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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION 2:09-cv-4414-SDW

In Re: : TRANSCRIPT OF PROCEEDINGS  
:  
ZIMMER DUROM CUP LITIGATION, : H E A R I N G  
:  
- - - - - : Pages 1 - 23

Newark, New Jersey  
January 11, 2016

B E F O R E: HONORABLE SUSAN D. WIGENTON,  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

SEEGER WEISS,  
BY: CHRISTOPHER SEEGER, ESQ.  
- and -  
JEFFREY GRAND, ESQ  
Liaison Counsel for Plaintiffs

CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.  
BY: JAMES CECCHI, ESQ.  
Liaison Counsel for Plaintiffs

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Pursuant to Section 753 Title 28 United States Code, the  
following transcript is certified to be an accurate record as  
taken stenographically in the above entitled proceedings.

S/Carmen Liloia  
CARMEN LILOIA  
Certified Court Reporter  
973-477-9704

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A P P E A R A N C E S - continued

WATERS & KRAUS  
BY: GIBBS HENDERSON, ESQ.  
Attorney for Plaintiffs

CELLINO & BARNES, P.C.  
BY: SEAN SASSO, ESQ.  
- and -  
BRIAN GOLDSTEIN, ESQ.  
Attorneys for Plaintiff Kelly

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
BY: WENDY R. FLEISHMAN, ESQ.  
Liaison Counsel for Plaintiffs

LANIER LAW FIRM  
BY: RICK MEADOW, ESQ.  
Attorney for Plaintiffs

DAVIS, SAPERSTEIN & SALOMON, P.C.  
BY: TERRENCE SMITH, ESQ.  
Attorney for Plaintiffs

FAEGRE BAKER DANIELS, LLP  
BY: STEPHEN BENNETT, ESQ.  
JOSEPH TANNER, ESQ. ESQ.  
ANDREW L. CAMPBELL, ESQ.  
Attorneys for Defendant

McCARTER & ENGLISH, LLP  
BY: EDWARD J. FANNING, JR., ESQ.  
Attorney for the Defendants

1           THE COURT: We're going to oblige and place the call  
2 so that apparently some counsel are participating, or at least  
3 listening by phone. They won't be able to participate, quite  
4 frankly, beyond that. So I just want to make sure everybody is  
5 aware of that. So Miss Soto is going to put the call on first,  
6 and then we'll do appearances right after that.

7           Counsel, on the phone, you can hear us?

8           A VOICE: Yes.

9           THE COURT: I'm not going to let you enter your  
10 appearances, apparently there are a number of you. But you  
11 will have the opportunity to listen and at least hear what is  
12 taking place. But we will first just place on the record that  
13 this is the matter of In re: Zimmer Durom Cup Litigation, and  
14 it's under docket number 09, which is the master number, 4414,  
15 also known as MDL-2158.

16           And so we'll first start with counsel entering your  
17 appearances officially on the record.

18           MR. SEEGER: Good morning, your Honor. Chris Seeger  
19 on behalf of plaintiffs.

20           THE COURT: Good morning.

21           MR. CECCHI: Good morning, your Honor. James Cecchi,  
22 also on behalf of plaintiffs.

23           THE COURT: Good morning.

24           MS. FLEISHMAN: Good morning, your Honor. Wendy  
25 Fleishman on behalf of the plaintiffs.

1 THE COURT: Good morning.

2 MR. HENDERSON: Good morning, your Honor. Gibbs  
3 Henderson on behalf of plaintiffs.

4 THE COURT: Good morning.

5 MR. MEADOW: Good morning, Judge. Rick Meadow from  
6 the Lanier office for plaintiffs.

7 THE COURT: Alright, good morning.

8 MR. SASSO: Sean Sasso from Cellino & Barnes, for  
9 plaintiff Judith Kelly.

10 THE COURT: Okay.

11 MR. SMITH: Good morning, Judge. Terrence Smith,  
12 Davis Saperstein & Salomon for plaintiffs..

13 THE COURT: Alright, good morning.

14 MR. GRAND: Jeff Grand from Seigel Weiss, for  
15 plaintiffs.

16 THE COURT: Let me see if you signed in. One of you  
17 did not sign in. Mr. Smith, did. Did you sign in Mr.  
18 Saffer --

19 MR. GRAND: Mr. Grand. I'm sorry, your Honor, I did  
20 not.

21 THE COURT: You did not. Okay, so you're in trouble,  
22 it's official. It's okay.

23 Alright, counsel.

24 MR. BENNETT: Good morning, your Honor. Steve  
25 Bennett, Faegre Baker Daniels, for defendants.

1 THE COURT: Good morning.

2 MR. TANNER: Good morning. Joe Tanner, Faegre Baker  
3 Daniels, on behalf of defendants.

4 MR. FANNING: Good morning, your Honor. Ed Fanning  
5 from McCarter & English for defendants.

6 MR. CAMPBELL: And Andrew Campbell, Faegre Baker  
7 Daniels, for defendants.

8 THE COURT: Alright. Good morning to all of you as  
9 well.

10 With that being said, counsel, we did schedule for  
11 today -- we moved this date up because there were some  
12 inquiries as to several status aspects. So why don't we start  
13 with plaintiffs' counsel, let me know where we are, what's  
14 going on.

15 MR. SEEGER: Your Honor, it's okay to address you --

16 THE COURT: Whatever makes you happy. It will pick  
17 you up either place. Just make sure you talk in the mike, it  
18 can pick you up. It will be fine.

19 MR. SEEGER: So -- I'll move up here.

20 THE COURT: This is Mr. Seeger and Mr. Bennett.

21 MR. SEEGER: Correct. So we're here to give the Court  
22 and others listening in an update on the status of some  
23 discussions that the plaintiffs have been having with the  
24 defense counsel with regard to possibly getting this thing back  
25 on track with settling the cases.

1 THE COURT: Alright.

2 MR. SEEGER: As your Honor knows from the history of  
3 this case, there was a program in place for a while where  
4 parties were able to meet with the defense lawyers and with  
5 Zimmer and settle cases. That kind of went on hold for some  
6 period of time. Not completely on hold, but for the most part,  
7 I think most of the lawyers out there listening will understand  
8 that it was slowed down by the fact that there were a lot of  
9 cases being filed, trials were going forward. So I'm pretty  
10 happy to report that we were able to get those discussions back  
11 on track.

12 THE COURT: Okay.

13 MR. SEEGER: And with the help of the lawyers sitting  
14 here as well. So we're not at the point where we can actually  
15 present to your Honor a settlement agreement, we're almost  
16 there. I'd say we're 98 percent of the way there. And some  
17 lawyers who are sitting in the courtroom and listening on the  
18 phone haven't had an opportunity to look at this and won't know  
19 what I'm talking about. We expect, I would say, Steve, is it  
20 fair to say a week or so we'd be able to?

21 MR. BENNETT: It will be this month it will be a  
22 signed agreement. And if I can just back up a second. And  
23 obviously there's been an informal program going on, as your  
24 Honor knows, for over five years now. It's been very  
25 successful. We've literally settled, you know, over a

1 thousand, almost 2,000 cases through that program. But as  
2 Chris correctly notes, that process has slowed down over time  
3 as --

4 THE COURT REPORTER: Excuse me, could you move over.  
5 That mike doesn't work.

6 THE COURT: Yeah, it is a total fake, that whole  
7 thing.

8 MR. BENNETT: That program was very successful.  
9 However, over time it has slow down as we were litigating.  
10 What this program does, this is actually a formalization of the  
11 informal program. And in formalizing it, it becomes in essence  
12 a national global settlement program for the Durom cup. So all  
13 comers that have revised Durom cups, the revision within nine  
14 years or less, is eligible for this program in the U.S. So  
15 whether you're in the MDL, or state court, or unfiled a claim,  
16 all are eligible. And this really is designed to encompass all  
17 the cases and bring them to a resolution in an orderly fashion.  
18 So?

19 MR. SEEGER: No, I think you're doing a great job.  
20 That's probably the most important aspect of it. As I said, I  
21 don't know if it makes sense to try to lay out the exact terms  
22 at this point because we are almost there but, like I said,  
23 haven't had an opportunity to really begin to get the word out.  
24 I guess we'll have a program in place where people, they'll  
25 understand how to file claims, have it reviewed, what the

1 process will be. And, you know, the expectation is that most  
2 people will recognize this as a good settlement offer and take  
3 advantage of it, so.

4 MR. BENNETT: Your Honor, I do want to go over some of  
5 the broader terms though for everyone here.

6 THE COURT: Okay. Just grab that mike, Mr. Bennett,  
7 and we can do that.

8 MR. BENNETT: Sure. Like other settlement programs  
9 that we've seen in the recent past, there will be a base award  
10 of \$175,000 for a revision. And then the agreement and, again,  
11 we have essentially agreed to most of the terms. All the  
12 substantial terms we've agreed to already, we're just working  
13 out the language right now. The agreement has in it  
14 enhancements for those whose claims can be categorized with  
15 certain enhancements to increase the value of the award. There  
16 are also some reductions. For example, depending on the age of  
17 the claimant, and in vivo time, those are two of the examples  
18 of reductions that we might have in this agreement.

19 There's also a fixed award for those claimants who, as  
20 your Honor knows, might otherwise not be eligible. Like if  
21 someone has a statute of limitations case which has been tried  
22 in this courtroom, so for those, there's a fixed award separate  
23 from the base award.

24 Again, your Honor, as soon as we get this thing sign  
25 we intend to submit it to you for review.

1 THE COURT: Okay. Very well.

2 MR. SEEGER: I guess the only thing to add to that,  
3 and Steve has laid it all out, the program is totally global.  
4 It's going to be offered to people who are actually also  
5 unrepresented that may need revision surgery, so everyone will  
6 be invited.

7 THE COURT: So you're going to publish it so those  
8 that will fall in the category of having had a Zimmer cup,  
9 whatever, can access and file a claim if necessary.

10 MR. SEEGER: Correct.

11 MR. BENNETT: Your Honor, that's actually a great  
12 point. We -- Zimmer has already taken steps. We're acquired a  
13 website called duromsettlement.com. And that will have all the  
14 information about the global settlement. It will have all the  
15 forms that need to be submitted and filed, and the deadlines,  
16 and the calendaring. All of it will be a one-stop place for  
17 any claimant, whether the MDL or not, to get the forms, fill  
18 them out, and submit them to us.

19 So that's --

20 THE COURT: So how will it affect, I guess, the Court  
21 in terms of the MDL pending here?

22 MR. SEEGER: Well, I mean, I guess, your Honor, so if  
23 it goes well, and people like what they see, I would imagine  
24 most of the cases before your Honor, if not all, should wind up  
25 in the program and ultimately dismissed because they've been

1 compensated.

2 THE COURT: So is it a situation where -- I guess  
3 we'll see, but is it a situation where a person applies: I  
4 want to be in the program. This is my claim. And they go  
5 through that process so they never actually get to court for  
6 those that have not filed yet?

7 MR. SEEGER: Well, for people who haven't filed,  
8 like -- so even whether they're represented or not, somehow  
9 we'll get some notice out there and they'll be invited into the  
10 program. For cases on file, the lawyers obviously will get the  
11 details and the settlement agreement, be able to evaluate it  
12 and decide. There are processes within the agreement where all  
13 their claims need to be registered, evaluated. There could be  
14 disagreements on claims and values where they should be  
15 categorized. There's a process for mediation. Process to play  
16 itself out. So I think we tried to anticipate as many of these  
17 issues as possible. We may have missed a couple.

18 THE COURT: Okay.

19 MR. BENNETT: Your Honor, and that's actually a great  
20 point. Once we get the agreement to you, we will likely ask  
21 for your help in getting the word out. State court judges,  
22 contacting them. We really wants this -- for this to work, we  
23 need, you know, as much buy in as possible. It makes no sense  
24 to have a program in place where certain people are not finding  
25 out and others -- this is intended to resolve this entire MDL,

1 as we discussed previously. That's what we aim to do with this  
2 program, so we'll be asking are for you your involvement.

3 One of the things we're contemplating, and we will  
4 submit that with this agreement when it's finalized, is a  
5 reposed modification of CMO-1. n **Currently CMO-1 right now is**  
**6 a process where you order mediation before the case moves**  
**7 forward.** This has a mediation component in it, this new  
8 program, and so we would like to modify it so you order them  
9 through this program first before you move forward.

10 THE COURT: Okay. Alright. And so, just in terms of  
11 numbers, and I know Miss Fleishman's letter sort of alluded to  
12 it, in terms of numbers because I don't have a problem reaching  
13 out to the state court judges. Obviously I don't know what  
14 they have pending there as opposed to what we have pending in  
15 the MDL, I have no problem at least communicate with them to  
16 try to get their agreement, cooperation, whatever. But how  
17 many matters are pending in state court, if you know?

18 MR. BENNET: You have those numbers?

19 MR. TANNER: **There's a total of 618 revised cases and**  
**20 claims.** **Of that, there's 387 in the MDL.** So quick math from  
21 there is what the current population is.

22 THE COURT: Okay.

23 MR. BENNETT: Now, just to clarify, that is not all  
24 lawsuits, right?

25 MR. TANNER: Correct.

1 MR. BENNETT: So there are claims out there. And we  
2 will have a process, we will send out a letter notifying  
3 everyone and welcome them to the website. The website will  
4 have all the information. This is designed to be the path  
5 forward for everyone. So there's not going to be separate  
6 mediations and agreements and everything else. This is a way  
7 that's going to be very transparent so everyone can see what  
8 the deal is. And that way it achieves ultimate fairness across  
9 the board.

10 THE COURT: Okay. Fair enough. Alright, well, it  
11 sounds good.

12 MR. SEEGER: So far.

13 THE COURT: It sounds good, right? I haven't seen  
14 anything yet, but it sounds promising. And, I mean, as I've  
15 communicated to counsel on a couple of occasions, with an '09  
16 docket, it's certainly time for us to get to that place of  
17 resolution for all of these cases.

18 MR. BENNETT: And Your Honor, on that point, because I  
19 have heard that message loud and clear.

20 THE COURT: Thank you.

21 MR. BENNETT: And so we are going to have an agreement  
22 this month, if at all possible, that's what our plan is. And  
23 there are milestones throughout the agreement, deadlines for  
24 submission of the forms. There's deadlines for categorization.  
25 There's deadlines for acceptance, or contesting of the

1 categorization. And in that process, there's also a deadline  
2 for mediation. And all of this is designed to get the vast  
3 majority of the cases wrapped up this year, in 2016.

4 MR. SEEGER: Can I just add one other thing, your  
5 Honor?

6 THE COURT: Sure.

7 MR. SEEGER: I know that having been through this  
8 before that when lawyers look at this the first reaction  
9 sometimes is to be a little suspicious and not be totally happy  
10 with this. What I intend to do with plaintiffs' counsel,  
11 Cecchi and Wendy, and others if they were to be involved, is to  
12 have some meetings in certain places where we could actually  
13 sit down and --

14 THE COURT: Explain.

15 MR. SEEGER: Explain -- walk through the deal.  
16 Because sometimes when, you know, you think you have that case  
17 that doesn't fit, but when you work through it a little bit, it  
18 looks like the deal tends to get a little better.

19 THE COURT: Right.

20 MR. SEEGER: I don't want to make representations for  
21 anybody or make them think I'm trying to talk them into  
22 anything, but it would be, I think, helpful for most  
23 plaintiffs' lawyers to have somebody, so we'll set that up.

24 THE COURT: Excellent. That sounds great. That's it,  
25 you guys, for at least that aspect?

1 MR. BENNETT: Yes, your Honor.

2 THE COURT: I don't know to what extent you discussed  
3 that with any others, certainly counsel that are present, if  
4 there's anything you want to address as it relates to that  
5 presentation we can do that and then we can sort of go through  
6 whatever else exists in our proposed agenda.

7 MR. SEEGER: In fairness to counsel, except for Rick  
8 Meadow, they're just learning of some of this now because we  
9 kept this under wraps for a while, while we were talking, so.

10 THE COURT: It could be a stunned silence, possibly,  
11 if that's possible.

12 MR. SEEGER: Exactly.

13 THE COURT: Alright. To the extent, I don't know if  
14 counsel wants to share anything or add anything to what has  
15 been proposed by both Mr. Seeger and Mr. Bennett, but to the  
16 extent you do, I'll certainly hear from you. If not, we'll  
17 move through the other matters that potentially are pending and  
18 we need to address.

19 MR. SEEGER: Thanks for your time, your Honor.

20 THE COURT: Thank you, both.

21 Alright. So, Mr. Tanner, you've already indicated the  
22 number of current cases filed and transferred to this MDL. I  
23 think you said 387 are in this?

24 MR. BENNETT: Yes, your Honor, that's how many --  
25 there's actually 412, but 21 of those are non-Duroms and four

1 of those settled informally, so 387 is the real number of cases  
2 that are pending.

3 THE COURT: Okay. Very well.

4 And this probably applies to you more, Mr. Henderson,  
5 but the trial date in Cartwright, which is presently set for  
6 February the 2nd. Because I know we -- we had some discussions  
7 before obviously the end of the year, and so where we are on  
8 that.

9 MR. HENDERSON: Right, your Honor. So, I think the  
10 Court had indicated when we met with you in December that we  
11 were going to push that February date. And I know that we are  
12 having an additional mediation for that in the next four or  
13 next three trial cases with you in a couple weeks. That might  
14 be the time to set a new date for the Cartwright matter. We  
15 just wanted to keep that in front of the Court and make  
16 everyone mindful that we are still needing a new date for that  
17 matter.

18 THE COURT: Okay, and that's fine. Rather than set a  
19 date, because I have a pretty busy trial schedule as we go into  
20 the spring, but I know that there are certain things pending in  
21 that respect. There's also this entire settlement process  
22 that's also out there as well, so I'm aware of that.

23 Mr. Tanner, you want to be heard?

24 MR. TANNER: Certainly, your Honor. I'm not aware of  
25 mediations being scheduled.

1 MR. HENDERSON: I'm sorry, the settlement, mandatory  
2 settlement conference with Judge Wigenton, I believe is  
3 February -- or January 21st.

4 MR. TANNER: I wasn't aware of that. So we may have  
5 missed that.

6 THE COURT: I'm not even sure I'm aware of it, but,  
7 you know.

8 MR. TANNER: Sorry. Okay.

9 THE COURT: So we're definitely going to settle,  
10 obviously.

11 MR. TANNER: Yeah.

12 MR. HENDERSON: I can check my calendar.

13 MR. TANNER: And so we can clear that up, I'm not --  
14 I'm trying to think of my caliber right now if I'm even in  
15 town, but we'll figure that out. I wasn't aware of that being  
16 on the docket, so maybe we can straighten that out.

17 THE COURT: I think Mr. Henderson is probably talking  
18 about the January 20th date.

19 MR. HENDERSON: January 20th.

20 THE COURT: Which we moved from there to here. That  
21 was that conference.

22 MR. HENDERSON: Okay.

23 THE COURT: So it was nothing, you know, I won't say  
24 it was nothing more than, it wasn't a specific settlement  
25 conference. I know that, counsel, you were going to be

1 speaking in trying to, you know, work out some things. But in  
2 light of what both Mr. Seeger and Mr. Bennett proposed, perhaps  
3 it's worth, once you go back to your office and speak to Mr.  
4 Kraus, et cetera, and clients, you can make a determination  
5 possibly if it's something that interests you and your firm --

6 MR. HENDERSON: Okay.

7 THE COURT: -- as well.

8 MR. TANNER: As far as the trial setting, your Honor,  
9 we mentioned it briefly when we were with you before in  
10 December that it seems to me because Cartwright should be the  
11 next case tried because of the agreement that it would be a  
12 defense pick. We have a trial date already of May 10th for  
13 that other case, the Rochau case, it may make sense for the  
14 present purposes in planning to schedule Cartwright on May 10th  
15 and then we can decide whether that ends up going that date  
16 based on what happens with all this other. But at least we  
17 have that case on the calendar and it doesn't take any more of  
18 the Court's time because it already has a --

19 THE COURT: Yeah, the date is blocked. So for me it  
20 doesn't matter if it's Cartwright or Rochau. But I understand  
21 just from the discussions we had the preference is we do  
22 Cartwright, and we do it in the order we had previously  
23 planned.

24 MR. TANNER: Correct. And if we have an understanding  
25 it's not going to be before then, then we can plan accordingly

1 that that would be the most likely date and work with your  
2 Honor on that in a few weeks, or whenever that comes about.

3 MR. HENDERSON: And I would just say, consistent with  
4 where we were in December, that our preference would be if the  
5 Court had an available date prior to May, that we continue to  
6 reserve the May date for the Rochau matter, which is a  
7 plaintiff's pick. And subject to the Court's schedule, if  
8 there was a time, I know there was some discussion about maybe  
9 March or April, having something open up. So that would be our  
10 preference, your Honor.

11 THE COURT: Understood. I mean, like I said, I  
12 understand now that, you know, that you're obviously being hit  
13 with some of this other stuff, so it may change the landscape.  
14 The date is blocked. Cartwright right now obviously is not  
15 taking place February 2nd. So that's what we know. To the  
16 extent we need to address it with more intensity we can do  
17 that. But I will tell you I have two criminal matters that are  
18 scheduled and so I highly doubt we are going to be able to do  
19 it much sooner than April, at best. And I'm not looking at the  
20 calendar as I'm sitting here but just knowing what our trial  
21 schedule is. But things change, so we can always revisit it.  
22 But for the moment we know that February 2nd is off. There's a  
23 proposal to move it to May 10th. But before I formally do  
24 that, Mr. Henderson, just give some thought, obviously, as to  
25 potentially whether that case is even -- could be part of this

1 settlement process. Okay?

2 MR. HENDERSON: Thank you, your Honor.

3 THE COURT: Alright. So, where does that leave us?  
4 Liaison counsel's notice of appeal and Magistrate Judge's  
5 December 2nd order on motion to reduce assessment, which is  
6 docket entry 802 on the docket. And that's your application,  
7 correct, Mr. Henderson?

8 MR. HENDERSON: That's correct, your Honor, I'm up  
9 again.

10 THE COURT: I know.

11 MR. HENDERSON: Correct, your Honor. And we've raised  
12 this issue because there has been a series of orders by Judge  
13 Mannion reducing plaintiff's liaison common benefit fee and we  
14 thought after several of these orders it would be prudent on  
15 our end to raise the issue with you. We've set out in our  
16 papers the amount of work that plaintiff's liaison counsel has  
17 performed and think in light of that, that the four percent  
18 assessment that was initially instated, put in place by the  
19 Court, was reasonable. And I think there's a lengthy  
20 discussion in our papers regarding other cases and how that  
21 four percent fits comfortably within a range that is seen in  
22 other litigations similar to this one. And so we wanted to get  
23 that in front of your Honor. I have not seen any opposition by  
24 the plaintiff Rhodes who --

25 THE COURT: Right.

1 MR. HENDERSON: Who was subject to -- was the one that  
2 filed the initial motion with Judge Mannion. I didn't see a  
3 response by defense counsel. But in any event, we wanted to  
4 get this before you. I know that you have not, with respect  
5 to -- you may have already entered an order I think saying that  
6 this was going to be decided on the papers, but I wanted to get  
7 this in front of you and again ask that the Court consider  
8 carefully putting the four percent back in place because we  
9 think that's entirely appropriate given the amount of work  
10 plaintiff's liaison counsel did.

11 THE COURT: Right. And just so it's clear, the four  
12 percent hasn't been disturbed consistently across the board,  
13 it's on this particular case that you're questioning Judge  
14 Mannion's reduction of the common --

15 MR. HENDERSON: Right, your Honor. The standard four  
16 percent is still in place, it's just been lowered in a series  
17 of orders set out in our papers.

18 THE COURT: And I would just note for even counsel on  
19 the phone, the only opposition that's been filed to this appeal  
20 has been filed by Zimmer. So to the extent plaintiff's counsel  
21 wishes to be heard on this pending appeal, which is on the  
22 docket as docket entry number 802, that you would have to file  
23 any opposition by, let's say, next Wednesday. What's the date  
24 of next Wednesday? Carm, you know what's next Wednesday?

25 THE CLERK: The 20th.

1           THE COURT: So any opposition to the appeal must filed  
2 by January 20th, 2016. After that date, the appeal will be  
3 deemed fully briefed and we will proceed from there. Okay?

4           Alright. And then there's also entry number 5 on the  
5 letter dated January the 8th, which talks about plaintiff's  
6 motion for certification of interlocutory appeal, which is  
7 docket entry 793. And this matter was filed as well by you,  
8 Mr. Henderson.

9           MR. HENDERSON: Correct, your Honor.

10          THE COURT: You again.

11          MR. HENDERSON: I know. I know.

12          Yes, your Honor. And I think with respect to this  
13 motion, I know we've discussed it with the Court before and  
14 this goes back to the Lexecon issue. And I think really what  
15 we need here at least for present purposes would be some sort  
16 of briefing schedule so that defendants could file their  
17 response.

18          THE COURT: Well, just so you know, I mean, on the  
19 docket the only thing you filed was a brief. Like you didn't  
20 file it with the notice of motion, et cetera. So the clerk's  
21 office basically didn't treat it as a motion. So perhaps you  
22 want to go through that, file it, give it a return date, and  
23 then that will prompt any opposition to be filed in due course.

24          MR. HENDERSON: We'll do that, your Honor, thank you.

25          THE COURT: Alright, no problem.

1            Alright. And entry number 5 was the plaintiff's  
2 proposed procedures for remanding cases to their originator  
3 courts. And that's pursuant to docket entry 750. Anyone want  
4 to be heard on that? I mean, in light of what's been proposed,  
5 it may be an issue that's moot, quite frankly.

6            MS. FLEISHMAN: Right. I think that we should  
7 readdress this at a later date, your Honor.

8            THE COURT: Alright. So we'll table it for the time  
9 being.

10           MS. FLEISHMAN: And then the last one is the same.

11           THE COURT: Right.

12           MS. FLEISHMAN: Because we wanted to change, ask the  
13 Court to modify the CMO, so that this mediation phase be moved  
14 out and plaintiffs could then just proceed. So plaintiffs who  
15 have not been able to resolve their cases to this date, and who  
16 may not want to participate in this program, they can just get  
17 discovery dates and move ahead and get defendant's answers and  
18 motions.

19           THE COURT: Okay, that sounds fine.

20           THE COURT: Alright. Especially given what Mr.  
21 Bennett and Mr. Seeger indicated, I don't have any issue with  
22 that once we have the agreement.

23           Alright. Anything else we need to address?

24           MR. CECCHI: No.

25           MS. FLEISHMAN: We need another date, your Honor.

1 THE COURT: Another date for what?

2 MS. FLEISHMAN: To appear before the Court.

3 THE COURT: About what?

4 MS. FLEISHMAN: To report to the Court about what's  
5 happening with all of this.

6 THE COURT: We can't just all get a letter? We have  
7 to come in?

8 MS. FLEISHMAN: I think it would be a good idea.

9 THE COURT: And the reason I sound like I'm saying it  
10 facetiously, I'm very serious. To schedule a conference for  
11 the same of scheduling a conference, I would at least like to  
12 know in writing where we are. Because to just schedule a  
13 conference for the sake of scheduling a conference.

14 MR. CECCHI: Your Honor, I think it makes good sense,  
15 after the people have an opportunity to digest what has  
16 happening here today, and to give Mr. Seeger and myself an  
17 opportunity to have a dialogue with a lot of counsel who were  
18 on the phone and elsewhere, then we can report back to your  
19 Honor and maybe a conference is necessary.

20 THE COURT: Precisely.

21 MR. CECCHI: Hopefully it's not, all they we enjoy  
22 coming in, but hopefully --

23 THE COURT: And I enjoy having you guys here.

24 MR. CECCHI: But hopefully everything is wrapped up in  
25 a nice little bow for your Honor and we don't have to come in.

1           THE COURT: My point being, I don't want to set a  
2 conference for the sake of setting a conference. If it makes  
3 sense, by all means we'll set it. But I think it would be  
4 wiser, as Mr. Cecchi represented, to speak to the other  
5 attorneys, see where you are, what your thoughts are as relates  
6 to the proposal and the agreement, and everything else is also  
7 set up and we can come back in at a time that's actually going  
8 to make some sense for everybody.

9           With that being said, I do not think there's is any  
10 order that has to issue from today. Unless you want to do the  
11 order, Mr. Henderson, pertaining to the appeal. But I don't  
12 even think you need to do that, I just think you need to  
13 officially file the notice of motion as it relates to the  
14 remand for your particular case and the interlocutory appeal.  
15 Okay? But even that, it's on the record, it's not required.  
16 But I defer to you as to whether you choose to do that or not.

17           Alright. If that is it, have a wonderful day.

18           MS. FLEISHMAN: Thank you.

19           MR. SEEGER: Thank you, Judge.

20           THE COURT: And as always, it's good to see you. It  
21 will be good to see less of you.

22           (Matter concluded)

23

24

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