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1 (The following was heard in open court at  
2 10:14 a.m.)

3 THE COURT: Good morning, everybody.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. I am glad the  
6 courtroom is cooler than the other side of the  
7 building. It's not actually too bad in here, so I can  
8 stay here a very long time today. What time are your  
9 flights?

10 All right. I have received a number of  
11 suggested orders and I will deal with them in a moment.  
12 I also have received a joint proposed agenda from the  
13 parties, thank you, and we are going to take up those  
14 matters in turn.

15 I would like to start, however, with first --  
16 because, I think there is an importance to this  
17 particular start and my choice with the state review  
18 from Mr. Aylstock, who has given us a report, and then  
19 I would like to have a report from our special  
20 discovery master, Mr. Chirls, and then we will see  
21 what's left.

22 Because, I did schedule oral argument on a  
23 number of contested issues and I think I see now that I  
24 have had a chance to review what was just submitted  
25 this morning that most of those issues have been

1 resolved.

2 But, I have some questions and I have some  
3 lingering concerns about ongoing process and I would  
4 like to give you my thoughts on how to head them off  
5 before there is a bigger problem.

6 So, I will turn first to you, Mr. Aylstock.

7 MR. AYLSTOCK: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. AYLSTOCK: You should have the  
10 multi-district coordinator report number seven.

11 THE COURT: I do.

12 MR. AYLSTOCK: And there have been some  
13 significant developments since the last report. I will  
14 go through, hit the highlights in turn. First of all,  
15 in California, as the report noted, there were seven  
16 additional cases filed.

17 It is now my understanding as of this morning  
18 that those cases are going to be dismissed out of that  
19 litigation, at least at this point. So, the California  
20 section of that report pretty much stayed the same from  
21 the last report after those cases were dismissed.

22 THE COURT: Do you happen to know the genesis  
23 of the dismissals?

24 MR. AYLSTOCK: I believe that the dismissals  
25 related to an agreement to toll those cases and kind of

1 hold them in advance while the MDL continues to plow  
2 forward with discovery and tort trial.

3 THE COURT: All right.

4 MR. AYLSTOCK: There is also a developing  
5 issue as of, I think there was a hearing yesterday, in  
6 the Plumbley (ph) efficacy class action case. As the  
7 Court may remember this was the case that was before  
8 the judicial panel on multi-district litigation and  
9 they had made the determination not to coordinate that  
10 case with these personal injury cases.

11 THE COURT: Yes, I received that notice from  
12 the MDL panel in June. June 11th, as a matter of fact.

13 MR. AYLSTOCK: And in that case I believe  
14 there was a hearing yesterday. I was not a participant  
15 in that hearing and the question came up about whether  
16 the discovery in that should be fully coordinated, and  
17 I have a little bit of detail, simply that the judge  
18 had indicated because the issues, of course, are  
19 different than a personal injury issue that there may  
20 be some overlap, but I think that she is going to  
21 proceed with her -- that individual judge will proceed  
22 with her own scheduling.

23 THE COURT: And that individual judge is  
24 whom?

25 MS. ARMSTRONG: Judge Koh, Your Honor.

1 MR. CHEFFO: Lucy Koh, K-O-H.

2 THE COURT: The patent judge, right?

3 MR. CHEFFO: I think she was the judge who  
4 had the Apple Samsung case, Your Honor, that's right.

5 THE COURT: Okay.

6 MR. AYLSTOCK: In Illinois, Your Honor, there  
7 is a few changes there, the Ratliff (ph) case was  
8 removed recently. It is before Judge Herndon on a  
9 motion to remand, I believe, and that's been filed. No  
10 ruling yet on that case.

11 There is another group of cases in Illinois,  
12 the Wilson group, and some of those cases have been  
13 dismissed. The Seville (ph) case was in that group and  
14 that case was dismissed and refiled here as part of an  
15 agreement to move forward on that case as one of the  
16 plaintiffs' trial picks here.

17 There is a couple of cases still pending  
18 there. My understanding is that there are different  
19 lawyers involved in those cases and will continue to  
20 work about whether or not those cases can continue in  
21 Illinois, or also perhaps be dismissed and refiled  
22 here.

23 THE COURT: All right.

24 MR. AYLSTOCK: In New York there is three  
25 additional cases that have been filed. They continue

1 before Judge Huff and those cases are the Rookside  
2 (ph) case and the Wolcott (ph) case, and as you know  
3 we've been able to coordinate with Justice Huff on  
4 those cases.

5 There is another case pending in Richmond  
6 County, the Guzzo (ph) case, that has not yet been  
7 assigned, but when it is assigned I will reach out and  
8 make sure the judge is aware of what's going on in this  
9 court.

10 THE COURT: You just said Illinois. I don't  
11 see those cases on your report. This is in addition?

12 MR. AYLSTOCK: I may have misspoke. New  
13 York, I have moved to New York.

14 THE COURT: Okay.

15 MR. AYLSTOCK: In Pennsylvania there is a  
16 development. Judge Moss had a hearing on June 17th and  
17 set up a trial in that case. There is only one case  
18 pending in Pennsylvania State Court, and that's April  
19 7th, 2014 is her trial date.

20 Then, finally in -- that's the Robinson case,  
21 Your Honor. Finally, in West Virginia the Fourth  
22 Circuit ruled on the appeal of the remand order by  
23 local federal district judge there remanding those West  
24 Virginia cases and dismissed the appeal for lack of  
25 jurisdiction, and my understanding is Sandra Day

1 O'Connor sat on that panel. So, I always find that  
2 interesting, and that's my report.

3 THE COURT: Thank you. Would counsel from  
4 the plaintiffs' steering committee like to add or  
5 clarify anything to the report?

6 MS. NAST: No, Your Honor. I don't know if  
7 Mr. Cheffo --

8 MR. CHEFFO: I had a few additional comments,  
9 I think, Your Honor.

10 THE COURT: Yes, please.

11 MR. CHEFFO: Thanks, Bryan. I think largely  
12 what Bryan said, if not completely, was accurate and I  
13 think, you know, we have been coordinating on these  
14 presentations to Your Honor to the extent that we can  
15 and help with some information.

16 I do want to add a few just clarifying  
17 points. So, with respect to Mr. Peavy's cases, you  
18 will recall that we had somewhat of an agreement.

19 There was one of the 12 plaintiffs discovery  
20 pool picks which was a case that not only had not been  
21 served, I don't think had been filed. The case, they  
22 put it as a discovery pool case.

23 We ultimately talked about saying it didn't  
24 make a lot of sense to have someone who wasn't part of  
25 the MDL have a case, and I think as a result of that



1 agreement my understanding was Mr. Peavy was going to  
2 withdraw his remand motions, which I understand he  
3 hasn't done yet, but is going to do, and then was going  
4 to dismiss the cases of which he was involved in state  
5 court and refile.

6           There may be, I think, some discussions that  
7 need to be had about which cases he is involved in and  
8 which cases he hasn't, but I do understand that some of  
9 the cases have been dismissed and refiled. So, I think  
10 we are moving in the right direction there.

11           I also just want to talk briefly about the  
12 Robinson case and then talk about the Plumbley case for  
13 a few minutes. The Robinson case, I think, again,  
14 Bryan accurately described where we are. I would just  
15 add that it is an out of state plaintiff and, you know,  
16 my understanding and expectation is if a 409 motion  
17 will not be made it will certainly be explored and  
18 raised, so that may or may not impact the ultimate  
19 schedules if the case stays in the PCCP. So, I just  
20 wanted to at least alert the Court that that was  
21 something that the defendants --

22           THE COURT: Have any motions been filed along  
23 those lines in the court of common pleas?

24           MR. CHEFFO: There was. That case had  
25 somewhat of a tortured procedural history. It was one

1 of the early filed cases. It was removed. It was then  
2 remanded before there was an MDL petition. There was  
3 an early 409 motion filed, my understanding of it was  
4 that it was essentially rejected on technical grounds  
5 of format filing issues.

6 So, I think that's one issue, and I do  
7 believe that there has been some additional rulings in  
8 the PCCP that we, at least, believe. So, I don't want  
9 to argue one-sided that we believe would implicate the  
10 409 analysis today that might not have, you know, six  
11 or nine months ago when that motion was made.

12 THE COURT: Well, I find it very interesting  
13 that the various jurisdictions, and there aren't really  
14 more than a handful here around the country, of state  
15 courts that have one case or a small collection of  
16 cases are more easily able to move their cases along  
17 than a larger MDL, although I thought that we were  
18 setting up streamlined procedures to facilitate that  
19 and coordinate, and yet we can't expect any state court  
20 jurisdiction to hold back.

21 If they have one case and they want to get it  
22 off their dockets they are going to do it, and they  
23 should. So, I suggest that as everyone is looking at  
24 rules, and implementation, and following the rules that  
25 you've all agreed to at this point, that perhaps it

1 would be well to keep in mind that we are supposed to  
2 be leading the discovery.

3 I am going to go out on a limb here and  
4 predict that if we don't move a little faster in the  
5 course of discovery and selection of cases and get the  
6 trial dates that we have already put in place, good  
7 ones, solid ones, we are going to be the tail that's  
8 wagging or trying to wag this dog, and I don't think  
9 anybody wants to be there.

10 MR. CHEFFO: I think that's absolutely right,  
11 Your Honor, and I would say just in terms of both  
12 Robinson and the other cases, and again I think this is  
13 consistent with Mr. Aylstock's report, there has been  
14 no discovery in the Robinson, I mean really nothing  
15 has happened and I think to a large extent certainly  
16 the state courts as you have indicated have their own  
17 independent determinations, rules, calendars.

18 THE COURT: They do.

19 MR. CHEFFO: But, I think it is fair to say  
20 that the discovery that's being done here really is  
21 leading in the state court cases. In other words, for  
22 West Virginia for example we are working very closely  
23 with the lawyers there and they are getting everything  
24 at the same time, and they, you know, we are  
25 cross-noticing the depositions and I think they are

1 actively participating.

2 So, I think the Robinson case may be a bit of  
3 an anomaly --

4 THE COURT: An anomaly?

5 MR. CHEFFO: -- at this point.

6 THE COURT: Well, I -- let's not pick out  
7 that case or that jurisdiction. Talk about then, the  
8 status of the case that Judge Clark has, her one case  
9 in Onida County in New York. When we talked, Judge  
10 Clark and I, she said that she was willing to  
11 coordinate. Is there the same type of cross-noticing  
12 up there, is discovery ongoing?

13 MR. CHEFFO: Yes, I think to my knowledge,  
14 and Katherine can tell me if I am missing something  
15 around the country. To my knowledge, really everybody  
16 is coordinating quite well and there may be a footnote  
17 on the Plumbley case that I will talk about in a  
18 second.

19 But, in terms of all of the other cases, you  
20 know, so let me say this. I think we all -- I probably  
21 speak for the plaintiffs in this room, we recognize  
22 very clearly, and we said this from the beginning, that  
23 if we are going to expect or ask the state courts to  
24 coordinate we do need to lead, we do need to have  
25 schedules, and we do, and I think you will hear from

1 Mr. Chirls that we spent the better part of yesterday  
2 working on dates and discovery, so we are very mindful  
3 of that.

4 And as a general matter, I do think that the  
5 state courts -- I haven't heard, frankly, a lot of  
6 grouching from the lawyers or the judges that we are not  
7 kind of doing what we think we should be doing. So, in  
8 that regard --

9 THE COURT: But, keep in mind, and I am not  
10 just talking to you, Mr. Cheffo, on behalf of the  
11 defense, this is to everyone. When a court has one  
12 case it can be made ready for trial very quickly. I  
13 have been there, I understand it.

14 When I have a case on my docket that is a  
15 single case I put very definite dates on it and they  
16 don't move too much without good cause. Then, if they  
17 are not ready they get -- there better be a good reason  
18 for a continuance.

19 I don't ever rely on a state court holding  
20 back. They shouldn't have to, and I don't ever rely on  
21 this particular matter not taking precedence over  
22 another particular matter in our daily civil logs, and  
23 believe me, we federal courts and judges have many,  
24 many, many civil cases that we are juggling care  
25 management orders and schedules.

1           What I continue to see, again I am not just  
2 talking to the defense, is not a growing body of cases  
3 in the state, but because many of the cases have been  
4 filed here and the interest by most counsel, and I  
5 welcome this, is filed in the MDL, those few cases that  
6 remain can speed.

7           If we are going to determine true issues of  
8 science, of liability, and then of damages I would hope  
9 that we be just speeding along. It is time to speed.  
10 We have had a lot of time to get whatever cases there  
11 are gathered and identified, and now it is time to  
12 select and work, work on the cases, and I am anxious to  
13 get into it. So, I will have some other suggestions  
14 that I will reveal in a minute.

15           MR. CHEFFO: Okay.

16           THE COURT: But, this is an interesting  
17 situation to me, because it is not typical. Let me  
18 take a moment. Are we trying to get the callers on the  
19 line?

20           COURTROOM DEPUTY: Yes, apparently there is a  
21 gentleman, Mr. Tracey is having trouble hearing. They  
22 called us a second time. I am not sure.

23           THE COURT: It's probably his phone. Well,  
24 we will put the sound up as much as we can.

25           COURTROOM DEPUTY: Mr. Tracey?

1 THE COURT: Did he hear anything?

2 COURTROOM DEPUTY: Maybe you're in a bad  
3 place for reception, because everything is clear over  
4 here. You might want to go to another room. Yes, no  
5 one has called in, so it might be the reception. No,  
6 there he goes, the microphone.

7 (Pause in proceedings.)

8 THE COURT: But, we're not chatting yet.

9 COURTROOM DEPUTY: Well, let's try it again.

10 MR. TRACEY: Okay.

11 THE COURT: We hear you, Sean.

12 MR. CHEFFO: All set?

13 THE COURT: I guess, so. We will see. Back  
14 to you, Mark.

15 MR. CHEFFO: No, that's okay, Your Honor, I  
16 was just going to give you a report on the Plumbley  
17 case if that's okay.

18 THE COURT: Please.

19 MR. CHEFFO: And just saying I think your  
20 message is heard loud and clear, certainly at this  
21 podium, and I am sure for the rest of the room as well.  
22 So, with the Plumbley case, Your Honor correctly stated  
23 it was a class action.

24 We sought to have it transferred to this  
25 Court, the MDL panel determined not to transfer it to

1 the MDL and it was filed in the Northern District of  
2 California and it is before Judge Koh.

3 There is, as I understand it, two lead  
4 lawyers in the case, two lead firms, one is the Baum  
5 Hedlund firm and the other is Chris Coffin, who was  
6 actually at the CMC yesterday in California.

7 And this may be one that while I think we all  
8 agree that it is not completely coordinated, no one is  
9 suggesting that the claims are completely overlapping,  
10 you know. I think it would also be not true to say  
11 that there is no synergies of discovery, particularly  
12 when you are doing the 30(b)(6) type depositions.

13 What I think troubled us was -- and I heard  
14 this secondhand, but albeit from one of my partners who  
15 was there, that Mr. Coffin and others not only said  
16 that they didn't have notice of 30(b)(6)s and objected  
17 to the timing, which I found kind of odd considering he  
18 is on the PSC, and how he wouldn't have notice, but  
19 really objected to cross-noticing or really doing any  
20 type of coordinated discovery.

21 So, that may be something that I think we  
22 need to address, and perhaps I know Your Honor has been  
23 very diligent about contacting the courts and at least,  
24 you know, offering to coordinate where possible, and I  
25 didn't sense in any regard that Judge Koh wasn't open



1 to that.

2 I think that her view was probably not  
3 unexpected of any court which is, you know, here is the  
4 case before me, to the extent that there is  
5 coordination, you know, it can and should happen and I  
6 am going to set my schedules.

7 But, I think that the real issue for us was,  
8 it was again somewhat surprising, particularly on the  
9 timing or notice issues to having a PSC member saying,  
10 you know, I didn't have adequate notice of a 30(b)(6)  
11 in a case of which I am on the PSC.

12 I also think it does create a potential issue  
13 here of, you know, while there may be some case  
14 specific issues certainly that neither case should hold  
15 each other up.

16 When you are doing, you know, some of the  
17 depositions we are taking, have taken are basically the  
18 who, what, when, where type depositions of, you know,  
19 from pharmica vigilants and things like that that are  
20 important for the plaintiffs to understand structure.

21 So, I don't want to get too much into the  
22 weeds. I just wanted to highlight it because it  
23 happened yesterday. It was frankly somewhat surprising  
24 to me to hear that report.

25 THE COURT: Well, as I -- wow, I got loud all

1 of a sudden. Can you hear me, Sean? I guess he is not  
2 -- maybe he is on mute. The order denying transfer  
3 stated its reasons why it didn't send Plumbley to the  
4 MDL, and maybe you don't agree with this description,  
5 but the panel said that Plumbley alleges that she was  
6 not adequately informed of Zoloft's side effects and  
7 her claims focus on its effectiveness, but she does not  
8 allege that she was pregnant when she ingested Zoloft,  
9 nor does she seek to represent women in that potential  
10 class who ingested Zoloft while pregnant, which is the  
11 factual core of this MDL.

12 MR. CHEFFO: Sure, and I --

13 THE COURT: So, how much overlap do you think  
14 needs to be coordinated here?

15 MR. CHEFFO: Well, you know, that's just one  
16 example. So, if -- if the question -- and putting  
17 aside whether I agree with that characterization or  
18 not, let's take it at its face value.

19 THE COURT: Or just deal with it because it  
20 is the ruling.

21 MR. CHEFFO: Exactly, absolutely. But, to  
22 the extent that we are talking about warnings as to  
23 kind of efficacy or safety, if you are in this  
24 litigation having a 30(b)(6) deposition of who is the  
25 members of the team who dealt with safety issues over

1 the course, you know, it was a market product for 20  
2 years, a person is going to say well, between 1993 and  
3 1997 it was this person, and how did you maintain your  
4 documents and your database, well here is how we did  
5 it, and how did you store them, you know, those types  
6 of questions which enable folks to then make discovery  
7 requests, which is why I think the good lawyers who are  
8 in this room are doing those types of depositions.

9 So, admittedly, if we are dealing with  
10 something that's very specific to pregnancy issues or  
11 teratogenicity and their claim is they have nothing to  
12 do with that, then absolutely, we are not trying to  
13 shoehorn these kinds of claims.

14 But, we do think where it makes sense, where  
15 we don't have to subject another witness to a kind of a  
16 basic discovery request for a deposition.

17 THE COURT: I understand what you are saying  
18 and I think that there is a certain limit, however, to  
19 how much you can coordinate on those and that is  
20 probably limited to the labeling and what went into it.  
21 But, our MDL is clearly about women who ingested,  
22 allegedly, Zoloft while they were pregnant.

23 MR. CHEFFO: I agree.

24 THE COURT: And its alleged after effects.  
25 And I don't see us spinning our wheels and bending over

1 backwards to try to, what you said, shoehorn  
2 jurisdictions into coordination in those very  
3 differently defined lawsuits.

4 That is why that is not here. That class  
5 doesn't belong here, I agree with the MDL panel and I  
6 don't want to see us held up because of it.

7 MR. CHEFFO: Sure.

8 THE COURT: But I also think there has to be  
9 ongoing coordination and it ought to be easier with the  
10 attorneys who are part of both. It ought to be easier  
11 to communicate and coordinate if necessary and I'll be  
12 happy to talk to Judge Koh as long as I'm clear and I  
13 agree that there is a particular deposition or two or  
14 three that have been noticed that you think should be  
15 coordinated. But we will have to hash that out here  
16 and make sure we all agree on that.

17 MR. CHEFFO: Sure.

18 THE COURT: Because I do see that there could  
19 be great disagreement on that, and I don't want to put  
20 another Court in a position where they are held up  
21 either.

22 MR. CHEFFO: I think that is exactly where we  
23 are, Your Honor, and you know, it is vice-versa, so if  
24 there are things that are happening there that don't  
25 apply here. So we are not suggesting that these are

1 coordinate litigations, we are just saying where it  
2 makes we just want to coordinate.

3 THE COURT: Where it makes sense, I agree  
4 with you.

5 MR. CHEFFO: That is all I have, thank you,  
6 Your Honor.

7 THE COURT: Thank you. And is there anything  
8 more from you, Mr. Aylstock?

9 MR. AYLSTOCK: No, Your Honor. I will say  
10 just that I think you hit the nail on the head. We  
11 have coordinated I think very well up until this point,  
12 but I think your points are well taken that we need  
13 to -- if we don't move quickly the -- that will create  
14 a large issue.

15 THE COURT: If there is no more coordination.

16 MR. AYLSTOCK: Exactly. So we hear you loud  
17 and clear.

18 THE COURT: Okay. Good. Thank you. And  
19 would the plaintiffs like to add anything on this note?

20 MS. NAST: No, Your Honor.

21 THE COURT: All right. Thank you. Then  
22 let's turn to a report from our special discovery  
23 master. Mr. Chirls? And congratulations on your move  
24 to Fineman, Krekstein & Harris.

25 MR. CHIRLS: Thank you.

1 THE COURT: And further congratulations again  
2 on the birth of your daughter.

3 MR. CHIRLS: Thank you very much, Your Honor.  
4 I met with the parties yesterday and have the following  
5 to report both on yesterday's meeting and on the  
6 general progress of the matter.

7 First of all, there are two items on Your  
8 Honor's agenda that you can cross off I believe. One  
9 is the common benefit order, and the parties have  
10 reached agreement on what it should be.

11 Working with them we improved on some of the  
12 administrative experiences we have from the Avandia  
13 case to help the fund be administered more simply and  
14 cheaply, and the parties had some issues about what  
15 would be included or not and how the amount would be  
16 calculated and they have resolved those. So, the  
17 parties are presenting the common benefit order to the  
18 Court and I think it is a good approach.

19 Similarly, the deposition protocol as to  
20 which there were several open issues when the Court  
21 last met with the parties has been resolved. My report  
22 and recommendation number two has been, in substance,  
23 incorporated into the issue into the provision dealing  
24 with interviews of physician health care providers, and  
25 the parties have reached agreement on some other

1 matters.

2           Some of which are based on my informal views  
3 of the matter and some of which are based on the  
4 additional negotiation, and so that deposition protocol  
5 appears to be finished and I understand they have  
6 presented it to Your Honor and all of it makes sense to  
7 me as a way to proceed.

8           THE COURT: All right. That makes your  
9 report and recommendation otherwise leaves it without  
10 objections?

11           MR. CHIRLS: Correct, Your Honor.

12           THE COURT: To be adopted upon, if I should  
13 agree with each and every term here of the proposed  
14 orders, adopted in full.

15           MR. CHIRLS: Good.

16           THE COURT: All right.

17           MR. CHIRLS: Thank you. We discussed quite a  
18 bit yesterday and that discussion was a continuation of  
19 much correspondence and earlier discussion. We  
20 discussed the pace of discovery which Your Honor has  
21 touched upon today. Concerns are expressed by both  
22 sides.

23           From the defense side there is some question  
24 about the plaintiffs' facts sheets and some of them not  
25 being completed. Some of that may be due to some

1 administrative issues related to the obtaining of  
2 medical records through a third party. Some of it may  
3 be related to other points.

4 The plaintiffs have discussed the need to  
5 speed up the getting of dates for depositions, 30(b)(6)  
6 depositions for the most part, and they have talked  
7 about their view of the pace of document production.  
8 It is always true that discovery could go faster, there  
9 is no limit to the -- there is no speed limit on it.

10 So, I don't want to say it could go faster,  
11 it doesn't mean anything. But the parties do agree  
12 that additional clearer communications between the two  
13 sides will speed up and perhaps simply discovery.

14 I have proposed and they have agreed that  
15 there should be regular meetings at which I facilitate  
16 and monitor those communications. We talked about  
17 whether they should be every week, every other week. I  
18 doubt that I can start it next week, but after that I  
19 am available every week and we will work on a schedule  
20 to make these regular and simple. We haven't decided  
21 whether it will be every week or every two weeks, but  
22 they will be regular.

23 Finally, there is the open issue that was  
24 before the Court at our last meeting which was the  
25 trial pool selection protocol and it would be doing an



1 injustice to just say it is about the words of a  
2 protocol.

3           The issue that the parties are facing that is  
4 embedded in the trial pool selection protocol is how  
5 many cases will be in the discovery pool, how many  
6 cases will be in the trial pool, how cases will be  
7 selected for the trial pool, and how many cases will be  
8 trial ready on a date.

9           Some of that controversy or disagreement  
10 arises from the de-designation or from the withdrawal  
11 of cases by the plaintiffs of cases that have been  
12 selected. So, that has given rise to a question of how  
13 big the pool should be and what should happen upon the  
14 withdrawal of cases.

15           I have not reached a resolution to the point  
16 where I had a recommendation to make on those points,  
17 and the parties have certainly not reached a resolution  
18 either.

19           THE COURT: Is there any resolution in any  
20 particular order that I may not have reviewed yet  
21 concerning the ex parte communications with certain  
22 witnesses?

23           MR. CHIRLS: The ex parte communications with  
24 the physicians is dealt with in report and  
25 recommendation number two, and that is embodied in the

1 deposition protocol.

2 THE COURT: All right.

3 MR. CHIRLS: In other words, my report and  
4 recommendation has been boiled down to a couple  
5 sentences which is one of the paragraphs in the  
6 deposition protocol.

7 THE COURT: Okay. I would like to review  
8 that in particular, because that was a source of  
9 contention that I thought I would have to deal with  
10 today by oral argument and I'm afraid I'm not seeing  
11 it. Could somebody point me to the paragraph?

12 MS. NAST: Yes, Your Honor. It is -- it is  
13 II(b) paragraph four.

14 THE COURT: Oh II. Okay.

15 MS. NAST: Unfortunately, somehow we did  
16 not -- with two mark-ups we did not manage to paginate  
17 this document.

18 MR. CHIRLS: It appears to be the fifth page.

19 THE COURT: Okay. I see paragraph sub four  
20 ex parte communications with treating or prescribing  
21 health care providers. It provides for disclosure of  
22 that contact. And that the contact will be governed by  
23 the jurisdictional and relevant law --

24 MR. CHIRLS: Correct.

25 THE COURT: -- in which the health care

1 provider resides and that is what you had suggested.

2 MR. CHIRLS: Correct. I suggested that it  
3 would speed up the depositions if documents given by an  
4 interviewing party be given to the others at some point  
5 after the interview, but before the deposition.

6 THE COURT: I'm satisfied with that. I don't  
7 think we need oral argument. If that is what the  
8 parties have agreed, that makes imminent sense to this  
9 Court.

10 MR. CHIRLS: Good.

11 THE COURT: Thank you.

12 MR. CHIRLS: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 MR. CHIRLS: Unless there are other  
15 questions, that is my report.

16 THE COURT: Not at the moment.

17 MR. CHIRLS: Thank you very much.

18 THE COURT: Thank you. Is there anything in  
19 addition, Mr. Corr?

20 MR. CORR: I just want to address a couple of  
21 things on the fact sheets, Your Honor.

22 THE COURT: Yes.

23 MR. CORR: Your Honor, yesterday we talked a  
24 lot about these fact sheets and what the defendants  
25 had, and we had their request through the PSC that fact

1 sheets when they were served on the defendants would --  
2 also a copy would be sent to the PSC.

3 We have received a good number of them, we  
4 did get the statistics yesterday. We know that we are,  
5 the PSC is short. So we haven't got everything that we  
6 know the defendants have.

7 In our conversations yesterday -- so, in  
8 other words --

9 THE COURT: What does PSC is short mean?

10 MR. CORR: We are short the number of  
11 plaintiff fact sheets that we think we should have.

12 THE COURT: Okay.

13 MR. CORR: So in other words, some plaintiffs  
14 when they have served a fact sheet, one of the  
15 defendants have not provided a copy to the PSC.

16 THE COURT: Okay.

17 MR. CORR: So, yesterday we were told that  
18 there were 34 plaintiff fact sheets that were overdue.  
19 I did get a list from the defendants yesterday and sent  
20 an e-mail out to all of those who had an overdue fact  
21 sheet and told them to get their fact sheets in. Also  
22 reminding them to provide a copy.

23 During our discussions yesterday we thought  
24 it might be helpful if Your Honor entered an order  
25 requiring the defendants to turn over whatever fact

1 sheets they have so that we make sure we are  
2 coordinated, plaintiffs and defendants, that we have  
3 all of them at the PSC, so that we know who to follow  
4 up, because we don't know when somebody has to send  
5 them over.

6 I think that was -- the defendants were  
7 uncomfortable just turning them over to us without a  
8 court order because they were turned over by the  
9 plaintiffs.

10 THE COURT: Well, it seems to me a matter of  
11 course, but what am I missing here, Mr. Cheffo?

12 MR. CHEFFO: This is not a controversial  
13 issue.

14 THE COURT: I don't think it is  
15 controversial.

16 MR. CHEFFO: I think the real issue is this  
17 and I generally agree with the way that it was  
18 characterized. What we talked about was that they  
19 weren't getting the fact sheets and you know, we  
20 actually have HIPAA concerns, right, about -- what I  
21 said to them is, you know, if they can get them, if an  
22 order is entered where when the plaintiffs send them to  
23 us they also send to the PSC, we have no objection. We  
24 just didn't feel comfortable sending people's  
25 confidential information to other lawyers and that was

1 our concern.

2 THE COURT: I gather that these plaintiffs'  
3 fact sheets are coming from attorneys who are not  
4 involved in the leadership of the PSC.

5 MR. CHEFFO: That is largely the ones that  
6 are --

7 THE COURT: But, yet they are bound to follow  
8 it, and isn't there a designation in one of the earlier  
9 pretrial orders and if not then there should be, that  
10 all of these documents will be treated with  
11 confidentiality pursuant to HIPAA and pursuant to the  
12 Court's direction, they are to be disclosed to the PSC  
13 for purposes of this litigation only.

14 MR. CORR: Yes, I believe that was in one of  
15 the earlier PTOs.

16 THE COURT: Or something to that effect?

17 MR. CORR: And we have tried to follow up  
18 with that. I mean, I have sent out about five e-mails  
19 to people saying that. But we now know that they have  
20 more than we have and I think for both of our purposes  
21 it would be nice that we all have the same ones so we  
22 know what we are talking about.

23 MR. CHEFFO: We actually kind of just figured  
24 this out. You know, we were sitting across the table  
25 yesterday and said oh we don't have anything. I said

1 oh, --

2 THE COURT: You have to, you know --

3 MR. CHEFFO: We do.

4 MR. CORR: Right.

5 MR. CHEFFO: So we are just trying to figure  
6 out a way, a mechanism if you direct us or if you think  
7 it is appropriate for us to give it, we are certainly  
8 happy to do that. Going forward it might also be  
9 easier just to say when the plaintiffs provide a fact  
10 sheet they also send it to Mr. Corr or somebody else.  
11 But whatever --

12 THE COURT: If it isn't already a pretrial  
13 order and I'll let you speak to this in a moment, Mr.  
14 Robinson, if it isn't already I think you ought to be  
15 working out some proposed order to that effect as a  
16 separate stand alone pretrial order.

17 My guess is that order or not, I would be  
18 entering a rule to show cause as to why they should not  
19 be turned over for purposes of litigation in this MDL  
20 and then give the plaintiffs in those cases an  
21 opportunity to say why or why not, because their case  
22 will just sit there otherwise.

23 But, they still have to, they are complying  
24 with the plaintiffs' fact sheets, so it is a question  
25 of I like misunderstanding on their counsel's part.

1 MR. CORR: I think that is probably accurate,  
2 so.

3 THE COURT: Yes.

4 MR. CORR: I don't -- I don't --

5 THE COURT: We may need an order to clarify  
6 it and to protect the dissemination even between the  
7 PSC and the defense so that there are no other  
8 repercussions. I mean, it is absolutely ridiculous,  
9 but I will do that.

10 MR. CORR: I think our feeling at this point  
11 was that there was enough of a discrepancy that it  
12 would be easier for them, for the defendants to just  
13 give us a disc with all of the ones they have.

14 THE COURT: Sure.

15 MR. CORR: That way we can match it up and  
16 then I can coordinate with them on a regular basis on  
17 what we have and what we don't have.

18 THE COURT: It is only easier if they are not  
19 subjecting themselves to a violation of HIPAA.

20 MR. CORR: Right.

21 THE COURT: And I am prepared to protect them  
22 in that regard for this purpose.

23 MR. CORR: Okay.

24 THE COURT: Mr. Robinson, did you want to  
25 speak to this?



1 MR. ROBINSON: Yes, could I speak to this,  
2 Your Honor?

3 THE COURT: Please.

4 MR. ROBINSON: Good morning, Your Honor.

5 THE COURT: Good morning. Mr. Corr, you can  
6 come back up with your other matters.

7 MR. CORR: That is all I had really.

8 THE COURT: All right. Thank you.

9 MR. ROBINSON: The only thing I wanted to add  
10 was this, Your Honor, was timing on plaintiffs'  
11 attorney committee getting the facts sheet. It may be  
12 important for the non-plaintiff -- I'm sorry, PSC  
13 lawyers.

14 Under one of their orders we provided our  
15 expert reports last night to the defense. So we sent  
16 them to them in a drop box. I think that starts a  
17 45-day period for others, maybe, who are not covered by  
18 the expert reports in the -- the PSC has submitted to  
19 defense.

20 For example, there may be other injuries, or  
21 other issues, or other defects that our experts didn't  
22 cover, and that under the Court's order these other  
23 people maybe who have cases out there that aren't part  
24 of the PSC, or maybe even the PSC members.

25 They need to get us their facts sheets, I

1 think, because we want to look and make sure that  
2 they're notified that they have this 40 -- actually  
3 today is now 44 days. So they have 44 days to actually  
4 file some sort of expert --

5 THE COURT: No. We are coordinating this  
6 discovery, Mr. Robinson, and I cannot have attorneys in  
7 individual cases, whether they are on the PSC or not,  
8 that is not the point.

9 The point is they have to give you the facts  
10 sheets, yes, so that you, as the MDL coordinators for  
11 the plaintiffs, can present your best issues.

12 MR. ROBINSON: Thank you.

13 THE COURT: And it is not going to be  
14 litigated individually.

15 MR. ROBINSON: Thank you.

16 THE COURT: I do not think anybody ever  
17 contemplated that. That will come if they do not do  
18 what they need to do now, but I did not think that the  
19 expert reports were supposed to cover everybody's case  
20 if those issues in those other cases were not clearly  
21 represented by the bulk of the medical and legal issues  
22 already in this case.

23 We are looking for the major issues. We are  
24 not looking for an individual issue that might turn the  
25 litigation sideways or -- what can I say here? The PSC

1 is the leader --

2 MR. ROBINSON: Thank you.

3 THE COURT: -- who decides.

4 MR. ROBINSON: Thank you, Your Honor. I  
5 appreciate it.

6 THE COURT: Okay. All right. I think now I  
7 would like to address the summary that the leadership  
8 would like to give me if it is other than what we have  
9 already talked about, although I still have specific  
10 issues that I would like to talk about in a moment.

11 MS. NAST: Thank you, Your Honor. We have  
12 covered a number of things, and just as a point of  
13 clarification, and this is the lawyers' fault not the  
14 Court's fault, in PTO-15 as amended by 20 and 23, it  
15 states the day that the plaintiffs' facts sheets have  
16 to be filed and served, or not filed but served, but it  
17 does not say that they should be sent to lead counsel.

18 So, it seems appropriate, perhaps, if it's  
19 all right with you if we submit an order providing for  
20 that, an agreed order?

21 THE COURT: I think so.

22 MS. NAST: Okay.

23 THE COURT: Yes.

24 MS. NAST: All right. Then moving -- I'm  
25 going to combine I and (a), and much of this has been

1 touched upon.

2 But it -- since we met with you at the end of  
3 May we've continued to schedule depositions. There are  
4 probably eight depositions scheduled at this point.  
5 Documents have continued to be produced and inspected.

6 Plaintiffs' have had quite a number of  
7 working meetings among themselves and have inundated  
8 Mr. Chirls with volumes of correspondence, so he has  
9 something to do in his spare time.

10 We've met with him several times and  
11 communicated with him many times on these issues. As  
12 Mr. Robinson mentioned, we served expert reports  
13 yesterday.

14 And I think that's, you know -- we've just  
15 been moving along. Unfortunately, haven't had to bring  
16 too many things to the Court. Mr. Chirls has resolved  
17 a number of items, as he mentioned. In terms of the  
18 volume of cases right now, there are 449 cases pending  
19 in this Court.

20 THE COURT: In the MDL, yes.

21 MS. NAST: In the MDL, yes.

22 THE COURT: Yes. I recently received a  
23 report from the MDL panel and I think the date on that  
24 was June 24th, so this is probably as of June 1st, and  
25 it had the total number of civil actions, 423. So that

1 is an increase from that.

2 MS. NAST: Right,

3 THE COURT: Which is expected because I have  
4 seen quite a few files this month.

5 MS. NAST: Okay. And we are talking about  
6 something that the plaintiffs have suggested and we're  
7 discussing with the defendants, we've discussed it with  
8 Mr. Chirls yesterday in an effort to kind of move  
9 things faster.

10 When we presented to the Court a proposal to  
11 have 25 cases that were discovered for trial selection  
12 purposes, at that point I think we had, for lack of a  
13 better word, our Avandia hats on, when we had thousands  
14 of cases, and so 25 didn't seem like a crazy number.

15 Now we have 450 cases and it seems to us that  
16 there is some validity to reducing the number from --  
17 of cases that are going to be discovered for purposes  
18 of picking trial cases, from 25 to something smaller.

19 And to kind of illustrate that, in each of  
20 those trial picked cases we figure that we'll be taking  
21 approximately eight depositions. That's what the order  
22 provides.

23 So if we have 25 that are being discovered  
24 for trial purposes, that's 200 depositions, which is a  
25 lot of depositions. We suggested moving it down to

1 eight and eight, eight plaintiffs, eight defendants,  
2 which would move the number of depositions from 200 to  
3 128 or some other number, but some number smaller than  
4 25 cases which would be fully discovered and from which  
5 we would pick the trial pool cases.

6 That is still being discussed. I don't know  
7 that it's met with the warmest reception yet, but we're  
8 working on it, and I know that Mr. Chirls is --

9 THE COURT: Is that --

10 MS. NAST: -- working on an issue as well.

11 THE COURT: That is an obvious benefit in  
12 terms of getting cases really prepped.

13 MS. NAST: Yes.

14 THE COURT: However, the other side of that  
15 coin is what are those cases, because the report that I  
16 got was that there were a lot of withdraws of cases  
17 once they were named, by both sides, and I am troubled  
18 by that maneuvering. That is all I see is maneuvering  
19 on that issue and I do not understand it because --

20 MS. NAST: Well --

21 THE COURT: -- we are never going to move  
22 forward.

23 MS. NAST: I can understand why Your Honor  
24 would have that perception. It may, however, not be  
25 quite accurate.

1           We're having trouble -- some of these cases  
2 are older, records have not been preserved by hospitals  
3 or by doctors for longer than seven years in many  
4 instances, and it's difficult in some instances, for  
5 example, to get firm proof of use.

6           Cases were filed maybe prematurely or maybe  
7 with the belief that there would be records based on  
8 what the plaintiff told the lawyer, but as it turns out  
9 when you dig down, and it takes months and months to  
10 get these records, when you dig down those records may  
11 not be there.

12           Another instance, genetic testing may show  
13 that there was a propensity in that particular family  
14 to have this kind of a problem. So my only point is is  
15 that there are legitimate reasons for at least some --

16           THE COURT: All right.

17           MS. NAST: -- and maybe the majority --

18           THE COURT: But we are not --

19           MS. NAST: -- to be discussed.

20           THE COURT: -- talking about cases that have  
21 not been filed already.

22           MS. NAST: Right.

23           THE COURT: And when you file a case and then  
24 you decide not to litigate it for those two reasons in  
25 particular, you are really saying I do not have a claim

1 here. I cannot prove a claim here.

2 MS. NAST: That may be,

3 THE COURT: I can't prove a claim here, and  
4 if that is the case, why is just removing it from the  
5 discovery pool the alternative, because then we are  
6 going to have a constant flow --

7 MS. NAST: Well, most of this --

8 THE COURT: -- of cases in and out of the  
9 discovery pool and worse yet, I am not going to allow  
10 those cases to be on a trial pool and just withdrawn.

11 You know, I have to get into maybe the  
12 selections here because I understand proof problems,  
13 and when you are dealing with very old records, it  
14 cannot be that old, you are dealing with minors for the  
15 most part. It cannot be that old.

16 MS. NAST: Some of them are -- we're finding  
17 seven years is a standard for keeping the records,  
18 which I was frankly surprised about, but -- and many of  
19 these cases are older than seven years.

20 But many of these cases, and Mr. Cheffo can  
21 correct me because I think he has better stats on this,  
22 but these cases are being dismissed. Not just  
23 withdrawn from the trial pool, but actually dismissed.

24 THE COURT: I am not actually aware of that  
25 because I do not know which cases they are.



1 MS. NAST: Right.

2 THE COURT: And maybe this Court would feel  
3 more confident if it understood that trail of activity  
4 because if the cases are named and then they start  
5 moving from the discovery pool to dismissal --

6 MS. NAST: Those are being --

7 THE COURT: -- I am going to need to know it.

8 MS. NAST: Mr. Cheffo confirms my thought  
9 that they are being dismissed, and I'm not saying  
10 there's no exception to that, but I think that's pretty  
11 much the solid rule, that they are dismissed.

12 THE COURT: But all the dismissals I signed  
13 were without prejudice.

14 MR. CHEFFO: That's the distinction, is  
15 they're being dismissed without prejudice.

16 THE COURT: So I do not see where we are  
17 going there. I need to have some --

18 MS. NAST: Well, I think in fairness --

19 THE COURT: -- clarity because --

20 MS. NAST: -- to these plaintiffs they're  
21 being dismissed without prejudice because at this point  
22 in time we have proof issues, but it may be that there  
23 will come a time when they can get records, maybe from  
24 an insurance company, or an out of business, you know,  
25 doctor who sold his practice.

1           And these are minors and to outright dismiss  
2 their case without really turning every rock to see if  
3 you can get those records seems not fair either.

4           THE COURT: I understand that, but this would  
5 be a very appropriate time in the litigation of the MDL  
6 to have standards espoused by the PSC as to claims that  
7 are ready to be filed for a complaint, because we have  
8 to move cases and we have to let you select yours, let  
9 the defense select theirs, and then somehow get the  
10 best cases most representative prepared for trial.  
11 This is what we do.

12           MS. NAST: Understood.

13           THE COURT: And the constant movement is not  
14 going to get there, and these cases will be tried  
15 everywhere else because there won't be that movement.  
16 They will be tried or they will be dismissed with  
17 prejudice.

18           MS. NAST: Right.

19           THE COURT: So if we are going to help  
20 anybody in the state and the federal system, and any of  
21 your clients, we are going to have to have real cases  
22 discovered and set for trial.

23           MS. NAST: And the 12 cases that plaintiffs'  
24 picked, we were very careful. I'm not saying Mr.  
25 Cheffo wasn't, I'm sure he was as careful as he could

1 be with the information he had available to him,

2 But the 12 cases that we picked, not one of  
3 them has been dismissed, and maybe it's because we had  
4 better access to the clients and, you know, better  
5 information.

6 THE COURT: Because they were prepared.

7 MS. NAST: In terms of, you know, screening  
8 the cases that get filed -- that are filed, that is a  
9 little bit more difficult because it's very hard to go  
10 out to a plaintiff -- to a lawyer that you don't even  
11 know and say, you know, we have to screen your case  
12 before you can file it. That's very hard to do.

13 THE COURT: No, I do not suggest --

14 MS. NAST: Yeah.

15 THE COURT: -- that you have any control over  
16 that and neither does the Court.

17 MS. NAST: Right.

18 THE COURT: We know in the federal court  
19 system anyone can file anything at anytime --

20 MS. NAST: Right.

21 THE COURT: -- and then we deal with it.  
22 That is the openness of our courts and I hope that  
23 never changes.

24 But we, in selecting cases for discovery and  
25 for trial, need to have the most representative, and

1 that means --

2 MS. NAST: We understand that concern.

3 THE COURT: -- documented, and you know that.

4 So, do you have a suggestion as to how we can cull  
5 through this and --

6 MS. NAST: Well, one of our suggestions,  
7 which we haven't been successful on selling yet was  
8 that we reduce the number of cases from -- Mr. Cheffo  
9 has 13 picks now, and our thought was if we reduced --  
10 we know we have a solid group of cases picked in the  
11 defense pool.

12 It's not 13 at this point. And that by  
13 reducing the numbers there would be pairing on both  
14 sides. We would have firm trial picks of a smaller  
15 number, be it eight, be it six, be it ten, whatever  
16 those numbers might be would help to solve this concern  
17 and also save a ton of time and money, client money on  
18 taking all these depositions.

19 But, I mean, we're aware of this concern and  
20 fully appreciate it. We aren't pleased when a case has  
21 to be dismissed and we understand Mr. Cheffo's  
22 frustration with that. It's a scenario that is  
23 repeated in case after case, but it certainly isn't  
24 ideal.

25 THE COURT: No.

1 MS. NAST: We understand that.

2 THE COURT: In any product liability  
3 collection of cases this is going to be a reality, but  
4 we have to make sure that as we are trying to identify  
5 the medical and legal issues that we have these cases  
6 in a somewhat stable process.

7 That is what we are trying to understand, and  
8 I thought when we approved the former PTO that was  
9 agreed by the parties that there would be cross-checks  
10 and, you know, objections could be made to each sides'  
11 selection that we would run into this, because we do  
12 not have the statute issues that exist --

13 MS. NAST: Right.

14 THE COURT: -- in some other product  
15 liability cases, not yet. I agree that when you are  
16 dealing with minors a withdrawal without prejudice is  
17 not improper, but when you are trying to get set for  
18 trial it becomes very cumbersome and problematic.

19 It is not leading the way. So again, it gets  
20 to communication between each side and knowing what you  
21 really have. Is it leading to an enhanced facts sheet  
22 already with documentation before it can be considered  
23 for the discovery pool?

24 MS. NAST: I don't think that we're there  
25 yet. The -- this has been a very short period of time,

1 relatively speaking, in which the picks were made.

2 We have a committee headed up by Mr.  
3 Blizzard, who has been pretty diligent about chasing  
4 these cases down, and we've dismissed them when we see  
5 that they need to be dismissed pretty promptly.

6 So at this early stage in this proceeding, we  
7 don't have a trial yet for 15 months. So at this early  
8 stage, I don't think we're there. Will we get there  
9 sometime? Perhaps. But I don't think we're there yet.

10 THE COURT: Well, we have to make sure that  
11 the initial discovery group is selected as  
12 representatives so that there is not too much of this  
13 movement.

14 The reduction of cases to be selected is  
15 something I will consider. I would like to hear from  
16 the defense on that, too.

17 MS. NAST: Sure. So, that's where we stand  
18 on -- actually, really two issues, the initial  
19 discovery group and the trial selection because they're  
20 really hand-in-hand.

21 And as Mr. Chirls mentioned, we have that  
22 trial selection order ready with just a couple areas  
23 that need to be resolved yet, and this is one and  
24 another one is how many cases are going to be trial  
25 ready at the same time and we have a modest difference

1 of opinion which I'm sure will get worked out.

2 THE COURT: Well, I am interested in what you  
3 do work out, and even if you do not work it out,  
4 because this Court has some familiarity with making  
5 selections, and I welcome the opportunity to do it in  
6 the discovery group selection if all else fails, or not  
7 even if all else fails. To me, that is how I get to  
8 know what your issues are as proposed --

9 MS. NAST: Right.

10 THE COURT: -- and as defended, and I think  
11 it may be appropriate in this case.

12 MS. NAST: If you recall the procedure that  
13 we followed in Avandia was we presented synopsis. I  
14 don't know what the plural of that word is, but we  
15 presented a synopsis of each case and --

16 THE COURT: I call them summaries, but --

17 MS. NAST: -- you basically made the  
18 decision.

19 THE COURT: Yes.

20 MS. NAST: Okay. Then just moving down the  
21 agenda. We will skip special master for a moment  
22 because Mark is going to cover that, Mark Robinson, and  
23 he has already reported on the protocol and the common  
24 benefit order.

25 And in terms of my reporting at this point, I

1 think the only thing -- and you may want to save it for  
2 the end, is we have some suggestions on scheduling  
3 future conferences.

4 THE COURT: Very well.

5 MS. NAST: Okay.

6 THE COURT: Thank you. Mr. Cheffo?

7 MR. CHEFFO: Thanks, Your Honor. So I'll try  
8 to respond to a few of the points that Diane just made,  
9 and then just a few other thoughts.

10 So we've all been in mass tort litigations,  
11 and this is certainly not the first time that cases  
12 have been dismissed. There's no question about that.

13 However, I think this is very much an anomaly  
14 of what's been happening here. I have not seen a  
15 situation where -- we haven't even taken a deposition  
16 yet, you know, and cases are -- these were supposed to  
17 be cases where, you know, mothers are being told --  
18 very serious cases.

19 You know, there's a birth defect issue here.  
20 There's no statute of limitation. One would have  
21 expected to have basic screening of the cases before  
22 the file, particularly, you know, at some point it's  
23 finding that we're not having any.

24 I think that it's -- the -- we're not --  
25 first of all, we're talking about -- and I'll talk in a



1 minute -- we're not talking about, you know, one or two  
2 law firms or one or two types of injuries, we're  
3 talking law firms across -- including the PSC members.

4 We are talking about, you know, what I think  
5 is really posing a very serious problem for us, both in  
6 timing and resources. So, the answer -- let me talk  
7 about reducing the number.

8 I mean, in theory, you know, it all sounds  
9 good. Less is easier and it's faster. But a few  
10 things. One is we've agreed to reduce the number --  
11 the maximum number from eight to six. So that will be  
12 one issue.

13 But, that is not even putting a bandaid on  
14 the issue. I mean, saying -- reducing it because you  
15 have a problem with cases that once we pick them and  
16 someone actually realizes that they're going to have to  
17 do an extended facts sheet, they dismiss those cases  
18 just completely out of the PSC.

19 The answer is, well, let's leave all those  
20 cases there. We don't want to pick that many cases and  
21 let's reduce the number. That -- there -- to me  
22 there's completely separate issues.

23 I mean, if there's efficiencies in terms of  
24 timing or scheduling that makes sense for the Court in  
25 term of the case selection, that's one issue, but the

1 fact that we have -- just to give you an example.

2 So, they've had a chance -- I mean, you know,  
3 they obviously filed these cases, they know the  
4 plaintiffs. They have picked 12 cases. At this point  
5 they haven't dismissed any.

6 Again, no depositions. Maybe they will,  
7 maybe they won't. But we've picked 13 cases, and it's  
8 a very time consuming process. I think they would  
9 agree with that, and after that -- and again, without a  
10 single deposition being taken, ten cases have been  
11 dismissed. So, what that means --

12 THE COURT: From your list.

13 MR. CHEFFO: Well, see yes. We've basically  
14 had to pick 23. Only our list. So -- and that  
15 includes cases that were supposed to be the replacement  
16 cases.

17 Those have been dismissed as well, three or  
18 so of the cases. So, you have this situation of, you  
19 know, on the one hand they say well, there's not that  
20 many cases, there's 400 or so cases, but we've now gone  
21 through almost 25 cases, and ten cases right now, and I  
22 suspect, I don't think the PSC will, or anyone will  
23 stand up and say well, that's it, what you've picked is  
24 now going to stick.

25 You know, so this is very significant issue,

1 and I -- you know, I certainly have some suggestions.  
2 One answer is not reducing the number and essentially  
3 ignoring the fact that these cases perhaps either  
4 shouldn't be filed -- and the other issue is it's one  
5 thing to say -- you know, and I have a list of the ten  
6 case.

7           These are not cases where someone, you know,  
8 didn't have a medical record. One is -- I think the  
9 vast majority of the lawyers in this PSC certainly, and  
10 probably in the broader collection, are better lawyers  
11 than that, and smarter lawyers than that.

12           They don't file a birth defect case and then  
13 say oh my gosh, I, you know, I didn't realize the woman  
14 never took Zoloft. So for the -- there are a few of  
15 those cases, but that's not the vast majority cases.

16           They are issues where, you know, we have a  
17 number of cases where they've now made clear, but I  
18 think they've said this from the beginning, that you  
19 have to have a first trimester use.

20           So, four of the cases, when you get the  
21 records, they're not first trimester uses. There is  
22 one case where there was a Zoloft -- that was  
23 dismissed, Zoloft was used for two days.

24           You know, and part of this is you don't get a  
25 lot of the information, and we select these cases, and

1 then we ultimately do an extended facts sheet say yes,  
2 give us all the information, the records.

3 You then wind up getting that and then they  
4 say it was only two days usage? They say yes, and then  
5 they dismiss the case. There's other cases where it's  
6 clear genetic factors.

7 After the fact they've disclosed to us, well,  
8 we had a genetic test done and it turns out that it's a  
9 syndrome case. There's two or three of those cases.

10 And that's just out of the, you know, the  
11 cases we've picked. That's -- we don't know what's in  
12 the vast majority of the inventory of cases. So, I do  
13 think we have a significant issue here because --

14 THE COURT: But, how did you pick them? Did  
15 you pick them knowing that there was today use of  
16 Zoloft?

17 MR. CHEFFO: On some of them, we did pick  
18 some cases based on what we knew because, again, when  
19 cases get dismissed we have a lot of limited  
20 information.

21 You know, we've talked about this yesterday.  
22 There is many, many authorizations that we think are  
23 missing, and then what happens is once a case they tell  
24 us gets dismissed we have 14 days now to pick a new  
25 case.

1           And, you know, frankly it was a lot easier  
2 with our first 12 or 13 cases, because we had a month.  
3 We go through the schedule, they knew the schedule, but  
4 then you pick a case and people are doing expert --

5           THE COURT: It only says you need back up,  
6 because it is going to happen.

7           MR. CHEFFO: And we are, we frankly didn't  
8 expect, Your Honor, you know, we didn't expect within a  
9 month or two, maybe I should have, shame on me, but ten  
10 cases before we took the first deposition being  
11 dismissed.

12           THE COURT: Okay. Part of this is getting  
13 used to the system, but the first order of business,  
14 though, is perhaps not to choose cases that you know  
15 will be dismissed voluntarily, because that's not the  
16 reason for the discovery group. And maybe if they are  
17 so weak that they wouldn't proceed anyway, it is good  
18 to weed them out, but not that way. There is another  
19 way to do that.

20           MR. CHEFFO: Well, maybe we should talk about  
21 that, Your Honor, because, you know, candidly I do  
22 remember one of the first hearings, you know, some of  
23 the PSC members standing up and saying, Your Honor,  
24 there is no need for certification, there is no need  
25 for Lone Pine, where did we sell selective, we're going

1 to monitor, we're going to do, you know, X, Y and Z.

2 We are now a year a half later and, you know,  
3 there is no mechanism and we have to pick certain  
4 cases. They are supposed to have gone through the  
5 vetting process. And, you know, the cases that we have  
6 picked, even -- so, the two days is an exception. I  
7 will admit that.

8 But, you know, we've picked a case that's a  
9 septal defect, a cleft pallet case, a craniostenosis  
10 case, a case that has bilateral club foot, a case that  
11 has cranial facial disorders.

12 So, you know, as an example, without getting  
13 into, you know, work product, we believe we have, for  
14 example, motions on certain state laws, like Michigan  
15 for example.

16 We think we make a motion, I am sure the  
17 plaintiffs will disagree, but I think I am correct on  
18 this. We've avoided picking those kind of cases where  
19 we think we have a legal motion to dismiss, because  
20 that would be somewhat self-defeating. We pick the  
21 case, we work it up and then we tell Your Honor by the  
22 way you should dismiss it as a matter of law.

23 So, you know, are we -- is that guiding us?  
24 Sure, but it would be -- you know, I would like to tell  
25 you that we, you know, we've picked the only ten cases

1 of two-day use or first kind -- that's just not the  
2 case.

3 I mean, at some point you have to pick, you  
4 know, these cases, and I think we do want to get a  
5 representative sample. I think certainly at this  
6 point, before we had even had a chance to take any  
7 depositions, any doctors' discovery, the answer is not  
8 shrinking.

9 In fact, I think this shows that perhaps in  
10 order for Your Honor to ultimately have representative  
11 and selective cases is to have as expansive a view, at  
12 least on this preliminary discovery.

13 You know, once we get to the trial case,  
14 because at least this is supposed to be a funnel. All  
15 right. So, we have 25 cases.

16 THE COURT: Right.

17 MR. CHEFFO: I think there is a back and  
18 forth in the trial pool issue whether it should be six  
19 cases or four cases, I can't recall exactly where we  
20 are on that, and then ultimately cases will get  
21 selected.

22 We want to have the most representative  
23 sample. It doesn't do the Court or us or even the  
24 plaintiffs, I think, ultimately a very good -- they  
25 pick, you know, the cases they think are the 12 best in

1 the entire MDL and that's what we should, you know,  
2 have Bellwether trials on.

3 So, I do think, you know, we would certainly  
4 be open to some guidance from the Court on, you know,  
5 on how we can do this. I think that there really  
6 should be a mechanism.

7 Now, you can't stop people from filing cases,  
8 but you certainly could hold them under a microscope  
9 once they're filed, you know, and require some  
10 additional information.

11 I do think the answer is once they are filed  
12 and in the MDL, you know, we should have a reasonable  
13 opportunity to pick those cases, you know, within  
14 certain parameters.

15 THE COURT: There are other things that can  
16 be done besides putting the two-day case on the  
17 discovery pool, because you know that there is another  
18 way to handle that, and that would be an informal  
19 discovery between the defense and the PSC or that  
20 particular case, and to say what are you really doing  
21 here. There is nothing to prevent you from doing that.

22 MR. CHEFFO: But, there are lots of these  
23 cases, Your Honor.

24 THE COURT: Yes, well --

25 MR. CHEFFO: And they are not being -- I



1 mean, the point is -- see, this is really what happens.  
2 I know it kind of puts the burden on us, right, but  
3 someone sitting there and saying I know -- I mean, the  
4 lawyer had to know he had a two-day case, right?

5 We've been through this entire MDL. People  
6 have said we are going to be selective, and --

7 THE COURT: And I understand --

8 MR. CHEFFO: -- they kind of just sit back  
9 until I pick him and then he says oh, by the way, I am  
10 going to dismiss my case.

11 THE COURT: I understand also that you would  
12 rather have the cases here than have them refiled in  
13 another place, I understand that,. But, there has to  
14 be some sense of what is really justiciable in this MDL  
15 or anywhere, and unless those cases are on your list,  
16 and this is to your favor, we won't be able to  
17 understand that, and no one will.

18 So, I understand, but it's just not a  
19 discovery case. It is a different issue. It is a fact  
20 sheet, Lone Pine, oh God, did I say that word, that  
21 term? It is that next level of motions practice that  
22 says this is sufficient, because obviously there is a  
23 whole body of plaintiffs' counsel that wish that to be  
24 justiciable and a liability. But, is that the most  
25 representative here?

1 MR. CHEFFO: Correct, and in fairness, you  
2 know, I think -- you know, I don't want to speak for  
3 the good lawyers here, they probably don't like that  
4 case in the MDL either, right, because they don't want  
5 to have to hear me say well, there is cases that they  
6 haven't been vetted.

7 So, maybe that -- it does -- we do need a  
8 separate, you know, and maybe it is, you know, if it is  
9 not a Lone Pine maybe it is something more, but I don't  
10 think any of us are served by hearing that there is 440  
11 cases, right, and if 100 of those shouldn't be in the  
12 MDL then we should call those cases and then we should  
13 figure out -- because, that will help us, then, not  
14 spend the time and energy. It will also help as we go  
15 on with experts, because right now we do have to  
16 address these expert issues in these cases.

17 THE COURT: Well, where is the line, though,  
18 two days, four days, five days, ten days, one month,  
19 the usage?

20 MR. CHEFFO: I mean, personally, that's kind  
21 of the dilemma. I mean, if someone files a case,  
22 right, I mean I have no -- we are taking that one, that  
23 is admittedly a non-legal, let's talk about usage.

24 If the plaintiffs or Your Honor or someone  
25 got up and said that's not consistent with what our

1 experts are, or we have now said now we've seen their  
2 expert reports, you know, it's got to be in first  
3 trimester use, okay, well that's what the expert  
4 supports.

5 That now leads us, I think, it does give us a  
6 pathway. Those were served yesterday and, you know, I  
7 don't know, someone may say two days is enough. It was  
8 at a crucial time and I picked the case and we have an  
9 expert who is going to say two days is sufficient.

10 I have to make that assumption when they  
11 filed their complaint and they make that allegation and  
12 I assume they have collected the medical records  
13 before.

14 And that particular lawyer, I think,  
15 correctly determined two days is probably not enough I  
16 think the plaintiffs here would say but, you know, the  
17 answer is I don't know that, that's why I think we need  
18 some guidance or some standards.

19 THE COURT: Well, that's why you need  
20 experts, right, on more than a few issues. There  
21 are several sides to this, and I don't see a bright  
22 line rule, but I do see a need to pick the cases that  
23 you know discovery will be well worth spending the time  
24 on.

25 So, if that's not the case, then it doesn't

1 need to be included. That fight is going to come in  
2 another way.

3 MR. CHEFFO: And I --

4 THE COURT: That's where I am.

5 MR. CHEFFO: And I agree with --

6 THE COURT: That's all I am saying. I am not  
7 criticizing your selection of it, because it brings  
8 this issue to the fore.

9 MR. CHEFFO: Well, and I would just say this,  
10 Your Honor, I completely agree, but here, you know, we  
11 kind of a potentially nationwide litigation. All  
12 right.

13 So, if an issue we feel strongly about is two  
14 days is not enough, and they want to prosecute that  
15 case and have a Daubert hearing on whether it is two  
16 days or not that will help us, right? We will tee that  
17 issue up so we will know for all time --

18 THE COURT: It would be guidance.

19 MR. CHEFFO: So, you know, now we can't tee  
20 that up because they have now dismissed it without  
21 prejudice, so who knows if someone refiles that in  
22 state court and says two days is enough in Wisconsin?

23 So, I get the idea that we want to have  
24 representative cases, and we really are trying to do  
25 that. I would say this, though, that this is not a

1 situation where we have a signature injury, you know,  
2 where we are picking kind of outlier.

3 We have almost every body system is involved,  
4 if you look at their expert reports.

5 THE COURT: I haven't seen their expert  
6 reports, but I have seen the initial list.

7 MR. CHEFFO: So, that's what we are, you  
8 know, we are trying to pick cases like go across the  
9 different body systems and, you know, geographic and  
10 there is other, obviously, strategic concerns, and I  
11 know you are not finding fault. I am just trying to --

12 THE COURT: No, I am not, and I am also glad  
13 to have this argument today, because this is the real  
14 need to understand on the Court's part as to eventually  
15 selecting the trial cases, which I think I am going to  
16 be doing.

17 But, I do think that this is the way the rule  
18 that you agreed to was supposed to work, and it may be  
19 that in affecting the selections, dismissals, ability  
20 to counter-select and whittle down to what is the best  
21 pool of cases for discovery for both plaintiff and  
22 defendant, that may very well be how this rule is  
23 supposed to work so that you get to these other issues.

24 If two day cases are on the defense list and  
25 they are dismissed, boy that says something about those

1 cases. Maybe there will be an expert at some point  
2 that is willing to say on the record in a deposition,  
3 in a report, that it is enough, and then you will be  
4 able to litigate that, but maybe that's not the first  
5 round.

6 We are dealing with rounds here. We are not  
7 going to get to every single liability first, and we  
8 have to get there sooner or later. So, if this is the  
9 process I don't really have a problem with the process.

10 I don't think the number bothers me either,  
11 except that, you know, ten on each side if you end up  
12 there, seems logical. But, in getting there you might  
13 need the extra numbers just to whittle it down.

14 So, I appreciate each side's position here.  
15 I do think that there is probably more I should hear,  
16 but it doesn't seem to me like this rule is not doing  
17 its job. I appreciate that.

18 MR. CHEFFO: Thank you, Your Honor.

19 THE COURT: And we have to deal with in  
20 another way, I think, the dismissals.

21 MR. CHEFFO: Thank you, Your Honor.

22 THE COURT: Thank you. Ms. Nast?

23 MS. NAST: Your Honor, I will be brief. Of  
24 the ten cases that were dismissed, seven of them we  
25 don't think were representative cases.

1           As Mr. Cheffo just said, there were three  
2 that were second trimester use, one was a two-day use,  
3 two there was a genetic issue that probably couldn't  
4 have been known at the time, or could have been known,  
5 but not easily, at the time the case was filed.

6           And they just picked a Texas case, which is  
7 the same as Michigan in terms of the body of the law.  
8 So, that's not going to be representative either. It  
9 costs the PSC at least a half a million dollars to  
10 prepare these cases for trial and often more, and we  
11 don't want to prepare non-representative cases.

12           I mean, it is a two-way street. We've got to  
13 get on both sides --

14           THE COURT: Do you think it is possible --

15           MS. NAST: -- representative cases.

16           THE COURT: -- that the rule is working then?

17           MR. CHEFFO: Yes, I think it is working. It  
18 is not perhaps working the way we anticipated. I don't  
19 think we anticipated that these types of cases would be  
20 picked, but the fact that they were picked and that we  
21 dismissed them and we go to the next round, I mean it  
22 is working. Maybe not just as quickly as we thought it  
23 would work.

24           THE COURT: And maybe it is clarifying the  
25 types of cases and claims --

1 MS. NAST: Right.

2 THE COURT: -- that will be representing the  
3 MDL.

4 MS. NAST: Right.

5 THE COURT: Without too much additional  
6 initial discovery group contention.

7 MS. NAST: Right.

8 THE COURT: I think we will be running into  
9 the issues before these cases, although they're  
10 dismissed, are not going away from being a claim. We  
11 all understand that Pfizer would like some certainty  
12 and some resolution other than without prejudice  
13 dismissals.

14 But, at least we can be handling the most  
15 viable or prevalent claims according to the PSC's  
16 determination and, of course, we all know those are  
17 allegations that Pfizer continues to contest, but I am  
18 wondering if it is really as bad as both sides think it  
19 is.

20 MS. NAST: I don't think it is, Your Honor.

21 THE COURT: Okay. Thank you. All right.  
22 Let's try to move on on the trial pool selection  
23 protocol. Should we be addressing that now?

24 MS. NAST: I think we've really kind of  
25 covered that.



1 THE COURT: Yes, we've beaten that one up  
2 with the initial discovery pool. Okay. But, I did  
3 want to check with you, Mr. Cheffo, do you agree 449  
4 cases are live right now in the MDL?

5 MR. CHEFFO: I think that's correct, Your  
6 Honor.

7 THE COURT: Okay.

8 MR. CHEFFO: And we do sometimes get  
9 confused, because a few of the cases have a few  
10 children in them, so I think that's a number of  
11 plaintiffs.

12 MS. NAST: Plaintiff families.

13 MS. ARMSTRONG: (Inaudible) usually the  
14 number of children. If there is like -- there is some  
15 twin cases. So, if there is twins, those are kind of  
16 two cases.

17 MR. CHEFFO: But, the number is -- that  
18 should be the number of actual children.

19 THE COURT: So, I can report that on my July  
20 31st annual report. I need to be very clear that we  
21 are correct?

22 MR. CHEFFO: Yes, Your Honor.

23 THE COURT: Thank you, very much. Are we up  
24 to the court appointed expert?

25 MS. NAST: Oh, okay. Go ahead.

1 THE COURT: And after what I have heard about  
2 the array of claims, am I ready for a court appointed  
3 expert?

4 MR. HEIM: Good morning, Your Honor.

5 THE COURT: Good morning, Mr. Heim.

6 MR. HEIM: Your Honor, this is simply a  
7 report. The parties have continued to have discussions  
8 about this subject and we did yesterday as well. The  
9 defense will be, as we have said several times to Your  
10 Honor, that a court appointed expert may materially  
11 assist the Court in certain ways with respect to the  
12 science issues.

13 The plaintiffs are of the view that a court  
14 appointed expert isn't necessary and would not be  
15 helpful. I think where we came out yesterday is that  
16 plaintiffs were serving their expert reports last  
17 night. We have to serve our expert reports down the  
18 road a little bit.

19 We will look at those expert reports, we are  
20 going to have a further conversation about it. It may  
21 be that the views won't change and we will have that  
22 same view, and we will be back with the request to Your  
23 Honor or it may be that the views will change, but it  
24 is the topic that is still under discussion by the  
25 parties.

1 THE COURT: Well, if there is such a  
2 continued request, I would gladly review all side's  
3 reports to make my own determination. Maybe that would  
4 be what I would need to do.

5 MR. HEIM: Very well, Your Honor.

6 THE COURT: Thank you, Mr. Heim. Mr. Zonies?

7 MR. ZONIES: Good morning, Your Honor.

8 THE COURT: This is your area, I trust?

9 MR. ZONIES: Well, up against Mr. Heim they  
10 had to pick the heavy hitter. I guess I got that  
11 choice. I am just briefly going to say I agree with  
12 everything Mr. Heim said, that is the position.

13 And as he points out and as I think Your  
14 Honor said, of course, once we see their expert reports  
15 we can probably all have a much more informed  
16 discussion about this issue at that time because  
17 obviously we expect their experts to agree primarily  
18 with ours, and we probably won't need a doubt here.

19 THE COURT: You are the eternal optimist, but  
20 I know you prepare for the worst. So, I am also going  
21 to prepare for the worst, and I will just repeat that  
22 if you can't agree I will review the reports and make a  
23 decision as to what I think, okay, before there is any  
24 motions filed.

25 MR. ZONIES: And one point, Your Honor, I

1 know that we in Avandia for example, and here we  
2 discussed it early on, but it got changed a little,  
3 even, you know, a synopsis paper or summary paper  
4 summarizing the issues and Your Honor may want that  
5 with them attached and have that.

6 THE COURT: I think what I am really  
7 interested in seeing in these reports is the  
8 expansiveness, allegedly, of the harm that Zolofit is  
9 being charged with causing, and whether or not it fits  
10 into categories, and then address the categories. But,  
11 I have to see the reports. I mean, that's going to be  
12 really, really helpful to me.

13 MR. ZONIES: I totally agree. We have to as  
14 well. That's why we expect this will just keep showing  
15 up as a tickler for this discussion.

16 THE COURT: Very good.

17 MR. ZONIES: Until we get skied up.

18 THE COURT: Thank you.

19 MR. ZONIES: Thank you.

20 THE COURT: Anything else from the PSC?

21 MS. NAST: I think we are at scheduling.

22 THE COURT: Okay. We never contemplated a  
23 meeting in August?

24 MS. NAST: No.

25 THE COURT: But, September would be a good

1 time to -- do you still wish to continue on the on/off,  
2 informal --

3 MS. NAST: Yes.

4 THE COURT: -- and in Court. So, September,  
5 we are going to need a September date.

6 MS. NAST: In chambers.

7 THE COURT: In chambers, and if you don't  
8 need it, then we don't need to have it, but I also  
9 think in scheduling we are talking about how often you  
10 meet with Mr. Chirls and I am going to ask our master  
11 if you think you need a weekly telephone conference or  
12 as needed?

13 MR. CHIRLS: I think we should do weekly at  
14 the beginning, and then determine whether we continue  
15 to need it weekly.

16 THE COURT: All right. So, you are still in  
17 the beginning. Okay. So, that keeps you very busy.  
18 So, we are looking some time in mid-September, aren't  
19 we?

20 MS. NAST: Yes, and in September we have two  
21 things that we need to work around and it is easy to  
22 do. The Jewish holidays are in September, and also a  
23 number of people will be -- and we need a judge and a  
24 special master with us, we will be in Paris taking  
25 depositions.

1 THE COURT: Let me get my calendar. I don't  
2 hesitate, you say Paris, I don't hesitate.

3 MS. NAST: So, I don't know if you were aware  
4 of that. We were thinking of something around the 25th  
5 of September, which would be -- the 26th?

6 MR. CHIRLS: 23rd.

7 MS. NAST: 23rd, I am sorry, 23rd.

8 THE COURT: And what day of the week is that?

9 MS. NAST: I thought we were staying way from  
10 the 23rd? Monday the 23rd, okay. But, some time in  
11 that week if that date doesn't work for the Court.

12 THE COURT: Okay.

13 MS. NAST: Now, that is like seven weeks from  
14 now, but I know if we need something sooner we can --

15 THE COURT: We are available.

16 MS. NAST: -- deal with it.

17 THE COURT: I will check. I don't believe we  
18 have actually scheduled a trial yet, a criminal trial  
19 yet, right, Ms. Pratt?

20 (Pause in proceedings.)

21 THE COURT: We were discussing that yesterday  
22 and perhaps we could do that in the afternoon and do  
23 this in the morning if it is a Monday.

24 MS. NAST: Okay. And then we thought it  
25 might be appropriate, if it works for the Court, to

1 schedule the November conference, and the only thing we  
2 will be dealing with then would be the Thanksgiving  
3 holidays.

4 THE COURT: All right. So, we are wide open  
5 in November, but we do need -- no, we need an October  
6 conference, don't we?

7 MS. NAST: We didn't know if the Court wanted  
8 an October conference.

9 THE COURT: Well, given the MDL's conference  
10 that would conflict on the monthly schedule, we can do  
11 one earlier in November in Court.

12 MS. NAST: Okay. Because the MDL is sitting  
13 in Philadelphia, as you know, in September, I think the  
14 26th or the 25th.

15 THE COURT: So, didn't you want to work your  
16 conference around that instead of the 23rd?

17 MS. NAST: It's Thursday, it's the Thursday  
18 of that week.

19 MR. ROBINSON: We can do it, I think, Your  
20 Honor, we had set up a deposition with Pfizer that week  
21 in New York that Mr. Zonies and I are taking with Mr.  
22 Cheffo, I believe, and so we are trying to do it on the  
23 23rd. We could possibly do the 24th too, don't you  
24 think?

25 THE COURT: Well, it would be harder for me

1 with a criminal trial to do the 24th.

2 MR. ROBINSON: Oh, no, you want to prepare --

3 THE COURT: I can do Monday or Friday, but  
4 not in the middle.

5 MR. ROBINSON: We could probably do Friday  
6 too. Either Monday or Friday.

7 MS. ARMSTRONG: So, Friday, September 27th?

8 THE COURT: That sounds better to me.

9 MS. NAST: Okay.

10 MS. ARMSTRONG: That would be fine.

11 MS. NAST: That's fine.

12 THE COURT: And we will do it in the morning.

13 MS. NAST: And then early in November, so we  
14 are not a whole long two months away.

15 THE COURT: Okay.

16 MS. NAST: Okay.

17 THE COURT: Thank you.

18 MS. NAST: That's it.

19 THE COURT: Thank you. Anything else from  
20 the defense?

21 MR. ROBINSON: No, Your Honor.

22 THE COURT: Mr. Chirls?

23 MR. CHIRLS: No, Your Honor.

24 THE COURT: All right. Let me check.

25 Nicole, is there something else? I think we have



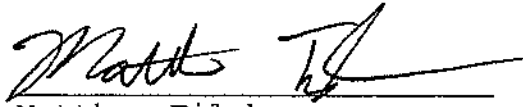


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CERTIFICATION

I, Matthew Tilghman, 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.

8-23-13  
Date

  
Matthew Tilghman