

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE: ABILIFY (ARIPIPIRAZOLE))
PRODUCTS LIABILITY LITIGATION)

) Case No. 3:16-md-2734

) Pensacola, Florida

) **November 7, 2016**

) 11:10 a.m.

CASE MANAGEMENT CONFERENCE

BEFORE THE HONORABLE M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE
(Pages 1-71)

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P R O C E E D I N G S

(Court called to order 11:10 a.m.)

THE COURT: Good morning. It's still morning, maybe not for some of you, maybe afternoon, but welcome. I'm Judge Casey Rodgers. It's my pleasure to have you all here this morning for the initial case management conference in the Abilify MDL action.

For the record, this is In Re: Abilify Products Liability Litigation, Case No. 3:16md2734.

So it looks a little bit like jury selection, there's so many of you here. I wish I could have hosted you in my nice big courtroom across the street. Some of you have been in that courtroom. But I assure you we are much better off here in this courtroom breathing clean air. And beyond that, how often do you all get to appear in a beautifully-restored historic courthouse?

So I hope you're comfortable enough. But I do want to assure you, as I think I did with some of you on the conference I had with the original actions filed in this court, that if you feel we need a larger courtroom, something that we can't accommodate here in this courthouse, then I'm happy to hold any proceedings over in our Tallahassee courthouse, just a short 200 miles away from here. But I'm happy to do it. And you'll just need to let me know if you think we need to do that or the circumstances call for it.

11:11:43 1 As you know, this MDL action was assigned to me by
11:11:48 2 order of the Judicial Panel on Multidistrict Litigation on
11:11:52 3 October 3rd, 2016.

11:11:55 4 Now, in terms of introductions, I feel like I'm at a
11:12:00 5 bit of a disadvantage in terms of names and facial recognition.
11:12:04 6 There's only one of me, but I believe at last count I think
11:12:08 7 there's about thirty of you here in the courtroom. I know
11:12:10 8 there are others on the phone.

11:12:12 9 I'm going to do my best hopefully early on in the
11:12:15 10 litigation to begin to commit to memory faces and names and
11:12:20 11 make that connection. I promise you I will do that. But I'd
11:12:24 12 like to start now by asking each of you to introduce
11:12:37 13 yourselves, if you would. Some of you I do know. Many of you
11:12:37 14 I do not know. And for the record, I think it would be helpful
11:12:37 15 to have you all introduce yourselves and the client you're here
11:12:40 16 representing.

11:12:41 17 So we'll start with -- you must be Mr. Wilson?

11:12:43 18 **MR. WILSON:** Yes, I am, Your Honor. Thank you. And
11:12:44 19 the courtroom is great.

11:12:45 20 **THE COURT:** Thank you.

11:12:46 21 **MR. WILSON:** I am Gary Wilson from Robins Kaplan in
11:12:51 22 Minneapolis representing the plaintiffs.

11:12:53 23 **THE COURT:** And you're interim co-lead?

11:12:53 24 **MR. WILSON:** Yes, I am.

11:12:56 25 **THE COURT:** Thank you.

11:12:56 1 **MR. AYLSTOCK:** Good morning, Your Honor. Bryan
11:12:57 2 Aylstock from Aylstock, Witkin, Kreis & Overholtz, and I'm
11:13:04 3 representing the plaintiffs, interim liaison.

11:13:05 4 **THE COURT:** Good morning.

11:13:05 5 **MR. RASMUSSEN:** Good morning, Your Honor. Kristian
11:13:08 6 Rasmussen, and I'm here on behalf of plaintiffs as interim
11:13:11 7 co-lead counsel.

11:13:12 8 **THE COURT:** Good to see you again.

11:13:14 9 Mr. Echsner?

11:13:14 10 **MR. ECHSNER:** Good morning, Judge Rodgers. Steve
11:13:18 11 Echsner from Aylstock, Witkin, Kreis & Overholtz representing
11:13:19 12 the Locklear plaintiffs filed here in the Northern District.

11:13:23 13 **THE COURT:** Good to see you, thank you.

11:13:23 14 Mr. Rafferty?

11:13:24 15 **MR. RAFFERTY:** Good morning, Your Honor. Troy
11:13:25 16 Rafferty from Levin Papantonio representing several of the
11:13:29 17 plaintiffs here in the litigation.

11:13:30 18 **THE COURT:** Mr. Rafferty, I heard something this
11:13:32 19 morning that maybe you weren't receiving notices of orders.
11:13:37 20 Whatever we need to do to rectify that, we will.

11:13:41 21 **MR. RAFFERTY:** Thank you, Your Honor. I got an email
11:13:44 22 right before I came in saying -- I think it's been fixed, but
11:13:49 23 thank you.

11:13:49 24 **MS. HAZAM:** Good morning, Your Honor. Lexi Hazam from
11:13:52 25 Lief, Cabraser, Heimann & Bernstein in San Francisco,

11:13:54 1 representing several plaintiffs transferred to this district.

11:13:58 2 **THE COURT:** Good morning.

11:13:58 3 **MS. SUTTON:** Good morning, Your Honor. Tara Sutton
11:14:00 4 from the Robins Kaplan firm in Minneapolis on behalf of
11:14:04 5 plaintiffs.

11:14:04 6 **THE COURT:** Good morning.

11:14:08 7 **MR. RUDD:** Good morning, Your Honor. Gordon Rudd from
11:14:09 8 Zimmerman Reed in Minneapolis on behalf of the plaintiffs.

11:14:09 9 **THE COURT:** Good morning.

11:14:15 10 **MR. MEGHJEE:** Good morning, Your Honor. Munir Meghjee
11:14:16 11 from the Robins Kaplan law firm on behalf of plaintiffs.

11:14:16 12 **THE COURT:** Good morning, thank you.

11:14:25 13 **MR. CORY:** Good morning, Your Honor. I'm Ernie Cory
11:14:25 14 from Birmingham here on behalf of plaintiffs.

11:14:25 15 **THE COURT:** Thank you.

11:14:25 16 **MS. LIAKOS:** Good morning, Your Honor. Jennifer
11:14:25 17 Liakos from Napoli Shkolnik, here on behalf of plaintiffs.

11:14:25 18 **THE COURT:** Good morning.

11:14:36 19 **MR. SMITH:** Good morning, Your Honor. Brandon Smith
11:14:37 20 from Childers, Schlueter & Smith in Atlanta on behalf of the
11:14:40 21 plaintiffs.

11:14:43 22 **MS. GOLDENBERG:** Good morning, Your Honor. Marlene
11:14:43 23 Goldenberg from Goldenberg Law in Minneapolis on behalf of the
11:14:47 24 plaintiffs.

11:14:47 25 **MR. BYRD:** Your Honor, Kenny Byrd with Lieff,

11:14:51 1 Cabraser, Heimann & Bernstein in the Nashville office on behalf
11:14:54 2 of plaintiffs.

11:14:55 3 **MR. MANN:** Good morning, Your Honor. Jon Mann from
11:14:57 4 Pittman, Dutton & Hellums on behalf of plaintiffs.

11:14:57 5 **THE COURT:** Good morning.

11:15:06 6 **MR. PAREKH:** Good morning, Your Honor. Behram Parekh
11:15:06 7 from Kirtland & Packard for the plaintiffs.

11:15:06 8 **THE COURT:** Good morning, thank you.

11:15:09 9 **MR. NIGH:** Good morning, Your Honor. Daniel Nigh from
11:15:11 10 Levin Papantonio here in Pensacola on behalf of plaintiffs.

11:15:11 11 **THE COURT:** Good morning.

11:15:16 12 Anyone on the phone on behalf of the plaintiffs? I
11:15:19 13 believe we do have a few attorneys on the phone.

11:15:27 14 **MS. MCKENZIE:** Yes, Your Honor. This is Megan
11:15:28 15 McKenzie from Robins Kaplan on behalf of the plaintiffs.

11:15:35 16 **THE COURT:** Okay. Good morning.

11:15:35 17 **MR. SCHULTE:** This is Richard Schulte from Wright &
11:15:37 18 Schulte on behalf of plaintiffs.

11:15:40 19 **THE COURT:** Good morning.

11:15:44 20 **MR. WILLIAMSON:** Judge, this is George Williamson on
11:15:47 21 behalf of the plaintiffs.

11:15:48 22 **THE COURT:** And then is Ms. Calvert also on the line?

11:15:52 23 **MS. CALVERT:** Yes. Lauren Calvert of Morris Anderson
11:15:57 24 on behalf of plaintiffs.

11:15:58 25 **THE COURT:** Thank you.

11:15:58 1 And then Ms. Bolton (sic), are you on the line?

11:16:04 2 **MS. COLTON:** It's actually Lauren Colton with a "C",
11:16:09 3 Your Honor.

11:16:09 4 **THE COURT:** I apologize.

11:16:11 5 **MS. COLTON:** No worries. I'm on behalf of the
11:16:15 6 defendant, Bristol-Myers.

11:16:16 7 **THE COURT:** Thank you.

11:16:17 8 Then Mr. Litchford, are you on? Hal Litchford?

11:16:27 9 He was on, I believe, but maybe not any longer.

11:16:31 10 **MR. LITCHFORD:** Your Honor, I'm sorry, I had a call
11:16:34 11 coming in and I couldn't answer quickly enough there. It's Hal
11:16:39 12 Litchford, Baker Donelson, and I'm on the line for the Otsuka
11:16:44 13 defendants.

11:16:44 14 **THE COURT:** Thank you and good morning.

11:16:46 15 Is there anyone else on the telephone who has not
11:16:49 16 introduced themselves?

11:16:52 17 *(No response.)*

11:16:53 18 All right. If at any point during the conference,
11:16:57 19 those of you on the telephone, if there's technical
11:17:01 20 difficulties or you have trouble hearing, just speak up and let
11:17:04 21 us know and we'll try to fix that.

11:17:07 22 Then turning now to the defense, for Bristol-Myers
11:17:12 23 Squibb, Mr. Agneshwar?

11:17:15 24 **MR. AGNESHWAR:** Correct, Your Honor. Good morning.

11:17:18 25 **THE COURT:** Good morning.

11:17:18 1 **MR. EISENSTEIN:** Good morning, Your Honor. Matt
11:17:19 2 Eisenstein from Arnold & Porter on behalf of Bristol-Myers.

11:17:21 3 **THE COURT:** Good morning.

11:17:21 4 **MR. HILL:** Good morning, Your Honor. Larry Hill from
11:17:24 5 Moore, Hill & Westmoreland for Bristol-Myers.

11:17:29 6 **MR. CAMPBELL:** Good morning, Your Honor. Matt
11:17:30 7 Campbell from Winston & Strawn, the DC office, here on behalf
11:17:30 8 of two of the defendants.

11:17:30 9 **MR. CONNELLY:** Luke Connelly also from Winston &
11:17:30 10 Strawn for the Otsuka defendants.

11:17:41 11 **MR. DIAMANTAS:** Kyle Diamantas from Baker Donelson,
11:17:43 12 also for the Otsuka defendants.

11:17:43 13 **MR. BEALL:** Your Honor, Charles Beall from Moore, Hill
11:17:48 14 & Westmoreland on behalf of Bristol-Myers.

11:17:50 15 **THE COURT:** Good morning.

11:17:50 16 **MS. SULLIVAN:** Good morning, Your Honor. Kim Sullivan
11:17:50 17 with Moore, Hill & Westmoreland on behalf of Bristol-Myers.

11:17:55 18 **THE COURT:** Okay. Who else do we have?

11:17:55 19 **MS. HENNESSY:** Monica Hennessy from Otsuka.

11:17:55 20 **MR. LeGOWER:** Good morning, Your Honor. Donald
11:18:02 21 LeGower from Bristol-Myers.

11:18:02 22 **THE COURT:** Now, are you all in-house?

11:18:05 23 **MR. LeGOWER:** We're both in-house.

11:18:06 24 **MS. HENNESSY:** Yeah, we're in-house counsel, Your
11:18:13 25 Honor.

11:18:13 1 **THE COURT:** Okay, good, thank you.

11:18:13 2 Excuse me just a minute, please.

11:18:33 3 Now I'd like to take just a minute to introduce some
11:18:36 4 of the court personnel that you will become -- if you're not
11:18:39 5 already acquainted with, you will become familiar with them
11:18:42 6 throughout the course of this litigation.

11:18:45 7 First, Magistrate Judge Gary Jones. I believe Judge
11:18:50 8 Jones is on the telephone. He is one of our magistrate judges.
11:18:53 9 He actually sits in the Gainesville division of our court. If
11:18:58 10 you've had the pleasure of appearing before Judge Jones, then
11:19:02 11 you know he is highly competent and will be excellent support
11:19:09 12 for our court and me in particular in this litigation.

11:19:13 13 Also, my law clerk that's assigned to this MDL action
11:19:20 14 is Ms. Gwendolyn Bills, and she is here. Also excellent
11:19:26 15 support for me, and she's very easy to work with, and I'm sure
11:19:30 16 you will find her a pleasure to work with.

11:19:34 17 Also, Ms. Susan Simms, if you haven't met Ms. Simms,
11:19:40 18 she is my courtroom deputy. She works for me but she's
11:19:43 19 technically assigned to our clerk's office, but she'll be
11:19:47 20 available to you for certainly any courtroom logistical issues
11:19:53 21 as well as scheduling.

11:19:55 22 This is Ms. Donna Boland to my immediate right.
11:20:02 23 Ms. Boland, B-o-l-a-n-d, is my court reporter. She, too, is
11:20:08 24 excellent. And if you need any services from Ms. Boland, then
11:20:15 25 feel free to reach out to her and she will assist you. And I

11:20:21 1 want to talk in a few minutes about court reporter services and
11:20:24 2 transcripts, but I'll hold off for just a little bit on that.

11:20:28 3 Mr. Randy Hausner is my court security officer.
11:20:36 4 Obviously he has responsibility for maintaining security here
11:20:40 5 in the courtroom and enforcing all of the Court's orders in the
11:20:43 6 courtroom. I don't think that will be an issue. He'll
11:20:46 7 probably get very bored. I know that won't be an issue here,
11:20:51 8 but he will be here -- whenever you have a conference,
11:20:54 9 Mr. Hausner will be here in the morning, he'll open the
11:20:58 10 courtroom and get you all situated.

11:21:00 11 And then in the back of the courtroom, you may not
11:21:04 12 have met -- and they're probably not happy about me introducing
11:21:08 13 them -- is Mr. Travis Green and Ms. Donna Bajzik. They are
11:21:15 14 employees of our clerk's office. Mr. Green is actually our
11:21:20 15 resident deputy clerk in charge here in Pensacola. And they
11:21:23 16 are very much involved in the day-to-day activity on the docket
11:21:27 17 in this litigation. But feel free to reach out to either one
11:21:31 18 of them, Donna or Travis, if you need anything from the clerk's
11:21:35 19 office.

11:21:35 20 And if it would be helpful -- I wish I had had the
11:21:39 21 foresight to do it -- we can create a list of all of those
11:21:44 22 names of the people I've just introduced to you with contact
11:21:49 23 information, and we can actually file that on the docket after
11:21:52 24 today. That will be helpful.

11:21:53 25 All right. I want to thank you all for your

11:21:59 1 preconference submissions. The materials were extremely
11:22:03 2 helpful to me in preparing for today's conference, so thank you
11:22:07 3 for that. I know a lot of time went into those submissions.

11:22:11 4 Also helpful to me recently was my attendance at the
11:22:16 5 MDL conference down in West Palm. That was last week. And of
11:22:22 6 course, that's the national conference that is hosted by the
11:22:26 7 Judicial Panel on Multidistrict Litigation through the Federal
11:22:29 8 Judicial Center.

11:22:31 9 There was a great deal of information presented at
11:22:35 10 that conference. I found my head swimming just a little bit
11:22:38 11 while I was there, but I tried to act like a sponge and just
11:22:42 12 take in as much information as I could.

11:22:45 13 One of the many takeaways for me at that conference
11:22:51 14 was the fact that there is -- from what I can gather, there is
11:22:57 15 no magic formula or recipe for handling an MDL action. And
11:23:04 16 although most MDL judges do seek out advice and guidance from
11:23:10 17 other more experienced MDL judges, most borrow ideas from a
11:23:18 18 number of different judges. A lot of judges seek out maybe one
11:23:23 19 colleague that they know of who has an MDL or has had one in
11:23:28 20 the past, but there are a number of judges who seek the advice
11:23:31 21 of a broad range of judges across the federal judiciary and
11:23:36 22 then they apply what seems relevant to them given the case that
11:23:41 23 they've been assigned. And that's what I plan to do. And I
11:23:44 24 have spoken to a number of my colleagues around the country,
11:23:47 25 various geographic areas, districts, about their handling of

11:23:53 1 MDLs, and from that I've learned again there's no one magic
11:23:58 2 formula or approach. But I also plan to listen to you all.
11:24:01 3 You certainly bring a wealth of experience and a unique
11:24:05 4 perspective to the table, and so I will be relying on you as
11:24:11 5 well as we move through this litigation.

11:24:13 6 And from the outset, I want you to know that I take
11:24:21 7 this very seriously, my role to help you manage these cases in
11:24:26 8 such a way that each side gets the information that it needs
11:24:31 9 and the answers that it needs in order to make an informed
11:24:35 10 decision on whether to take the individual cases back to the
11:24:41 11 transferor districts for trial or to test your respective
11:24:45 12 positions through a bellwether trial process in hopes of
11:24:48 13 resolving the MDL here in this court.

11:24:52 14 But in either case, I hope that you get the
11:24:55 15 information -- and I will help you to get the information that
11:24:57 16 you need during the coordinated pretrial proceedings to answer
11:25:02 17 those questions.

11:25:03 18 So the state of this MDL, as I understand it -- and
11:25:09 19 please correct me if you understand it differently -- we have
11:25:13 20 45 cases pending now in the MDL. Dozens of attorneys have
11:25:26 21 appeared. 41 of the 45 cases have been transferred by the
11:25:28 22 Judicial Panel on Multidistrict Litigation from 22 different
11:25:32 23 districts. Four cases were originally filed in this district
11:25:37 24 prior to the transfer order, and two have been filed in this
11:25:40 25 district since the transfer order.

11:25:42 1 There is one additional case I understand that's
11:25:47 2 pending transfer. This was part of what the defendants advised
11:25:54 3 me of in their brief, which I appreciated. It's filed
11:25:58 4 originally in the Northern District of Illinois, and there's a
11:26:02 5 *pro se* plaintiff, I believe, involved, a Mr. Memler in that
11:26:06 6 action.

11:26:06 7 I don't believe it's actually been transferred yet.
11:26:08 8 Do you know differently?

11:26:15 9 **MR. AGNESHWAR:** I don't believe it has, Your Honor.

11:26:17 10 **THE COURT:** But you anticipate it will be?

11:26:21 11 **MR. AGNESHWAR:** Yes, Your Honor.

11:26:22 12 **THE COURT:** Okay, thank you.

11:26:22 13 Additionally, there are 21 cases currently pending in
11:26:25 14 New Jersey state court, all of which have been consolidated,
11:26:29 15 before Judge James -- now known to me as Jim -- DeLuca. Very
11:26:37 16 nice man. He's been very gracious. I think he and I will be
11:26:41 17 good friends when this is all over.

11:26:43 18 Now, I wanted to address with you all and seek some
11:26:48 19 input on what you expect in terms of -- and I know you don't
11:26:53 20 have a crystal ball, I don't either, and I keep asking for one
11:26:58 21 but no one has given me one -- what you expect in terms of the
11:27:03 22 cases to be filed in this MDL. And also, I want to ask you
11:27:08 23 about any class action litigation that may or may not be on the
11:27:13 24 horizon or expected.

11:27:15 25 You had -- both sides had sort of wildly disparate

11:27:20 1 views on the number of cases that you expect to make up this
11:27:25 2 MDL.

11:27:25 3 So, Mr. Wilson, what can you --

11:27:27 4 **MR. WILSON:** Yes, Your Honor, may I please speak to
11:27:30 5 that?

11:27:30 6 **THE COURT:** Yes.

11:27:30 7 **MR. WILSON:** We had an organizational dinner last
11:27:33 8 night. And as I always do, I conducted my survey of: *How many*
11:27:37 9 *cases do you have? What's your plans?*

11:27:39 10 And what I've found is these -- the people behind me
11:27:41 11 are all very experienced MDL attorneys. And people are waiting
11:27:46 12 for some of the efficiencies to be put into place, for example,
11:27:50 13 a master complaint and a short form complaint, which is
11:27:56 14 commonplace in these types of cases, and I don't believe the
11:27:59 15 defendants are going to oppose that.

11:28:01 16 And then we're going to see a surge in case filings.
11:28:07 17 We put in our papers that it's going to be in excess of a
11:28:11 18 thousand cases ultimately, and we still believe that.

11:28:15 19 **THE COURT:** Okay. And as I said, the defendants, I
11:28:20 20 guess, had a different view of this, but it was pretty much I
11:28:25 21 think based on what you've seen in other MDLs of this nature
11:28:29 22 and how rapidly or quickly cases were filed after the transfer
11:28:33 23 order, say within the first 30 days, as compared to this case.

11:28:33 24 Is that --

11:28:37 25 **MR. AGNESHWAR:** Well, that's correct, Your Honor, but

11:28:39 1 again, it's totally up to the plaintiffs what they file.

11:28:39 2 **THE COURT:** Right.

11:28:41 3 **MR. AGNESHWAR:** But typically what you see is, when an
11:28:44 4 MDL application is filed you'll see a lot of cases filed then,
11:28:47 5 and certainly after an MDL is created you start seeing a lot of
11:28:50 6 cases being filed as the leadership structure on the
11:28:55 7 plaintiffs' side is being put in place, as people want a seat
11:28:58 8 at that table.

11:28:59 9 What we're seeing here is just a remarkably few cases
11:29:02 10 that have been filed both since the MDL application was filed
11:29:06 11 and after the MDL was created.

11:29:08 12 Now, I have no reason to dispute what Mr. Wilson is
11:29:10 13 saying, that everyone is waiting for more stuff to happen, and
11:29:13 14 it may well be. But we can only act based on what we see right
11:29:18 15 now.

11:29:18 16 **THE COURT:** Sure.

11:29:18 17 **MR. AGNESHWAR:** And at this point it seems like a much
11:29:21 18 smaller MDL than what you typically see in pharmaceutical
11:29:25 19 cases.

11:29:26 20 **MR. WILSON:** And if I may just add one thing, Your
11:29:26 21 Honor?

11:29:28 22 **THE COURT:** Yes, sir.

11:29:28 23 **MR. WILSON:** This case is kind of unique from other
11:29:31 24 cases, in that the FDA just issued a warning. So people --
11:29:37 25 people behind me included -- are looking at this as just

11:29:41 1 starting off now. They feel like there's time before they're
11:29:44 2 forced to file, and they think they're in a great position to
11:29:48 3 wait until they can do so with a short form complaint and when
11:29:51 4 things are kind of up and running.

11:29:53 5 The usual rush to file cases to ensure your spot on
11:29:58 6 the leadership, we have been meeting for months about the
11:30:02 7 leadership, and I think everybody pretty much understands what
11:30:07 8 the leadership will look like, with your approval, of course.
11:30:12 9 And we're -- we have like a cohesive group together, and we
11:30:17 10 think we're going to be able to work very well going forward.

11:30:20 11 So there aren't a lot of people coming in saying *I'm*
11:30:22 12 *going to run an ad campaign and file 500 cases so I can get a*
11:30:29 13 *leadership spot.*

11:30:30 14 **THE COURT:** All right, thank you. And I appreciate
11:30:32 15 you standing. I'll allow you to remain seated, if that's
11:30:36 16 easier for you, during this conference. Some attorneys just
11:30:39 17 can't do that and they want to stand, and that's fine, too.

11:30:46 18 Mr. Wilson, though, I'm sorry, I did not hear any
11:30:52 19 reference to class actions. Do you have any sense of that?

11:30:57 20 **MR. WILSON:** We don't see a class action at this time.
11:31:01 21 Sometimes there's third-party payer actions, sometimes there's
11:31:04 22 security derivative actions. I can't speak for people who
11:31:08 23 might bring them in the future, but we see nothing at this
11:31:10 24 point.

11:31:11 25 **THE COURT:** Okay. Thank you for that.

11:31:12 1 All right. I'm going to just go through my checklist.
11:31:25 2 It certainly won't track perfectly your agenda, but I think it
11:31:30 3 will cover everything, and then some, that you submitted to me.

11:31:33 4 So all counsel and any *pro se* litigants certainly will
11:31:38 5 be expected to thoroughly familiarize themselves with the
11:31:41 6 Court's orders. As I hope all of you know, there have been
11:31:45 7 three significant orders entered in the case.

11:31:50 8 October 19th I entered an order establishing case
11:31:55 9 management procedures appointing interim counsel. That can be
11:31:58 10 found at ECF No. 8. And then two days later on the 21st I
11:32:04 11 entered an order establishing docketing and filing procedures.
11:32:08 12 That order can be found at ECF No. 12.

11:32:12 13 And then there were some filings that were not
11:32:16 14 compliant with that order from ECF No. 12, and so I entered an
11:32:23 15 additional order on November 3rd just further highlighting my
11:32:32 16 expectations for compliance with the procedural requirements of
11:32:35 17 the case and notifying some that their filings had not been
11:32:39 18 compliant. And that order can be found at ECF No. 41.

11:32:43 19 So additional housekeeping -- well, probably more
11:32:49 20 meaningful than just housekeeping, but we are going to be --
11:32:54 21 we're in the process of setting up a website for this MDL that
11:32:57 22 will be available on our court website. I intend to put on
11:33:05 23 this website the calendar, certainly any orders, briefs that
11:33:10 24 are significant, and any pertinent forms that may need to be
11:33:18 25 easily accessible by others.

1 I also would like to include on the website
2 transcripts of these case management conferences. As you can
3 see, Ms. Boland is here taking down this conference. I know
4 some judges record these, some don't. I plan to. I would like
5 to post the transcript on the website.

6 I don't know how you all feel about official
7 transcript versus real time transcript. If there is an
8 official transcript placed on the website, then you all would
9 have to order it, and that way Ms. Boland would be paid for her
10 work in preparing that official transcript. If you all do not
11 order an official transcript, then I would propose submitting
12 and posting on the website a real time transcript. Ms. Boland
13 is very good at what she does, and she prepares excellent real
14 time transcripts, but they are not official. And so if you all
15 want official transcripts, then you'll need to make
16 arrangements through her for that.

17 Any other suggestions for the website are welcome. So
18 if you would like to suggest -- this will be our first attempt
19 at creating an MDL website, so we are open to your input.

20 **MR. WILSON:** Your Honor, it's always nice to have a
21 calendar of upcoming events.

22 **THE COURT:** Yes, I intend to do that. Once we have
23 some dates on that calendar I will be doing that. And again,
24 just feel free to submit suggestions, if you have them. I know
25 many of you have been involved, if not all of you, in other

11:35:06 1 MDLs.

11:35:08 2 I want to talk just a moment about leadership
11:35:11 3 structure, and then we'll get more into the weeds, I guess.
11:35:17 4 The leadership structure is something that, obviously, I'll be
11:35:21 5 establishing in the near future. And I noted in the
11:35:25 6 plaintiffs' submissions that you all offered to provide a slate
11:35:29 7 of attorneys to fill those positions. But I have decided, in
11:35:35 8 an effort to be more fair and transparent in this process, that
11:35:39 9 I'm going to solicit applications from anyone who wants to
11:35:44 10 submit an application.

11:35:45 11 So any interested counsel, I will be preparing that
11:35:48 12 application form for you, and I will be sending that out -- I
11:35:53 13 hope to send that out next week. I'm traveling the rest of
11:35:59 14 this week, so it might be a bit ambitious to say the beginning
11:36:04 15 of next week, so it will probably be more towards the end of
11:36:08 16 next week.

11:36:09 17 That will outline the leadership structure, which I'll
11:36:13 18 talk about in just a moment, duties and obligations, and that
11:36:17 19 will include the application. I'm going to require that those
11:36:21 20 applications be turned around quickly and back to the Court
11:36:24 21 within 14 days.

11:36:29 22 And I will reduce all of this to a written order after
11:36:32 23 this conference.

11:36:35 24 I anticipate having an order out filling those
11:36:40 25 leadership positions the first week of December. I've targeted

11:36:47 1 for myself December 2nd. I shouldn't tell you all that, but
11:36:51 2 I've targeted that for us here, and that's what I'm going to
11:36:57 3 work towards.

11:36:59 4 Now, the leadership structure -- well, let me start
11:37:09 5 out by saying I'm going to look to create a diverse leadership
11:37:13 6 structure. I'm going to be looking for attorneys, obviously,
11:37:16 7 who have the financial, the legal, the technical abilities and
11:37:21 8 resources to oversee and manage the litigation to its
11:37:24 9 conclusion in this court for the benefit of all of the
11:37:28 10 plaintiffs in the MDL.

11:37:30 11 I'm also going to be looking for diversity in terms of
11:37:33 12 experience, so I'll be looking for superior litigators,
11:37:39 13 excellent oral advocacy skills, strong writing skills. I'll
11:37:43 14 also be looking for skilled negotiators, attorneys with
11:37:48 15 excellent people skills, people who can work well with the
11:37:51 16 other side. I don't know if we will have more *pro se*
11:37:54 17 plaintiffs, but I'll be looking for people who can work well
11:37:58 18 with *pro se* plaintiffs.

11:38:00 19 Also, I will look for unique skill sets that would be
11:38:05 20 of benefit to the litigation, maybe a strong science or medical
11:38:09 21 background or maybe even sort of strong data management skills.

11:38:15 22 The structure that I envision -- and this stems from
11:38:20 23 what you all submitted to me, both plaintiff and defense, but
11:38:25 24 largely plaintiff -- I do intend to appoint an executive
11:38:31 25 committee, plaintiffs' executive committee. My intent will be

11:38:36 1 to appoint a very strong leadership team.

11:38:39 2 I do intend at this time -- now, this could change,
11:38:43 3 but at this point I would envision co-lead counsel as well as
11:38:50 4 liaison counsel and then two others on -- if I do co-lead
11:38:55 5 counsel and liaison counsel, that's three, and then I would
11:38:58 6 appoint two more for a total of five on that executive
11:39:00 7 committee.

11:39:01 8 The steering committee, which I'll also be appointing
11:39:03 9 as a supplement to the executive committee, and of course I'll
11:39:06 10 be looking for sort of a core team that can manage the
11:39:10 11 day-to-day litigation process on the ground. I intend to
11:39:13 12 appoint seven to that committee.

11:39:17 13 On that steering committee I also -- of the seven I
11:39:22 14 intend one of those to be a federal-state liaison counsel. And
11:39:28 15 I understand there may be some duplication here. You may have
11:39:31 16 one attorney who holds more than one role, although I'm going
11:39:35 17 to be mindful not to stretch someone too thin.

11:39:42 18 Then on the defendants' side I intend to appoint a
11:39:48 19 defense liaison counsel. I would prefer that person be local,
11:39:53 20 meaning Pensacola or Tallahassee. I also intend to appoint a
11:40:02 21 joint discovery committee of six, three from each side. And
11:40:09 22 when I say "side" I mean all of the defendants as one.

11:40:19 23 And then, now, everyone hold on to their seats,
11:40:23 24 because I'm also going to appoint a joint settlement committee.
11:40:30 25 At this time I would envision only two attorneys on that

11:40:33 1 committee, one from each side. And I'm going to do this from
11:40:38 2 the outset with a settlement master.

11:40:47 3 Obviously, there is no obligation to settle this
11:40:51 4 matter, and this should not be interpreted as arm twisting to
11:40:55 5 achieve an early settlement in any way. But engaging in early
11:41:01 6 settlement negotiations can often be helpful, it can oftentimes
11:41:06 7 identify problems or sticking points in the litigation that
11:41:09 8 need to be resolved. And this is one of those tips that I've
11:41:15 9 taken from a number of other MDL judges who I respect and have
11:41:21 10 handled massive and numerous MDLs, and so I'm going to take
11:41:29 11 their lead and do the same here.

11:41:31 12 I'm going to ask you all for suggestions as far as a
11:41:36 13 settlement master, and I'll put this in an order that I enter
11:41:39 14 after this conference. I will share with you one name that I
11:41:43 15 have heard repeated from other judges as well respected
11:41:50 16 certainly by the judiciary, but it's presented to me as someone
11:41:55 17 respected on both sides of the table, but I certainly can't
11:41:58 18 speak for you all and your opinions of this person. Her name
11:42:02 19 is Ellen Reisman, and she's at Reisman, Karron & Greene LLP in
11:42:09 20 D.C.

11:42:09 21 **MR. AGNESHWAR:** Your Honor, Ms. Reisman used to be a
11:42:12 22 partner in my firm, Arnold & Porter, so I don't think she would
11:42:16 23 be --

11:42:17 24 **THE COURT:** Well, she's out then. Well, then, all the
11:42:20 25 better that I'm going to ask you all to submit your own

11:42:23 1 suggestions. Hopefully we'll find someone as competent as she
11:42:30 2 appears to be.

11:42:36 3 All right. I've mentioned to you I expect to get the
11:42:41 4 order out next week establishing the structure, 14 days
11:42:44 5 thereafter for your applications, the first week of December
11:42:48 6 for the order actually making the appointments.

11:42:52 7 Now, depending on the number of applications I
11:42:55 8 receive, and based on what Mr. Wilson is suggesting there may
11:42:58 9 not be that many, I may or may not hold a hearing. I would
11:43:02 10 think not. But I know other judges do, and if I think it's
11:43:07 11 helpful I will. But at this point I'm not thinking it will be
11:43:10 12 necessary.

11:43:12 13 Questions that in my mind raised as a result of your
11:43:19 14 briefing. This master complaint and short form complaints,
11:43:26 15 pleading with agreed-upon modules, all of this is sort of new
11:43:30 16 to me.

11:43:30 17 So can I ask someone from plaintiffs' side if you
11:43:34 18 would sort of walk me through how this would look in practice.

11:43:40 19 **MR. WILSON:** Yes. The way it usually works is there
11:43:44 20 will be one complaint filed in the court, and it will be called
11:43:47 21 a master complaint. And it will be very comprehensive listing
11:43:52 22 all the facts, listing everything you would put in a normal
11:43:56 23 complaint, listing causes of action that maybe span different
11:44:04 24 state law regimens.

11:44:06 25 And then the short form complaint that follows upon

11:44:09 1 that allows a person to give the name of a plaintiff, and
11:44:14 2 usually there will be some boxes to check as to which of the
11:44:17 3 allegations in the master complaint are being asserted on
11:44:21 4 behalf of a particular plaintiff.

11:44:23 5 **THE COURT:** So it's not either/or? I wasn't sure when
11:44:26 6 I read your submissions. It sound almost -- I misunderstood,
11:44:30 7 and I thought it was a master complaint or a short form
11:44:32 8 complaint. And that didn't make sense to me.

11:44:35 9 **MR. WILSON:** No. There's usually one on behalf of all
11:44:38 10 plaintiffs, it's called the master. It's gigantic. It's
11:44:41 11 everything you would put in a complaint. And then, rather than
11:44:44 12 having everyone file that, people are allowed to file a shorter
11:44:48 13 form where they check off what causes of action are asserted.
11:44:52 14 And some of the factual allegations of the master complaint are
11:44:56 15 deemed to be part of the short form complaint.

11:44:58 16 **THE COURT:** And then how are they responded to?

11:45:02 17 **MR. WILSON:** They're responded to usually with a
11:45:05 18 master answer, and then we will work together with the
11:45:10 19 defendants to make a shorter answer to respond to the short
11:45:14 20 forms.

11:45:15 21 **THE COURT:** Are you all on the defense side accustomed
11:45:18 22 to working with master complaints and short form complaints?

11:45:23 23 **MR. AGNESHWAR:** We are in MDLs, definitely, Your
11:45:26 24 Honor. Now, there's a negotiation process that gets us to that
11:45:28 25 point, because there's some causes of action that we see in the

11:45:32 1 | complaints that are being filed that we don't think are viable
11:45:35 2 | causes of action. And we've been talking about sitting down
11:45:38 3 | and seeing if we could work those out. It may come to a point
11:45:41 4 | where we agree with a master complaint in theory, but there
11:45:44 5 | might be one or two parts of it that we don't think are viable,
11:45:49 6 | and we would file a motion as to those parts.

11:45:52 7 | I definitely believe a master complaint is appropriate
11:45:55 8 | here, as well as a master answer. And in return for that, we
11:45:58 9 | would just ask the Court to stay our responses to all the
11:46:02 10 | pending complaints now to give us time to work out the master
11:46:05 11 | complaint, the short form complaint, and the master answer.

11:46:09 12 | **THE COURT:** I don't have a problem continuing the stay
11:46:15 13 | for now, but I do want to talk to you about deadlines for
11:46:20 14 | getting this done. So I'll be getting to that in just a
11:46:27 15 | minute. Thank you.

11:46:29 16 | **MR. AGNESHWAR:** Thank you, Your Honor.

11:46:30 17 | **THE COURT:** Now, also raised by your -- either the
11:46:37 18 | agenda or the briefs, is this issue of the service of process,
11:46:39 19 | and it seems you've been working well with that. And OAPI and
11:46:46 20 | BMS have agreed, correct, to accept service of process?

11:46:54 21 | **MR. CAMPBELL:** That's correct, Your Honor.

11:46:55 22 | **THE COURT:** And then we have OPC who has agreed in
11:47:01 23 | Maryland?

11:47:01 24 | **MR. CONNELLY:** That's right, Your Honor, OPC won't
11:47:01 25 | contest service if it's conveyed upon the agent pursuant to the

11:47:03 1 process in Maryland. But that's correct, the position is
11:47:09 2 that's correct.

11:47:09 3 **THE COURT:** Thank you. There was discussion or an
11:47:12 4 issue raised as to the tolling agreement. I guess you all are
11:47:15 5 still working on that as well; is that right?

11:47:17 6 **MR. AYLSTOCK:** Your Honor, we've had some preliminary
11:47:20 7 discussions with Mr. Agneshwar and haven't come to a
11:47:24 8 conclusion. Obviously, they're the ones that have to agree to
11:47:27 9 it, but we're in continued discussions on that.

11:47:30 10 **THE COURT:** So that will need a deadline, too, okay.
11:47:38 11 Then there's a protective order in the New Jersey litigation.

11:47:41 12 And I know, Mr. Aylstock, you all are wanting to have
11:47:49 13 some time to discuss this with other counsel on plaintiffs'
11:47:54 14 side?

11:47:55 15 **MR. AYLSTOCK:** Yes, Your Honor. We don't see any
11:47:57 16 major problems with the protective order. It's a little
11:48:00 17 different and has some things that we might want to try to
11:48:04 18 improve on with negotiation. But since we weren't involved in
11:48:07 19 that at all and a lot of counsel here weren't, I think we
11:48:11 20 wanted to give everybody an opportunity to weigh in.

11:48:13 21 And the same with the ESI order, Your Honor. That
11:48:16 22 order, just so the Court understands, it's really just a format
11:48:20 23 of production order for single page text. It doesn't cover a
11:48:24 24 lot of the things by its terms. We all -- or the New Jersey
11:48:26 25 counsel agreed to kind of kick that down the road for really

11:48:29 1 this Court to handle. And we have some folks on our side that
11:48:34 2 are experts in that -- I'm not -- but we would like the
11:48:38 3 opportunity for them to weigh in on that as well, as we
11:48:41 4 continue our discussions.

11:48:42 5 **THE COURT:** All right. And I noted that the parties
11:48:47 6 agree there's no preservation order needed at this time.

11:48:52 7 **MR. WILSON:** Your Honor, we believe that the
11:48:55 8 defendants are preserving everything.

11:49:01 9 **THE COURT:** Okay. I made note of that, and I
11:49:03 10 appreciate that.

11:49:04 11 Now, I also noted the plaintiffs stated intent to
11:49:07 12 retain a document management firm, and I want to discuss that.
11:49:11 13 I think that's an excellent idea. I want to discuss that in
11:49:17 14 just a moment in connection with another topic.

11:49:19 15 But before I do that, let me turn to the personal
11:49:23 16 jurisdiction issue with OPC. My understanding from Judge
11:49:30 17 DeLuca and in reading his orders as well and is you all are
11:49:33 18 engaged in jurisdictional discovery now. You have a deadline
11:49:37 19 of January 21st, I believe, to complete that jurisdictional
11:49:40 20 discovery.

11:49:41 21 **MR. CONNELLY:** That's correct, Your Honor.

11:49:43 22 **THE COURT:** He did not give you a deadline for
11:49:45 23 renewing your motion to dismiss. I'm going to give you a
11:49:49 24 deadline here of January 23rd, because really it's the
11:49:54 25 plaintiffs who need that discovery.

11:49:56 1 And so you all have filed a motion to dismiss in at
11:50:01 2 least a couple of other federal jurisdictions, one of which is
11:50:06 3 the subject of an R&R right now out of -- I believe it was
11:50:10 4 Indiana. So I don't think that's going to be too burdensome on
11:50:14 5 you all to be prepared to file that motion here.

11:50:16 6 My question is -- I'm presuming no more discovery is
11:50:23 7 going to be needed on this issue beyond what's being conducted
11:50:27 8 in New Jersey, because I also understand you're doing some core
11:50:32 9 discovery there, and the same deadline is due for that core
11:50:35 10 discovery of the 21st, and by that point you will have
11:50:38 11 exchanged, I believe, about a million-and-a-half pages of
11:50:43 12 material. Is that's right?

11:50:46 13 **MR. CONNELLY:** Yeah, let me, if I can, Your Honor,
11:50:48 14 first as a concept, OPC is perfectly willing to make what we
11:50:52 15 would see an omnibus motion to dismiss for lack of personal
11:50:56 16 jurisdiction by January 23rd. That's fine to us.

11:51:00 17 **THE COURT:** You're Mr. Campbell, right?

11:51:02 18 **MR. CONNELLY:** I'm Connolly, this is Campbell. I'm
11:51:06 19 sorry, we switched up.

11:51:06 20 **THE COURT:** Oh, okay. You're in contempt. No, I'm
11:51:12 21 kidding. Okay, so you're Mr. Connolly, Luke Connolly?

11:51:16 22 **MR. CONNELLY:** Connolly, that's right, from Winston as
11:51:19 23 well. We're both for the Otsuka defendant.

11:51:19 24 We are conducting jurisdictional discovery, that is
11:51:22 25 correct, and we've been doing so for a bit. There's some

11:51:24 1 issues about jurisdictional discovery that we're meeting and
11:51:26 2 conferring about in New Jersey. And then part of that is we
11:51:29 3 will produce -- we've agreed in New Jersey to produce a
11:51:33 4 corporate representative, a 30(b)(6) style witness for
11:51:37 5 testimony.

11:51:38 6 And, yeah, ideally what we would do is we'd coordinate
11:51:41 7 all of that with the MDL so that we're doing jurisdictional
11:51:44 8 discovery once and for all and then making a motion. That's
11:51:47 9 right, Your Honor.

11:51:49 10 Plaintiffs may have something to say about that, and
11:51:50 11 we've talked about it, but that is our position, that we should
11:51:53 12 be complete with jurisdictional discovery, we'll make the
11:51:56 13 motion, and then the Court rules on it, and we'll go from
11:51:59 14 there.

11:51:59 15 **THE COURT:** Mr. Wilson, I'll say that was my
11:52:01 16 understanding when I spoke to Judge DeLuca, because he actually
11:52:04 17 called me ahead of time before he entered that order and asked
11:52:07 18 if this would be agreeable, not that he had to do that, but he
11:52:11 19 did as a courtesy, and asked if that would be acceptable to me,
11:52:15 20 and I felt like it was acceptable.

11:52:18 21 **MR. WILSON:** Yes, Your Honor. The one sticking point
11:52:19 22 is the jurisdictional inquiry, of course, is going to deal with
11:52:23 23 contacts of OPC with particular states. If there's, say, a
11:52:32 24 Kentucky resident before you, there's going to be a need for
11:52:37 25 discovery about the contact between OPC and Kentucky.

11:52:40 1 **THE COURT:** So in all of those documents you're
11:52:42 2 getting they're only limited to New Jersey?

11:52:45 3 **MR. WILSON:** That is my understanding.

11:52:47 4 **MR. CONNELLY:** It's a little more completed than that.
11:52:50 5 But to resolve it, we can meet and confer and we can make sure
11:52:52 6 we've covered all of the states at issue.

11:52:55 7 We had -- and not to get too deep in the weeds, but we
11:52:58 8 had started jurisdictional discovery for cases in California,
11:53:00 9 and at the same time we were talking about Maryland and the
11:53:03 10 Southern District of Indiana and a bunch of other states. And
11:53:05 11 then when the stays were issued in those courts, then we
11:53:09 12 focused on New Jersey.

11:53:10 13 So there's been a focus on particular states, but we
11:53:13 14 can meet and confer and ensure that we're addressing all of the
11:53:17 15 states where there are cases at issue.

11:53:19 16 **MR. WILSON:** Yes, what we're seeing, Your Honor, is
11:53:21 17 sometimes there's, you know, the payments to doctors, the
11:53:23 18 promotion by OPC is different in different states. The
11:53:27 19 clinical testing sometimes is done in a particular state, not a
11:53:33 20 different state. So there is going to be some follow-up need
11:53:36 21 to expand the New Jersey discovery to other states.

11:53:39 22 **THE COURT:** Well, Mr. Connolly is saying they're
11:53:43 23 willing to do that. I'm going to ask that you start -- if
11:53:46 24 you're not already doing it, that you start it immediately.
11:53:50 25 And I will be willing and happy and plan to actually -- I was

11:53:54 1 going to do it a little bit later but I can do it now -- set a
11:53:58 2 discovery conference with you all every couple of weeks, to the
11:54:03 3 extent you run in -- and it may be that we don't need to hold a
11:54:07 4 conference, and you can let me know that and we'll just cancel
11:54:11 5 it. But if we have it on the books where we can get together
11:54:15 6 every couple of weeks, by telephone is fine. If you have any
11:54:18 7 sticking points, anything that you need help with from the
11:54:21 8 Court, I'd rather be proactive than reactive.

11:54:25 9 **MR. WILSON:** The plaintiffs think that is a great
11:54:27 10 idea.

11:54:28 11 **MR. CONNELLY:** And that's fine, Your Honor. Maybe the
11:54:31 12 place to start is for us to have that conversation and see what
11:54:33 13 they think they need, you know, state by state. Certainly we
11:54:35 14 can produce the same sort of information we've produced so far
11:54:39 15 for those states that I've mentioned for all of the states at
11:54:41 16 issue, and then that should not be a problem.

11:55:00 17 **THE COURT:** Okay, thank you. I just mentioned the
11:55:01 18 omnibus, it sounds like, motion by January 23rd. And again,
11:55:04 19 these dates will be reduced to writing in an order following
11:55:04 20 this conference. But just for those who are taking notes:

11:55:06 21 Plaintiffs' response to the motion, February 6th.

11:55:11 22 Defendant's reply, February 13th.

11:55:17 23 Hearing, to the extent we need an evidentiary hearing,
11:55:20 24 or if not, oral argument, February 22nd. And that's also --
11:55:25 25 jumping a little bit ahead, that's also going to be a case

11:55:29 1 management conference date as well.

11:55:38 2 Any discussion -- this is one of the other takeaways
11:55:43 3 from the MDL conference: Any discussion of discovery in an MDL
11:55:49 4 should include a discussion on the bellwether trial process.

11:55:55 5 And following my conversations with a number of
11:56:07 6 different judges who have handled MDLs and in addition to a lot
11:56:11 7 of reading that I've done, I don't think you can overstate the
11:56:14 8 benefit to the MDL litigation a whole of both sides sort of
11:56:21 9 having the opportunity to take a class of representative cases
11:56:25 10 through discovery and through motion practice, to be able to
11:56:29 11 evaluate the strengths of each side's arguments, the evidence
11:56:33 12 that each side has, and also to be able to evaluate the risks
11:56:38 13 and the costs of the litigation itself, regardless of whether
11:56:42 14 the vast majority of the cases are ultimately remanded to the
11:56:48 15 transferor courts or ultimately a global settlement is reached
11:56:52 16 in the MDL.

11:56:53 17 As I understand it, there's also a benefit to local
11:56:56 18 counsel in having a bellwether process because then local
11:57:03 19 counsel has what's been referred to by some of my colleagues as
11:57:09 20 a nice neat trial package that's been created through the MDL
11:57:13 21 bellwether process in which the massive amounts of data and
11:57:18 22 information that have been produced here during the MDL have
11:57:21 23 been organized -- and this gets back to your electronic storage
11:57:25 24 of information -- but have been organized and streamlined for
11:57:29 25 that subsequent use later in those cases that are remanded for

11:57:35 1 trial.

11:57:35 2 So in my view, the key to useful bellwether trials is
11:57:44 3 to have a true representative sample of cases, including
11:57:50 4 representative of the various causes of action that exist in
11:57:56 5 the MDL and the state law that governs those claims.

11:58:01 6 Now, obviously, any discussion of the bellwether trial
11:58:09 7 process leads to a discussion of *Lexecon* waivers. And
11:58:13 8 obviously, any waiver of venue must be voluntary. But I think
11:58:21 9 the value of engaging in this process really can't be
11:58:25 10 overstated, even if you don't ultimately receive or execute the
11:58:29 11 waivers.

11:58:30 12 So even if the waivers are not executed in this
11:58:35 13 action, my vision for the early part of this MDL will include a
11:58:41 14 bellwether process for discovery as well as motion practice.
11:58:48 15 Some of you -- I won't ask for a show of hands, but some of you
11:58:52 16 may be familiar with discovery pools.

11:58:55 17 And it makes the most sense to me for all of us, the
11:59:01 18 Court as well as all parties, to take a census of the entire
11:59:06 19 MDL litigation. Right now it's probably not that difficult to
11:59:10 20 do. If Mr. Wilson's predictions turn out to be true in terms
11:59:15 21 of the number of actions or cases filed, then it will be a much
11:59:20 22 more herculean task to undertake, but that's why you have data
11:59:28 23 analytic firms who are sort of experts, expert professionals in
11:59:33 24 gathering that type of information, streamlining it, and then
11:59:37 25 also reporting on it statistically.

11:59:40 1 So these firms -- my understanding is these firms can
11:59:44 2 take the plaintiffs' fact sheets, they can create sort of an
11:59:51 3 online portal for fact sheets, for the creation, collection,
12:00:00 4 exchange of fact sheets. They can also, most importantly,
12:00:08 5 create reports from the fact sheets that will give the Court
12:00:12 6 and the parties real-time demographic information about the
12:00:18 7 plaintiffs and the litigation. And from that, discovery pools
12:00:24 8 that are representative of the entire MDL action can be
12:00:29 9 created.

12:00:29 10 So just reviewing the materials that you all have
12:00:32 11 already submitted, some variables have come to mind to us, and
12:00:41 12 those would be variables such as gender, age, previous history
12:00:46 13 of compulsive behavior, also dechallenge and rechallenge
12:00:52 14 results.

12:00:55 15 That's what I envision this type of a process, at
12:01:06 16 least initially, for discovery and motion practice. And of
12:01:10 17 course, the discovery and the motion practice will be
12:01:14 18 case-specific, is what I'm talking about, but it will be
12:01:18 19 case-specific to those representative cases.

12:01:20 20 Now, there are likely to be a number of data, sort of,
12:01:27 21 analytic firms out there who could handle this type of a
12:01:32 22 project. One such firm that I've been -- "referred to" is not
12:01:41 23 the right word, but has been discussed with me -- is
12:01:45 24 BrownGreer. And they have a software program called MDL
12:01:50 25 Centrality.

12:01:55 1 And BrownGreer is probably well known to you all, but
12:01:59 2 this MDL Centrality is a multi-faceted -- at least my
12:02:04 3 understanding is it's a multi-faceted litigation management
12:02:04 4 tool. It serves a number of different functions that are
12:02:08 5 beneficial, not just to the plaintiffs, but to the defense as
12:02:15 6 well, and certainly to the Court in any MDL case.

12:02:17 7 They, as I said -- I mentioned fact sheet exchange.
12:02:20 8 There's also online fact sheet completion exchange, case
12:02:25 9 tracking, document repository, a pleadings database, exchange
12:02:30 10 of electronic discoveries, search capabilities, and again,
12:02:35 11 importantly, the creation of statistical reports from the fact
12:02:37 12 sheets and the discovery documents that will give the Court and
12:02:40 13 the parties the information it needs to identify the
12:02:43 14 representative group of cases.

12:02:45 15 So this discovery committee that I have just -- hold
12:02:45 16 on just a minute, I'll hear from you in just a minute --
12:02:56 17 discovery committee that I have indicated to you all that I'll
12:02:58 18 be appointing, I would expect that discovery committee to draw
12:03:03 19 up a trial selection blueprint. And I refer to it as -- I use
12:03:08 20 the word "trial" because that's -- you hear "bellwether trial."
12:03:12 21 But at the end of the day, if these cases don't get tried -- I
12:03:16 22 hope they will -- I know I can try four of them. But if they
12:03:20 23 don't get tried, there's still a benefit, in my opinion, to the
12:03:23 24 discovery proceeding in this fashion and the case-specific
12:03:28 25 motions proceeding in this fashion.

12:03:32 1 But the committee would itself catalog and would work
12:03:38 2 with the data analytic firm to catalog the entire universe of
12:03:43 3 cases that comprise the MDL. They would divide those cases,
12:03:46 4 with the assistance of the consultant, into several distinct,
12:03:51 5 easily ascertainable categories of cases based upon that census
12:03:56 6 and the identification of those major variables.

12:03:58 7 And then the Court and counsel would select a
12:04:01 8 manageable pool of cases, which would reflect or be reflective
12:04:04 9 of those various categories or major variables, and these cases
12:04:09 10 would be put on a fast track for case-specific discovery and
12:04:13 11 motion practice.

12:04:14 12 And then near the conclusion of the case-specific
12:04:18 13 discovery, to the extent cases weren't disposed of in the
12:04:24 14 motion practice, then the Court and counsel would select a
12:04:27 15 predetermined number of those cases within that sample set and
12:04:31 16 set them for trial, as well as *Daubert* -- we would already
12:04:37 17 probably have had the *Daubert* and dispositive motions certainly
12:04:43 18 prior to trial, but as part of that process. Now, depending on
12:04:46 19 the number of cases existing in the MDL at the time, we may
12:04:50 20 have different tracks running with the discovery pools.

12:04:56 21 I did want to also mention that during discovery, and
12:05:02 22 including this jurisdictional discovery that is proceeding now
12:05:06 23 and will also be proceeding for purposes of this MDL, I am
12:05:10 24 going to schedule -- just set conferences with the Court every
12:05:15 25 other week. We'll pick a date and a time that works, and I'll

12:05:19 1 be available. If I'm traveling, I'll be available. If I'm
12:05:22 2 here in trial, I'll take a break and we'll have the conference
12:05:27 3 if we need to. You'll submit to me a couple of days in advance
12:05:30 4 any issues that you need help with.

12:05:32 5 Now, that doesn't mean I'm not available. If you're
12:05:36 6 in the middle of a discovery deposition and an issue comes up
12:05:42 7 and you need some attention, I can be available. If I'm not,
12:05:45 8 then Judge Jones can be available to you. If I'm in the middle
12:05:49 9 of selecting a jury, I won't be available to you during your
12:05:52 10 deposition, but Judge Jones will be.

12:05:53 11 Mr. Agneshwar, you're looking restless over there.

12:06:01 12 **MR. AGNESHWAR:** I'm a New Yorker, that's my style.

12:06:05 13 Just at this point in the litigation I have a little
12:06:09 14 bit of a concern about committing, you know, absolutely to a
12:06:10 15 bellwether system, precisely because we have only 45 cases, and
12:06:14 16 those 45 cases, if Mr. Wilson is correct, seem to be
12:06:19 17 self-selected by a handful of plaintiffs lawyers from a much
12:06:24 18 larger inventory that they have. I mean, if that's -- I think
12:06:26 19 that's accurate.

12:06:26 20 So if what I'm hearing is correct, that there are
12:06:29 21 hundreds maybe of other cases that are held by these same
12:06:32 22 plaintiffs lawyers that haven't been filed, and so we have a
12:06:35 23 pool of 45 plaintiffs right now, if we think that that's the
12:06:39 24 total pool and start picking the subset of those as bellwethers
12:06:43 25 as representatives of the litigation as a whole, I think we're

12:06:45 1 going to be skewed. Because those cases -- those handful of
12:06:49 2 cases that have already been filed are in fact self-selected by
12:06:53 3 the plaintiffs and most probably their strongest cases.

12:06:56 4 So that's my concern with doing a bellwether system
12:06:59 5 right now. Of course, if we get to the point where hundreds of
12:07:01 6 cases are being filed, I think it makes a lot more sense to
12:07:04 7 think about discovery pools and bellwethers. But I'm just --
12:07:09 8 I'm not -- I'm happy to discuss this in the context of
12:07:12 9 discovery, but I'm not sure that that would be really fair to
12:07:17 10 the defendants at this point to go down a bellwether system.

12:07:20 11 I also think that -- typically when you look at MDLs
12:07:25 12 that have hundreds or thousands of cases and you start doing
12:07:27 13 discovery pools, the discovery pools tend to be, you know, 40
12:07:31 14 to 50 cases, along the lines of what we actually have right
12:07:33 15 now.

12:07:33 16 **THE COURT:** Right.

12:07:34 17 **MR. AGNESHWAR:** So I don't really see an issue, if the
12:07:37 18 litigation stays as it is right now, with working up all the
12:07:39 19 cases.

12:07:40 20 **THE COURT:** I'm assuming it's not going to stay as it
12:07:42 21 is right now. I mean, that's based on what Mr. Wilson has
12:07:45 22 represented to me. But if it doesn't, we can -- if you want to
12:07:49 23 address sequencing of discovery -- you mentioned that in your
12:07:53 24 briefs -- I'll hear from you on that.

12:07:55 25 But let me finish my checklist, and then I'll

12:07:58 1 certainly give both sides an opportunity to address the Court
12:08:00 2 with other issues.

12:08:02 3 **MR. AGNESHWAR:** Okay. One other thing I wanted to
12:08:05 4 point out is Mr. Aylstock knows -- and I feel like I'm the wet
12:08:10 5 blanket on some of those, quote, "suggestions," but the
12:08:10 6 BrownGreer firm is co-counsel with Arnold & Porter with another
12:08:16 7 fairly large litigation that is winding down but it's still
12:08:18 8 active. So I'm not sure if that would disqualify them, but I
12:08:20 9 just wanted to disclose that to the Court.

12:08:20 10 **THE COURT:** Well, you all have worked so cooperatively
12:08:23 11 thus far that maybe --

12:08:25 12 **MR. AYLSTOCK:** Your Honor, we're very familiar with
12:08:28 13 BrownGreer, and as you know, I'm sure, they're handling the
12:08:33 14 Xarelto litigation and doing it very well.

12:08:34 15 **THE COURT:** That's how I heard about them.

12:08:36 16 **MR. AYLSTOCK:** And they also were co-counsel with
12:08:40 17 Mr. Agneshwar's firm in the Fen-Phen litigation way back when
12:08:43 18 and we have a good relationship with them, but we can talk
12:08:46 19 about that.

12:08:47 20 I agree with Your Honor that a bellwether process
12:08:51 21 makes sense, and I also agree fast-track makes sense. In order
12:08:55 22 to do proper bellwether discovery, though, I think it's
12:09:00 23 important for the Court to know that we would also need to
12:09:03 24 fast-track some general discovery, because so much of the
12:09:06 25 case-specific discovery is fed off the general discovery.

12:09:08 1 Particularly, on a failure to warn claim we need to know what
12:09:12 2 they knew, when they knew it, and the science and so forth.

12:09:15 3 **THE COURT:** Right, I'm going to get to that in just a
12:09:19 4 minute. Thank you.

12:09:19 5 So Mr. Aylstock mentioned science, so we are going to
12:09:28 6 have science day. Both sides seemed amenable to that, and the
12:09:35 7 Court would like to hold a science tutorial. The date that
12:09:40 8 I've identified for that is January 30th.

12:09:45 9 **MR. AGNESHWAR:** I'm sorry, Your Honor, January 30th?

12:09:48 10 **THE COURT:** January 30th. Let me make sure about
12:09:51 11 that. Yes, January 30th.

12:10:00 12 I will enter an order as to what I contemplate for
12:10:04 13 science day, but right now I'm thinking both sides maybe two
12:10:08 14 experts. If you think you need more --

12:10:11 15 **MR. AYLSTOCK:** Your Honor, we've discussed this with
12:10:13 16 Mr. Agneshwar.

12:10:13 17 **THE COURT:** Oh, all right.

12:10:17 18 **MR. AYLSTOCK:** And our thinking, at least before your
12:10:20 19 comment, was that we wouldn't need an expert, we could simply
12:10:22 20 do it in the way it's been done in some other litigations that
12:10:26 21 I've been involved with, it was actually off the record so we
12:10:28 22 can --

12:10:28 23 **THE COURT:** Well, it would be off the record,
12:10:31 24 definitely would be off the record. There would not be a
12:10:34 25 cross-examination. And when I say off the record, let me

12:10:38 1 qualify that. I will have Ms. Boland here, so it will be on
12:10:44 2 the record, but there will not be an official transcript. But
12:10:49 3 to the extent I need to refer back to the transcript, I will
12:10:52 4 have it as real time if she's in here. You all will not have
12:10:57 5 that transcript, though, because you will not be able to --
12:11:00 6 obviously -- be able to use anything against the other side at
12:11:02 7 any later point in time, but this would be just for my benefit.

12:11:06 8 **MR. AYLSTOCK:** We were thinking, however, Your Honor,
12:11:08 9 that experts wouldn't be necessary for the basic science
12:11:12 10 tutorial, and with the Court's indulgence, maybe pushing it off
12:11:15 11 a little bit because so much of the information is part of this
12:11:18 12 discovery that we have yet to receive from the defendants.

12:11:22 13 So it made sense to us anyway that if we pushed it off
12:11:25 14 a little bit further when we can digest some of the science, it
12:11:30 15 might make for a more fair presentation.

12:11:33 16 **THE COURT:** Well, I don't want to put it off too far.
12:11:36 17 And my next comment is going to tie into this. I am going to
12:11:41 18 give the defendants -- so I've talked about the bellwether
12:11:46 19 trial process. Now I'm going to give the defendants the
12:11:49 20 ability to test general causation early in the case, so we're
12:11:54 21 going to need to establish a process for that.

12:11:58 22 **MR. WILSON:** Your Honor, if I could -- again, I thank
12:12:04 23 your indulgence -- but it would not be fair to hold a science
12:12:09 24 day before we get some knowledge of the science that they know
12:12:12 25 about and we don't know about yet. It's just going to slip

12:12:15 1 into an advocacy situation.

12:12:18 2 **THE COURT:** Well, I wouldn't let it slip into an
12:12:21 3 advocate situation.

12:12:23 4 **MR. WILSON:** But right now sort of the balance of
12:12:26 5 information so favors them because they have the clinical trial
12:12:32 6 data and they haven't produced it to us, they have the adverse
12:12:35 7 event data and they haven't produced it to us.

12:12:38 8 **THE COURT:** Well, they may be required to produce it
12:12:41 9 to you, and maybe I do need to push the date out a little bit,
12:12:44 10 but this is not going to be an adversarial setting for science
12:12:48 11 day. But, now, when we start talking about challenges to
12:12:50 12 general causation, obviously, that's adversarial, and you'll
12:12:55 13 have expert discovery on that and present your challenges and
12:12:59 14 summary judgment.

12:12:59 15 **MR. WILSON:** Kind of the way it works, though, is --

12:13:02 16 **THE COURT:** Well, kind of the way it works --

12:13:06 17 **MR. WILSON:** I'm sorry. I would like -- I really
12:13:07 18 think it's important that we get to see some of the science
12:13:10 19 that they alone see now before we can present a balanced
12:13:14 20 picture for the Court.

12:13:15 21 **THE COURT:** Okay. So, do you have, Mr. Wilson, a list
12:13:23 22 of the information that you feel you need to present an
12:13:28 23 effective tutorial for the Court on science day?

12:13:30 24 **MR. WILSON:** Right now the defendants in the New
12:13:33 25 Jersey litigation, they're obligated by January 21st.

12:13:35 1 **THE COURT:** That's the core discovery?

12:13:38 2 **MR. WILSON:** Yes. Much of that is the clinical trial
12:13:42 3 data, it's the communications with the regulators, it's the
12:13:48 4 sciency information -- some of the sciency information.

12:13:48 5 **THE COURT:** Okay.

12:13:54 6 **MR. WILSON:** I think we need to at least have them
12:13:57 7 confirm to you that they've completed that discovery, give us
12:14:02 8 30 days or so to digest it, then we'd be happy to have a
12:14:06 9 science day.

12:14:06 10 **THE COURT:** Okay, that seems fair, that seems fair.
12:14:08 11 So maybe we move science day off a little bit.

12:14:12 12 **MR. AGNESHWAR:** That's fine, Your Honor. I believe
12:14:14 13 the -- I will say that the plaintiffs filed a complaint based
12:14:19 14 on a thorough discussion of science, but we're fine with
12:14:24 15 producing to them adverse event reports and clinical data and
12:14:25 16 having a science day shortly after that. I do agree with Your
12:14:28 17 Honor that it should sooner rather than later, because I think
12:14:30 18 it will give the Court a grounding to evaluate the parties'
12:14:34 19 various positions.

12:14:35 20 And I do agree with Mr. Aylstock. I've done these
12:14:39 21 both ways, with experts and with counsel. At this point in the
12:14:43 22 litigation, it's early enough in the litigation that the
12:14:46 23 purpose of it is to give the Court a grounding of our various
12:14:51 24 perspectives of the science to help the Court manage the case.
12:14:55 25 I do think it can be done effectively with attorney

12:14:58 1 presentations rather than with experts, and that's what we
12:15:01 2 would recommend doing at this point.

12:15:10 3 **THE COURT:** Well, I would envision, you know, shortly
12:15:14 4 thereafter you all moving into discovery on general causation.

12:15:27 5 I don't know. Let me give that some thought as to
12:15:30 6 whether I want to hear from experts or if I'm comfortable just
12:15:36 7 being educated by you all. And I'm sure you are well-versed,
12:15:43 8 or will be when you get the materials that you need on the
12:15:46 9 plaintiffs side. But let me give that some thought. I wasn't
12:15:51 10 expecting you to propose that to me. I was expecting to have
12:15:55 11 experts.

12:15:59 12 I suppose if we're going to move quickly into general
12:16:03 13 causation, though, I'll be hearing from those experts sooner
12:16:08 14 rather than later, so maybe that's sufficient.

12:16:10 15 So let me ask, as far as the general causation
12:16:22 16 discovery including the expert, you all -- I saw a stipulation
12:16:30 17 regarding one of the plaintiffs' experts in the New Jersey
12:16:34 18 litigation. I presume you're going to use the same experts
12:16:37 19 here that you have in New Jersey, or not?

12:16:40 20 **MR. WILSON:** It's likely we will, with probable
12:16:47 21 additions.

12:16:48 22 **THE COURT:** Well, are you on any schedule with Judge
12:16:54 23 DeLuca as far as experts?

12:16:55 24 **MR. WILSON:** No, we are not. We've stressed before
12:16:59 25 Judge DeLuca that, before there can be a lot of development of

12:17:05 1 the expert record, we need to have discovery from the files of
12:17:08 2 the company. We haven't gotten that yet. And that -- in my
12:17:11 3 mind, that's what's slowing down the litigation. We have not
12:17:14 4 been provided any liability discovery, and that's -- before we
12:17:19 5 can do anything, before we can have a motion practice on
12:17:23 6 individual cases, we have to have discovery from the
12:17:28 7 defendants.

12:17:28 8 **THE COURT:** Well, in the interest of moving more
12:17:36 9 quickly towards science day and discovery, both generally as
12:17:44 10 far as causation but also in the case-specific, is there any
12:17:48 11 chance you all can produce these documents any sooner?

12:17:51 12 **MR. AGNESHWAR:** Well, we're doing it as fast as we
12:17:53 13 can. We're trying to do it on a rolling basis, and we expect
12:17:56 14 to complete by January 21st, which is when Judge DeLuca has
12:18:01 15 imposed a deadline on us.

12:18:02 16 **THE COURT:** Right, but I'm just wondering if there's
12:18:06 17 any chance you can do it sooner.

12:18:07 18 **MR. CAMPBELL:** Your Honor, we can look into it. One
12:18:09 19 of the issues the Court should be aware of is that the
12:18:12 20 documents that are part of this core discovery are actually a
12:18:14 21 large volume, but also contains -- Your Honor may be aware of
12:18:17 22 this -- personal identifying information because they're
12:18:21 23 clinical trials.

12:18:21 24 **THE COURT:** Right.

12:18:21 25 **MR. CAMPBELL:** It's a very tedious process to go

12:18:24 1 through and redact that information, and that's really what is
12:18:26 2 slowing down the process. It's something where, you know, you
12:18:26 3 could have a pool of reviewers and it just takes days to get a
12:18:29 4 thousand documents or a thousand pages out.

12:18:31 5 We'll go back and look and try to reassess and try to
12:18:35 6 add more bodies to that. But at this point in time we had set
12:18:38 7 the January 21 date based on the volume we were aware of and we
12:18:42 8 thought it was a tight schedule to begin with. Of course we'll
12:18:46 9 try to accommodate, but we'd have to let you know that we can't
12:18:47 10 guarantee it at this point.

12:18:47 11 **THE COURT:** So, Mr. Campbell, if you can do that
12:18:50 12 sooner, then I can hold science day sooner. And I'm really
12:18:55 13 interested in science day.

12:18:57 14 **MR. AGNESHWAR:** We will talk and we will do our best.

12:19:00 15 On the general causation issue, I think Mr. Wilson
12:19:04 16 might be mixing apples and oranges because there's a reference
12:19:08 17 to liability documents. And it is true that the core
12:19:10 18 discovery, which, as it's defined in New Jersey, does not
12:19:15 19 include the custodial email documents and things like that.
12:19:18 20 They're the adverse event reports, clinical studies, things of
12:19:22 21 that nature.

12:19:22 22 However, as I understand what Your Honor is suggesting
12:19:24 23 with general causation is looking at the scientific evidence
12:19:29 24 somewhat early in the case to see if really the data that is
12:19:32 25 out there that the plaintiff is trying to show a relationship

12:19:35 1 between the --

12:19:37 2 **THE COURT:** That's exactly what I'm talking about.

12:19:38 3 **MR. AGNESHWAR:** And I believe that's going to be
12:19:40 4 scientifically-driven data, and that's going to be driven by
12:19:43 5 the published articles that are out there, by the case reports
12:19:47 6 that are out there, by the FDA materials that Mr. Wilson cited
12:19:50 7 in his paper. And to the extent they want to rely on adverse
12:19:56 8 event information, that's also going to be produced to them
12:19:59 9 early on in the case.

12:20:00 10 **THE COURT:** That's what you all have?

12:20:02 11 **MR. AGNESHWAR:** Exactly, we have that and we're
12:20:03 12 producing it to them.

12:20:04 13 So I don't see custodial production really holding up
12:20:08 14 that process, because what someone said in an email of how
12:20:12 15 somebody performed on the drug isn't really relevant to the
12:20:13 16 issue of whether there, in fact, is sufficient evidence on
12:20:17 17 general causation.

12:20:20 18 **THE COURT:** Okay.

12:20:20 19 **MR. WILSON:** I guess, Your Honor, I just -- I don't
12:20:21 20 want the point lost that what they're doing about the 21st is
12:20:24 21 like a limited interim production. What we want to do is we
12:20:29 22 want Rule 26 disclosures and we want to serve document requests
12:20:34 23 so we can also get into the custodial files.

12:20:37 24 **THE COURT:** But I'm expecting you -- my vision is that
12:20:41 25 you would do that as part of the bellwether process. That's

12:20:45 1 what I would expect.

12:20:48 2 **MR. WILSON:** So the bellwether process will include
12:20:51 3 general liability discovery of the custodians of the company?

12:20:55 4 **THE COURT:** Yes.

12:20:57 5 **MR. WILSON:** I don't see -- usually -- I don't want to
12:21:01 6 betray my age here, but in the old days you just got all the
12:21:05 7 discovery. Like we would serve document requests, we would get
12:21:08 8 the discovery, it would take six months to go through it all,
12:21:12 9 and then the case would just go forward from there. So I
12:21:16 10 really think parsing it out like this is going to make things
12:21:24 11 take longer.

12:21:24 12 **THE COURT:** I guess I don't agree.

12:21:26 13 Mr. Aylstock?

12:21:30 14 **MR. AYLSTOCK:** Your Honor, if I may, just to respond
12:21:32 15 to Mr. Agneshwar's point about custodial files. Having done
12:21:37 16 some clinical trial 30(b)(6) depositions before and having the
12:21:40 17 opportunity to review emails and internal documents in
12:21:42 18 preparations for those depositions and use them, I couldn't
12:21:46 19 disagree more.

12:21:47 20 The custodial files of key science figures and medical
12:21:50 21 personnel are absolutely critical to the understanding of the
12:21:54 22 science if we're going to really delve deeply into it.

12:21:59 23 **THE COURT:** My understanding is you've all already
12:22:01 24 agreed with Judge DeLuca that you're going to produce the
12:22:04 25 30(b)(6) representative.

12:22:05 1 **MR. AYLSTOCK:** Not custodial files, Your Honor. It
12:22:08 2 was simply really FDA documents and clinical trials.

12:22:08 3 **THE COURT:** Oh, okay.

12:22:13 4 **MR. AYLSTOCK:** And so that's why -- you might have
12:22:14 5 noticed in the letter -- it was really initial. It was called
12:22:18 6 core, but I don't view that as core discovery. I view
12:22:21 7 custodial files of those individuals as inclusive of the core
12:22:24 8 discovery.

12:22:25 9 **THE COURT:** I'm using here the reference that was
12:22:29 10 given to it in the New Jersey litigation, which was core
12:22:32 11 discovery.

12:22:33 12 **MR. AGNESHWAR:** Your Honor, maybe a little bit of
12:22:37 13 background as to how this issue of core discovery came up might
12:22:37 14 help.

12:22:38 15 So the New Jersey cases were filed, and at the same
12:22:40 16 time those cases were filed federal cases were being filed, and
12:22:43 17 we were negotiating with the plaintiffs about whether we were
12:22:46 18 going to join in an MDL application and when that would get off
12:22:49 19 the ground and the timing.

12:22:51 20 And it was our position -- the defendants' position
12:22:54 21 that, based on, you know, not wanting to get conflicting orders
12:22:59 22 in different litigations, that we should wait for the MDL to be
12:23:02 23 created and do discovery in a coordinated fashion with the
12:23:07 24 state court litigation in New Jersey and the MDL.

12:23:09 25 The plaintiffs -- Mr. Wilson had most of the cases at

12:23:13 1 the time -- was anxious to at least get a head start on some of
12:23:17 2 the discovery, some of the company's documents before it got
12:23:20 3 coordinated, before the MDL was created, because just by virtue
12:23:24 4 of the JPML hearings to take some time to do that.

12:23:27 5 So we agreed at that point that, if there were certain
12:23:30 6 sets of documents that we could just kind of find on the shelf
12:23:33 7 without doing a lot of searches, without doing custodial
12:23:37 8 searches, that were clearly relevant to the litigation, we
12:23:40 9 would produce those and call it core discovery.

12:23:42 10 And we put together a list that's actually quite
12:23:44 11 extensive, which includes all the adverse drug event reports,
12:23:49 12 it includes clinical report information, it includes some
12:23:53 13 marketing materials, it includes every promotional piece we've
12:23:58 14 done on Abilify in the 2253 FDA forms, and that's what's going
12:24:02 15 to be produced on January 21st.

12:24:05 16 Now, we have never said that that's all the production
12:24:07 17 that we're going to do in this litigation. We recognize that
12:24:10 18 we're going to be producing more, we're going to be producing
12:24:14 19 custodial files and the like.

12:24:15 20 **THE COURT:** They're saying that they need that as part
12:24:19 21 of this phase of the case that's going to involve the science
12:24:26 22 and the general causation challenge.

12:24:29 23 **MR. AGNESHWAR:** Well, that's what -- I think I
12:24:31 24 disagree with them on that, because I think the law is pretty
12:24:34 25 clear that, even if they could find an admission in our

12:24:37 1 documents where some company scientist says -- and there is no
12:24:41 2 such document, let me say -- but that '*I believe that Abilify*
12:24:45 3 *causes compulsive gambling,*' you know, that might be helpful at
12:24:50 4 trial. But in an actual *Daubert* hearing, whatever a company
12:24:53 5 employee said is not relevant to the scientific evidence that
12:24:56 6 must be presented to get over the *Daubert* standard.

12:25:00 7 That's my understanding based on my review of the case
12:25:03 8 law. I'm sure Mr. Aylstock might disagree with me.

12:25:07 9 **THE COURT:** Well, I may have you submit briefs on this
12:25:09 10 to me so I can make a decision about whether this discovery is
12:25:13 11 necessary to facilitate this phase of the case that I'm
12:25:16 12 interested in now early on, which is the science and the
12:25:20 13 general causation.

12:25:22 14 **MR. RASMUSSEN:** Your Honor, I was going to suggest
12:25:24 15 that maybe give us about a week just to meet and confer with
12:25:27 16 the defendants and then either submit something to the Court as
12:25:30 17 a joint brief outlining our position or competing briefs. And
12:25:35 18 then perhaps, like you mentioned earlier, having a discovery
12:25:38 19 conference call after whatever written briefs have been
12:25:43 20 provided to the Court, just to maybe -- to the extent that you
12:25:46 21 have questions about what we have put down in writing, that may
12:25:50 22 make the most sense. And then you could ask us some questions
12:25:52 23 and then we could explain why we are submitting what we're
12:25:56 24 submitting jointly for the defendants, or to the extent we
12:26:00 25 disagree, we could explain why we -- our relative positions.

12:26:04 1 **THE COURT:** That sounds like a good idea.

12:26:07 2 **MR. AGNESHWAR:** That's fine, Your Honor. And I'll be
12:26:09 3 happy to meet and confer, and we've done this and discussed
12:26:11 4 with them on a lot of things.

12:26:12 5 But on the discovery, I'm not sure what Mr. Wilson is
12:26:14 6 referring to about piecemeal things, but as I understand what
12:26:17 7 the Court is saying is that a lot of things are going to happen
12:26:21 8 concurrently, and the Court is going to put together a
12:26:23 9 discovery committee concurrently with all of these other
12:26:26 10 materials, and that committee will in fact sit down and work
12:26:30 11 out a production -- what production we're going to produce to
12:26:33 12 the plaintiffs from custodial files and the like.

12:26:35 13 **THE COURT:** Have any of y'all ever run the Boston
12:26:39 14 Marathon? You know how they have those corrals that are 20,000
12:26:44 15 people deep, and one starts at eight o'clock and the next one
12:26:48 16 starts at 8:15, and the next one at 8:25. That's how this is
12:26:53 17 going to work. Right? That's how the case is going to
12:26:57 18 proceed, things will be running concurrently, yes, exactly.

12:27:03 19 Case management order. This is going to turn around a
12:27:14 20 little quicker than I think you all were expecting. As I
12:27:18 21 indicated, I expect the second -- excuse me -- the first week,
12:27:22 22 hopefully December 2nd I will have your leadership structure
12:27:28 23 appointments in place and an order entered. The proposed case
12:27:33 24 management order will be submitted 14 days after that.

12:27:38 25 And the order that I enter -- hopefully tomorrow, but

12:27:44 1 as I said, I'm traveling, so it may be Wednesday but definitely
12:27:48 2 this week -- will outline everything that I want you all to
12:27:52 3 submit in your proposed case management order. And of course,
12:27:55 4 if there are other things you want to propose, that's fine,
12:27:59 5 too, but I will give you sort of the minimum of what I'm
12:28:03 6 looking for.

12:28:05 7 Now, case management conferences, I intend to hold one
12:28:16 8 per month, at least initially. I won't hold one next month,
12:28:23 9 however. Right now I had January 30th as our next conference,
12:28:32 10 but of course that was also going to be held in conjunction
12:28:35 11 with science day, which may or may not take place on January
12:28:40 12 30th. So for now pencil that date in, January 30th. It may be
12:28:47 13 that we have a case management conference that day and a
12:28:50 14 science day another day.

12:28:55 15 February 22nd is the next case management conference.
12:29:03 16 And just to let you know, I'm going to mark off two days for
12:29:08 17 this. And that may be overkill and it may not be necessary.
12:29:15 18 But if I don't, then I'll lose that time for sure. I think I
12:29:19 19 can do this. We will have a case management conference. We
12:29:23 20 will also hear oral argument or evidentiary hearing, to the
12:29:28 21 extent it's necessary, on the personal jurisdiction question.

12:29:37 22 I was also hoping on that date -- and I'm not going to
12:29:42 23 -- my hopes aren't completely dashed, it may still happen -- I
12:29:48 24 would like to hear from a representative of the firm that you
12:29:55 25 all decide you would like to use for the data analytics. So to

12:29:59 1 the extent it's BrownGreer, I may have a representative here
12:30:06 2 that day to discuss with me the MDL Centrality and its
12:30:13 3 application here.

12:30:14 4 And by that time -- just a moment, let me check. My
12:30:53 5 hope was -- in advance of this conference, my desire to have
12:31:01 6 the data analytics person here was that the plaintiffs' fact
12:31:09 7 sheets would be completed by that time.

12:31:11 8 What do you all need for that? How much time? Is
12:31:14 9 that too ambitious, Mr. Aylstock?

12:31:18 10 **MR. AYLSTOCK:** I think it is a little bit, Your Honor.
12:31:20 11 Probably an additional 30 days.

12:31:24 12 **THE COURT:** The discovery committee will be in place
12:31:27 13 by this time. So you're thinking -- but again, a firm, whether
12:31:35 14 it's BrownGreer or another, can be of significant advantage to
12:31:39 15 you all in getting these done.

12:31:42 16 **MR. AYLSTOCK:** Absolutely.

12:31:43 17 **THE COURT:** But it may be, then, that we hear from
12:31:47 18 BrownGreer at the March 27th case management conference.

12:31:52 19 **MR. AYLSTOCK:** We'll certainly try to get it done for
12:31:54 20 the February 22nd.

12:31:55 21 **THE COURT:** Mr. Rasmussen?

12:31:56 22 **MR. RASMUSSEN:** Your Honor, I was just going to say,
12:31:57 23 part of what this hinges on, in terms of time with respect to
12:31:57 24 the plaintiffs' fact sheets and then also the defendants' fact
12:32:02 25 sheets, is the information that is being requested and/or

12:32:06 1 provided from the perspective parties in the individual cases.

12:32:08 2 And since the Court brought up -- or referenced Judge
12:32:14 3 Fallon, and in particular the Xarelto litigation, the plaintiff
12:32:20 4 -- actually, I forget how many cases it is right now, because
12:32:26 5 of, you know, to have data on this many cases, and really it's
12:32:27 6 the data that -- the court references "the necessary data." So
12:32:32 7 all that's required from the plaintiffs now is to submit -- I
12:32:34 8 believe it's about a page-and-a-half or two pages worth of
12:32:39 9 information that's on the facts sheet, whereas originally
12:32:42 10 everything was contained in each one of those pages, and I
12:32:46 11 believe it was maybe 8 pages or 10 pages, the entire fact sheet
12:32:47 12 is. And now Judge Fallon is only requiring plaintiffs to
12:32:52 13 submit a page or two.

12:32:53 14 So when the Court asked about the timing issue with
12:32:58 15 respect to the facts sheet, obviously we need -- the most
12:32:59 16 important information is to have this important demographic
12:33:02 17 data but --

12:33:03 18 **THE COURT:** Well, maybe we can do it that way. I
12:33:08 19 don't have an objection to that. If that would get us to the
12:33:12 20 point of being able to start inputting that important variable
12:33:16 21 information early on, then I would be in favor of that.

12:33:21 22 **MR. AYLSTOCK:** One of the things that I have discussed
12:33:23 23 with the other side, Your Honor, is the concept of exactly
12:33:26 24 that, but we call it a "plaintiff profile form" --

12:33:26 25 **THE COURT:** Right.

12:33:30 1 **MR. AYLSTOCK:** -- and then a "plaintiff fact sheet"
12:33:31 2 later on. So if we're talking about a plaintiff profile form,
12:33:35 3 that's a much easier process from our end and from our client's
12:33:39 4 end to get everything. And it's the core data, it is the
12:33:41 5 important information for data points and so forth. So we've
12:33:44 6 agreed to continue to meet and confer about that as well.

12:33:49 7 **MR. CAMPBELL:** Your Honor, I think we're -- we've had
12:33:53 8 preliminary discussions about this, and we'd be open to it.
12:33:56 9 Obviously, we have somewhat of a disagreement about what's core
12:33:59 10 information for being able to determine the proper
12:34:02 11 demographics, but I think we're willing to have further
12:34:05 12 discussions with them to see whether we could have short of a
12:34:09 13 fact sheet that gives everything that we need for the actual --
12:34:10 14 if it's going to be a part of a beginning of bellwether
12:34:13 15 selection process, then we definitely want to have certain key
12:34:16 16 information that I'm not sure would be included in a
12:34:19 17 page-and-a-half fact sheet, but we're happy to discuss that
12:34:22 18 further before we make that decision.

12:34:24 19 **THE COURT:** The discovery committee can certainly work
12:34:27 20 on this, but I don't want you all to stop your discussions on
12:34:32 21 it, thinking, *Oh, we'll wait until the discovery committee is*
12:34:36 22 *in place.*

12:34:37 23 Continue to discuss this and see if there is some
12:34:40 24 version of the fact sheet, short of a full complete fact sheet,
12:34:44 25 that could get us the information that we need and the firm

12:34:49 1 needs, the important variables.

12:34:52 2 And then to the extent there's additional information
12:34:55 3 you feel you need for that process, work on -- whether it's one
12:35:01 4 page or two pages, y'all work on that, just so that it's
12:35:07 5 manageable from a time standpoint for the plaintiffs,
12:35:10 6 understanding the Court's sort of goal here.

12:35:15 7 **MR. AGNESHWAR:** Yes, Your Honor. So just responding
12:35:17 8 to both of their points, I think what Mr. Aylstock is referring
12:35:20 9 to as the patient profile forms are used in some litigations.
12:35:24 10 Typically they're used in litigations where there's thousands
12:35:26 11 of plaintiffs and where you pick a discovery pool that all of
12:35:30 12 them submit a bigger fact sheet, the most complete fact sheet,
12:35:34 13 and those are typically 60 to 80 people at a time. And then
12:35:38 14 the thousands of people in the background submit patient
12:35:41 15 profile forms.

12:35:42 16 And, again, I sound like a broken record, but I come
12:35:45 17 back to the fact that at this point the litigation is only 45
12:35:47 18 people. We have negotiated a fact sheet with the plaintiffs.
12:35:51 19 And Mr. Aylstock initially asked for an extra 30 days to
12:35:55 20 complete those fact sheets.

12:35:57 21 Now, I think we're fine with that. But at this number
12:36:00 22 of people, we think, especially if the Court is leaning towards
12:36:04 23 using -- going down the bellwether process even if we end up
12:36:08 24 with something that's closer to 45 people, we really think we
12:36:12 25 should have those fact sheets completed early on in the

12:36:14 1 litigation.

12:36:15 2 **THE COURT:** Yeah. And Mr. Agneshwar makes a good
12:36:17 3 point. If you all are -- if we're going to stay at this
12:36:22 4 number, this is fairly comfortable, and so I think full
12:36:27 5 complete fact sheets --

12:36:29 6 **MR. RASMUSSEN:** Two things, Your Honor. Number one,
12:36:31 7 we're not going to stay at this number, the number is going to
12:36:35 8 increase. But number two, I think that typically the fact
12:36:39 9 sheets come out of a process that's negotiated and oftentimes
12:36:42 10 agreed to between the parties, and we could add this to the
12:36:45 11 list of things that you require us to meet and confer, and then
12:36:48 12 let's report back in whatever we submit either jointly or
12:36:51 13 separately to the Court within a week. And then to the extent
12:36:54 14 that we have disagreements, then we can explain those to the
12:36:58 15 Court, and you can make a ruling then.

12:36:59 16 **THE COURT:** But didn't you already do this in New
12:37:01 17 Jersey? I've seen the plaintiffs and defense facts sheets.

12:37:06 18 **MR. AYLSTOCK:** Your Honor, Mr. Wilson's firm did. We
12:37:09 19 weren't involved in that process. And similar to the ESI and
12:37:13 20 protective order, we'd just like an opportunity to weigh in and
12:37:15 21 in particular try to negotiate a profile form to give them,
12:37:20 22 maybe not 3 pages, maybe 15 pages, but it's a very lengthy fact
12:37:24 23 sheet that frankly, in my view, that has a lot of wasted time
12:37:28 24 and effort.

12:37:29 25 **THE COURT:** You know what would I think really

12:37:32 1 facilitate the process here is if you all get in touch with
12:37:38 2 your network and your colleagues and encourage them to file
12:37:44 3 their cases if they're going to file cases.

12:37:47 4 **MR. AYLSTOCK:** Yes, Your Honor.

12:37:48 5 **THE COURT:** That would be helpful. A lot of this
12:37:55 6 unknown of how many cases we're going to have is really driving
12:37:58 7 this discussion. Because depending on the number, we're going
12:38:01 8 to go in one direction. If we're not at that number, then we
12:38:07 9 may go in a completely different direction. So it's making the
12:38:11 10 discussion a little difficult.

12:38:12 11 And I know that's not completely in your hands, but to
12:38:15 12 the extent you can encourage it, I think that would be helpful
12:38:18 13 to the process.

12:37:48 14 **MR. AYLSTOCK:** Yes, Your Honor.

12:38:25 15 **THE COURT:** Let me make sure you have those dates
12:38:27 16 again.

12:38:28 17 January 30th for the next case management conference.
12:38:34 18 Science date to be determined.

12:38:40 19 February 22nd, case management conference with the
12:38:44 20 hearing or oral argument on the motion to dismiss.

12:38:48 21 And then March 27th.

12:38:53 22 Somewhere in between the February 22nd and the March
12:38:57 23 27th date I would anticipate -- definitely anticipate fact
12:39:05 24 sheets or some form of a fact sheet.

12:39:08 25 And if you all -- if we get some more cases filed in

12:39:12 1 the litigation and you all can come to an agreement on a short
12:39:16 2 form that contains the information that the Court needs and the
12:39:24 3 defense needs, then it may be that we're able to have that
12:39:27 4 discussion with someone from BrownGreer or another firm at the
12:39:34 5 February conference. If not, then it may be March, and it may
12:39:41 6 be a full fact sheet at that point.

12:39:47 7 All right, I had just a couple of miscellaneous
12:39:51 8 matters. The *pro se* plaintiff.

12:39:54 9 My understanding, Mr. Campbell or Mr. Connolly, this
12:39:57 10 is being taken care of, right?

12:40:00 11 **MR. CAMPBELL:** (Indicating affirmatively.)

12:40:02 12 **THE COURT:** And I know you're different, I just wasn't
12:40:06 13 sure which one was going to address that, so I just called you
12:40:09 14 both.

12:40:09 15 And so the federal state liaison counsel who has yet
12:40:14 16 to be appointed, just as a heads up, I'm going to be asking
12:40:19 17 that attorney and giving him or her the responsibility to
12:40:23 18 provide Judge DeLuca with everything pertinent in the MDL and
12:40:30 19 provide me with everything pertinent in the New Jersey
12:40:34 20 litigation. Because up until now, it's really been him and I
12:40:39 21 doing that -- him more than me -- doing that, and I'd like to
12:40:44 22 take that burden off of him.

12:40:45 23 I will be inviting him -- and actually, I did invite
12:40:49 24 him to attend today. I think I was a little late in my
12:40:52 25 invitation. So I have extended the invitation for any future

12:40:58 1 case management conferences, and I've invited him to science
12:41:02 2 day, whenever we hold science day.

12:41:05 3 He said he may come. I don't think he's very familiar
12:41:07 4 with Florida geography, though, because he was hoping it would
12:41:14 5 be in February and he could come to Pensacola and wear his
12:41:19 6 bathing suit. But I told him, no, it's not all that unlike New
12:41:24 7 Jersey in February here.

12:41:26 8 I believe that's all I had to cover. So, Mr. Wilson
12:41:32 9 or Mr. Aylstock, Mr. Rasmussen, anything else from you all?

12:41:38 10 **MR. AYLSTOCK:** We've covered it, Your Honor.

12:41:40 11 **THE COURT:** Very good.

12:41:40 12 Mr. Agneshwar?

12:41:41 13 **MR. AGNESHWAR:** Could I just have one minute to
12:41:44 14 consult with my colleagues and make sure?

12:41:46 15 **THE COURT:** I tell you what, let's take five minutes
12:41:48 16 recess, and I'll come back in and we'll wrap up. Maybe
12:41:50 17 something else comes up for the plaintiffs, and you all can
12:41:51 18 address the Court at that time.

12:53:11 19 *(Recess taken 12:41 p.m. to 12:53 p.m.)*

12:53:11 20 **THE COURT:** Mr. Wilson?

12:53:18 21 **MR. WILSON:** Thank you, Your Honor. We had two minor
12:53:22 22 things to add. I think one solution to the lack of cases being
12:53:30 23 filed now would be for us to meet with the defendants over the
12:53:33 24 next day or two and submit to you what's called a Direct Filing
12:53:38 25 Order. That allows people who live in other districts to file

12:53:43 1 directly here, and it will just be an incentive for people to
12:53:47 2 get their cases on suit.

12:53:49 3 **THE COURT:** I'm happy to did that. I think my prior
12:53:51 4 orders spoke to that, but I'll be that happy to consider
12:53:55 5 anything you submit. And if you think it will help facilitate
12:54:00 6 the filing of cases, then I'm happy to do it.

12:54:03 7 **MR. WILSON:** OPC has raised an objection and we'll try
12:54:06 8 to work it out with them.

12:54:10 9 **MR. CONNELLY:** That's right, Your Honor, we'll meet
12:54:12 10 and confer.

12:54:12 11 **THE COURT:** Before you speak to the second matter,
12:54:14 12 just along those same lines, I'd like to ask you to go ahead
12:54:21 13 and submit your master complaint and a short form within 20
12:54:27 14 days, to get that done, so 11/28.

12:54:33 15 But I also have a question about that, and I think I
12:54:37 16 know the answer, but just to be clear and for the record. The
12:54:41 17 master complaint would supersede all existing complaints; is
12:54:46 18 that correct?

12:54:46 19 **MR. WILSON:** Yes. It would relate back -- for our
12:54:50 20 complaints that are already failed, the date would relate back.

12:54:56 21 **THE COURT:** Okay. And then I would suggest putting
12:54:58 22 the short form on our website as well.

12:55:02 23 **MR. WILSON:** Yes, good idea. And then the other
12:55:04 24 thing, Your Honor, with respect to the New Jersey documents and
12:55:09 25 the January 21 deadline, counsel pointed out to me we should

12:55:14 1 probably serve document requests tracking the same documents in
12:55:20 2 federal court just so there's a production pursuant to the
12:55:24 3 federal rules with a privileged log, and we would ask that you
12:55:28 4 lift the stay solely for that little purpose.

12:55:34 5 **THE COURT:** Procedurally that would seem to be
12:55:37 6 technically proper.

12:55:40 7 Mr. Agneshwar?

12:55:43 8 **MR. AGNESHWAR:** That category of documents has not
12:55:47 9 been -- what we're producing as, quote, "discovery" in New
12:55:51 10 Jersey has not been pursuant to a formal document request. It
12:55:55 11 has been the subject of negotiation where we were getting
12:55:58 12 emails from Mr. Wilson saying *We think we should have these*
12:56:01 13 *documents*, and we would come back and say, *Well, we think 1, 2,*
12:56:05 14 *6, 8, 9 can be doable, but not the others.* So I'm not sure
12:56:09 15 what he's really concerned about or referring to.

12:56:12 16 **THE COURT:** Okay. Why couldn't I just enter an order
12:56:15 17 in this MDL that requires the production of what you've already
12:56:20 18 agreed to produce in the New Jersey litigation?

12:56:23 19 **MR. AGNESHWAR:** To be produced here?

12:56:25 20 **THE COURT:** Yes, to be produced here.

12:56:27 21 **MR. WILSON:** We could, Your Honor, and those documents
12:56:28 22 are broken up by category in our brief.

12:56:32 23 **THE COURT:** Right, yes, I saw that. Thank you. I
12:56:34 24 will do that promptly.

12:56:36 25 **MR. CAMPBELL:** Your Honor, one point of issue about

12:56:38 1 that is I believe the final category -- the description of the
12:56:41 2 final category of marketing documents, I'm not sure that
12:56:44 3 plaintiffs' brief is exactly accurate on the category that
12:56:47 4 Judge DeLuca entered. That's the only issue.

12:56:50 5 Judge DeLuca was very clear in his oral opinion on
12:56:53 6 this of what he was ordering us to produce is that final kind
12:56:57 7 of contested issue or category for core discovery. I'm not
12:57:01 8 sure that the list -- and I'm sure it's inadvertent, but I'm
12:57:05 9 not sure that the list that they included was actually accurate
12:57:07 10 on that, and I would just make sure that the order that Your
12:57:10 11 Honor enters reflects what Judge DeLuca is actually ordering in
12:57:14 12 this case.

12:57:14 13 **THE COURT:** He called me and gave me the categories
12:57:18 14 but, again, this was just over the phone. And I know marketing
12:57:22 15 materials was one of those categories, but that's pretty broad.

12:57:28 16 **MR. AGNESHWAR:** What it was is it was marketing plans
12:57:31 17 that were referenced in a particular agreement between
12:57:34 18 Bristol-Myers and Otsuka, which he asked us to produce because
12:57:37 19 he thought they were also relevant to jurisdictional discovery.
12:57:41 20 But we can get with Mr. Wilson and put a list of all the
12:57:44 21 categories of documents, make sure it's exactly accurate and
12:57:47 22 submit it to Your Honor, if that would make sense.

12:57:49 23 **MR. WILSON:** Yeah, let's focus on the last one that
12:57:53 24 you are objecting to now, but otherwise, I don't think we have
12:57:56 25 a disagreement. I don't want to reopen the scope of these

12:57:59 1 documents.

12:57:59 2 **MR. AGNESHWAR:** No.

12:58:00 3 **THE COURT:** No, I don't want to do that right now
12:58:02 4 either. But I also -- I only want to enter one order on this.
12:58:08 5 So why don't you all get together, make sure the list is
12:58:11 6 accurate and consistent with what's been ordered in the New
12:58:14 7 Jersey litigation, submit that to me -- can you get it to me
12:58:19 8 by, say, Wednesday or Thursday?

12:58:21 9 **MR. WILSON:** Yes, we can.

12:58:22 10 **THE COURT:** That will be fine, just this week get that
12:58:25 11 to me.

12:58:26 12 Mr. Aylstock?

12:58:27 13 **MR. AYLSTOCK:** Your Honor, one other housekeeping
12:58:29 14 matter in the area about counsel's structure, and Your Honor
12:58:34 15 had indicated a discovery committee, and there was a question
12:58:37 16 about whether those members would be part of the PSC or
12:58:41 17 executive committee or whether they were designed to be
12:58:44 18 entirely separate. So I wanted to ask a clarification on that.

12:58:49 19 **THE COURT:** Well, I was thinking separate, but I'm not
12:58:52 20 -- I mean, I was thinking separate. I think the discovery
12:58:57 21 committee will have a lot of work to do, at least for a period
12:59:03 22 of time sort of up front in the litigation.

12:59:05 23 How do you all feel about it?

12:59:07 24 **MR. AYLSTOCK:** Typically there's some overlap. They
12:59:09 25 don't have to be a member of the PSC or executive committee or

12:59:15 1 co-lead, but sometimes there's overlap, so perhaps if folks are
12:59:19 2 interested, they should put that on their application.

12:59:23 3 **THE COURT:** Sure, because otherwise I was
12:59:25 4 contemplating three and three. And I'm trying to create
12:59:30 5 opportunities for some diversity in your leadership structure.
12:59:33 6 I can increase the size of the committee by one or two, so four
12:59:37 7 and four, or -- I was going to say five and three but I don't
12:59:42 8 know how that would go over.

12:59:46 9 You tell me what you think you need. I mean, this is
12:59:49 10 your litigation, and you know a lot more about it at this point
12:59:53 11 than I do. What do you need in terms of representation?

12:59:56 12 **MR. AYLSTOCK:** I think if we had four or five on our
12:59:58 13 side that might be more helpful, Your Honor.

01:00:01 14 **THE COURT:** Okay. What about you all? The same?

01:00:03 15 **MR. AGNESHWAR:** I don't think we need more than three,
01:00:06 16 maybe up to four.

01:00:09 17 **THE COURT:** All right.

01:00:11 18 **MR. CAMPBELL:** Thank you, Your Honor.

01:00:12 19 **MR. AGNESHWAR:** Nothing else from defendants, and we
01:00:15 20 look to a hearing before Your Honor and working with plaintiffs
01:00:19 21 on this issue.

01:00:19 22 **THE COURT:** Thank you. I have a couple of final --
01:00:21 23 whenever you take a break something always comes up, but that's
01:00:28 24 because Ms. Bills is paying very close attention and taking
01:00:31 25 very good notes.

01:00:32 1 The briefs -- we talked about some legal briefs on
01:00:36 2 discovery and the scope of discovery in connection with science
01:00:38 3 day and general causation. Could you have those submitted,
01:00:43 4 please, by the 28th?

01:00:45 5 You were going to get together, I think, and confer on
01:00:48 6 this as well. But to the extent one side thinks custodial
01:00:55 7 documents are relevant and one thinks not relevant, I would
01:01:00 8 like you to submit something to me if there are some case law
01:01:03 9 out there on it.

01:01:05 10 **MR. AGNESHWAR:** That's fine, Your Honor. Do you want
01:01:07 11 to impose a page limit or leave that to our discretion?

01:01:10 12 **THE COURT:** Do I need to?

01:01:12 13 **MR. AYLSTOCK:** Not under the local rules, Your Honor.

01:01:14 14 **THE COURT:** Okay. And then, lastly, I mentioned
01:01:19 15 earlier wanting to post transcripts of these conferences for
01:01:21 16 the benefit of all on the website. Do you all intend -- or do
01:01:26 17 you want an official transcript? Have you had a chance to even
01:01:30 18 think about that?

01:01:30 19 **MR. AYLSTOCK:** I think we would, Your Honor. That
01:01:33 20 would be helpful.

01:01:33 21 **THE COURT:** All right. Well, you all then please get
01:01:35 22 with Ms. Boland. I would expect you all to share the expense
01:01:39 23 of that. If you would get with Ms. Boland in that regard and
01:01:44 24 she can talk to you about arrangements for that. As soon as
01:01:50 25 it's available, I'll post it on the website.

01:01:54 1 So 11/28 for your master complaint and short form,
01:02:01 2 11/28 for your briefs on discovery in connection with the
01:02:03 3 general causation. Those were the last two things that I had.

01:02:06 4 Well, I really appreciate this. It was very helpful
01:02:09 5 to me, and I look forward to helping you all in this
01:02:14 6 litigation, however it may conclude. And I will get an order
01:02:18 7 out in the next day or two.

01:02:18 8 **MR. WILSON:** Thank you, Your Honor.

01:02:18 9 **MR. AGNESHWAR:** Thank you, Your Honor.

01:58:33 10 **MR. AYLSTOCK:** Thank you, Your Honor.

01:58:33 11
12 *(Proceedings concluded at 1:58 p.m.)*

13 -----
14 *I certify that the foregoing is a correct transcript from the*
15 *record of proceedings in the above-entitled matter. Any*
16 *redaction of personal data identifiers pursuant to the Judicial*
17 *Conference Policy on Privacy are noted within the transcript.*

17 *Donna L Boland*
18 Donna L. Boland, RPR, FCRR
Official Court Reporter

11-30-2016
Date

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