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

IN RE: AVANDIA MARKETING : CIVIL ACTION
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION : 07-MD-01871

PHILADELPHIA, PENNSYLVANIA
TUESDAY, APRIL 8, 2008

BEFORE: THE HONORABLE CYNTHIA M. RUFÉ, J.

SUZANNE R. WHITE, CM
FEDERAL CERTIFIED REALTIME REPORTER
FIRST FLOOR U. S. COURTHOUSE
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REPRESENTING DEFENDANT

- - -

1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, EVERYONE. FIND
3 A SEAT. IT'S A PLEASURE TO FINALLY HAVE YOU HERE IN THE
4 COURTHOUSE FROM ALL OVER THE COUNTRY IN THE CASES THAT
5 HAVE BEEN FILED. WE, OF COURSE, ARE ANXIOUS TO GET
6 STARTED ON THE MDL CASE MANAGEMENT. AND BY NOW ALL OF
7 YOU HAVE RESPONDED IN ONE WAY OR ANOTHER, ON YOUR OWN OR
8 THROUGH OTHER COUNSEL THAT YOU HAVE SELECTED TO
9 REPRESENT CERTAIN ISSUES, POSITIONS AND THE LIKE.

10 I AM PLEASED THAT I RECEIVED A JOINT
11 PROPOSED CASE MANAGEMENT ORDER #2. ALSO, A JOINT
12 PROPOSED INITIAL PRETRIAL CONFERENCE AGENDA, WHICH THE
13 COURT FEELS MIRRORS ITS OWN OBJECTIVES. SO WE WILL BE
14 FOLLOWING IT. WE ALSO RECEIVED AND REVIEWED THE
15 APPLICATIONS FOR THE POSITIONS ON THE PLAINTIFFS'
16 STEERING COMMITTEE AS WELL AS LIAISON COUNSEL. AND WE
17 ALSO RECEIVED AN OBJECTION THERETO. WE WILL BE
18 ADDRESSING ALL OF THOSE IN A MOMENT.

19 WE READ WITH INTEREST THE PLAINTIFFS' AND
20 THE DEFENDANTS' POSITION PAPERS WITH THE ACCOMPANYING
21 DOCUMENTATION. PROBABLY DIDN'T READ EVERY PAGE OF THE
22 HYPERLINKS. BUT I DO FIND IT MOST INTRIGUING AND
23 INTERESTING. AND I CAN PERCEIVE THAT THE ISSUES, AS
24 THEY DEVELOP, THE LEGAL ISSUES AND THE FACTUAL ISSUES,
25 WILL OCCUPY OUR TIME IN THE NEXT -- DARE I SAY FIVE

1 YEARS, TEN YEARS, I DON'T KNOW. I DON'T WANT TO SAY
2 THAT. BUT I HAVE TO BE PREPARED, DON'T I? THEY DIDN'T
3 GIVE THIS MDL TO MANAGE TO A JUDGE WHO IS ELIGIBLE FOR A
4 SENIOR STATUS. I THINK THEY PERCEIVED WHAT I'M THINKING
5 RIGHT NOW.

6 IN ANY EVENT, WE DID INDICATE IN THE
7 FIRST CASE MANAGEMENT ORDER THAT WE WOULD LIKE COUNSEL
8 TO BE REPRESENTING THEIR CLIENTS HERE, BUT ONE COUNSEL
9 PER CASE, ONE COUNSEL PER LAW FIRM. SO EVEN THOUGH WE
10 KNOW THAT THERE ARE MORE THAN THAT IN THE COURTROOM, AS
11 LONG AS THERE ARE ENOUGH SEATS IN THE GALLERY AND JURY
12 BOX, YOU ARE FREE TO REMAIN. OTHERWISE, WHEN IT GETS
13 CROWDED AND WE NEED COUNSEL THAT ARE SPEAKING TO HAVE A
14 SEAT, WE PROVIDED OUR JURY ROOM ANNEX THERETO, AND WE
15 PROVIDED SOME DUNKIN' DONUTS COFFEE. IT'S NOT
16 STARBUCKS, WHICH I UNDERSTAND WILL BE FREE BETWEEN 12
17 AND 2 TODAY, BUT -- SOME KIND OF PROMOTION THAT WE DID
18 NOT THINK WE COULD BUY INTO. BUT WE DID GET YOU SOME
19 COFFEE. SO FEEL FREE TO GET UP AND USE THE RESTROOMS
20 THAT ARE ATTACHED AND ALSO TO TAKE A BREAK, BECAUSE I
21 EXPECT THAT WE WILL BE STARTING AND JUST RUNNING
22 STRAIGHT THROUGH TO SEE IF WE CAN GET YOU ALL HOME AND
23 MAKING YOUR FLIGHTS.

24 LET'S TALK ABOUT THE INTRODUCTIONS HERE.
25 OBVIOUSLY YOU KNOW WHO I AM AND I AM LEARNING WHO YOU

1 ARE. SO THE DEFENSE MAY REPRESENT YOUR COLLEAGUES.

2 MS. GUSSACK: GOOD MORNING, YOUR HONOR.
3 THANK YOU SO MUCH FOR HAVING US. NINA GUSSACK, PEPPER
4 HAMILTON, FOR DEFENDANT SMITHKLINE BEECHAM, DOING
5 BUSINESS AS GLAXOSMITHKLINE. I HAVE WITH ME TODAY MY
6 COLLEAGUES FROM PEPPER HAMILTON WHO REPRESENT THE
7 DEFENDANT, WHO WILL BE INTRODUCED AS THEY ADDRESS
8 PARTICULAR ISSUES. WE SEE ARRAYED AMONGST US COLLEAGUES
9 ON THE PLAINTIFFS' SIDE. I WANT TO ASSURE THE COURT, AS
10 I KNOW COUNSEL FOR THE PLAINTIFFS DO, THAT EVEN PRIOR TO
11 THIS CONFERENCE, THE PARTIES HAVE BEEN ENGAGED IN
12 MEANINGFUL AND CONSTRUCTIVE DISCUSSIONS. AND WHILE
13 THERE ARE MANY ORGANIZATIONAL ISSUES STILL TO BE
14 ADDRESSED, WE HAVE BEEN WORKING, I THINK, IN AN
15 EFFECTIVE MANNER. AND I WOULD ADVISE THE COURT THAT, AT
16 LEAST OVER THE PAST COUPLE OF MONTHS, WE HAVE BEEN
17 DEALING WITH A MORE COORDINATED GROUP, AT LEAST
18 PROVISIONALLY. MR. ANDREWS IS HERE TODAY, AND HE HAS
19 BEEN A POINT PERSON THAT WE HAVE BEEN DEALING WITH. AND
20 I'M SURE THAT HE CAN ADVISE THE COURT AS TO
21 REPRESENTATION ON THE PLAINTIFFS' SIDE.

22 THE COURT: THANK YOU.

23 WE WOULD LIKE TO MEET AND GREET EACH OF
24 THE PLAINTIFFS' COUNSEL THAT IS PRESENT. AND IN NO
25 PARTICULAR ORDER, I WILL TAKE THEM AS THEY APPEAR IN THE

1 SIGN-UP SHEET. AND I DO SEE THAT THERE'S DUPLICATION.
2 AND I DON'T MIND BECAUSE I NEED TO KNOW THE CAST OF
3 CHARACTERS. SO I WILL JUST BE GOING DOWN HERE AND IF
4 THERE ARE TWO OR THREE, I DON'T MIND THAT. BUT WHEN IT
5 COMES, AGAIN, TO SPEAKING TO THE ISSUES, I'M GOING TO
6 ASK FOR ONE REPRESENTATIVE PER CASE PER LAW FIRM.

7 THE FIRST WE HAVE HERE IS GARY MARTIN
8 MEYERS.

9 MR. MEYERS: THAT IS ME, YOUR HONOR.

10 THE COURT: HELLO.

11 MR. MEYERS: GOOD MORNING.

12 THE COURT: YOU ARE INVOLVED IN THE CLASS
13 ACTION OF THE D'APUZZO CASE?

14 MR. MEYERS: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: VERY WELL. THANK YOU.

16 DIANNE NAST.

17 MS. NAST: GOOD MORNING, YOUR HONOR.

18 THE COURT: GOOD MORNING.

19 MISS NAST, YOU ARE ON ONE OF THE CASES,
20 SEIBEL, AND WHAT IS THE OTHER?

21 MS. NAST: THERE ARE SIX TOTAL, YOUR
22 HONOR.

23 THE COURT: SIX TOTAL CASES. OKAY.

24 AND YOU HAD ALSO ASKED TO BE CONSIDERED
25 AS LIAISON COUNSEL.

1 MS. NAST: LIAISON COUNSEL OR ANY
2 POSITION YOUR HONOR THINKS IS APPROPRIATE, IF ANY.

3 THE COURT: LOWELL FINSON.

4 MR. FINSON: GOOD MORNING, YOUR HONOR.

5 THE COURT: GOOD MORNING, MR. FINSON.

6 AND YOU HAVE TEN CASES?

7 MR. FINSON: YES, THE JOHNSON CASES.

8 THE COURT: THANK YOU.

9 AND RACHEL ABRAMS.

10 MS. ABRAMS: GOOD MORNING, YOUR HONOR.

11 THE COURT: GOOD MORNING. DO I HAVE THAT

12 AS ANOTHER TEN CASES?

13 MS. ABRAMS: APPROXIMATELY. SOME ARE

14 BEING TRANSFERRED, BUT CURRENTLY WE HAVE ABOUT TEN

15 FILED.

16 THE COURT: THANK YOU.

17 AND DYLAN BRENNAN.

18 MR. BRENNAN: GOOD MORNING, YOUR HONOR.

19 THE COURT: GOOD MORNING. MR. BRENNAN,

20 YOU ARE HERE ON SEVEN CASES?

21 MR. BRENNAN: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: THANK YOU.

23 AND DANIEL BECNEL, JUNIOR.

24 MR. BECNEL: RIGHT HERE, YOUR HONOR.

25 MATT MORELAND, WHO IS NOT HERE BECAUSE HE IS ON JURY

1 DUTY, IS A LAWYER IN MY OFFICE. HE HAS A NUMBER OF
2 CASES, TOO, THAT HE FILED FOR OUR OFFICE BUT HE COULD
3 NOT GET OUT OF JURY DUTY.

4 THE COURT: ABOUT HOW MANY CASES DOES
5 YOUR OFFICE HANDLE?

6 MR. BECNEL: TWO OR THREE DEATH CASES
7 THAT HE HAS FILED.

8 THE COURT: THANK YOU, MR. BECNEL.
9 STEPHEN CORR.

10 MR. CORR: GOOD MORNING, YOUR HONOR.

11 THE COURT: HOW ARE YOU?

12 MR. CORR: GOOD. HOW ARE YOU?

13 THE COURT: GOOD. ABOUT FIVE CASES SO
14 FAR, STEPHEN.

15 MR. CORR: YES.

16 THE COURT: FROM YOUR FIRM?

17 MR. CORR: CORRECT.

18 THE COURT: AND THAT, OF COURSE, IS
19 MELLON WEBSTER AND SHELLY.

20 MR. CORR: YES.

21 THE COURT: AND BRYAN AYLSTOCK.

22 MR. AYLSTOCK: GOOD MORNING, YOUR HONOR.

23 THE COURT: GOOD MORNING. AND YOU HAVE
24 ANOTHER LIST OF TEN CASES, MR. AYLSTOCK, THAT YOU ARE
25 HANDLING HERE?

1 MR. AYLSTOCK: TEN CURRENTLY BEFORE YOUR
2 HONOR, SEVERAL MORE ON THEIR WAY.

3 THE COURT: THANK YOU VERY MUCH. MICHAEL
4 HINGLE, IS IT?

5 MR. HINGLE: GOOD MORNING, YOUR HONOR.

6 THE COURT: GOOD MORNING. MR. HINGLE,
7 YOU ARE IN WHAT CASE, SIR?

8 MR. HINGLE: THE CUCCIE CASE IN
9 LOUISIANA.

10 THE COURT: THANK YOU.

11 MR. HINGLE: WE HAVE THAT FILED AS A
12 CLASS ACTION WITH QUITE A LARGE NUMBER OF CLASS ACTION
13 PARTICIPANTS BUT ONLY ONE FILED CASE.

14 THE COURT: THANK YOU.

15 SAM LANHAM.

16 MR. LANHAM: GOOD MORNING, YOUR HONOR.

17 THE COURT: GOOD MORNING.

18 MR. LANHAM: I HAVE THE ONE FILED CASE,
19 MORE TO COME. NICE LADY FROM THE STATE OF MAINE.

20 THE COURT: WELL, IT'S NICE TO HAVE ALL
21 CORNERS OF THE NATION REPRESENTED. THANK YOU.

22 NOW, I'M HAVING TROUBLE WITH THIS, BRIAN
23 P --

24 MR. FLEGER: FLEGER.

25 THE COURT: FLEGER.

1 MR. FLEGER: YES, YOUR HONOR. I'M ALSO
2 HERE ON THE CUCCIE CASE.

3 THE COURT: YES, THANK YOU.

4 THE COURT: RON GOLDSSEN.

5 MR. GOLDSSEN: GOOD MORNING, YOUR HONOR.

6 THE COURT: DID I PRONOUNCE THAT
7 CORRECTLY?

8 MR. GOLDSSEN: YOU DID. WE ARE ON THE
9 DONAHUE CASE AND THE HENDRICKSON CASE, CO-COUNSEL WITH
10 JIM SILL AND SHANNON MEDLEY, WHO ARE FROM OKLAHOMA WHO
11 ARE IN THE COURTROOM TODAY. AND OUR OFFICE HAS A NUMBER
12 OF OTHER CASES THAT WE ARE EVALUATING AND HAVE NOT YET
13 FILED.

14 THE COURT: THANK YOU, MR. GOLDSSEN. NEIL
15 OVERHOLTZ.

16 MR. OVERHOLTZ: YES, YOUR HONOR. GOOD
17 MORNING.

18 THE COURT: GOOD MORNING. AND YOU ARE IN
19 THE NOE CASE, IS IT?

20 MR. OVERHOLTZ: THE NOE CASE IS FILED
21 DIRECTLY HERE IN THE EASTERN DISTRICT OF PENNSYLVANIA
22 AND ALSO THE SAME TEN CASES WITH MR. AYLSTOCK THAT ARE
23 BEING TRANSFERRED IN HERE. THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU. RICHARD HOOD.

25 MR. HOOD: GOOD MORNING, YOUR HONOR.

1 THE COURT: GOOD MORNING. MR. HOOD, YOU
2 HAVE THE NAYLOR CASE?

3 MR. HOOD: THAT'S CORRECT.

4 THE COURT: AND THAT IS FILED HERE?

5 MR. HOOD: THAT IS FILED IN THE NORTHERN
6 DISTRICT OF FLORIDA.

7 THE COURT: OKAY. AND ARE YOU AFFILIATED
8 WITH ANY OTHER FIRM?

9 MR. HOOD: I AM, YOUR HONOR, WITH VANCE
10 ANDRUS.

11 THE COURT: THANK YOU. AND EDWIN
12 EASTERBY.

13 MR. EASTERBY: GOOD MORNING, JUDGE.

14 THE COURT: GOOD MORNING.

15 MR. EASTERBY: I'M WITH THE WILLIAMS
16 KHERKHER LAW FIRM IN HOUSTON. WE HAVE TWO CASES ON THE
17 WAY, ONE FROM THE WESTERN DISTRICT OF TEXAS AND ONE FROM
18 THE EASTERN DISTRICT OF CALIFORNIA.

19 THE COURT: THANK YOU.

20 MR. SIZEMORE, PAUL SIZEMORE.

21 MR. SIZEMORE: GOOD MORNING, JUDGE. HOW
22 ARE YOU?

23 THE COURT: I'M GOOD. HOW ARE YOU?

24 MR. SIZEMORE: GREAT. THANK YOU. WE'VE
25 GOT ABOUT 12 CASES PENDING IN CALIFORNIA. MOST OF THEM

1 ARE ON THEIR WAY HERE. I THINK PROBABLY THREE OR FOUR
2 ARE HERE ALREADY, JUDGE.

3 THE COURT: I THINK I SAW FOUR OR FIVE
4 THIS MORNING.

5 MR. SIZEMORE: YES, MA'AM.

6 THE COURT: AND THAT IS WITH THE KLINE &
7 SPECTER FIRM?

8 MR. SIZEMORE: THEY ARE HELPING US WITH
9 THOSE CASES, YES, MA'AM.

10 THE COURT: YES, THANK YOU. ARE THEY
11 PRESENT? IS ANYBODY FROM THEIR FIRM?

12 MS. TIGER: MICHELLE TIGER.

13 THE COURT: I WOULD NOT HAVE KNOWN THAT
14 EXCEPT THAT THEY ARE FRESH IN MY MIND BEING RIGHT ON MY
15 DESK THIS MORNING AS BEING NEWLY FILED ON THE 4TH OF
16 APRIL.

17 DAVID EISBROUCH.

18 MR. EISBROUCH: GOOD MORNING, MA'AM.

19 THE COURT: AND YOU ARE IN WHAT CASE?

20 MR. EISBROUCH: I'M CO-COUNSEL WITH
21 MORELLI RATNER. WE HAVE ABOUT 20 CASES FILED IN THE
22 DISTRICT OF NEW YORK THAT HAVE BEEN SENT OVER AND MORE
23 TO COME.

24 THE COURT: THANK YOU.

25 MR. EISBROUCH: THANK YOU, MA'AM.

1 THE COURT: AND DAVID RATNER.

2 MR. RATNER: I'M THE RATNER FROM MORELLI
3 RATNER, YOUR HONOR. GOOD MORNING.

4 THE COURT: GOOD MORNING.

5 MR. RATNER: AND WE ARE CO-COUNSEL WITH
6 MR. EISBROUCH ON THOSE CASES.

7 THE COURT: THANK YOU VERY MUCH.

8 AND VANCE ANDRUS.

9 MR. ANDRUS: GOOD MORNING, YOUR HONOR.

10 THE COURT: GOOD MORNING.

11 MR. ANDRUS: RICHARD HOOD IS MY PARTNER.

12 HE ALREADY SPOKE. WE HAVE APPROXIMATELY 18 CASES IN
13 LITIGATION, MOST OF WHICH ARE ON THE WAY HERE. SEVERAL
14 ARE ALREADY HERE, INCLUDING THE DOUCET CASE AND NAYLOR
15 CASE THAT HE REFERRED TO. WE EXPECT TO HAVE MORE HEADED
16 THIS WAY.

17 THE COURT: THANK YOU FOR THE BUSINESS.

18 MR. ANDRUS: YES, MA'AM.

19 MY PLEASURE. THANK YOU FOR BEING HERE
20 WITH US.

21 THE COURT: MARK GROSSMAN.

22 MR. GROSSMAN: GOOD MORNING, YOUR HONOR.

23 THE COURT: AND MR. GROSSMAN, YOU SAY YOU
24 HAVE 49 FILED?

25 MR. GROSSMAN: YES. 49 FILED IN THIS

1 COURT, YOUR HONOR.

2 THE COURT: THAT IS IN A CLASS OR
3 SEPARATELY?

4 MR. GROSSMAN: SEPARATELY. INDIVIDUALS.

5 THE COURT: INDIVIDUALS.

6 THANK YOU. CATHERINE HEACOX.

7 MS. HEACOX: GOOD MORNING, YOUR HONOR.

8 THE COURT: GOOD MORNING.

9 MS. HEACOX: I'M HERE WITH LANIER LAW
10 FIRM AND MARK LANIER. WE HAVE ABOUT 14 CASES BEFORE YOU
11 RIGHT NOW AND ABOUT 20 OR SO FILED.

12 THE COURT: THANK YOU. IS THAT THE SAME
13 FOR EVAN JANUSH?

14 MR. JANUSH: YES, YOUR HONOR.

15 THE COURT: THANK YOU VERY MUCH.

16 VICTORIA MANIATIS.

17 MS. MANIATIS: GOOD MORNING, YOUR HONOR.

18 I'M WITH MORELLI RATNER.

19 THE COURT: THANK YOU.

20 AND FRED THOMPSON?

21 MR. THOMPSON: YES, YOUR HONOR.

22 THE COURT: ANY RELATION?

23 MR. THOMPSON: NO, YOUR HONOR. I DIDN'T
24 GET 4,000 DOLLARS FROM ANY OF THESE FOLKS, SO I DIDN'T
25 RUN.

1 THE COURT: SO YOU --

2 MR. THOMPSON: I DROPPED OUT.

3 THE COURT: IT WON'T BE THAT EASY TO
4 LEAVE THIS COURTROOM. ALL RIGHT, MR. THOMPSON.

5 MR. THOMPSON: JUDGE, WE HAVE ONE CASE
6 FILED AT PRESENT. THE BUSBY SMITH CASE IN THE DISTRICT
7 OF SOUTH CAROLINA, WHICH I BELIEVE HAS BEEN TRANSFERRED
8 IN. AND WE HAVE A NUMBER OF CASES THAT WE INTEND TO
9 FILE IN THE RECENT -- NEAR FUTURE.

10 THE COURT: THANK YOU.

11 SEE, WHAT I'M DOING IS TAKING FUTURE
12 INVENTORY TO SEE WHAT IS COMING DOWN THE PIKE SOONER
13 RATHER THAN LATER. AND ONE OF MY GOALS HERE IS TO TRY
14 TO ASSESS NUMBERS, BECAUSE WE DO HAVE RESOURCES WE NEED
15 TO MEET. AND I APPRECIATE KNOWING WHAT IS IMMINENT TO
16 BE FILED AND, OF COURSE, WE CAN ALWAYS GUESS AT WHAT
17 COULD HAPPEN AFTER THAT.

18 MS. GUSSACK: YOUR HONOR, I SHOULD HAVE
19 MENTIONED AT THE OUTSET, I HAVE BROUGHT WITH ME AND
20 SHARED WITH MR. ZONIES AT LEAST, AND I WOULD LIKE TO
21 HAND TO THE COURT, THE UPDATED REPORT OF CASES FILED
22 BOTH HERE AND IN STATE COURT AND THOSE SUSPECTED
23 TRANSFERS. THE NUMBERS HAVE GONE UP SOMEWHAT. THE
24 CASES THAT WERE FILED IN STATE COURT HAVE BEEN REMOVED
25 AND WOULD ADD TO THE NUMBERS PENDING TRANSFER. SO AT

1 YOUR HONOR'S CONVENIENCE, I WILL HAND THEM TO THE COURT.

2 THE COURT: ALL RIGHT. WE ARE UP TO
3 MICHAEL MILLER.

4 MR. MILLER: GOOD MORNING, YOUR HONOR.
5 MICHAEL MILLER.

6 THE COURT: AND YOU HAVE 40 CASES SO FAR?

7 MR. MILLER: WE HAVE ABOUT 85 FILED,
8 ABOUT 80 OF WHICH ARE IN THE FEDERAL SYSTEM AND WORKING
9 THEIR WAY HERE. 10 OR 15 OF WHICH WE FILED DIRECTLY
10 UNDER YOUR HONOR'S COURT.

11 THE COURT: SO YOU ARE TAKING THE 40 THAT
12 YOU PERSONALLY FILED AND THE 40 NANCY ARMSTRONG FILED?

13 MR. MILLER: THIS IS NANCY ARMSTRONG.
14 SHE IS A MEMBER OF OUR FIRM AS WELL. WE HAVE FOUR
15 MEMBERS OF THE FIRM HERE TODAY.

16 THE COURT: THANK YOU.

17 MR. MILLER: THANK YOU.

18 THE COURT: JUST SO I REMEMBER OR TRY TO
19 REMEMBER FACES AND NAMES, WOULD YOU INTRODUCE THE OTHER
20 MEMBERS OF YOUR FIRM?

21 MR. MILLER: WELL, THIS IS CHRIS GOMEZ.
22 HE HAS BEEN OFFERED AS PROPOSED CO-LIAISON COUNSEL IN
23 THE STATE LITIGATION IN FRONT OF JUDGE TERESHKO.

24 MR. GOMEZ: GOOD MORNING, YOUR HONOR.

25 THE COURT: GOOD MORNING.

1 MR. MILLER: THIS IS KRISTINA GIGSTAD, A
2 MEMBER OF OUR FIRM AND WORKS AVANDIA 24/7.

3 THE COURT: LUCKY YOU. THANK YOU.

4 JAY SALTZMAN.

5 MR. SALTZMAN: GOOD MORNING, YOUR HONOR.

6 THE COURT: GOOD MORNING.

7 MR. SALTZMAN: WE HAVE THE SCHRANK CASE,
8 ONE OF THE CLASS ACTIONS.

9 THE COURT: YES. THANK YOU VERY MUCH.

10 AND IS IT TOM CARTMELL?

11 MR. CARTMELL: GOOD MORNING, YOUR HONOR.

12 THE COURT: GOOD MORNING.

13 MR. CARTMELL: WE HAVE FOUR CASES WE
14 FILED IN MISSOURI. I THINK THEY HAVE BEEN TRANSFERRED.
15 AND WE ARE INTENDING TO FILE ABOUT A DOZEN MORE VERY
16 SOON.

17 THE COURT: THANK YOU.

18 JERRY TAYLOR.

19 MR. TAYLOR: GOOD MORNING, YOUR HONOR.

20 THE COURT: GOOD MORNING.

21 MR. TAYLOR: I'M CO-COUNSEL WITH
22 MR. CARTMELL ON THE SAME CASES.

23 THE COURT: VERY GOOD.

24 DANIEL GALLUCCI.

25 MR. GALLUCCI: GOOD MORNING, YOUR HONOR,

1 I'M FROM RODA & NAST IN LANCASTER, PENNSYLVANIA AND WE
2 HAVE ABOUT EIGHT CASES AND MANY MORE TO COME.

3 THE COURT: THANK YOU.

4 AND BRIAN MCCORMICK.

5 MR. MCCORMICK: GOOD MORNING, YOUR HONOR.

6 BRIAN MCCORMICK WITH THE SELLER FIRM HERE IN
7 PHILADELPHIA, AND WE ARE CO-COUNSEL IN THE D'APUZZO
8 CLASS ACTION.

9 THE COURT: THANK YOU. STEPHEN SELLER,
10 IS IT?

11 MR. SELLER: YES. GOOD MORNING, YOUR
12 HONOR. AND BRIAN MCCORMICK WILL BE SPEAKING FOR THE
13 FIRM. AND WE HAVE JIM PEPPER HERE FOR THE FIRM.

14 MR. PEPPER: GOOD MORNING, YOUR HONOR.

15 THE COURT: GOOD MORNING.

16 MR. SELLER: THE UNUSUAL BACKGROUND OF
17 ONCE UPON A TIME BEING A DETAIL PERSON FOR A DRUG
18 COMPANY DETAILING ACCESS TO A COMPETING PRODUCT.

19 MR. PEPPER: MANY MOONS AGO, YOUR HONOR.

20 MR. SELLER: MANY MOONS AGO.

21 THE COURT: AND MARVIN FRANK.

22 MR. FRANK: GOOD MORNING, YOUR HONOR.

23 THE COURT: AND MIRACOLU IS YOUR CASE?

24 MR. FRANK: MIRACOLU IS MY CASE. IT'S A
25 CLASS ACTION. WE ARE CLASS ACTION ATTORNEYS.

1 THE COURT: THANK YOU, MR. FRANK.

2 AND I HAVE ALREADY MET JAMES PEPPER WHO
3 WAS NEXT ON THE LIST.

4 JAMES SILL.

5 MR. SILL: YES, YOUR HONOR. I'M HERE AS
6 CO-COUNSEL IN THE CASE OF DONAHUE IN THE EASTERN
7 DISTRICT OF OKLAHOMA WHICH IS CURRENTLY BEFORE YOUR
8 HONOR, AND ONE OTHER FEDERAL CASE, HENDRICKSON IN THE
9 WESTERN DISTRICT OF OKLAHOMA THAT HAS NOT YET BEEN
10 TRANSFERRED.

11 IN TERMS OF FUTURE INVENTORY, WE WILL TRY
12 TO KEEP PEPPER HAMILTON AND THE COURT ADVISED. WE DO
13 HAVE A NUMBER OF CLIENTS AND FRANKLY, ARE NOT SURE OF
14 THE NUMBER THAT WILL BE FILED BEFORE YOUR HONOR.

15 THE COURT: THANK YOU VERY MUCH.

16 BETHANY SAMUELS.

17 MS. SAMUELS: GOOD MORNING, YOUR HONOR.
18 BETHANY SAMUELS ON BEHALF OF THE LAW FIRM OF MEYERSON &
19 O'NEILL. WE HAVE TWO CASES CURRENTLY FILED BEFORE YOUR
20 HONOR AND ANOTHER CASE THAT WE ARE GOING TO FILE THIS
21 WEEK.

22 THE COURT: THANK YOU.

23 AND SHANNON MEDLEY.

24 MS. MEDLEY: GOOD MORNING, YOUR HONOR.

25 I'M HERE WITH MR. SILL ON THE DONAHUE AND HENDRICKSON

1 CASES .

2 THE COURT: THANK YOU .

3 JOE ZONIES .

4 MR. ZONIES: GOOD MORNING, YOUR HONOR .

5 NICE TO SEE YOU . WE HAVE APPROXIMATELY FIVE CASES, TWO
6 MORE ON THEIR WAY TO THE COURT, AND WE WILL BE FILING
7 ONE TODAY, I SUSPECT, SO THAT WILL FIND ITS WAY HERE AS
8 WELL .

9 THE COURT: THANK YOU .

10 MR. ZONIES, YOU PREPARED JOINTLY ONE OF
11 THE SUBMISSIONS .

12 MR. ZONIES: YES, YOUR HONOR .

13 THE COURT: CORRECT?

14 THANK YOU VERY MUCH .

15 TOM MELLON, JUNIOR .

16 MR. MELLON: GOOD MORNING, YOUR HONOR .

17 THE COURT: GOOD MORNING .

18 MR. MELLON: TOM MELLON, AND WITH STEPHEN
19 CORR WE HAVE TAKEN EIGHT CASES, FOUR FROM ALABAMA, ONE
20 FROM INDIANA, TWO FROM PENNSYLVANIA . I DON'T WANT TO
21 MISLEAD THE COURT, HOWEVER, I DON'T KNOW HOW MANY WE
22 HAVE ACTUALLY FILED . I THINK ONLY ONE OR TWO . NO . WE
23 HAVE FILED FIVE OF THE EIGHT . THANK YOU .

24 THE COURT: THANK YOU .

25 CHARLES ZIMMERMAN .

1 MR. ZIMMERMAN: YES, YOUR HONOR.

2 THE COURT: HELLO.

3 MR. ZIMMERMAN: WE HAVE TWO FILED CASES
4 AND TEN THAT ARE ON THE WAY TO BE FILED OR HAVE BEEN
5 FILED.

6 THE COURT: THANK YOU.

7 KAREN BARTH MENZIES.

8 MS. BARTH MENZIES: GOOD MORNING, YOUR
9 HONOR.

10 THE COURT: GOOD MORNING.

11 MS. BARTH MENZIES: WE HAVE TEN CASES
12 FILED. SIX HAVE FOUND THEIR WAY HERE. THERE IS ONE
13 THAT WE HAVE WITH MR. MELLON AND MR. CORR THAT WOULD BE
14 THE SAME, THE MORAN CASE, SO THERE'S A CROSSOVER THERE.

15 THE COURT: THANK YOU.

16 ROGER DRAKE.

17 MR. DRAKE: GOOD MORNING, YOUR HONOR.

18 THE COURT: GOOD MORNING. AND YOU HAVE
19 THREE CASES PENDING SO FAR?

20 MR. DRAKE: THAT'S RIGHT, AND THEY ARE
21 ALL HERE.

22 THE COURT: THANK YOU.

23 DAVID VERMONT.

24 MR. VERMONT: GOOD MORNING, YOUR HONOR.

25 THE COURT: GOOD MORNING.

1 MR. VERMONT: WE HAVE NO CASES FILED YET
2 BUT I EXPECT TO BE FILING SOME IN THE NEXT FEW WEEKS,
3 PROBABLY ABOUT SIX.

4 THE COURT: THANK YOU.

5 TRACY REZVANI.

6 MS. REZVANI: GOOD MORNING, YOUR HONOR.
7 WE ARE ALSO COUNSEL FOR D'APUZZO IN THE CLASS ACTION.
8 HERE WITH ME IS MY PARTNER, HALLEY ASCHER AND MY
9 ASSOCIATE ROSALEE CONNELL.

10 THE COURT: HOW DO YOU DO.

11 MS. REZVANI: AND WE BELIEVE THAT THERE
12 MAY BE ANOTHER FILING IN THE NEXT COUPLE OF WEEKS. WE
13 WERE APPROACHED BY AN ATTORNEY WHO REPRESENTS A THIRD
14 PARTY PAYOR INTERESTED IN POSSIBLY FILING. IF IT
15 HAPPENS, IT WILL BE WITHIN THE NEXT WEEK OR SO.

16 THE COURT: THANK YOU.

17 MARK LANIER.

18 MR. LANIER: GOOD MORNING, JUDGE.

19 THE COURT: DID I PRONOUNCE YOUR NAME
20 CORRECTLY?

21 MR. LANIER: YOU WERE DEAD ON.

22 THE COURT: OH, GOOD.

23 MR. LANIER: YOU WERE DEAD ON.

24 JUDGE, I'M WITH THE LANIER LAW FIRM. YOU
25 MET TWO OF MY ASSOCIATES ALREADY. WE HAVE 14 CASES THAT

1 ARE HERE. WE HAVE GOT FOUR IN THE PROCESS OF BEING
2 HERE. WE HAVE DOZENS AND DOZENS IN THE PROCESS OF BEING
3 FILED. AND THEN -- THOSE ARE OUR CASES. IN ADDITION TO
4 THAT, I HAVE BEEN ASKED TO BE TRIAL COUNSEL FOR A NUMBER
5 OF DIFFERENT CASES FROM A NUMBER OF DIFFERENT LAWYERS.
6 THEY WOULD KEEP THOSE LAWYERS' AFFILIATIONS AT THIS
7 POINT IN TIME.

8 THE COURT: THANK YOU.

9 MR. LANIER: THANK YOU, JUDGE.

10 THE COURT: TIM GOSS.

11 MR. GOSS: GOOD MORNING, YOUR HONOR. I
12 HAVE ONE CASE THAT WAS RECENTLY TRANSFERRED AND A NUMBER
13 WAITING TO BE TRANSFERRED.

14 THE COURT: THANK YOU.

15 AND WE HAVE MET MICHELE TIGER.

16 MS. TIGER: YES, YOUR HONOR.

17 THE COURT: DAVID MATTHEWS.

18 MR. MATTHEWS: GOOD MORNING, YOUR HONOR.

19 THE COURT: GOOD MORNING.

20 MR. MATTHEWS: I HAVE FIVE CASES ON THE
21 WAY HERE. I THINK WE ARE REVIEWING SEVERAL HUNDRED.

22 THE COURT: YOU SAID SEVERAL HUNDRED?

23 MR. MATTHEWS: YES, YOUR HONOR.

24 THE COURT: THANK YOU. WITH A HEADS UP.

25 ANYONE WHO I -- WHOSE NAME I DID NOT CALL WOULD LIKE TO

1 INTRODUCE THEMSELVES TO ME? ALL RIGHT.

2 I WANT TO ALSO INTRODUCE PEOPLE THAT ARE
3 VERY IMPORTANT TO THE CASE MANAGEMENT OF THIS MDL AND
4 THOSE, OF COURSE, ARE THE PERSONS THAT ARE ASSISTING
5 THIS COURT. WE HAVE TWO DEPUTIES. MY COURTROOM DEPUTY
6 IS MISS ERICA PRATT, WHO YOU HAVE ALREADY MET, AND MY
7 CIVIL DEPUTY, MY CIVIL CASES DEPUTY IS MISS VELMA WHITE.

8 MS. WHITE: GOOD MORNING.

9 THE COURT: AND ALSO ASSISTING US TODAY
10 IS OUR STENOGRAPHER, SUZANNE WHITE. AND MY LAW CLERK,
11 WHO IS ASSIGNED TO THIS FILE WHO FORTUNATELY WILL STAY
12 WITH ME ANOTHER YEAR, IS JOSH D'ANCONA.

13 NOW, AS YOU WELL KNOW, WELL, MAYBE YOU
14 DON'T, I WILL REPEAT NOW, THESE COURT ASSISTANTS ARE
15 INTEGRAL TO THE SUCCESS OF ANY CASE MANAGEMENT AND KEEP
16 US AFLOAT. THEY ARE HERE TO ASSIST YOU EXCEPT WHEN IT
17 COMES TO ANY SUBSTANTIVE MATTER WHICH, OF COURSE, YOU
18 WOULD NOT POSE BY CALLING IN QUESTIONS. BUT SIMPLE
19 TECHNICAL, PROCEDURAL QUESTIONS, THEY CAN BE APPROACHED
20 BY LETTER, FAX OR TELEPHONE. BUT, MIND YOU, THAT IS
21 PROCEDURAL. OKAY.

22 NOW, I WOULD LIKE TO MOVE ON TO THE PART
23 OF THE AGENDA WHICH I THINK IS ON EVERYONE'S MIND. I
24 HAVE BEEN GIVEN THE JOINT REPORT NOW ON CASES FILED --
25 THANK YOU, MISS GUSSACK, IN THE STATE AND THE FEDERAL

1 COURTS. AND I THINK THAT IT WOULD BE A GOOD TIME IF THE
2 PARTICULAR INDIVIDUALS WHO HAVE APPLIED TO THIS COURT TO
3 BE CONSIDERED FOR STEERING COMMITTEE POSITIONS AND
4 LIAISON COUNSEL WOULD MORE SPECIFICALLY ADDRESS NOT
5 BASICALLY HOW MANY CASES THAT THEY ARE HANDLING AND
6 EXPECT TO HANDLE, BECAUSE WE JUST HEARD THAT FROM ALL OF
7 YOU, BUT WOULD INTRODUCE THEMSELVES AGAIN AS TO WHY THEY
8 BELIEVE THEY WOULD BE HELPFUL AND APPROPRIATE TO BE ON
9 THE PLAINTIFFS' STEERING COMMITTEE. AND THESE I WILL
10 TAKE IN ALPHABETICAL ORDER AND I WILL TAKE THEM AS THEY
11 HAVE APPLIED, ALL OF THEM, BY THE DEADLINE THAT WE SET
12 OUT IN OUR CASE MANAGEMENT ORDER #1.

13 I WILL ALSO TELL YOU THAT THIS COURT WILL
14 TAKE UNDER CONSIDERATION NOT ONLY THE APPLICATIONS THAT
15 WE RECEIVED AND REVIEWED BUT YOUR INTRODUCTIONS TODAY.
16 AND WE WILL NAME A STEERING COMMITTEE BY THE END OF THIS
17 WEEK. I'M GOING TO RESERVE TWO TO THREE POSITIONS AND
18 LEAVE THEM VACANT ON THE STEERING COMMITTEE BECAUSE, AS
19 I UNDERSTAND IT AND AS YOU HAVE ALL PROVEN TO ME, WE
20 HAVE MANY MORE CASES YET TO COME, AND I SUSPECT MANY
21 MORE ATTORNEYS TO BE INVOLVED. AND I WOULD LIKE TO MAKE
22 THIS ROOM FOR GROWTH TO INCORPORATE THOSE THAT FOLLOW
23 AND NOT LEAVE THIS STATIC.

24 SOME OF YOU MAY HAVE WONDERED WHY THE
25 COURT WAITED TO THIS DATE, WHICH IS NOT QUITE SIX MONTHS

1 FROM THE TIME THIS MDL WAS FORMED, BUT ABOUT FIVE MONTHS
2 SINCE WE WERE NAMED TO CHAIR IT, THAT WE KNEW THAT THIS
3 WOULD BE A GROWING MATTER. AND WE THOUGHT ANYTHING TOO
4 SOON WOULD NOT FLESH OUT ALL OF YOU GOOD COUNSEL AND THE
5 KINDS OF CASES THAT ARE BEFORE IT, SO WE CAN NOW
6 PERCEIVE THE ISSUES THAT ARE INTEGRALLY INVOLVED IN
7 THIS TYPE OF MDL. THEY ARE NUMEROUS, AS YOU WELL KNOW.
8 SO INSTEAD OF MAKING THEM SMALLER, WE WANTED TO ENHANCE
9 THE OPPORTUNITY FOR INVOLVEMENT AND OPPORTUNITY FOR
10 PARTICIPATION BECAUSE WE THINK THAT MAKES A BETTER
11 RESOLUTION. SO HERE WE ARE. AND WE ARE GOING TO START
12 WITH RACHEL ABRAMS.

13 MS. ABRAMS: GOOD MORNING, YOUR HONOR.

14 THE COURT: GOOD MORNING.

15 MS. ABRAMS: MY NAME IS RACHEL ABRAMS. I
16 HAVE BEEN AT THE LAW FIRM OF HERSH AND HERSH LOCATED IN
17 SAN FRANCISCO FOR TEN YEARS, WHEREIN I SPECIALIZED IN
18 MASS TORTS PRODUCT LIABILITY. BEEN INVOLVED IN EVERY
19 MASS TORT OUR FIRM, HERSH AND HERSH, HAS WORKED ON IN
20 THE LAST TEN YEARS.

21 MOST RECENTLY, I WORKED ON ZYPREXA MDL IN
22 THE EASTERN DISTRICT OF NEW YORK, OF WHICH PEPPER
23 HAMILTON WAS COUNSEL FOR ELI LILLY.

24 I'M FAMILIAR WITH PEPPER HAMILTON AND OUR
25 FIRM, HERSH AND HERSH, HAS DEDICATED LOTS OF TIME,

1 ENERGY AND RESOURCES TO THE AVANDIA LITIGATION.

2 I AM CURRENTLY ON NO OTHER PSC'S, AND
3 WILL DEDICATE MY TIME TO WORKING ON THE AVANDIA
4 LITIGATION.

5 THE COURT: AND HOW MANY PSC'S HAVE YOU
6 BEEN INVOLVED WITH?

7 MS. ABRAMS: I HAVE BEEN INVOLVED IN
8 THREE OTHER PSC'S IN THE LAST FEW YEARS, ON THE STEERING
9 COMMITTEES THEMSELVES. AND I HAVE BEEN PART OF
10 COMMITTEES WORKING ON MDL'S AS WELL, NOT NECESSARILY ON
11 THE PSC.

12 THE COURT: AND YOU HAVE ACTUALLY
13 PARTICIPATED IN SETTLEMENT NEGOTIATIONS?

14 MS. ABRAMS: WITH REGARDS TO THE ZYPREXA
15 LITIGATION.

16 THE COURT: MR. ANDRUS.

17 MR. ANDRUS: YES, MA'AM. MAY IT PLEASE
18 THE COURT. IN YOUR CASE MANAGEMENT ORDER #1, YOU
19 INSTRUCTED US THAT YOU WERE GOING TO BE INTERESTED IN
20 PARTICULAR IN THE WILLINGNESS AND AVAILABILITY OF
21 COUNSEL TO COMMIT TO TIME CONSUMING PROJECT, ABILITY TO
22 WORK COOPERATIVELY WITH OTHERS AND PROFESSIONAL
23 EXPERIENCE IN THIS TYPE OF LITIGATION. I BELIEVE I MEET
24 ALL THOSE CRITERIA, YOUR HONOR. MY WILLINGNESS TO WORK
25 IS DEMONSTRATED BY THE FACT THAT STARTING LAST MAY I

1 BEGAN ORGANIZING VARIOUS LAWYERS WHO EXPRESSED INTEREST.
2 AND MAY I SAY THAT, AT THE OUTSET, NO ONE HAD ANY
3 INTEREST IN THIS CASE, BECAUSE VIOXX WAS A VERY SIMILAR
4 CASE. WE WERE TAKING A BEATING. THERE IS A SPECIFIC
5 CAUSATION ISSUE IN THIS CASE WHICH IS GOING TO BE VERY
6 DIFFICULT TO OVERCOME. BUT AS YOU CAN SEE, I FOUND A
7 FEW FRIENDS AND STARTED WITH A NATIONAL CONFERENCE AND
8 FROM THERE SIMPLY GREW.

9 AT THE COURT'S REQUEST AND INSTRUCTIONS,
10 WE BECAME AS INCLUSIVE AS WE COULD. WE HAVE MAILED TO
11 EVERYONE INVITATIONS TO ATTEND. WE FORMED TEN DIFFERENT
12 WORKING GROUPS OF VARIOUS LAWYERS HERE. I WISH TO SAY,
13 YOUR HONOR, THAT THE LAWYERS WHO ARE REPRESENTED HERE
14 TODAY ARE THE CREAM OF THE CROP. EVERY SINGLE ONE OF
15 THEM IS OUTSTANDING AND WOULD DO YOU PROUD. I'M PLEASED
16 TO SAY THAT I HAVE BEEN ABLE TO HELP GUIDE THEM THUS
17 FAR.

18 IN TERMS OF PERSONAL PROFESSIONAL
19 EXPERIENCE, I PRESENTLY SERVE ON TWO OTHER NATIONAL
20 PLAINTIFFS' STEERING COMMITTEES, INCLUDING THE EXECUTIVE
21 COMMITTEE OF THE FOSAMAX LITIGATION IN NEW YORK CITY,
22 AND HAVE SERVED EITHER ON COMMITTEES OF THE PLAINTIFFS'
23 STEERING COMMITTEES OR AS A COMMITTEE MEMBER ON TWO OR
24 THREE OTHERS IN ADDITION TO THAT.

25 IN TERMS OF BRINGING THE BOAT INTO THE

1 DOCK IN THE BREAST IMPLANT LITIGATION, I HAVE LED FOR
2 NINE YEARS LOUISIANA BREAST IMPLANT LITIGATION
3 PLAINTIFFS' STEERING COMMITTEE COMPOSED, YOUR HONOR, OF
4 23 LAW FIRMS. AND WE WERE SUCCESSFUL IN ACQUIRING
5 SETTLEMENTS OF OVER 400 MILLION DOLLARS ON BEHALF OF OUR
6 CLIENTS.

7 I LOOK FORWARD TO SERVING THE COURT IF
8 THE COURT SEES FIT TO APPOINT ME. I THANK YOU FOR THE
9 CHANCE TO ADDRESS THE COURT.

10 THE COURT: THANK YOU, MR. ANDRUS.

11 MR. ANDRUS: YES, MA'AM.

12 THE COURT: NEXT I WOULD LIKE TO HEAR
13 FROM BRIAN AYLSTOCK.

14 MR. AYLSTOCK: GOOD MORNING, YOUR HONOR.

15 THE COURT: GOOD MORNING, AGAIN.

16 MR. AYLSTOCK: MAY IT PLEASE THE COURT.

17 I HAVE SERVED ON A NUMBER OF DIFFERENT COMMITTEES, AND I
18 WOULD SUBMIT TO THE COURT THAT ONE THING THAT I THINK
19 MYSELF AND MY PARTNER AND OUR FIRM CAN BRING TO THE
20 TABLE IS SOME EXPERTISE WITH REGARD TO THE SPECIFIC
21 DISCOVERY ISSUES THAT ARE GOING TO BE INVOLVED IN THIS
22 CASE. EITHER MYSELF OR MY PARTNERS HAVE SERVED AS
23 CHAIRS OF NUMEROUS DISCOVERY COMMITTEES, AS WELL AS
24 CO-LEAD COUNSEL ON DIFFERENT LITIGATIONS. AND I THINK
25 THAT IS SOMETHING THAT I WOULD BRING TO THE TABLE.

1 THE COURT: THE NEXT IS DANIEL BECNEL,
2 JUNIOR.

3 MR. BECNEL: MAY IT PLEASE THE COURT.
4 I'M APPARENTLY THE ONLY ONE FROM A COUNTRY TOWN, AND I'M
5 WHAT I CALL A TBO, TALL BUILDING OIL. I STARTED
6 PRACTICING LAW 38 YEARS AGO, WON ONE OF THE FIRST
7 MILLION DOLLAR VERDICTS MY FIRST YEAR OUT OF LAW SCHOOL,
8 AND SINCE THEN HAVE BEEN DOING MOST OF THE MASS TORTS
9 AROUND THE COUNTRY. I HAVE -- THE FIRST BIG MDL CIVIL
10 ACTION WAS BEFORE JUDGE GERHARD GESELL IN WASHINGTON,
11 D.C., WHICH IS THE SWINE FLU INOCULATION PROGRAM, WHICH
12 WE ULTIMATELY SETTLED FOR A HALF BILLION DOLLARS WHEN
13 GERALD FORD WAS PRESIDENT. SO THAT IS HOW LONG AGO THAT
14 WAS. I HAVE BEEN INVOLVED IN MOST LITIGATION AROUND THE
15 COUNTRY, MOST TRAIN DERAILMENTS, CHEMICAL PLANT
16 EXPLOSIONS. I'VE HIRED TEAMS OF LAWYERS, SO IF YOU SEE
17 THE LIST OF LAWYERS ON MY LETTERHEAD, I HAVE NO
18 PARTNERS, EVEN THOUGH MY SON AND HIS WIFE ARE LAWYERS,
19 MY BROTHER AND HIS WIFE ARE LAWYERS, MY OTHER SON AND
20 HIS WIFE ARE LAWYERS, ONE OF MY SONS IS ON A NATIONAL
21 CAMPAIGN WORKING FOR PRESIDENT CLINTON RIGHT NOW. SO WE
22 HAVE A GIGANTIC STAFF. IF YOU READ USA TODAY, TODAY
23 DEALING WITH THE FEMA TRAILER CASES THAT ARE NOW
24 NATIONWIDE, NOT JUST FEMA TRAILERS IN LOUISIANA. WE
25 HAVE TEAMS OF LAWYERS THAT WE HIRE FOR SPECIFIC

1 PROJECTS.

2 FOR EXAMPLE, I'M HIRING ABOUT 25 LAWYERS
3 RIGHT NOW TO DO NOTHING BUT FEMA TRAILER CASES THAT I
4 WILL MANAGE THROUGH MY FACILITIES. I HAVE HANDLED ABOUT
5 EIGHT OR NINE MAJOR NATIONAL DEPOSITORIES FROM NORPLANT
6 TO FORD BRONCO CASES, TO ALL KINDS OF CASES, CHEMICAL
7 EXPLOSIONS, TRAIN DERAILMENTS AND THE LIKE.

8 OF PARTICULAR IMPORTANCE HERE, BECAUSE
9 I'M A TRIAL LAWYER. I SPEND AN AVERAGE OF THREE MONTHS
10 A YEAR TRYING CASES, SOME OF THE BIGGEST IN THE COUNTRY.
11 WHETHER IT WAS BREAST IMPLANTS, WHICH I HAD A TEAM OF 35
12 LAWYERS I PUT TOGETHER AND SPENT TWO YEARS SUPERVISING
13 AND TAKING THE MAJOR DEPOSITIONS OF DOW CORNING
14 CORPORATION IN THAT CASE. AND VIOXX, I HELPED ORGANIZE
15 THAT CASE. I FILED FOR THE MDL. IN ADDITION TO THAT, I
16 COMMITTED SEVEN LAWYERS FULL-TIME TO DO ALL OF THE
17 DOCUMENTS, ONE OF WHICH THE ONLY FEDERAL TRIAL THAT WAS
18 TRIED, ONE OF MY LAWYERS, A FEMALE LAWYER, REBECCA TODD,
19 HELPED HAVE THAT CASE TRIED IN NEW ORLEANS BEFORE JUDGE
20 FALLON.

21 IF YOU LOOK AT THE LIST OF CASES I HAVE
22 SERVED ON, NOT ONLY DO I DO THAT, BUT WE DO A LOT OF PRO
23 BONO WORK. I'M REPRESENTING ABOUT 61,000 PEOPLE IN THE
24 GULF SOUTH RIGHT NOW RELATED TO HURRICANE RITA AND
25 KATRINA PRO BONO. SO I HAVE A VERY DIVERSE FIRM. I

1 HAVE VERY DIVERSE LAWYERS WITH HISPANICS, AFRICAN
2 AMERICANS. AND IN FACT I THINK I WAS THE FIRST ONE TO
3 SPEAK TO THE MDL PANEL, WHY WAS THE MDL PANEL COMPOSED
4 OF ALL WHITE MALES, WHO WERE BASICALLY SENIOR JUDGES.
5 AND FINALLY THEY PUT A COUPLE OF FEMALES ON IN THE LAST
6 EIGHT OR TEN YEARS. PRIOR TO THAT, THEY DIDN'T HAVE
7 ANY. THEY DIDN'T HAVE ANY AFRICAN AMERICANS. AND I
8 THINK THAT IS CRITICAL. AND THEY DON'T HAVE YOUNG
9 LAWYERS, WHICH I THINK IS CRITICAL.

10 I MIGHT ADD THAT IN ATLA, I LED MANY
11 LITIGATION GROUPS. I WAS ASKED TO BE THE JUDGE IN THE
12 VIOXX CASE, WHO I CONSIDER TO BE MARK LANIER, THE BEST
13 TRIAL LAWYER IN AMERICA THAT I HAVE EVER SEEN. AND I
14 HAVE SEEN A LOT IN 38 YEARS. SO I WAS ASKED TO JUDGE
15 ALL OF THE LAWYERS, AND MARK LANIER WAS THE BEST.

16 PAUL SIZEMORE, WHO WAS WITH BEASLEY ALLEN
17 AT THE TIME, I THOUGHT WAS THE SECOND BEST. SO THERE
18 ARE A LOT OF TALENTED PEOPLE.

19 VANCE ANDRUS, AND I WANT THE COURT TO
20 KNOW, I HAVE NO OBJECTION TO VANCE. MY OBJECTION GOES
21 TO DIVIDING UP WORK AND TAKING ALL THE WORK WITH A GROUP
22 OF PEOPLE WHO THEN SHARE ALL THE FEES. I DON'T THINK
23 THAT THAT IS WISE. AND IN THE FEMA TRAILER CASE WE DID
24 SOMETHING UNIQUE. WE SAID EVERYBODY THAT IS ON THE
25 COMMITTEE, YOU PAY X NUMBER OF DOLLARS AS AN ASSESSMENT.

1 EVERYBODY WHO WANTS TO WORK IN THE COMMITTEE, YOU PAY X
2 NUMBER OF DOLLARS AS AN ASSESSMENT. THEN WE HIRED A
3 TEAM OF LAWYERS, BECAUSE YOU CAN LISTEN TO ALL OF THE
4 QUALIFICATIONS OF ALL OF THESE PEOPLE, AND IF YOU SAY
5 I'M GOING TO DO THE DOCUMENTS IN MY OFFICE, IF I HAVE A
6 BETTER PROJECT FOR THEM TO WORK ON, I PULL THEM OFF THAT
7 PROJECT AND DO SOMETHING ELSE. SO WE HIRE TEAMS OF
8 INDEPENDENT LAWYERS TO DO THAT.

9 THE PEOPLE WHO PUT UP THE MONEY SHARE IN
10 THE HOURS OF THOSE PEOPLE AND ANY FUTURE CASES, BECAUSE
11 LEAD COUNSELS HAVE ALWAYS TAKEN A POSITION, IF YOU
12 CONTROL THE TELEPHONE, YOU CONTROL ALL THE NEW CASES
13 THAT COME IN. WE SAID NO MORE CONTRACTS. THESE CASES,
14 IF THEY WERE SIGNED BY A CERTAIN DATE, THEN THEY ARE
15 YOURS. IF THEY COME AFTER THAT DATE, WHERE, LET'S SAY,
16 MYSELF OR MR. ANDRUS OR MR. LANIER OR WHOEVER IS
17 APPOINTED TO THIS COMMITTEE, THAT WE DON'T WANT -- WE DO
18 NOT WANT THAT POSITION TO BE USED AS A METHOD TO TAKE
19 CASES. THAT IS NOT WHAT MDL'S ARE FOR.

20 THE COURT: MR. BECNEL, IS THAT WHY YOU
21 OBJECTED TO EVERYONE WHO APPLIED TO THE STEERING
22 COMMITTEE?

23 MR. BECNEL: I DID NOT OBJECT TO ANY
24 PARTICULAR PERSON WHO APPLIED.

25 THE COURT: NO. IT WAS A GENERAL

1 OBJECTION --

2 MR. BECNEL: YES. IT WAS A GENERAL

3 OBJECTION --

4 THE COURT: AND I NEED TO UNDERSTAND.

5 MR. BECNEL: -- OF THAT REASON.

6 THE COURT: BUT I DON'T SEE THAT IT'S

7 HELPFUL TO ME TO DECIDE WHO TO PUT ON THE STEERING

8 COMMITTEE WITH SUCH A HAZY, VAGUE ASSERTION.

9 NOW, IF AND WHEN SOMETHING LIKE THAT MAY
10 BECOME APPARENT, WHICH I CAN'T SEE HERE, I CAN'T SEE IT.
11 BUT IF IT DOES, I WILL BE THE FIRST TO LISTEN. BUT I
12 JUST THINK THAT IT'S APPROPRIATE AND MORE DESIGNED TO
13 WORK IN COOPERATION, BECAUSE WE HAVE TO IN A CASE LIKE
14 THIS. WE JUST MUST. DISCOVERY WOULD BE A NIGHTMARE.
15 GIVING THE COURT ONE SUBMISSION WOULD BE A NIGHTMARE IF
16 THERE WASN'T COOPERATION. COOPERATION MEANS THAT WE
17 CAN'T HAVE ALLEGATIONS STANDING BETWEEN THAT -- LAWYERS
18 THAT WOULD PREVENT IT. SO I'M TRYING TO MAKE SURE
19 EVERYONE HAS A VOICE, BUT I DON'T WANT THIS TO BECOME
20 POLITICAL WITH A SMALL P, IF YOU UNDERSTAND.

21 MR. BECNEL: MAY IT PLEASE THE COURT.

22 THAT IS NOT -- I HAVE BEEN ON THESE THINGS TOO MANY
23 TIMES. I HAVE SEEN THE LEAD COUNSEL TAKE, FOR EXAMPLE,
24 IN THE BREAST IMPLANT CASE CONTROL OF THE PHONE AND GET
25 THE 3,000 BEST CASES IN THE COUNTRY AND DID NO WORK ON

1 COMMON BENEFIT. JUST DID A SPEAKING PART BEFORE AN MDL
2 COMMITTEE. THAT IS NOT RIGHT. I DON'T THINK IT'S
3 RIGHT. I DON'T THINK IT'S FAIR.

4 THE COURT: BUT IT HAS NOT HAPPENED HERE,
5 MR. BECNEL.

6 MR. BECNEL: IT HAS NOT HAPPENED HERE
7 YET. I HAVE SERVED IN THIS COURTHOUSE, I THINK ON FIVE
8 MAJOR MDL'S, ALL OF WHICH WERE RESOLVED, DIDN'T HAVE ANY
9 OF THOSE PROBLEMS.

10 THE COURT: RIGHT.

11 MR. BECNEL: NEVER. WHETHER IT WAS JUDGE
12 BECHTLE, OR THE OTHER JUDGES THAT HANDLE THESE VARIOUS
13 CASES, IN PEDICLE SCREW AND OTHER CASES.

14 MY ONLY CONCERN IN THIS, MANY TIMES WHAT
15 HAPPENS IS, IF YOUR LEAD COUNSEL, YOU SAY, OKAY, MISS
16 SMITH, YOU DO THIS, MR. SUCH AND SUCH, YOU DO THAT, IT'S
17 NOT AN OPEN PROCESS. HOW ELSE ARE YOU GOING TO HAVE
18 YOUNG LAWYERS, AFRICAN AMERICAN LAWYERS, PROBABLY DON'T
19 EVEN HAVE AN APPLICATION FROM AN AFRICAN AMERICAN OR A
20 HISPANIC. THAT IS ABOUT 35 PERCENT OF THE POPULATION IN
21 THE UNITED STATES. I'M CONCERNED ABOUT THOSE ISSUES.
22 VERY CONCERNED ABOUT THOSE ISSUES.

23 LOOK, JUST AS CONCERNED AS I WAS WITH THE
24 MDL NOT HAVING AFRICAN AMERICANS ON THE PANEL AND
25 HISPANICS ON THE PANEL AND WOMEN ON THE PANEL. THAT IS

1 AN IMPORTANT ISSUE.

2 THE COURT: WELL, IT CERTAINLY IS AN
3 IMPORTANT ISSUE. THERE CERTAINLY ARE A LOT OF WOMEN IN
4 THIS COURTROOM. AND I THINK DIVERSITY IS SOMETHING THAT
5 THIS COURT ALWAYS ADDRESSES AND RECOGNIZES, NO MATTER
6 WHAT THE FUNCTION.

7 MR. BECNEL: I DON'T WANT YOU TO THINK
8 I'M TRYING TO BE A DISSIDENT. I WENT TO THE MEETING
9 YESTERDAY. MY BIGGEST PROBLEM UNTIL YOU APPOINT A
10 COMMITTEE, IT'S KIND OF HARD TO MAKE A DEAL.

11 FOR EXAMPLE, SITTING IN HERE MR. BYSNER
12 WHO HAS BEEN IN THE LAST FOUR GIANT CASES I HAVE BEEN
13 IN, VIOXX, ONE OF THE LEAD PEOPLE, DID NOT EVEN
14 INTRODUCE HIMSELF. SO YOU DON'T KNOW WHO IS REALLY
15 PULLING THE STRINGS IN TERMS OF, YOU KNOW, YOU HAVE ONE
16 DEFENSE FIRM HERE TODAY BUT YOU MIGHT HAVE THREE OR FOUR
17 OTHER THAT ARE SITTING LIKE O'MELVENY & MYERS, WHO ARE
18 REALLY GOING TO CONTROL A LOT OF THE LITIGATION.

19 THE COURT: WELL, MR. BECNEL, I AM
20 POSITIVE THAT ONE OF THE THINGS THAT I DO BEST IS SNIFF
21 THAT STUFF OUT. ON THE OTHER HAND, I DEPEND ON GOOD
22 COUNSEL TO KEEP ME INFORMED. AND AS A COOPERATIVE
23 MEMBER OF THE STEERING COMMITTEE, I NEED TO BE SURE THAT
24 THERE IS NOT A CONSPIRACY BEING ALLEGED UNDER EVERY
25 SEAT. I THINK THAT IS COUNTERPRODUCTIVE. ON THE OTHER

1 HAND, IF IT IS TRUE, I NEED TO KNOW ABOUT IT. SO WE
2 WANT AN OPEN DIALOGUE BUT WE DON'T WANT DIVISIVENESS ON
3 THE STEERING COMMITTEE.

4 YOU HAVE TOLD ME THAT YOU GOT THE
5 RESOURCES, YOU CAN HIRE TEAMS OF LAWYERS, PUSH ASIDE
6 THEIR OTHER WORK AND DO WHAT NEEDS TO BE DONE. THAT IS
7 ONE CONSIDERATION. THE OTHER IS TO BE ABLE TO WORK
8 TOGETHER WITHOUT BEING DIVISIVE, AND CAN YOU ASSURE ME
9 THAT YOU CAN DO THAT GIVEN HOW THIS HAS STARTED OUT,
10 SIR?

11 MR. BECNEL: YOUR HONOR, I HAVE NEVER --
12 MR. ZIMMERMAN, WHO I HAVE JUST WORKED WITH WITH TWO
13 MAJOR CASES -- WELL, NO, FOUR MAJOR CASES IN THE LAST
14 COUPLE OF YEARS, GUIDANT, I WAS THE BIGGEST SUPPORTER OF
15 THE LEAD COUNSEL IN GETTING THAT CASE SETTLED.
16 MEDTRONICS THE SAME WAY. MR. ZIMMERMAN, VERY FINE
17 LAWYER. MINOT, NORTH DAKOTA, THAT SAME WAY, TRAIN
18 DERAILMENT. I HAVE WORKED WITH VIRTUALLY EVERY LAWYER
19 ACROSS THIS COUNTRY FOR 38 YEARS.

20 THE COURT: MR. BECNEL, NOBODY LODGED AN
21 OBJECTION AGAINST YOU.

22 MR. BECNEL: AND I DID NOT LODGE AN
23 OBJECTION AGAINST ANY INDIVIDUAL. I WAS CONCERNED
24 ABOUT THE PROBLEM OF USING POSITIONS IN AN MDL TO GATHER
25 UP OTHER CASES.

1 THE COURT: WELL, WE WILL BE LOOKING AT
2 THAT.

3 MR. BECNEL: AND THAT IS WHAT CONCERNS
4 ME. AND THE ONLY REASON IT CONCERNS ME IS BECAUSE IT
5 HAS HAPPENED IN THE PAST. AND PEOPLE USE THEIR
6 POSITION. IF YOU GET APPOINTED, THEN ALL OF A SUDDEN
7 YOU BLOCK EVERYBODY ELSE FROM DOING COMMON BENEFIT WORK.

8 THE COURT: I UNDERSTAND THAT.

9 MR. BECNEL: AND NOT ONLY DO YOU DO THAT,
10 BUT YOU GIVE THE BEST WORK TO YOUR FRIENDS WHO MAY NOT
11 BE THE BEST TRIAL LAWYERS, WHO MAY NOT BE THE BEST
12 DEPOSITION TAKERS, WHO MAY NOT BE THE BEST BRIEF WRITER.
13 THAT IS WHAT YOU NEED IN THESE CASES. HAVING DONE
14 TOBACCO, WHICH IS THE BIGGEST CASE IN THE HISTORY OF THE
15 COUNTRY AND BEING ONE OF THE THREE PEOPLE THAT FOUNDED
16 THAT CASE, I KNOW WHAT IT TAKES. I KNOW WHAT YOU NEED
17 TO DO. AND I KNOW HOW TO DO IT. AND I'M NOT A KNOW IT
18 ALL. I HAVE PROBABLY FALLEN IN EVERY HOLE BETWEEN
19 WASHINGTON, D.C. AND RESERVE, LOUISIANA AT LEAST ONCE,
20 BUT I NEVER FALL IN IT TWICE.

21 THE COURT: THANK YOU, MR. BECNEL.

22 MR. BECNEL: THANK YOU, MA'AM.

23 THE COURT: ALL RIGHT. THOMAS CARTMELL.

24 MR. CARTMELL: YES, YOUR HONOR. I'M AN
25 ATTORNEY IN KANSAS CITY, MISSOURI, AND HAVE A LAW FIRM

1 OF 18 LAWYERS. I STARTED MY PRACTICE AS A DEFENSE MED
2 MAL LAWYER. FOR ABOUT THE LAST SEVEN YEARS, I HAVE BEEN
3 INVOLVED IN MASS TORT LITIGATION. I HAVE HAD A LOT OF
4 EXPERIENCE IN MASS TORTS IN THE LAST SEVEN YEARS.
5 CURRENTLY, I'M SERVING ON THE STEERING COMMITTEE IN
6 BEXTRA/CELEBREX. AND I'M ON THE TRIAL TEAM THAT IS
7 SCHEDULED TO TRY THE FIRST CASE MAY 5TH, STARTING IN SAN
8 FRANCISCO.

9 I HAVE ALSO BEEN INVOLVED IN TWO OTHER
10 MASS TORTS AND ARGUED AT THE DAUBERT HEARINGS IN THOSE.
11 MY EXPERIENCE HAS BEEN PRETTY GOOD IN THE LAST SEVERAL
12 YEARS AND I WOULD REALLY APPRECIATE THE OPPORTUNITY AND
13 BE THRILLED TO BE PART OF THE LEADERSHIP IN THIS CASE.

14 THE COURT: THANK YOU.

15 LOWELL FINSON.

16 MR. FINSON: YOUR HONOR, MY NAME IS
17 LOWELL FINSON. I'M FROM PHILLIPS ASSOCIATES FROM
18 PHOENIX, ARIZONA. WE HAVE A FIRM OF 45 LAWYERS AND A
19 SISTER FIRM IN SAN DIEGO WITH 20 MORE. AND I GUESS I'M
20 ONE OF THE NEW KIDS ON THE BLOCK HERE BECAUSE I HAVE NOT
21 BEEN ON A PLAINTIFFS' STEERING COMMITTEE, ALTHOUGH I
22 HAVE DONE WORK ON SEVERAL COMMITTEES. AND ONE OF THE
23 THINGS THAT I HAVE SEEN IS THAT SOMETIMES PEOPLE GET TOO
24 BUSY, SOMETIMES PEOPLE CAN'T DO THE WORK. I HAVE
25 PLEDGED TO THE PEOPLE I HAVE BEEN WORKING WITH ON THE

1 PRELIMINARY COMMITTEES THAT I WILL BE AVAILABLE AND WILL
2 DO THE WORK NECESSARY, AND WILL COMMIT THE RESOURCES.
3 AND ONE THING THAT I REALLY HAVE TO EMPHASIZE IS, IS
4 THAT WE HAVE BEEN A COOPERATIVE GROUP. AND I THINK THAT
5 YOUR HONOR SEEMS TO BE VERY CONCERNED WITH THE ABILITY
6 TO COOPERATE. AND I DO PLEDGE TO YOU AND THE DEFENSE
7 BAR AND MY COLLEAGUES, AND MORE IMPORTANT, TO MY CLIENTS
8 THAT I'M GOING TO BE COOPERATIVE WITH EVERYBODY WHO ASKS
9 ME TO DO THINGS, AND I WILL NEVER NOT BE TOO BUSY TO DO
10 WHAT NEEDS TO BE DONE. I WOULD LIKE TO BE ON THIS
11 PLAINTIFFS' STEERING COMMITTEE AS MY FIRST. AND YOUR
12 HONOR, I WOULD APPRECIATE THE HONOR OF BEING ASSOCIATED
13 WITH THE TREMENDOUS GROUP OF PEOPLE THAT I HAVE BEEN
14 AGAIN PRIVILEGED TO WORK WITH UP UNTIL TODAY.

15 THANK YOU.

16 THE COURT: THANK YOU VERY MUCH.

17 MARVIN FRANK.

18 MR. FRANK: YOUR HONOR, MY NAME IS MARVIN
19 FRANK. I'M WITH MURRAY FRANK & SAILER, AND WE ARE
20 PRIMARILY SECURITIES CLASS ACTION ATTORNEYS, ANTITRUST,
21 CONSUMER FRAUD AND DERIVATIVE ACTION ATTORNEYS. THIS IS
22 OUR FIRST MASS TORT CASE. AND THE CLASS ACTION ASPECTS
23 OF IT SOUND EXACTLY LIKE THE CLASS ACTION ASPECTS OF ALL
24 OF THE OTHER CASES THAT I HAVE TALKED ABOUT.

25 IN THOSE TYPES OF CASES, THERE HAVE TO BE

1 GROUPS OF ATTORNEYS RUNNING A CASE. THAT IS WHAT YOU
2 DO. GENERALLY, IT IS ONE LEAD COUNSEL, ONE OR TWO.
3 THEN THE EXECUTIVE COMMITTEE THAT HELPS RUN THE CASE. I
4 HAVE BEEN ON BOTH. I RECENTLY SETTLED A NUMBER OF
5 THOSE.

6 MY SPECIFIC EXPERTISE IS IN ELECTRONIC
7 DISCOVERY. THIS IS THE SECOND CAREER FOR ME. I HAVE
8 BEEN A LAWYER FOR 17 YEARS NOW. BEFORE THAT, I WAS A
9 PROGRAMMER AND ANALYST, AND HAVE A MASTER'S DEGREE IN
10 COMPUTER SCIENCE. AND INTERESTINGLY ENOUGH, YESTERDAY I
11 WENT TO THE MEETING, OF COURSE, AND I MET MR. ANDRUS FOR
12 THE FIRST TIME. AND I WAS AMAZED AT HOW WELL ORGANIZED
13 THE CASE WAS BEING ORGANIZED. AND WHEN I EXPRESSED TO
14 HIM MY DESIRE -- AND HE HAS NEVER MET ME BEFORE. WE
15 HAVE SPOKEN ONCE FOR ABOUT FIVE MINUTES ON THE PHONE --
16 TO BE INVOLVED IN ELECTRONIC DISCOVERY, HE SAID TO ME,
17 HERE, LET ME INTRODUCE YOU TO HIS PARTNER AND OVERHOLTZ
18 AND A NUMBER OF OTHERS, GET TOGETHER, START WORKING ON
19 IT. SO WHEN I HEAR OBJECTIONS AND CONCERNS ABOUT PEOPLE
20 HOGGING THE CASE AND GRABBING A CASE AND TRYING TO TAKE
21 OVER, AND GRAB ALL THE MONEY OUT OF THE CASE, I DON'T
22 KNOW WHAT THEY ARE TALKING ABOUT. THAT CERTAINLY HAS
23 NOT BEEN MY EXPERIENCE. SO I WOULD LIKE TO JOIN THIS
24 PLAINTIFFS' STEERING COMMITTEE, I WOULD LIKE TO BRING MY
25 EXPERTISE IN ELECTRONIC DISCOVERY AND CLASS ACTIONS TO

1 GROSSMAN.

2 MR. GROSSMAN: GOOD MORNING, YOUR HONOR.
3 I AM FROM SANDERS VIENER GROSSMAN. I'M A SENIOR
4 PARTNER. I STARTED THE FIRM 15 YEARS AGO. IT HAS GROWN
5 TO NOW OVER 50 ATTORNEYS, 150 PEOPLE, UNDER MY
6 LEADERSHIP. I AM PREPARED TO LEAD COMMITTEES AND I
7 THINK I'M QUALIFIED TO DO THAT IN THIS LITIGATION. ONE
8 THING THAT SETS ME APART IS I'M NOT AFRAID TO GET MY
9 HANDS DIRTY AND DO A LOT OF WORK THAT A LOT OF OTHER
10 PEOPLE DON'T WANT TO DO.

11 THE COURT: LIKE WHAT, MR. GROSSMAN?

12 MR. GROSSMAN: SOME OF THE MORE
13 DIFFICULT, ONEROUS TASKS, YOUR HONOR. ONE THAT I TOOK
14 ON RECENTLY, I HAVE BEEN WORKING WITH MATT HAMILTON
15 SPECIFICALLY TO PROFFER TO YOUR HONOR THE TIME REPORT
16 THAT WE SUBMITTED TODAY. IN COMPILING THAT REPORT, IT
17 WAS NECESSARY FOR ME TO SPEAK WITH JUST ABOUT EVERY
18 ATTORNEY IN THIS ROOM, CALL EVERY ATTORNEY HANDLING
19 STATE COURT ACTION IN THE COUNTRY, FIND OUT WHETHER IT
20 WAS IN FACT AVANDIA RELATED AS WELL AS SUMMARIZE AND
21 PREPARE FOR A GROUP OF PLAINTIFFS' ATTORNEYS SUMMARIES
22 OF ALL THE CLASS ACTION CASES THAT ARE PENDING. AND I
23 INTEND TO -- IF YOUR HONOR SO PLEASES -- TO MAINTAIN
24 THAT ROLE AND CONTINUE TO WORK WITH MR. HAMILTON AS I
25 HAVE BEEN DOING AND DEFENSE AND MY CO-PLAINTIFFS TO KEEP

1 THE COURT APPRISED OF THE INVENTORY OF CASES THAT ARE
2 OUT THERE, AND KEEP THE STATISTICS ACCURATE. IN MY
3 LEADERSHIP, IN MY FIRM, I HAVE BEEN ENGAGED IN
4 APPROXIMATELY 20 MASS SETTLEMENTS OF MEDICAL CLAIMS.
5 EACH MASS SETTLEMENT INVOLVES THOUSANDS OF CLAIMS, MANY
6 IN TENS OF MILLIONS OF DOLLARS, HUNDREDS OF MILLIONS OF
7 DOLLARS, AND I'VE BEEN UNILATERALLY LEADING THOSE
8 SETTLEMENT NEGOTIATIONS TO CONCLUSION, TO SUCCESSFUL
9 CONCLUSION, FOR MANY YEARS. I HAVE BEEN INVOLVED IN
10 SEVERAL OTHER MASS TORTS WHERE I HAVE WORKED, AGAIN
11 ROLLING UP MY SLEEVES, TO ASSIST A LOT OF COMMITTEES AND
12 A LOT OF WORK THAT THEY HAVE BEEN PERFORMING. I HAVE 49
13 OF THE 212 CASES ON FILE, WHICH I DON'T SAY TO EVIDENCE
14 MY STAKE IN THE LITIGATION AS MUCH AS TO SHOW THAT I'M
15 PUSHING THESE CASES AND I WANT TO MOVE THIS LITIGATION
16 ALONG AS MUCH AS ANYBODY. I HAVE HUNDREDS OF CLIENTS
17 THAT HAVE RETAINED ME, AND I HOPE TO GET THE BEST
18 RECOVERY FOR THEM AND DO JUSTICE FOR THEM.

19 WITH THAT, I WOULD BE -- I'M HONORED TO
20 BE HERE IN THIS ROOM WITH ALL THESE OTHER CO-PLAINTIFFS'
21 COUNSEL THAT I HAVE WORKED WITH IN THE LAST FEW MONTHS.
22 AND I FIND THEM ALL TO BE QUALIFIED, YOUR HONOR.

23 THE COURT: THANK YOU, MR. GROSSMAN.

24 I SHARE YOUR PENCHANT FOR DOING THE
25 UNGLAMOROUS WORK AND I UNDERSTAND FROM WHERE YOU SPEAK.

1 THANK YOU.

2 MICHAEL HINGLE.

3 MR. HINGLE: GOOD MORNING, YOUR HONOR.

4 WOULD YOU MIND ADDING SOMETHING TO MY LIST THERE?

5 THE COURT: I WOULD NOT MIND.

6 MR. HINGLE: MR. BECNEL SAID THAT MIGHT
7 BE IMPORTANT, TO HAVE A HISPANIC. I DON'T LOOK
8 HISPANIC. EVERYBODY TELLS ME I LOOK GERMAN. I DO HAVE
9 QUITE A BIT OF GERMAN. SOUTH OF LOUISIANA WE TEND TO BE
10 CAOOGLE, WHICH IS A DOG THAT IS MIXED WITH A LOT OF
11 VARIOUS DIFFERENT THINGS, BUT I CERTIFY THAT I'M
12 HISPANIC.

13 THE COURT: I WAS IN NEW ORLEANS LAST
14 YEAR THIS TIME FOR A FEDERAL CONFERENCE AND LEARNED A
15 LITTLE BIT MORE ABOUT THE HISTORICAL CULTURE, AND IT'S
16 QUITE A COMBINATION OF VARIOUS NATIONALITIES.

17 MR. HINGLE: IF YOU HAD SOME TIME I WOULD
18 TELL YOU WHAT HAPPENED BETWEEN THE FRENCH AND SPANISH,
19 THEY SWAPPED POWER IN THE AREA AND THAT IS HOW THE
20 CREOLES RESULTED, IF YOU HAVE SOME TIME.

21 THE COURT: DON'T FORGET THE ITALIANS.
22 THEY'RE IN THERE, TOO.

23 MR. HINGLE: MY LAW FIRM IS COMPOSED OF
24 55 PEOPLE. WE HAVE TEN ATTORNEYS. WE ARE ONE OF THE
25 LARGEST PLAINTIFFS' LAW FIRMS IN LOUISIANA. WE HAVE

1 BEEN INVOLVED IN A CORNING CHEMICAL SPILL CASE, PSC
2 THERE. WE ARE INVOLVED IN THE FEMA FORMALDEHYDE CASES
3 THAT ARE PENDING DOWN THERE NOW. WE WILL SHORTLY BE
4 INVOLVED IN THE FORMALDEHYDE CASE THAT IS PROBABLY GOING
5 TO SPREAD ACROSS THE COUNTRY. WE'VE HAD SOME OTHER
6 CHEMICAL CASES THERE. BEEN ON THE DISCOVERY COMMITTEE
7 OF THE VIOXX CLASS ACTION. IF I WERE FORTUNATE ENOUGH
8 TO BE PART OF THIS COMMITTEE, I THINK MY PRIMARY TALENTS
9 ARE FINANCIAL. I'M A CPA, ALTHOUGH NON PRACTICING. I
10 UNDERSTAND NUMBERS. A LOT OF US UNDERSTAND MONEY AND
11 HOW TO SPEND IT AND HOLD ON TO IT. I UNDERSTAND
12 FINANCIALS AND DEALING WITH MONEY.

13 THE OTHER THING THAT I WOULD SUGGEST IS
14 THAT WE HAD AN OIL SPILL AFTER KATRINA THAT DISRUPTED
15 MANY PEOPLE'S HOMES AND REALLY RUINED THOSE HOMES. I
16 THINK I WAS A MODERATE PERSON ON THAT COMMITTEE. I WAS
17 A PROBLEM SOLVER, FIREFIGHTER, AND I HELPED A LOT WITH,
18 IF YOU WILL, BICKERINGS THAT WENT ON AMONG PEOPLE WITH
19 GIANT EGOS THAT SOMETIMES NEEDED SOMEBODY TO TRY TO BE A
20 A RECONCILER OF VARIOUS DIFFERENT PROBLEMS. I'M A
21 CERTIFIED CIVIL TRIAL LAW SPECIALIST. I HAVE HAD A
22 NUMBER OF JURY TRIALS IN OUR AREA AND WOULD APPRECIATE
23 THE HONOR OF BEING ON THIS COMMITTEE.

24 THE COURT: THANK YOU VERY MUCH.

25 SAMUEL LANHAM.

1 MR. LANHAM: GOOD MORNING, YOUR HONOR.
2 WHENEVER I SAY I'M FROM BANGOR, MAINE, I GET FUNNY
3 LOOKS, LIKE HOW CAN ANYONE FROM UP THERE BE INVOLVED IN
4 THIS KIND OF WORK. I DON'T HAVE NECESSARILY THE DEPTH
5 AND BREADTH OF PLAINTIFFS' STEERING COMMITTEE AND MASS
6 TORT CREDENTIALS AS MY COLLEAGUES IN THIS COURTROOM. I
7 HAVE BEEN INVOLVED IN THIS KIND OF WORK FOR SIX YEARS.
8 I EMBARKED UPON IT. I'M WORKING VERY CLOSELY WITH
9 MR. AYLSTOCK AND MR. OVERHOLTZ IN ASSEMBLING ABOUT 2,400
10 CASES, WORKING WITH 18 LAW FIRMS THROUGHOUT THE NATION
11 TO FILE THOSE CASES IN STATE COURT FOR THE DIET DRUG
12 LITIGATION IN THE COMMONWEALTH OF MASSACHUSETTS. THAT
13 IS HOW I BEGAN. IT BEGAN SIX YEARS AGO. BEFORE THEN, I
14 WAS PRIMARILY AN INSURANCE DEFENSE LAWYER AND THEN
15 TRANSITIONED INTO PLAINTIFFS' WORK.

16 BUT WHAT I FOUND FOR ME IS THAT, NUMBER
17 ONE, I LIKE WHAT I DO. I LIKE BEING A LAWYER. NUMBER
18 TWO, I LOVE PROJECTS. I'M NOT HAPPY UNLESS I'M INVOLVED
19 WITH A PROJECT AND I HAVE BEEN VERY FORTUNATE IN MY LIFE
20 TO HAVE SOME VERY UNUSUAL EXPERIENCES. I'M REMINDED OF
21 A MENTOR MANY YEARS AGO WHO TOLD ME, NEVER FORGET, SAM,
22 THAT ANOTHER EXPERIENCE OR ACCOLADE IS JUST ANOTHER KINK
23 IN THE PIG'S TAIL. AND WHAT I FOUND LIVING AND WORKING
24 IN MAINE IS THAT THERE IS A WORK ETHIC. THERE IS
25 SOMETHING ABOUT MAINE PEOPLE THAT I LOVE. I'M

1 ORIGINALLY FROM WASHINGTON, D.C. I HAVE HAD THE HONOR
2 OF REPRESENTING LOBSTERMEN, POTATO FARMERS IN NORTHERN
3 MAINE. AND I EVEN REPRESENTED ROSS PEROT. AND I'M
4 BRINGING THAT UP NOT AS ANOTHER KINK IN THE PIG'S TAIL,
5 YOUR HONOR, BUT TO SAY SOMETHING THAT IS IMPORTANT TO MY
6 CORE BELIEF. AND THAT IS, WHEN IT'S ALL SAID AND DONE
7 WITH ANY GROUP, A TEAM, IT'S ALL ABOUT PEOPLE. IT'S
8 ABOUT PEOPLE BEING ABLE TO WORK COOPERATIVELY TOGETHER.
9 AND I KNOW WE SAY THAT AND WE ALWAYS TALK LIKE THAT, BUT
10 I THINK IT IS THE CORE THING THAT WILL CONTRIBUTE TO THE
11 SUCCESS OF THE PLAINTIFFS' STEERING COMMITTEE, WHOEVER
12 IS ON IT.

13 AND I HAVE BEEN VERY FORTUNATE TO BE ABLE
14 TO WORK WITH ALL KINDS OF PEOPLE ALL OVER THE WORLD IN
15 SOME OF THE THINGS THAT I HAVE PUT IN MY PAPERS THAT IS
16 NOT APPROPRIATE TO GO INTO RIGHT NOW. BUT THAT IS WHAT
17 THE BOTTOM LINE IS ABOUT FOR ME. I LIKE PEOPLE. I LIKE
18 LAWYERS. AND I THINK HAVING SOMEBODY THAT HAS A
19 DIFFERENT KIND OF PERSPECTIVE, A DIFFERENT EXPERIENCE IN
20 LIFE ON A COMMITTEE THAT IS A TEAM BRINGS THAT BREADTH
21 AND DEPTH THAT IS ESSENTIAL TO ITS SUCCESS. IF I'M NOT
22 ON THE COMMITTEE BY YOUR APPOINTMENT, I WILL BE INVOLVED
23 WHEREVER I CAN BE BECAUSE I BELIEVE IN WHAT WE ARE
24 DOING. AND I APPRECIATE YOUR CONSIDERATION.

25 THE COURT: THANK YOU.

1 MR. MARK LANIER.

2 MR. LANIER: GOOD MORNING AGAIN, JUDGE.
3 I'M TRYING TO FIGURE OUT HOW KINKY THE PIG'S TAIL IS IN
4 MY LIFE LISTENING TO THAT ILLUSTRATION. I HAVEN'T HEARD
5 THAT BEFORE.

6 THE COURT: HE DID NOT SAY KINKY. YOU
7 MAY MAKE THIS TOO INTERESTING.

8 MR. LANIER: IT'S ALMOST TIME TO GO OFF
9 THE RECORD, ISN'T IT?

10 YOUR HONOR, MY NAME IS MARK LANIER AND
11 I'M HONORED TO BE IN A ROOM WITH A LOT OF FRIENDS AND
12 COLLEAGUES THAT ARE OUTSTANDING PEOPLE, OUTSTANDING
13 LAWYERS, ON BOTH SIDES OF THE DOCKET IN A COURT WITH A
14 WONDERFUL REPUTATION WITH A GREAT STAFF. AND SO, FIRST,
15 MY THANKS TO EVERYBODY THAT I EVEN GET TO STAND UP AND
16 SAY ANYTHING.

17 HAVING SAID THAT, I HAVE GOT TWO OF MY
18 LAWYERS HERE, BUT WE HAVE 35 GREAT LAWYERS. WE PRACTICE
19 -- I HAVE OFFICES IN NEW YORK, HOUSTON, LA, AND WE
20 RECENTLY OPENED IN PALO ALTO AND THE CASES WE BRING ARE
21 ALL ACROSS THE NATION. I GOT INVOLVED IN THIS -- I'M
22 NOT HISTORICALLY ONE OF THE PHARMACEUTICAL PSC-TYPE
23 GUYS. WHAT I DO IS, I TRY CASES BASICALLY, AND I'M
24 HONORED TO DO THAT. I TRIED THREE VIOXX CASES TO
25 VICTORY FOR THE PLAINTIFFS. ONE IN TEXAS, THE VERY

1 FIRST VIOXX CASE THAT WAS TRIED. THEN WE TRIED TWO IN
2 NEW JERSEY, BOTH IN STATE COURT. JUDGE FALLON IN THE
3 FEDERAL LITIGATION, THE FEDERAL MDL IN VIOXX, HAS
4 APPOINTED ME TO THE FEE COMMITTEE, ONE OF NINE PEOPLE.
5 I WAS NOT ON THE PSC IN VIOXX. I HAVE NOT DONE PSC WORK
6 PER SE. I GOT INTO THIS LITIGATION BECAUSE THIS IS A
7 DRUG THAT A NUMBER OF PEOPLE CONSIDER VIOXX-LIKE, AND
8 SINCE WE WERE ABLE TO WIN THREE OF THE VIOXX CASES, THE
9 IDEA WAS -- NOT A LOT OF OTHERS WERE WON BY THE
10 PLAINTIFFS. THE IDEA WAS WELL, MAYBE LANIER WILL HAVE
11 SOME INSIGHT INTO HOW HE IS GOING TO OVERCOME CAUSATION,
12 WHICH IS SOMETHING THAT NINA IS GOING TO REALLY POUND ON
13 US ABOUT.

14 MS. GUSSACK: RIGHT.

15 MR. LANIER: AND WE CAN STIPULATE TO
16 THAT, COULDN'T WE, NINA?

17 MS. GUSSACK: YES, YOU COULD.

18 MR. LANIER: AND SO, JUDGE, I KIND OF GOT
19 THROWN INTO THE BOAT. AND I THOUGHT WELL, IF I'M GOING
20 TO GET IN, I WANT TO BE IN ON A POSITION WHERE I CAN SET
21 THINGS UP SO THAT I CAN GET TO KNOW THE COURT MAYBE AND
22 MAYBE I CAN TRY THE CASES AND I CAN DO THIS KIND OF
23 STUFF. A NUMBER OF PEOPLE WERE ALREADY SAYING TO ME,
24 ARE YOU DOING AVANDIA, WILL YOU TRY OUR CASES? WILL YOU
25 TRY THEM? SO I SAID OKAY, WELL, I'M GOING TO STEP IN.

1 AT THE SAME TIME, MR. ANDRUS WAS STEPPING IN, AND
2 MR. BECNEL WAS STEPPING IN, TRYING TO ORGANIZE SOME
3 THINGS AS WELL. AND I QUICKLY RECOGNIZED, ESPECIALLY
4 MR. ANDRUS'S SKILL AT PUTTING THINGS TOGETHER WAS SO
5 GREAT I DIDN'T NEED TO BE SPENDING MY TIME AND ENERGY
6 DOING THAT. SO I HAVE KIND OF STEPPED ASIDE AND WATCHED
7 HIM DO IT. I APPRECIATE THE KIND THINGS MY FRIEND DANNY
8 HAS SAID ABOUT ME THIS MORNING. I WAS AT THE SAME MOCK
9 TRIAL AND SIZEMORE WAS A LOT BETTER THAN I WAS. SO
10 OTHER THAN THAT, IT WAS ALL RIGHT. BUT I WOULD LOVE TO
11 BE ON THE COMMITTEE. I WOULD LOVE TO TRY AND HELP
12 SERVE. I WOULD DO IT WITH AN EYE TOWARD HOW DO WE GET
13 THESE CASES READY FOR TRIAL. AND ULTIMATELY IF YOU SET
14 SOME TRIALS IN SOME BELLWETHER CASES IN THIS COURT, IT
15 WOULD BE MY HONOR TO GET TO TRY THEM. TO DO THAT
16 EFFECTIVELY, I REALLY NEED TO BE ON THE COMMITTEE. AND
17 PREFERABLY IN SOME TYPE OF A ROLE THAT ALLOWS ME TO MAKE
18 SURE THAT THE DISCOVERY IS BEING PUT TOGETHER RIGHT, AND
19 THE DOCUMENTS HAVE BEEN PUT TOGETHER RIGHT, AND ALL OF
20 THE PIECES OF THE PUZZLE ARE AVAILABLE, SO THEN MAYBE I
21 CAN PUT THE PUZZLE TOGETHER IN FRONT OF YOU AND A JURY.
22 THANK YOU.

23 THE COURT: I UNDERSTAND. THANK YOU VERY
24 MUCH.

25 IT'S A PERSPECTIVE THAT, UNLIKE THE REST

1 THAT WE HAVE HEARD, IS A TRUE ONE. I APPRECIATE THE
2 CANDOR. BECAUSE IN SOME WAYS, AND IN MOST WAYS, THE
3 PREPARATION OF THESE CASES DOES DICTATE THE RESULT, AND
4 THAT IS TRUE OF ANYTHING IN LIFE. SO WE ARE LOOKING
5 FORWARD TO APPROPRIATE DISCOVERY, THOROUGH DISCOVERY AND
6 AN EQUALLY THOROUGH REVIEW OF THE ISSUES. AND WE
7 UNDERSTAND CAUSATION IS ONE OF THEM.

8 I DON'T KNOW IF ANY OF YOU ARE GOING TO
9 THE ABA MID YEAR IN PHOENIX TOMORROW OR THE NEXT DAY.
10 BUT I'M PRESIDING OVER A DAUBERT HEARING FOR THE TOXIC
11 TORT ENVIRONMENTAL LAW SECTION. AND IT'S A MOCK DAUBERT
12 HEARING FOLLOWED BY A PANEL DISCUSSION. SO IF I SEE ANY
13 OF YOU FINE ATTORNEYS WHO OBVIOUSLY DO MORE EXPANSIVE
14 WORK THAN ONLY PRODUCT LIABILITY IN PHARMACEUTICALS, AND
15 THAT IS A VERY BIG ONLY, I PROMISE THAT WE WILL NOT TALK
16 ABOUT THESE CASES, BUT I WILL BE HAPPY TO SEE YOU.

17 ALL RIGHT.

18 MOVING ON, DAVID MATTHEWS.

19 MR. MATTHEWS: DAVE MATTHEWS, JUDGE, AND
20 I DON'T HAVE A BAND.

21 THE COURT: DAVE MATTHEWS.

22 MR. MATTHEWS: I HAVE BEEN DOING
23 PRIMARILY PHARMACEUTICAL WORK FOR TEN YEARS. I TRIED
24 OVER A HUNDRED CASES. I HANDLED MORE REZULIN CASES I
25 GUESS THAN ANYBODY IN THE COUNTRY. I HAD APPROXIMATELY

1 10,000 CLAIMANTS. REZULIN WAS ANOTHER
2 THIAZOLIDINEDIONE. AND DON'T ASK ME TO SPELL THAT, I
3 CAN'T DO IT. I HAVE WORKED WELL, I THINK, WITH MANY
4 LAWYERS IN THIS ROOM. I DO WORK WELL WITH OTHERS. I
5 BRING SOME EXPERTISE TO THE TABLE WITH THIS CLASS OF
6 DRUGS. I HAVE KNOWN AND WORKED WITH DEFENSE LAWYERS ON
7 THE OTHER SIDE. I RESPECT THEIR ABILITIES. I ALSO
8 RESPECT THE ABILITIES OF THIS ORGANIZATIONAL CREW THAT
9 HAS BEEN PUT TOGETHER.

10 THE COURT: THANK YOU.

11 BRIAN MCCORMICK.

12 MR. MCCORMICK: GOOD MORNING, YOUR HONOR.

13 BRIAN MCCORMICK FROM THE SHELLER FIRM HERE IN
14 PHILADELPHIA. YOUR HONOR, LIKE TWO OR THREE OF THE
15 PEOPLE THAT PRECEDED ME, THIS IS MY FIRST APPLICATION
16 FOR A STEERING COMMITTEE. THAT IS BECAUSE I COME FROM A
17 DIFFERENT BACKGROUND THAN SOME OF THE PEOPLE HERE.
18 UNTIL ABOUT A YEAR AGO, I WAS A PARTNER AT BUCHANAN,
19 INGERSOLL & ROONEY HANDLING NATIONAL COMMERCIAL COMPLEX
20 LITIGATION ALL OVER THE COUNTRY. ABOUT A YEAR AGO, MR.
21 SHELLER APPROACHED ME AND ASKED ME TO COME AND LEAVE THE
22 DARK SIDE AND COME WORK FOR THE PLAINTIFFS' SIDE, AND I
23 HAVE BEEN THERE EVER SINCE.

24 THE STRENGTHS THAT I THINK WE OFFER AT MY
25 FIRM ARE MR. SHELLER, WHO HAS YEARS OF OUTSTANDING MASS

1 TORT AND CLASS ACTION EXPERIENCE. HE ALREADY SPOKE TO
2 MR. PEPPER WHO HAS EXPERIENCE WITH AVANDIA ITSELF AND
3 SELLING AGAINST IT. PERSONALLY, WHEN WE FILED THE
4 D'APUZZO CLASS ACTION, WE DIDN'T KNOW THAT MR. ANDRUS
5 AND MR. LANIER AND MR. AYLSTOCK WERE GOING -- WERE
6 ORGANIZING, SO WE TRIED TO DO THE SAME ON A PARALLEL
7 TRACK. ONCE WE DISCOVERED WHAT THEY WERE DOING, WE
8 BEGAN TO WORK TOGETHER. WE HAVE BEEN WORKING WITH THEM
9 FOR THE PAST SEVERAL MONTHS AND COOPERATING WITH THEM.
10 I THINK IT IS VITAL, AS MR. FRANK SAID, THAT THE CLASS
11 ACTIONS, WHICH I THINK THERE ARE FIVE OR SIX ON FILE
12 NOW, HAVE A VOICE ON THE STEERING COMMITTEE. I THINK MY
13 FIRM OFFERS BOTH THE PERSONAL INJURY AND CLASS ACTION
14 EXPERIENCE THAT WE WOULD LEND TO A STEERING COMMITTEE
15 REPRESENTING THE INTEREST OF THE CLASS ACTION LAWSUITS.

16 THE COURT: THANK YOU.

17 MR. MCCORMICK: THANK YOU, YOUR HONOR.

18 THE COURT: I THINK NEXT WE HAVE SHANNON
19 MEDLEY.

20 MS. MEDLEY: GOOD MORNING, YOUR HONOR.
21 WHEN I SAW THAT I WAS GOING TO BE FOLLOWING FAIRLY
22 CLOSELY TO MR. LANIER, I WAS LIKE, GREAT, BUT ACTUALLY
23 IT DOES, I THINK, FOLLOW FINE, BECAUSE I AM A YOUNG
24 ATTORNEY, I LIKE THE DETAILS. I HAVE ALWAYS, MAYBE TO A
25 FAULT, GONE FOR THE DETAILS, LET'S GET EACH PART IN LINE

1 AS OPPOSED TO LOOKING AT THE BIG PICTURE SOMETIMES. AND
2 SO LINING UP THINGS FOR DISCOVERY, GETTING READY FOR
3 TRIAL, THINGS LIKE THAT, I THINK, ARE A PARTICULAR SKILL
4 OF MINE. I'M A NATIVE OKLAHOMAN AND AFTER TEN YEARS
5 ATTENDING SCHOOL IN TEXAS AND HAVE BEEN BACK IN OKLAHOMA
6 SINCE 2000, AND SO THE AVANDIA LITIGATION IS OF
7 PARTICULAR INTEREST TO US, AS OKLAHOMA HAS THE HIGHEST
8 PER CAPITA DIABETES RATE IN THE COUNTRY. OUR FIRM HAS
9 WORKED ON A SIGNIFICANT NUMBER OF THE PHARMACEUTICAL
10 LITIGATION IN THE PAST. MY PARTICULAR EXPERIENCE HAS
11 BEEN IN THE FEN-PHEN CASE. AND SINCE APPARENTLY
12 FEN-PHEN IS ALMOST OVER, I HAVE SOME TIME TO GET STARTED
13 ON SOMETHING NEW NOW. AND OUR FIRM ALSO REPRESENTS
14 SEVERAL INDIAN TRIBES. AND AGAIN, AS MOST PEOPLE WOULD
15 EXPECT, THE DIABETES RATE IN THE INDIAN TRIBES IS VERY
16 HIGH, SO OUR INTEREST IS PIQUED IN THAT REGARD. SO I
17 WOULD LOVE TO HELP IN ANY WAY I COULD AND LOOK FORWARD
18 TO YOUR RESPONSE.

19 THE COURT: THANK YOU VERY MUCH.

20 TOM MELLON.

21 MR. MELLON: GOOD MORNING, YOUR HONOR.

22 THE COURT: GOOD MORNING, TOM.

23 MR. MELLON: YOUR HONOR, IT'S A PLEASURE
24 TO BE BEFORE YOU THIS MORNING. AND I HAVE APPLIED TO BE
25 LIAISON COUNSEL AS WELL AS A MEMBER OF THE PLAINTIFFS'

1 STEERING COMMITTEE.

2 I WOULD LIKE TO SAY THAT I'M HONORED TO
3 BE AMONG THESE GROUP OF ATTORNEYS AND OUR DISTINGUISHED
4 APPLICANTS FOR THE LIAISON COUNSEL AND FOR THE
5 PLAINTIFFS' STEERING COMMITTEE. AND I AM SO HONORED.
6 HOWEVER, I WOULD LIKE TO BRING TO THE COURT'S ATTENTION
7 WHAT MIGHT BE UNIQUE ABOUT MY APPLICATION. AND THAT IS,
8 I HAVE BEEN IN THIS BUILDING, IT'S ALMOST SCARY, 40
9 YEARS. THIS BUILDING WAS OPENED IN '76. BUT BEFORE
10 THAT, MIKE KUNZ WHO IS OUR DISTINGUISHED CLERK
11 DOWNSTAIRS, AND I WERE ONE OF 12 PEOPLE NEXT DOOR TO
12 EACH OTHER, ELBOW TO ELBOW, IN THE SUMMER OF 1969 DOING
13 DOCKET ENTRIES. SO 12 PEOPLE IN CLERK'S OFFICE, NOW
14 MIKE HAS 200 PEOPLE IN THE CLERK'S OFFICE. BUT I USE
15 THAT ILLUSTRATION OF 1969 IN WORKING WITH MICHAEL AS A
16 WAY OF STATING TO THE COURT, I KNOW MOST OF THE PEOPLE
17 WHO WORK IN THIS COURTHOUSE. MISS WHITE AND I WORKED
18 TOGETHER IN 1974, DOING TRIAL AND GRAND JURY WORK AND,
19 OF COURSE, MOST OF THE JUDGES I KNOW PERSONALLY AND
20 PROFESSIONALLY.

21 THE COURT: INCLUDING THIS ONE.

22 MR. MELLON: INCLUDING YOUR HONOR.

23 INCLUDING YOUR HONOR.

24 SO THIS IS COMING HOME TO ME. JUST AS A
25 PERSONAL ASIDE, MY OFFICE IS ACROSS THE STREET FROM THE

1 COUNTY COURTHOUSE IN BUCKS COUNTY. I'M MORE AT HOME
2 HERE IN THE COURTHOUSE WITH THE DOORMEN, WITH THE
3 CLERK'S OFFICE, WITH THE STENOGRAPHERS, WITH THE JUDGES,
4 WITH THE 3RD CIRCUIT PERSONNEL THAN I AM IN MY OWN
5 COUNTY ALTHOUGH I HAVE BEEN THERE FOR 20, 25 YEARS.

6 I WOULD LIKE TO ALSO MENTION BESIDES MY
7 FAMILIARITY, WHILE WORKING HERE, I WAS WORKING WITH THE
8 U.S. DEPARTMENT OF JUSTICE AFTER A 3RD CIRCUIT CLERKSHIP
9 WITH JUDGE HASTIE AND WHILE AT THE U.S. DEPARTMENT OF
10 JUSTICE, I WAS RESPONSIBLE FOR THE COMMUNICATIONS, THE
11 ADMINISTRATION OF THE DEPARTMENT OF JUSTICE, ALL THE
12 CRIMINAL PROSECUTIONS, FOR SEVERAL YEARS. AND THAT WAS
13 WITH OUTSTANDING LAWYERS ALSO. I PRIDE MYSELF ON THE
14 FACT THAT DURING MY TENURE WE HAD A VERY PRODUCTIVE TIME
15 HERE IN THIS BUILDING ON BEHALF OF THE U.S. DEPARTMENT
16 OF JUSTICE.

17 ONE OTHER THING, YOUR HONOR, THAT MIGHT
18 BE RELEVANT IS THAT ALONG WITH FRED THOMPSON, I'M A
19 MEMBER OF THE MDL ON THE 9/11 OUT OF NEW YORK, AND THAT
20 IS A VERY COMPLEX, VERY MEANINGFUL EXPERIENCE.

21 I WOULD ALSO LIKE TO MENTION THAT WE HAVE
22 DONE TOBACCO, WE HAVE DONE FEN-PHEN, WE HAVE DONE
23 PREMPRO, WE HAVE DONE VIOXX. SO THIS AREA IS CERTAINLY
24 VERY WELL KNOWN TO US.

25 BUT FINALLY, WHAT REALLY PERHAPS MIGHT

1 SET ME APART IS SOMETHING I'M VERY PROUD OF, AND THAT
2 IS, ON MAY 19TH, I'M GOING TO BE GETTING ANOTHER
3 MASTER'S DEGREE. THIS ONE IN BIOETHICS. I'VE BEEN
4 STUDYING AT PENN FOR TWO YEARS BECAUSE OF MY ACADEMIC
5 INTEREST IN ETHICS, AND MY THESIS IS ON THE CODE OF
6 ETHICS OF THE PHARMACEUTICAL COMPANIES IN THE UNITED
7 STATES. SO NOT ONLY DO I HAVE PROFESSIONAL INTEREST, I
8 HAVE AN ACADEMIC INTEREST IN BIOETHICS IN PHARMACEUTICAL
9 WORK.

10 THE LAST THING I WOULD LIKE TO SAY IS
11 THAT I'M BLESSED WITH A WONDERFUL LAW FIRM AND I'M
12 BLESSED WITH THE ASSISTANCE, THE GREAT ASSISTANCE OF
13 STEPHEN CORR, WHO IS KNOWN TO MOST OF THE FOLKS IN THIS
14 ROOM SINCE WE HAVE BEEN WORKING TOGETHER MORE OR LESS,
15 MOSTLY MORE, SINCE OCTOBER.

16 AND THEN A FINAL WORD. I WOULD LIKE TO
17 MENTION THAT MR. ANDRUS HAS DONE AN EXCEPTIONAL JOB. I
18 THINK I'M IN A POSITION TO KNOW, HAVING WORKED WITH MANY
19 OTHER CONSORTIUMS, MANY OTHER LAW FIRMS, MANY OTHER
20 LEADERS. AND I HAVE PERSONALLY COMMENDED HIS CONDUCT TO
21 OTHER PEOPLE AND SPOKEN TO HIM PRIVATELY ABOUT IT.

22 BUT FOR THOSE REASONS, YOUR HONOR, I
23 WOULD LIKE TO BE CONSIDERED AS LIAISON COUNSEL.

24 THE COURT: THANK YOU.

25 MR. MELLON: THANK YOU.

1 THE COURT: AND I WILL ALSO SAY THAT BOTH
2 MR. CORR AND MR. MELLON HAVE APPEARED IN COURT BEFORE
3 THIS JUDGE IN THE COUNTY MANY TIMES, AND THEIR
4 REPUTATION IS IMPECCABLE IN TERMS OF LAWYERING, AND
5 PERSONALLY -- AND I THINK, THOUGH, THAT THEY ARE
6 PROBABLY THE ONLY ATTORNEYS IN THIS ROOM THAT I HAVE
7 PRIOR EXPERIENCE WITH, AND THAT EXPERIENCE IS EXTENSIVE.

8 OKAY. KAREN BARTH MENZIES.

9 MS. BARTH MENZIES: GOOD MORNING, YOUR
10 HONOR.

11 THE COURT: HELLO AGAIN.

12 MS. BARTH MENZIES: I COME FROM -- I WORK
13 IN NEWPORT BEACH, CALIFORNIA. I WORK FOR A FIRM CALLED
14 ROBINSON CALCAGNIE & ROBINSON. I THINK THE REASON THAT
15 WOULD SET ME APART OR PARTICULARLY VALUABLE TO THIS PSC
16 COMES FROM MY EXPERIENCE IN LITIGATING AGAINST
17 GLAXOSMITHKLINE. IT WAS NOT AS DEFENSE COUNSEL, IT WAS
18 A DIFFERENT DEFENSE FIRM, BUT I WORKED VERY CLOSELY WITH
19 GLAXOSMITHKLINE'S INTERNAL COUNSEL. I WAS APPOINTED
20 LEAD COUNSEL FOR THE MDL ON THE PAXIL CASES. AND WE
21 BROUGHT THOSE CASES FORWARD FOR ABOUT FOUR AND-A-HALF
22 YEARS. AND ABOUT 30 DAYS BEFORE TRIAL, AFTER ALL OF THE
23 FINAL MOTIONS, WE WENT INTO A THREE-DAY MEDIATION WITH
24 COUNSEL FOR GSK AND WERE ABLE TO RESOLVE OVER 3,000
25 CASES, A HANDFUL LEFT AND ENDED UP RESOLVING THOSE THAT

1 SUMMER LATER. SO THAT EXPERIENCE THAT I HAVE WITH
2 GLAXOSMITHKLINE, THE DEPOSITIONS I HAVE DONE, BEING AT
3 THEIR HEADQUARTERS IN THE UK, THE SAFETY BOARDS, THE
4 MARKETING GROUPS, THAT JUST GIVES ME SOME PARTICULAR
5 INTEREST IN THIS CASE AND ALSO EXPERIENCE THAT MIGHT BE
6 HELPFUL TO THE PSC.

7 MY FIRM, ROBINSON CALCAGNIE & ROBINSON,
8 MARK ROBINSON IS THE SENIOR PARTNER THERE. AND HE WAS
9 ACTUALLY THE ATTORNEY WHO TRIED THE FEDERAL MDL VIOXX
10 CASE. SO MY FIRM ALSO HAS ABOUT 11 LAWYERS DEDICATED
11 SOLELY TO PHARMACEUTICAL LITIGATION, AND DO HAVE GREAT
12 EXPERIENCE OVER 13 PSC'S, BUT ALSO A VERY STRONG FOCUS
13 TOWARDS PREPARING FOR TRIAL. AND LOOK FORWARD TO
14 GETTING THERE IN THESE CASES HOPEFULLY.

15 THE COURT: THANK YOU VERY MUCH.

16 MS. BARTH MENZIES: THANK YOU FOR YOUR
17 CONSIDERATION.

18 THE COURT: GARY MEYERS.

19 MR. MEYERS: GOOD MORNING, YOUR HONOR.

20 THE COURT: HELLO AGAIN.

21 MR. MEYERS: YOUR HONOR, AS YOU KNOW, I'M
22 THE ATTORNEY FOR THE PLAINTIFF IN THE D'APUZZO CLASS
23 ACTION. I'M THE FIRST ON THE LIST THERE. AND I THINK
24 WHAT I CAN OFFER TO THE PSC IS SOMEONE WITH A BACKGROUND
25 BOTH IN CLASS ACTION AND INDIVIDUAL LITIGATION. I'M A

1 CERTIFIED CIVIL TRIAL ATTORNEY. I HAVE TRIED CASES TO
2 SUCCESSFUL CONCLUSION. I HAVE GOTTEN SOME SUBSTANTIAL
3 JURY VERDICTS. I DON'T THINK THEY NECESSARILY MATCH
4 WHAT SOME OF THE DISTINGUISHED ATTORNEYS IN THIS ROOM
5 HAVE OBTAINED, BUT I HAVE BEEN VERY SUCCESSFUL. I
6 UNDERSTAND WHAT IT MEANS TO LITIGATE AN INDIVIDUAL CASE.
7 AND YESTERDAY, AT THE PLAINTIFFS' MEETING THAT WE HAD, I
8 TRIED TO THROW OUT A SUGGESTION TO MY COLLEAGUES, WHO I
9 THINK MAYBE HAD SOME CONCERNS ABOUT WHERE IS THE CLASS
10 ACTION PART OF THIS CASE GOING TO FIT IN WITH THE
11 INDIVIDUAL ACTION. AND MY SUGGESTION TO THEM, WHICH I
12 THREW OUT IN ACCORDANCE WITH, I THINK, THE COURT'S IDEA
13 OF AVOIDING DIVISIVENESS, WAS JUST TO SAY, I'D LIKE YOU
14 GUYS TO THINK ABOUT WHERE THE CLASS ACTION CASES COULD
15 POSSIBLY ASSIST YOU IN THE PROSECUTION OF YOUR
16 INDIVIDUAL CASES AND WHAT YOU ARE TRYING TO ACHIEVE IN
17 YOUR INDIVIDUAL CASES AND VICE VERSA. AND I THINK IF WE
18 WORK TOGETHER AND THINK OF IT IN THAT WAY, THAT WILL
19 ADVANCE THE ENTIRE LITIGATION. AND THAT IS REALLY WHAT
20 I THINK I CAN PRESENT TO THE COURT TODAY AND WHAT I CAN
21 PRESENT IF I WERE PROVIDED WITH A POSITION ON THE
22 PLAINTIFFS' STEERING COMMITTEE.

23 THE COURT: MR. MEYERS, CAN YOU SEE THE
24 DISCOVERY RUNNING ON PARALLEL TRACKS FOR CLASS ACTION
25 AND THE INDIVIDUALS, OR DO YOU SEE THEN DISCOVERY BEING

1 MESHED?

2 MR. MEYERS: WELL, I THINK THAT THEY CAN
3 PROCEED ON AN IDENTICAL COURSE TO A POINT, YOUR HONOR.
4 I THINK WHAT HAS TO BE KEPT IN MIND ABOUT THE CLASS
5 ACTION CASES AND THE CLASS ACTION ISSUES IS THAT IT DOES
6 NOT REQUIRE QUITE THE SAME DEGREE OF DISCOVERY FOR THE
7 COURT AND COUNSEL TO BE IN A POSITION TO BRING THOSE
8 ISSUES TO A CONCLUSION. AND FOR THE COURT TO DECIDE, IS
9 THIS A CASE THAT -- WHERE PART OF IT IS SUITABLE FOR
10 CLASS TREATMENT. SO I THINK INITIALLY THEY CAN
11 CERTAINLY MOVE TOGETHER. BUT AT A CERTAIN POINT, AND AN
12 EARLIER POINT, WE CAN REACH THE POINT WHERE THE COURT
13 WOULD PERHAPS WANT TO ADDRESS, IS THIS SUITABLE FOR
14 CLASS TREATMENT. AND THEN FROM THERE AGAIN, I SEE THEM
15 PROCEEDING TOGETHER.

16 AND BY THE WAY, YOU MENTIONED DAUBERT.
17 AND OF COURSE MY STOMACH SANK A LITTLE BIT BECAUSE AS
18 ALL OF US PLAINTIFFS I HAVE HAD MY EXPERIENCE WITH THAT.
19 AND I RECENTLY COMPLETED SOME DAUBERT BRIEFING. AND
20 AFTER ALL OF US SUBMITTED ABOUT 150 PAGES OF BRIEFING AT
21 THE INSTRUCTION OF THE MAGISTRATE, THE JUDGE SAID, I'M
22 NOT READY FOR THAT NOW. SO I HAVE THESE DAUBERT BRIEFS
23 SITTING ON MY COMPUTER AND I'M HAPPY TO CONTRIBUTE THAT
24 AS WELL.

25 THE COURT: WE MAY VERY WELL NEED THEM

1 BEFORE THE END OF THIS LITIGATION.

2 MR. MEYERS: I'M SURE WE WILL. THANK
3 YOU, JUDGE.

4 THE COURT: THANK YOU.

5 I THINK WE ARE HALFWAY THROUGH THE
6 APPLICANTS FOR THE STEERING COMMITTEE. AND IT'S AN
7 APPROPRIATE PLACE TO STOP AND HAVE SOME REFRESHMENT, IF
8 YOU WOULD LIKE A CUP OF COFFEE. WE ARE GOING TO TAKE A
9 TEN-MINUTE RECESS. I HAVE SOMETHING TO ATTEND TO IN
10 CHAMBERS, SO WE WILL BE BACK AND PICK UP WHERE WE LEFT
11 OFF.

12 (BREAK TAKEN AT 1:25 P.M.)

13 THE CLERK: PLEASE REMAIN SEATED. COURT
14 IS NOW IN SESSION.

15 THE COURT: PLEASE HAVE A SEAT.

16 LET'S RESUME. I WOULD LIKE TO HEAR FROM
17 MICHAEL MILLER, PLEASE.

18 MR. MILLER: YES, YOUR HONOR, HERE I AM.

19 THE COURT: HELLO.

20 MR. MILLER: THANK YOU, YOUR HONOR. I'LL
21 TRY TO CARRY ON LIKE A LAST SINGER IN AMERICAN IDOL
22 AFTER A VERY TALENTED PROGRAM, BUT I WILL DO THE BEST I
23 CAN.

24 YOUR HONOR, WE ARE A LAW FIRM OUT OF
25 PHILADELPHIA, VIRGINIA, MISSISSIPPI. WE HAVE 12

1 LAWYERS. WE DO PHARMACEUTICAL LITIGATION, WHAT WE HAVE
2 BEEN DOING SINCE FOREVER. 28 YEARS IN THE BUSINESS.

3 I WANT TO TALK ABOUT THE ISSUES THAT THE
4 COURT RAISED. AND I THINK IN A PRAGMATIC WAY AND I
5 WON'T TAKE THAT MUCH TIME, HONESTLY.

6 AVAILABILITY TO SERVE. WE HAVE JUST
7 SUCCESSFULLY RESOLVED 5,000 FEN-PHEN CASES. AND WE HAVE
8 SUCCESSFULLY RESOLVED 400 VIOXX CASES. AND WITH PEPPER
9 HAMILTON, AFTER A VERY PROFESSIONAL BUT CONTESTED
10 LITIGATION IN FRONT OF THE HONORABLE JACK WEINSTEIN, WE
11 WERE ABLE TO RESOLVE 921 CASES. AND I COMMEND THEM NOW.
12 THEY WERE VERY PROFESSIONAL AND I'M SURE WE CAN DO THAT
13 AGAIN HERE. SO I HAVE GOT THE TIME BECAUSE WE HAVE
14 RESOLVED ALL THESE CASES.

15 THE COURT: YOU DON'T SOUND UNEMPLOYED TO
16 ME.

17 MR. MILLER: THEY ALL HAVE KIDS, YOUR
18 HONOR, AND THEY ALL NEED WORK. AND WILLINGNESS,
19 WILLINGNESS, BECAUSE WE JUMPED INTO THIS EARLY AND
20 HEAVY. ON MAY 17TH, THERE WAS AN ARTICLE AND MUCH
21 PUBLICITY IN 2007. WE LOOKED AT IT. WE HAVE DOCTORS
22 WHO ARE LAWYERS IN OUR FIRM. WE HAVE NURSES WHO ARE
23 LAWYERS IN OUR FIRM. WE HAVE BEEN LOOKING AT IT. SO IN
24 THAT CASE, WE SAID THIS IS OUR LITIGATION. WE WANT IN
25 IN A BIG WAY. WE'VE BEEN THROUGH IT.

1 EVERY ONE OF THE THINGS I HAVE DONE. I WAS ON THE
2 PLAINTIFFS' STEERING COMMITTEE. I AM ON THE PLAINTIFFS'
3 STEERING COMMITTEE FOR THE VIAGRA LITIGATION BY JUDGE
4 MAGNUSON, VERY FASCINATING LITIGATION. NO JOKES,
5 PLEASE. AND THEN I'M ON THE ZYPREXA PLAINTIFFS'
6 STEERING COMMITTEE WITH JUDGE WEINSTEIN, I CONSIDER IT
7 AN HONOR. FABULOUS FEDERAL JUDGE. AND I HAVE WORKED
8 VERY, VERY -- OBVIOUSLY WITH 5,000 FEN-PHEN CASES, VERY
9 CLOSELY WITH THE PLAINTIFFS' STEERING COMMITTEE, AS WELL
10 AS THERE WAS A GROUP OF US CALLED JOINT COUNSEL BEFORE
11 CHIEF JUDGE BARTLE. IT WAS AN HONOR TO BE BEFORE HIM
12 FOR MANY, MANY YEARS.

13 I TRY CASES. LIKE MR. LANIER, THAT IS
14 WHAT I DO. I TRIED SEVEN PHARMACEUTICAL CASES TO
15 CLOSING ARGUMENT OR TO VERDICT. I SAY TO CLOSING
16 ARGUMENT BECAUSE WITH WYETH THEY WOULD HAVE FOUR JURY
17 CONSULTANTS AROUND THE COURTROOM READING THAT JURY. AND
18 ONCE WE GOT TO CLOSING ARGUMENT, IF WE HAD A WINNER IT
19 WOULD GO AWAY.

20 THE COURT: WHATEVER WORKS.

21 MR. MILLER: THAT IS FINE. THAT IS FINE.
22 SO I HAVE HELPED CREATE PLAINTIFFS' STEERING COMMITTEE
23 PACKAGES. AND I HAVE HAD TO USE PLAINTIFFS' STEERING
24 COMMITTEE TRIAL PACKAGES THAT HAVE BEEN CREATED BY
25 OTHERS. SOME OF THEM GREAT PRODUCTS, SOME OF THEM I

1 THROW RIGHT IN THE CLOSET AND CREATE MY OWN TRIAL
2 PACKAGE. LIKE MR. LANIER I DREAM OF BEING INVOLVED IN
3 THIS FROM THE GET-GO, AND HAVE BEEN AND WILL, WITH HIM
4 AND OTHERS, TO CREATE A GREAT TRIAL PACKAGE THAT FAIRLY
5 REPRESENTS THE CLIENTS WHEN THIS COURT, YOUR HONOR,
6 SENDS THESE CASES BACK, IF THAT HAS TO HAPPEN. WE ALL
7 KNOW THERE IS A POSSIBILITY OF NOT GETTING IT RESOLVED
8 BY SETTLEMENT OR MOTIONS PRACTICE. BUT AT THE END OF
9 THE DAY, THIS COURT'S CHARGE IS SENDING THESE CASES BACK
10 TO THE TRANSFEREE COURTS AND THE PLAINTIFFS' STEERING
11 COMMITTEE HAS FAILED IF WE DON'T PUT TOGETHER A GREAT
12 TRIAL PACKAGE FOR THE PEOPLE WHO TAKE IT BACK TO THOSE
13 TRANSFEREE COURTS. AND THAT'S WHAT I WOULD LIKE TO DO.
14 SO THANK YOU SO MUCH FOR YOUR TIME.

15 THE COURT: MATTHEW MORELAND.

16 MR. BECNEL: YOUR HONOR, DANIEL BECNEL
17 FOR MATT MORELAND. MATT IS ON JURY DUTY TODAY. THAT IS
18 WHY HE IS NOT HERE. HE PROBABLY COULD HAVE GOTTEN OUT
19 OF IT. HE WAS THE FEDERAL LAW CLERK FOR ALL OF THE
20 JUDGES IN NEW ORLEANS FOR THREE YEARS. HE ALSO WAS THE
21 PAST PRESIDENT OF THE FEDERAL BAR ASSOCIATION IN NEW
22 ORLEANS, WHICH IS THE LARGEST FEDERAL BAR ASSOCIATION IN
23 THE COUNTRY. HE SITS ON THE BOARD OF THE FEDERAL BAR
24 ASSOCIATIONS WITH FEDERAL JUDGES, MAGISTRATES AND
25 LAWYERS FROM AROUND THE COUNTRY. HE HAS PROBABLY WORKED

1 ON 20 TO 30 MAJOR MDL'S SINCE HE HAS BEEN WITH MY OFFICE
2 OVER THE YEARS. AND HE PUT IN AN APPLICATION. IF YOU
3 DON'T LIKE ME, MAYBE YOU WOULD LIKE MATT.

4 THE COURT: I LIKE YOU, MR. BECNEL. I'M
5 SURE I WOULD LIKE MATT, TOO.

6 ALL RIGHT. BENEDICT MORELLI.

7 MR. RATNER: YOUR HONOR, I'M NOT BENEDICT
8 MORELLI. I'M HIS PARTNER, DAVID RATNER. HE HAD A
9 PERSONAL ISSUE THAT PREVENTED HIM FROM BEING HERE TODAY.
10 BUT WITH THE COURT'S PERMISSION, I WOULD LIKE TO SPEAK
11 ON HIS BEHALF.

12 MR. MORELLI HAS BEEN A LAWYER FOR OVER 30
13 YEARS. HE IS PAST PRESIDENT OF THE NEW YORK STATE TRIAL
14 LAWYERS, AND HE BRINGS TO THIS PSC BOTH TRIAL AND
15 PHARMACEUTICAL LITIGATION EXPERIENCE. HIS
16 PHARMACEUTICAL LITIGATION EXPERIENCE GOES BACK TO THE
17 1990'S HANDLING THE DES CASES. AND HE WAS ONE OF THE
18 FEW LAWYERS IN THE COUNTRY WHO ACTUALLY TRIED A DES CASE
19 ALMOST TO VERDICT. THAT, TOO, WAS RESOLVED AFTER
20 CLOSING ARGUMENTS. HE HAS BEEN HANDLING DES CASES SINCE
21 THE '80'S AND WE STILL HAVE SOME DES CASES LEFT,
22 ACTUALLY WITH PEPPER HAMILTON ON THE DEFENSE. BETWEEN
23 MR. MORELLI AND MYSELF WE PROBABLY HAVE TRIED OVER 600
24 PERSONAL INJURY CASES. WE ARE CURRENTLY INVOLVED IN
25 ABOUT A HALF DOZEN MASS TORTS, INCLUDING PAXIL AGAINST

1 GSK, RENU, FOSAMAX, BEXTRA/CELEBREX, ORTHO-EVRA. WE
2 HAVE BEEN WORKING ON THIS CASE WITH MR. ANDRUS AND HIS
3 GROUP SINCE THE BEGINNING. I'M ON THE PLAINTIFFS'
4 STEERING COMMITTEE IN THE NEW YORK BEXTRA/CELEBREX
5 LITIGATION AND ON THE PLAINTIFFS' STEERING COMMITTEE IN
6 THE RENU MDL. MR. MORELLI HAS WORKED WITH MR. LANIER
7 TRYING THE FIRST VIOXX CASE IN HOUSTON AND ANOTHER VIOXX
8 CASE IN NEW JERSEY. AND WE BRING BOTH A -- I THINK A
9 UNIQUE PERSPECTIVE IN THAT WE HAVE THE TRIAL EXPERIENCE
10 AND THE PHARMACEUTICAL EXPERIENCE, AND WE PLAY WELL WITH
11 OTHERS, YOUR HONOR. SO TO THAT EXTENT, MR. MORELLI IS
12 LOOKING FORWARD TO SERVING ON THE STEERING COMMITTEE.

13 THE COURT: THANK YOU VERY MUCH.

14 MR. RATNER: THANK YOU.

15 THE COURT: WE WILL MOVE ON TO DIANNE
16 NAST.

17 MS. NAST: GOOD MORNING, AGAIN, YOUR
18 HONOR.

19 THE COURT: GOOD MORNING.

20 MS. NAST: LIKE MR. MELLON, I'VE
21 PRACTICED AT THIS BAR FOR OVER 30 YEARS, AND HAVE ALSO
22 BEEN PRIVILEGED TO SERVE THE BENCH AND THE BAR IN MANY
23 PROFESSIONAL COMMITTEES IN FEDERAL JUDICIAL CENTERS IN
24 SIMILAR WAYS.

25 I HAVE ALSO BEEN FORTUNATE TO BE SELECTED

1 OR APPOINTED TO PROBABLY 35 PSC'S THROUGHOUT THE UNITED
2 STATES AND HAVE BEEN LEAD COUNSEL IN PERHAPS A DOZEN OR
3 MORE OF THOSE CASES.

4 YOUR HONOR'S ORDER ASKED THAT THERE BE
5 MORE THAN ONE APPLICATION FOR LIAISON, SO BOTH
6 MR. MELLON AND I AGREED TO PUT OUR HATS IN THE RING FOR
7 THAT AS WELL AS TO ALTERNATIVELY REQUEST APPOINTMENT TO
8 THE PSC.

9 I HEAR GSK MENTIONED ALL THE TIME. AND I
10 SHOULD SAY, TOO, GSK IS ONE OF MY FAVORITE DEFENDANTS.
11 WE ALL SEEM TO HAVE HAD LITIGATION AGAINST GSK. AND I
12 ALSO HAVE DONE THAT AND HAVE ENJOYED WORKING WITH PEPPER
13 HAMILTON.

14 I THINK WHAT WE BRING TO THE TABLE AND
15 WHY WE WERE APPOINTED AND SELECTED TO STEERING
16 COMMITTEES FREQUENTLY IS A RANGE OF ABILITIES. WE WRITE
17 STRONG BRIEFS. WE TRY TO WRITE STRONG SHORT BRIEFS,
18 WHICH I ALWAYS FAVOR. WE HAVE GOOD DEPOSITION TAKERS.
19 WE OBVIOUSLY -- EVERYBODY HAS PEOPLE THAT REVIEW
20 DOCUMENTS. WE SERVED ON SO MANY COMMITTEES THAT I THINK
21 THE RANGE OF IDEAS AND EXPERIENCE THAT YOU ACCUMULATE
22 ARE HELPFUL. AND I SAY WITH SOME HUMILITY I THINK ONE
23 OF THE REASONS WE ARE CHOSEN IS PEOPLE RESPECT THE
24 JUDGMENT AND THE ABILITY THAT WE SEEM TO BRING TO
25 RESOLVE DISPUTES, BE THEY ENTIRE CASES OR BE THEY

1 RESOLUTION OF INDIVIDUAL ISSUES. JUDGE BARTLE APPOINTED
2 ME RECENTLY TO THE FEE COMMITTEE IN THE DIET DRUG CASE,
3 WHICH WAS NOT A HAPPY GATHERING IN THE BEGINNING. AND
4 IT WAS RESOLVED. AND SIMILARLY JUDGE GRADY APPOINTED ME
5 TO BE THE LIAISON, THE COMMITTEE JUDGE. JUDGE PADOVA
6 APPOINTED ME AS LEAD COUNSEL AND SETTLEMENT COUNSEL ON A
7 CASE SO I THINK THAT THERE IS THAT ADDED DIMENSION THAT
8 I BRING TO THE TABLE. AT LEAST I HUMBLY SAY I HOPE I
9 BRING TO THE TABLE. BUT WE WOULD BE DELIGHTED TO SERVE.
10 WE HAVE THE TIME, WE HAVE THE FINANCIAL RESOURCES, WE
11 HAVE THE STAFF LIKE SOME OF MY COLLEAGUES HERE HAVE
12 EXPRESSED.

13 THE COURT: THANK YOU VERY MUCH.

14 TRACY REZVANI.

15 MS. REZVANI: GOOD MORNING. I AM TRACY
16 REZVANI FROM FINKELSTEIN THOMPSON IN WASHINGTON, D.C.
17 AND I JOINED THE FIRM IN '96. SO FOR A LITTLE OVER A
18 DOZEN YEARS HAVE BEEN DOING NOTHING BUT CLASS ACTION
19 LITIGATION. AND ALTHOUGH I WORKED IN SECURITIES AND
20 ANTITRUST CASES I TEND TO REALLY ENJOY THE CONSUMER
21 CASES THE MOST. THEY TEND TO BE A LOT MORE INTERESTING,
22 A LOT MORE CHALLENGING, A LOT MORE COMPLEX. SO I FIND
23 THAT I'M CONSTANTLY LEARNING THE PROCESS AS I GO ALONG.

24 PERHAPS WHAT IS UNIQUE TO OUR FIRM'S
25 APPLICATION AND MY APPLICATION IS THAT ALTHOUGH WE HAVE

1 DONE DOZENS OF PHARMACEUTICAL CASES, THEY HAVE BRANCHED
2 OVER THE ENTIRE SCOPE OF OUR PRACTICE. WE HAVE HAD
3 ANTITRUST CASES IN COUMADIN AND RELAFEN, WHICH I HAVE
4 WORKED ON. WE HAVE THIRD-PARTY PAYOR CASES WHERE
5 INSURERS AND TAFT-HARTLEY PLANS ARE SEEKING REFUNDS OF
6 THE OVERPRICED DRUGS OR PERHAPS THEY PAID FOR MORE OF
7 THE DRUG THAN THEY SHOULD HAVE. AND CURRENTLY WE ARE
8 LEAD IN RISPERDAL THAT IS PENDING IN TRENTON. AND WE
9 ARE PROPOSED EXECUTIVE COMMITTEE FOR SEROQUEL IN THE
10 MIDDLE DISTRICT OF FLORIDA. BOTH OF THOSE CASES ARE
11 HANDLED IN MY OFFICE BY MISS ASCHER AND MISS CONNELL.

12 WE ALSO HAVE SECURITIES CASES. WE WERE
13 LEAD IN ZONAGEN, AND LAST BUT NOT LEAST WE WERE CO-CHAIR
14 OF THE NON-PMC IN FEN-PHEN AND WE WERE PUT INTO THAT
15 POSITION BECAUSE AT THE OUTSET OF THAT LITIGATION, THE
16 PMC WAS ONLY SEEKING A CLASS ACTION AND CLASS
17 CERTIFICATION OF THE MEDICAL MONITORING, WHICH LEFT OUT
18 OTHER CLAIMS. AND SO WE HAD TO WORK TO BRING IN ALL THE
19 OTHER CLAIMS AND PUT IT THROUGH FOR CLASS CERTIFICATION
20 AND WORK WITH ALL OF THE OTHER FIRMS, WITH ALL THE OTHER
21 CLAIMS, AND WORK WITH DEFENSE COUNSEL AND EXPERTS, AND
22 WE HAD TO PUT IN A UNIFIED PRESENTATION TO THE COURT.
23 THAT IS SOMETHING THAT I SPENT QUITE A BIT OF TIME
24 WORKING ON.

25 AND THEN AS OUR APPLICATION NOTES,

1 OUTSIDE OF THOSE CONTEXTS, WE ARE -- HAVE VERY NOTABLE
2 AND LARGE CASES. WE HAVE THE RICO CASE THAT WAS THE
3 LARGEST CASE EVER CERTIFIED IN U.S. HISTORY BEFORE JUDGE
4 WEINSTEIN, AND ALSO IN THE TEFLON LITIGATION, AS I NOTED
5 IN THE APPLICATION, WE ARE EXECUTIVE COMMITTEE EXPERT IN
6 DISCOVERY AND DOCUMENT REVIEW.

7 YOUR HONOR ASKED ABOUT CURRENT AND PRIOR
8 NOTABLE POSITIONS THAT THE APPLICANTS HAVE HAD.
9 CURRENTLY I'M CHAIR OF THE PLEADING COMMITTEE IN THE
10 MERCEDES-BENZ TELE AID CASE THAT IS PENDING IN NEW
11 JERSEY BEFORE JUDGE DEBEVOISE. AND I'M ON THE EXECUTIVE
12 COMMITTEE FOR THE ONLINE MUSIC ANTITRUST LITIGATION
13 PENDING BEFORE JUDGE PRESTA.

14 AND IN THE PAST, WE HAVE BEEN CO-CHAIR OF
15 DISCOVERY IN MICROSOFT. THERE HAS BEEN SOME DISCUSSION
16 OF E-DISCOVERY. AND I REMEMBER WE WERE AT THE VERY
17 BEGINNING OF E-DISCOVERY FOR MICROSOFT. AND I HAD TO
18 FIND A PLACE WHERE WE COULD HOUSE QUITE A FEW ATTORNEYS
19 AND PUT THEM AT TERMINALS SO WE COULD TEACH THEM
20 E-DISCOVERY AND TRY TO MOVE THEM AWAY FROM PAPER AND
21 CODING SHEETS, BECAUSE IT WAS A WHOLE NEW GAME. AND
22 THERE WAS ONLY ONE OR TWO FIRMS THAT COULD DO THIS. SO
23 OUR FIRM HAS BEEN LITERALLY AT THE BEGINNING STAGES OF
24 E-DISCOVERY AND GOING FORWARD. AND WE HAD THE LARGEST
25 -- SECOND LARGEST SETTLEMENT UNDER THE COMMODITIES

1 EXCHANGE ACT IN OUR NATURAL GAS CASES. SETTLEMENT OF
2 OVER 100 MILLION DOLLARS. SO OUR FIRM HANDLES VERY
3 LARGE CASES, WORKS COOPERATIVELY WITH MANY FIRMS DOING
4 COMPLEX CASES THAT RANGE ALL ACROSS OUR PRACTICE AREA.

5 SPECIFICALLY ON AVANDIA, AS MR. MCCORMICK
6 HAD MENTIONED, THERE WAS A MEETING WHERE WE INVITED ALL
7 COUNSEL TO BE PRESENT. AND WE PROVIDED A REPORT TO THE
8 COURT AND THEN WE HAVE WORKED WITH THE INTERIM COUNSEL
9 THAT HAS BEEN WORKING TO PROVIDE RESPONSES TO CMO1. I
10 HAVE BEEN AT THE MEETINGS WITH DEFENSE COUNSEL AND I
11 HAVE BEEN PROVIDING COMMENTS, TRYING TO DO -- TRYING TO
12 REPRESENT THE CLASS ACTION POINT OF VIEW ON THE POSITION
13 STATEMENTS, CMO NUMBER 2 AND PROPOSED PROTECTIVE ORDER
14 THAT HAD BEEN IN DISCUSSIONS IN THE PAST. SO WE HAVE
15 BEEN TRYING TO WORK COOPERATIVELY WITH ALL THE ATTORNEYS
16 IN TRYING TO PUT FORWARD THE POSITION OF THE CLASS CASES
17 IN THIS LITIGATION PRIOR TO TODAY.

18 OUR FIRM AND MYSELF, WE ARE DEEPLY
19 COMMITTED TO THIS CASE. AND WE ARE LOOKING TO MAKE
20 SEVERAL HIRES TO STAFF THIS CASE AS NEEDED. THERE HAS
21 BEEN MUCH TALK ABOUT DIVERSITY. OUR FIRM UNTIL LAST
22 MONTH WAS MAJORITY WOMEN. WE ARE NOW 50-50, AND WE HAVE
23 NATIVE SPEAKERS WHO SPEAK FRENCH, SPANISH, PATOIS,
24 TAGALOG AND FARSI SHOULD THE CLASS MEMBERS NEED TO HAVE
25 SOMEONE WHO THEY CAN COMMUNICATE WITH. SO WE THINK WE

1 PROVIDE A LOT OF PRIOR EXPERIENCE IN PHARMACEUTICAL
2 LITIGATION AND OTHERWISE AND BRING A LOT OF UNIQUE
3 VANTAGE POINTS AND PERSPECTIVE TO THIS LITIGATION.

4 THE COURT: THANK YOU VERY MUCH.

5 JAY SALTZMAN.

6 MR. SALTZMAN: GOOD MORNING, YOUR HONOR.
7 GOOD AFTERNOON.

8 THE COURT: GOOD AFTERNOON.

9 MR. SALTZMAN: YOUR HONOR, OUR FIRM,
10 SCHOENGOLD SPORN LAITMAN & LOMETTI IN NEW YORK, HAS BEEN
11 PRACTICING IN CLASS ACTIONS FOR ABOUT 40 YEARS. AND
12 PRIMARILY WE PRACTICE IN SECURITIES AND CONSUMER AREAS.
13 WE HAVE PRACTICED RECENTLY IN PFIZER IN THE TORCETRAPIB
14 CASES, AND SOME MEDICAL DEVICE CASES SO WE HAVE SOME
15 EXPERIENCE IN THE MEDICAL FIELD, ALTHOUGH THIS IS OUR
16 FIRST FORAY INTO MASS TORTS.

17 I'M SORRY, PHARMACEUTICAL, MASS
18 PHARMACEUTICALS.

19 LIKE MISS REZVANI'S FIRM, WE MET WITH MR.
20 MCCORMICK'S FIRM PRIOR TO WORKING WITH MR. ANDRUS. WE
21 HAVE WORKED IN THE PAST WITH MISS REZVANI'S FIRM AND IN
22 FACT WITH MR. FRANK'S FIRM SUCCESSFULLY ON SOME QUITE
23 LARGE CASES, INCLUDING THE IPO CASE. WE BELIEVE WE
24 BRING TO THE CASE OUR EXPERIENCE, VAST EXPERIENCE, AND
25 THE ABILITY TO WORK EASILY WITH EVERYONE HERE. AND LIKE

1 THE OTHERS BELIEVE THAT THE CLASS ACTION SHOULD HAVE A
2 SEAT AT THE STEERING COMMITTEE IN ORDER TO PROTECT THE
3 INTEREST OF THE CLASS.

4 THANK YOU, YOUR HONOR.

5 THE COURT: THANK YOU.

6 MR. SIZEMORE.

7 MR. SIZEMORE: GOOD AFTERNOON, YOUR
8 HONOR. YOUR HONOR, WHEN I FIRST STARTED HEARING
9 EVERYBODY SPEAK, I THOUGHT YOU PROBABLY HAD A TOUGH JOB.
10 BUT I REALIZE NOW THAT IT IS PRETTY EASY. YOU COULD
11 PICK ANYBODY THAT HAS SPOKEN SO FAR AND ANYBODY THAT
12 WILL SPEAK AFTER ME AND I THINK YOU WILL DO WELL.

13 I WANT TO BE VERY BRIEF AND I WANT TO
14 REFER YOU TO WHAT MY SECRETARY CALLS "PAUL'S LOOKOUT
15 COOL LETTER" IN FRONT OF YOU UP THERE. SHE HAS A SENSE
16 OF HUMOR OBVIOUSLY.

17 I DO WANT TO TELL YOU A LITTLE BIT ABOUT
18 MYSELF, JUDGE. IT'S A LITTLE AWKWARD DOING SO. I TRIED
19 THE FIRST VIOXX MDL CASE. I TRIED FOUR VIOXX MDL CASES
20 AND I TRIED THE FIRST CALIFORNIA VIOXX CASE. AND I
21 HAVEN'T HAD AS GOOD RESULTS AS MR. LANIER BUT MAYBE ONE
22 DAY.

23 I HAVE THE DISTINCT HONOR OF TRYING IN
24 THREE WEEKS THE FIRST BEXTRA CASE AND THAT WILL BE IN
25 FRONT OF JUDGE BREYER IN SAN FRANCISCO. AND I INVITE

1 YOU TO CONTACT HIM TO ASK ANY QUESTIONS YOU MAY HAVE
2 ABOUT ME.

3 YOUR HONOR, I ALSO AM A MEMBER, ONE OF
4 FIVE PARTNERS AT ONE OF THE BIGGEST PLAINTIFFS' FIRMS IN
5 THE COUNTRY, PROBABLY THE WORLD. WE DO STUFF FROM
6 EUROPE TO CALIFORNIA, ALL AROUND THE WORLD. AND I
7 REPRESENT MANY DISTINCT INDIVIDUALS. I DON'T JUST DO
8 MASS TORT LITIGATION. I DO ALL SORTS OF LITIGATION. SO
9 I THINK I CAN REALLY ADD SOMETHING TO THIS LITIGATION,
10 YOUR HONOR. AND I WANT TO WORK WITH MY FRIENDS HERE,
11 VANCE AND MARK LANIER, BECAUSE I THINK THEY ARE THE
12 PEOPLE THAT HAVE PUT THIS LITIGATION TOGETHER SO FAR,
13 AND I THINK IT WOULD BE AN HONOR TO WORK WITH THESE TWO
14 GENTLEMEN.

15 THANK YOU, JUDGE.

16 THE COURT: THANK YOU VERY MUCH.

17 BACK TO THE SENATOR.

18 MR. THOMPSON: I SENSE THAT THIS IS NOT A
19 MOMENT FOR SELF DEPRECIATION. I ALSO SENSE THAT BREVITY
20 IS BECOMING MORE AND MORE OF A GOOD QUALITY.

21 THE COURT: YOU ARE VERY PERCEPTIVE.

22 MR. THOMPSON: LET ME BE AS BRIEF AS I
23 CAN. I AM A MEMBER OF MOTLEY RICE, WHICH IS A FIRM THAT
24 HAS A NATIONAL PLAINTIFFS REPUTATION. IT IS A FIRM THAT
25 HAS CUT ITS TEETH ON MASS TORTS SINCE THE EARLY '70'S IN

1 EVERY MAJOR MASS TORT MOVEMENT FROM ASBESTOS THROUGH TO
2 TOBACCO INTO THE CURRENT TIME WHERE MOTLEY RICE IS
3 PARTICIPATING, FOR EXAMPLE, IN THE 9/11 MDL IN NEW YORK.
4 WE'RE CO-LEAD COUNSEL IN THE KUGEL MESH LITIGATION IN
5 THE DISTRICT OF RHODE ISLAND. WE ARE CO-LEAD COUNSEL,
6 FOR EXAMPLE, IN THE HUMAN TISSUE LITIGATION THAT IS
7 ONGOING IN THE DISTRICT OF NEW JERSEY. WE HAVE 80
8 LAWYERS. WE HAVE APPROXIMATELY 450 STAFF PEOPLE. I'M
9 NOT GOING TO TELL YOU THAT ALL OF THEM IS GOING TO WORK
10 ON THIS CASE BUT WE HAVE SIGNIFICANT FLEXIBILITY TO
11 BRING RESOURCES TO BEAR, TO MAKE SURE THAT NEEDED WORK
12 GETS DONE QUICKLY AND THAT, OF COURSE, BRINGS ME TO MY
13 ONE FINAL POINT. AND THAT IS, IT IS EASY TO VIEW THE
14 MDL AS SORT OF A GIANT GULLIVER SORT OF TIED DOWN WITH
15 LOT OF THREADS BY THE LILLIPUTIANS, BUT REALLY OUR ROLE
16 IS TO REPRESENT INDIVIDUAL CLIENTS WHO WANT US TO MOVE
17 THIS CASE TO RESOLUTION WITH ALACRITY AND
18 ENTHUSIASTICALLY AND AGGRESSIVELY. AND WE THINK THAT WE
19 BRING THAT SORT OF EXPERIENCE AND THAT SORT OF
20 ENTHUSIASM TO ANY GROUP THAT WE ARE LUCKY ENOUGH TO BE
21 INCLUDED WITH. WE THREW IN VERY EARLY WITH MR. LANIER,
22 MR. ANDRUS AND WITH BRIAN AS WELL, BECAUSE WE RECOGNIZE
23 THAT WE WANTED TO MOVE FORWARD AND SO WE, WITHOUT ANY
24 GREAT AUTHORITY, EXCEPT AS A RUMP GROUP, SEEING WHAT
25 NEEDED TO BE DONE AND SEEING WHAT NEEDED TO BE PUSHED

1 FORWARD, WE'VE BEGUN TO DO THAT. AND I THINK THAT WE
2 HAVE ACTED VERY RESPONSIBLY. AND WE WOULD HOPE THAT THE
3 COURT, IN REVIEWING THAT ACTIVITY, WOULD THINK THAT WE
4 HAD NOT GONE OFF IN THE WRONG DIRECTION AND WOULD GIVE
5 US AN OPPORTUNITY TO GET THAT -- PUSH THAT FORWARD
6 QUICKLY.

7 I APPRECIATE IT. THANK YOU, JUDGE.

8 THE COURT: THANK YOU, MR. THOMPSON.

9 AND CHARLES ZIMMERMAN.

10 MR. ZIMMERMAN: YOUR HONOR, MY NAME IS
11 CHARLES ZIMMERMAN. A LOT OF PEOPLE REFER TO ME AS
12 BUCKY, AND THAT IS A LONG STORY BUT IT SEEMS TO STICK.
13 I GUESS I WANT TO GIVE YOU THE WHO, WHAT AND WHY. WHO I
14 AM AND WHAT I HAVE TO SAY AND WHY I THINK YOU SHOULD
15 APPOINT ME ONTO THE COMMITTEE.

16 THE WHO IS THAT I HAVE BEEN APPOINTED
17 LEAD COUNSEL IN A NUMBER OF CASES BY A NUMBER OF FEDERAL
18 COURTS. I'M LEAD COUNSEL CURRENTLY IN THE GUIDANT
19 LITIGATION IN FRONT OF JUDGE FRANK, AND LEAD COUNSEL IN
20 THE MEDTRONICS DEFIBRILLATOR CASE BEFORE CHIEF JUDGE
21 ROSENBAUM. AND WAS APPOINTED AND AM STILL LEAD COUNSEL
22 IN THE BAYCOL LITIGATION.

23 ALL THREE OF THOSE HAVE RESOLVED AND
24 RESOLVED HONORABLY. AND THE FIRST TWO RESOLVED WITHIN
25 TWO YEARS OF THEM BEING ASSIGNED TO THE MDL COURTS. AND

1 I WILL GET BACK TO THAT IN A SECOND BECAUSE I THINK THE
2 END GAME IS SOMETHING NO ONE LIKES TO TALK ABOUT AT THE
3 BEGINNING BUT SHOULD BE TALKED ABOUT.

4 I HAVE ALSO BEEN ON, LIKE DIANNE NAST,
5 WHO I KNOW VERY WELL. HAVE BEEN ON PROBABLY 20 OTHER
6 PSC'S AROUND THE COUNTRY OVER PERIODS OF TIME GOING ALL
7 OF THE WAY BACK TO BREAST IMPLANTS. THIS IS WHAT I DO.
8 I HAVE BEEN A LEADER OF LITIGATION, MOSTLY IN FEDERAL
9 COURTS, FOR THE LAST PROBABLY 20 YEARS OF MY CAREER. I
10 LIKE IT. I BELIEVE IT'S IMPORTANT, AND I THINK WE HAVE
11 AN IMPORTANT PUBLIC RESPONSIBILITY TO DO IT WELL.

12 AND IN DOING IT WELL, YOU HAVE TO
13 INNOVATE, AND YOU HAVE TO CHANGE AND YOU HAVE TO
14 COMMUNICATE AND YOU HAVE TO COORDINATE AND ALL THE
15 THINGS THAT WE HAVE TALKED ABOUT, BUT YOU ALSO HAVE TO
16 THINK ABOUT EACH TIME YOU DO THIS TO BUILD A BETTER
17 MOUSETRAP. YOU HAVE TO FIGURE OUT HOW WE CAN DO IT
18 BETTER AND LEARN FROM THE THINGS WE DID BEFORE, BECAUSE
19 THESE ARE VERY INVENTIVE PROCESSES THAT WE ARE IN. WE
20 WORK VERY COOPERATIVELY WITH COURTS AND COOPERATIVELY
21 WITH DEFENSE COUNSEL, BECAUSE AT THE END OF THE DAY, WE
22 HAVE A JOB TO DO FOR THE PUBLIC HEALTH OR FOR THE PUBLIC
23 GENERALLY, AND THAT IS TO GET TO THE END OF THE CASE AND
24 GET PEOPLE WHAT THEY DESERVE. SOMETIMES THEY DON'T
25 DESERVE ANYTHING, HONESTLY, AND MOST OF THE TIME THEY

1 DESERVE SOMETHING. AND IT NEEDS TO BE APPROPRIATELY
2 RESOLVED.

3 I THINK THAT IS WHAT I BRING TO THE
4 TABLE. I HAVE BEEN -- STARTING WITH THE NATIONAL
5 TOBACCO SETTLEMENT, I WAS ONE OF THE NEGOTIATORS OF THE
6 NATIONAL TOBACCO SETTLEMENT AND ONE OF THE SIGNATORIES
7 OF THAT DOCUMENT, WHICH I'M EXTRAORDINARILY PROUD OFF.
8 I WAS THE LEAD NEGOTIATOR, ONE OF THE LEAD NEGOTIATORS
9 IN THE PROPULSID LITIGATION BEFORE JUDGE FALLON, WHICH
10 CAME UP WITH A VERY UNIQUE PROGRAM TO RESOLVE A MASS
11 TORT THAT DID NOT INVOLVE A CLASS. I WAS THE LEAD
12 NEGOTIATOR IN THE GUIDANT AND IN THE MEDTRONICS
13 LITIGATION, WHICH WE WERE ALSO CO-LEAD COUNSEL, AND WE
14 RESOLVED THOSE IN A VERY UNIQUE WAY AND IN A VERY
15 APPROPRIATE WAY AND IN A VERY RESPONSIBLE WAY AT A TIME
16 WHEN THE REGAL PREEMPTION WAS LOOMING LARGE IN THE
17 BACKGROUND. AND WE HAVE THAT ISSUE HERE. WE DON'T WANT
18 TO TALK ABOUT IT. IT'S THE ELEPHANT IN THE MIDDLE OF
19 THE ROOM, BUT IT'S AROUND US. AND WE NEED TO DEAL WITH
20 IT.

21 I THINK MY STRENGTHS, IF YOU WILL, YOUR
22 HONOR, ARE IN BEING A RESOLUTION PERSON, IN BEING AN END
23 GAME, SEEING THE END GAME, UNDERSTANDING THE GAME,
24 UNDERSTANDING THE LITIGATION FROM THE MACRO POINT OF
25 VIEW, PREPARING THE CASE, AND WORKING COOPERATIVELY WITH

1 COUNSEL AROUND THE COUNTRY, WHICH I HAVE DONE AND WHICH
2 I WOULD CONTINUE TO DO, AND TRY AND FIGURE OUT WHEN AND
3 HOW YOU ARE EVER GOING TO GET THIS CASE OFF OF YOUR
4 CALENDAR AND SOMETHING FOR THE PEOPLE THAT WE ALL
5 COLLECTIVELY REPRESENT. AND I THINK THAT IS THE
6 IMPORTANT THING THAT I BRING, IS THE ABILITY TO SEE THAT
7 AND DO THAT.

8 LAST THING YOUR HONOR, I JUST PUBLISHED A
9 BOOK FOR WEST ON DRUG AND DEVICE LITIGATION. I DIDN'T
10 THINK I COULD EVER DO IT. IT WAS A CHALLENGE. MY WIFE
11 SAID TO ME, IF YOU CAN DO A BOOK, YOU CAN DO ANYTHING.
12 I GOT IT OUT THERE. IT'S OUT THERE, AND I'M PROUD OF
13 IT. BUT THE POINT IS, IT WAS A CATHARTIC PROCESS TO ME,
14 TO LOOK BACK AT MY CAREER AND SAY WHAT DID WE LEARN, AND
15 HOW DID IT EVOLVE AND HOW DO YOU GET THESE CASES TO THE
16 POINT WHERE THE PEOPLE WHO MATTER MOST TO ALL OF US, BE
17 THEY DEFENSE AND THE PEOPLE IN THE SHAREHOLDERS, AND THE
18 PEOPLE AT THEIR RESPONSIBLE COMPANIES, OR THE PEOPLE
19 THAT THE PLAINTIFF'S SIDE REPRESENT, THE PEOPLE THAT WE
20 THINK ARE VICTIMIZED BY THESE PRODUCTS, HOW DO WE GET
21 THEM TO A JUST REWARD AT THE END. AND I THINK I CAN
22 BRING THAT TO THE TABLE, PERHAPS AS MUCH AS ANYONE IN
23 THIS ROOM.

24 THE COURT: THANK YOU VERY MUCH,
25 MR. ZIMMERMAN.

1 MR. ZONIES.

2 MR. ZONIES: THANK YOU, YOUR HONOR. AS
3 YOU CAN SEE IN THE APPLICATION, JUDGE, THIS IS SORT OF A
4 COMING HOME FOR ME. I GREW UP IN READING, PENNSYLVANIA,
5 SO I HAVE PROBABLY THE MOST COMPELLING REASON TO BE
6 APPOINTED. MY MOM WANTS TO SEE ME MORE OFTEN. SO IF I
7 WOULD HAVE TO COME TO PHILLY MORE, SHE WOULD APPRECIATE
8 THAT.

9 I WILL SPEAK TO WHAT WE HAVE DONE SO FAR
10 IN WORKING WITH THE CAPABLE DEFENSE COUNSEL. I HAVE
11 BEEN HONORED BY MY COLLEAGUES HERE AND TRUSTED BY THEM
12 TO DRAFT A POSITION PAPER, AND I'M THE PRIMARY DRAFTER
13 OF THAT DOCUMENT. SO ANY ERRORS IN THERE ARE MINE OR
14 VANCE'S BECAUSE HE DID NOT PROOF IT WELL ENOUGH.

15 AND I'VE ALSO WORKED JOINTLY WITH
16 MR. FAHEY AND MISS GUSSACK AND HER TEAM ON JOINT CASE
17 MANAGEMENT ORDER #2 AND THE JOINT AGENDA THAT IS BEFORE
18 THE COURT AS WELL AND I HAVE BEEN LUCKY ENOUGH TO BE A
19 HEAD OF A TEAM WITH MISS ABRAMS AND MISS JANUSH WORKING
20 ON THE PROTECTIVE ORDER WITH MR. WASSON AND BEEN TRUSTED
21 TO LEAD THAT TEAM AS WELL. IT'S A GREAT BUNCH OF
22 PEOPLE. EVERY SINGLE ONE OF THEM BRINGS TALENT AND
23 EXPERIENCE TO THE TABLE THAT I THINK WOULD MAKE THE
24 COURT PROUD. AND I WOULD BE HONORED TO BE CONSIDERED.

25 THE COURT: THANK YOU, MR. ZONIES.

1 ANY OTHER APPLICANTS? I THINK I HEARD
2 FROM EACH OF YOU. AS I SAID, I WILL TAKE THE
3 APPOINTMENT TO THE PSC UNDER ADVISEMENT. HOPEFULLY BY
4 THE END OF THE WEEK, I WILL HAVE THE APPOINTMENT LIST
5 OUT TO YOU ALL AND FILED. MY THOUGHTS RIGHT NOW ARE TO
6 APPOINT A COMMITTEE OF APPROXIMATELY 15 WITH ROOM TO
7 GROW, BECAUSE IT CAN'T BE STATIC ANY MORE THAN THE WORK
8 OF THE COMMITTEE CAN BE STATIC. AND I DO THINK THAT
9 THERE IS ROOM FOR SUBCOMMITTEES IN THAT PROCESS, AS WELL
10 AS A SELECTION OF ATTORNEYS FOR THOSE SUBCOMMITTEES THAT
11 MAY NOT BE ON THE PRIMARY STEERING COMMITTEE. SO WE ARE
12 LOOKING TO INCORPORATE AS MUCH OF THE INTEREST AND
13 ENERGY AND EXPERIENCE IN THIS ROOM AS POSSIBLE BECAUSE
14 YOU ARE HERE, YOU ARE INTERESTED, YOU ARE ALL QUALIFIED
15 AND OUTSTANDING. AND IT'S A DIFFICULT POSITION. I
16 DON'T LIKE TO BE IN THIS SPOT. IT IS EASIER TO RULE ON
17 CASE DISPOSITIVE MOTIONS OF MOMENT THAN IT IS TO LOOK
18 YOU ALL IN THE EYE AND SAY YEA OR NAY. BUT TRUST ME
19 WHEN I TELL YOU THAT I AM IMPRESSED WITH ALL OF YOUR
20 SINCERITY AND YOUR ABILITIES AND YOUR EXPERIENCE AND I
21 HOPE TO UTILIZE EVERY ONE OF THEM IN THE UPCOMING MDL
22 PROCESS.

23 MOVING ON, I WOULD LIKE TO ADDRESS THE
24 POSITION PAPERS. I'M GOING TO ASK FOR A BRIEF
25 RECITATION OF THE PLAINTIFFS' POSITION FIRST. I DON'T

1 NEED CITATIONS BUT I DO THINK THAT IT'S IMPORTANT TO
2 HAVE EVERYBODY FOCUSED ON THE SAME ISSUES. AND
3 GENERALLY THE HISTORY IS NOT CONTESTED BETWEEN THE
4 PLAINTIFFS' AND THE DEFENDANTS' POSITION PAPERS, BUT I
5 DO SEE SOME CHANGE IN FOCUS, SOME DIFFERENCE. AND I
6 WOULD THINK THAT IN THE PLAINTIFFS' POSITION PAPER,
7 WHICH WAS SUBMITTED BY MR. CORR -- NO, I'M SORRY -- THE
8 PLAINTIFFS' POSITION PAPER IS SUBMITTED BY MR. ZONIES,
9 MR. ANDRUS, ON BEHALF OF ALL THE PARTIES, I THINK
10 ADDRESSES SEVERAL CLASSIFICATIONS OF CASES THAT I WOULD
11 LIKE TO JUST MENTION.

12 MR. ZONIES, WOULD YOU LIKE TO SPEAK TO
13 THIS?

14 MR. ZONIES: CERTAINLY, YOUR HONOR.

15 THE COURT: BECAUSE YOU HAVE CLASSIFIED
16 THEM INTO GROUPS BY INJURY.

17 MR. ZONIES: YES.

18 THE COURT: AND I AM CERTAIN THAT THAT IS
19 APPROPRIATE. THAT IS STRONGLY CONTESTED BY DEFENDANTS
20 AS TO SOME OF THESE INJURIES EVEN BEING RELATED TO THEIR
21 PRODUCT, AND I WOULD JUST LIKE YOU TO DO A RECITATION,
22 PLEASE.

23 MR. ZONIES: CERTAINLY, YOUR HONOR. WE
24 GROUPED IT BY CASES. AND WE HAVE HAD DISCUSSIONS WITH
25 MR. FAHEY ABOUT THIS AS WELL -- I'M SURE HE WOULD LIKE

1 TO SPEAK TO IT -- ABOUT EXACTLY HOW WE WOULD DEFINE THE
2 SCOPE OF THIS MDL FOR THE COURT. AND WE DECIDED JOINTLY
3 THAT THE SCOPE OF THE MDL SHOULD INCLUDE MYOCARDIAL
4 INFARCTION, STROKE, MACULAR EDEMA, CONGESTIVE HEART
5 FAILURE, AS WELL AS BROKEN BONES. THOSE ARE THE PRIMARY
6 INJURIES THAT WE ARE SEEING IN OUR CASES. AND THAT IS
7 WHY WE BROKE DOWN THE -- LAID THAT OUT FOR THE COURT IN
8 THE POSITION PAPER.

9 THE COURT: ALL RIGHT. PERHAPS MR. FAHEY
10 WOULD LIKE TO ADDRESS THE COUNTERPOSITION.

11 MS. GUSSACK: YOUR HONOR, IF I MIGHT,
12 ACTUALLY BEFORE MR. FAHEY SPEAKS TO THE SPECIFIC
13 DISCUSSIONS HE HAD WITH MR. ZONIES, I WOULD LIKE TO
14 ADDRESS THE CONTEXT IN WHICH WE ARE ADDRESSING THIS
15 ISSUE A LITTLE MORE BROADLY.

16 THE CASES THAT COUNSEL HAVE FILED HERE,
17 AT LEAST BY OUR ESTIMATE, BREAK DOWN LARGELY INTO TWO
18 CATEGORIES. THOSE THAT ALLEGE CONGESTIVE HEART FAILURE,
19 ONE TYPE OF INJURY DISCUSSED IN OUR POSITION PAPER, AND
20 THOSE THAT ALLEGE EITHER MYOCARDIAL ISCHEMIC EVENTS OR
21 CARDIOVASCULAR EVENTS OR HEART ATTACKS. AS WELL, THERE
22 ARE, I THINK, A SMALL NUMBER OF CLAIMS OF MACULAR EDEMA
23 OR BONE FRACTURE. VERY FEW. IT IS GSK'S POSITION HERE
24 AND I THINK ONE THAT REALLY FAVORS THE KIND OF
25 COORDINATION THAT I'M SURE THE COURT IS INTERESTED IN,

1 THAT WE LOOK QUICKLY AS TO SEEING THE SPECIFIC NATURE OF
2 THE VARIOUS CLAIMS BROUGHT BEFORE THE COURT, BECAUSE THE
3 NATURE OF THE DEFENSES MAY WELL VARY. FOR INSTANCE,
4 THOSE CASES THAT INVOLVE CONGESTIVE HEART FAILURE CLAIMS
5 ARE CLAIMS THAT INVOLVED ALLEGATIONS OF A FAILURE TO
6 WARN WHEN THE LABELING FOR AVANDIA, SINCE IT WAS BROUGHT
7 TO MARKET IN 1999, ADDRESSED ISSUES ABOUT EDEMA, FLUID
8 RETENTION THAT MAY CAUSE OR LEAD TO OR EXACERBATE
9 CONGESTIVE HEART FAILURE. AND CERTAINLY FOR AT LEAST
10 SEVEN YEARS THE LABEL HAS BEEN VERY SPECIFIC ABOUT
11 CONGESTIVE HEART FAILURE ISSUES. SO THAT IS ONE SERIES
12 OF DEFENSES AVAILABLE WHICH WOULD DIFFER IN PART FROM
13 THE KIND OF FACTUAL PREDICATE FOR THE CLAIMS ABOUT
14 MYOCARDIAL ISCHEMIC EVENTS OR HEART ATTACK.

15 BUT, AS MR. ZIMMERMAN SAID, THE ELEPHANT
16 IN THE ROOM HERE, FROM THE PLAINTIFFS' PERSPECTIVE, JUST
17 GOT LARGER BECAUSE THIS MORNING THE 3RD CIRCUIT ISSUED
18 ITS PREEMPTION OPINION FAVORING PREEMPTION. AND I THINK
19 THOSE -- THAT ANALYSIS APPLIED TO THE LABELING AND FDA'S
20 OVERSIGHT OF GSK'S LABELING FOR AVANDIA WILL BE AN ISSUE
21 THAT WE WILL WANT TO BRING TO THE COURT'S ATTENTION AT
22 THE EARLIEST POSSIBLE TIME ON AN APPROPRIATE RECORD AND,
23 THEREFORE, I FEEL SOME CONFIDENCE IN SAYING, I HOPE THAT
24 WE WON'T BE BEFORE YOU OVER A FIVE-YEAR PERIOD. IN
25 FACT, I'M HOPING THAT THERE WILL BE A VARIETY OF

1 DISPOSITIVE MOTIONS THAT WE CAN BRING TO THE COURT'S
2 ATTENTION AT THE APPROPRIATE TIME THAT WILL HELP
3 COORDINATE AND SHAPE THIS LITIGATION.

4 THE COURT: DO YOU SUGGEST, THEN,
5 COUNSEL, THAT A BIFURCATED PROCESS FOR DISCOVERY MIGHT
6 BE APPROPRIATE?

7 MS. GUSSACK: I BELIEVE THAT A PHASED
8 DISCOVERY PROCESS IS APPROPRIATE. A SUBJECT THAT WE
9 HAVE STARTED TO HAVE DISCUSSIONS WITH THE VARIOUS
10 REPRESENTATIVES OF PLAINTIFFS' COUNSEL HERE AND ONE THAT
11 WE WOULD LIKE TO ADVANCE FURTHER IN A MORE FORMAL
12 PRESENTATION TO THE COURT. BUT I THINK THAT WILL, IN
13 FACT, FAVOR THE KIND OF ISSUES THAT WILL ALLOW THE COURT
14 TO STREAMLINE THIS AND ALLOW THE PLAINTIFFS' COUNSEL TO
15 DO AS THEY HAVE SAID, WHICH IS TO ADVANCE THE CASES WITH
16 APPROPRIATE AND EXPEDIENT MANNER TO ADDRESS THEIR
17 CLAIMANTS' CONCERNS. MR. FAHEY CAN ADDRESS MORE
18 SPECIFIC ISSUES THE COURT RAISED.

19 THE COURT: THANK YOU.

20 MR. FAHEY: YES. AND, YOU KNOW, JUST TO
21 TOUCH ON WHAT MR. ZONIES SAID. I THINK THAT WE ALL
22 AGREE THAT RATHER THAN HAVING BONE MDL'S WITH STROKE
23 CASES OR WITH CHF CASES OR WITH HEART ATTACK CASES, THAT
24 IT MAKES SENSE TO BRING THEM ALL BEFORE YOUR HONOR IN
25 THE CONTEXT OF THIS MDL. I THINK WE DISAGREE ON THE

1 MERITS OF THE CLAIMS. BUT IN TERM OF WHETHER THIS IS AN
2 APPROPRIATE FORUM FOR THEM, I THINK WE ALL AGREE ON
3 THAT.

4 THE COURT: WELL, I CERTAINLY UNDERSTAND
5 THAT IN THE CONTEXT AND, YET, I ALSO SEE THAT BRINGING
6 THEM TOGETHER NOW, FOR PURPOSE OF PRETRIAL DISCOVERY, IS
7 INEVITABLY GOING TO BE SEPARATED OUT. SO I'M TRYING TO
8 SEE AND PROJECT THE TIMING OF THE PROCESS. I WILL BE
9 LOOKING FORWARD TO COUNSEL PRESENTING SUGGESTIONS FOR
10 THAT TIMING PROCESS, MEANING DISCOVERY. I THINK ALSO IT
11 WOULD BE APPROPRIATE TO CONSIDER THAT AS YOU ORGANIZE,
12 THOSE OF YOU ON THE COMMITTEE, THIS DISCOVERY. AND I
13 ALSO THINK IT'S APPROPRIATE TO CONSIDER, COUNSEL, THE
14 SUGGESTIONS OF MASTERS FOR DISCOVERY. I AM VERY MUCH IN
15 FAVOR OF MASTERS' ASSISTANCE TO THE COURT. I DO NOT
16 THINK IT WILL BE FEASIBLE -- IT MAY BE APPROPRIATE, BUT
17 NOT FEASIBLE -- TO UTILIZE THE SERVICES OF OUR
18 MAGISTRATES HERE, BECAUSE THEY HAVE A FULL SCHEDULE, AND
19 MDL WORK OF THIS MAGNITUDE IS NOT IN IT.

20 SO THEREFORE, I WANT YOU TO ADDRESS IN
21 THE FUTURE, VERY CLOSE FUTURE, HOW THOSE MASTERS WOULD
22 BE PAID AND THE SUGGESTIONS FOR THE FEES AND SUGGESTIONS
23 AS TO RESOURCES. THE COURT CERTAINLY HAS ITS RESOURCES.
24 AND WE HAVE ELECTRONIC DISCOVERY MASTERS IN MIND. WE
25 HAVE REGULAR MASTERS, SETTLEMENT MASTERS IN MIND,

1 BECAUSE WE HAVE WORKED WITH THEM BEFORE, BECAUSE OF
2 THEIR STELLAR REPUTATION. AND WE WOULD THINK THAT THAT
3 WOULD BE APPROPRIATE, GIVEN CHECKS FOR CONFLICTS. BUT I
4 DO THINK THAT IF WE ARE GOING TO TRY TO RESOLVE AS WE
5 GO, THAT MIGHT BE ONE WAY TO DO IT, TO AVOID THE
6 ULTIMATE ISSUES OF DISCOVERY CONTENTIONS THAT CAN'T BE
7 WORKED OUT. THAT WAY, WE HAVE A PRETTY GOOD RECORD UPON
8 WHICH TO MAKE RULINGS AND KEEP THINGS MOVING.

9 I AM VERY CONCERNED, AS MR. ZIMMERMAN
10 MENTIONED, ABOUT RESOLUTION IN A TIMELY WAY. AND I
11 THINK THAT IF THERE ARE CLAIMANTS HERE THAT HAVE FILED
12 OR ARE STILL WAITING TO FILE CASES AND CLAIMS
13 INDIVIDUALLY OR AS PART OF A CLASS, THEY NEED A
14 RESOLUTION WHETHER IT IS UP OR DOWN. THEY NEED A
15 RESOLUTION. AND IT IS MY PHILOSOPHY AS A JUDGE, IN CASE
16 MANAGEMENT IN PARTICULAR, TO MOVE THINGS ALONG. SO I
17 WILL BE SETTING A SCHEDULE THAT DOES TAKE A SUGGESTION,
18 I THINK, OF MAYBE NOT MONTHLY STATUS CONFERENCES WITH
19 THE STEERING COMMITTEE, BUT CLOSE TO IT. I THINK THAT
20 IS THE ONLY WAY TO KEEP THINGS ON TRACK EARLY ON. AND
21 IF WE ARE GOING TO SEE AN INFLUX OF MANY CASES, WE ARE
22 GOING TO NEED TO PUT THAT MAP OUT RIGHT NOW AS CLOSE AS
23 WE CAN TO IMMEDIATE AS TO WHERE THOSE CASES FIT. AND I
24 DO APPRECIATE COUNSELS' ABILITY TO WORK TOGETHER TOWARDS
25 GIVING THE COURT SUGGESTIONS ON THAT.

1 I DON'T MEAN TO MAKE YOU STAND,
2 MR. ZONIES. IT IS QUITE ALL RIGHT IF YOU SIT AGAIN,
3 THANK YOU.

4 MR. ZONIES: THANK YOU.

5 THE COURT: I DID WANT TO JUST MAKE A FEW
6 POINTS AND THEN ASK COUNSEL TO ADDRESS WHATEVER
7 REMAINING ISSUES THERE ARE IN THE PROPOSED CASE
8 MANAGEMENT ORDER #2. WE DO NEED TO HAVE A DATE BY WHICH
9 OUTSTANDING MOTIONS MUST BE REFILED. THAT WILL BE
10 COMING UP. WE DO NEED TO MAKE SURE THAT SERVICE OF ALL
11 DOCUMENTS THAT ARE FILED IN THIS MATTER BE MADE ON ONE
12 DESIGNATED COUNSEL. WE NEED THE RECORD CLEARED FOR THAT
13 BECAUSE RIGHT NOW IT'S ALREADY VOLUMINOUS AND IT'S ONLY
14 GOING TO GET MORE SO. PRESERVATION ISSUES ARE EXTREMELY
15 IMPORTANT IN THIS CASE, ESPECIALLY WITH THE TOLLING
16 ISSUES NOT RESOLVED. AND I THINK THAT ALL COUNSEL ARE
17 UNDER OBLIGATION TO DO THAT ON BEHALF OF THEIR CLIENTS.
18 AND WE ALSO NEED CONFIDENTIALITY ORDERS TO BE PUT INTO
19 PLACE SOON. I DO HAVE AN ELECTRONIC DISCOVERY DEFAULT
20 ORDER READY TO GO, WHICH I THINK WOULD BE APPROPRIATE TO
21 ACTUALLY PUT IN AS A DEFAULT ORDER AND ALLOW THE
22 STEERING COMMITTEE AND COUNSEL TO MOVE FORWARD WITH A
23 MORE REFINED OR DIFFERENT ONE.

24 I DO THINK IT'S TIME TO MAKE SURE THAT
25 ALL ELECTRONIC DISCOVERY IS ALSO PRESERVED IN ADDITION

1 TO OTHER MATTERS THAT WILL BECOME IMPORTANT.

2 IS THERE ANY OBJECTION FROM PLAINTIFFS'
3 COUNSEL NOW TO THE DEFENSE IDEA THAT NO MASTER COMPLAINT
4 FORM BE UTILIZED HERE?

5 MR. ANDRUS: VANCE ANDRUS. FIRST, WITH
6 RESPECT TO THAT LAST ISSUE, THE COURT SHOULD BE AWARE
7 THAT THERE HAS BEEN A MUCH MORE EXTENSIVE AMOUNT OF WORK
8 DONE. IF YOU READ CASE MANAGEMENT ORDER #2, IT SORT OF
9 LOOKS LIKE WE ARE SAYING, WE WILL DO THIS AND SORT OF DO
10 THAT. BUT IN FACT, THERE HAVE BEEN SERIOUS NEGOTIATIONS
11 WITH INDEPENDENT TEAMS WORKING ON EVERY ISSUE THAT THE
12 COURT JUST MENTIONED. AND SO THEREFORE CLOSURE CAN
13 HAPPEN. WHAT WE TRIED TO DO IN CASE MANAGEMENT ORDER #2
14 WAS TO GIVE A TRIGGER DATE. THE TRIGGER DATE WOULD BE
15 THE DATE ON WHICH YOU APPOINT PSC, 30 DAYS HEREAFTER,
16 THIS THAT, THIS THAT HAS TO HAPPEN. WE ARE VERY CLOSE
17 ON A LOT OF THOSE THINGS.

18 WITH RESPECT TO A MASTER COMPLAINT, THE
19 PARTIES HAVE NEGOTIATED AND DISCUSSED THIS MATTER AT
20 GREAT LENGTH. MR. ZONIES AND I AND MR. AYLSTOCK AT THE
21 FIRST MEETING, IN PARTICULAR, DISCUSSED THAT. AND I
22 BELIEVE THAT THE DEFENDANTS WERE COMFORTABLE, AS WERE
23 WE, THAT A MASTER COMPLAINT WAS SIMPLY NOT A PRACTICAL
24 SOLUTION. THE DEFENDANTS, FOR THEIR PART, REQUESTED
25 THAT WE CONSIDER ALLOWING THEM TO DO A MASTER ANSWER

1 CAUTION THE COURT IS THAT DISPOSITIVE MOTIONS ARE VERY,
2 VERY DANGEROUS THINGS IN MDL'S, BECAUSE THEY CAN HARDEN
3 THE PARTIES' POSITIONS. ON THE ONE HAND, IN MANAGING
4 THE MDL, THE COURT CAN SAY, WELL, I'M GOING TO RULE ON
5 THIS, AND I'M GOING TO RULE ON THAT, WE ARE GOING TO GET
6 THAT OVER WITH. WE ARE GOING TO MOVE ON DOWN THE ROAD.
7 BUT THEN WHAT HAPPENS IS, PARTIES' POSITIONS GET
8 HARDENED, BECAUSE THEY FILED THIS MOTION AND THEY
9 FAILED. AND NOW WE ARE TIGHTENED UP, NOW THOSE
10 NEGOTIATIONS TOWARDS RESOLUTION GET TOUGHER. YOU
11 ULTIMATELY HAVE CONTROL OF THE DOCKET. BUT I SIMPLY
12 SUGGEST THAT YOU CONSIDER THAT WE DO NOT RUSH INTO
13 MOTIONS TO DISPOSE OF THINGS, BECAUSE WHEN WE DO, THEN
14 THE FIGHT IS GOING TO CONTINUE FOR YEARS WITH THE
15 PARTIES BACK IN THE CORNER. SOMEONE IS BACK IN THE
16 CORNER. IN THE BREAST IMPLANT LITIGATION ONE OF THE
17 BEST JUDGES I EVER SAW, HE JUST HELD THAT HAMMER OVER
18 PEOPLE'S HEADS ALL THE TIME. YOU KNOW, I MIGHT HAVE TO
19 RULE. I MIGHT HAVE TO RULE ON THAT MOTION, MR. ANDRUS,
20 OH, SO LET'S JUST CONSIDER THAT.

21 THE COURT: IT CAN BE AN EFFECTIVE
22 TACTIC.

23 MR. ANDRUS: SWORD OF DAMOCLES. AND
24 THANK YOU, YOUR HONOR, FOR LETTING ME BLABBER ON.

25 THE COURT: THANK YOU. I APPRECIATE YOUR

1 INPUT.

2 WOULD ANY OTHER COUNSEL LIKE TO ADDRESS
3 THE PROPOSED JOINT CASE MANAGEMENT ORDER #2?

4 MS. GUSSACK: YOUR HONOR, IF I MIGHT JUST
5 FOR A MOMENT. I BELIEVE ALL -- AS MR. ANDRUS SAID, ALL
6 THE SUBJECTS THAT YOU REFERENCED ARE, IN FACT, IN THE
7 PROCESS OF BEING ADDRESSED INCLUDING THE PRESERVATION
8 ISSUE. AND I MIGHT SUGGEST TO THE COURT THAT IF YOU
9 ALLOW THE PARTIES A LITTLE MORE TIME TO CONTINUE THEIR
10 DISCUSSIONS, WHICH HAVE DEVELOPED SUBSTANTIALLY, WE MAY
11 BE ABLE TO OFFER THE COURT AN AGREED UPON ORDER.
12 PLAINLY THE PARTIES ARE WELL AWARE OF THEIR PRESERVATION
13 OBLIGATIONS.

14 THE COURT: I'M POSITIVE OF THAT BECAUSE
15 I HAVE REVIEWED IT. SO I SEE THAT YOU ARE AWARE. BUT
16 WHEN YOU SAY MORE TIME, DO YOU MEAN 30, 60, 90 DAYS?
17 WHAT DO YOU MEAN?

18 MS. GUSSACK: OUR EXPECTATION WAS THAT
19 WITHIN 30 DAYS THAT WE WOULD HAVE A PROPOSED ORDER.

20 THE COURT: MR. BECNEL.

21 MR. BECNEL: IF IT PLEASES THE COURT, I
22 WOULD LIKE TO MAKE ONE SUGGESTION THAT WE HAVE USED
23 TWICE IN LOUISIANA. FIRST IN THE SHELL NORCO EXPLOSION
24 THAT KILLED SEVEN PEOPLE AND INJURED ABOUT 7,000, IS A
25 JUDICIAL THIRD LAW CLERK, I THINK YOU PROBABLY HAVE TWO,

1 THAT IS DEDICATED TO THIS CASE AND THIS CASE ONLY.

2 THE COURT: WELL, WE HAVE THAT ALREADY.

3 MR. BECNEL: OKAY.

4 THE COURT: I CAN'T PROMISE YOU ONLY,
5 BECAUSE THE RESOURCES OF THE EASTERN DISTRICT HAVE NOT
6 BEEN SUPPLEMENTED TO THE POINT TO GIVE ME AN EXTRA ONE,
7 BUT JOSH D'ANCONA HAS THE NEXT TWO YEARS MAPPED OUT FOR
8 HIM. THERE MIGHT BE ONE OR TWO OTHER MONSTERS.

9 MR. BECNEL: THE WAY IT HAS BEEN DONE IN
10 LOUISIANA IN THE SHELL NORCO CASE, WHICH WAS RESOLVED IN
11 '93, AND JUST RECENTLY JUDGE DUVALL, IN ALL OF THOSE
12 KATRINA-RELATED CASES AND HE HAS THE UMBRELLA WAS THAT
13 THE PLAINTIFFS AND THE DEFENDANTS PAY TO THE CLERK
14 WHATEVER THE SALARY IS, AND HAVE NO INTEREST IN WHO IS
15 SELECTED, HOW THEY ARE SELECTED OR WHAT THEY ARE
16 SELECTED TO DO, BUT THAT THEY TAKE THOSE FUNDS AND
17 DEDICATE THAT, SO THAT THAT LAW CLERK DOES NOT HAVE
18 OTHER RESPONSIBILITIES AND CAN DEVOTE FULL-TIME TO
19 DOING -- AND I CAN ASSURE YOU I HAVE DONE THIS SO LONG
20 THAT --

21 THE COURT: MR. BECNEL, I APPRECIATE
22 THAT. WE ARE ALWAYS LOOKING FOR WAYS TO HIRE ADDITIONAL
23 PERSONNEL. AS YOU KNOW, THE FEDERAL BUDGET HAS NOT BEEN
24 INCREASED IN MANY YEARS. AND WE ARE EVEN LUCKY THAT WE
25 CAN RETAIN WHAT WE HAVE IN THE WAY OF PERSONNEL. BUT IF

1 THERE IS -- WHAT I CAN PROMISE ALL OF YOU IS THAT I WILL
2 SPEAK TO THE MDL PANEL AND THE CLERK OF THE COURT HERE
3 AND MY CHIEF JUDGE TO SEE IF AN ADDITIONAL PERSON IN THE
4 FORM OF A CLERK COULD BE HIRED WITH FUNDS RAISED THROUGH
5 THE MDL PROCESS.

6 NOW, HOW THAT IS, I HAVE NO IDEA. I'M
7 CERTAIN IT WOULD BE APPROPRIATELY DONE AND FORMED, BUT
8 ONE OF THE THINGS THAT I'M DOING THIS MORNING IS GAUGING
9 THE WORKLOAD. I KNOW WHAT CASES I HAVE BACK THERE
10 FACING ME THAT DON'T INVOLVE YOU GOOD COUNSEL, AND THEY
11 ALL DEMAND ATTENTION. SO I'M ALSO GOING TO BE
12 REQUESTING ADDITIONAL PERSONNEL. AND MAYBE WE CAN ALL
13 WORK TOGETHER ON THAT.

14 MR. BECNEL: THE REASON I'M MAKING THAT
15 SUGGESTION, YOUR HONOR, IS BECAUSE MANY TIMES GOOD
16 DEFENSE FIRMS, GOOD PLAINTIFFS' FIRMS, RAID THE LAW
17 CLERK THAT YOU HAVE AND ALL OF A SUDDEN THAT PERSON HAS
18 INVESTED A YEAR, YEAR AND-A-HALF IN THE CASE AND THEN
19 GETS AN OFFER HE CAN'T REFUSE. SO THAT WAY, IF YOU HAVE
20 THESE FUNDS DEDICATED, YOU CAN USUALLY GET A COMMITMENT
21 TO STAY FOR THREE YEARS, TWO YEARS, HOWEVER LONG IT
22 TAKES.

23 THE SECOND THING THAT I WOULD SUGGEST IS
24 I HAD THE OPPORTUNITY TO WORK WITH JUDGE FALLON, WHO I
25 THINK IS ONE OF THE FINEST JUDGES, IN SOME MASS TORT

1 CASES. BUT THE PERSON THAT MENTORED US WAS JUDGE ALVIN
2 RUBIN, WHO WAS ON THE DISTRICT COURT AND THEN ULTIMATELY
3 ON THE 5TH CIRCUIT FOR YEARS, IS TO SET A TRIAL DATE.
4 NOW, WHILE YOU ARE THINKING OF THIS AND THEN WORK
5 BACKWARDS ON EVERYTHING YOU DO BECAUSE HERE IS WHAT WILL
6 HAPPEN. AND I THINK JUDGE DAVIS IN THE BAYCOL CASE THAT
7 BUCKY TALKED TO YOU ABOUT WANTED A TRIAL. WANTED A
8 REPRESENTATIVE TRIAL. BUT EVERY TIME YOU GOT TO THAT
9 POINT WHEN YOU PICKED ONE, RIGHT BEFORE THE CASE, IT GOT
10 SETTLED, AND THEN ALL OF A SUDDEN HE HAD DEDICATED FIVE
11 WEEKS OR FOUR WEEKS OR TEN DAYS OR 20 DAYS TO TRY A CASE
12 AND HE HAS NOTHING TO DO. SO WHAT I WOULD SUGGEST IS
13 USING WHAT I CALL THE RUBIN RULE. YOU SET A TRIAL DATE,
14 BUT YOU SET A CUTOFF. IF YOU ARE GOING TO SETTLE THAT
15 CASE, YOU SETTLE IT IN FIVE MONTHS, FOUR MONTHS, SO THAT
16 YOU CAN HAVE A BACKUP CASE TO TRY AND NOT WASTE YOUR
17 TIME AND CALENDAR TO GET SOMETHING SETTLED.

18 THE OTHER THING THAT I WOULD SUGGEST IS
19 THAT THESE DEFENDANTS HAVE ALREADY RESOLVED A CASE IN
20 LOUISIANA BEFORE JUDGE BERRIGAN AND PRODUCED DOCUMENTS
21 AND EXPERT REPORTS AND ALL THAT, AND TWO DAYS BEFORE THE
22 CASE WENT TO TRIAL, IT RESOLVED. AND, YOU KNOW, SO WE
23 SHOULD BE ABLE TO GET THOSE SAME DOCUMENTS BUT BECAUSE
24 OF CONFIDENTIALITY YOU COULD NOT GET TO DESTROY ALL THE
25 DOCUMENTS, YOU COULD NOT TALK ABOUT THEM, YOU COULD NOT

1 SAY MUCH ABOUT THEM OTHER THAN IT RESOLVED. SO WHAT I
2 WOULD SUGGEST IS, IF YOU DO THAT DATE, IT DOES NOT TAKE
3 THIS COMPANY, WHEN THEY HAD TO PRODUCE THE DOCUMENTS
4 THREE AND FOUR YEARS AGO, TIME TO SAY, IT'S GOING TO
5 TAKE A ROLLING PRODUCTION, IT'S GOING TO TAKE THREE
6 YEARS TO DO. BY THE TIME YOU GET TO THEM, HALF THE
7 DEPOSITIONS ARE ALREADY TAKEN.

8 THE COURT: ALL RIGHT. I DON'T KNOW IF I
9 CAN MOVE FORWARD ON THE LAST MATTER YET, BUT I WILL
10 ASSURE YOU AND EVERYONE ELSE THAT THE PHILOSOPHY OF THIS
11 COURT -- WE HAVE INDIVIDUAL CASE MANAGEMENT HERE -- IS
12 TO SET DATES. WE KNOW, FROM OUR EXPERIENCE GROWING UP
13 IN THE LEGAL PROFESSION IN BUCKS COUNTY, WHERE
14 MR. MELLON IS FROM, THAT THE COURT OPERATES IN A MOST
15 EFFICIENT MANNER BECAUSE DATES ARE SET AND DATES ARE
16 KEPT. AND I AGREE TOTALLY THAT THAT IS THE BEST WAY TO
17 CASE MANAGE, DATE AND BACKWARDS, BUT IT HAS TO BE A
18 REASONABLE DATE. IT HAS TO BE A MEANINGFUL DATE. IT
19 CAN'T BE ONE THAT IS ARTIFICIAL JUST TO CREATE HAVOC AND
20 CONFUSION AND/OR CONTROL. AND AS A JUDGE, I HAVE EASE
21 OF CONTROL. BUT SOMETIMES I NEED IT MORE THAN OTHER
22 TIMES. AND SO I WILL BE LOOKING TO WORK WITH COUNSEL
23 FOR THE SUGGESTIONS OF DATES. AND I DO THINK IT'S GOOD
24 TO HAVE REPRESENTATIVE DATES. I KNOW THAT SINGLE DATES
25 ARE NOT NECESSARILY PRODUCTIVE. TRIAL POOLS SOMETIMES

1 ARE. BUT NOT IN THIS CASE. SO WE WILL BE LOOKING FOR
2 SUGGESTIONS ON THAT. BUT IF ANYBODY KNOWS MY REPUTATION
3 FOR EFFICIENCY, IT'S THAT DATES ARE SET AT THE EARLIEST
4 OPPORTUNITY AND THEY ARE PRETTY MUCH KEPT, EXCEPT FOR
5 GOOD CAUSE. AND I DO APPRECIATE THE SUGGESTION, ALL THE
6 SUGGESTIONS, MR. BECNEL, BUT I DID SEE A REACTION OVER
7 HERE.

8 MR. MILLER: MY QUESTION IS A LITTLE MORE
9 MUNDANE, YOUR HONOR.

10 THE COURT: I LOVE MUNDANE.

11 MR. MILLER: WE HAVE A LOT OF FOLKS HERE
12 THAT ARE GOING TO BE FILING A LOT OF CASES. IS IT -- WE
13 DON'T NEED AN ANSWER TODAY, BUT IF HE COULD GET ONE,
14 FINE, BUT SOON IF THE COURT WOULD. IS IT OKAY TO FILE
15 DIRECTLY INTO THE MDL? IT'S GOING TO BE A QUESTION THAT
16 EVERYBODY WILL BE ASKING EACH OTHER AFTER YOU LEAVE THE
17 BENCH. AND WHAT IS YOUR HONOR'S POSITION GOING TO BE
18 ABOUT COMPLAINTS WITH MORE THAN ONE PLAINTIFF ON THERE?

19 THE COURT: YOU'RE RIGHT. THOSE ARE OPEN
20 QUESTIONS. I CAN ANSWER THE FIRST ONE FOR YOU RIGHT
21 NOW. FILING DIRECTLY INTO THE MDL IS APPROPRIATE. I
22 THINK THE COURT IS PREPARED FOR THAT AND I BELIEVE ON
23 THE CASE MANAGEMENT ORDER, WE REFER TO IT.

24 THE SECOND QUESTION, HOWEVER, THE MULTI
25 PLAINTIFF CASES ARE MORE TROUBLING FOR ME. I DON'T

1 PERMIT THEM AS A GENERAL RULE IN NON-MDL PRACTICE, AND I
2 BELIEVE WITH THE DISPARITY, NOT SIMILARITY BUT
3 DISPARITY, OF ALLEGATIONS THAT WILL LEAD TO CAUSATION,
4 WE HAVE CONFUSION ROOM. AND I HAVE NOT YET DECIDED HOW
5 TO UNTANGLE THOSE CASES. BUT IF COUNSEL WOULD ADDRESS
6 THAT, I THINK IT WOULD BE APPROPRIATE.

7 MR. FAHEY: YOUR HONOR, THE COURT MAY
8 REMEMBER THAT JUDGE BARTLE WAS FACING THOSE SAME ISSUES
9 IN THE DIET DRUG LITIGATION. AND IN AUGUST OF 2007, HE
10 ISSUED A RULING AFTER HE HAD PREVIOUSLY ALLOWED THE
11 MULTI PLAINTIFF FILING TO OCCUR TO REALLY, AS A REACTION
12 IN PART TO THE EFFICIENCY, THAT WERE THOUGHT TO HAVE
13 BEEN ACHIEVED BY THE MULTI FILINGS, THAT THEY WERE JUST
14 CAUSING HAVOC IN THE CLERK'S OFFICE AND REALLY
15 EVERYWHERE ELSE IN THE COURTROOM TO NOT ALLOW THEM TO
16 MOVE FORWARD. AND IF IT WOULD HELP THE COURT, I CAN
17 HAND UP TO THE CLERK A COPY OF THAT DECISION.

18 THE COURT: THAT WOULD BE HELPFUL. I'M
19 FAMILIAR WITH IT, HOWEVER. I ALSO HAVE ON A NON-MDL
20 BASIS, I MANAGED 1,500 OR SO CASES OF COPYRIGHT
21 INFRINGEMENT BY THE VARIOUS MUSIC COMPANIES WHO STARTED
22 OUT IN THIS COURT FILING 200, 300 PLAINTIFFS AT ONCE
23 AGAINST MULTI DEFENDANTS. AND MY DEAR DEPARTED
24 COLLEAGUE JUDGE NEWCOMER STARTED THE BALL ROLLING BY
25 ORDERING THEM TO BE FILED SEPARATELY. ONCE HE DID THAT,

1 THE MANAGEMENT OF THOSE CASES FELL TO ONE OF THE NEWER
2 JUDGES, WHICH WAS ME. AND I AM HAPPY TO SAY THAT OF THE
3 1,500 OR SO CASES, ONLY 38 ARE PENDING AND NO MOTIONS
4 ARE PENDING. SO I WANT TO GIVE YOU AN IDEA OF HOW
5 EFFICIENT MY STAFF AND MYSELF CAN BE. AND IN THAT CASE,
6 WE HAVE PRETTY GOOD COUNSEL ON ONE SIDE. MOST OF THE
7 OTHER SIDE ARE PRO SE.

8 MR. FAHEY: I'M ALSO GOING TO HAND UP A
9 COPY OF THE DECISION IN VIOXX. JUDGE FALLON ORIGINALLY
10 ALLOWED MULTI FILING AND THEN RECENTLY, BECAUSE OF ALL
11 OF THE ISSUES IN THE CLERK'S OFFICE AND CASES BEING
12 DISMISSED AND TRYING TO FIND THE PLAINTIFF IN MULTI
13 PLAINTIFF CASES. SO I WILL HAND THAT DECISION UP AS
14 WELL.

15 THE COURT: WE APPRECIATE THAT.

16 MR. MILLER: YOUR HONOR, WE HAVE BEEN
17 DISCUSSING THIS AT SEVERAL MEETINGS AND ONE SUGGESTION I
18 HAD, IF THE COURT WOULD ENTERTAIN IT, IS THAT FOR
19 ORGANIZATIONAL PURPOSE, FIRST THE DISPARITY OF INJURIES.
20 I THINK THAT IS A VERY LEGITIMATE CONCERN, PERHAPS MULTI
21 PLAINTIFF COMPLAINTS, CONGESTIVE HEART FAILURE WHERE WE
22 ARE ALLEGING NOT A LACK OF WARNING BUT AN INADEQUATE
23 WARNING. AND THEN A SEPARATE COMPLAINT FOR THE
24 MYOCARDIAL INFARCTION CASES AND THEN FOR THE OTHER TWO,
25 WOULD BE THE OCULAR OR THE STROKE. THERE ARE FOUR SORT

1 OF CATEGORIES I THINK YOUR HONOR IS GOING TO SEE. AND
2 THEN THE ORGANIZATIONAL MATTER OF IF YOU DO A MULTI
3 PLAINTIFF COMPLAINT WITH ONE CIVIL ACTION NUMBER, THEN
4 YOU GET THE A1, A2, A3. SO THAT IF LATER PLAINTIFFS'
5 COUNSEL DISMISSES SOME, SOME SETTLE, THE CLERK IS NOT IN
6 A STATE OF CHAOS. THAT IS THE PROBLEM THAT JUDGE
7 FALLON, I THINK VERY LEGITIMATELY ADDRESSED IS THAT --
8 OKAY, YOU ARE DROPPING OUT SOME PLAINTIFFS BUT YOU STILL
9 HAVE A CIVIL ACTION OPEN AND THE A1, A2 SORT OF CAN
10 PREVENT THAT, IF THE COURT IS SO INCLINED. JUST AN
11 IDEA.

12 THE COURT: THANK YOU. THANK YOU. WE
13 LOOK FORWARD TO MUCH MORE INPUT IN THIS AREA WITHIN 30
14 DAYS. I HOPE THAT YOU WILL ALL GIVE ME THAT KIND OF
15 SUGGESTION SO THAT I MAY CHOOSE WISELY. AND ONE OF THE
16 REASONS I DON'T COME OUT HERE AND JUST TELL YOU WHAT I'M
17 GOING TO DO IS BECAUSE I REALLY DO WANT TO MAKE THIS AN
18 INCLUSIVE PROCESS. WHY HAVE A STEERING COMMITTEE AND
19 WHY HAVE LEAD COUNSEL IF YOU ARE NOT ABLE TO HAVE INPUT.
20 AND I MEAN THAT SINCERELY. AND IF THE STEERING
21 COMMITTEE IS ABLE TO SOLICIT EVERYONE'S IDEAS AND PUT
22 THEM FORWARD THEN THIS COURT HAS AN EVEN BROADER BASE OF
23 SUGGESTIONS TO MAKE AN INFORMED DECISION.

24 MR. ANDRUS: YOUR HONOR, ONE MORE MUNDANE
25 MATTER. IN CASE ORDER MANAGEMENT NUMBER ONE THIS COURT

1 INSTRUCTED ALL PARTIES TO BECOME MEMBERS OF THE
2 ELECTRONIC FILING SYSTEM. I'M AWARE THAT THERE ARE A
3 SUBSTANTIAL NUMBER OF PARTIES WHO NEED TO BE SERVED
4 THINGS. FOR EXAMPLE, WHEN I FILED MY APPLICATION, NOT
5 ONLY DID I SERVE IT ELECTRONICALLY, BUT I HAD TO FAX 60
6 OR MORE PEOPLE WITH FAXED COPIES. SO I WOULD ONLY URGE
7 THE COURT THAT WHEN THE COURT APPOINTS LIAISON COUNSEL
8 THAT THE COURT INCORPORATE IN THAT ORDER A VERY STRICT,
9 THAT -- FILE A NOTICE OF APPEARANCE. IT IS AS SIMPLE AS
10 THAT. THEY BECOME PART OF THE ELECTRONIC FILING SYSTEM,
11 AND MY SECRETARY WOULD BE MOST GRATEFUL. SHE CERTAINLY
12 WOULD. THANK YOU.

13 THE COURT: ANY OTHER MATTERS THAT THE
14 COURT NEEDS TO ADDRESS TODAY FROM ANY COUNSEL? YOU
15 REALLY THINK THAT IS IT, HUH? I'VE WORKED YOU HARD
16 ENOUGH. AND I DO APPRECIATE AGAIN MEETING ALL OF YOU.
17 I WOULD LOVE TO SHAKE YOUR HANDS AND I PROBABLY WILL
18 COME DOWN TO DO THAT.

19 MR. MILLER: I'M SORRY, YOUR HONOR. BUT
20 DOES THE COURT WANT TO SET NOW THE NEXT STATUS
21 CONFERENCE, OR IS THAT SOMETHING THE COURT WILL DO
22 LATER?

23 THE COURT: I WILL DO THAT LATER. I
24 WOULD LIKE TO SET THE CASE MANAGEMENT ORDER #2 IN PLACE
25 AS IT HAS BEEN PROPOSED WITH A FEW FINE TUNINGS. I'M

1 GOING TO ADD MY ELECTRONIC DISCOVERY DEFAULT ORDER, SO
2 THAT IF YOU WANT TO AGREE TO OTHERWISE AND PROPOSE IT, I
3 WILL BE HAPPY TO ENTERTAIN THAT, AS WELL AS THE OTHER
4 MATTERS THAT ARE CONTEMPLATED IN CASE MANAGEMENT NUMBER
5 TWO.

6 AND I WOULD LIKE TO HAVE SOME CONTACT
7 WITH THIS CASE AND THE COURT EVERY 30 DAYS. I THINK
8 IT'S NECESSARY RIGHT NOW IN PARTICULAR. AND I WILL BE
9 LOOKING FORWARD TO, PERHAPS WITHIN 90 DAYS OF SETTING
10 THAT FAR OUT TRIAL SCHEDULE THAT MR. BECNEL REMINDS ME
11 OF BECAUSE I THINK THAT MAKES SENSE TO IN 90 DAYS WE
12 WILL KNOW A LITTLE BIT BETTER WHERE WE ARE WITH THE 30,
13 30, 30 REPORTS. AND WE ARE GOING TO BE ASKING COUNSEL
14 FOR STATUS RECORDS ON AN INTERIM BASIS IN ADDITION, TOO.
15 SO YOU WILL EACH RECEIVE BY THE ECF OR OTHERWISE,
16 BECAUSE NOT EVERYBODY YET IS ON ECF, MY ORDERS. AND
17 THEN, BY THE END OF THIS WEEK, I DO PROMISE TO HAVE THE
18 STEERING COMMITTEE IN PLACE, AS WELL AS NAMING LIAISON
19 COUNSEL.

20 I THANK YOU AGAIN. WE WILL STAND
21 ADJOURNED.

22 THE CLERK: COURT IS ADJOURNED.

23 (COURT ADJOURNED AT 12:50 P.M.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

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