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
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- - - - - - - - - - - - - - - - - : Pages 1 - 77

Newark, New Jersey
May 4, 2016

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

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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
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Certified Court Reporter
973-477-9704

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THE COURT: We'll get our friends on the call, on the line. Okay, good.

Alright. So, for purposes of the record, counsel that are on the telephone, we won't have you enter your appearances, but we are aware that a number of you are participating by phone, and that is fine. Anyone that actually intends to speak was required to be here and present for purposes of clarity of the record. And so before we get started, this is the matter of In Re: Zimmer Durom Hip Cup Products Liability Litigation. And it is under docket number 09-4414, also known as multi-district litigation docket number 2158.

We will have all counsel that are present and do intend to be heard, if you will enter your appearances formally for the record, then we can begin.

MR. KRAUS: Good morning. Thank you, your Honor. Peter Kraus of Waters & Kraus for the plaintiffs.

THE COURT: Alright. Good morning Mr. Kraus.

MR. HENDERSON: Gibbs Henderson, your Honor, good morning, on behalf of Waters & Kraus and the plaintiffs.

THE COURT: Alright, good morning to you. Now, I do not see where you guys have signed in. Oh, I see it. There it is. Right in the middle. Alright. I'm sorry.

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

THE COURT: Very well. Good morning, Ms. Fleishman.

MR. CECCHI: Good morning, your Honor. James Cecchi, Carella Byrne, on behalf of the plaintiffs.

THE COURT: Good morning, Mr. Cecchi.

MR. SEEGER: Good morning, your Honor. Chris Seeger, Seeger Weiss, on behalf of the plaintiffs.

THE COURT: Good morning, Mr. Seeger.

MR. MEADOW: Good morning, your Honor. Rick Meadow from the Lanier Law Firm, for the plaintiffs.

THE COURT: Good morning, Mr. Meadow.

MR. GOLDSTEIN: Good morning, your Honor. Jason Goldstein, Lanier Law Firm, on behalf of plaintiffs.

THE COURT: Alright. Good morning to you, Mr. Goldstein, as well.

MR. GRAND: Good morning, your Honor. Jeff Grand, Seeger Weiss, on behalf of the plaintiffs.

THE COURT: Let me fine you, Mr. Grand. Let me fine you.

MR. GRAND: First page.

THE COURT: Nope, wrong. Not first page. Now, say your name again, Jeff --

MR. GRAND: Jeff Grand.

THE COURT: oh, you're under Mr. Seeger. I make no comment about that, I'm just saying. Your name is second to Mr. Seeger, so I missed it. Alright, very well.

Okay.

MR. SMITH: Good morning, your Honor. Terrence Smith, Davis Saperstein & Goldman, for plaintiffs. I'm right next to Miss Fleishman.

THE COURT: Yup, I see you, Mr. Smith. How are you?

MR. SMITH: Good. Thanks very much.

THE COURT: Excellent.

Anyone else on plaintiff's side want to be heard? Want to enter your appearances?

MR. SAYEG: Your Honor, my name is Ilyas Sayeg. I'm from the Maglio Christopher & Toale Law Firm on behalf of the plaintiffs in this MDL. We also represent plaintiffs in state litigation as well.

THE COURT: Thank you, Mr. Sayeg. I got a letter indicating that you would be appearing, so.

MR. WELLS: Jim Wells, I'm with Meyerson & O'Neill. I'm here for Francis and Patricia McClosky.

THE COURT: Good morning, Mr. Wells.

MS. CRAIG: Good morning, your Honor. Christine Craig on behalf of the plaintiffs.

THE COURT: Good morning, Miss Craig.

MR. WEINTRAUB: Good morning, your Honor. Adam Weintraub with Lieff Cabraser on behalf of plaintiffs.

THE COURT: Did you hear that, Miss Liloia, Mr. Weintraub, is that what he said?

THE COURT REPORTER: With Lieff Cabraser.

THE COURT: Yup, I see -- yup, he's with Miss Fleishman.

Okay.

MR. DWECK: Morris Dweck, Reingold Valet.

THE COURT: Did you get that? D-W-E-C-K, Morris Dweck from Reingold Valet. Okay. That's it?

Mr. Kraus.

MR. KRAUS: Quick procedural question, your Honor.

THE COURT: Certainly.

MR. KRAUS: I spoke with Mr. Navan Ward from the Beasley Alan firm yesterday. Said he was going to be on the phone and wanted me to ask whether it would be possible for him to be heard by phone.

THE COURT: No.

MR. KRAUS: Okay.

THE COURT: Alright. I think I made it very clear, we scheduled this in March, and anyone that intended to appear and speak, they were given explicit directions. It makes it very difficult for the record purposes to do it by phone. As a courtesy, we said that counsel could certainly participate and listen by phone. So that will be the best it gets for Mr. Beasley.

So, Mr. Campbell.

MR. CAMPBELL: Good morning, your Honor. Andrew Campbell, Faegre Baker Daniels for the defendants.

THE COURT: Alright, good morning,

MR. TANNER: Your Honor, Joe Tanner, Faegre Baker Daniels on behalf of the defendants.

THE COURT: Good morning, Mr. Tanner.

MR. BENNETT: Good morning, your Honor. Steve Bennett, Faegre Baker Daniels.

THE COURT: Good morning, Mr. Bennett.

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

THE COURT: Good morning, Mr. Fanning.

MR. TANNER: This my Byron Hayes from Zimmer.

THE COURT: Okay. Good morning, Mr. Hayes.

MR. HAYES: Good morning.

THE COURT: He's the only one not chomping at the bit to stand, which was a clear sign right there.

Alright, counsel, anyone else want to be heard? Okay, in terms of appearances.

Alright. So, we're convening today to address this issue as it relates to the settlement proposal and order that has been provided to the Court and that does go back to the month of March where it has been outlined.

What I'd like to do is first ask counsel for Zimmer just to outline the process that is proposed because I got a number of letters, many of them were essentially duplicates with different names of attorneys, but the same letter in many

instances, a number of letters expressing certain concerns. So before we get into that, what I'd like to do is have an outline of exactly what the process is and what the order is proposing.

MR. TANNER: Thank you, your Honor. Joe --

THE COURT: Oh, and to make sure that Miss Liloia is saved here, I'm going to ask you to come to the podium just so that the record will be clear and accurate. So anyone that is speaking or wishes to speak, you will have to come to the podium. Okay?

MR. TANNER: Thank you, your Honor. Joe Tanner on behalf of the defendants.

We're here today on this settlement program proposal that's been negotiated and asking the Court three or four things. One is to adopt this as the way to settle revised cases in the MDL. To be the only way to settle revised cases in the MDL and order all plaintiffs that they must participate in this program.

And also we've asked that your Court -- that your Honor inform other state court judges that have Durom hip cases about, if you so enter this order, that this is the order of this Court. Because your Honor has kind of been involved in this for quite a while and we think the state court judges would be appreciative of hearing from you about what you've done with this program. If I could, just a little bit of background just to put this into context as to what's going on

here.

As this Court knows, and Judge Mannion and Judge Arleo know, Zimmer took a unique approach towards these Durom cup cases way back in 2009 and basically said: Look, we want to try to resolve these cases. And we'll talk to any plaintiff that will talk to us about resolving their cases basically on a no questions asked basis. Just get us some records. We'll sit down, we'll hopefully settle without mediation. If not, we'll enter mediation and we'll resolve the cases. And this Court's helped with that process by entering case management order number one that set in place that process. And that was done in October or so of 2010.

And the program was very successful. We've settled to date 1,745 cases. We're at a 91 percent success rate when we're able to get cases into mediation. Those are pretty good numbers and we're proud of those numbers.

As the process has evolved over the last six and a half years, we've come across some speed bumps. Those speed bumps are: One, the Waters Kraus firm, who is one of the liaison counsel, decided to take a little different approach for their cases. Not other MDL cases, but their cases in the MDL and in the state court and said: We want to go on a trial mode. So they wanted to try their cases. That has an effect.

Quite frankly, there's been non-compliance with the CMO-1 in getting all of the records. And that's caused delay.

And it's caused some confusion. And we're trying to find a way to get around that delay. And, in fact, a lot of the lawyers that have objected, are actually some of the ones we've had the biggest problems getting records from and I have those statistics for you, your Honor.

So we thought about, okay, let's figure out a way we can get to an end result here. And we negotiated with very experienced counsel who have Durom cup cases but are also known as well-known national lawyers on resolving large mass torts. But they're not only that. As I mentioned, they have substantial inventories of Durom cup cases. In fact, the two firms primarily, Chris Seeger's firm and the Lanier firm, are number two and three in the most Durom cup claims behind the Waters Kraus firm. So they have an inventory. They're invested. We've been able to negotiate and settle some cases and we've sat down and said: Isn't there a way we can take our data over six and a half years of settling Durom cup cases and find a way to end this litigation? And we came up with a process that collects all the data so we get the universe of claims in front of us and we know all the claims that are out there. We can expedite the settlement and then resolve all these claims based on actual data.

And so that's what we put in front of you, your Honor, is a settlement agreement which in essence is a modification of CMO-1 to get around these speed bumps. Streamlined. Requires

less records than before. It's a quicker path to settlement. Provides dates certain by which things have to happen. And we've also asked, as part of our CMO-1, that there be teeth to that. If people don't meet those deadlines, they'll be consequences because we're having that problem now where deadlines aren't met.

The same for Zimmer. There should be teeth and repercussions for us, for both sides. There's little risk. It's simply putting into a process. There's been some misinformation about that, that requires you to settle it, it doesn't. It will agree to toll the statute of limitations for those that haven't filed claims. There are stated amounts in the agreement which increases predictability, increases the streamline nature of this, but at the same time there's built-in flexibility because if there are true outlier cases, we agree to go mediate those cases. If there are case that people truly feel don't fit the schedules that we've put out, we go mediate those cases. So there's that flexibility.

And, again, it's based on actual experience. And it's based on a negotiated process. And this is important because there's been some misunderstanding out there that this is simply Zimmer's deal. This was negotiated. We're putting, you know, we negotiate these settlements, we start like at, you know, 100,000, somebody starts at 300,000, we negotiate and we get to a number. We've basically put that final number on the

table for all of these plaintiffs that has been negotiated by very capable firms.

We think this process eliminates back and forth. But very importantly gets all the information about the claims out there. And as a matter of fact, your Honor, since we did this registration process, from the registration process alone, we've learned of a hundred new claims. And that's important, your Honor, because those claims would have just trickled in at some point. Who knows when they would have been filed, a year from now, or two years from now. They would have had, you know, had complaints filed, those types of things. Now we know the universe and we can efficiently resolve those claims. So that's another benefit of the program and shows that it is working through the registration process.

In addition to getting the information on the claim, it insures that all plaintiffs, themselves, because they have to sign on their claim form that they are getting the information about the settlement and are making an informed decision as to whether they accept or not. And, quite frankly, we have reason to believe that some people just aren't hearing about the settlement, and don't know about the settlement. And we want that to be eliminated and get around that speed bump as well. So it's based on fairness, and it's based on finding an end point.

Now, there is a very vocal minority about these

claims. It's vocal. We've talked about that. But it is a minority. Of the firms in the MDL, 80 percent of the firms in the MDL have registered their claims. There's been a bunch of misinformation out there, things like "you must accept the amounts". That's what we heard first. Or, "Zimmer is immediately going to just categorize them in the least category," which it makes no sense, whatsoever. The goal here so to resolve the claims, why in the world would we change course after six and a half years and do something we haven't done over that period of time?

These objections, your Honor, what they kind of boil down to is they don't mind a settlement process, they just don't like some of the aspects of what Zimmer gets depending on decisions made by plaintiffs' counsel.

THE COURT: I want to stop you, Mr. Tanner.

MR. TANNER: Sure.

THE COURT: Because I don't want you to get into the argument so much --

MR. TANNER: Okay.

THE COURT: I really wanted you to just outline what the proposal is. So the proposal is -- and it's outlined in the agreement or the order. So I want you to just outline that, what the process is. And then I want to hear from, I guess Mr. Kraus or Mr. Henderson, because they are the sort of primary spokes people.

MR. TANNER: Sure.

THE COURT: On behalf of the objectors. And so then I'll come back to Zimmer and hear what your positions are.

MR. TANNER: Okay.

The process is this. By April 29th, was the deadline by which people would register their claims. By May 31, they categorized their claims. And that means they fill out the forms that are on the website. We have a Duromsettlement.com website and the forms are right there. And they list what their claim is. I have a single revision. I have these, maybe if they have a large lost wage, or I've had these complications. I've had a dislocation. And there's in essence boxes to check. And they fill out and they identify their claim at that point.

And they check on the box. In the end they say: This is my claim. And then they have an option to say: I wish to settle for that amount. I wish not to settlement for that amount. Zimmer then takes it, looks at it, and by August 1, either accepts that categorization that they put in and says: We're done. Or makes an alternative categorization: We disagree about this little point or this reduction. Because in the settlement there are enhancements and reductions. If you've had your cup a long time, over nine years, there's reductions. If you're a certain age, there's reductions. If you've had dislocations, there's enhancements. So it comes out

to a dollar amount. So there's a formula by which a normal, everyday revision is 175,000. But it may go up or it may go down.

Then there's also, if you have an extraordinary loss, and those are identified as examples in the agreement, something like an embolism, or if you had a stroke, or if you had another condition, then that is subject to negotiation as well. So there's that protection that you can get these enhanced damages.

So that process runs August 1st. We accept or we counter. By September 15th, the plaintiffs can accept our counter, if there is one. Or if not, the parties go into mediation. Mediation then occurs. And we have a deadline to schedule mediations by February 25th -- or excuse me, 28th of 2017. And they must be completed by September 15th, 2017, where the mediations are scheduled -- are completed.

Now, two of the provisions that I think have gotten some attention is that the -- where you get to the settlements without mediation. If 90 percent of the entire eligible body of claims are not settled, then Zimmer has the option, it doesn't mean it will, but it has the option of saying it does not wish to complete the deal. The reason for that is simple. We're putting a substantial amount of money on the table here in order to resolve all the cases. And if it's not going to resolve all the cases, we need to be able to have that option

at least to rethink.

Now, that option is only triggered by what the plaintiffs do, so they kind of control whether we have that option. It depends on what they do, but we really need to have that option.

For example, if we find out a plaintiff or a plaintiff's firm -- I actually mention also there's a 90 percent requirement that if a particular firm doesn't settle 90 percent of their claims, we have the option of going forward or not going forward with that firm. And here's the purpose of that.

If we have a firm that, for one reason or another, is saying: We're only going to put in and settle the worst cases for us, and we're going to not settle the best cases for us, and we're going to hold back all these cases and therefore try to leverage higher settlements, that's not the intent of the agreement and that's not what we are signing up for. We have the option to say no.

On the other hand, if a firm in good faith says: Look, we have three of our ten cases are all outliers. And they've dealt in good faith with us, of course we have the option of going: No, let's finish those and let's take these other three and we'll move forward. So it simply gives us the option to look at, if it looks like we're not getting substantially all, maybe we can go ahead, we hope we could go

ahead, but we have to have that protection. And that's the 90 percent.

At the end of the mediation process, there's a similar provision that if 67 percent of the cases that are mediated don't settle, we have the same option. And, again, that's an option to us. There's some of that that keeps everybody honest in dealing with this and not trying to play games. To try again. The whole purpose of this is we want this to end. We think the Court would want this to end. We think the plaintiffs actually would want this to end, and we think this is a fair, negotiated process to end that.

That in a nutshell --

THE COURT: What happens t the mediation, Mr. Tanner?

MR. TANNER: I'm sorry?

THE COURT: What happens at the end of the mediation? Say, for example, the plaintiff does not agree with the finding of the mediator.

MR. TANNER: With the findings of the mediator, then the case would go back and hopefully that would only be a handful of cases that would then be litigated.

THE COURT: But they're not bound, it's not binding mediation?

MR. TANNER: Correct, it is not binding mediation. The only restrictions we put on it is we have three or four mediators who are experienced in mediating these Durom cup

cases. And I'll tell you, one or two of them are the ones that have gotten the most money out of us, so I don't believe plaintiffs would complain, but they're available and could do a lot of these, and will travel, and that type of thing. So we have three or four mediators set aside to do that. I haven't heard objections to uses those mediators.

Again, the whole idea is, we have a period from when they have to sign up for mediation to get them done. We want to make that as short as possible. We want to get this done. And if you had to go out and find mediators and do all that, and we've talked to mediators that are willing to set aside significant time to get these cases mediated.

THE COURT: Very well. Anything else you want to add just in terms of the process? Is that primarily it?

MR. TANNER: Did I mistaken guys? No.

THE COURT: Thank you, Mr. Tanner.

You, Mr. Kraus.

MR. KRAUS: Your Honor, with the Court's permission, I was going to do a 30,000-foot overview of where we are, and Mr. Henderson was going to detail our legal objections to the process.

THE COURT: Alright. So how long is your 30,000-foot overview going to take?

MR. KRAUS: Three or four minutes.

THE COURT: Okay, that's good.

MR. KRAUS: Your Honor, I'll go up to the podium. Peter Kraus, your Honor, speaking for the Waters & Kraus plaintiffs and as a member of plaintiffs' liaison committee on behalf of several other plaintiffs and plaintiffs' firms. We rise as your Honor and Mr. Tanner notes to object and oppose Zimmer's request for entry of the case management order regarding settlement agreement, and to oppose efforts by Zimmer to convince your Honor to reach out to state court judges to try to encourage them to force plaintiffs into this program.

At the outset, your Honor, let me be clear. We do not oppose settlement. We share the desire to settle our cases. In conversations with other plaintiffs' firms who have objected, they wish to settle their cases. We applaud the success that the Lanier firm and the Seeger firm and Mr. Cecchi have had with reaching an agreement with Zimmer. We think all that's fine.

What we oppose is the mandatory nature of this process. When it is very clear from the lengthy and extended discussions we have had with Zimmer, and other plaintiffs' firms have had with Zimmer, that there are large numbers of the clients who will not settlement in this process. Who can not settle for the numbers that this Zimmer settlement agreement, this unilateral provision, allows.

Your Honor, as I said, we filed a detailed objection and then Mr. Henderson filed additional responses to Mr. Seeger

and to Zimmer as well which he's going to address raising various legal objections here.

In terms of where the bar is on this. You heard from Mr. Tanner that 80 percent have registered. Well, your Honor, over 30 firms representing more than 200 plaintiffs, which is more than half of all the plaintiffs pending in the MDL, filed objections to this proposal. And the reason there's that this discrepancy, more than 50 percent objecting and 80 percent registering, is because these plaintiffs were between a rock an hard place. The proposed order said that if you didn't register by April 29th, you were subject to having your case dismissed at Zimmer's sole discretion.

Obviously we haven't had this hearing until now, several days later, about a week later, and that concern I think is why you see a lot of people who, with a gun to their head, felt like they were between a rock and a hard place and they went ahead and signed up, even though they objected, filed written objections to this case management order and to this process.

Your Honor, before I turn over the floor to Mr. Henderson, I just want to make a couple of points.

THE COURT: I'm waiting for the overview.

MR. KRAUS: Okay.

THE COURT: I haven't gotten the overview. You're just simply saying why you object, which I know you object.

What's the overview?

MR. KRAUS: The reason we're objecting, your Honor, is this is not an agreement that's negotiated by or on behalf of all the plaintiffs here. It's a mandatory process which puts all the cases on hold at Zimmer's discretion for 18 months. Zimmer's sole discretion, your Honor. I have no choice, if I do not wish my plaintiffs to be dismissed, but to register them and to put them on ice for 18 months or more. Mr. Henderson is going to address why the Court should not do that under the applicable law.

The agreement represented by these plaintiffs' firms, and we hopefully segregated ourselves into the jury box, the firms that negotiated the agreement, and those that oppose sitting here. It was not purported to be by or on behalf of all the plaintiffs that they negotiated this agreement. Zimmer reached out to them, they negotiated with them, that's fine. But essentially it's a cram down on the rest of the plaintiffs here, your Honor, that we must participate or our cases will be dismissed. And if we go into the process, it's 18 months where Zimmer, at their sole discretion, can set those cases aside and not deal with us. Even though Zimmer knows from the negotiations that we've had, that a large percentage of my clients and many of these other plaintiffs' firms who filed objections, their clients cannot settle under the terms of that deal.

There are ethical concerns, your Honor, about an agreement that may work for some of our plaintiffs but clearly does not work for other of our plaintiffs. And if 90 percent or more of all of our plaintiffs are not in then the deal cannot go forward. That's a conflict. It's an impermissible conflict for Zimmer to force upon us or for the Court to order.

In addition to those legal and ethical problems, your Honor, you will recall that when I was before the Court earlier in the year with Zimmer, with Mr. Tanner, with Mr. Bennett, I believed I was having good faith settlement discussions with Zimmer about my cases. At the same time, apparently, they were secretly negotiating this deal, which they intended to force down upon my clients. I was never given any notice of it or any opportunity to comment or participate on it, and frankly that's fundamentally unfair. It does not make sense for my clients, this deal, as Zimmer proposes.

And, your Honor, with your permission Mr. Henderson is going to address some of the details --

THE COURT: Okay.

MR. KRAUS: -- and problems with that.

THE COURT: Thank you.

MR. HENDERSON: Good morning, your Honor.

THE COURT: Good morning, Mr. Henderson.

MR. HENDERSON: As Mr. Kraus alluded to, I wanted to address to the Court today our legal objections to the narrow

issue of what we believe is before the Court today, which is the entry of this particular CMO that Zimmer has requested. And our problems and objections concerning that CMO relate to three different areas.

Paragraph 2's requirement that all plaintiffs must file no later than April 29th, and that they shall participate in the process, subject to a dismissal motion. And so that clause very clearly makes participating in this process mandatory. And so that's our first objection as to the mandatory nature of this CMO.

The second objection is to the stay, your Honor, that is outlined in paragraph 3, which says that the litigation is stayed so long as the settlement agreement remains in effect, subject only to the exception listed in paragraph 4.

That paragraph 4 exception talks about how parties can file a joint notice of unsettled case. And as Mr. Kraus alluded to earlier, joint notice means that Zimmer has to agree to lift -- to file this joint notice to lift the stay.

So, in essence, it is a stay because the settlement agreement itself says it's in effect until September 17th of 2017. This is essentially I guess now a 17-month stay. When I was writing my letters, an 18-month stay. And so what we're talking about is a CMO that requires mandatory participation in this ad hoc ADR process, and a corresponding stay of 17 months.

Our legal objections to that were outlined in my

series of letters to the Court. And incidentally, and I think it's significant, that Zimmer or -- neither Zimmer nor counsel looking to get this CMO entered ever really addressed the specific nature of my arguments. Instead, their letters related to the generic principles of inherent authority.

And as my letters hopefully pointed out with some clarity, we don't think the situation is that simple. And the reason we don't, I think the easiest distillation of it was a passage that I included in my letter that has been cited with approval by the Third Circuit in Moravian School Advisory Board decision in '95. It was initially written by the G. Heileman case in the Seventh Circuit. And it says: "Obviously the District Court in devising the means to control cases before it, may not exercise its inherent authority in a manor inconsistent with rule or statute. This means that where the rules directly mandate a specific procedure to the exclusion of others, inherent authority is proscribed".

And what we see in the local rules here of the district court of New Jersey is that the Advisory Committee that disseminated and propagated these rules, has made a decision that there are specific types of non -- or specific types of ADR processes that they have selected to the exclusion of others. And we see those found in 201.1 of the local rules, which is the arbitration provision and 301.1, which is the provision that provides the Court the authority to refer cases

to mediation without the consent of the parties. And that provision also has a subpart (e)(6), which says the Court can stay a case for 90 days to allow for this mediation unless the parties jointly request a longer stay.

And here, by nature of the fact that we have so many objecting parties, there isn't a joint request here to ask for a stay longer than 90 days.

And so given where the district court of New Jersey local rules are, it is our position that a CMO that contemplates a mandatory 18-month ad hoc ADR process goes beyond what is provided for in the local rules of this Court. Tellingly, the only CMOs that have been provided to the Court as examples of similar CMOs, which were the ASR CMO and the Yasmin CMO, the fundamental distinction is neither one of those that were submitted included open-ended stays or subjected non-filers to dismissal. But more importantly, they were entered by courts, the Northern District of Ohio and the Southern District of Illinois, that had provisions in their local rules giving the Court the discretion to fashion ad hoc ADR processes. And I listed both of those local rules in my letter.

The district court, local rules of New Jersey, don't have this catch-all, ad hoc ADR process provision. And so we believe very strongly and have, we believe, put forward a strong legal argument as to why this particular CMO goes beyond

what is provided for in the local rules and because the local rules have chosen specific types of ADR to the exclusion of others, those are the limitations in place here. And I think the In re: Atlantic Pipe Decision that we discussed at length in our letters is particularly illuminating on this subject. And so that's the reason why we think the CMO, you know, goes beyond that.

In addition, we do have concerns, if the Court is still inclined to enter this CMO by inherent authority, we think it shouldn't, for a number of reasons, some of which Peter alluded to. The Eash v. Riggins case in the Third Circuit says "inherent authority should be exercised with great restraint and caution". The In re: Atlantic Pipe Decision said: "You have to take into consideration whether the exercise of inherent authority would comport with notions of procedural fairness".

As Mr. Kraus alluded to, requiring the participation of plaintiffs who know that given the terms outlined in the settlement agreement, this is never going to be an acceptable process for them. And I say that for two different reasons. One, there is the provision relating to anybody with a potential statute of limitations issue or a potential infection can be given only -- Zimmer can make only a $25,000 bid. Or the provision that tops out the awards at 290,000, unless the patient has a stroke within 72 hours, I think was the example.

So because we have a peek into the settlement agreement and it lists actual terms, and the mediation process specifically in the settlement agreement only says that the nature of the mediation is to discuss whether these specified enhancements or reductions apply, so it's not even a full-fledged mediation, that we don't think that requiring participation among plaintiffs who they know will never be able to settle in this agreement and having their cases stayed for 18 months comports with notions of procedural fairness.

I think other attorneys might at some point later address this ethical quandary that the agreement poses, which is, that in order to have some plaintiffs that you represent participate, you have to put all your plaintiffs in this agreement. I think letters have addressed that as well.

But we think that the local rules which are governing on this issue don't allow for this CMO. And we think that even aside from that, on notions of procedural fairness, that this Court should not enter this CMO.

And so our objections are about the CMO. They're not about the settlement agreement, they're about this mandatory provision and the open-ended stay, that can only be lifted at Zimmer's discretion.

And so those are our concerns, your Honor, and we certainly appreciate the opportunity to come here and to express those in person.

THE COURT: But you agree, Mr. Henderson, that the process heretofore is not working?

MR. HENDERSON: I think, your Honor, that, as Mr. Kraus alluded to, we thought we were having good faith settlement negotiations back in December and January.

THE COURT: Okay.

MR. HENDERSON: But I agree, your Honor, I think that the process isn't working. We outlined what we thought would be a prudent way forward that would specifically contain a process by which cases could get remanded; and a process by which group settlements -- but, yeah, I think the process that has played out to this part -- to this point in time, has not worked, I agree.

THE COURT: Right. I mean, because the reality is that this case starts, the master case, with an '09 docket. And I don't think anyone in this room or on the phone would disagree with the fact that the goal here is to resolve the cases for the benefit of the plaintiffs so that everyone can move on; for the benefit of the defense as well. So, I mean, it's not litigation that should just go on ad nauseum. And we have attempted to do a bellwether approach. That didn't really work. We're basically doing trials that have statute of limitations issues and extensive briefing on those issues.

And while I'm more than willing to try every case that needs to be tried, the reality is that we have to get to a

place of somehow doing some type of mass resolution of some of these cases. Now, there have been a lot of cases and a lot have settled, but I have to ask you, so based on your position, you're saying that as a District Judge handling a case in this court that I do not have the authority to manage a case the way I see fit? That's your position. Fair?

MR. HENDERSON: I don't relish making that argument, your Honor.

THE COURT: Just want to be clear, that's what you're saying.

MR. HENDERSON: For the reasons, the specific reasons --

THE COURT: Under local Rule 201 and local Rule 301, that's what you feel is accurate.

MR. HENDERSON: And the case law that I cited in my brief, your Honor.

THE COURT: Alright. Anything else you want to add?

MR. KRAUS: Your Honor, just in terms of -- so the Court is clear about our proposal. Our proposal would be that the Court deny entry of the proposed CMO. That the Court encourage voluntarily participation in this settlement program. And that the Court enter an order providing a realistic path to remand and the opportunity to try groups of these cases as they have done in the Pinnacle hip implant case and other MDL cases of this nature regarding mass torts. That would provide the

leverage on both sides.

The proposal here is unilateral leverage against the plaintiffs who don't want to participate. There's no corresponding pressure on -- litigation pressure on Zimmer and therefore the proposal on the table is simply not fair to both sides. So that's what we're proposing. We have outlined written proposals that would follow that procedure. We agree settlement's a good thing and I think the Court should encourage voluntary participation in Zimmer's settlement program. The Court should not mandate it for parties who know it won't work.

THE COURT: Very well.

Alright, anyone else want to be heard on the plaintiff's side?

MS. FLEISHMAN: Not at this time, your Honor.

THE COURT: Okay. Thank you, Mr. Fleishman.

Mr. Sayeg wants to be heard.

MR. SAYEG: And thank you for a having me, your Honor. Ilyas Sayeg from Maglio, Christopher & Taole. We represent seven or eight plaintiffs in the MDL. Jointly with the Nash Franciskato law firm, we also represent a number of individuals in various state court litigations, all of whom are affected by the process that's at issue here today.

THE COURT: Start with, what is the big deal if I say to the state Court: This is what we're doing in federal court.

What's the problem with that?

MR. SAYEG: Your Honor, that's not necessarily the issue we have. The issue we have, the particular letter that's been provided to your Honor to provide to the state courts, we have objections to the language that has been used in that letter. For example, given the objections that have been filed, and the knowledge that more than half of the plaintiffs in this MDL have an issue with this program, have an issue with this settlement program, to have your Honor word this to the state court judges to say: This is the best and most efficient program for the shared objective. Given that more than half the people involved object, I don't think that's a fair and accurate assessment to make from this Court to the state court litigation.

THE COURT: So you don't have a problem with me sending a letter to the state court, you just don't like the language?

MR. SAYEG: Correct, your Honor. You have your authority to communicate with the state court judges, if you like. But having this particularized language, it has issues.

Also, direct directing the state court judges, and this is the one of the issues I'll get to, one of the bases of my arguments, directing the state court judges to communicate with the claimants' liaison counsel, or as another way that it's termed in this letter, the plaintiffs's settlement

counsel, that's illusory. That's a fiction. The plaintiffs' steering committee exists, but there was never any authority given to a claimant's liaison counsel, or a plaintiff's settlement counsel, to negotiate the deal that's before this Court today on behalf of everybody in the MDL, or certainly on behalf of unfiled or state court filed plaintiffs around the country.

So we do take issue with presenting this to state courts or even, your Honor, as something that's been negotiated on behalf of everybody. It certainly was negotiated on behalf of a couple of firms. For them if it was a good deal, great. And if we look at the settlement agreement, itself, it's an agreement between those two firms or those firms and Zimmer. So the agreement between them, that's fine. And if Zimmer wants to provide that same agreement for other plaintiffs as a voluntary process to settle, that's fine. However, to say that these two -- these parties here have agreed to this agreement, and to mandate other people who have were not represented, had no opportunity to negotiate in those negotiations for the agreement, to be a part of that process is necessarily unfair.

In addition --

THE COURT: But why is it unfair if you're not mandated to resolve your claim? If you don't agree with the amount, then don't settle.

MR. SAYEG: And that's the next point, your Honor. So

what we have here is the registration process. So in other litigations, for example, the -- in other hip litigations, there was a requirement to register your clients. And defendants want to know how many cases are out there. I'm sure they want to figure out how are they going to resolve everything that's out there. And that's fine. However, when the registration process alone affects the registrant's legal rights, that's a problem. It's not just giving your information, but it's affecting your legal rights in that once you register in this program, once you register, you have to go through all of the motions or be subject to a dismissal.

So, let's say you don't agree to $175,000 as a base. Let's say you don't agree to $10,000 for dislocation, and you will never agree to those numbers. Well, under this program, that's all you can get. You can't even mediate for more. And if you know from the get go these numbers are not going to be --

THE COURT: What do you mean you can't mediate for more?

MR. SAYEG: The mediation is limited. The mediation is not an open mediation. You have certain categories of awards you can mediate, and you're only going to mediate for that. You can't go into the mediation and say: I don't agree with the 175. Based on my facts, this isn't -- I should get more. The mediation is not an open mediation. So that's one

term that other plaintiffs would negotiate differently.

So -- now, the other thing is, why, when you know the outcome is not going to be acceptable, why should you spend 18 months to get to an unacceptable outcome and not be able to litigate your case the entire time? And that happens as a result of registering. And that's the problem. And then --

THE COURT: Is your case moving quicker?

MR. SAYEG: I'm sorry?

THE COURT: Is your case moving quicker than that now?

MR. SAYEG: Well, it takes the plaintiff's ability to move the case quicker away.

THE COURT: Tell me what's going on with your case now.

MR. SAYEG: With the MDL? The MDL --

THE COURT: Your cases. I'm talking about your cases. How many plaintiffs do you have?

MR. SAYEG: I don't have the number off the top of my head how many we have. We have an active case right now, a number of plaintiffs consolidated in Florida. We've been hoping for a settlement program that's fair. But if the settlement program is not acceptable to them, they need to have the ability to litigate their case. That's their constitutional right.

Now, if they simply register for this program in the hopes that it provides for Zimmer the information that Zimmer

wants, that's one thing. And that's just providing the information. But if they don't intend to settle based on these numbers, if this is not acceptable for them, and for them they object to doing all of that, wasting their resources, going after a settlement that's never going to be acceptable, why would they agree to register?

Now, here's the other ethical issue that's triggered because of that. If those clients don't want to register because they don't want to go through this needless work and waste resources and everyone's part, them not registering puts them in conflict with our other clients who may want to register and may want to settle. Now, we have a conflict between our clients. That's the ethical dilemma here. That's why we also provided a letter to your Honor about the deadlines. We need to figure out about this ethical dilemma so we know what to do.

And so for those reasons, we ask that until this Court analyzes the arguments that are before the Court today, we shouldn't have an April 29th deadline to register. Let's figure out the ethical issue.

THE COURT: Well, that has past. The deadline has already past, so I would assume we're either addressing it to set an additional amount of time.

MR. SAYEG: Yes, your Honor. We provided a letter last week asking for an extension of that deadline. Zimmer

responded by saying that that issue shouldn't be addressed by the Court. The issue of a --

THE COURT: No, that's not what they said. What they said was that was not an order. That was a settlement agreement that was proposed by Zimmer. They never said that that was not to be addressed by the Court. It was just that that was the proposed settlement agreement. There was no order entered by the Court. So, to write the Court to say: Move the deadline. Their position was, it was never an issue that the Court signed off on, which I hadn't signed off on.

MR. SAYEG: And we would ask, because there's an ethical concern here, if there's a deal. If Zimmer wants to offer plaintiffs a deal. Great deal, bad deal, whatever it is. That's fine, we can give it to our clients. Our clients can decide what they want to do with it. But when there's an ethical issue and it potentially puts our clients at odds with each other, then we have to bring that to the Court's attention. We have to figure out what to do with those deadlines. That's why we asked for the extension.

THE COURT: Do you mean how many cases are in the MDL?

MR. SAYEG: At this point? I would defer to the plaintiffs' steering committee.

THE COURT: You have any idea? The reason I ask that is it's easy to say: Hey, just let it keep going on. What's the problem? There's an ethical dilemma? My issue is, moving

the docket, moving the case. It's not 50 cases. It's not 30 cases. It's a number of the case.

So, you know, looking at this from a global perspective, you know, everyone is certainly comfortable arguing the positions on behalf of their respective clients, as they should be. But there is a broader concern, from the Court's perspective, that relates to trying to bring about a resolution. It doesn't mean we will resolve everything.

MR. SAYEG: Correct.

THE COURT: But it certainly may be more expeditious to do it in this manner.

MR. SAYEG: Your Honor, I'm not arguing that it wouldn't be more expeditious to do it in this particular manner. It certainly would. Let's get a global resolution. Let's get it moving right now. The problem is, the resolution itself is problematic. We're not arguing that there shouldn't be a global resolution. It should. It is the most efficient way forward to get a global resolution and just figure out what remains afterwards.

The problem here is that resolution should have been negotiated with the parties who were given authority to do that. If we're talking about a resolution for everyone, there is a plaintiff's steering committee here who represents everyone. They were cut out of the out of the negotiation for this. If the two firms that negotiated this want to settle

based on this agreement, great, that is the agreement that was written between the parties. But those who represent our clients were cut out of these negotiations and therefore our clients were cut out of these negotiations. We have an issue with that. We believe that negotiation should happen. A global resolution should happen, but it should happen fairly.

Now, the other issue is futility. When we look at these numbers, if Zimmer's goal is to resolve as many of these as possible, but they put forth a settlement that is unacceptable to most, it's futile. If they're going to come out of this and say: We don't want to settle. What's the point of having gone through all of this? Having had an 18-month stay? We're going to come out at the end of this in the same position we are here today, with a lot of cases that haven't resolved that could have resolved.

There are portions of this that allow them -- that allows Zimmer to unilaterally decide: There may be a statute of limitations argument here. That's going to be a $25,000 case. As an attorney advising my client to register or not register for this, I can't even advise my client whether their case falls into that category because there are no additional facts in the settlement agreement about when a case may fall into that category. Or infection. All I know is, on its own, Zimmer may do that and tag it with a $25,000 tag.

Now, Zimmer today mentioned that wouldn't be in our

best interest to do that. Why would we do that? Your Honor, I can tell from you experience having been involved in the Biomet litigation, and I know Navan Ward is on the line listening in and he's on the steering committee for the Biomet litigation. My firm is not, but we do handle litigation in state court. Biomet did precisely that.

So we're in a situation where you leave it open for a defendant to potentially do something that would undermine the reason for going into this process in the first place. We need more clarity in the settlement agreement. To mandate something like this to everybody we believe is not right.

So the thing we're asking for, again, like the MDL's request, is that this not be mandated because there are problems. Do we have certain clients who likely would pursue the settlement? Sure. But this creates problems because there are clients who won't pursue this. And for those clients, it's a very problematic and ethically concerning deal.

THE COURT: Thank you, Mr. Sayeg.

MR. SAYEG: Thank you.

THE COURT: Anyone else?

MR. SMITH: Judge, may I?

THE COURT: Yes.

MR. SMITH: Thank you.

THE COURT: It's a dangerous path. Okay, you made it.

MR. SMITH: Terrence Smith, Judge, for Davis

Saperstein & Solomon.

We did not register our clients. We have 13 of them. Seven are unrevised, six are revised. Three of the six revised clients are bilateral revisions, one of which has been mediated unsuccessfully. Another single revision is one that will get zero under the current plan. He has no option but to go forward with trial. Three others may very well be interested in the mediation process. Another one, who is a bilateral revision, has one that is arguably subject to a statute of limitations argument. If I were defendant, I would make the statute of limitations argument as to hip B. He also is stuck by virtue of being in an outlier status. These three of our six revisions now are looking at an 18-month delay that is not going to move their case. It's not going to improve their case, other than have time pass.

The mandatory aspect of this I think is objectionable for our clients as a group, for certain of our clients individually. There is a process that has always been in place under CMO-1. CMO-1 requires all the plaintiffs to participate in mediation, without any restrictions applied. There were no caps on damages. There were no issues other than damages and proximate cause.

THE COURT: And what's the date of CMO-1?

MR. SMITH: Sometime in 2010, I think.

THE COURT: Alright, so we're in 2016. So how many

cases have been resolved by way of mediation in that respect? I'm not saying none have, obviously a number have. But a number have not.

MR. SMITH: We have resolved three.

THE COURT: Alright. You still have 13, right?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: We had one that did not succeed in mediation but it did go forward. From our perspective, CMO-1 still works. We're -- were our cases chosen for purposes of bellwether selection? No. Might they be under a different scenario? Yes. But at least from our point of view, CMO-1 is still a viable option with no strings attached on either side.

But one last thing I want to mention, Judge, is that of our 13 cases, seven of them are unrevised. They were filed in order to protect statutes of limitations.

Dealing with these case groups in terms of percentages, I think can be misleading, to some extent. I'm sure there are a lot more than seven unrevised plaintiffs here who, by virtue of the proposed settlement, are basically subject to proforma dismissal immediately. And maybe they should be. That has never been addressed during the course of the litigation.

But I think that for purposes of deciding this issue, the Court needs a little more clarity as to how many cases

we're actually talking about. How many plaintiffs have had revision surgery? How many plaintiffs have had bilateral revision surgeries? How many are not revised at all? And I think that those numbers would give the Court a much better perspective on the universe of claims that we're talking about. Thank you, very much.

THE COURT: Alright. Thank you, Mr. Smith.

Anyone else? Mr. Seeger or Miss Cecchi? Oh, Miss Fleishman.

MS. FLEISHMAN: I have a compromise that I'd like to -- I have -- I'm sorry. Wendy Fleishman on behalf of the plaintiffs, your Honor.

I too objected to this settlement because -- and to the CMO as it stated. And the basis of our objection is that this -- the CMO would impose the stay on all the plaintiffs whether they're filed or not. And the settlement agreement seeks to impose its settlement mandate on all the plaintiffs, whether they're filed or not, and whether they're filed before your Honor or in state courts around the country. And I know that that's been -- that is a great source of the objection to that.

THE COURT: Well, I have no control over what the state court does.

MS. FLEISHMAN: But --

THE COURT: And never did and never will. I don't

think anyone has suggested that.

MS. FLEISHMAN: Zimmer has suggested it, your Honor. Has suggested that your Honor --

THE COURT: That's not in the order.

MS. FLEISHMAN: It's in the letter that your Honor suggest that they mandate participation.

THE COURT: But I'm not -- I can't order it. I can suggest and I can tell them what I've done, but I can't order them to do anything.

MS. FLEISHMAN: Absolutely. Your Honor should definitely, I think coordination is key. And I think it's a great idea.

THE COURT: And I didn't read the letter to say that. If it's a matter of tweaking it so that that's clear, that's fine. But I'm not ordering them to do anything, I'm simply saying what we are doing in Federal Court.

MS. FLEISHMAN: And the second issue is that Zimmer seeks to compel the plaintiffs in Federal Court to have the clients who are not even filed yet because they've just had revisions, to have those clients made part of this deal, when those clients haven't even made a decision had what they want to do yet. Whether they want to proceed, whether they want to go forward with their cases or not. So those cases, their privacy is not an issue yet. They haven't made that legal determination. They shouldn't be compelled to participate in

the settlement either.

And the third issue is that if the Court believes that this might be the most expeditious way to move forward, we certainly are open to negotiating the settlement in a different way. We're certainly open to a stay, your Honor. And, in fact, a stay up until August 1st would be within that 90-day period, I believe. And also at that point Zimmer either comments that they agree with the categorization and the demand of the plaintiff or they counter. And so they either accept or they counter, and everybody makes a decision. So that's certainly a good stopping point, if your Honor wants to undertake some sort of compulsory participation for the filed cases in the MDL.

THE COURT: Okay.

MS. FLEISHMAN: Thank you, your Honor.

THE COURT: Thank you.

Mr. Seeger.

MR. SEEGER: Chris Seeger.

Your Honor, I just want to make some brief comments because the last thing I really want to do is be in a position where I'm arguing against other plaintiffs' counsel. I want to just put this in some context.

We've been, Jim Cecchi and I, I think along with Wendy Fleishman, was appointed by this Court I think back in 2009 to be liaison counsel. We had settled a number -- Seeger Weiss

had settled a number of cases. For a number of years, the settlements that we were achieving for many reasons went on hold. I saw what I believed, at no fault of this Court, who entered orders for mediation, who had a bellwether process, who was willing to try cases, I saw a process that broke down. And I think the lawyers let the Court down frankly on that.

What I wanted to do in negotiating this, and I don't want to get into a battle over whether it's perfect, it's not perfect. But I also don't think we should allow perfect to be the enemy of what's really good, and I think that this is pretty good. And I think it's good for this reason. There are clients in my firm who have been calling us for three, four years, saying: When you are you going to get my case settled? What is going to happen with this?

I wanted to get a process where people could participate in that, have negotiations, get an offer. Literally get a settlement offer from the defendant. Take it if they like it, and if they don't like it, continue to litigate. It was that simple. Those were my objectives going into this, along with Mr. Lanier and Mr. Cecchi. We've said: We don't want to force people to settle. There is no effort to force people to settle. In fact, I think you heard several times today from both the defendant, and even the objectors, that when you read the agreement, you will not be forced to settle. That's a big point. You will get a settlement offer.

Those settlement offers should be communicated to the client. If they're not communicated to the client, then I think that's an ethical issue. I don't think the ethical issue is whether the agreement requires 90 percent participants. Because if this Court agrees with that, you will be in very good company with other MDL Courts throughout the country who have done exactly that. And other lawyers have challenged the ethics of those participation provisions, and they have consistently lost.

I won't get into the Court's authority argument because I really think that goes absolutely nowhere. The cases that are relied upon are not MDL cases where a Court is deal with thousands of cases. You obviously have the right under the rules of federal civil procedure and your inherent jurisdiction to manage this litigation, order the parties to mediate and to participate in a process that at the end of the day, if you don't like it, you're not bound by it. That's all I have to say, your Honor.

THE COURT: Alright, very well. Thank you, Mr. Seeger.

Anyone else?

MR. MEADOW: Only, Judge, if I were to get up there to speak, I would have echoed Mr. Seeger's comments. We're in the same boat.

THE COURT: Alright, counsel, just put your name on

the record so those on the phone know who's speaking.

MR. MEADOW: Rick Meadow from the Lanier Law Firm.

THE COURT: Very well. Thank you, Mr. Meadow.

Alright, we'll hear from defense counsel.

MR. TANNER: Thank you, your Honor. Joe Tanner again on behalf of the defendants.

I try to take some good notes here to try and address all the points that were made. And a lot of it is a perfect example of misinformation, miscommunication that's been going on about this program.

First of all, there was discussions about what goes on at the mediation, how the mediation is limited. And that's just simply not what the agreement says. The agreement says, at mediation we can talk about whether your claimant is eligible. Whether he's eligible or she's eligible for the base amount or the fixed amount. Any reductions. Any enhancements. The amount of the extraordinary fund. If you have an outlier, how much that is. What -- whether you qualify for that. Any damages caps that may exist. It's a -- the list lists all the topics we are talking about. That's what's going to happen at a mediation.

THE COURT: So there's no limitation on obviously what can be discussed at the point of mediation?

MR. TANNER: Correct. Within those categories, damages, caps and the amount of extraordinary benefit fund. We

are not going to, for instance, your Honor, say: I had a single revision. I have no complications. That's all. I want a 190,000 instead of 175,000. That amount has been negotiated. Whether you claim you're entitled to more than that for some other circumstance, that is subject to further negotiation and mediation.

Mr. Smith raised issues about somebody getting zero, or whatever. If you have a statute of limitations issue, if you have an infection issue, you go into what's called the fixed program and that is a $25,000, I believe, amount.

Now, Mr. Sayeg said: Well, Zimmer is just going to put everybody in that category, aren't they? Because apparently Bilmet did that, or so they allege. And first of all, I don't think we should be talking about hypotheticals here. But second, why in the world would we do that? We're trying to end these cases not keep these cases, and people would just reject it. So why would we do that? And what, in the six and a half years of us doing this, were to indicate that that's going to happen? Our history in this case shows our good faith and how we're going to handle it. It's pure speculation. It's not valid. And there's simply nothing behind it

Other things that were said. Mr. Sayeg, and I hope I pronounced his name right, said a majority of the firms have issues with this. That's not true. Eighty percent did not

object to -- 80 percent of the firms did not object. And some objected, and after we talked to them, were indicating: Okay, this sounds okay to me now. So it's simply not true that that many people objected.

There was this issue or fight about April 29th, and we had to register by April 29th, which was the deal as your Honor recognized our agreement. If that's an issue, your Honor, anybody that wants to register and register by the categorization deadline of May 31st, I believe, we can do that. If there are people that missed that deadline that want to register and, your Honor orders it, we can move that deadline and just register with categorization. And we're happy to do that because it doesn't push the other deadlines back. It would enable us to continue the same pace that we want to have.

You had asked Mr. Sayeg about his cases. By the way, he has five in the MDL. But his firm has settled 48 cases with us. So to say that we're not going to address his cases in good faith is -- simply falls on deaf ears.

This whole authority issue, your Honor, which we addressed. You know, we dealt with the second and third largest firms that have the largest pool of Durom cases. It was very contentious. Mr. Benefit was involved in most of those negotiations. He'll tell you it's simply not logistically possible to have two hundred firms negotiate. And it's really not an authority issue. But, the CMO that we have

in place gives liaison counsel the power to bind plaintiffs in things like scheduling deposition's agenda, entering stipulations and other interactions with defense counsel. And that's what Mr. Seeger did and that's what Mr. Cecchi did.

A couple of other quick points, your Honor. Mr. Smith talked about unrevised would result in dismissal. Simply not true. Unrevised are not part of this program. We're asking for unrevised to get information about them so we can set up a program to resolve. But we've said from the beginning, if you read the agreement, it's for revised claims.

And Miss Fleishman said: Well, there's revised claims that haven't decided whether they want to pursue their claim, or we don't know whether they'll file a claim. We've taken that off the table. We're going to pay them. There's not a whole lot of decision to make, they're going to get money. So we don't think that's an issue.

If I could address a couple of the primary points, your Honor, however, and one of them is the stay of the litigation. We think this is very important. Keep in mind the vast majority of the people that go through this program are going to get their money in 2016. The only people that are not going to get their money in 2016 are either people that don't participate or mediate. And the ones that mediate should get their money in 2017, so long as we can reach an agreement.

No one is going to get their money any more quickly.

I mean, this is the settlement proposal, quite frankly, whether your Honor adopts it or not, this is where Zimmer is going on trying to settle these cases.

It's interesting that most of the people or some of them that have objected have not even satisfied the CMO-1 obligations. For instance, Mr. Smith, 16 or 11 of his 16 cases, we don't have sufficient records yet. We're trying to get away from that. We're trying not to have to get those records and wait on those records. And I can go down the list. Four of the five of Mr. Sayeg's cases, we don't have sufficient records for. We're trying to get beyond that.

As far as delaying the trials and the discovery. Other than Waters Kraus and a handful, just a small handful of other cases -- or firms, nobody's even started discovery yet. Mr. Smith mentioned this will hold back and delay. It's not going to delay anything because he hasn't done any discovery. So we think the stay here will have little effect on what's already going on in the litigation.

As you, your Honor, recognized, the focus of this MDL should be on finding a resolution, not on wasting our resources, Court's resources, plaintiffs' resources on discovery, discovery fights. Whether people are scheduling depositions just to get leverage. Whether taking these depositions could be just wasteful. That's not the purpose. We've put limits on the stay. We've put a limit -- the longest

the stay could last would be the end of the September, 2017. We're willing to move that up. If we want to move it up and say all the mediations have to be done by the end of May, 2017, we'll do that. Our concern is the plaintiffs, that we can't get records, we can't get information, which is exactly why we need teeth into this order that says: If you miss deadlines, and if you don't do what you're suppose to do, you can be subject to a dismissal motion. We're happy to move it faster, but we have to have that teeth so that it doesn't get drug out and we're left with not understanding what the universe of the claims are.

THE COURT: What about, Mr. Tanner --

MR. TANNER: I'm sorry?

THE COURT: What about the issues of cases that don't get resolved going back to their respective state courts pursuant to the ruling that I issued in the Lexecon waiver?

MR. TANNER: Right. There's a couple of issues there, your Honor. We think that a remand process at the appropriate time is obviously what will have to happen. Now, there's a couple of issues up on appeal right now that the Waters Kraus firm has appealed, whether all of their cases should be remanded or should stay in this Court. And we've cross appealed saying: If you're going to appeal it out, we think all the cases should stay here, because we think there's a waiver across the board. So we have that issue, that

procedural issue to deal with.

But at the end the settlement process, then if there's a discovery -- if there's discovery that is specific and needed through the MDL process, which we've talked about before, what some of that discovery maybe, the MDL Court would run that discovery. And then at the appropriate time, through an appropriate procedure by which everyone is protected, you know, you can't asked for an MDL, have an MDL, and just open the flood gates and have 50, 100, 500 trials all at the same time, but a process in which the cases were selected and those cases could be remanded and that type of process. I think that's down the road and we can continue to talk about. And if during the stay of the settlement process, if during that period we wanted to try and put in place what will happen at the end of that process, we would be happy to do that.

If I could address two other points, your Honor. One is the -- all or nothing provision in the agreement and the sister to that, which is, we think the Court should order all of the cases in the MDL to participate.

On the authority issue, we don't think that's an issue at all, your Honor. You have that authority. This is ordering a process. This is not like a settlement order of a class settlement or anything else. This is just like ordering mediation. It's just like ordering plaintiffs in the whole case to do plaintiff fact sheets. It's just like ordering, as

this Court did six years ago, the CMO-1 mediation process that plaintiffs, themselves -- plaintiffs' liaison counsel at the time helped negotiate. We don't think that's an order of the Actos case. As a matter of fact, your Honor ordered people to -- the Judge ordered everyone that had an MDL case to not only register theirs, but also the state cases too. We haven't asked that of your Honor. And Rule 16C-2(l) gives this Court authority in complex cases to do special procedures. And there's nothing in the local rules that trump this Court's authority to handle those special matters.

Second, on why this Court should order. It fits this purpose. It fits the purpose of substantially ending this litigation and fits the purpose of trying not to have gamesmanship going on in the litigation. Selectively picking the cases. I'm only going to put in my worst cases, not my good cases. We got to end them all. It's the same discussion we had about the 29 and the 102 back when we talked back in December.

And also, it's important because we think plaintiffs need to know, Mr. Seeger mentioned this, plaintiffs need to know, need to sign on the dotted line. And, quite frankly, your Honor, we have information and knowledge that we think people that have objected haven't told their clients. And we think everybody should be telling their clients and their clients should know that.

There's a case dismissed for, we think, maneuvering, or even there was a case set for trial and it was dismissed after the settlement program was announced and it was an infection case. That client would have been entitled to $25,000. And that case, Mr. Niebruggie's case, Waters Kraus's case, was dismissed with prejudice.

Now, one of three things happened there. Mr. Niebruggie was told and said: I don't really want my $25,000. Somehow he got paid $25,000 from lawyers, or somebody else, I don't know. I don't know that that's proper. I'm not accusing anything. Or he didn't know about it. And I would suggest that the latter is the most likely. That's what we're trying to avoid, your Honor. We want the clients and the plaintiffs to know what's going on.

And the other thing the ordering does is it clears up, doesn't create, but clears up this conflict issue. Let me explain what I mean by that. No conflict exists if you simply put your cases in the process. A conflict only exists if you decide not to participate. That's something within the plaintiff's control and that's something that happens and is a byproduct of when you represent multiple parties.

But a conflict would exist irrespective if you order it or not; right? I mean, we're making this offer. The conflict, if they have some clients that want it and some clients don't, and a part of deal is you got to all be in or

all out, or it gives us options and rights, then they have a conflict. And my point, your Honor, is the only way to resolve this conflict is if you order it. If you order these people to participate, the lawyers are off the hook and there's no conflict.

With respect to the 90 percent, it's a similar argument, your Honor. We're making this substantial investment. And if it doesn't end or isn't looking like it's going to end the litigation, we need to be able to rethink it. We need to be able to see up front what the entire inventory is. Who's really being selective in their cases and who in good faith has a dispute about, well, this one is a little bit more and this one is a little bit less, and we'll deal with those folks. Like I mentioned before, if three out of 10 cases, and it's not 90 percent, then, okay, we'll talk to you. We'll work this out. It just gives us rights, it does not end the deal.

As Mr. Seeger said, 90 percent of eligible claims, that's a common provision. Ninety percent of the firm's inventory. There's also common with respect to inventory settlements. You just don't do inventory settlements but say: We'll settle with you, but keep all your good cases.

I heard a couple of the plaintiffs' firms up hear say: Well, we already know that our clients aren't going to accept this. And, your Honor, I would submit that we should just --

let's just see. Let's not deal in hypotheticals, let's deal in real facts, real circumstances. We've all had clients that say: I'll never settle. And they end up settling. But let's see.

But second, it just gives us more rights and the discretion to see if we go forward. In other words, a conflict only exists if they actually do not participate and -- or the 90 percent is actually not met, and Zimmer then decides it doesn't want to go forward. If that conflict happens, then there's ways to resolve it under Rule 1.8 that when you deal with multiple clients, that happens. I mean, if we represent multiple defendants and something like that happens, you know, we have to get consent, we have to do different things. But we think it will be resolved because we are in full focus on getting these cases resolved so long as what we hoped the plaintiffs do in their cases, and categorize them all, and move forward towards settling them all promptly and efficiently happens, and then we're done.

THE COURT: Very well.

MR. TANNER: Thank you, your Honor.

THE COURT: Thank you, Mr. Tanner.

Anyone else on the defense?

MR. KRAUS: Briefly, your Honor.

THE COURT: Sure. Mr. Kraus.

MR. KRAUS: Your Honor, the proposed compromise by

Miss Fleishman would be acceptable to us. If we had a registration process which allowed clients to register in the next week or ten days, get offers from Zimmer, and make a decision on that, and be finished with that by September 1st of 2016, that would be an acceptable compromise. At that point, your Honor, this issue, and I've heard the Court's frustration with myself and with other counsel here about the fact that here we are seven years later, this MDL rolls along. I was in another MDL that had gone on for nearly 20 years and had tens of thousands of cases, your Honor. It was the asbestos MDL and I was on the steering committee for the plaintiffs in that. And what ultimately resolved the asbestos MDL was when Judge Robreno in Philadelphia came in eight to ten years ago and entered an order, an administrative order, to remand cases. That's when those cases that could not settle through the MDL process resolved. When they --

THE COURT: How many years into it was it?

MR. KRAUS: When he took over --

THE COURT: Right.

MR. KRAUS: It was over 15 years into it and there were tens of thousands of cases. And within a matter of a few years, the entire MDL resolved, your Honor. And Judge Robreno entered an order two years ago ending the referral of additional cases to the MDL because the need for the MDL had ceased.

And what that proposed administrative order did, your Honor, is what the Court sees in the proposal that Mr. Henderson sent on March 31st. It gives Zimmer in this case the revised version that Mr. Gibbs -- Mr. Henderson proposed here, gives Zimmer the information that they need to settle cases. The current orders require a mediation take place. And if that mediation takes place, if that information is exchanged, which is the normal pretrial discovery, and the parties aren't able to bridge their differences, an order of remand is entered and the cases go back for trial. And the vast majority of those cases settle, your Honor. That's what happened in the MDL. That's what's been lacking, frankly, in this MDL is a realistic threat that if Zimmer doesn't settle cases outside their comfort range, that they're going to have many trials that they're going to have to face. I mean, that's the system, that's our adversarial system here, your Honor.

So without that realistic back end, that's the problem here.

THE COURT: So clarify for me what you said when you first stood up that you agree with -- what is it that you agree with, Miss Fleishman --

MR. KRAUS: We would agree to a stay of litigation, not for seventeen or eighteen months, but through September 1st of 2016.

THE COURT: And what's going to happen between May the

4th, 2016, and September 1st, 2016.

MR. KRAUS: We'll register our clients and get an offer from Zimmer, and accept or reject it.

THE COURT: That's it?

MR. KRAUS: At that point the stay will be lifted. The parties choose to go on and mediate, additional mediation, they can. And if not, then they go back into litigation. And we would ask that the Court enter an administrative order providing for remand so that cases can go back.

Now, with respect to this issue about Lexecon and the appeal involving our cases, there is no stay associated with that appeal that would keep this Court from remanding cases.

Further, your Honor, just so the record is entirely clear, since Mr. Tanner indicated that he negotiated with liaison counsel. He negotiated with two members of the plaintiff's liaison counsel committee individually. Neither they nor, until this moment, I think, has anyone indicated that they were acting on behalf of all plaintiffs when they negotiated that agreement. That did not occur. The Leiff Cabraser firm, the Waters & Kraus firm, and to my knowledge, the Pogust Milred (phonetic) firm were not involved in any way in those negotiations and we heard about it when it was a fait accompli. So it was not an agreement that was negotiated with the appointed plaintiff's liaison counsel committee.

So, your Honor, we would submit that would be the

appropriate way to go. That would be fair to all parties. And with all due respect to Mr. Tanner's opining on my ethical obligations to my clients and whether or not conflicts exist, I have clients now who have made it very clear that they would not accept the maximum amount in this -- available in this settlement agreement, are who are asking weekly: When will I get my day in Court? When can I get my trial? If my case can't settle for a number that I can --

THE COURT: What did you tell them?

MR. KRAUS: I say: We're working as hard as we can to get this process to go.

THE COURT: And your client --

MR. KRAUS: We're trying to engage Zimmer in a settlement discussion that we believe is fair to you and that you believe is fair to you.

THE COURT: Okay. So their question is: When will my case go to trial? What was your answer, other than: We're working as hard as we can?

MR. KRAUS: Your Honor, obviously we're at the mercy of the courts on that.

THE COURT: Okay.

MR. KRAUS: And so we would submit to the Court that the bellwether program has simply not been robust enough to create the settlement leverage on both parties that's required to get a fair settlement done for all the claimants here. As I

mentioned in the Pinnacle litigation, the Court, Judge Kincaid in Dallas, is setting groups of five to ten. There's been a defense verdict. There's been a 500 million dollar plaintiff's verdict. As that moves down the line, that sort of litigation -- that sort of verdict pressure is what drives settlement, your Honor, global settlements that are fair for all. This is not a deal that is fair for all and we ask the Court not to enter the proposed Zimmer case management order as written.

THE COURT: Very well. Okay.

Mr. Tanner, I did have a question for you. How many cases are pending in the MDL? You know you indicated what settled. What's pending in the MDL?

MR. KRAUS: Our records show 380 at this time, your Honor.

THE COURT: Three eighty?

MR. KRAUS: And Mr. Tanner can perhaps correct me, he probably has better records.

MR. TANNER: The total number of cases in the MDL or on their way to the MDL, because they were filed and removed, is 429. Three hundred seventeen, 74 percent were registered. A hundred and twelve did not register. Fifty-one of those were represented by Waters Kraus.

THE COURT: Okay.

MR. TANNER: So almost half were theirs.

THE COURT: Alright. So 317 total are what are pending in the MDL.

MR. TANNER: No, I'm sorry, 429 --

THE COURT: Okay.

MR. TANNER: -- your Honor. Three hundred seventeen have registered to date. A hundred and twelve have not. Fityone of those 112 are represented by Waters Kraus.

THE COURT: Okay. Alright.

MR. TANNER: Could I impose upon the Court to make just a couple of comments on what Mr. Kraus said?

THE COURT: Sure.

MR. TANNER: First of all, we did negotiate with two of the liaison counsel also had two books, large stables of Durom cases. This new remand idea and discussion, I don't think that was cleared with all liaison counsel and that they're speaking on behalf of the liaison counsel. And I'm sure the process by which Waters Kraus cases got put first ahead of everybody else's probably wasn't done by all liaison counsel. And we've dealt with Waters Kraus individually as well. So this idea you have to deal with all liaison counsel on all things simply falls of deaf ears.

They talk about this compromise. We've already submitted a couple of compromises here. Move it up to May. If they want it up to May, that's great by us. Let's move it up to May. But -- and also, in that meantime, if we want to talk

about procedures and orders and things like that, that will happen later, we can do that type of stuff. We just don't think we should be opening up the cases to discovery and those types of things. We need to let the entire process run its course so that we have clients, or excuse me, plaintiffs that say: I don't want those base amounts. And I don't agree with the enhancement. But let's talk about it. Let's have the opportunity to sit down and talk about it. And that's why the mediation process needs to run its course.

He says they won't accept the limits that are set on the agreement. But there are none. There's limits if you have just a single revision. But if you have an outlier case, you have exceptional injury, that's all fair game and open to discussion. And we just want to discuss that and we want to do it when our resources are focused on this result.

And finally, this idea that Zimmer is just not wanting to go to trial and that this is all a stay to keep that -- that is just false. I mean, we've had four Durom trials. Three of them been defense verdicts, one of them was a plaintiff's verdict that was overturned, as your Honor knows, for counsel issues. You know, that's not a record that we're scared of and we're certainly not scared of going to trial. We just don't know think that's where the resources should be spent and we want to put an end to this case. And, quite frankly, we want to see these plaintiffs get their money. Thank you, your

Honor.

THE COURT: Very well.

Miss Fleishman, you want to say something?

MS. FLEISHMAN: Yeah, I do.

Your Honor -- excuse me. Your Honor specifically asked Mr. Tanner if it was an open mediation process and he said yes, subject to. And then he said, essentially, no. But it's not an open mediation process. A number of cases are set at $25,000, a number of cases will be set at less than a $175,000 because of the way they structured the settlement. So now if they're saying yes at the mediation, we are willing to negotiate beyond these limits, then that's information that I think all the plaintiffs need to know. If they're saying no, we're settling within the limits and within the square limits of this agreement, then they need to know that too. But we need that answered, I think.

THE COURT: Okay.

MS. FLEISHMAN: Before anybody can be informed.

THE COURT: Alright.

Mr. Tanner.

MR. TANNER: You want me to answer that? Yes. I thought I was clear -- I'm sorry, I'll get to the podium, I apologize.

I thought I was clear but if not, let me try and clarify. The mediation process, we do have categories that

we'll talk about. Are you eligible or not? Are you eligible for the fixed or the base amount? What are the reductions that you might be entitled to? We're not talking about the amount for a revision. That's, as I mentioned earlier, that's not what we're negotiating or the amount for a particular reduction. It's, are you eligible for that? Or an enhancement.

And when I said it's open, if you have extraordinary injury. For instance, if you have lost wages over 20 percent of the year before, that can be part of that mediation process. What the extent is of: Did you have a stroke within a certain amount of time? Did you have a dropped foot within a certain amount of time? Those things, for these extraordinary injury, are what are open for full discussions. And it says: Whether or not an eligible claimant under the base award is entitled to compensation for extraordinary injury or economic loss, and the amount of that compensation. That's what I meant by if somebody says: I have this outlier case. I have these extraordinary injuries. That's fair game. And then damages, caps, and other things like that.

THE COURT: Let me ask you this.

MR. TANNER: Sure.

THE COURT: When was the last Durom cup manufactured? Because that's also sort of always looming here. Wasn't that like 2008?

MR. TANNER: Two thousand ten, your Honor. It was last sold in the United States, I believe it was October, 2010. December, 2010, I was just told.

THE COURT: December, 2010. Okay.

Alright, any question about that, Miss Fleishman?

MS. FLEISHMAN: No.

THE COURT: Okay.

MS. FLEISHMAN: Thank you, your Honor.

THE COURT: Okay, you're welcome.

So this is the reality. The reality is that we have a case that was begun in 2009. We have a hip cup that hasn't been manufactured since 2010. And while I have given the objecting plaintiffs an opportunity to be heard and verbalize and orally state their objections because you submitted them in writing, which I did have the opportunity to read. And I want to state at the outset that I completely, totally and whole heartily disagree with this notion and concept that I do not have the authority to manage a case in the manner that I feel is appropriate. I think that strains logic.

And even in looking at our local rules here in New Jersey, you know, I served as a magistrate judge for a number of years. I served as a district judge for a number of years. I've handled prior MDL cases. In private practice I handled cases that were part of MDLs. So the reality is that different cases require different things. And this is clearly a case

that requires some recharting of our course. And what has been suggested, what has been done up to this point, has not been working. And that's the reality. I know that Judge Arleo, who was the magistrate judge on this case for a number of years and is now a district judge, and subsequently Judge Mannion has met with counsel on an ongoing basis to try to sort of shape a way to get to a resolution.

And while I appreciate plaintiffs' counsel making the arguments of ethical concerns, and the extraordinary amount of time that their clients have had to wait for this litigation, the course that we're on is such that this will take another five to ten years. I don't think any attorney in here that represents a plaintiff in this litigation would recommend to their client that that's a preferred course of action.

And so much is made of this proposed 18-month stay. I don't think it's unreasonable, given where we are. We have a litigation that is fastly approaching being seven years old, and with no end in sight. With have set cases for trial. We have spent an inordinate amount of time on preparing a final pretrial order, then just going through just absolutely voluminous motions in limine, and then actually jury selection. And going through the trial, itself, only to essentially come down to: There's a statute of limitations issue in this case and therefore there's no viable claim and it should not proceed.

Second case, and I'm only talking about my experience. Second case that's listed for trial. We get -- we schedule the trial. Once again, motions are filed. And it has basically the same issue again about the statute of limitations. That is not in the best interest of the litigation of the parties, of any type of expeditious resolution of this litigation. And trying two, four, even six cases a year, which is being extremely generous, to be quite frank, because I'm sure everyone appreciates that this is not the only case the Court has. If I was only tasked with the responsibility of serving as an MDL judge on this Zimmer litigation, my life would certainly be a lot different. But that's not the reality. So I cannot -- have criminal matters that obviously clearly have preference over a civil case.

And so even if we were to suggest that we were going to do some type of grouping, which I'm not even sure, quite frankly, based on the proposal, how that would even work. And I don't think that would be something that would be plausible, quite frankly. And at six trials a year, and that's a significant amount of trials because every case that comes before this Court, there are a number of in limine motions that have to be addressed. There are a number of motions under Daubert that have to be addressed. And it's very time constraining and very time consuming. And that's not a problem. And that's certainly what this Court is here to do

and that's part of the process, and we have no objection to doing that.

But at the end of the day, the best interests of the plaintiffs who have, in many instances lived with this entire issue for a number of years. And while, you know, much is said about Zimmer, they are also entitled to get to some point of resolution as well. So -- and I don't know any other way that I think is actually -- would be more practical than what is being suggested. And the only arguments I hear are arguments that: One, I don't have authority; two, there's an ethical dilemma that will exist; which makes no sense to me, whatsoever.

The bottom line is, nobody is compelled to settle. Nobody is compelled to accept what is being offered. Nobody is compelled to do anything other than register. And once you go through the registration process and there's a determination that's made as to whether or not -- what category a particular plaintiff falls in, the process proceeds from there. And the suggested 18-month delay is not an extreme amount of delay. And it just seems shocking to me that counsel would have such ire about that, considering it's litigation that's seven years old. It's seven years old. Now we don't want anything to happen for 18 months.

If I tried the cases that are scheduled or were scheduled and I took them off, the Cartwright matter, Rochau,

et cetera, if I tried those cases and finished them in December, we are into no better place in January than we are today. And that's the reality.

So something has to be done. And this whole concept of, I believe Mr. Smith indicated: We're fine with CMO number one, which is six years old, at least. And matters are still not settled. Matters are still not even fully prepared for discussions about settlement. And I think for every plaintiff that is involved in this litigation and potentially will be involved in this litigation, that there needs to be a clear and distinct perspective as to how this matter can resolve.

There are some plaintiffs in the world that are not simply driven by the monetary aspect but are driven by the fact that they'd like to move on with their lives. And sometimes that may be -- might be muted by the fact that it's not a sufficient enough offer. But it also might be muted by the fact that they're ready to move on. And I think they're at least entitled to have a definite and definitive offer from Zimmer. And this proposal that's been basically made today about stay the case until September of 2016, and we'll register, it basically means nothing. It sound like nothing. And I think at the end of the day, the only thing that would have happened was the case will -- nothing will happen until September and then we'll be right back here again.

There are a number of plaintiffs whose cases would

potentially be subject to remand and the ability or right to return to their originating jurisdictions, and that's an issue as well that we will address. I've already made a ruling as to what cases I feel are appropriate for that -- for remand. And I think, more importantly, there needs to be some clear direction and clear universe that exists as to what claims are part of this MDL.

And going further to the issue about the language or the letter to the state court judges, I will adjust the language as I feel appropriate. It's my letter. And it will be a letter from this Court. I will simply indicate what this Court is doing. State court judge can go along with what this Court does. They are not obligated to do that. I have no authority and certainly don't even attempt to suggest that I have any authority over what they do with their docket or the cases pending before them. But I think it's certainly appropriate to share with them how this Court is in fact proceeding with the litigation.

The issue of who represents whom and who's actually plaintiffs' liaison counsel, and you can't make a deal with this one. I quite frankly find that to be of little moment. It's very clear that Mr. Seeger and Mr. Cecchi have -- are clearly part of the plaintiffs' liaison team. I understand there are objections from other members. But, counsel, this is not a situation where Zimmer as acted on its own. It is not a

situation where Zimmer has simply outlined a process which has had absolutely no input from plaintiffs' counsel. The fact that there are objections means that everyone is entitled to have objections, and I wanted to give you an opportunity to be heard here today and voice those objections.

But at the end of the day, I don't think there's any, any prejudice that results to any plaintiff in this case if this Court were to issue a case management order regarding the settlement agreement. I do agree that the April 29th date should be adjusted. And I think as you indicated, Mr. Tanner, moving it to the May date probably makes more sense since the date has already passed by way of April 29th. But that was not the Court's order and I think Zimmer was appropriate in communicating to counsel that that was Zimmer's process. And what is taking place now is that the Court will enter a case management order regarding the settlement agreement requiring parties to participate.

There is no requirement to settle. There is no requirement to accept what is being offered. And that is the bottom line. But this will give the Court an opportunity to effectively manage this case on its docket. It will give the Court an opportunity to attempt to bring this case to some type of resolution so that we won't be sitting here, as they did in the asbestos litigation, in a case that has far fewer plaintiffs involved and talking about a case 20 years from now.

And I don't think realistically that anyone really can legitimately object to that. I think it's appropriate. I think it's fair and reasonable, and I don't think it is a stay that will prejudice anyone, and I don't think the process will prejudice anyone as well.

So, it is my intention to sign the order. I will ask counsel for Zimmer, and make sure that you share it with plaintiff's counsel. At least plaintiff's liaison counsel just in terms of what is being modified to in terms of the date because the proposed order that I have has the April 29th date in it, so that does need to be modified. And I would also include in the order the indication that, as it relates to the Lexecon waiver, that is an issue that the Court retains jurisdiction over and will address at the conclusion of this process. Okay? And we will address that further as we need to.

And that is where we are. So that is my intention to sign that order and if there's an objection and you're unable to resolve the objection, then by all means let me know and I will be guided accordingly.

MR. KRAUS: Your Honor --

THE COURT: Mr. Kraus.

MR. KRAUS: One other point of clarification. The May date that's going to substitute for April 29th, what date in May is that?

MR. TANNER: Thirty-one.

MR. KRAUS: May 31st.

In addition, your Honor, during his argument, Mr. Tanner agreed on behalf of Zimmer to lift the mandatory stay or to move the mandatory stay from September of 2017, to May of 2017, which we would certainly favor. Is the Court inclined to make the modification?

THE COURT: I have no objection to that.

MR. KRAUS: Okay.

THE COURT: I mean, my point is, and the reason I didn't adopt that in my oral sort of opinion about it is the fact that, it needs to be realistic. And what I have found in the history of this case is that dates are thrown out and dates are not met. So, I don't have any objection to it at all, but I want everyone to be very clear, if that's the deadline, that is the deadline. We don't say May and then we just sort of keep proceeding to September, and then we keep proceeding to December. If May is the agreed-upon date, and I'll let counsel speak amongst yourselves, I have no objection to that. You can speak amongst yourselves as to that deadline. But I'm not ordering that. As far as I'm concerned, what's proposed is reasonable. Alright?

MR. KRAUS: Thank you, your Honor.

THE COURT: So you guys can confer. And if you want to adjust it, by all means do so.

Alright, anything else? Any other questions? Concerns? Anything I need to address?

Alright. So I will look for an order from counsel in the next week or so. Okay? Thank you all for coming. Have a great day, and we will hang up for counsel on the phone. And thank you all for participating.

(Matter concluded)