

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

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IN RE:	:	MDL NO. 13-2436
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TYLENOL (ACETAMINOPHEN)	:	
MARKETING, SALES PRACTICE	:	Philadelphia, Pennsylvania
AND PRODUCTS LIABILITY	:	November 19, 2013
LITIGATION	:	10:04 a.m.

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

- - -

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

3 THE COURT: Good morning.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. This is a
6 status conference in the Tylenol litigation, and I want
7 to first just make sure we have a list of everybody who
8 is here.

9 On the plaintiffs' side we have Laurence
10 Berman. Good morning.

11 MR. BERMAN: Good morning, Your Honor.

12 THE COURT: Michael Weinkowitz, good morning.

13 MR. WEINKOWITZ: Good morning, Your Honor.

14 THE COURT: And David Buchanan.

15 MR. BUCHANAN: Good morning.

16 THE COURT: Good morning. And by telephone
17 we have David Tawil.

18 MR. TAWIL: Good morning, Your Honor.

19 THE COURT: Good morning. Susan Minkin.

20 MS. MINKIN: Good morning, Your Honor.

21 THE COURT: Good morning. William Gainer.

22 MR. GAINER: Good morning, Your Honor.

23 THE COURT: Good morning. Megan McBride.

24 MS. McBRIDGE: I'm here. Good morning.

25 THE COURT: Good morning. Lauren Welling.

1 MS. WELLING: Good morning, Your Honor.
2 THE COURT: Good morning. And James Green.
3 MR. GREEN: Good morning, Your Honor.
4 THE COURT: Good morning. And on the defense
5 side, David Abernethy. Good morning.
6 MR. ABERNETHY: Good morning, Your Honor.
7 THE COURT: Alyson Jones. Good morning.
8 MS. JONES: Good morning, Your Honor.
9 THE COURT: Madeline Sherry.
10 MS. SHERRY: Good morning, Your Honor.
11 THE COURT: Good morning. Stephen Finley.
12 MR. FINLEY: Yes, Your Honor. Good morning.
13 THE COURT: Good morning. Brandon Goodman.
14 MR. GOODMAN: Good morning, Your Honor.
15 THE COURT: Good morning. Margaret O'Neill.
16 MS. O'NEILL: Good morning, Your Honor.
17 THE COURT: And Meredith Burnhardt?
18 MS. REINHARDT: Reinhardt, good morning --
19 THE COURT: Reinhardt, okay.
20 MS. REINHARDT: -- Your Honor.
21 THE COURT: I'm not reading this very well.
22 All right. Have I missed anyone.
23 (No response heard.)
24 THE COURT: Okay. As you know we have a new
25 law clerk on this case, Molly Campbell has moved on,

1 maybe to a better place, I don't know, but she's now
2 working for a law firm here in the City of Philadelphia
3 and Melissa Mazer (ph) has taken over and will be with
4 us for two years. We have an intern from Temple as
5 well, Elizabeth Mellon who is here with us for the
6 year. So, I think we have all the participants.

7 I have the proposed agenda, and I thank you
8 for working together to come up with an agenda, and I
9 thought we could just go through these topics, and
10 there are a few points I would like to discuss as well
11 with you.

12 I note on the first item that we have
13 depositions taken to date, and the depositions noticed
14 and scheduled in the proposed case management order,
15 14A.

16 So, Mr. Berman, would you like to address
17 where we are with depositions?

18 MR. BERMAN: Certainly, Your Honor. Good
19 morning. Laurence Berman for the plaintiffs and the
20 plaintiffs' steering committee. As reported in the
21 agenda, Your Honor, there have been five depositions
22 basically noticed.

23 One, Robert Havard (ph) is a current employee
24 of the defendants, McNeil, and he was deposed October
25 31st as reported. Edward Nelson is scheduled for

1 deposition on Thursday of this week, November 21, also
2 a current employee. Patricia Gusson (ph) and Ashley
3 McElvoy (ph) are scheduled as noted, respectively
4 December 12th, 2013 and, actually it's a typographical
5 error, the deposition for Ashley McElvoy is February
6 6th, 2014, not 2013.

7 THE COURT: Right.

8 MR. BERMAN: Mr. Vernon is a former employee
9 and the plaintiffs had been directed to communicate
10 with his personal counsel to schedule his deposition.
11 I have done that personally. He had requested that a
12 subpoena be issued in order for Mr. Vernon to appear.

13 Because all of the depositions have been
14 cross-noticed in New Jersey and the MDL, we are in the
15 process at the moment of securing a commission to be
16 issued by the State Court in New Jersey, which is
17 similar to a letter rogatory to permit then a subpoena
18 to issue out of a local court in Illinois which is
19 where Mr. Vernon is located, along with the MDL
20 subpoena that will issue. We have requested dates
21 sometime probably in January as well, although
22 depending on the issuance of the commission will effect
23 the availability.

24 While I have been in contact with Mr.
25 Vernon's personal counsel and suggested those dates, he

1 has not yet responded with actual dates of
2 availability.

3 The other persons listed under number six are
4 employees or former employees/consultants, and the
5 plaintiffs have asked for deposition dates, and we
6 await responses as to that.

7 There will also be some 30(b)(6) depositions
8 and the equivalent, and notice for Atlantic County for
9 the New Jersey cases on various topics. We have been
10 in communication with the defendants about the idea of
11 issuing the notices for such depositions.

12 With respect to the proposed CMO-14A, in
13 order to efficient and to reduce costs the parties have
14 come to an agreement to permit live streaming of the
15 depositions so that various counsel can observe the
16 deposition without the need for travel.

17 For example, Mr. Nelson's deposition that is
18 scheduled this Thursday will be taking place in Austin,
19 Texas and myself and Mr. Weinkowitz plan to attend
20 through the live streaming with the court, and there's
21 the order rather than attending in person as other
22 plaintiffs' counsel will be involved at the appearance
23 there.

24 THE COURT: Who will be taking that
25 deposition?

1 MR. BERMAN: Mr. Tisi and Mr. Milling.

2 THE COURT: Okay.

3 MR. BERMAN: That's about all I would have to
4 say on the status of the depositions.

5 THE COURT: Are the defendants appearing,
6 defense counsel appearing live at the deposition or are
7 you going by way of video streaming?

8 MS. JONES: Yes, Your Honor, we're attending
9 live. We don't have any participants that will be
10 attending by video except perhaps the co-defendants.

11 THE COURT: Right.

12 MS. SHERRY: Your Honor, (inaudible) Consumer
13 Health, Stephen Finley will be participating by
14 telephone.

15 THE COURT: Very well. I think that makes
16 sense. Is there any objection to the proposed case
17 management order 14A from any of the defendants?

18 MS. JONES: No, Your Honor.

19 THE COURT: Okay. It seems pretty
20 straightforward and helpful, so I will sign that and
21 we'll get that entered today.

22 MR. BERMAN: Thank you, Your Honor. And just
23 to add to the record on that, we've been in
24 communication with Golkow, which is the court reporting
25 service about setting up the necessary technology for

1 this to work appropriately.

2 THE COURT: Thank you very much. Do any of
3 the defense counsel have anything to say on the
4 depositions already taken or proposed?

5 MR. BERMAN: No, Your Honor.

6 THE COURT: Okay. All right. Thank you, Mr.
7 Berman.

8 Let's move on to the second item, the request
9 for admissions, plaintiffs' request for leave to file
10 the motion to compel. I have the copy of Mr. Berman's
11 letter of August 13, 2013. I'm sorry, it's Mr.
12 Weinkowitz's letter. I want you to take credit for
13 that.

14 So, I have the letter which outlines the
15 concerns over the request for admission, and then there
16 is a chart that accompanied, I guess. Did it accompany
17 that letter or this chart?

18 MR. WEINKOWITZ: That chart, Your Honor, you
19 requested that. That came separately.

20 THE COURT: Okay. Thank you. And I guess
21 we're not in a position today to argue the specific
22 request for admissions. I think you were asking under
23 the case management protocol for leave to file a motion
24 to compel, is that right?

25 MR. WEINKOWITZ: Yes, that's right, Your

1 Honor. We've narrowed the issues. The defendants
2 McNeil and Johnson & Johnson have given us supplemental
3 answers and we sort of narrowed the issues to a few
4 categories of problems that remain, and we are asking
5 just leave to file a brief.

6 What we're going to do is, in the brief we'll
7 provide you with examples in each of the categories of
8 the problems we think that still exist. I don't
9 anticipate that the brief will be a very long brief. I
10 think it will be about ten, 11 pages, and I don't
11 intend to burden the Court with huge amounts of
12 exhibits or requests for admissions. I think we can do
13 this in a very simple fashion.

14 THE COURT: Okay. What are the areas that
15 you've narrowed this, the current areas of dispute?

16 MR. WEINKOWITZ: Well, there are a couple of
17 categories of requests for admissions that are at
18 issue. They have to do with, let's see. We've
19 narrowed down, the request for admissions at issue, the
20 responses are about 19 studies that McNeil had done.

21 Some of the requests for admissions have to
22 do with marketing and advertising. The other topic is
23 acetaminophen's relationship to acute liver failure,
24 and then some of the requests for admissions address
25 label and labeling.

1 The issue that we have is that some of the
2 responses are evasive and incomplete. They don't even
3 admit or deny, or there are a number of qualifiers that
4 are in check, long series of qualifiers and conditions
5 and objections that are in the request for admission.
6 So, actually when you read the request for admission,
7 you have no idea of whether they're being admitted or
8 denied.

9 And then there are a number of qualified
10 responses that when you read it's either admit or deny,
11 but it's so qualified that you have no idea what the
12 actual response is. And they're the three categories
13 of problems that we have with the remaining responses.

14 THE COURT: Normally the request for
15 admissions come a little later in the discovery process
16 and I've been curious about why we seem to almost be
17 leading with request for admissions here. There are
18 depositions that are scheduled. Is this because there
19 has been paper discovery in other earlier cases?

20 MR. WEINKOWITZ: Your Honor, that's correct,
21 in part that -- we are looking for admissions of
22 certain facts that have been, as Ms. Jones has told you
23 many times have been known for a number of years.

24 We're trying to really -- this set was trying
25 to enable us to act efficiently, to get facts that we

1 know in place, not that it should preclude other
2 discovery depositions and stuff like that.

3 THE COURT: Yes, I don't have a --

4 MR. WEINKOWITZ: But we were trying to be --

5 THE COURT: -- concern about that.

6 MR. WEINKOWITZ: -- yes, we were trying to be
7 efficient up front in putting out a set of requests so
8 that we could get some things under our belt.

9 THE COURT: Okay.

10 MR. WEINKOWITZ: And narrow issues, Your
11 Honor.

12 THE COURT: Okay, I think that makes sense.
13 On the defense side, Mr. Abernethy, do you want to
14 address those requests for admissions, I guess in
15 general terms at this point.

16 MR. ABERNETHY: Well, first of all, Your
17 Honor, I'm happy to proceed in whatever way the Court
18 wants, including a motion and a response if that's what
19 the Court deems the most appropriate thing to do.

20 I want to be clear on the history here. We
21 did get a lengthy deficiency letter on August 13th,
22 2013 from plaintiffs' counsel. We served supplemental
23 responses October 10th, 2013.

24 There has been some communication since then,
25 but I don't think that you can fairly say that there's

1 been a complete meet and confer on anything that might,
2 in fact, remain at issue based on the supplemental
3 responses.

4 I think it's pretty clear that there are at
5 least some issues on which we have some basic
6 disagreements about how a request for admission is
7 supposed to be written, what you can and can't do in a
8 request for admission.

9 I think we clearly have a disagreement on at
10 least one issue because the plaintiffs seem to think
11 that qualification is never proper in a response to a
12 request for admission. I think that's clearly wrong,
13 so that's clearly going to be something on which we're
14 at loggerheads, I think, with respect to some of these
15 issues.

16 There are a number of requests that can't be
17 admitted or denied without qualification. To cite
18 merely one example, there are a bunch of requests in
19 here that ask us to admit that we were or were not
20 legally permitted to do certain things with the
21 labeling of "Tylenol Products."

22 There is at least one Tylenol product that is
23 an NDA product. There are Tylenol products that are
24 monograph products. They don't have the same rules,
25 and therefore you can't give the same answer, but there

1 no qualification or limitation so the answer has to be
2 qualified.

3 I mean there are certainly going to be issues
4 that have to be addressed by the Court, I think, so if
5 may be the most efficient thing to have the motion
6 presented and we'll respond to it. But we certainly
7 think that to the extent we've objected and qualified
8 in the supplemental responses we think that's proper.

9 It may, in fact, be the case that there are
10 some issues with the supplemental responses that could
11 be addressed if we know exactly what -- for each single
12 one what the issue was, but we can do a meet and confer
13 or we could just go to a motion, which ever the Court
14 thinks is the best way to go.

15 THE COURT: Well, I mean we clearly have a
16 dispute over some things. Maybe to save time, I think
17 if we talk about a meet and confer, we're probably
18 talking about a month or two, and then a month or two
19 for a motion practice. Let's set up a time frame for
20 the filing of a motion and brief.

21 If in the response to that you find that
22 there are areas where you agree, you can certainly
23 communicate that to the plaintiffs' steering committee,
24 and then when we get together to talk about the motion
25 and the response maybe we can have some areas of

1 agreement and then some areas that I will need to
2 decide.

3 How long do you need to file a motion brief?

4 MR. BERMAN: Your Honor, we probably could
5 get a brief filed by Friday.

6 THE COURT: Okay.

7 (Pause in proceedings.)

8 THE COURT: Does that give you enough time?

9 MR. BERMAN: Yes, Your Honor.

10 MR. WEINKOWITZ: Yes, Your Honor.

11 THE COURT: Okay. And how about, Mr.
12 Abernethy, how long do you need to respond?

13 MR. ABERNETHY: Well, we've got Thanksgiving
14 in there, Your Honor.

15 THE COURT: We do.

16 MR. ABERNETHY: So I would like to have two
17 weeks. And for purposes of clarification, with respect
18 to the motion, I think we all agree there are some
19 categories here where the same issue applies to
20 multiple requests. I assume the motion is going to be
21 explicit in terms of indicating which requests counsel
22 thinks are --

23 THE COURT: Can you do that?

24 MR. WEINKOWITZ: Yes, I can.

25 MR. ABERNETHY: So I don't want to have

1 misunderstandings later about, "Oh, did that ruling
2 apply to number 261 or didn't it apply to 261."

3 MR. WEINKOWITZ: It will be very clear, Your
4 Honor.

5 THE COURT: So by Friday, December 6th? Can
6 you do that?

7 MR. ABERNETHY: Yes, Your Honor. Thank you.

8 THE COURT: When is our next scheduled
9 conference?

10 MS. JONES: I believe it's December 17th.

11 THE COURT: Is that right? Okay. Shall we
12 put this on the agenda for that conference?

13 MR. WEINKOWITZ: That would be fine, Your
14 Honor.

15 MR. BERMAN: Yes, Your Honor.

16 MR. ABERNETHY: That's fine, Your Honor.

17 THE COURT: Okay. That works.

18 (Pause in proceedings.)

19 THE COURT: Does anybody have any addition
20 thoughts or questions about the motion to compel the
21 responses to request for admissions?

22 (No response heard.)

23 THE COURT: All right. Hearing none, why
24 don't we move on.

25 The next item on the agenda is the

1 coordination between this MDL and the New Jersey
2 Tylenol actions, and I think -- yes, Mr. Abernethy?

3 MR. ABERNETHY: I think this is my issue
4 actually, Your Honor --

5 THE COURT: Okay.

6 MR. ABERNETHY: -- or the defendants' issue
7 to present and I will address it if the Court will
8 permit.

9 THE COURT: Sure.

10 MR. ABERNETHY: I don't have a request for
11 any specific order or relief that I want to put before
12 the Court this morning. I do have a concern on the
13 part of the defendants that I think will be a recurring
14 concern and that exposes some degree of disagreement
15 between the plaintiffs and defendants about what
16 exactly this Court's orders require in terms of
17 coordination between state court discovery and federal
18 state discovery.

19 Case Management Order 13 recites certain
20 representations that were made by counsel, and imposes
21 certain specific restrictions on generic written
22 discovery.

23 Specifically section five, paragraph four of
24 CMO-13 says that "The PSC will not serve additional
25 generic written discovery, including request for

1 admissions, interrogatories or request for production
2 upon defendants' J & J and McNeil without the PSC
3 obtaining leave of court." And as Your Honor knows
4 there are other provisions in the case management
5 orders that relate to coordinating state court and
6 federal court discovery.

7 That paragraph that I just read specifically
8 refers to the fact that written discovery had already
9 been served and responded to in the New Jersey State
10 Court cases.

11 Section seven, paragraph one of CMO-13 says
12 that this order is being entered -- says, in pertinent
13 part, "This order is being entered in reliance on
14 representations of lead counsel for the plaintiffs and
15 defendants, and counsel for plaintiffs in state court
16 actions presently pending in New Jersey, that the
17 parties in those state court actions do not intend to
18 engage in duplicative discovery or additional discovery
19 in relation to that set forth in this order."

20 And then there's a reference in that same
21 paragraph, Your Honor, to the possibility that
22 scheduling or discovery conflicts may require
23 coordination between Your Honor and presiding judges in
24 state court actions.

25 Not long after CMO-13 was entered by the

1 Court, additional generic written discovery was served
2 by plaintiffs in certain of the New Jersey state court
3 actions. The lawyers involved are the same lawyers who
4 are involved on the plaintiffs' side in this MDL
5 proceeding.

6 There was communication between Christy Jones
7 who is the lead counsel for defendants, and counsel for
8 the plaintiffs. The defendants asked that that
9 discovery be withdrawn and asserted that it was subject
10 to the requirement of leave of court for further
11 generic written discovery in the MDL.

12 And while there was a lot of communication
13 back and forth, and I won't try to characterize it all,
14 I think the essence of the plaintiffs' position, if I
15 understand it correctly, is that they're in New Jersey
16 State court cases and they're permitted to take
17 whatever discovery in the New Jersey State court cases
18 they want to take, and they're not required to get
19 leave of court or have any consultation or notice to
20 this Court before that additional generic written
21 discovery is taken.

22 Obviously, we don't read CMO-13 that way.
23 And I want to be clear, Your Honor, I'm not suggesting
24 or we're not suggesting that CMO-13 is intended to
25 prevent additional discovery in the New Jersey State

1 Court proceedings.

2 But we think it clearly is intended, not
3 merely intended, it's what it says, to require that
4 leave of court be obtained and that, therefore, be
5 communication and coordination with this Court if
6 additional generic written discovery is going to be
7 taken in those state court proceedings, New Jersey or
8 elsewhere.

9 I think this is going to be a recurring
10 issue. We've had discussions about, for example, about
11 depositions, and it has been made clear to us that the
12 plaintiffs' position is that, notwithstanding -- so
13 there are depositions being cross-noticed in this
14 proceeding and in state court proceedings.

15 And it's been made clear to us that the
16 plaintiffs' position is that notwithstanding federal
17 limitations on the length of those depositions, that
18 doesn't really matter because the same limitations
19 don't apply under state court rules so they could take
20 multiple days of a witness if they want because they
21 just do that in the state court proceeding.

22 Again, Your Honor, I think we're looking
23 perhaps for some guidance or indications from the Court
24 about how this coordination is going to work because in
25 our view it doesn't work, it doesn't exist.

1 If the lawyers in this case on the
2 plaintiffs' side who negotiated these orders, who are
3 subject to these orders, who are subject to the
4 requirements imposed by this court aren't really
5 subject to limitations imposed by this Court because
6 they can walk around the gate anytime they want to in a
7 state court proceeding and just take whatever discovery
8 they want in a state court proceeding, I don't think
9 that's how it was intended to work.

10 Maybe there will have to be direct
11 coordination between this court and state court judges
12 with respect to how the discovery is going. But I
13 think the first step should have been consultation with
14 this Court by the lawyers in this court who are also
15 then taking that additional discovery in the state
16 court proceedings.

17 THE COURT: Thank you, Mr. Abernethy. Mr.
18 Buchanan?

19 MR. BUCHANAN: Yes, I'm happy to address it,
20 Your Honor. I serve, obviously, as federal/state
21 liaison. I'm also liaison counsel in the New Jersey
22 State proceedings.

23 Briefly, and I think this was lost a bit in
24 the overview that was just provided by Mr. Abernethy,
25 the New Jersey State litigation is not really a one-off

1 piece of litigation, a single case. It actually
2 predates this MDL. It's been proceeding since 2010,
3 the earliest filed case.

4 We had a trial date originally set for last
5 spring. It was adjourned owing to some discovery
6 failings by the defense. We spent the last year trying
7 to clean that up. It was cleaned up this
8 spring/summer.

9 There was a failed application to the New
10 Jersey Supreme Court to seek a multi-county litigation
11 status for it and that was denied. And more recently
12 there was an effort by the defense to move the
13 litigation from Atlantic County, or at least newer
14 filed cases from Atlantic County to another court in
15 New Jersey.

16 We've had at least three case management
17 conferences with Judge Higbee this fall, some
18 telephonic, some in person, and the court has set,
19 reset her trial date for the spring of 2014.

20 In the last two months, I guess since
21 September, we have litigated a number of discovery
22 disputes concerning old discovery requests and we have,
23 in fact, served new discovery request and have obtained
24 new discovery orders from the Court, all in the aid of
25 these 19 cases that are currently pending before Judge

1 Higbee.

2 At no point in time in those three case
3 management conference have the defendants raised any
4 challenge or concern or sought a stay from Judge Higbee
5 of discovery in that courtroom, and Judge Higbee has
6 been very clear, she would like a trial to happen and
7 happen soon. She's got a docket that's aging, and I
8 think by the time the first case goes, the earliest
9 case will have been on her docket for four years.

10 So the parties are indeed moving
11 aggressively. The parties are indeed taking a number
12 of depositions. The five depositions that are noticed
13 or in the process of being noticed, I think the Court
14 actually directed those out of New Jersey because we
15 have an imminent trial date.

16 The future requested depositions that we
17 intend to take are also being taken in the hope of
18 getting that discovery in on time so our expert
19 disclosures which are supposed to happen in January
20 will happen in a timely fashion.

21 There has been substantial coordination.
22 It's not deniable that there are lawyers in both
23 courtrooms representing clients whose cases have been
24 filed in different courts around the country, sometimes
25 in federal court originally that have been transferred

1 here, sometimes in this federal court, sometimes in the
2 state court that was removed to this court, and
3 sometimes in state courts outside of Pennsylvania that
4 were moved to federal court and sent here.

5 We have a substantial number that were filed
6 as an original matter in state court in New Jersey, and
7 the lawyers are cooperating on the plaintiffs' side.
8 We are coordinating. The examinations are streamlined.
9 There is ample federal/state coordination as close as
10 there has been in many litigations.

11 And I received Ms. Jones' letter and I
12 responded to Ms. Jones' letter because frankly I was
13 shocked. We have been before Judge Higbee for months
14 talking about getting the discovery and developing
15 discovery in a timely fashion so we could finally try a
16 case in her courtroom.

17 The judge is focused on us doing that, she's
18 got the defense counsel focused on doing that and we
19 have the vowed commitment of the defense team in her
20 courtroom to do whatever was necessary to make sure the
21 discovery happened.

22 And then I receive a letter in my capacity as
23 federal/state liaison effectively seeking a stay of
24 those efforts to move discovery forward in that
25 courtroom. And it specifically targeted a discovery

1 request that we served in New Jersey relating to a
2 series of articles that had been issued, and I have
3 them for Your Honor and happy to share them, and I have
4 the discovery request, I'm happy to share it with Your
5 Honor, and the recent decision by the company to
6 repackage and re-brand and re-warn about Tylenol liver
7 risk, it all happened in the last 60 to 90 days, in the
8 hope that we could get that discovery in November so
9 that we could use that information in connection with
10 the depositions that are happening now in aid of
11 getting expert disclosures meaningfully done in time to
12 keep the trial setting that's been developed.

13 And so I responded to Ms. Jones and I
14 received no further response from the defense. I
15 believe that if there is a genuine concern that in some
16 way the discovery we're seeking is not relevant or that
17 it's burdensome, that there is a vehicle to have that
18 heard and it's before Judge Higbee. It's her trial
19 date, and it's her 19 cases on the docket that are
20 moving forward.

21 And am I happy to sit in a call with Your
22 Honor and I'll participate in a call with Judge Higbee
23 and we can have a broad discussion about federal/state
24 coordination and the best way to move forward. I think
25 we're as tightly aligned and coordinated in this case

1 as we have ever been a federal/state situation.

2 So as I appreciate it, and I have to be
3 candid, Your Honor, I was not involved in the
4 negotiations at the CMO that defense counsel is not
5 citing, I did not appreciate that I needed permission
6 from this court or from defense counsel before serving
7 my discovery because that had not been the dynamic and
8 tenor and commitment of the defense in New Jersey as
9 they're saying, we're going to do whatever we can to
10 move it forward, and they have never taken this to
11 Judge Higbee.

12 So, I do feel while it's being suggested that
13 the plaintiffs in New Jersey are engaged in some kind
14 of end-run, that effectively what's happening here is
15 that they're coming to Your Honor rather than going to
16 Judge Higbee to stay discovery in aid of a state court
17 trial when there is a very clear way to do that, and
18 I'm happen to have the conversation with Your Honor
19 here as we're doing now, with Judge Higbee or jointly.

20 But I don't think it's appropriate to suggest
21 in any way that plaintiffs' counsel in aid of a very
22 real docket, not a one-off situation, a single case in
23 one jurisdiction where people are trying to turn,
24 excuse me, turn screws and put pressure on somebody.
25 We have a real docket, an aged docket with a lot of

1 cases and a real trial date.

2 And so, respectfully, Your Honor, I think the
3 concern about the discovery that's being taken in New
4 Jersey is misplaced. I think our actions are all being
5 taking appropriately in furtherance of that.

6 And if there's a proper permission process
7 that we need to proceed, because we happen to represent
8 people in both places, I'm happy to abide by that. But
9 I don't appreciate Your Honor, frankly, and I did not
10 understand Your Honor's orders to preclude discovery in
11 aid of those other cases. Thank you.

12 THE COURT: Thank you. Yes, go ahead.

13 MR. ABERNETHY: Very briefly, Your Honor.
14 I'm not going to address the 2013 or 2012 discovery
15 issues in the New Jersey State Court cases. I
16 understand that Mr. Buchanan likes to address that, but
17 respectfully it doesn't have anything to do with what
18 we're talking about here.

19 We're not seeking a stay of all state court
20 discovery, we're not seeking to prevent all state court
21 discovery, but I think there is a very real issue to be
22 addressed which is notwithstanding CMO-13, are the
23 lawyers who have been appointed to leadership positions
24 on the plaintiffs' side by this Court, and who are
25 subject to orders and limitations in this court, free

1 to do whatever they want, whenever they want in a state
2 court case without any consultation or notice to this
3 Court.

4 If that's the rule, then I guess that's the
5 rule, but I don't really think you could describe that
6 as genuine coordination of discovery between the state
7 and federal proceeding.

8 I confess I was not at any of recent case
9 management conferences with Judge Higbee, but I'm here.
10 And my point here is simply that the MDL case
11 management orders are enforced here by this Court.

12 So, I guess we are seeking some guidance from
13 this Court as to whether, in fact, the rule is as seems
14 to be suggested which is, the lawyers at this table
15 here are not subject to any constraints or consultation
16 or leave of court requirements with respect to state
17 court discovery notwithstanding what's in CMO-13 and
18 the representations in CMO-13.

19 THE COURT: Mr. Buchanan, is the discovery
20 that's been served recently in New Jersey, is that
21 generic discovery?

22 MR. BUCHANAN: Yes, Your Honor, it is, and in
23 Camden it's not case specific. I would have hoped it
24 would have been encompassed by our prior request, that
25 the challenged was raised very specifically by the

1 defendants to us about it.

2 Obviously, they didn't interpret it that way,
3 they probably intend to respond to it differently
4 rather than as a supplemental response to our earlier
5 request, but it's generic. It applies to the 19 cases,
6 and frankly we're not requiring people to reproduce in
7 other jurisdictions so it would obviously extend to
8 here as well.

9 THE COURT: Is that about the issue of the
10 recent re-branding or re-labeling?

11 MR. BUCHANAN: There's two global issues.
12 There's this re-branding and re-packaging, there's a
13 new marketing campaign, you see it on the billboards as
14 you drive around in a lot of places now. There's new
15 T.V. ads, and there's a series of articles that came
16 out in late September in ProPublica, and other places.
17 I'm happy to provide a copy of all of this to the Court
18 to the extent it would be helpful.

19 THE COURT: Okay.

20 MR. BUCHANAN: But, yes, that's what the
21 discovery is targeted to. And our discovery responses
22 interestingly are due from the defense to us this
23 Friday.

24 THE COURT: But, we are trying to strike a
25 balance here between the rights of the parties in the

1 New Jersey litigation and the independence of that
2 tribunal, that forum from this one.

3 On the other side of the equation, I think,
4 is the need to schedule and possibly control the
5 progress of generic discovery in this case because so
6 much had been filed earlier in the New Jersey cases.

7 So, I think for that reason we ask that the
8 plaintiffs' steering committee obtain leave of court
9 before going ahead with any generic discovery. I'm not
10 sure that we really talked about generic discovery in
11 New Jersey. I think we were talking about more generic
12 discovery in this case.

13 But, I can see the defendants' concern that
14 simply by filing it in the state court case they
15 accomplish it without getting the leave of court that
16 this CMO envisioned.

17 Well, what can we do about this?

18 MR. BUCHANAN: Well, Your Honor, I didn't
19 appreciate the order, obviously, to bar, and frankly
20 I've been much more engaged, as Your Honor is probably
21 aware, in the state court litigation.

22 THE COURT: Right.

23 MR. BUCHANAN: That's where we first file
24 cases, that's where I principally co-counsel and that
25 has been my primary focus. I do think it's important

1 and we have litigated discovery disputes in the state
2 court before Her Honor, Judge Higbee.

3 There has been numerous, there's a series of
4 CMOs that have issued as a result of that effort, and I
5 think it's important for us on behalf of the people we
6 represent, and the trial setting and the schedule of
7 the court there is overseeing to be permitted to pursue
8 that discovery.

9 And I have been in this position a number of
10 times, Your Honor, where I'm liaison counsel in state
11 court and my partner, for example, may be leading an
12 MDL like this one or, you know, senior, involved in a
13 very senior way. And it's not the first time that
14 we've had the task and the charge to represent people
15 in both places consistent with our ethical obligations
16 to them and the court obligations under the various
17 CMOs.

18 It's really the first time though that a
19 court has tried or defense counsel has tried to seek a
20 stay of the state court proceedings through the CMOs in
21 the federal court, that I've been involved in.

22 And I'm honor bound and I think committed to
23 this litigation as well, and I'll abide by Your Honor's
24 orders. If there's a procedure that you would like to
25 invoke that we ought to follow, as counsel I will abide

1 by those.

2 I do feel quite committed, and it's important
3 that the docket proceed in the timetable that's been
4 directed in New Jersey. There has been a series of
5 efforts or a series of acts that have served to delay
6 the first trial date in New Jersey.

7 There have been discovery challenges. There
8 was a challenge to move it away initially through a
9 mass tort consolidation, and then later to transfer
10 venue for a specific motion that was filed to the
11 assignment judge, most recently denied in the last few
12 weeks.

13 And then after that I received this letter
14 suggesting the discovery in the state court was subject
15 to Your Honor's orders, or my acts as counsel on behalf
16 on my clients was subject to Your Honor's orders in
17 this MDL, and I'm quite concerned about that type of
18 dynamic impeding the development of those cases in a
19 timely fashion.

20 I'll be held accountable in either court for
21 unreasonable discovery, and for lack of relevance, and
22 all the standards that exist under Rule 26. But, I am
23 quite concerned about attention if this Court is being
24 asked to exercise jurisdiction over me because I happen
25 to represent people in both places, and my ability to

1 work those cases up.

2 I don't know how to reconcile that other than
3 to do my best and abide by my obligations to my clients
4 in state court while separately abiding by my
5 obligations here.

6 THE COURT: Right. I think it's a real
7 problem. Mr. Abernethy, are you suggesting that the
8 plaintiffs' steering committee should obtain leave from
9 me before filing discovery in a New Jersey State Court
10 case?

11 MR. ABERNETHY: Before serving additional
12 generic discovery. First of all, let me be clear, Your
13 Honor --

14 THE COURT: But that begs my question. I
15 mean there's additional generic discovery in this case,
16 which they haven't done, but there's another case in
17 another jurisdiction which has discovery rules and a
18 judge who is in charge of the case.

19 I get your point and I think you're
20 absolutely correct that this is likely to be a
21 recurring problem, but I guess my question is, is the
22 defendant suggesting that they should get my
23 permission, leave of court from me before proceeding
24 with discovery in the New Jersey case?

25 MR. ABERNETHY: Well, Your Honor, I'm not

1 suggesting that Your Honor should be supervising
2 discovery in a state court proceeding. And, first of
3 all, we're not seeking a stay of New Jersey discovery.

4 And, by the way, I should say that the
5 discovery that led to this issue being raised and
6 communicated about between Ms. Jones and Mr. Buchanan,
7 we've decided not to file a motion to try to stop that
8 discovery. We're going to respond to it. We're
9 cognizant of the fact --

10 THE COURT: In New Jersey?

11 MR. ABERNETHY: In New Jersey.

12 THE COURT: Right. Right.

13 MR. ABERNETHY: We're cognizant of the fact
14 that there is a New Jersey case with a trial date and
15 the case has to proceed to trial. Ultimately the issue
16 may depend on whether or not the discovery that's going
17 to be pursued, whether it's in a state court proceeding
18 or here, is going to be used in this MDL.

19 But, ultimately my point, Your Honor, is
20 you've imposed certain limitations, how many
21 depositions can be taken, whether further generic
22 written discovery can be taken, those limitations are
23 meaningless if the same lawyers who have accepted your
24 appointment as leadership positions on the plaintiffs'
25 side in this MDL can just walk around the gate whenever

1 they want to and say, I'll just take it somewhere else
2 and then I'll use it here.

3 Then we'll have to confront the reality that
4 those limitations mean nothing. They can't be enforced
5 and they don't mean anything because the lawyers who
6 are here leading the plaintiffs in this MDL can simply
7 ignore them.

8 MR. BUCHANAN: Your Honor --

9 THE COURT: Yes.

10 MR. BUCHANAN: -- if I may just add one
11 point. There was a day, and maybe it's ten years ago,
12 when the concern that the defendants are raising now
13 led to a situation where plaintiffs' lawyers didn't
14 participate in both places. They very specifically, to
15 avoid a situation like the defendants are now seeking
16 or asking you to impose on me in our New Jersey cases,
17 people were so concerned about that they wouldn't be in
18 both places, and what ended up happening was chaos.

19 What you had was true independence between
20 both jurisdictions, different counsel representing
21 people in different places, completely different
22 leadership, and there was chaos. There were
23 independent depositions. Nobody would agree to the
24 cross-notices because they wanted their lawyers. I
25 represent the people in New Jersey. I represent the

1 people in the MDL. I represent the people in
2 California.

3 And what ended up happening is, people would
4 all want their own days. They wouldn't agree to not
5 take the other deposition. Everyone insisted on their
6 own rules in every respect. There was a complete and
7 utter absence of coordination.

8 What's happened frankly is people have played
9 much better in the sandbox in the last ten years.
10 People have realized that you can be in both places.
11 Defendants realize that. They seem to get the wisdom
12 of that, they don't want their witnesses being produced
13 on multiple occasions.

14 If there is a situation whereby virtue of me
15 representing people in both place and accepting a
16 leadership appointment to help coordinate litigation in
17 a state court, that somehow my state court clients are
18 prejudiced and compromised in some way, then we do dial
19 the clock back.

20 And, respectfully, I think we are doing a
21 very good job at coordinating. We have a very real
22 trial date, and it's not a situation where somebody is
23 trying to use a case filed and an opportunist
24 jurisdiction to accelerate discovery or do something
25 other than what's anticipated by the very schedule in

1 that case.

2 I would certainly oppose the request to have
3 to come and be subjected to, if you will, a level of
4 scrutiny that may prejudice my client's preparations
5 for that trial date, I'm quite concerned about that.

6 THE COURT: Yes, I think it's a real problem.
7 It's a real problem.

8 MR. ABERNETHY: So we have depositions, Your
9 Honor, and they're being cross-noticed, and the MDL,
10 that's your deposition, and in the state court case,
11 that's somebody else's deposition. So under the rules
12 of this Court it's one day. What happens when we get a
13 second day? Sorry, I'm representing clients in New
14 Jersey, I want a second day or a third day.

15 THE COURT: Are there --

16 MR. ABERNETHY: Is a suggestion being made
17 that you have nothing to say about that and those
18 limitations aren't going to be applied.

19 MR. BUCHANAN: What I was saying was, if they
20 were truly independent, Your Honor, the witness was
21 produced in a completely different setting. The New
22 Jersey plaintiffs would say, "I'm not subject to that
23 other deposition. I'm going to move to strike the
24 cross." This is what used to happen.

25 People would move to strike cross-notices and

1 they would seek a completely different examination
2 because we have different law, we have different
3 evidentiary standards, we have different expert
4 standards of review, we have different rules about
5 trial preservation examinations versus discovery
6 examinations.

7 These are the arguments, and frankly when you
8 start to unpack this whole thing and look at it, that's
9 when people start to play only in their space rather
10 than in both spaces and you have a breakdown of
11 coordination.

12 THE COURT: Are there case management orders
13 in place in the New Jersey litigation?

14 MR. BUCHANAN: Yes, Your Honor.

15 THE COURT: And do they deal with the length
16 of depositions and --

17 MR. BUCHANAN: They don't.

18 THE COURT: They don't. Okay.

19 MR. BUCHANAN: The rules are open. The Court
20 provides guidance, and when people are unreasonable,
21 the Court deals with it. And having done this for a
22 long time in mass torts in New Jersey, I can't remember
23 a situation where it actually had to go to the board
24 more than once in ten years.

25 THE COURT: Realistically, do you anticipate

1 depositions going more than a day?

2 MR. BUCHANAN: There will be depositions
3 where that happens, Your Honor, but it's driven mostly
4 by the size of the custodial file. It would be a
5 situation --

6 THE COURT: Custodial what?

7 MR. BUCHANAN: Custodial file, the volume of
8 pages.

9 THE COURT: Yes, yes, right.

10 MR. BUCHANAN: I mean if somebody is the
11 historian, if somebody covers, you know, a very big
12 period of time or a very big issue and the documents
13 are quite significant, it may go beyond a day. But the
14 parties are tightly coordinated in this case. I'm not
15 aware that we've noticed any of the first five for more
16 than a day.

17 THE COURT: It seems to me that if we had a
18 situation in this case where there was a deponent with
19 a large custodial file, that we might be talking about
20 a deposition exceeding a day, and you could get leave
21 of court to do that.

22 MR. WEINKOWITZ: Your Honor, let me just give
23 you an example.

24 THE COURT: Okay.

25 MR. WEINKOWITZ: Mr. Havard's deposition

1 went, I think, in less than seven hours. Ashley
2 McElvoy who was vice-president of marketing and
3 president of the company for 14 years.

4 I was speaking to Michael Hughes and I said,
5 "Mike, I may need a few more hours the next day. I
6 don't plan on going two whole days." This is when he
7 asked me to rescheduled it into February because she
8 was in Japan.

9 And, you know, I just said, "Can we work this
10 out?" And he said, "You know what, let's see what we
11 can do. Maybe I can get a few more hours the next
12 day," and it was not an issue.

13 So I'm not really understanding what the
14 exact issue is here because we're working together.
15 We're working together to schedule these depositions
16 and cross-notice them. And if there's a large file or
17 somebody was there for a large period of time, I'm
18 going to go to the defense and say, "Hey, can I maybe
19 have a few more hours." We don't plan on taking
20 depositions beyond seven hours or beyond what Your
21 Honor has in this CMO, and we are working this out.

22 So I'm not quite sure whether there's a real
23 concern or whether we're raising issues as
24 hypotheticals in order to raise issues as
25 hypotheticals. We're going to work it out. And if we

1 don't work it out, we'll come to Your Honor.

2 THE COURT: And if they need some additional
3 time with a witness, wouldn't the defense side be
4 willing to agree to that?

5 MR. ABERNETHY: You know, that's obvious. We
6 are going to do anything we possibly can, Your Honor,
7 to avoid having litigated disputes over that. We'll
8 have to deal with it case by case. It certainly is a
9 concern when we hear that, okay, there is a federal
10 limitation, but the state court rules don't impose that
11 limitation so we're entitled to take more time.

12 We're certainly going to try to work out
13 every discovery issue that we can work out. But, I do
14 think it's a legitimate concern if the ultimate
15 position is, no matter what the federal limitations
16 are, we can do whatever we want in a state court
17 proceeding if the state court rules permit that. I
18 think that is going to be an issue.

19 And I'm not asking Your Honor to rule on a
20 specific deposition and, as I said, the written
21 discovery that caused us concern about which Ms. Jones
22 and Mr. Buchanan had communications, we've chosen to go
23 ahead and respond to that and try to deal with those
24 specific requests that way.

25 But, I think this court does have to be

1 concerned with ensuring that its limitations are not
2 simply readily circumvented by the lawyers that its
3 appointed to represent the plaintiffs in this case.

4 THE COURT: I understand that position, and I
5 think the fact that they represent clients and have
6 certain obligations arising from that relationship in
7 another forum creates somewhat of a tension here.

8 Well, that actually leads me to a topic that
9 I wanted to raise with you before we get to the next
10 item on the agenda. Have the parties given any thought
11 to bringing the New Jersey cases into the MDL?

12 MR. BERMAN: Your Honor, Laurence Berman,
13 again. There has been no discussion about that. I
14 think one of the issue though would be the technicality
15 of federal jurisdiction over those cases which would be
16 a problem.

17 THE COURT: Okay. Right. I had a note to
18 raise that with you. Is there diversity among the
19 parties in the New Jersey cases?

20 MR. BERMAN: There may be some. Amongst the
21 19 plaintiffs, some may present diversity, some may
22 not. We would have to review the demographics of each
23 plaintiff.

24 However, the lawsuits having been brought in
25 New Jersey precluded removal for federal court because

1 the defendants are New Jersey defendants, corporate
2 defendants which is one of the reasons why they have
3 not been brought into the MDL.

4 THE COURT: Mr. Abernethy?

5 MR. ABERNETHY: In a case in which you have a
6 New Jersey plaintiff suing either or both of our
7 clients, you would have a diversity and, therefore,
8 subject matter jurisdiction problem because Johnson &
9 Johnson, and McNeil-PPC Incorporated, which are the two
10 legal entities sued are citizens of New Jersey.

11 If you had a case in which you had a non-New
12 Jersey plaintiff who sued those defendants in a New
13 Jersey State Court, you would not be precluded from
14 removing to federal court. The forum defendant rule,
15 and for that matter the one-year time limitation are
16 procedural objections, they are not jurisdictional.

17 So, even a defendant who resides as a citizen
18 of the state in which the case was filed can remove
19 that case to federal court and if it's not objected to
20 the case is properly in federal court and subject
21 matter jurisdiction exists.

22 THE COURT: How many New Jersey resident
23 plaintiffs are there?

24 MR. ABERNETHY: In the New Jersey State Court
25 cases?

1 THE COURT: Yes.

2 MR. ABERNETHY: I don't --

3 MS. JONES: There are three or four.

4 THE COURT: Three or four. Okay.

5 MS. JONES: I believe it's four.

6 MR. BUCHANAN: So, that this is beyond the
7 jurisdictional issues, I mean, you know, the power of
8 the Court actually to entertain them and to hear those
9 cases in federal court there may actually be some
10 complicating issues as it relates to torts of law and
11 other things.

12 I assume things can be done by stipulation,
13 but there have been clients who thought they were going
14 to try a case last May, who now believe they're going
15 to be trying -- four plaintiffs believe they're going
16 to be trying a case in April in New Jersey.

17 THE COURT: We're having trouble hearing you.
18 We need to get you close to the microphone.

19 MR. BUCHANAN: Thank you. I think I dialed
20 it down there. There would certainly be some client
21 issues as well in terms of the expectations and having
22 their cases heard on a consolidated basis in the near
23 term.

24 So there's a trial setting, I think set for
25 April of 2014. Currently there's four cases eligible

1 for that setting, and the plaintiffs have sought that
2 three of those cases be tried together in the first
3 trial. Judge Higbee has reserved on that issue and we
4 expect that she'll decide that probably in January.

5 So we're pretty focused, obviously, Your
6 Honor, in moving those forward in the near term for
7 that first trial setting.

8 THE COURT: Okay. I think that answers my
9 question then. And if we could bring them into the
10 MDL, it would certainly take care of this discovery in
11 two separate jurisdictions, two separate forum, among
12 other efficiencies. Okay.

13 The last item on the agenda as you proposed
14 it is the New Jersey motions for protective order.

15 MS. JONES: Yes, Your Honor. I'll address
16 this, if it please the Court.

17 THE COURT: Sure. Go ahead, Ms. Jones.

18 MS. JONES: The intent of putting this on the
19 agenda was to advise the Court of four motion for a
20 protective order, two are subsumed in one motion, so
21 there are two separate motions for protective order,
22 and these motions address discovery requests contained
23 in discovery that was served pursuant to Case
24 Management Order 13. So this is not the new set that
25 we've been discussing at length at this conference,

1 these are old requests.

2 These motions were filed in New Jersey on
3 Friday, and they were filed Friday pursuant to a case
4 management order in New Jersey that directed defendants
5 to file the motions on or before November 15th.

6 We intend to file these in front of Your
7 Honor as well, however, we are working with the
8 plaintiffs to isolate the issues and we may be able to
9 reach agreement on some of the items contained within
10 the motion. And so we want to present it to the Court
11 when it's ripe and when we have the issues narrowed as
12 to what is actually in dispute.

13 So, at this point we are simply advising the
14 Court of two motions that will be filed before the
15 Court. And we would seek request in how or in what
16 manner to file them before you.

17 It may be that we can file them by motion by
18 Friday as well. The motions are prepared, so it maybe
19 that we can meet with the plaintiffs between now and
20 then and get them before Your Honor and they can be
21 heard in December as well.

22 THE COURT: Okay. I would be happy to do
23 that. Can you discuss with the defense counsel that
24 scheduling?

25 MR. BERMAN: We can, Your Honor.

1 THE COURT: Okay.

2 MR. BERMAN: As noted in the agenda, the
3 issue of these motions was first brought to our
4 attention on last Thursday, the 14th of November in
5 preparation for the agenda. These motions are not
6 before Your Honor, as you know.

7 In terms of preparing the agenda, we did
8 discuss that we would review the motions when filed.
9 They were received Friday afternoon at the close of
10 business, and if it is possible to work out any of the
11 issues and narrow the controversy, we certainly will do
12 that. And, otherwise, once they are filed formally in
13 this court, we will respond to any issues that remain
14 outstanding.

15 THE COURT: Well, this is Tuesday. If you
16 can take some time today or tomorrow to try to narrow
17 the issues or work out the disagreement, I'm happy to
18 receive your motion on Friday then if you're not able
19 to work it out.

20 MS. JONES: Yes, Your Honor.

21 THE COURT: Okay.

22 (Pause in proceedings.)

23 THE COURT: Is there anything else that the
24 parties wish to discuss at this point? Any new
25 business? Any old business?

1 (No response heard.)

2 THE COURT: Are you involved in mediation in
3 the New Jersey litigation? Have you attempted to --

4 MS. JONES: No, Your Honor.

5 THE COURT: Okay. Is that something you plan
6 to do, or are we just going to go to trial in the
7 spring?

8 MS. JONES: We plan to go to trial in the
9 spring.

10 THE COURT: Okay.

11 MR. BUCHANAN: I think that will answer for
12 the plaintiffs, then I guess we're going to be in trial
13 in the spring, Your Honor.

14 THE COURT: Is that because there's a lack of
15 interest in mediation or you simply haven't gotten
16 there? I mean these cases typically --

17 MS. JONES: Yes, Your Honor.

18 THE COURT: -- there's some effort, at least,
19 at settling them, right?

20 MS. JONES: We have no received any
21 settlement offers from the plaintiffs, and so we have
22 not entertained any offers, so our plan is not to move
23 forward with those discussions.

24 THE COURT: Okay. Do you have a settlement
25 demand in the New Jersey cases?

1 MR. BUCHANAN: I have not been involved in
2 those discussions, Your Honor, but I believe there had
3 been --

4 THE COURT: There's a lot of deniability in
5 the room today.

6 MR. BUCHANAN: There certainly is. I'm
7 soaking it in at the moment, Your Honor. There have
8 been some discussions some time ago and I was not
9 involved in those discussions, some of my colleagues
10 were and they can probably dust off where they were
11 then and see whether there's an appetite and interest
12 on both sides to sit in a room and see if we can get
13 something done.

14 THE COURT: Go ahead, Mr. Abernethy?

15 MR. ABERNETHY: If you want a report on this,
16 Your Honor, I'll be happy to talk to Ms. Jones and get
17 back to you. I think if there were discussions, she
18 would have been the one. And I apologize, I'm not
19 trying to retreat to further deniability. But if there
20 were discussions, I'm sure she was involved in them.
21 And if Your Honor would like an update on that, we'll
22 be happy to provide it.

23 THE COURT: Well, I raise it simply because
24 if you're going to trial in the spring, it seems to me
25 that soon would be a good time to be talking about

1 mediating. And if a mediation in the New Jersey case
2 can help us in our efforts here, then all the better.

3 I have been in touch, by the way, with Judge
4 Higbee. We have spoken since we were all together
5 last, and I expect to talk to her again some time very
6 soon, so I'll raise that with her as well. I'm sure
7 she has her own thought about mediating and trying to
8 get this resolved.

9 Okay. Anything else. Thank you very much
10 for your discussion today, and we'll look forward to
11 seeing you, what is it, December 17th?

12 MS. JONES: Yes, Your Honor.

13 THE COURT: Okay. Very good. Thank you very
14 much.

15 ALL: Thank you, Your Honor.

16 (Proceedings adjourned at 11:04 a.m.)

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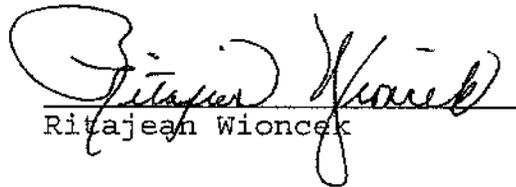
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CERTIFICATION

I, Ritajean Wioncek, 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.

11-25-13
Date


Ritajean Wioncek