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transcription service.

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1 (The following was heard in open court at  
2 10:00 a.m.)

3 THE COURT: Good morning, everyone, Please  
4 be seated.

5 ALL: Good morning.

6 THE COURT: As I have just met with your  
7 leaders, I informed them that I am in the middle of a  
8 criminal trial and thus will have to make this very  
9 short today, but we're making arrangements for  
10 additional rooms for you to meet in, and there are  
11 quite a few of you, so I'm sure that we can accommodate  
12 you, not everybody has trials today.

13 I would like to also welcome our newest  
14 member, and that would be Mr. Andrew Chirls, who has  
15 been appointed the special discovery master, and we've  
16 already seen the products of your work. Thank you.

17 MR. CHIRLS: Thank you, Your Honor.

18 THE COURT: We have an agenda, but before we  
19 address the agenda items we have been joined on the  
20 telephone by at least five attorneys. I don't have  
21 their names in front of me but they are from various  
22 offices and I would like to know if they are receiving  
23 the transmission. Could somebody respond?

24 Hello? Is anybody on the line. I don't  
25 think they're on.

1 COURTROOM DEPUTY: Counsel, can you hear us?  
2 Hello.

3 COUNSEL: Hello.

4 THE COURT: Good. Can you hear us all right?  
5 I don't think they are hearing us.

6 COURTROOM DEPUTY: Counsel, can you hear the  
7 Court?

8 COUNSEL: Not well.

9 THE COURT: Well, we'll turn up the volume as  
10 best as we can, but this is a new trunk line that we're  
11 using because there was five or six requests and  
12 anything over four means my chambers can't do it  
13 manually. I'm not guaranteeing that this is the best  
14 system.

15 So in the future if we're going to be doing  
16 more tele-conferencing and video-conferencing to  
17 conserve resources, as I'm sure that we will be, we may  
18 have to revise this system, so I'll ask for ideas.

19 I do see that we have a number of attorneys  
20 here today. I hope you all had good holidays, whatever  
21 you observed, and you're ready to go. It's a busy  
22 spring.

23 So we'll start by asking for the summaries  
24 from each of the leadership of the plaintiffs and the  
25 defendants, and we'll start with the plaintiffs.

1 MS. NAST: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. NAST: I'll give the abbreviated summary  
4 given that we have some time limitations. Since Your  
5 Honor appointed Mr. Chirls as our special master in  
6 February, we have had two meetings with him, one  
7 several days after the appointment, and another meeting  
8 yesterday.

9 We've exchanged multiple items of  
10 correspondence with him very frequently. At the first  
11 meeting plaintiffs and defendants basically ironed out  
12 some scheduling issues that we needed to request be  
13 revised. Mr. Chirls has submitted to the Court a  
14 report concerning that with some recommendations for  
15 revisions of dates.

16 We have been eternally optimistic in our date  
17 selection and in some instances find that some of those  
18 dates have to be adjusted. But, they do not in any way  
19 affect the Dalbert hearings or the trial date. It's  
20 just a matter of when we do our internal work. We  
21 talked a lot of about those things yesterday and Mr.  
22 Robinson will report on that.

23 We also met for two days in Houston, a group  
24 of the PSC members and some other lawyers who are  
25 assisting. We worked on document issues and case

1 specific selections to finalize our case selections  
2 which we have now informed Mr. Cheffo. The defendants  
3 have produced another 330,000-plus or minus a few pages  
4 of documents, and we are working with them.

5 Pretrial orders, what we've numbered 23 and  
6 24 in keeping with the Court's renumbering of the  
7 earlier versions, basically moves the dates for our  
8 plaintiffs' fact sheets, the date for the defendants'  
9 case selection, the dates for the defendants' fact  
10 sheet, and the dates for threshold discovery, each of  
11 those by about, rounding it out, by about a month  
12 giving us each another month, and as I said that won't  
13 impact any of the dates.

14 So we've been busily working away, our  
15 committees have been meeting in some instances where  
16 meetings are required and have been working very hard.  
17 We've had a number of people, particularly this past  
18 month who have -- Ed Blizzard's committee worked very  
19 diligently on the case specific selection with a lot of  
20 assistance from some people that worked very hard as  
21 well.

22 Barbara Anderson from Mark Robinson's office  
23 has been keeping a weekly calendar. We've had weekly  
24 conference calls of the PSC. We will be, with Your  
25 Honor's assistance, we will be meeting after this

1 hearing with the plaintiffs' steering committee.

2 And, if I may, I'm going to ask Mark Robinson  
3 to report briefly on our meeting with Mr. Chirls  
4 yesterday.

5 THE COURT: Thank you.

6 MR. ROBINSON: Good morning, Your Honor.

7 THE COURT: Good morning, Mr. Robinson.

8 MR. ROBINSON: I'm going to be brief. We had  
9 a good meeting with actually Mr. Cheffo and Ms.  
10 Armstrong before the meeting with Special Master Chirls  
11 yesterday, and I think we got a lot done.

12 I mean we've actually in the last three weeks  
13 had a team of people attempting to get responses to  
14 plaintiff fact sheet deficiencies, cure deficiencies.  
15 We've tried to actually get medical records together  
16 and then respond.

17 Actually what we've done, Your Honor, is Shea  
18 Shaver from Mr. Zonies office has sort of been our  
19 center point on this, and we want to give her a  
20 shout-out, she's done a good job. Everybody is sending  
21 our deficiency responses to Mr. Cheffo through Ms.  
22 Shaver, and then she gives it to Mr. Cheffo.

23 So we went through those responses with Mr.  
24 Cheffo and, you know he's going to talk to you. There  
25 are still some people, some stragglers that we are

1 needing to get on, but I think the fact that we're  
2 going through this process, we've identified the people  
3 and I think Mr. Cheffo will speak to that, but we're  
4 trying to actually get people involved and get answers  
5 to Mr. Cheffo so that he could make proper selections  
6 of --

7 THE COURT: Right.

8 MR. ROBINSON: -- his 13 cases. We moved his  
9 date to May 22nd, so that he has some time to pick his  
10 cases.

11 There are going to be expanded plaintiff fact  
12 sheets for the 25 discovery pool picks, and then  
13 there's going to be defense fact sheets. We've  
14 exchanged redlines between each other, and we're going  
15 to talk to Mr. Cheffo and Ms. Armstrong again this week  
16 to try and work out our objections and redlines.

17 I'm hoping that we're going to work this out.  
18 I think we'll work it out this week. The reason we  
19 want to work out these fact sheets is that the sooner  
20 we work it out, then that gives us on the plaintiffs'  
21 side more time to get the final plaintiff fact sheets  
22 to our plaintiffs.

23 THE COURT: Okay. I'm a little confused  
24 about the redline. What are you talking about in that  
25 respect? Is this something that is a dispute in the



1 form or the answers?

2 MR. ROBINSON: Your Honor, I think that it's  
3 the form. Basically, what are the questions, what  
4 questions are part of the defense fact sheet, which  
5 questions are part of the plaintiffs' fact sheet. So  
6 we haven't sent them out yet, so we're trying to work  
7 on the form. But I think we're going to work it out.

8 THE COURT: Well, you'll try to work it out,  
9 if not, I'll have to make a call because if you can't  
10 get this rather pivotal initial form filled out to each  
11 side's satisfaction, then you can't make proper  
12 selections it seems to me, and you all know that.

13 MR. ROBINSON: We understand that, and we  
14 actually have suggested that if we needed help, we  
15 would ask Mr. Chirls to weigh in, but I'm hoping that  
16 we don't have to do that, Your Honor.

17 THE COURT: I thought the form was pretty  
18 much established in the earlier orders?

19 MR. ROBINSON: Well, the initial plaintiff  
20 fact sheet was, that form is done. But the defense  
21 wants more information on the discovery pool cases and  
22 they have an expanded fact sheet. We have given them a  
23 defense fact sheet form that's new, so we're still  
24 trying to work both of those fact sheets out.

25 THE COURT: Well, that may be difficult given

1 the status of the actual discovery in this MDL, but you  
2 have to start somewhere, so it starts with plaintiffs.

3 MR. ROBINSON: We're trying to work that,  
4 Your Honor.

5 THE COURT: Okay. I understand, Mr.  
6 Robinson. Thank you.

7 MR. ROBINSON: So really that's all I have to  
8 report and thank you very much.

9 THE COURT: Thank you. Mr. Cheffo?

10 MR. CHEFFO: Well, Your Honor, thank you. As  
11 everyone said, I'm going to be very brief as well. If  
12 it sounds like it's a good news story, I think it  
13 generally is.

14 We have been providing, as best we can,  
15 charts and things like that. I won't bother the Court  
16 with all the concorde details but, you know, telling  
17 them where we think there are deficiencies. Usually  
18 we're right, sometimes we're wrong, they tell us.  
19 They've been kind of taking our charts back and telling  
20 us.

21 So really on both sides it's led to two  
22 things. It's led to, I think, really a good faith  
23 effort by the plaintiffs to get us the records, so  
24 that's very helpful so we can make our selections.  
25 It's also, frankly, led to a significant number of

1 cases being dismissed, you know, 20 or 30, which is  
2 fine as well to the extent folks re-evaluate.

3 So we're actually a little bit less this  
4 month than we were last month. I think we have 335  
5 plaintiff families. Last month was 343, and the month  
6 before that was 321. So we're around the same with  
7 some cases being filed and some cases being dismissed.

8 I think the one area I just do want to  
9 highlight for the Court is, there are folks who we've  
10 sent deficiency letters, there are folks that I know  
11 the plaintiffs have contacted and they really fall into  
12 a few categories, people haven't given any plaintiff  
13 fact sheets.

14 Just two points. I think Mark was incorrect,  
15 one is April 22nd is our date, not May 22nd. The  
16 second issue is, we did the initial plaintiff fact  
17 sheets, and then we are going to have the expanded that  
18 will only apply to the 25 cases.

19 THE COURT: Right.

20 MR. CHEFFO: But there are some folks who  
21 haven't even responded to the initial. It's a handful,  
22 it's probably less than five, and then there are other  
23 folks who haven't done product ID.

24 So I think what we're going to propose again,  
25 with the Court's, you know, input on this, and with Mr.

1 Chirls as well, is a joint order to show cause, perhaps  
2 the Court can consider where you might say something to  
3 the effect of, you know, you shall have X period of  
4 time to comply, and I think that those folks maybe  
5 after not listening to plaintiffs and defendants, if  
6 the Court does that, I think we'll ultimately get the  
7 compliance.

8 THE COURT: And that can come about several  
9 ways. You can agree on a list between the plaintiffs  
10 and yourself, and also it can come about through  
11 motions to dismiss. We have been known to generate  
12 rules to show cause based on motions to dismiss because  
13 it's a way of giving us notice what's out there.

14 But if you can agree with plaintiffs that  
15 there's no other way that we can reach this, we can  
16 respond that way too, so there could be alternative  
17 procedures.

18 MR. CHEFFO: Fair enough, and we'll try and  
19 do that jointly, and I appreciate that, Your Honor. So  
20 I'm not going to recap.

21 The only other thing I think that's probably  
22 worthwhile to bring to the Court's attention, we have  
23 been producing, you know, a number of records, I think,  
24 in the last week or two, over 300,000.

25 They have pick their 12 cases. Of those

1 there are really, there are two cases, if you will, of  
2 which we've had questions. One was one where there was  
3 an issue of potential subject matter jurisdiction, it  
4 was Mr. Zonies case. He's indicated he's going to  
5 replace that case and we're working cooperatively,  
6 that's fine.

7 There was just Mr. Blizzard -- let me see,  
8 oh, there he is, there was just one other case I just  
9 wanted to highlight for the Court. I'm hopeful that we  
10 can work this out, but just to set the table for Your  
11 Honor, there was the Bailey Perrin firm has some cases  
12 here pending remands. They have some cases in state  
13 court.

14 The case that was selected, at the time it  
15 was selected we hadn't even received the complaint, so,  
16 you know, we had no information whatsoever. So we  
17 said, you know, this isn't exactly what we think we  
18 contemplated.

19 In the intervening time we've said to the  
20 extent that they are really committed to the MDL,  
21 because we think having a trial, potential discovery  
22 trial picked case is something that should be, we  
23 believe, for folks, one, cases that have been filed,  
24 and two --

25 THE COURT: That they're going to stay here.

1 MR. CHEFFO: -- the people that are committed  
2 to the MDL and not going to be doing other things. So  
3 I think the general agreement -- let me stop. I know  
4 Mr. Blizzard has had conversations with the firm and  
5 maybe he can report.

6 THE COURT: Good morning.

7 MR. BLIZZARD: Good morning, Your Honor. Do  
8 you want me to approach the podium?

9 THE COURT: I think I can hear you fine from  
10 there.

11 MR. BLIZZARD: Okay. Since brevity is the  
12 word for the day, I'll be brief. I have talked to  
13 them.

14 Part of our selection process was to make  
15 sure we had good representative cases, but also to make  
16 sure we engaged firms who had significant inventories,  
17 even though most of their inventory may have been  
18 originally filed in state court.

19 So we approached the Bailey firm, my partner  
20 and I did, and talked to them about whether they wanted  
21 to really become involved in the MDL because frankly,  
22 they weren't pursuing discovery in the other  
23 jurisdictions where they had filed their cases. So  
24 they said they did. They put up a case.

25 As soon as they filed it, which was about the

1 time of the selection, they got the initial fact sheet  
2 done, they got records which were fairly significant  
3 copied and off to Mr. Cheffo, and they're going to file  
4 the expanded fact sheet once that's worked out.

5 They have also told me this morning and  
6 actually last week that they are considering  
7 withdrawing their motions for remand, and they're also  
8 going to be filing new cases here in the MDL. So I  
9 think they are committed to going forward in the MDL  
10 and will be a constructive force going forward.

11 THE COURT: All right. Thank you very much.

12 MR. CHEFFO: And just, then I will sit down,  
13 just to add, I think we've asked and we'll continue to  
14 work with them for something a little more definitive  
15 than maybe, so hopefully they will, in fact, withdraw.

16 This is not a hard thing, you file a  
17 one-pager, withdraw your remands. We think as some of  
18 the leadership here has dismissed their cases in State  
19 Court, it's just not productive to have, you know,  
20 competing State Court litigation, and to the extent  
21 that it's, you know, consistent with their ethical  
22 obligations to their clients, if they commit to filing  
23 the MDL, we would not have an objection. I think to  
24 the extent they don't do that, then I think we would  
25 have an objection to that case.

1 THE COURT: There might have to be a deadline  
2 on that because we're working on the remand motions  
3 now, and I want everyone to understand that we've tried  
4 to see what the collection and the corpus, if you will,  
5 of the cases are and represent and what kind of  
6 litigation, and we haven't seen too many additional  
7 motions to remand.

8 So we think we've got enough of a body to  
9 create a precedential type of line of rulings and we're  
10 working on that now that some other things have been  
11 put out of the way.

12 So if you can tell him that the judge is  
13 really interested in what he's going to be doing,  
14 either way is fine with us, except that we need to know  
15 because we have plenty of other matters that we can  
16 attend to besides those.

17 MR. BLIZZARD: I'll pass that along, Your  
18 Honor.

19 THE COURT: Thank you, Mr. Blizzard.

20 MR. CHEFFO: That's all I have, Your Honor.  
21 Thank you very much.

22 THE COURT: Thank you, Mr. Cheffo. All  
23 right. I don't think there's anything different to  
24 report in the anticipated volume. You said 335  
25 individual families?



1 MR. CHEFFO: Yes, Your honor.

2 THE COURT: I think Mr. Aylstock's state  
3 coordination report said 336, so you're really close,  
4 and maybe we can hear from you now, Mr. Aylstock.

5 MR. AYLSTOCK: Thank you, Your Honor. You  
6 should have the report number six that I submitted Your  
7 Honor --

8 THE COURT: I do.

9 MR. AYLSTOCK: -- dated March 29th, and I'll  
10 be brief as well. The only things to report that are  
11 different from the prior report relate to a hearing  
12 that's now been set in the California litigation by  
13 Judge Tigar.

14 Those cases were filed, 12 cases, member  
15 families, were filed in San Francisco County late last  
16 year, and Judge Tigar has set a hearing for June 20th  
17 on the motion to remand and motion to stay pending  
18 transfer to this court.

19 There has also been some correspondence sent  
20 to Judge Young, which you were copied on. He had  
21 expressed on February 27th in an order the desire for  
22 coordination so we sent him a letter just letting him  
23 know of the resources available here. He has a status  
24 conference set on May 6th.

25 We have completed the website that was talked

1 about at the last hearing, Itssooftend1.com working  
2 with the defendants to make sure everything on there is  
3 accurate and up-to-date, and it does have the  
4 transcripts, the approved orders, Mr. Chirls' opinions,  
5 and we hope to keep that as accurate and up-to-date as  
6 humanly possible.

7 THE COURT: And can you tell me, please, how  
8 matters get posted on that? Who is in control or in  
9 charge of that?

10 MR. AYLSTOCK: That's my firm's IT department  
11 set up that website, and in coordination with the  
12 leadership and Mr. Cheffo, we make sure everything is  
13 accurate before it gets posted on that website, but my  
14 firm is administering it.

15 THE COURT: That's not an interactive  
16 website, not yet, right?

17 MR. AYLSTOCK: Not yet.

18 THE COURT: There can't be a Q and A yet?

19 MR. AYLSTOCK: Not yet.

20 THE COURT: Okay.

21 MR. AYLSTOCK: But, we can certainly add that  
22 and I think it's a nice adjunct to the Court's website  
23 because we can sometimes move a little quicker and put  
24 things up even before if we have agreement.

25 THE COURT: I think that's accurate which is

1 one of the reasons why I was suggesting it, and I  
2 really think that this is going to be helpful in many  
3 ways. Thank you.

4 MR. AYLSTOCK: Thank you, Judge.

5 THE COURT: Thank you for doing that.

6 MR. AYLSTOCK: You're welcome.

7 THE COURT: All right. Then I am going to  
8 ask Mr. Chirls if he would like to address this  
9 assemblage and give us some recommendations as to  
10 future thoughts and plans.

11 MR. CHIRLS: Thank you, Your Honor. You've  
12 heard from the parties on the progress of their  
13 discussions since my appointment. On two occasions  
14 they've met in my office and I came in at the end and  
15 spent considerable time both times.

16 But, my assessment is similar to what you've  
17 heard, that they've been collegial, cooperative,  
18 business-like and productive. Whether that's because  
19 I've not been invited to the larger parts of the  
20 meeting, I don't know.

21 They have talked about deadlines, and I have  
22 tried to assess from my point of view whether moving  
23 the deadlines that have been proposed to be moved will  
24 result in other delays later, which would be more  
25 deleterious to the function of the MDL.

1 I think that if the parties proceed as they  
2 have in the business-like and productive manner, that  
3 we'll still be able to hold to those later deadlines,  
4 so that's why I've made my recommendation.

5 I have made myself available, and they've  
6 previewed the possibility that I will have to be  
7 available to deal with the expanded plaintiffs' fact  
8 sheets.

9 I have read considerable amounts of the  
10 discovery that have been exchanged so far. I have not  
11 looked at the 330,000 document and don't plan to that  
12 were produced this week.

13 But I have been up-to-date on what's  
14 happening, so I look forward to being available and to  
15 intervening when I see that it might be necessary, and  
16 I will do that. Thank you, Your Honor.

17 THE COURT: Thank you very much. We welcome  
18 your intervention at all points whether asked or not.  
19 I don't really have another matter to discuss today.  
20 We're happy to provide a forum for all of you to meet  
21 and confer, and continue to do your good work. I'm  
22 very impressed with everyone who continues to show the  
23 kind of professionalism that I expect and am used to  
24 working with all of you.

25 Was there anything else that you needed to

1 bring to the Court's attention from any source?

2 Why are you smiling, Mr. Corr?

3 MR. CORR: Nothing.

4 COUNSEL: It wasn't me, it wasn't me.

5 THE COURT: I have no idea what's going on  
6 out there.

7 MS. NAST: You don't want to know.

8 MR. CORR: They're going to have to sit  
9 somebody between the two us, I think.

10 MS. NAST: I don't know if Your Honor wants  
11 to set another meeting date, perhaps in late May or  
12 just a small group, or postpone setting that date until  
13 we see where we are.

14 THE COURT: I think that I have learned  
15 enough not to try to schedule from this bench even  
16 though I brought my calendar in with me.

17 I thought that if would be best, since this  
18 was the last scheduled meeting, that you could work up  
19 another schedule. It seems to me that the reasons that  
20 we get together are complimented by the work that you  
21 all do while you're together, and I would like to  
22 continue to provide that. It may not be necessary that  
23 we have an on-the-record discussion every single month.

24 We have been in the throes of initial  
25 litigation and you are well on your way to selecting

1 your cases and then your work is not in court, it is on  
2 those cases, it's on discovery specific, and general in  
3 terms of science. So we know that all the work can't  
4 be here in court.

5 So I would suggest that late May is perfect,  
6 maybe for a conference with the Court and Mr. Chirls,  
7 and the leadership, as well as others who may have  
8 issues, we can do that, or we can do it in court, it  
9 doesn't matter to me. But I'm suggesting that maybe if  
10 you're going to continue to do this every month, we  
11 alternate that.

12 I don't always have court availability, but,  
13 you know, I make time for you. And, yet, you can also  
14 slip it to 45 days. I'll tell you right now, August is  
15 a blur, nobody is going to be available so let's not  
16 schedule anything for August, and do May and July and  
17 September, and hopefully we'll get back on track and  
18 see if we can keep up with you, because I think you're  
19 forging ahead. I see a speedy schedule all of a  
20 sudden, and I wasn't sure when that would happen, but I  
21 see it and I'm very happy about it. So maybe we can  
22 make some progress here.

23 So if you would work on some schedules, look  
24 for that last week of May after Memorial Day and not  
25 the week before. I think that would be best.

1 All right. Is there anything else from  
2 anyone? I appreciate all of your efforts, even though  
3 you don't get to stand up and talk every time you're  
4 here, I know you're working, I do. Thank you. It was  
5 nice to see you.

6 (Proceedings concluded at 10:23 a.m.)

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CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

4/3/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeff Nathanson