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1 (The following was heard in open court at
2 10:13 a.m.)

3 THE COURT: Good morning.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. I believe we
6 have made the telephone connections, so we have some
7 participants who are with us by telephone, and then we
8 have some counsel present here in the courtroom.

9 Let me just make certain who is here. Dianne
10 Nast, good morning.

11 MS. NAST: Yes, Your Honor.

12 THE COURT: Laurence Berman.

13 MR. BERGMAN: Good morning, Your Honor.

14 THE COURT: Good morning. Clay Milling.

15 MR. MILLING: Good morning, Your Honor.

16 THE COURT: Good morning. Michael
17 Weinkowitz, good morning.

18 MR. WEINKOWITZ: Good morning, Your Honor.

19 THE COURT: James Green.

20 MR. GREEN: Good morning, Your Honor.

21 THE COURT: Good morning. Christy Jones.

22 MS. C. JONES: Yes, Your Honor, good morning.

23 THE COURT: Good morning. David Abernethy.

24 MR. ABERNETHY: Good morning, Your Honor.

25 THE COURT: Good morning. Alyson Jones.

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

2 THE COURT: Good morning. Madeline Sherry.

3 MS. SHERRY: Good morning, Your Honor.

4 THE COURT: Good morning. Stephen Finley.

5 MR. FINLEY: Yes, Your Honor.

6 THE COURT: Good morning. Brandon Goodman.

7 MR. GOODMAN: Good morning, Your Honor.

8 THE COURT: Good morning. Robert O'Neill.

9 You are all sitting in order, it's great.

10 Okay. We have a few things to discuss, and
11 what I would like to do is start with agenda item five,
12 because in response to the concern about the filing of
13 short form complaints on the CMECF system I invited
14 some representatives from our clerk of court's office,
15 Susan Matlack and Rich Sabol are here with us. So,
16 thank you for being here this morning.

17 I wanted to just give you a chance to air
18 your concerns and then talk about how we can resolve
19 that with the clerk's office. So, go ahead, Mr.
20 Berman.

21 MR. BERMAN: Do you mind if I start? Thank
22 you. Laurence Berman speaking for the plaintiffs, Your
23 Honor. Thank you.

24 It came to our attention during this past
25 week that an attorney in California, Robert Moser, was

1 attempting to file cases utilizing the short form
2 complaint through the ECF system. He had difficulty
3 doing that.

4 We were copied on the e-mail traffic between
5 himself and the clerk's office, and what I understand
6 to be the issue is that his secretary, or paralegal, or
7 support staff is required to come to Philadelphia to go
8 through an in person training to learn how to make that
9 filing through the ECF system, and that there would be
10 four, five, six tests that that person would be put
11 through in order to confirm the proper utilization of
12 the system.

13 Once that occurs there would be a
14 certification of ability and knowledge, that the person
15 would then be permitted to make the filings in that
16 regard.

17 The issue becomes larger, if I may, in that
18 if other counsel also wish to file through the ECF
19 system and are not part of the steering committee or
20 otherwise recognized in the Eastern District of
21 Pennsylvania for the ECF filing, it would seem to me
22 that all such persons might have to come in and be
23 similarly trained and await the days when the clerk's
24 office conducts that training.

25 As far as I know, the counsel who likely will

1 be filing cases in this matter, distant from the
2 Philadelphia area or the PSC, are counsel who typically
3 are involved in MDL matters. I believe they are fairly
4 facile with filing and utilizing the ECF system.

5 Our request would be either some distant
6 methodology for them to confirm their abilities to
7 utilize the system and to avoid having to travel to
8 Philadelphia for a learning day, particularly somebody
9 from California that would involve a two or three day
10 travel.

11 THE COURT: Right.

12 MR. BERMAN: Just because of the distance to
13 come across the country.

14 THE COURT: Do we have any idea how many of
15 those complaints you anticipate?

16 MR. BERMAN: I don't know if I can give an
17 estimate. I know that there are some attorneys who are
18 filing cases more traditionally in a federal court out
19 of the MDL, not a direct filing utilizing the short
20 form complaint, and then those complaints will be
21 transferred through the panel to this Court, and then
22 those cases will have to conform to the short form by
23 filing a substituted complaint.

24 There have been cases filed in Florida in
25 federal court that are coming to this Court through

1 that mechanism. Those counsel I think would have
2 preferred to have been able to utilize the short form
3 complaint.

4 In regards to the California situation, my
5 understanding is that there were two cases that had to
6 be filed by hard copy paper, in which case because they
7 were not able to utilize the ECF system they mailed
8 hard copies to the clerk's office. They were filed,
9 uploaded as I understand it, through the ECF system by
10 the clerk's office, and then that's the way that they
11 got onto the docket.

12 That California counsel has a number of cases
13 in state court, and I understand that he is speaking
14 with defense counsel about a dismissal without
15 prejudice of those cases so that they would be refiled
16 in the MDL. His preference would be that those cases
17 be filed using the short form electronically.

18 I don't know if it's more pervasive, but my
19 impression is is that nobody is able to use the ECF
20 short form complaint filing at this point unless they
21 are filing directly -- my understanding is nobody is
22 able to do that. I guess the clerk's office may be
23 able to elaborate, my information may be wrong.

24 But, that's the extent of my knowledge on
25 this, Your Honor.

1 THE COURT: Okay. What is to prevent --
2 well, a couple of points to cover. What is to prevent
3 those attorneys say, for example, Mr. Moser in
4 California, what is to prevent him from filing through
5 your steering committee, or does he prefer to file on
6 his own and remain in the case as plaintiffs' counsel?

7 MR. BERMAN: I think he, and I am not
8 speaking for him with respect to that specific issue
9 because I have not discussed it with him, but, yes,
10 certainly he could send the case to the steering
11 committee to ask that it be filed using the ECF system.

12 But, he intends to be counsel of record in
13 that case, and these are specific cases where he is
14 counsel. Whether he may or may not enter into a
15 relationship with members of the steering committee I
16 think is a separate issue.

17 THE COURT: It's another issue, right.

18 MR. BERMAN: As to the ability to file the
19 case.

20 THE COURT: Okay. All right. Well, why
21 don't I ask Mr. Sabol or Ms. Matlack to simply explain
22 the short form CMECF filing process and what the
23 training involves.

24 MS. MATLACK: Well, we have a question first.
25 When you say short form, you are filing a short form

1 complaint to an existing case, or are you saying a
2 short form complaint, which would be a completely new
3 case number?

4 MR. BERMAN: The way we understand it, the
5 case management order reads is that if a completely new
6 case is filed on behalf of a plaintiff or in a matter,
7 that case would be initiated by a short form complaint
8 that tracks --

9 MS. MATLACK: Okay.

10 MR. BERMAN: -- to a master administrative
11 complaint that is already on file. That individual
12 case, a new case, would be assigned its own docket
13 number.

14 MS. MATLACK: Okay.

15 MR. BERMAN: But, would then be consolidated
16 into the master complaint and the master MDL docket.

17 MS. MATLACK: MDL docket. Okay. The reason
18 why we do want people to come in for training, for the
19 complaint training, is because we expect them to file
20 the complaint from beginning to end.

21 It's a little bit different than some courts
22 will do, a dummy docket, you can file a complaint which
23 is a dummy docket. We want the filing done, the
24 complaint done where you enter all the statistical
25 information, you add the parties, you link the parties

1 to the attorney. It is pretty involved, and that is
2 why we asked for the training.

3 We could set something up where we could give
4 the attorney in California a test login and password,
5 where they go into our training database and try and
6 file some complaints, and then we could work with them
7 that way. That is the only --

8 MR. BERMAN: I think that would be the
9 preferable way to do it in requiring support personnel
10 to come to Philadelphia for the training. I do believe
11 most of the counsel who will be filing cases have filed
12 ECF filings in other matters.

13 It may be different in this district, but --

14 MS. MATLACK: It is.

15 MR. BERMAN: -- they may be quick learners.

16 MS. MATLACK: Yes.

17 MR. BERMAN: But, the training would --

18 MR. SABOL: We would just require them to do
19 maybe five or six cases where we think that they have
20 done everything correctly. That way there will be no
21 issues with the quality control of it later on.

22 MS. MATLACK: Right.

23 MR. BERMAN: I think my partner, Mr.
24 Weinkowitz, is explaining to me that he believes that
25 even our firm, because we are not a member of your

1 pilot program, that we would not even be able to file
2 without having --

3 MS. MATLACK: Right.

4 MR. BERMAN: -- one of our support people --

5 MR. SABOL: Correct.

6 MS. MATLACK: Yes.

7 MR. BERMAN: -- be trained, too.

8 MS. MATLACK: Yes.

9 THE COURT: You haven't gone through the
10 training yet?

11 MR. BERMAN: I have not. I'm lucky to be
12 able to --

13 THE COURT: Did Mr. Weinkowitz?

14 MR. WEINKOWITZ: I have not, Your Honor.

15 THE COURT: Okay. Well, then you have to get
16 up here.

17 MS. MATLACK: And it's not a pilot program,
18 it's just a program that we have available, but we do
19 expect people to come in for the training. If you sat
20 through the training you would realize that it is a lot
21 different filing a complaint than filing a motion or
22 any other kind of CMECF entry.

23 It is a lot more involved, and that's why we
24 expect the training, because if it's not done properly
25 that could really screw everything up where we would

1 have to go in probably and delete the case and start
2 all over again.

3 MR. BERMAN: Right.

4 THE COURT: So, Susan, can we do some long
5 distance training if the people in California get on
6 the phone with somebody in your office and somebody
7 walks them through the training?

8 MS. MATLACK: Sure.

9 THE COURT: We could do that?

10 MS. MATLACK: Sure.

11 MR. BERMAN: Your Honor, it's not only even
12 the California counsel, you know, if I may, Mr. Milling
13 is co-lead counsel who is in Atlanta, and his support
14 people would also need that training.

15 So, if we could set up something remotely
16 long distance, a go to meeting or something like
17 that --

18 MS. MATLACK: We could do a teleconference.

19 MR. SABOL: Yes, we could probably do some
20 type of conference.

21 THE COURT: We can certainly try that.

22 MS. MATLACK: Yes.

23 MR. MILLING: If I could just say something,
24 Your Honor?

25 THE COURT: Yes, Mr. Milling.

1 MR. MILLING: I think -- thank you all for
2 what you are doing, given the fact that their are
3 lawyers ultimately from around the country, and given
4 the fact that we have this short form complaint, which
5 is essentially a check up.

6 I think everybody is trying to move to the
7 same spot, which is how do we make it easy for people
8 to do it right, but yet still be able to do it from
9 their desk top?

10 If there is a way for us to organize a group,
11 and then if more people join we call back and we
12 organize another group just so people get trained,
13 including my office? I think that that would be
14 amazing.

15 MS. MATLACK: Maybe we could set up a video
16 conference training.

17 THE COURT: Okay.

18 MS. MATLACK: Do we have video conference in
19 the employee's training room? Bill, do you know?

20 MR. JONES: No, but we have it in portable.

21 MS. MATLACK: Okay. Okay.

22 MR. WEINKOWITZ: And to minimize the amount
23 of sort of aggravation on you, our firm can sort of be
24 the point person to organize that for you so you don't
25 have a million people calling.

1 MS. MATLACK: Okay.

2 MR. WEINKOWITZ: And then at least you will
3 have one contact with us.

4 MS. MATLACK: Okay.

5 MR. WEINKOWITZ: Rather than 20 to 30 people
6 calling you.

7 MS. MATLACK: Okay.

8 MR. WEINKOWITZ: We can do that going
9 forward, too.

10 MR. BERMAN: I mean, I would be thinking that
11 if we could get a selection of several dates that is
12 convenient for the staff or the clerk --

13 MS. MATLACK: Okay.

14 MR. BERMAN: Then we could publish that to
15 the various counsel who wish to file, and advise them
16 this is a date that is selected, you know, it's
17 important, et cetera, and try to get them --

18 MR. SABOL: Sure, we can make that together.

19 MS. MATLACK: Okay. Yes, sure, definitely.

20 MR. SABOL: We can put that together with
21 chambers.

22 MS. MATLACK: I'm going to be very up front
23 about. We do really have very strict standards for the
24 filing of the complaints, so, you know, you sit through
25 the training, but if they keep filing complaints and

1 there is a lot of issues and problems with it, we are
2 not going to release them.

3 MR. SABOL: Release them.

4 MS. MATLACK: A little bit of, you know, high
5 schoolish, Catholic schoolish, I don't know.

6 THE COURT: Right, it makes sense.

7 MS. MATLACK: But, we do have standards with
8 the complaints.

9 THE COURT: Okay.

10 MR. BERMAN: Right.

11 MS. MATLACK: Because if it's screwed up in
12 the beginning, then it just really can, you know, mess
13 up the whole docket down the road.

14 MR. SABOL: I think that's the difference
15 between some of the other districts, is ours, if you
16 are going to do that this way it goes right into our
17 live ECF system, where with the other courts it goes
18 into a separate, they call it a dummy docket, where
19 that is all reviewed first before it gets puts into
20 the --

21 MS. MATLACK: We will gladly work with you on
22 this matter.

23 MR. BERMAN: Okay.

24 MS. MATLACK: Okay.

25 THE COURT: It sounds like someone from your

1 office, though, should go through the training soon.

2 MR. BERMAN: Yes.

3 THE COURT: So, you can be technical advisors
4 to other counsel, and also so you can file the short
5 forms directly.

6 MR. BERMAN: That's agreeable, of course,
7 Your Honor.

8 THE COURT: Okay.

9 MR. BERMAN: Thank you.

10 MS. MATLACK: Your Honor, I think one other
11 issue with the filing of your short complaint.

12 THE COURT: Yes, Susan?

13 MS. MATLACK: Your short forms. It sounds
14 like it is going to be pretty standard.

15 MR. BERMAN: Yes.

16 MS. MATLACK: Pretty much the same thing.
17 So, once you get the hang of it I think it will be
18 fairly easy to follow through on.

19 MR. SABOL: I think it's doable.

20 MS. MATLACK: Right.

21 MR. MILLING: Right, the short form will be
22 virtually identical.

23 MR. MILLING: It's a check box.

24 MS. MATLACK: Okay.

25 MR. MILLING: The check box.

1 MS. MATLACK: And then just add a different
2 party name, though.

3 MR. MILLING: Right.

4 THE COURT: Thank you for being willing to do
5 that short form --

6 MS. MATLACK: Sure.

7 THE COURT: -- long distance training.

8 MS. MATLACK: Okay.

9 THE COURT: If you can coordinate with Susan
10 to set up some dates, that would be helpful.

11 MS. MATLACK: I can give him my phone number.

12 THE COURT: Is there anything else on that
13 subject?

14 MR. BERMAN: I don't think so, Your Honor,
15 thank you.

16 THE COURT: Okay. All right. Very quiet
17 over here, by the way.

18 MS. C. JONES: We have no interest in
19 assisting them in filing the complaints, Your Honor.

20 THE COURT: Thank you. I sort of gathered
21 that.

22 MS. MATLACK: Okay. Thanks.

23 THE COURT: Thank you, Rick. Thank you,
24 Susan.

25 Let's move to item one on the agenda then,

1 the defense facts sheet and accompanying order, which
2 is ripe for Court approval. I think this is our case
3 management order number ten, and I did review those,
4 Molly reviewed those. Who wants to speak to that?

5 MR. BERMAN: I don't know if there is too
6 much to speak to from the plaintiffs' side, Your Honor.
7 As you may recall, you did enter a case management
8 order that approved the utilization of a plaintiffs'
9 fact sheet.

10 THE COURT: Yes.

11 MR. BERMAN: I believe maybe at the last
12 conference we had mentioned that the parties were going
13 to attempt to resolve, and presenting you a defendants'
14 fact sheet, initially there were some issues that were
15 related to that that were described in the agenda.

16 The parties resolved those and present to
17 Your Honor a defendants' fact sheet, subject to Ms.
18 Jones having any further comment.

19 THE COURT: Okay. Ms. Jones?

20 MS. C. JONES: I think we have submitted,
21 Your Honor, an agreed fact sheet, an order that all
22 parties are happy with, sir. I don't think there's
23 anything further to discuss.

24 THE COURT: Okay. Looks good to me, and I
25 will sign case management order 10B, because the

1 initial ten, case management order ten had to do with
2 plaintiff and defense facts sheets. So, we will plug
3 it in there. Okay. Thank you.

4 The next item on our agenda is a discovery
5 update. There are four sub-parts to that. So, Mr.
6 Berman, would you begin with that, please?

7 MR. BERMAN: I will, Your Honor, thank you.
8 I am going to discuss item 2A, and to the extent there
9 is further discussion, Mr. Milling will discuss items
10 2B, C, and D.

11 With respect to 2A, the parties have been
12 discussing two case management orders to present to
13 Your Honor. One would address Bellwether selection
14 issues and, therefore, the scope of discovery related
15 to the cases that would be worked up in a Bellwether
16 selection process.

17 They also have been discussing more generally
18 a discovery plan in terms of generic and case specific
19 expert discovery, commencement of discovery,
20 commencement of 30(b)(6) depositions. I have
21 confirmation of full production of documents from
22 custodial files and things of that sort.

23 So, those are the issues that the parties
24 have been discussing. We have exchanged many drafts on
25 these issues in the last several weeks. There are a

1 few issues that we have not reached resolution on yet.
2 We may not reach resolution on those.

3 I can elaborate on those narrow issues now if
4 you wish, otherwise my thought was that if we do not
5 reach resolution within maybe the next three to five
6 days, the plaintiffs intend to file a letter brief, a
7 short letter brief as you permitted, and permit the
8 defendants to respond, and then we would ask the Court
9 to hold a conference call or however the Court may wish
10 to address the issues that remain.

11 We prefer to move this along more rapidly
12 than the next scheduled conference, which is the middle
13 of September, as the plaintiffs would like to begin
14 taking their discovery and moving this forward.

15 THE COURT: Okay.

16 MR. BERMAN: Ms. Jones may speak about the
17 scheduling of the next conference, as well as other
18 issues here, but I understand she may have a conflict
19 for the September 24th conference, and that is all the
20 more reason why we may wish to have a telephone --

21 THE COURT: I see.

22 MR. BERMAN: -- conference in advance, if
23 possible.

24 THE COURT: All right. Okay. Ms. Jones.

25 MS. C. JONES: If I might be heard on this

1 Court's guidance on.

2 I have a suggestion that I mentioned to Mr.
3 Berman this morning, and that is that is we schedule
4 for the benefit of the Court what I am going to call a
5 science day, or a tutorial day, or whatever, that could
6 frankly be something that's done off the record, but
7 where the parties undertake to really advise the
8 Court --

9 I don't mean to be presumptuous to suggest
10 that the Court needs advising on what the scientific
11 and regulatory issues and all on here, but I do think
12 that those issues will, in fact, guide the scope of
13 discovery going forward.

14 As the Court already knows, we have produced
15 millions of documents to the plaintiffs. We have
16 produced over 120 transcripts of depositions that have
17 been taken in the past.

18 This MDL is, frankly, very different from any
19 MDL that I have ever been associated with in the past,
20 and different from anything that I have ever seen in
21 that we have a drug that has been available and on the
22 market for over 50 years. The injury that is claimed
23 in this case across the board is liver toxicity, which
24 is an alleged injury that has been recognized since the
25 1970s.

1 In fact, Your Honor, there is not going to be
2 any dispute about the issue of general causation that
3 when you take Tylenol or acetaminophen in excess of the
4 recommended dosage that it can, in fact, cause hepatic
5 toxicity and injury. That is not going to be an issue
6 here. The issue, on the other hand, is going to be the
7 more case specific aspect of it. That's number one.

8 The second thing is that we have had 40 years
9 of regulatory action by the FDA and mandated warnings
10 and so forth that I don't want to get into all of the
11 details with the Court at this point, but that had
12 dealt very specifically with the warnings of hepatic
13 toxicity potential with respect to this.

14 That has been known for a long time. There
15 are going to be a substantial number of issues for
16 which there is simply not any dispute. We can consider
17 entering into stipulations or whatever else so the
18 discovery, an additional discovery is simply
19 unnecessary.

20 Given the manual of the complex litigation
21 that suggests that discovery ought to be tailored, and
22 that the Court and the parties ought to undertake --
23 suggests that the parties are to undertake to work with
24 the Court to fashion a discovery plan specifically
25 related to both narrowing the issues so that the

1 litigation can be resolved in an economically and
2 efficient basis, I think it's important for us to have
3 an opportunity to present that information to the Court
4 because I don't think

5 I do think it's going be important for us to
6 have and to look at perhaps staged forms of discovery,
7 to have a limitation on the number of depositions that
8 can be taken, and so that we don't have duplication of
9 everything that's gone on before in terms of the
10 document production.

11 Virtually every MDL has a limitation on the
12 number of interrogatories, requests for admissions, and
13 all of that. We have a fundamental disagreement at
14 this stage with plaintiffs, and I just -- my concern is
15 that it would be beneficial to the Court to have, if
16 you will, a little bit of an educational program about
17 that, whether we submit --

18 My personal thought was that it would be
19 easier for us to come and talk through the issues and
20 present the issues to the Court that would help the
21 Court then decide, if you will, the disputes between
22 the parties.

23 THE COURT: I would welcome that. I have
24 done that in patent cases, and I think it's important
25 and very helpful. So, you would propose that, I guess,

1 sooner rather than later so that we have a backdrop
2 then for these discovery issues?

3 MS. C. JONES: I would, and I am hoping that,
4 frankly, that would enable the Court to help us resolve
5 some of these issues. I think it's clear the parties
6 are trying to work together --

7 THE COURT: Right.

8 MS. C. JONES: -- to get to the right result,
9 but we have a little bit of a fundamental disagreement
10 about some of these issue that I think we're going to
11 have to involve the Court.

12 I am just a little bit concerned that if we
13 do it just by a letter brief here and there that it's
14 not going to accomplish long term what we would hope to
15 accomplish for the efficient --

16 THE COURT: I would welcome that. Any
17 concerns about that, Mr. Berman?

18 MR. BERMAN: Ms. Jones' presentation covered
19 a lot of issues to Your Honor.

20 THE COURT: Right. I guess initially about
21 the parties working together on some sort of tutorial
22 or some sort of general discussion about the science
23 involved in this case and what the real scientific or
24 medical issues are.

25 MR. BERMAN: Mr. Milling may respond to that,

1 but I wanted to say it was first discussed with us five
2 minutes or so before the conference commenced, and we
3 have not had an opportunity to really digest that or
4 even the scope of what it may entail.

5 THE COURT: Right.

6 MR. BERMAN: Ms. Jones made a number of
7 comments about, you know, issues relating to general
8 science. We need to flesh this out before we actually
9 know what is being proposed.

10 Our agenda included the fact that we do
11 believe there are a number of areas of discovery that
12 are in dispute that will require the Court's
13 involvement.

14 To the extent it is characterized as being
15 old matters, it's all well known, and we don't need
16 that discovery, I think we're going to take a different
17 position, and it may involve, you know, having the
18 Court resolve that.

19 THE COURT: Right.

20 MR. BERMAN: As I said, Mr. Milling was going
21 to speak about those areas as it is, I do defer to him,
22 Your Honor, if I may.

23 THE COURT: Okay.

24 MR. MILLING: Good morning, Your Honor.

25 THE COURT: Good morning, Mr. Milling.

1 MR. MILLING: My gut reaction, and I can't
2 speak for the PSC, but gut reaction is having a
3 tutorial day is something I don't think we would
4 resist.

5 So, it is interesting, though, that if it's
6 acknowledged by the defense, and it can't otherwise be
7 because it is the truth that acetaminophen causes liver
8 toxicity in certain individuals, and it certainly does
9 this and has been known to that for a long time.

10 The science to that particular issue may not
11 be necessary because we agree on that. What the
12 plaintiffs in the case are interested in proving is
13 that it has been known that at very, very -- at the
14 recommended dose in their own documents, and very close
15 to the recommended dose, very narrow. People can die
16 from acetaminophen.

17 The issue in the case is how long has McNeil
18 known this, how long has Johnson & Johnson known this,
19 and what have they done through their marketing and
20 through their labeling to appropriately warn consumers
21 of the potential dangers of this drug?

22 That's over-the-counter, where we can look at
23 the other drugs that clearly told doctors that this can
24 kill you and this can cause liver failure, but not in
25 this case.

1 So, we are happy to talk about certain
2 issues, but the core issue, I think, and what Ms. Jones
3 has said is agreed upon, my moving to sort of the issue
4 that Ms. Jones raises that we have discovery issues.
5 It was said, and don't take this the wrong way Christy,
6 I don't know how else to say it, but it was kind of
7 vague. I'm not really sure what the discovery issues
8 are.

9 I'll address our items B, C, and D. What we
10 tried to do, Your Honor, as the plaintiffs' steering
11 committee, is we got together and we realized we had
12 two months until the next hearing. We had mentioned to
13 you that we believe that there were certain
14 identifiable additional discovery that we wanted to do,
15 and we wanted to sort of tidy up the discovery.

16 To backtrack again to what Ms. Jones says,
17 that they have produced millions of documents, that is
18 true. But, it's not, as Judge Higbee mentioned and
19 realized in New Jersey, it's not as if they went and
20 found these documents.

21 All they did was take the historical Tylenol
22 documents, converted to electronic, which they were
23 going to do anyway because it's 2013, and produced them
24 to us in a big lump form.

25 What we decided to do and our goal was to,

1 number one, go through all of the discovery we had
2 outstanding and see if wanted to -- if we thought that
3 it needed to be supplemented, and we had sent letters
4 on interrogatories, requests for documents, and
5 requests for admissions.

6 Of course, as the Court knows, requests for
7 admissions, we could go right to a motion, but we had
8 some attachments that were not properly identified, and
9 so we actually sent a letter before a motion. So, we
10 accomplished that.

11 The second thing is is that we sent specific
12 discovery and very tailored discovery based on our
13 knowledge of the evidence that we have discovered so
14 far to Johnson & Johnson, both interrogatories and
15 requests for production.

16 The third, what we wanted to do is we wanted
17 to send -- I'll refer to it here in the courtroom as a
18 bucket list, sort of a letter that does a number of
19 things, that says we just as a broad brush we want to
20 make sure we get Johnson & Johnson's documents.

21 We know Johnson & Johnson had members of
22 every one of these committees. We know Johnson &
23 Johnson approves every piece of marketing, every label
24 that goes out. We know Johnson & Johnson sells
25 acetaminophen and Paracetamol all over the world, and

1 that Johnson & Johnson coordinates all of the adverse
2 events, things that go wrong with acetaminophen in the
3 world.

4 So, we wanted to send discovery to Johnson &
5 Johnson to begin to get their documents because thus
6 far we have received none. We accomplished that, and
7 the last thing we wanted to do is we wanted to send in
8 this letter for them to identify what we would consider
9 to be our first potential deponents and ask that we can
10 go ahead and begin to work towards depositions in
11 October.

12 So, I guess hearing what Ms. Jones said my
13 gut reaction, and I cannot speak for the whole PSC at
14 this point, is that it sounds fine. But, what we are
15 trying to do is we want to make sure the Court is aware
16 from our perspective if we really want to move the case
17 we have had the documents for a long time.

18 There are some areas specifically related to
19 Johnson & Johnson, their involvement, that we really
20 are going to need the discovery and the control over
21 which Johnson & Johnson has over acetaminophen, and
22 what it knows about this product on a global sense.

23 But, we are ready to move forward with
24 30(b)(6)s and the depositions, so anything that Ms.
25 Jones wants to do we would just ask that we move

1 forward.

2 Coming back to this scheduling order, I think
3 what Mr. Berman alluded to is really where we are as, I
4 think, say just sort off the cuff I think we need a
5 telephone call, I think there is some blanks that need
6 to filled in in terms of dates, and I think from the
7 plaintiffs' perspective it's time to go. That's what
8 we tried to over the two months.

9 THE COURT: All right. Go ahead, Ms. Jones.

10 MS. C. JONES: Well, the one thing that --
11 what I am trying to make clear for the Court is that we
12 have got all of the discovery requests, and I think
13 they have kind of gotten the cart before the horse in
14 the sense that we need to have a discovery plan that is
15 out there with deadlines, and limitations, and that
16 everybody knows about and knows where we are going
17 before we start automatically noticing depositions or
18 moving.

19 I am perfectly happy to say to the Court, you
20 know, we will get your tutorial and sit down with you
21 at any time that the Court's schedule permits, but
22 rather than just having repeated requests for
23 admissions, or requests for productions, or requests
24 for depositions filed on us, then we need to have at
25 the start an understanding what that scope is going to

1 be.

2 Is it going to be limited to 25 depositions,
3 and if it's going to be limited to 25 depositions, then
4 I suggest to the Court that the plaintiffs' would want
5 to know it's going to be limited to 25 depositions so
6 that they can assess priorities and presumptions in
7 order to select those people, recognize them.

8 The Court can always -- or, whatever, change
9 that or permit some additional ones.

10 THE COURT: Right.

11 MS. C. JONES: But, that's what I am
12 suggesting that we need, is we actually need a broader
13 scheduling discovery order than what the plaintiffs,
14 frankly, are contemplating at this point in time.
15 That's what I'm asking to leave to the Court.

16 But, to consider these issues so that we can
17 map out a plan, and then certainly move forward with
18 discovery in an efficient manner.

19 THE COURT: It sounds like there are
20 scenarios where you are in agreement over discovery,
21 and I am happy to set up something soon where we can
22 talk about the scientific and regulatory issues, and
23 then perhaps in that context then try to resolve these
24 areas where you can't agree.

25 MS. C. JONES: That would be fine, Your

1 Honor.

2 THE COURT: Okay.

3 MS. C. JONES: I mean, we know that there's
4 going to be discovery out there.

5 THE COURT: Right.

6 MS. C. JONES: That is not --

7 THE COURT: Right.

8 MS. C. JONES: That is not the issue, but it
9 is an issue that we don't think some of it may be
10 necessary. We may make it much easier for the
11 plaintiffs by saying we'll stipulate to these facts, so
12 you are not going need this discovery.

13 THE COURT: Okay.

14 MS. C. JONES: On other issues it may be that
15 what we say to the Court is we are willing to respond
16 to requests for admissions, but there needs to be some
17 limitation on the number or, you know, some limitation
18 on the number of depositions, and here's what the
19 schedule is kind of going forward.

20 Frankly, Your Honor, I suspect that as we are
21 beginning to have and collect information on the
22 plaintiffs' fact sheets about what the products are
23 involved and what the injuries are involved and so
24 forth, that those in and of themselves may result
25 certain issues either getting priority.

1 We may say, you know, it doesn't look like we
2 have many cases involving this product, or have statute
3 of limitation issues, or whatever that need to be
4 resolved to help move this case along for the Court.

5 THE COURT: Okay.

6 MR. BERMAN: Your Honor, if I may real
7 quickly?

8 THE COURT: Yes, go ahead, Mr. Berman.

9 MR. BERMAN: I mean, I didn't intend to get
10 into the depths of where we are in negotiations with
11 respect to orders that have not yet been presented to
12 the Court.

13 With respect to, though, the Bellwether
14 selection for example, the parties have agreed to a
15 limitation on the numbers of depositions that would
16 take place in that, and that they have agreed to the
17 number of plaintiffs who would go through a core
18 discovery for determination of which case might be the
19 first case.

20 With respect to the so-called bucket list, we
21 did present a suggested limitation on the first wave of
22 depositions. We identified 15 witnesses. It is a
23 first wave, we are not sure whether it would be
24 expanded to be more or not, but it's not as though the
25 plaintiffs are not recognizing that, you know, there

1 needs to be some scope.

2 There are a lot of dates that we need to fill
3 out in our discovery plan, you know, discovery closes
4 by X date.

5 THE COURT: Right.

6 MR. BERMAN: Expert reports are to be
7 produced by a certain date, depositions by a certain
8 date, and we don't want to really delay all of that
9 with respect to a potential science day or tutorial
10 day.

11 Certainly, they can go in hand -- we haven't
12 been presented with any stipulation of facts that is
13 being suggested that might make certain areas of
14 discovery not necessary. To the extent that we to be
15 presented a stipulation of facts, it would have to be
16 very, very extensive because we have the burden in a
17 complex case.

18 THE COURT: Okay.

19 MR. BERMAN: So, we don't want to delay the
20 discovery, we want to keep the momentum on that and not
21 delay it because of the potential of a science day.

22 THE COURT: All right. Well, can you
23 continue to negotiate as to those areas where you can
24 reach some agreement, and I can try to schedule a day
25 or a morning. Do we need a full day, do you think?

1 MR. BERMAN: Are you speaking about the
2 discovery disputes, Your Honor?

3 THE COURT: Yes, but to talk about the
4 scientific and regulatory issues. With my scientific
5 background, we may need a week.

6 MS. C. JONES: I would think the morning or a
7 half a day would be sufficient.

8 THE COURT: Okay.

9 MS. C. JONES: I mean, in my mind, now I
10 don't want to be presumptuous, in my mind, you know, we
11 would have maybe the plaintiffs would have an hour and
12 we would have an hour, and then we might have a time to
13 have some discussion with the Court in more of an
14 informal manner to the extent that we have issues that
15 we have not been able to resolve there.

16 THE COURT: Okay.

17 MR. BERMAN: Again, we had not previously
18 heard about the suggestion of such a day, and for
19 clarification and something else we may need to speak
20 about is what we are hearing is is this would be
21 presentations by counsel and not an intent to bring
22 witnesses to elaborate on the issues.

23 THE COURT: Right.

24 MS. C. JONES: That was, frankly, my thought.
25 In all fairness, Your Honor, I did -- I admit that I

1 told Mr. Berman this morning beforehand that I had
2 thought about this idea.

3 THE COURT: Okay.

4 MS. C. JONES: And thought that it was
5 perhaps a way to assist the Court. I didn't mean to
6 sandbag him at all.

7 THE COURT: Right. Okay. Who would do the
8 presentation? Would counsel do it?

9 MS. C. JONES: My thought, although we could
10 certainly come to an agreement, I have done it both
11 ways, where we have had witnesses that had testified
12 and whatever where they have done it, basically, off
13 the record so that nobody is bound by it.

14 My personal thought that I have not mentioned
15 to counsel would be that counsel would just kind of
16 present the issue as we understand them and the
17 historical aspect and all.

18 THE COURT: Okay. Mr. Milling.

19 MR. MILLING: See how we operate over here.
20 No, Clay, you stand up and do this.

21 Again, coming back to this, if it is just
22 going to be a science and regulatory day, then we would
23 need to have a -- this is as good a place as any yo
24 hash out just a few things.

25 We are going to do regulatory, which I think

1 is fine. I think, and I guess I don't know what the
2 PSC thinks, it seems we're both okay, we need some
3 assistance from the defense.

4 One of the issues in our letter that we wrote
5 to the defense, and I actually raised it with Alyson
6 this morning, and I think it's something that -- I
7 think everybody would agree it's pretty fair, is that
8 every year McNeil and Johnson & Johnson are required by
9 regulations to submit annual reports, periodic reports
10 to the FDA, and that goes back to the seventies.

11 One of the requests that we made in our
12 letter was -- it didn't -- it wasn't really
13 articulated. It was well, I guess in the final draft
14 what we want is that we said Alyson, for having a
15 difficult time finding the -- out of the seven million
16 documents, finding the final submission to the FDA for
17 all these, for the product Extra Strength Tylenol, to
18 take an example, for all these years, but we know from
19 other lawyers that you had all that information in one
20 place.

21 If I type into our computer system "Annual
22 report 1974" I get 216 documents that are letters about
23 it, drafts of it, and I can't find the final one. I
24 asked Alyson, you know, on certain things that should
25 be easily -- that should be by regulatory compliance

1 that are easily identifiable, could we just ask for,
2 you know, we will pay for the copying, and can we get
3 that information?

4 Then we also are going to need every -- what
5 has happened over the course -- as you know, every time
6 there is an adverse event report that comes into McNeil
7 or Johnson & Johnson, a doctor or somebody calls up and
8 says a patient has suffered, for example, acute liver
9 failure since that is what we are doing here, there
10 must be -- or, it comes out of the literature that it
11 must be within 15 days that that must be submitted to
12 the FDA, it must be analyzed, it must be followed up
13 on. We don't have that information yet.

14 So, we are a little bit in the blind. We are
15 working on the adverse events, but that has not been
16 provided to us. McNeil is actually -- I know in 1999,
17 there was -- in 2003 they actually restructured and
18 began this whole program to try and computerize it
19 because there were some delinquencies noted.

20 But, we need to get that computer data to us
21 so we can see what they knew, what they submitted, how
22 often they followed up, in addition to -- which is
23 easier. That's a more difficult project, although I
24 suspect it is in boxes.

25 But, in addition to -- just getting the

1 regulatory and periodic annual filing to us before we
2 do a regulatory day. We just can't find it in the
3 computer.

4 Of course, if I may point out, of course this
5 relevant discovery because, obviously, at what dose,
6 and how close to margins, and this is occurring goes to
7 the heart of this case.

8 THE COURT: All right.

9 MR. MILLING: So, if there is a way, and I
10 just brought it out that we could have done it on the
11 phone, but Alyson said she would go back. But, if we
12 can just get some of this material transferred to us at
13 our cost, because it is simply -- it takes me literally
14 six hours to go through 216 documents.

15 THE COURT: All right.

16 MR. MILLING: I still am not sure that this
17 is the one they sent to the FDA.

18 THE COURT: Right.

19 MR. MILLING: But, it can be transferred
20 over.

21 THE COURT: Okay. Is that something we can
22 do?

23 MS. C. JONES: We will certainly work with
24 him on that in terms of if there is certain documents.
25 My understanding is that the vast majority of that, if

1 not all of it, has already been produced, but if there
2 is a way that we can clearly get to and provide --

3 THE COURT: I think he is saying it has been
4 produced, it's just hard to access.

5 MS. C. JONES: yes, it's just he can't find
6 it.

7 THE COURT: Right.

8 MS. C. JONES: I know.

9 THE COURT: Right.

10 MS. C. JONES: So, we are surely willing to
11 work with them as soon as we can to get that
12 accomplished.

13 THE COURT: All right.

14 MR. BERMAN: I believe, Your Honor, that our
15 point is is that they may not have all been produced,
16 and one of the items that is involved in the discovery
17 plan was also a request of a certification that the
18 documents had been all produced so we know that we got
19 the full set.

20 THE COURT: Right.

21 MR. BERMAN: Again, I didn't want to bogged
22 down in all these, but it is one of the issues we are
23 working on.

24 THE COURT: Okay. All right. Let me ask you
25 to talk after we conclude today about what kind of

1 presentation you have in mind or what kind of
2 presentation you can agree to.

3 If there is an expert you want to bring in,
4 somebody from the industry, somebody who the
5 plaintiffs' bar has used to educate themselves about
6 these issues I am happy to hear that person off the
7 record without prejudice, just for general educational
8 purposes, or if you feel conversant enough with the
9 issue as to speak to it, I am fine with that, too.

10 Okay. I think we could probably move to item
11 three, the plaintiffs' fact sheet. Where are we with
12 the plaintiffs' fact sheets?

13 MR. BERMAN: This item, Your Honor, is on the
14 agenda merely as an informational for the Court to
15 advise that this past Monday, August 19, was the date
16 for the production of plaintiffs' fact sheets for the
17 early filed cases.

18 We understand that there is, I would say, 90
19 percent or so compliance with that date. For the few
20 that are not complying in terms of a production,
21 extensions of time have been granted by defense
22 counsel, and those few additional ones will be produced
23 as quickly as possible.

24 THE COURT: All right.

25 MR. BERMAN: But, it gives us a core of a

1 good 80 or so cases with fact sheets in the hands of
2 the defendants, with medical records and
3 authorizations.

4 THE COURT: Okay. That is progress. Item
5 four, the proposed common benefit order, I am going to
6 ask you to tell me why you need this, and what this
7 involves, and when it comes into play. This is case
8 management order 12, proposed order 12, I believe.

9 MR. BERMAN: I don't remember, let me check
10 the number. Yes, Your Honor. Common benefit orders
11 are typically entered in the MDL cases, particularly
12 the pharmaceutical cases, because the cases are not
13 styled as class actions whereby the payment of fees and
14 expenses to the steering committee members would be
15 governed by more traditional class action principles
16 and law.

17 THE COURT: Okay. Right.

18 MR. BERMAN: They came about as reflected in
19 our papers dating back as far as the MGM Fire case in
20 1987, the Florida Everglades case, 1977. They have
21 been utilized quite frequently here in the Eastern
22 District of Pennsylvania, particularly the Orthopedic
23 Bone Screw case, the diet drug case, the Avandia case.

24 There has been one entered, I believe, in the
25 Zolof case, which is still pending. In other

1 pharmaceutical cases they have been entered, such as in
2 the Yaz case that is pending before Judge Herndon, and
3 also the Pradaxa case that is pending before Judge
4 Herndon.

5 THE COURT: Okay.

6 MR. BERMAN: In the Southern District of
7 Illinois.

8 THE COURT: Okay.

9 MR. BERMAN: What the design of this is that
10 where counsel will be obtaining the benefit of the work
11 product of the plaintiffs' steering committee and any
12 other attorneys who are authorized to perform work
13 under the auspices of the steering committee, there is
14 a sharing of the value of that work by way of an
15 assessment against the plaintiffs' cases.

16 These are designed in a way where it is not
17 the plaintiff, him or herself, who bears that
18 assessment, but they are designed to be an assessment
19 against the attorneys' share of the fee that had been
20 negotiated with the private counsel.

21 So, for example, if a private counsel
22 negotiate a fee, you know, applying, you know, 40
23 percent on a contingent basis an assessment order is
24 entered, and we are proposing an eight percent for the
25 fees and two percent for costs.

1 If that were to be approved, then the way
2 that 40 percent contingent fee would be allocated is
3 that it would be allocated at eight percent to the
4 common benefit fund and 32 percent to the private
5 lawyer.

6 That private lawyer then has the benefit of
7 all of the work product, particularly the generic work
8 product, and generic discovery, and generic experts
9 that the steering committee develops in the prosecution
10 of the case.

11 It doesn't prevent an individual counsel from
12 obtaining case specific experts, and they do remain
13 obligated to work their individual cases through
14 discovery, and medical records, and depositions, and
15 things of that sort. That is their responsibility, and
16 they still receive an attorney's fee for that.

17 What we propose in this, which is common, is
18 the development of a comprehensive work product, which
19 could lead to a trial package, whereby if a counsel
20 were to have a case remanded for individual trial they
21 would have all the experts, and the briefing, and the
22 discovery, and the hot documents, and things of that
23 sort as perceived by the steering committee for use at
24 a trial. You know, videotaped depositions, deposition
25 cuts, et cetera.

1 It also serves to help organize how
2 depositions and discovery will take place. For
3 example, if a generic defense witness is noticed for
4 deposition, the steering committee or our liaison for
5 the steering committee will be primarily responsible
6 for conducting the depositions.

7 If there is something that is case specific,
8 the case specific counsel would not have to go over
9 that as a second time.

10 We proposed ten percent, divided eight
11 percent, two percent on two different funds. What that
12 would mean is that if and when cases are resolved,
13 before the payment is made to the handling counsel, ten
14 percent would be taken off the top and placed into an
15 escrow account subject to court supervision and court
16 approval for a later application for an award of fees
17 and costs that the steering committee might make.

18 We have also designed this, as is typical,
19 that counsel who wish to have an ability to do common
20 benefit work can sign onto the participating agreement,
21 commit their cases to the assessment, and have an
22 opportunity to do work for the common benefit of the
23 whole.

24 At the moment, it's a small MDL with the
25 steering committee and a few other counsel involved who

1 are not members of the steering committee. There are,
2 as I mentioned, Mr. Moser in California.

3 There are two counsel in Florida, and
4 attorney, Troy Rafferty, who is with a firm known as
5 Levin Papantonio with several other names, an attorney,
6 Laura Yeager, who is involved in the matter from a firm
7 called Morgan & Morgan.

8 I believe they all would like to do common
9 benefit work along with the steering committee. It
10 brings more resources to the steering committee for
11 managing the case and performing all of the general and
12 generic work.

13 THE COURT: How would this --

14 MR. BERMAN: That's sort of the outline of
15 it.

16 THE COURT: Okay. How would this order
17 relate to the pending state cases?

18 MR. BERMAN: Well, in terms of the state
19 cases, there are the California cases, which I
20 understand may be dismissed without prejudice for
21 refiling in the MDL.

22 THE COURT: Okay.

23 MR. BERMAN: In Pennsylvania at this moment I
24 believe there are no more state court cases. They have
25 all been removed. There was one case where there was

1 an absence of an ability to remove. That was recently
2 dismissed without prejudice.

3 Because that case did not involve diversity,
4 if it's refiled it would be refiled in state court in
5 New Jersey. There are, as we noted in the agenda, I
6 believe 16 cases in New Jersey at the moment. Those 16
7 cases are all represented by members of the steering
8 committee.

9 THE COURT: Okay.

10 MR. BERMAN: The members of the steering
11 committee are automatically subject to the common
12 benefit order and deemed to participate. So, the 16
13 cases that are filed in New Jersey would be coordinated
14 through the common benefit order.

15 In the event a case were filed, for example,
16 in state court by a counsel who is not a member of the
17 steering committee, and that counsel did not want to
18 participate with the common benefit effort, that
19 counsel would be free to do so.

20 The case would not be assessed, but that
21 counsel would not have the ability to collect the work
22 product of the steering committee, as it is a
23 proprietary work product that is protected by the
24 common benefit order.

25 So, that's how it would, you know, relay.

1 THE COURT: Okay.

2 MR. BERMAN: I am not familiar with any state
3 court cases pending at the moment.

4 THE COURT: Okay.

5 MR. BERMAN: Ms. Jones may be, but I think
6 those were the three primary venues that were in play,
7 California, New Jersey, and Pennsylvania.

8 THE COURT: Okay. All right.

9 MR. BERMAN: I don't know if you have any
10 other questions, or do you want me to speak further
11 with respect to this?

12 THE COURT: No, I really don't. Molly, do
13 you have anything else on that?

14 (Pause in proceedings.)

15 THE COURT: What about any newly filed state
16 cases? If there are additional cases in New Jersey, do
17 you anticipate those to come through the counsel who
18 are involved in the steering committee? I mean, we
19 have a New Jersey liaison counsel to possibly speak to
20 that.

21 MR. BERMAN: Yes, actually the New Jersey
22 liaison counsel is not present in court today.

23 THE COURT: Right.

24 MR. BERMAN: That would be Mr. Buchanan.

25 THE COURT: Right.

1 MR. BERMAN: I believe somebody from his
2 office is on the listening mode.

3 THE COURT: But, they can't talk.

4 MR. BERMAN: Well, they can talk.

5 THE COURT: Right.

6 MR. BERMAN: They can speak, I guess.

7 THE COURT: Okay.

8 MR. BERMAN: But, for filing in New Jersey,
9 it would require somebody admitted to the New Jersey
10 bar to make the filing. Our firm, Mr. Weinkowitz is a
11 member of the New Jersey bar, as is obviously Mr.
12 Buchanan's firm and others.

13 We expect that new filings in state court in
14 New Jersey most likely would be filed through the
15 steering committee. With an association with the
16 steering committee, that does require that counsel's
17 cases needs to be assessed, as well.

18 If they choose not to have that assessment
19 and they are admitted in New Jersey, they could file
20 their own case, but again they would not, and it's
21 purely voluntary, but they would not have any --

22 THE COURT: They wouldn't have access to your
23 work product.

24 MR. BERMAN: They wouldn't have access to our
25 work product.

1 THE COURT: Right.

2 MR. BERMAN: Which we feel is valuable, and
3 we haven't heard of any counsel stating that, you know,
4 they are not desirous of our work product.

5 THE COURT: Okay.

6 MR. BERMAN: To the contrary, I think that
7 they are desirous of it.

8 THE COURT: All right. Okay. I think it
9 makes sense. I will sign that. We have covered number
10 five, and number six is the update on New Jersey. I
11 think we have covered that.

12 MR. BERMAN: I did, Your Honor, as of the
13 report of July 31.

14 THE COURT: Right.

15 MR. BERMAN: There were 16 cases pending in
16 New Jersey. I believe that Judge Higbee will most
17 likely begin to reactivate the docket now that the
18 requests for centralization in that state had been
19 denied by the appellate court in New Jersey.

20 THE COURT: Okay. Is there anything else
21 that we need to discuss or cover this morning?

22 (Pause in proceedings.)

23 THE COURT: Ms. Jones.

24 MS. C. JONES: Mr. Berman mentioned this
25 earlier, and I simply had forgotten it. The next case

1 management conference is scheduled for September the
2 24th.

3 THE COURT: Yes.

4 MS. C. JONES: Unfortunately, I am actually
5 supposed to be in trial. Mr. Abernethy has the
6 audacity to have a vacation planned. So, one, we would
7 ask to be excused from that if it goes forward on that
8 day. My partner, Alyson Jones, knows more than any of
9 the rest of us do anyway, and we can certainly go
10 forward if that's the case.

11 But, if Your Honor were so inclined and
12 wanted to do the tutorial or whatever before then, we
13 would certainly accommodate the Court and perhaps could
14 it all at that time. That may or may not be possible
15 with Your Honor's schedule.

16 So, I just wanted to raise with Your Honor
17 that Mr. Berman had said that he did not want to cancel
18 the 24th, or at least to postpone it until the next
19 conference on the 22nd.

20 THE COURT: Okay.

21 MS. C. JONES: But, I just wanted to advise
22 the Court of our position.

23 MR. BERMAN: I mean, my position on that,
24 Your Honor, was I didn't want to eliminate a conference
25 within the next several weeks.

1 THE COURT: Right.

2 MR. BERMAN: Within the next month and wait
3 two months, because as you heard there is a lot in play
4 at this moment.

5 THE COURT: Right.

6 MR. BERMAN: And we may need either the
7 conference or the availability of the Court through
8 conference calls or something to keep the parties on
9 track.

10 THE COURT: Well, I can certainly do a
11 conference call at any time to resolve a discovery
12 issue if something comes up. Why don't you see what
13 you can agree on for this tutorial and what makes sense
14 in terms of scheduling?

15 MR. BERMAN: May I just speak for one more
16 moment?

17 THE COURT: Sure.

18 MR. BERMAN: About the tutorial, being that
19 there are 16 cases in New Jersey, could we have the
20 permission of the Court to ask Judge Higbee if she
21 would be willing to participate in that tutorial?

22 I don't know if she would come here or
23 whether it could be set up by a conference call or
24 whatever, but I think it would be valuable for her to
25 hear this, as well, being that she has at the moment

1 roughly 16 percent of the cases that are on file.

2 THE COURT: Okay.

3 MR. BERMAN: We would like to reach out to
4 her about that and with Your Honor's cooperation.

5 THE COURT: All right. Where is she in New
6 Jersey?

7 MR. BERMAN: She's in Atlantic County, Your
8 Honor.

9 THE COURT: Okay.

10 MS. C. JONES: We would have no objection to
11 that. It might be, Your Honor, that rather than the
12 parties reaching out to her, I know that she has had a
13 number of mass torts consolidated in front of her at
14 different times and she has worked with other federal
15 judges in an attempt to --

16 THE COURT: I will call her about the
17 tutorial. That makes sense.

18 MS. C. JONES: It might be that this would be
19 something that Your Honor might want to reach out to
20 her, and she has been in the past willing to
21 participate.

22 THE COURT: Okay. I will ask you to get
23 together to see what you can work out. If we can do
24 something in early to mid-September.

25 MS. C. JONES: That would be fine.

1 THE COURT: I have a number of criminal
2 matters in the first two weeks of September, but we
3 might be able to work something in. Is that an
4 understatement, Laura?

5 (Pause in proceedings.)

6 THE COURT: We have had a trial continuance
7 the week of September 9th, so that week seems open if
8 you want to --

9 MR. BERMAN: I know I'm not available
10 September 9th, Your Honor.

11 THE COURT: Okay.

12 MR. BERMAN: I'm not sure about the remainder
13 of the week, but I probably can be available.

14 THE COURT: Okay.

15 MS. C. JONES: We will certainly work with
16 counsel and see if we can agree on a time and a date.

17 THE COURT: Okay. Stay in touch with Molly
18 about that, and Molly's successor will be with us right
19 after Labor Day, so the tutorial will be for the new
20 law clerk's benefit, as well.

21 MR. BERMAN: Good luck, Molly.

22 THE COURT: Okay.

23 MS. C. JONES: Good luck.

24 THE COURT: All right. Anything else? Okay.

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

1 THE COURT: Thank you very much. I
2 appreciate your outlining these issues in advance and
3 your really helpful discussion during this meeting. We
4 will see everyone probably sometime before September
5 24th. Okay.

6 ALL: Thank you, Your Honor.

7 THE COURT: Thank you. I'm sorry. Sit down
8 for a second. I was asked to ask you that when you
9 submit the next agenda to please, if you can, list the
10 attorneys who are going to be here and the attorneys
11 who are going to be on the phone.

12 It just helps us the morning of the
13 conference to get things set up. It makes it easier on
14 Laura and our law clerks to just ascertain who is going
15 to be here and so forth.

16 So, if you could do that when you submit the
17 agenda, if possible, that would be helpful. Okay.
18 Thanks a lot.

19 ALL: Thank you, Your Honor.

20 (Proceedings adjourned at 11:20 p.m.)

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CERTIFICATION

I, Jeff Nathanson, 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


Jeff Nathanson