenda, and I thank you for getting
9 together to compose this agenda.

10 But I wanted to just make a record of who is
11 here before we get started. So we have -- Mr. Berman is
12 here, good morning.

13 MR. BERMAN: Yes, Your Honor. Good morning.

14 THE COURT: All right. Mr. Milling --

15 MR. MILLING: Yes, Your Honor.

16 THE COURT: -- good morning.

17 MR. MILLING: Good morning.

18 THE COURT: Mr. Weinkowitz --

19 MR. WEINKOWITZ: Good morning.

20 THE COURT: -- good morning. Mr. Gainer.

21 MR. GAINER: Good morning, Your Honor.

22 THE COURT: Good morning. And Mr. Gallucci.
23 Good morning.

24 MR. GALLUCCI: Good morning.

25 THE COURT: And Mr. Davis. Okay.

1 MR. DAVIS: Good morning, Your Honor.

2 THE COURT: Good morning. Mr. Green.

3 MR. GREEN: Good morning, Your Honor.

4 THE COURT: Good morning. Mr. Tisi.

5 MR. TISI: Yes, Your Honor. Good morning.

6 THE COURT: Good morning. And Mr. Gerel. Mr.

7 Ashcraft -- oh, that's a firm. Sorry. Did I miss

8 anybody?

9 MR. BUCHANAN: Dave Buchanan from Seeger
10 Weiss, Your Honor.

11 THE COURT: All right. Good morning.

12 MR. BUCHANAN: Good morning.

13 MR. LONGER: Fred Longer, Your Honor.

14 THE COURT: Good morning, Mr. Longer. And,

15 Ms. Jones, good morning.

16 MS. C. JONES: Good morning, Your Honor.

17 THE COURT: Mr. Abernethy --

18 MR. ABERNETHY: Good morning, Your Honor.

19 THE COURT: -- good morning. Alyson Jones.

20 MS. A. JONES: Good morning, Your Honor.

21 THE COURT: Good morning. Ms. Sherry.

22 MS. SHERRY: Good morning, Your Honor.

23 THE COURT: Good morning. And Mr. Finley?

24 MR. FINLEY: Yes, Your Honor. Good morning.

25 THE COURT: Good morning. Mr. Barnes --

1 MR. GOODMAN: Mr. Barnes is not here.

2 THE COURT: Mr. Goodman. Right.

3 MR. GOODMAN: Good morning, Your Honor.

4 THE COURT: And Ms. O'Neill.

5 MS. O'NEILL: Good morning, Your Honor.

6 THE COURT: Good morning.

7 Okay. Why don't we just go through the
8 agenda. If there's anything that you wish to raise, I'm
9 happy to talk about that as well. The first item is the
10 logistics of making case management orders one and two
11 applicable to all cases. I think we've taken care of
12 that.

13 MR. BERMAN: You have, Your Honor. The
14 parties submitted an order that accomplished that last
15 week.

16 THE COURT: Okay.

17 MR. BERMAN: Thank you.

18 THE COURT: We're okay with that, Ms. Jones?

19 MS. C. JONES: I think that's right, Your
20 Honor.

21 THE COURT: Okay. All right. The next item
22 is the submission of case management orders discussed at
23 the May conference. Where are we with that item?

24 MR. BERMAN: If I may, Your Honor, Laurence
25 Berman speaking.

1 THE COURT: Yes.

2 MR. BERMAN: At the May conference, we
3 discussed the submission of an order that would govern
4 plaintiff fact sheet, privilege and direct filings.
5 Those orders were submitted and they were approved by
6 Your Honor. We have -- the direct filing order was CMO
7 seven. The fact sheet order was CMO ten. The privilege
8 order was CMO nine, and they were entered last week.

9 THE COURT: Okay.

10 MR. BERMAN: We noted in this section of the
11 agenda that in your April 26 order, you had suggested
12 whether the parties felt it was necessary for a
13 preservation order to be submitted to the Court as well.
14 The parties have had a meet and confer with respect to
15 that and believe it would not be necessary. And that
16 was explained in the cover letter to Your Honor when the
17 parties submitted the order governing privilege.

18 THE COURT: Right.

19 MR. BERMAN: And the parties will be happy to
20 discuss it further if Your Honor requests.

21 THE COURT: I understand you simply don't feel
22 that's necessary at this time, is that right?

23 MR. BERMAN: That's correct, Your Honor.

24 THE COURT: Okay. Ms. Jones.

25 MS. C. JONES: That is correct, Your Honor.

1 THE COURT: Okay. Anything else to say about
2 that agenda item? Okay. Thank you.

3 The next item is the loading transcripts to
4 the ECF. I'm sure you're familiar with this process in
5 the Eastern District. But whenever there is a request
6 for a transcript of a hearing or an argument or a
7 conference, we're given an order by the Clerk's Office
8 that has a couple of different options. One is that the
9 transcript is uploaded to the CM/ECF, the PACER system
10 after a 90-day inspection period, and then it becomes
11 available to anyone.

12 What happens is the transcript -- for example,
13 the transcript for today would be uploaded to the CM/ECF
14 and it would be locked except to counsel involved in
15 this case which would give you a 90-day redaction
16 period, meaning if there was any error in the transcript
17 that you wished to change, you could make that request
18 and we would change it. So that after the 90-day
19 period, the transcript is unlocked and it's available to
20 anyone who logs into the CM/ECF program and can view it.
21 So it's essentially available to the public.

22 The other option is that we can restrict the
23 transcript to court users. That would be Judges, law
24 clerks and court staff and counsel of record who have
25 purchased a copy of the transcript. And after a 90-day

1 period, the transcript would be electronically available
2 to any other counsel of record.

3 Or the third option is I cannot approve the
4 uploading of the transcript, and it would not be
5 available on the CM/ECF and PACER system.

6 My policy generally is to approve the
7 uploading after a 90-day redaction period to give you a
8 chance to correct anything. But if there's any
9 proceeding in this case, be it a conference or an
10 argument or a hearing that you feel contains information
11 of a sensitive nature, you could ask that we somehow
12 seal that or keep that available only to counsel of
13 record and to the Court.

14 So I guess I'm interested in just your
15 thoughts about the availability of transcripts for --
16 for proceedings in this case. It seems to me it's a
17 public forum. We don't favor sealing unless there's
18 some, you know, good need for that, good cause, and I
19 guess I'm interested in your thoughts about that at this
20 point.

21 MR. BERMAN: Your Honor, from the plaintiffs'
22 perspective, we thought -- we think that your number one
23 option would be satisfactory which would be the 90-day
24 inspection, that the transcript remain locked for an
25 opportunity to redact, and then it would be unlocked and

1 be available. So we would agree with that policy.

2 THE COURT: Ms. Jones?

3 MS. C. JONES: Your Honor, I have no objection
4 on behalf of Johnson and Johnson and McNeil to that
5 policy as well. And as I understand it, we're talking
6 principally about the hearings before this Court --

7 THE COURT: Yes.

8 MS. C. JONES: -- at this point in time. And
9 I can foresee a point in time that perhaps there would
10 be transcripts involving some witness testimony or
11 something that might possibly involve some confidential
12 material, but I would think that we could take that up
13 on an individual basis --

14 THE COURT: Right.

15 MS. C. JONES: -- if that would come about.

16 THE COURT: Right. And we -- we do it all the
17 time in criminal cases, we seal portions of a transcript
18 if a cooperator is testifying, and so if there's
19 something that is, as you say, confidential material, we
20 can certainly -- we can certainly address that as we go.

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

22 THE COURT: Okay. Which leads me to another
23 topic which is related, we have the ability to post the
24 audio recording of anything that happens in the
25 courtroom to the CM/ECF immediately. So -- and that

1 doesn't need to be redacted or held for 90 days because
2 there's no transcript to be redacted or modified. What
3 we say is what we say, and it's -- and it's on the
4 record. And we normally allow that to happen. So what
5 would happen is later today, the transcript of our
6 discussion today would be available to anyone who wants
7 to access that from the CM/ECF.

8 And once you -- once you play it, it's loaded
9 in the Windows Media Player program on your computer and
10 then if you want to make a recording of that to provide
11 to your client or to just take home and let them know
12 what you do, anything like that, you certainly are
13 welcome to do so.

14 It's a public record. And so the audio
15 version is available -- is available to you. So I just
16 wanted to give you that as a point of information. So I
17 guess two things, you have it available to play back if
18 you forget what was said, or -- and you should also be
19 very careful to speak in complete sentences and not to
20 say anything that would be embarrassing when you play it
21 back. But it's -- I think it's a very good feature of
22 the CM/ECF system.

23 In the criminal cases, the local radio station
24 loves it, because you can have cross-examination or
25 closing arguments and they can play it during drive time

1 on the way home. So I doubt much that we say here will
2 be interesting to KYW but who knows? So it's there,
3 it's on the CM/ECF and as a registered CM/ECF user, you
4 have access to it.

5 Okay. Any thoughts, questions, comments?

6 Great.

7 The next item is the discovery plan. The
8 parties were working on a discovery plan, and I simply
9 wanted to get you to report on that today and see where
10 we are. Mr. Berman?

11 MR. BERMAN: Yes, Your Honor.

12 Since the parties worked quite aggressively
13 the past month on the case management orders that the
14 parties submitted to you, we haven't yet turned to great
15 detail in developing a discovery plan or a bellwether
16 trial pool plan. We do believe that both plans will be
17 interrelated to one another, particularly as to the
18 discovery that might be taken of the plaintiffs in that
19 those that are selected for the bellwether plan may
20 proceed on a separate track from the remaining
21 plaintiffs.

22 With the entry of the case management order
23 governing the provision of the plaintiff fact sheets,
24 that has now triggered a 60/90-day obligation to produce
25 those, and that will be part of a discovery plan that

1 the parties expect to discuss and present to the -- to
2 the Court at the next hearing.

3 I guess what the plaintiffs would like to
4 include within the plan, and it may be premature to be
5 discussing it with the Court since the parties haven't
6 discussed it yet, but the plaintiffs would like to
7 proceed on the generic discovery against McNeil and the
8 other defendants. As noted in this section, there is
9 written discovery that is outstanding, and in a meet and
10 confer that we had, we did reach an agreement about
11 McNeil answering some of that written discovery that had
12 not yet been answered, and we've agreed on a July 3 date
13 for that.

14 So I don't know if I have too much more to
15 talk about today, because we do not have the details to
16 present to the Court other than some generalized ideas,
17 that we would like to have our meet and confer on.

18 THE COURT: All right. Thank you. Ms. Jones?

19 MS. C. JONES: Your Honor, I would agree
20 primarily -- essentially with what Mr. Berman has said.
21 Clearly, it will be -- we've got at least 60 days before
22 we get the plaintiff fact sheets back in, and while I
23 think we hope to have the outline of the discovery plan
24 and schedule for Your Honor at the next conference,
25 whenever it will be, I suspect that as to the discovery

1 of the plaintiffs, until we get those fact sheets in,
2 it's going to be difficult to schedule everything down
3 the -- the line, make certain requirements and
4 modifications once we get those and determine what
5 products, for example, or issues -- what the injuries
6 are. But we would hope that by the next conference, we
7 would have at least for Your Honor the outline of a
8 discovery plan that would eventually lead to the
9 selection of the bellwether type cases.

10 THE COURT: Okay. So the fact sheets at least
11 as to form have been agreed to and approved?

12 MS. C. JONES: That's correct, Your Honor.

13 MR. BERMAN: That's correct, Your Honor.

14 THE COURT: And I take it you're in the
15 process now of completing those fact sheets?

16 MR. BERMAN: They were -- the form was
17 completed -- was approved last week, Your Honor, and we
18 have sent notice out to all plaintiffs' counsel about
19 the obligation to begin preparing the fact sheets, and
20 there was a time period for which that will take place,
21 which is I think roughly 60 days or 90 days. So it --
22 the fact sheets haven't begun to come in yet.

23 THE COURT: So you really need those in your
24 possession to determine what products are available and
25 what depositions you need to schedule, is that right?

1 MR. BERMAN: Well, the plaintiff fact sheets,
2 if I may, Your Honor, relate to information that the
3 defendants will be securing about the plaintiffs, their
4 medical history, their educational background,
5 employment background, and they are a substitute for
6 typical interrogatories --

7 THE COURT: Right, right.

8 MR. BERMAN: -- and requests for production of
9 documents. The fact sheet includes eight separate
10 authorizations to be executed that will permit the
11 defendants to secure various records. In our
12 discussions with the defendants last week, we learned
13 that they have retained a medical vendor service to
14 secure records utilizing the authorizations the parties
15 are talking about, how that -- the production of the
16 records that are secured can be shared, both on the
17 defense side and on the plaintiffs' side.

18 There is not a fact sheet that defendants are
19 providing to the plaintiffs. We've discussed whether
20 that would be appropriate and that's still up in the air
21 at the moment. In the meantime, the plaintiffs had
22 served formal, traditional interrogatories, requests for
23 production of documents and requests for admissions, so
24 there is written discovery that has been served on the
25 defendants for -- for them to answer.

1 THE COURT: But would the completion of these
2 fact sheets supplant that written discovery?

3 MR. BERMAN: It will -- it will supplant the
4 written discovery that the defendants would take of the
5 plaintiffs.

6 THE COURT: Right.

7 MR. BERMAN: It does not supplant the written
8 discovery that the plaintiffs will take from the
9 defendants unless we agree to a defendants' fact sheet
10 that may change that.

11 THE COURT: Okay. All right.

12 MS. C. JONES: And, frankly, Your Honor, what
13 we are hoping is that -- we agreed to respond to the
14 discovery that had previously been filed in individual
15 cases on the basis that it would be applicable to all of
16 the MDL cases in the hopes that we could respond once
17 and that would take care of the discovery obligations on
18 behalf of the defendants.

19 And, clearly, the intent is that the
20 plaintiffs' fact sheets would, for the most part,
21 suffice to supply the information that you would
22 otherwise get in response to answers to interrogatories
23 about their various claims, although there may be some
24 individual things that come up that are applicable to an
25 entire group, once we kind of get the fact sheets

1 together and begin to understand whether or not these
2 are Children's Tylenol as opposed to Adult Tylenol or
3 different products that may be involved or different
4 time tables that are involved or different injuries that
5 are involved, which is what we're trying to do in terms
6 of the discovery that relates to the plaintiffs and to
7 -- ultimately the selection of the bellwether cases may
8 depend upon that information that we get out of the
9 plaintiff fact sheets.

10 THE COURT: Okay. All right.

11 MR. BERMAN: I guess one additional point,
12 Your Honor, would be that with respect to discovery that
13 the plaintiffs do seek to obtain from the defendants
14 because we, the Steering Committee, is in essence
15 representing a multitude of plaintiffs, we need to have
16 broad generic discovery that would encompass all of the
17 types of products that are at issue or could be at issue
18 as additional complaints are filed.

19 Some of the initial cases may have been
20 limited to a particular type of Tylenol product, but the
21 discovery that we need would not be limited to that
22 product alone. It would have to be a broad-based
23 generic, and I don't mean to get into a discussion about
24 it today, but I wanted to just raise it on the radar in
25 the event we have an issue after we do our meet and

1 confer on those issues.

2 THE COURT: Okay.

3 MR. BERMAN: And if I may, Your Honor, Mr.
4 Milling wanted to address another point about discovery.

5 THE COURT: Sure.

6 MR. MILLING: Your Honor, I think at the last
7 conference I mentioned that we were -- a little bit of
8 what was happening in New Jersey, and I think, Alyson,
9 we are working through a reproduction of a certain
10 subset of generic discovery --

11 MS. A. JONES: Right.

12 THE COURT: Right.

13 MR. MILLING: -- which is what we call the
14 pre-2006, and I believe, Alyson, that we're still
15 waiting on maybe two more productions?

16 MS. A. JONES: That's right.

17 MR. MILLING: Two more productions to come,
18 and then this pre-2006 set of documents will be -- have
19 been produced to us with the exception of agreed-upon
20 subsets which include adverse events and patient
21 sensitive data that we're going to take up separately.

22 And what I wanted to remind the Court of is
23 that I also alluded to the fact that in addition to this
24 pre-2006 solely McNeil, solely Tylenol discovery set,
25 that we and our team are working to identify what I

1 called last time certain additional buckets of discovery
2 that we would like to embark on, and we're working
3 through documents, even as we are today here in
4 Philadelphia, in order to hopefully within the next 30
5 days, 60 days, to be able to report to Your Honor and to
6 meet and confer on additional areas of discovery that we
7 feel that we're going to need as it relates to
8 acetaminophen generally, the generic discovery.

9 THE COURT: Okay.

10 MR. MILLING: And counsel has reminded me to
11 say also, J and J of course as well as McNeil.

12 THE COURT: Very well.

13 MR. MILLING: And, Dave, I don't know where we
14 are on the adverse event unless where we -- oh, okay --
15 and we are actively meeting and conferring with the
16 defendants on how to transfer adverse event information
17 that the company receives about injuries that may have
18 occurred for people ingesting acetaminophen, reporting
19 to the FDA those types of things. We're actively
20 meeting and conferring about how to get that information
21 to us with patient information redacted.

22 THE COURT: Okay.

23 MR. BERMAN: I'm standing again, Your Honor.
24 Mr. Buchanan, who was assisting, has been appointed by
25 Your Honor to be the Federal/State liaison --

1 THE COURT: Right.

2 MR. BERMAN: -- with the New Jersey litigation
3 and is most familiar with what is going on in New
4 Jersey.

5 THE COURT: Okay. Thank you. What's a time
6 frame for the discovery plan?

7 MS. C. JONES: Your Honor, in all candor, I
8 don't think that's something that we have as yet
9 discussed --

10 THE COURT: Right. Okay.

11 MS. C. JONES: -- among ourselves. From our
12 standpoint, I think that what we know is, we will get
13 the fact sheets in. They have to be reported within 60
14 to 90 days. And then we have to get and collect a
15 significant portion of the medical records in order to,
16 frankly, intelligently participate in a bellwether
17 selection process.

18 And I would anticipate, although, frankly, we
19 have not spoken about it, a stage discovery where there
20 will be some number, whether it be 20 or 40 cases, that
21 would be selected for what I'll call basic discovery
22 that might involve the depositions of the plaintiff and
23 the key one or two doctors, and that after that's
24 completed, then a smaller group would be selected from
25 which the trial plaintiffs, if you would, would be

1 chosen. And in that small group, you would actually
2 have expert discovery going forward and some additional
3 depositions.

4 We have not talked about that and worked it
5 out in any way, shape or form, but I think that, to be
6 candid, it will take us probably 120 days to look at
7 collecting medical records and then another period of
8 discovery after that. So I suspect you're looking at
9 some place between 12 and 18 months for trials, but,
10 again, we have not spoken at all about that or really
11 tried to sit down and work that out.

12 THE COURT: Okay. How much -- maybe you've
13 answered this, but how much time do you need to -- to
14 provide a discovery plan?

15 MR. BERMAN: Well, I thought that may have
16 been what your question was, Your Honor, in terms of
17 when we could produce a discovery plan that would then
18 address the various issues and the dates and how far out
19 we go. I think we -- we can try to do that by the next
20 status conference even in the absence of the plaintiff
21 fact sheets being available, because I think that's just
22 the outline of the plan that -- that would govern the
23 parties, you know, subject to any relief that might be
24 needed.

25 But, step one, fact sheets; step two,

1 depositions, whether it's generic of the -- of the
2 defendants, some case specific for the plaintiffs, but
3 that may not occur until 120 days afterwards. But we
4 may be able to project out the time lines that could
5 give you a sense of how the case will proceed.

6 THE COURT: Okay. I guess that -- I don't
7 want to put you on a schedule to come up with a plan
8 that's unrealistic. I mean, you know better than I what
9 you have to have in front of you to discuss what plan
10 works for you.

11 MS. C. JONES: I would think, Your Honor, and
12 Mr. Berman and I had spoken beforehand, we can certainly
13 attempt to have the plan or the outline of a plan
14 available to Your Honor by the time of the next status
15 conference. What I've discussed with different stages,
16 as Your Honor is well aware, sometimes as well
17 intentioned as the lawyers are, once you get
18 information, it sometimes requires a modification of the
19 schedule.

20 But I would hope that we would have at least
21 the basic plan outlined for Your Honor by the time of
22 the next status conference. And to the extent that we
23 have any disagreements, we could at least advise the
24 Court what our disagreements are and get that in place.

25 THE COURT: Okay. All right.

1 MR. BERMAN: I think in sum it would be a
2 skeleton that we would like to produce to the Court by
3 the next conference, and that would set the -- the goals
4 and the dates by which we could expect to complete
5 various stages towards bringing cases to trial. We do
6 want to insist, though, from the plaintiffs' side that
7 our -- our discovery that we have outstanding and that
8 we're permitted to take will -- is not stayed -- I mean,
9 that we can continue to move forward with that while we
10 work on the development of the plan.

11 As I noted, we do have written discovery
12 outstanding. We are prepared to notice some depositions
13 and would like permission to continue to work towards
14 that even in the absence of a skeleton being presented
15 to the Judge -- to the Court.

16 THE COURT: Ms. Jones, what do you think about
17 that?

18 MS. C. JONES: Your Honor, we have no problem
19 with responding to the written discovery. This is the
20 first time that at least I've personally have had any
21 discussion about, you know, depositions and whatever,
22 and, frankly, Your Honor, there may be depositions that
23 we can agree to. There may be depositions that we
24 cannot agree to because we don't know what the products
25 are or what's involved here yet. And so I'm perfectly

1 happy to meet and confer with Mr. Berman about that, but
2 I'm not prepared to agree today that it's appropriate
3 for us to proceed with depositions of the defendant.

4 THE COURT: Okay.

5 MR. BERMAN: Your Honor, we will be prepared
6 to meet and confer. We would like permission to notice
7 depositions, and if it produces a meet and confer issue,
8 we will discuss that with defense counsel. It's
9 possible that 30(b)(6) depositions could be taken which
10 would be fundamental depositions at this point and help
11 us in organizing the remaining discovery that we would
12 have to -- that we would plan to take.

13 MS. C. JONES: And, Your Honor, just so you
14 understand, part of our concern is, at this stage, we do
15 not know all of the products that are actually involved,
16 so it's very difficult at this stage prior to getting
17 some of these plaintiff fact sheets to know what's
18 relevant, what may be an appropriate 30(b)(6) or not.
19 Again, we're happy to discuss it with counsel, but
20 that's part of the dilemma that we -- that we have at
21 this stage.

22 THE COURT: All right. I --

23 MR. MILLING: And just --

24 THE COURT: -- yes, Mr. Milling.

25 MR. MILLING: -- my last comment and maybe we

1 are getting too technical, but from our perspective, the
2 plaintiffs' perspective, I think that the product that
3 we're going to be focused on is acetaminophen which is
4 in all the products.

5 And we're not focused on any of the other side
6 parts of the product whether it's Cough and Cold, it's
7 acetaminophen; whether it's Sleep, it's acetaminophen.
8 So certainly the initial discovery that we would intend
9 to take is going to be broad-based about the drug
10 acetaminophen.

11 THE COURT: It seems to me that we can
12 certainly move ahead with -- with answering the written
13 discovery. In terms of 30(b)(6) depositions, why don't
14 we -- why don't you make that part of your discussions
15 about the discovery plan and see what -- see what you
16 can agree to. But I think -- I mean, I want to keep
17 this moving, but I don't want to do anything that's too
18 aggressive until you really know what the case is about
19 and make good use of the time with the people that you
20 depose.

21 The next item on the agenda is the common
22 benefit order, and your proposed agenda item said you
23 wanted to discuss the matter for the submission of an
24 order to govern the common benefit work, and I'm happy
25 to hear you out on that.

1 MR. BERMAN: My plan was not to discuss it in
2 detail today, Your Honor. We just wanted to put it on
3 the Court's list of items that the plaintiffs do expect
4 to file a motion for the Court's consideration relating
5 to common benefit work. I'm not certain whether the
6 Court's familiar with what that concept is and if not --

7 THE COURT: I'm not --

8 MR. BERMAN: Okay.

9 THE COURT: -- which is what I was hoping you
10 would discuss with me.

11 MR. BERMAN: Sure. And it would be explained
12 in more detail in a formal motion.

13 THE COURT: Okay.

14 MR. BERMAN: However, in MDL litigation,
15 particularly where a class action is not involved but
16 there's a Steering Committee that is appointed, the
17 Steering Committee will be performing work not solely
18 for their own cases but it would be generic work that
19 would become available to other litigants who have
20 cases. And frequently that will result in the
21 development of something called a trial package. The
22 depositions that the plaintiffs would take would be part
23 of the trial package. The documents that may be
24 identified would be part of the trial package. The
25 generic expert witnesses would be part of the trial

1 package.

2 And under the body of law that has developed
3 governing MDL cases, that work is considered compensable
4 work by the Steering Committee as an assessment against
5 the individual cases that will be garnering the benefit
6 of that work that has been performed. And typically an
7 order is entered that would assess those cases subject
8 to Court approval, of course. When there are parallel
9 cases that are proceeding in State Court, State Court
10 litigants can become participants to the -- to the
11 common benefit work and volunteer to have their cases
12 assessed as well even though they may not be formally
13 litigated in the MDL Court.

14 So it's sort of a broad based outline of this
15 concept. It has been utilized in many of these cases
16 here in Philadelphia, the bone screw litigation and the
17 diet drug litigation, I believe in the Zolof
18 litigation, in some of the other Courts. And Mr. Davis
19 is here from Louisiana, and he has been appointed to the
20 Steering Committee. He's practiced before Judge Fallon,
21 and it's been used in the Propulsid and the Vioxx
22 litigation. So there is a broad base of cases that
23 we'll be able to cite to the Court about this.

24 THE COURT: Okay. When do you expect to have
25 that ready?

1 MR. BERMAN: Plaintiffs are working on that --

2 THE COURT: Okay.

3 MR. BERMAN: -- and we may have it available
4 by the next hearing.

5 THE COURT: Okay. I take it there's no
6 concern on the defense side with that?

7 MS. C. JONES: I'm not sure we have a say in
8 it, Your Honor.

9 THE COURT: Right.

10 MS. C. JONES: That's between you -- you and
11 plaintiffs' counsel.

12 MR. BERMAN: Typically, it's not something
13 that the defendants comment on.

14 THE COURT: Right, right. Okay. Well, we'll
15 just wait till you're ready to present that. I don't
16 know that that's necessarily time sensitive at this
17 point.

18 MR. BERMAN: It is not, although we would like
19 to get it in place as other cases are filed, so that the
20 other counsel who will be representing plaintiffs will
21 be aware that there is both the concept and also the
22 availability of common benefit work that they can rely
23 on for litigating their own cases. And we have put it
24 on the agenda because we were not familiar with whether
25 Your Honor had experience with this before, and we just

1 wanted to raise the subject.

2 THE COURT: Thank you. I appreciate that.

3 Okay. The next item is an order to correct
4 typographical errors in the short form complaint and
5 confirming the logistics for filing with the Clerk's
6 Office. We've reviewed a proposed order to correct
7 certain typographical errors in the short form
8 complaint. Do you want to address that?

9 MR. BERMAN: Yes, Your Honor. After the short
10 form complaint was approved, and the order for direct
11 filing was approved, and we've compared, we found that
12 there were certain typographical errors that the parties
13 did not catch before submission to Your Honor,
14 particularly because an additional paragraph was added
15 to the short form complaint. But when that was added,
16 we did not conform succeeding paragraphs when they
17 referred back to specific paragraphs in the short form
18 complaint. Also there seemed to have been a difference
19 in the style of the caption that was being mandated by
20 the direct filing order, and the short form complaint
21 order.

22 So to cure those issues, we prepared a new
23 short form complaint that substantively is the same as
24 what had been previously approved, but cured the
25 typographical errors and made provisions so that the

1 case specific caption number or docket number for a case
2 would have a place on the caption for tracking by the --
3 by the Clerk's Office.

4 THE COURT: So the short form complaint that's
5 currently on the website has some errors in it?

6 MR. BERMAN: Correct, Your Honor.

7 THE COURT: Okay. And we want to correct
8 those.

9 MR. BERMAN: Correct, Your Honor.

10 THE COURT: Okay. I don't see any reason why
11 not. I will say that it takes staff here to go in and
12 make those changes, both in the Clerk's Office and my
13 chambers. We can certainly do that, but it's not a
14 matter of an order gets filed and the -- the changes are
15 made. So that's not any reason not to do it. It's a
16 reason maybe to look three times at what's filed in the
17 future to make sure that there aren't typographical
18 errors, because there is some work on this end to
19 correct those.

20 MR. BERMAN: We understand and apologize for
21 that, Your Honor.

22 THE COURT: No, that's okay. That happens.

23 MR. BERMAN: And the new short form complaint
24 was attached to the order that we submitted so that it
25 would appear on the docket. Hopefully that may make

1 things a little more efficient.

2 THE COURT: Right. Okay. Okay. Thank you.

3 MR. BERMAN: Yes.

4 THE COURT: Anything else about the correcting
5 errors? Anything on the defense side? No?

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

7 THE COURT: Okay.

8 MR. BERMAN: The other item, though, under
9 item seven, Your Honor, was whether there was anything
10 that the parties need to be aware of in terms of
11 interfacing with the Clerk's Office as to the logistics
12 of the filing of the short form complaint. Our idea is
13 that with the master complaint having been filed and the
14 order is in place, that new cases will be initiated by
15 the filing fee and a short form complaint and will be
16 assigned a specific docket number for tracking purposes
17 even though they will -- the cases will come under the
18 umbrella of the MDL docket as well. That's how we see
19 this happening, did not know whether we need to
20 interface with the Clerk's Office at all.

21 THE COURT: I honestly don't know the answer
22 to that, but I think it makes sense for someone from the
23 Steering Committee to be in touch with the Clerk's
24 Office. Do we know --

25 MR. BERMAN: I've spoke to Mr. Dempsey on a

1 number of different matters --

2 THE COURT: Okay. That's the person.

3 MR. BERMAN: -- and I will continue to do so
4 if that's -- if that's --

5 THE COURT: Yes, I think that's -- that's the
6 way to go. That's the way to go.

7 MR. BERMAN: Okay. And in terms of the cases
8 that have been removed from Common Pleas to Philadelphia
9 -- to this Court or otherwise came in as a tagalong,
10 those cases would already have a docket number assigned,
11 and our idea is that the short form complaint would be
12 filed using that docket number, that case specific
13 docket number for those cases.

14 THE COURT: Okay. That makes sense. Okay.
15 Anything else on that?

16 The next item is future status conferences.
17 Is there anything else we need to talk about before we
18 talk about future conferences?

19 MR. BERMAN: If I may one more time, Your
20 Honor, I spoke about some of the members of the Steering
21 Committee who -- already today -- but a number of them
22 have appeared today to introduce themselves and to
23 express their appreciation in being appointed by the
24 Court, so I thought I'd just take the opportunity, if I
25 may, to introduce a number of the other --

1 THE COURT: Please do. Yes, go ahead.

2 MR. BERMAN: -- Steering Committee members.

3 So Mr. Gallucci is from Dianne Nast's office
4 and Ms. Nast was not available today, but you did meet
5 her at the last conference.

6 We have Leonard Davis who I mentioned from
7 Louisiana.

8 MR. DAVIS: Good morning, Your Honor. Thank
9 you.

10 THE COURT: Good morning.

11 MR. BERMAN: And James Green who is from
12 Ashcraft and Gerel in Washington and Virginia.

13 MR. GREEN: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. BERMAN: And Mr. Tisi who is a partner of
16 Mr. Green although not formally appointed to the
17 Steering Committee.

18 And we have Mr. Buchanan who is here from the
19 Seeger Weiss firm. And Mr. Seeger, right, was
20 appointed. He was not available. Mr. Buchanan was
21 independently appointed as a New Jersey liaison. And
22 Mr. Longer is my partner --

23 THE COURT: Right. I know Mr. Longer.

24 MR. BERMAN: -- and he walked over to observe.

25 THE COURT: Good morning. Thank you.

1 MR. BERMAN: And we have -- and we have Mr.
2 Gainer.

3 MR. GAINER: Good morning, Your Honor.

4 THE COURT: Good morning, Mr. Gainer.

5 MR. BERMAN: And Mr. Weinkowitz is my partner
6 as well.

7 THE COURT: Yes.

8 MR. WEINKOWITZ: Good morning, Your Honor.

9 MR. BERMAN: And you met Mr. Milling.

10 THE COURT: Yes.

11 MR. BERMAN: Thank you for the opportunity to
12 do that.

13 THE COURT: Thank you. Okay. Do you want
14 equal time? You're fine.

15 MS. C. JONES: I don't think I have enough
16 people here.

17 THE COURT: You're fine. Very good. Thank
18 you very much. And I appreciate all the work that
19 you've been doing on both sides of this, and we look
20 forward to your continued cooperation and our being
21 productive together in getting this case developed and
22 hopefully resolved.

23 Schedule for next conference, do you want to
24 do it in a month? That takes us to the end of July.
25 Would it make more sense to take a little bit longer,

1 since you're working on a discovery plan, there doesn't
2 seem to be anything terribly pressing. Ms. Jones?

3 MS. C. JONES: I hesitate to say this without
4 having spoken with my counsel, but I would be perfectly
5 happy to take until the end of August, only because I'm
6 looking at vacation plans.

7 THE COURT: That's what I was thinking.

8 MS. C. JONES: I certainly understand that
9 that's not acceptable as, you know -- I think -- that's
10 not --

11 THE COURT: That's perfectly acceptable to me
12 that you take vacation. I think that's just fine, yes.

13 MS. C. JONES: I am certainly not suggesting
14 that we can't submit things in the interim and perhaps
15 move forward, but that would be my suggestion.

16 THE COURT: Do you want to go till the end of
17 August? Does that --

18 MR. BERMAN: That would be fine, Your Honor,
19 middle to the -- middle to the end of August.

20 THE COURT: -- involve any vacation time?

21 MR. BERMAN: Anybody have a conflict? That
22 would be fine, Your Honor.

23 THE COURT: All right. Let's do that. I
24 think -- in the meantime, you can submit -- if anything
25 comes up that we need to talk, I can get you on the

1 telephone. Certainly, we can -- we can do that.

2 MR. BERMAN: Yes. You have a procedure for
3 that that was enacted as well, Your Honor. Thank you.

4 THE COURT: Yes, yes.

5 MR. BERMAN: The only request that the parties
6 would have, if I may, is for an in-person conference, if
7 it could be on a Tuesday, Wednesday or Thursday as a
8 number of the attorneys travel from out of town, and
9 Monday conference requires travel on a Sunday, et
10 cetera. Thank you.

11 THE COURT: Okay. Okay. I think that's fine.
12 What day works best for you?

13 MR. BERMAN: Tuesday.

14 THE COURT: Tuesday? That's what I'm
15 thinking.

16 MS. C. JONES: I mean, I'm not -- it really
17 doesn't matter as long as --

18 THE COURT: Travel on Monday and -- okay.

19 MS. C. JONES: What I would hope, Your Honor,
20 and suggest is that as we get forward and we start
21 looking down the line, that perhaps we might agree upon
22 regularly scheduled conferences so that we can mark it
23 on our schedules --

24 THE COURT: I think that makes sense.

25 MS. C. JONES: -- and you can put it on your

1 schedule. You know, maybe we set those in August or
2 some time in the future, but I know it helps us all --

3 THE COURT: Okay.

4 MS. C. JONES: -- preserve our calender and
5 I'm sure it does the Court as well.

6 THE COURT: Do you want to give me a proposal
7 for that? I mean --

8 MS. C. JONES: We would be happy to.

9 THE COURT: -- I think Tuesday works fine, and
10 we can do that.

11 MR. BERMAN: For the next conference, some of
12 the members were suggesting Thursday, August 22nd. I
13 don't know if that would be a suitable date for you?

14 MS. C. JONES: I don't -- I don't have any
15 objection to it at this point.

16 THE COURT: Thursday, August 22nd?

17 MR. BERMAN: Yes.

18 THE COURT: Is that okay with us, Melanie?
19 Okay. That's fine. That works. Okay.

20 MR. BERMAN: What time?

21 THE COURT: 10:00? And the next item was
22 logistics for the dial-in option for counsel. Do you
23 have a preference for that?

24 MR. BERMAN: We placed it on the agenda, Your
25 Honor, so that in the event other counsel become

1 involved and they may wish to listen to the conference
2 although not have speaking ability, that might be
3 available. Also for the Steering Committee themselves,
4 they could participate as well if not traveling.

5 THE COURT: Right.

6 MR. BERMAN: Some of the cases we've been
7 involved in have made that available for counsel. We
8 did not know if Your Honor would find that to be
9 acceptable, and if so, how to handle the logistics to
10 set that up.

11 THE COURT: Yes. My thought was certainly for
12 the first couple of conferences that we meet in person.
13 We put, I think, in the case management order that we
14 would want you here if you have something to present.

15 MR. BERMAN: Yes.

16 THE COURT: I think that makes sense.
17 Otherwise, if you're simply monitoring or want to just
18 listen to what goes on, I don't have any problem with
19 people doing that by telephone. And maybe at some point
20 we get to doing these by telephone if it's simply an
21 update. But I'm -- I'm assuming for -- for the most
22 part we'll have substantive issues to talk about, and we
23 should be here in person to do that.

24 MR. BERMAN: And certainly I would be as my
25 office is two blocks away --

1 THE COURT: Right.

2 MR. BERMAN: -- so that's very convenient for
3 me, Your Honor.

4 THE COURT: Not so for everybody else.

5 MR. BERMAN: Right.

6 THE COURT: Ms. Jones, what are your thoughts?

7 MS. C. JONES: Your Honor, we're perfectly
8 happy, and I would anticipate that most of the time
9 we'll be here with issues. I guess I have two thoughts
10 about it. One is, it -- it sometimes is convenient to
11 have -- to be able to listen in to something; but,
12 secondly, I would hope that perhaps if we don't have a
13 matter on which, for example, I'm participating, that it
14 would be acceptable for Mr. Abernethy to be here and to
15 represent the interests and -- or Ms. Jones, whatever
16 may be appropriate, and --

17 THE COURT: I think that's fine.

18 MS. C. JONES: So as long as Your Honor is
19 happy with that, I think we'll -- we will work with you
20 with the telephone conference to whichever --

21 THE COURT: Right. No, I think that's fine,
22 and if you have a conflict -- I mean, it seems to me
23 there's a lot of very competent people at these tables,
24 so you can have -- just designate who is going to speak
25 for you. I think that makes sense. Okay.

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

CERTIFICATION

I, Donna M. Anders, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

9/1/13
Date

Donna M. Anders
Donna M. Anders