

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

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IN RE: : MDL-07-1871  
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AVANDIA MARKETING, SALES : Philadelphia, Pennsylvania  
PRACTICES and PRODUCTS : May 9, 2008  
LIABILITY LITIGATION : 2:02 p.m.

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE CYNTHIA M. RUFÉ  
UNITED STATES DISTRICT JUDGE

- - -

APPEARANCES:

For the Plaintiffs: VANCE ANDRUS, ESQUIRE  
THOMAS MELLON, ESQUIRE  
BENEDICT MORELLI, ESQUIRE  
DAVID RATNER, ESQUIRE  
RICHARD MEADOW, ESQUIRE  
DOUGLAS SANDERS, ESQUIRE  
MARK GROSSMAN, ESQUIRE  
MARK LANIER, ESQUIRE  
RICHARD HOOD, ESQUIRE  
PAUL SIZEMORE, ESQUIRE  
TRACY REZVANI, ESQUIRE  
MICHAEL MILLER, ESQUIRE  
FREDERICK THOMPSON, ESQUIRE  
DANIEL BECNEL, ESQUIRE  
JOSEPH ZONIES, ESQUIRE  
CATHERINE HEACOX, ESQUIRE  
KAREN MENZIES, ESQUIRE  
DIANE NAST, ESQUIRE  
HALLE ASHER, ESQUIRE

*Transcribers Limited*  
17 Rickland Drive  
Sewell, NJ 08080  
856-589-6100 • 856-589-9005

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APPEARANCES:

For the Defendants:   GEORGE LEHNER, ESQUIRE  
                          MATTHEW HAMILTON, ESQUIRE  
                          ANTHONY VALE, ESQUIRE  
                          ALINE FAIRWEATHER, ESQUIRE  
                          SEAN FAHEY, ESQUIRE  
                          CHRISTOPHER WASSON, ESQUIRE

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FTR Operator:           Michael DelRossi  
Transcribed By:         Donna M. Anders

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1 (The following was heard in open court at  
2 2:02 p.m.)

3 THE COURT: ... safely, it's a difficult day  
4 out there.

5 We scheduled this as a routine, we hope to be  
6 routine, conference pursuant to the case management  
7 order, number two directives that were established on  
8 April 9th after our first conference, and we see many  
9 attorneys here that are entitled to be present and  
10 participate. We are happy to see all of you.

11 We have our liaison counsel, Mr. Mellon.

12 MR. MELLON: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. MELLON: Good morning.

15 THE COURT: And we have the plaintiffs  
16 steering committee. A number of you have arrived and I  
17 suppose there is only one missing, that's Mr. Aylstock,  
18 and then we have various representatives of the  
19 defendants team.

20 MR. LEHNER: Good morning, Your Honor. As  
21 you recall, Ms. Gussack was here last time and she  
22 asked me to send her regards and her apologies for not  
23 being here. She has been traveling out of the country,  
24 arrived late last night and will look forward to being  
25 here at the very next conference.

1 THE COURT: Well, I appreciate that. The  
2 good thing about having so many on each team is that we  
3 can continue our movement forward even when these  
4 matters take place.

5 Now, I am looking at the joint report that  
6 was filed by counsel and I really see a few area that  
7 we need to discuss today. We don't need to review  
8 everything because some of it seems to be in process  
9 and not at issue, such as the master short form answer.  
10 I think that is working out.

11 So, we will just go to the multi-party  
12 complaints issue. I do need briefing on this. We  
13 understand that there is a divergence in the approaches  
14 that counsel wish to take. The case law is  
15 interestingly divided and we would like to have full  
16 briefing on this before we make a decision.

17 I think it's very difficult in pursuing  
18 discovery to have multi-defendants if they are not  
19 properly grouped, if their claims are diverse in one  
20 action, it does not make sense to me.

21 That is a practical response, not a legal  
22 one, and I would like everyone to keep that in mind  
23 because the problematic issues of procedure in this MDL  
24 are of uppermost concern to me right now. I don't  
25 think now is the time to be deciding the ultimate

1 issues on legal theories and claims.

2 So, we want this to be able to move forward  
3 in a comprehensive way and it may be because you are  
4 having some difficulties agreeing on discovery plans  
5 and schedules. I don't know if these two are related  
6 or not, perhaps counsel could let me know.

7 Would anyone like to address any arguments in  
8 the multi-party complaints, or are you content,  
9 counsel, to brief that and we have argument on it  
10 later?

11 MR. ANDRUS: Your Honor, if it please the  
12 court, Vance Andrus. I'm assuming the Court would like  
13 us to announce who we are at least for the first few  
14 hearings for the record.

15 THE COURT: You assume correctly, again, Mr.  
16 Andrus.

17 MR. ANDRUS: Thank you, Your Honor. Your  
18 Honor, I would like to address this, if I may. Before  
19 we do so, there are number of lawyers here who the  
20 Court has not as yet met. I would like to introduce  
21 them if I could, it will just take a moment.

22 THE COURT: You may.

23 MR. ANDRUS: Your Honor, Mr. Ben Morelli, a  
24 plaintiffs steering committee member who was out of the  
25 country.

1 MR. MORELLI: Good morning, Your Honor.

2 THE COURT: You will recall that Mr. Ratner  
3 did an outstanding job of introducing him. Mr. Morelli  
4 is with us today.

5 THE COURT: Hello, Mr. Ratner, too.

6 MR. RATNER: Good morning.

7 MR. ANDRUS: Mr. Rick Meadow, Your Honor, was  
8 out of the country adopting a baby from Guatemala, and  
9 I am pleased to say he got it done --

10 THE COURT: Congratulations.

11 MR. ANDRUS: -- and got the baby back just in  
12 time before they terminated that. Mr. Doug Sanders is  
13 a partner --

14 MR. GROSSMAN: Mark Grossman.

15 MR. ANDRUS: I know. I wanted you to stand  
16 up. I know who you are and I know who he is. I wanted  
17 to stand up --

18 MR. GROSSMAN: Good morning, Your Honor.

19 MR. ANDRUS: -- is a partner with Mr.  
20 Grossman and the reason that I bring that up, Your  
21 Honor -- that's the end of the introductions.

22 The reason that I bring up is that Mr.  
23 Sanders and Mr. Grossman together were in charge of  
24 multi-party complaints and are available to address the  
25 Court now or later.

1           With respect to that, Your Honor, each side I  
2 believe submitted briefing on the matter. I hear the  
3 Court saying that the Court would like some additional  
4 briefing --

5           THE COURT: No, that's not really what I am  
6 saying.

7           MR. ANDRUS: Okay.

8           THE COURT: I think that the briefing that  
9 has been submitted could use some argument. I don't  
10 know if now is the appropriate time since we have so  
11 many issues, but I do want to get this decided soon  
12 because --

13          MR. ANDRUS: Right.

14          THE COURT: -- it implicates the answers and  
15 the discovery.

16          MR. ANDRUS: Absolutely, Your Honor. May I  
17 make this suggestion. We are prepared today, Mr.  
18 Sanders is prepared to argue, why don't we put that  
19 aside for now, see how we get through the rest of the  
20 schedule and if we have time and it is accommodating to  
21 the Court, we'll come back and do that argument today.  
22 If not we can do it --

23          THE COURT: That is what I would prefer, Mr.  
24 Andrus.

25          MR. ANDRUS: Is that all right?

1 THE COURT: That is quite fine.

2 MR. LEHNER: Your Honor, that would be fine  
3 with us as well.

4 THE COURT: Good.

5 MR. LEHNER: Mr. Vale here is prepared to  
6 argue if you would like to do at the end of the  
7 proceedings.

8 THE COURT: Very well. Let's see how far we  
9 get with everything else and then address it.

10 MR. ANDRUS: Your Honor, going further on a  
11 personal matter, I would like to inform the Court that  
12 the plaintiffs steering committee appointed by the  
13 Court has organized itself, selected myself, Mr. Lanier  
14 and Mr. Aylstock as co-leads and has appointed Mr. Rich  
15 Hood, one of my partners as E-discovery liaison.

16 The Court I believe in a case (inaudible)  
17 number two requested that each side appoint one, and  
18 Mr. Hood has been appointed. George, I am not sure who  
19 from your side and it's Ms. Aline --

20 THE COURT: Fairweather.

21 MR. ANDRUS: -- Fairweather for her side.  
22 The last personal notes are that Mr. Aylstock sends his  
23 regrets, but he and his children are on vacation in  
24 Hawaii.

25 Mr. Overholtz's wife is thirty-six weeks

1 pregnant and he decided to stay close to home, and  
2 Karen Menzies, you will recall, one of our common  
3 benefit lawyers unfortunately broke her hip and has had  
4 surgery is recuperating at home, and that is enough of  
5 that.

6 THE COURT: Well, I am sorry to hear about  
7 that, but I appreciate that rundown. Do you have any  
8 other subdivisions and assignments in the plaintiffs  
9 steering committee that I might want to know about?

10 MR. ANDRUS: Yes, ma'am. The plaintiffs  
11 steering committee has organized approximately ten  
12 different working groups or subcommittees. For our  
13 purposes today, I think the Court should be aware that  
14 Mr. Sizemore -- where is Mr. Sizemore. There is he.

15 MR. SIZEMORE: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. ANDRUS: Mr. Paul Sizemore is heading up  
18 our science committee and will be very active in court  
19 and Ms. Tracy Rezvani --

20 MS. REZVANI: Good morning.

21 THE COURT: Good morning.

22 MR. ANDRUS: -- is in charge of the class  
23 action committee. There are additional lawyers who  
24 have worked on each one of these. The Court is correct  
25 that we have not made agreements on all of these, but

1 we're very, very close on many of them.

2 If the Court desires a rundown on each one of  
3 them, as we go through, I will introduce who has been  
4 working on those things.

5 THE COURT: I would appreciate a list, a  
6 written list if you wouldn't mind, it's helpful to me  
7 in --

8 MR. ANDRUS: That's fine.

9 THE COURT: -- the future to identify who is  
10 speaking about what, and besides which directing  
11 certain motions that way, it will just be easier for me  
12 to --

13 MR. ANDRUS: Right.

14 THE COURT: -- communicate and identify who  
15 is who.

16 MR. ANDRUS: Yes, Your Honor, I will supply  
17 that. One additional appointment that I think is very  
18 going to be significant because you are going to see a  
19 lot of them, Mr. Mike Miller has been --

20 MR. MILLER: Good morning, Your Honor.

21 MR. ANDRUS: -- appointed discovery co-chair,  
22 along with Mr. Overholtz who is birthing a baby right  
23 now, and we will run across the rest of these as we go,  
24 as the Court has inquired so we can address the rest of  
25 them.

1 THE COURT: Thank you very much.

2 MR. LEHNER: Good morning, Your Honor. George  
3 Lehner on behalf of GSK. Let me just introduce the  
4 other folks who are here today with us so that you can  
5 start associating names.

6 To my left is Sean Fahey, Tony Vale, Aline  
7 Fairweather, Chris Wasson from our firm, and Matt  
8 Hamilton as well. And we have similarly divided up the  
9 responsibilities among us to address the groups that  
10 the plaintiffs have been establishing.

11 I think it's fair to say that on all of the  
12 issues that we have had at least productive  
13 conversations, and on many we have reached substantial  
14 agreements, so I think we have been doing what you  
15 asked us to do.

16 Just as a housekeeping matter, really as a  
17 preliminary matter, I know last time we provided you a  
18 status report on those cases that have been filed, and  
19 I have an updated report I believe as of yesterday  
20 evening.

21 THE COURT: Thank you.

22 MR. LEHNER: I would be happy to hand it up  
23 to the clerk there.

24 THE COURT: We would be happy to receive  
25 that.

1 MR. LEHNER: I think there are now two  
2 hundred and four filed actions that have been  
3 transferred or in the MDL, and forty-five are pending  
4 transfer to the MDL. But I will hand this up and this  
5 is the most updated list.

6 THE COURT: Thank you very much.

7 MR. ANDRUS: Your Honor, the Court mused in  
8 connection with multi-party complaints how it might  
9 relate to other matters, and I simply would like to  
10 make a statement about this so the Court can appreciate  
11 why it's of concern to each side.

12 There are a number of moving parts here that  
13 are all trying to come together at once. The earliest  
14 possible statute date which I don't declare to be the  
15 statute date, I'll deny the allegations forever, but  
16 the earliest possible statute date we believe would be  
17 May 21st of this year, of '07, it's right in front of  
18 us.

19 THE COURT: Right.

20 MR. ANDRUS: We are working very diligently  
21 in good faith with the defendants with respect to the  
22 tolling agreement.

23 It is advantageous to the defendants to have  
24 a tolling agreement because they obtain information  
25 from us about the nature of our cases and those cases

1 which are not filed.

2           It is advantageous to the plaintiffs to have  
3 a tolling agreement because it substantially reduces  
4 the transactional cost and, after all, the clients are  
5 going to have to pay at the end of the day by having  
6 tolling agreements. Having multi-party complaints is  
7 an additional way, as they say in the south, to skin  
8 that cat.

9           Ultimately the clients pay the cost. The  
10 burden may be on the lawyer to pay a filing fee and pay  
11 a filing fee for every single case that he files, but  
12 there is a client behind every one of those cases, and  
13 sooner or later the case settles, or however the case  
14 is disposed of, ultimately those clients are  
15 responsible.

16           So, it is of substantial importance to us  
17 that this issue of multi-party complaints be addressed.  
18 I don't want to argue the merits right now, that's for  
19 my other people to do.

20           But, it's tied in to the tolling agreements,  
21 and I am hopeful that we will be able to announce to  
22 the Court within a week that we have made an agreement  
23 on the tolling agreements, and we can discuss that  
24 either now or later what those problems are.

25           But, the multi-party complaint issue is still

1 there, and it is something that needs to be addressed  
2 and that's why we briefed it for this hearing.

3 THE COURT: I don't see that the tolling  
4 agreement is going to eliminate all of the issues  
5 involved in multi-party complaints.

6 MR. ANDRUS: That's correct.

7 THE COURT: Yes, and I always recognized  
8 that. Thank you.

9 MR. VALE: Good morning, Your Honor. Anthony  
10 Vale on behalf of GSK. As Mr. Andrus says, we have  
11 been working with members of the PSC to attempt to  
12 agree upon a form of tolling agreement and we are close  
13 to reaching agreement on that form.

14 However, we do have to resolve one other  
15 problem and that is the pendency of eight class actions  
16 in which there are personal injury claims asserted.  
17 The problem there for us is that under the laws of at  
18 least some states, those class actions may toll the  
19 limitation period.

20 We have been working with the PSC to reach  
21 out to the law firms that filed those class actions in  
22 the hope that we can agree upon a dismissal of the  
23 class action claims as they pertain to personal injury  
24 claims.

25 We have had some success there. I think

1 three out of the eight have agreed to dismiss the class  
2 action claims, but we're still working on the other  
3 five. If those negotiations are not fruitful, then GSK  
4 may need to file a motion before Your Honor under Rule  
5 12 to strike the class action allegations.

6 So, from our point of view, I wanted to let  
7 you know that the class allegations on behalf of  
8 proposed personal injury classes are integrally tied  
9 into the tolling agreement arrangements.

10 THE COURT: I understand how complicated it  
11 is becoming, but I expect the committees to continue to  
12 work to resolve this with a good -- at this point not  
13 only of clients, but the MDL moving forward.

14 This heavy litigation at this point will  
15 stall things, that is true, and that is not the point  
16 of an MDL, but we will figure it out as best as we can.  
17 We know we also have a string of motions to remand. I  
18 think they are all from California cases, but those  
19 present even additional issues.

20 We want to get through this quickly because  
21 discovery needs to move forward, and regardless of what  
22 the Supreme Court may do on some of these claims, we  
23 can't count on any rulings being made either way, we  
24 have to move forward.

25 MR. VALE: Well, we are making progress

1 working with Mr. Andrus and his colleagues. I think we  
2 should reach at least substantial agreement on the  
3 tolling agreement (indiscernible).

4 It is certainly possible that we may be need  
5 to file a motion before Your Honor if we can't get to  
6 the end of the road there fairly quickly.

7 THE COURT: Thank you, Mr. Vale.

8 MR. ANDRUS: One additional comment in  
9 addition to what Mr. Vale said, two additional  
10 comments, Your Honor.

11 One of the rather creative things we're  
12 thinking about is the possibility of a bridge tolling  
13 agreement to give us some additional time. That would  
14 be one which would automatically disintegrate after a  
15 given period of time and we're discussing that with  
16 them.

17 The second is, regardless of how well we do  
18 on the personal injury class actions, the Court should  
19 be aware first that there are other class actions that  
20 are still pending which are not affected by this,  
21 consumer classes, for example.

22 Second, that there has to be an exception  
23 made to the State of Louisiana with respect to the  
24 personal injury class actions. Louisiana does not  
25 recognize tolling agreements. Under its civil code, it

1 considers the same contra-bonus morays, and it simply  
2 will not enforce them.

3 That places people in Louisiana in a very  
4 untenable position, because if they leave the American  
5 Pipe protection of their class action to go to a  
6 tolling agreement, they may have, in effect, have opted  
7 out of their own class action by doing so, and the  
8 tolling agreements are not recognized in Louisiana.

9 The defendants are well aware of this  
10 problem, we're working very, very diligently on it and  
11 we are trying to work our way around it. I simply  
12 report to the Court that at the end, there may be sort  
13 of a double back flip thing with Louisiana that  
14 hopefully the parties can agree to.

15 THE COURT: Well, I will look forward to a  
16 report on this as soon as possible. All right. The  
17 attorneys working on the tolling agreement discussions  
18 are they the same as on the multi-party complaints  
19 then?

20 MR. ANDRUS: No, ma'am. The tolling  
21 agreement is being negotiated on our side by Mr.  
22 Zonies, by myself and Mr. Thompson, Fred Thompson,  
23 the plaintiffs steering committee member in the back  
24 row.

25 THE COURT: All right.

1 MR. ANDRUS: And the defendants, Mr. Vale is  
2 leading the defendants.

3 MR. VALE: It just happens, both of those  
4 have fallen to me, Your Honor, so our side it is --

5 THE COURT: It makes sense to me, it makes  
6 perfect sense. Then let's just try to get to the  
7 issues of preservation of evidence and electronically  
8 stored information. That seems to be in progress, not  
9 at issue at the moment, correct?

10 MR. ANDRUS: That's correct, Your Honor. Mr.  
11 Hood can address any questions that the Court has from  
12 the plaintiffs' side.

13 MR. LEHNER: And, Your Honor, Ms. Fairweather  
14 can address any questions that the Court may have from  
15 our side. They are working together on this, and I  
16 think as you have indicated, have made substantial  
17 progress to date.

18 THE COURT: Any issues that are sticking in  
19 nature?

20 MR. HOOD: No currently, Your Honor. We're  
21 working on a consensual basis and we are moving  
22 forward.

23 THE COURT: Very good.

24 MS. FAIRWEATHER: Yes. I think, Your Honor,  
25 your default electronic discovery order provided that

1 it would apply until such time as the parties are  
2 conducting discovery electronic discovery on a  
3 consensual basis, and we have agreed that we do  
4 consider ourselves to be conducting electronic  
5 discovery on a consensual basis.

6 We are using the Court's order as a guide in  
7 our discussions. On May 7th, Mr. Hood sent me a  
8 proposed electronic discovery or ESI agreement which we  
9 will be responding to. We've had several meeting  
10 confers.

11 THE COURT: All right. Thank you.

12 MS. FAIRWEATHER: Thank you.

13 THE COURT: I appreciate the report, counsel.

14 The discovery plan and schedule, could you  
15 address, please, first from the plaintiffs, Mr. Andrus,  
16 who is handling this.

17 MR. ANDRUS: Yes, ma'am. Your Honor, the  
18 plaintiffs first broach with the defendants discussion  
19 of discovery plan and schedule was approximately two  
20 weeks ago. The defendants have had some scheduling  
21 difficulties and we were not able to physically get  
22 together.

23 Ultimately Mr. Miller and Mr. Overholtz  
24 prepared I would modesty say a very aggressive plan and  
25 forwarded it to them. Unfortunately, they didn't get

1 it until yesterday or the day before, and we have not  
2 had a chance to meet and confer with them.

3 We had hoped to be able to discuss that  
4 matter today and to try to resolve today a discovery  
5 plan for going forward with actual dates that would  
6 fit the Court's perception of how this pace should  
7 proceed. But, in fairness to the defendants who have  
8 only had our plan for one day, we are willing to pull  
9 it down.

10 We would suggest to the Court that either  
11 the Court has its own ideas about a discovery plan,  
12 in which case we will be happy to listen and obey if  
13 it comes as a form or order.

14 If it comes in the form of discussion, we  
15 will be happy to listen and engage the Court with  
16 whatever she wishes on the discovery plan. If not, we  
17 really need to get that resolved and so we would like  
18 to have --

19 THE COURT: How much time?

20 MR. ANDRUS: Alternatively what I would like  
21 to suggest is that we meet and confer with the  
22 opponents over the next, that if either says declares  
23 impasse after a good faith opportunity, we immediately  
24 submit to the Court and give us a briefing schedule,  
25 ten days, a week, two weeks, whatever and we'll trade

1       briefs the same date and then let the Court decide it.  
2       I don't think it's the kind of thing that we need to  
3       anguish over.

4                 THE COURT:   That's fine with the Court.

5                 MR. LEHNER:   That's agreeable, Your Honor,  
6       and I'm glad we received a plan to look at and we now  
7       have something concrete to discuss, and we can do that  
8       expeditiously over the next week, and if we don't reach  
9       an agreement --

10                THE COURT:   The next week means to me seven  
11       says, but do you need more than that?

12                MR. ANDRUS:   No.

13                MR. LEHNER:   No, I think we can have a  
14       conversation next week, and if we reach an impasse of  
15       sort of a week from Monday, we'll know that.

16                MR. ANDRUS:   Right.

17                THE COURT:   That's more like ten days.

18                MR. LEHNER:   So, we'll spend Monday through  
19       Friday discussing it, at the end of Friday if we're not  
20       ready to have an agreement, we will reach --

21                THE COURT:   I was willing to say just give me  
22       a status report within fourteen days --

23                MR. LEHNER:   That's fine.

24                THE COURT:   -- and if that status report says  
25       we are at an impasse totally on these issues, then the

1 Court will know what to do.

2 MR. ANDRUS: That's fine. May I also  
3 suggest, Your Honor, that at that time, fourteen days  
4 hence, if we have reached an impasse, that each side  
5 submit to the Court its own plan for the Court's  
6 consideration.

7 THE COURT: Automatically do so. I do like  
8 to get all parties concerns and understand them before  
9 I impose what may seem to attorneys as arbitrary dates  
10 and deadlines. But, I will have a good idea of what  
11 your needs are, your respective needs when I get your  
12 reports.

13 MR. LEHNER: Thank you, Your Honor.

14 MR. ANDRUS: Thank you, Your Honor.

15 THE COURT: All right. Document production  
16 is not currently an issue, you're moving along?

17 MR. ANDRUS: Your Honor, with respect to  
18 document production, Mr. Miller will address that right  
19 now and I would like the Court to note that Miller,  
20 Overholtz who is not here, and Mr. Hood, because of the  
21 E-discovery nature of document productions, would be  
22 the three people who going to be talking about that,  
23 and I am making you a list even as we speak.

24 But, Mr. Miller has served on the defendants  
25 in production and wishes to address that if he may?

1 THE COURT: Yes, please.

2 MR. MILLER: Good morning, again, Mike  
3 Miller. I haven't formally served it on the  
4 defendants. What we did was, Mr. Overholtz and I  
5 provided courtesy copies early this week of our first  
6 proposed interrogatories, the plaintiffs steering  
7 committee's first proposed request for productions, and  
8 our first proposed request for admissions.

9 We were a little unclear about Your Honor's  
10 first case management order, whether we were still  
11 stayed for discovery, you had stated pending  
12 appointment of the plaintiffs steering committee.

13 We are now asking that since you have  
14 appointed the plaintiffs steering committee, we be  
15 allowed today to formally serve our discovery requests  
16 on the defendants, so that is where we are.

17 THE COURT: These are initial discovery  
18 requests --

19 MR. MILLER: Yes.

20 THE COURT: -- not those that may be part of  
21 a master comprehensive discovery order?

22 MR. MILLER: They are the first discovery  
23 requests that would be embodied in this scheduling  
24 order that the Court will answer to.

25 THE COURT: I'm just wondering if we are not

1 piecemealing it to start this immediately without that  
2 comprehensive plan.

3 MR. MILLER: Whatever the Court desires is  
4 exactly how we are going to do it. I think it would  
5 help for them to get started on it now, but however the  
6 Court wants it.

7 THE COURT: Help for Glaxo?

8 MR. MILLER: Help for us that they got  
9 started on it now, Your Honor.

10 THE COURT: Oh, okay. You said them.

11 MR. MILLER: I'm here to help Glaxo, Your  
12 Honor, that's my job.

13 THE COURT: Yes, I realize what side you're  
14 on, Mr. Miller. Thank you.

15 MR. FAHEY: And, Your Honor, I just want to  
16 dissuade that there is anything piecemeal about the  
17 first set of requests that they sent us. Like many  
18 MDLs, they are very, very expansive and comprehensive.

19 We had talked earlier in terms of our  
20 agreement or at least our not opposing the lifting of  
21 the stay was an effort to try to avoid fifty different  
22 discovery requests coming in, and for the PSC to put  
23 together a master set of discovery, which usually  
24 drives the document production and a lot of the other  
25 discovery deadlines.

1           So, that's what we have now. So, there is  
2 nothing piecemeal about it. I just want to assure the  
3 Court this is hopefully going to be the discovery that  
4 we use to drive the discovery in the litigation.

5           THE COURT: So, if the defense does not think  
6 that it's a problem, is there any objection to lifting  
7 the stay of discovery as to this type of discovery, the  
8 document production?

9           MR. FAHEY: No, Your Honor, and I think that  
10 what we are going to be dealing with in the discovery  
11 plan is the general discovery of GSK. We're also going  
12 to obviously be talking about the fact sheets and the  
13 case specific discovery that we need from the  
14 plaintiffs to move the cases and evaluate them and get  
15 them ready for trial.

16           So, I think from our perspective the  
17 discovery stay can be lifted across the board so that  
18 it will allow us to move forward with all of the  
19 different pieces that are now moving and need to be  
20 part of the discovery plan.

21           THE COURT: All right. Is that agreed, then,  
22 if I am hearing this correctly, to lift the stay on  
23 discovery, but pending a comprehensive discovery order,  
24 you will not scheduling such things as fact depositions  
25 and --

1 MR. FAHEY: Yes.

2 THE COURT: -- specific case discovery, but  
3 general discovery may move forward as of now as  
4 propounded by plaintiffs steering committee?

5 MR. FAHEY: And Your Honor is very astute in  
6 picking up on -- what we don't want to do is kind of  
7 distract everyone with a doctors deposition or, you  
8 know, somebody from GSK being deposed completely out of  
9 the context of the master discovery plan to try to  
10 drive all of the discovery that needs to be done to get  
11 this case ready for trial.

12 THE COURT: That would be the understanding  
13 of the parameters --

14 MR. ANDRUS: Right.

15 THE COURT: -- and we will order that today.

16 MR. ANDRUS: And, Your Honor, while we are  
17 all kum by ya'ing and everything --

18 THE COURT: Is that what we're doing?

19 MR. ANDRUS: I would like to just add one  
20 slightly discordant note that we're trying to work out.  
21 The CEO of GSK which is the sort of parent company of  
22 SmithKlein Beecham d/b/a GSK, which is sort of  
23 confusing, but the European president is retiring  
24 within a month.

25 We are in negotiations to attempt to secure

1 his testimony, either a commitment that they will  
2 produce him when and as reasonably available. But, if  
3 he's going to disappear to the south of France, I'm  
4 talking about the end of this month, we're going to  
5 have to --

6 THE COURT: I'll go and take that deposition  
7 myself.

8 COUNSEL: Your Honor, I think that is one  
9 that the trial counsel will need to be taking, too.

10 THE COURT: Absolutely. That will not be  
11 problem, will it?

12 MR. FAHEY: And I'll agree to prepare him in  
13 the south of France.

14 THE COURT: Thank you very much, Mr. Fahey.

15 MR. LEHNER: There is a lot of assumptions  
16 built into that as to where he is going to be. They  
17 may not be so forthcoming if he decides to go somewhere  
18 else, but we'll find out.

19 COUNSEL: Western Sahara.

20 THE COURT: Those are glitches that counsel  
21 know best to flag. I don't need to be involved in  
22 them. As much as I would love to be taking depositions  
23 in Europe, I think that you can work that out. I know  
24 all honorable intentions will do so and he would have  
25 no reason not to cooperate.

1 All right. So, we can move forward then and  
2 talk about special masters a bit. You all agree that  
3 we will need a few, including ESI and E-discovery. I  
4 had mentioned I think at the last conference one such,  
5 at least I had one in mind, but Mr. Paul Weiner of  
6 Littler Mendelson does have a conflict so he is not  
7 under consideration.

8 I do not wish to usurp the attorneys efforts  
9 to screen, but he has been kind enough to forward two  
10 other suggestions and I would like to have these  
11 duplicated and given to counsel.

12 I think it's Jonathan Redgrave, Esquire,  
13 Daley Ragan and Wagner, and George Socha, S-O-C-H-A,  
14 Jr., Esquire and they are E-discovery masters. So, I  
15 am going to be submitting that. I just received it and  
16 I haven't had a chance to duplicate it for your  
17 consideration.

18 MR. ANDRUS: Thank you, Your Honor.

19 THE COURT: I'm not endorsing anyone, I'm  
20 just passing them through.

21 MR. ANDRUS: And I'm assuming the Court would  
22 like us to meet and confer, see if there is someone  
23 upon whom we can agree.

24 THE COURT: Right.

25 MR. ANDRUS: And failing that, would the

1 Court be of a mind that we should each side submit a  
2 candidate for consideration and then the Court can  
3 choose from that or any other person that the Court  
4 desires.

5 THE COURT: If you can't agree, I think the  
6 logical step is to submit at least two names each so  
7 that the Court has --

8 MR. ANDRUS: Two names each.

9 THE COURT: -- a larger pool than just two  
10 names.

11 MR. ANDRUS: Yes, ma'am.

12 THE COURT: You know, the Court is presently  
13 being not bombarded, but receiving a number of  
14 suggestions from experts, who I'm sure are all  
15 honorable and credible and have the expertise, but we  
16 are telling them now to go directly to counsel, which  
17 is organized to take their suggestions.

18 It could be misinterpreted if the Court  
19 passes these on, but since I did trust Mr. Weiner and  
20 wished that he would have taken this, I also trust  
21 anyone that he's tried to see doesn't have a conflict,  
22 and they did check that out so far anyway.

23 MR. ANDRUS: Thank you.

24 THE COURT: Those things can change. This is  
25 one growing MDL, we haven't stopped receiving new cases

1 as you all know. So, that will move forward.

2 Then we're on the protective order for  
3 confidential documents. There seem to be a few areas  
4 here that need discussion.

5 MR. ANDRUS: Yes, Your Honor. With respect  
6 to the protective order -- and may I approach the  
7 bench?

8 THE COURT: Thank you.

9 MR. ANDRUS: I made the list of the different  
10 people that have been assigned various tasks.

11 (Pause in proceedings.)

12 MR. ANDRUS: With respect to the protective  
13 order, the two persons most closely associated with  
14 that from our side are Mr. Joe Zonies and Ms. Halle  
15 Asher.

16 MS. ASHER: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. ANDRUS: There she is. And they are both  
19 available to answer any questions.

20 MR. ZONIES: Good morning, Your Honor.

21 MR. ANDRUS: I would suggest perhaps Mr.  
22 Zonies can give you sort of an update of where are  
23 right now.

24 MR. ZONIES: Good morning.

25 THE COURT: Good morning.

1 MR. ZONIES: Obviously as the stay has been  
2 lifted, Your Honor, and documents need to start  
3 changing hands, this is a very high priority issue for  
4 us.

5 Understandably GSK is a little concerned  
6 about disclosing and producing any documents until this  
7 protective order is in place. So, I have been working  
8 with Mr. Wasson in particular on it from Pepper and we  
9 have, I would probably say, a half dozen sticky issues.

10 I would assume we can get through a few of  
11 those in the next week or so, but both sides have  
12 agreed that we need to fast track this as much as the  
13 Court will allow.

14 So we have agreed to exchange essentially  
15 position papers and draft orders by the 19th of May in  
16 the hopes that the next time we get together the Court  
17 will be in a position to let us know what the Court  
18 would like to do with that.

19 THE COURT: The scope of the definition of  
20 confidential discovery materials is always the hardest  
21 it appears.

22 MR. ZONIES: Yes.

23 THE COURT: And how you can manage to agree  
24 to that I trust will take a lot of work and effort, but  
25 is this the kind of area that we should already be

1 incorporating the services of a general discovery  
2 master?

3 I know the Court can be ruling on all of  
4 these, but you need very quick answers if you can't  
5 agree, because we just had an agreement to lift the  
6 stay on discovery. So, I am concerned about that.

7 The Court would want to get a report as soon  
8 as possible from all counsel, but once I see that, if  
9 the areas of contention are so large, we will be days  
10 litigating these matters, I would like you to be able  
11 to turn to a general discovery master, so you might  
12 want to be thinking about that.

13 MR. LEHNER: Your Honor, we had a brief  
14 discussion about that, and if that's the Court's  
15 desire, I think that would be perfectly fine. There  
16 will be issues that may be more appropriately resolved  
17 by a discovery master on some of these and the  
18 protective order would be perhaps suitable for that. I  
19 assume there would be a process if there was a  
20 disagreement ultimately we would be able to come to the  
21 Court.

22 THE COURT: Right.

23 MR. LEHNER: But, that makes a lot of sense I  
24 think for us as well.

25 THE COURT: Perhaps the plaintiffs steering

1 committee would like to discuss that before you let me  
2 know.

3 MR. LEHNER: We can see how that is best  
4 resolved.

5 MR. ZONIES: My concern, Your Honor, is how  
6 important this is to get done quickly. While I  
7 appreciate the Court's suggestion, I think typically  
8 that's exactly how these issues should be handled.

9 However, this one we have set up an agreement  
10 to get it briefed and in front of Your Honor more  
11 quickly than I think we will be even able to get a list  
12 of two special masters to the Court, let alone get the  
13 special master appointed.

14 So, my concern with that is that that is not  
15 expeditious enough. I understand from Mr. Fahey that  
16 they quite literally have a couple of hundred boxes of  
17 documents that they are more than willing to produce to  
18 us. We would like to get to those sooner rather than  
19 later.

20 THE COURT: Well, it makes sense that  
21 whatever you are comfortable now without deciding the  
22 controverted issues, could be produced, that can march  
23 on, but that's not really going to --

24 MR. LEHNER: No, no, I think those would not  
25 be produced until there is a protective order here in

1 place and I think that is what Mr. Zonies is  
2 indicating, that this would be all material that would  
3 be subject to a protective order that's ready to be  
4 examined by them.

5 MR. ZONIES: So, my suggestion, Your Honor,  
6 is that you permit us to unfortunately impose upon you  
7 on this particular issue, with the hope that by the  
8 next conference we can have it resolved from your point  
9 of view, and it's a done deal and an order of the Court  
10 and production can start rolling.

11 THE COURT: Well, what I am hearing is that  
12 that next conference has to be within thirty days  
13 again, because we've got some pressing issues here. I  
14 think that this is, or course, time sensitive.

15 So, I respect what you are saying, counsel,  
16 but I still think that what will happen is an ongoing  
17 need for a discovery master in general --

18 MR. ZONIES: Absolutely.

19 THE COURT: -- so we will be working on that  
20 at the same time.

21 MR. ZONIES: Absolutely.

22 MR. LEHNER: Just for clarification, the  
23 discovery master that you were talking about a minute  
24 ago with respect to the names would be for electronic  
25 discovery --

1 THE COURT: That's right, that's separate  
2 from what I am talking about --

3 MR. LEHNER: -- we're not talking about a  
4 separate discovery master.

5 THE COURT: I don't think they need to be the  
6 same person, they can be, but I don't think so.

7 MR. LEHNER: I don't think --

8 THE COURT: This is a massive enough  
9 undertaking that we're going to need more than one.

10 MR. ZONIES: Right.

11 THE COURT: I had the intention and I hope  
12 the message was made, maybe not clearly, but I hope you  
13 got my drift at our first meeting that I want this done  
14 sooner rather later, because masters are very helpful  
15 to counsel and we want that to move ahead.

16 MR. ANDRUS: Your Honor, with respect then to  
17 discovery special masters, separate and apart from any  
18 discovery, and the plaintiffs additionally concur with  
19 the Court's opinion in that regard, has the Court given  
20 any thought to a general discovery special master?

21 THE COURT: I have.

22 MR. ANDRUS: Okay. And does the Court desire  
23 or need input from us or is the Court prepared to --

24 THE COURT: If you have need of one and this  
25 Court thinks it is necessary, I have in mind Mr. Jerome

1 Shestack.

2 MR. ANDRUS: Yes, ma'am. We had the  
3 fortunate opportunity to meet Ms. Shestack this  
4 morning, an outstanding lawyer, and we appreciate his  
5 interest.

6 THE COURT: I have already checked with Mr.  
7 Shestack for conflicts, but you may wish to do your own  
8 checks.

9 MR. LEHNER: So, is it your intention to  
10 appoint him subject to our reflection on that? How  
11 would you like to proceed?

12 THE COURT: I would like you to let me know  
13 what your positions are within seven days.

14 MR. LEHNER: Absolutely.

15 THE COURT: And, if everyone is in agreement,  
16 we will go ahead.

17 MR. LEHNER: Okay.

18 THE COURT: I would like to know if there is  
19 any conflicts that you know about that Mr. Shestack and  
20 the Court may not.

21 MR. ANDRUS: If I may, Your Honor, may I  
22 suggest to the Court that the Court allow each side to  
23 meet with him individually, without it being a conflict  
24 for him, and to visit with him and talk to him about  
25 his thoughts about the job?

1 THE COURT: I see no problem with that. Mr.  
2 Shestack?

3 MR. ANDRUS: Do you agree with that?

4 MR. SHESTACK: Yes.

5 MR. ANDRUS: Okay.

6 MR. LEHNER: We would welcome the  
7 opportunity, Your Honor, thank you.

8 THE COURT: Very good. You can set that up  
9 through with him through his office.

10 MR. ANDRUS: Thank you, Your Honor.

11 THE COURT: Thank you very much. Then we  
12 will be dealing with these sticky issues, and I say  
13 sticky because they are holding up the agreement now on  
14 the protective order, as soon as possible.

15 If you want the Court to rule on them to set  
16 the stage and keep things in order for future  
17 discovery, and we have to do that, we will.

18 In addition to that, we are most interested  
19 in appointing a general master to assist counsel, as  
20 well as the Court, not only on matters such as the  
21 confidential documents and the protective orders, but  
22 generally. Yet we are segregating the particular  
23 specializes issues involved with electronic discovery.

24 MR. ANDRUS: Understood.

25 THE COURT: All right.

1 MR. ANDRUS: Thank you, Your Honor.

2 MR. LEHNER: So, Your Honor, if I understand  
3 correctly, we will submit to you our comments about Mr.  
4 Shestack within the next seven days.

5 THE COURT: Please.

6 MR. LEHNER: And then it would be -- assuming  
7 the parties raise no objection, you would immediately  
8 appoint him as the discovery master?

9 THE COURT: I would, and I assume that when  
10 counsel will speak with him, you will also speak with  
11 him as I have not, about any fees --

12 MR. LEHNER: Sure.

13 THE COURT: -- any practical considerations.  
14 I do think strongly that most of the discovery we are  
15 talking about right now has got to be centered locally  
16 where the defense has their documentation, and I think  
17 that it is advantageous to have someone more local to  
18 this region, but doesn't preclude masters in other  
19 areas being from other parts of the country, but right  
20 now I think that's a consideration for the Court.

21 Secondly, is someone with the expertise and  
22 the pedigree, quite frankly, to deal with complex  
23 litigation in an effective amenable way, and I do know  
24 that I respect Mr. Shestack's accomplishments for this  
25 type of undertaking.

1 MR. LEHNER: And would it be your interest in  
2 having the parties submit to you a proposed order  
3 appointing the special master, outlining the scope of  
4 his -- some jurisdiction, as it were --

5 THE COURT: I would like you to try to reach  
6 agreement on that.

7 MR. LEHNER: -- and we can try to do that  
8 together as well.

9 THE COURT: I would appreciate that very  
10 much.

11 MR. LEHNER: Okay.

12 MR. ZONIES: I just want to make sure, Your  
13 Honor, that I understand the need at least at this time  
14 certainly for a local lawyer to handle the overall  
15 discovery role. You are comfortable with the  
16 electronic discovery names that we proposed to the  
17 Court are not from this area necessarily?

18 THE COURT: I am.

19 MR. ZONIES: Okay.

20 THE COURT: I am, thank you.

21 MR. ANDRUS: Your Honor, from our side, I  
22 together with Diane Nast, plaintiffs steering committee  
23 member, who is from this area, will have an opportunity  
24 to visit on that, and I would like to have Mr. Fred  
25 Thompson join us in relation to drafting the order

1     itself.

2                   THE COURT: Thank you. That will be fine.  
3     Could we move on to the fact sheets very quickly.  
4     There doesn't seem to be an issue.

5                   MR. ANDRUS: Yes, ma'am. With respect to  
6     plaintiff fact sheets, the two lawyers we have working  
7     most closely on that are Catherine Heacox from the  
8     Lanier firm in New York and Vicky Maniatis who is with  
9     the Morelli firm. Ms. Maniatis is not here today.

10                  I wish to report the following things. First  
11     of all, we're very, very close on the plaintiff fact  
12     sheet. As I alluded earlier, the defendants find great  
13     utility in plaintiff fact sheets because it allows them  
14     with respect to suits that are filed, to have a type of  
15     informal discovery where they can analyze the types of  
16     claims against them.

17                  It's very efficient for the Court because it  
18     reduces the need for case specific discovery. The  
19     Court generally enters an order saying fill out the  
20     plaintiff fact sheet and have a seat and we will get to  
21     you when we can.

22                  It's very useful for the plaintiffs if it's  
23     connected up with a tolling agreement. If they are  
24     tied together with a tolling agreement, it is very  
25     useful for the plaintiffs because it reduces the

1 transactional costs.

2 So, we are very, very close on the plaintiff  
3 fact sheet and I believe we are going to reach  
4 agreement on the plaintiff fact sheet.

5 THE COURT: Thank you.

6 MR. ANDRUS: Now, the defendant fact sheet,  
7 what is that, why would the defendant have to fill out  
8 a fact sheet.

9 Well, what the defendant fact sheet generally  
10 inquires into is tell us about the doctors who you know  
11 gave medicine to this person, and tell us about the  
12 salespeople who went to him.

13 Tell us about the contacts with that doctor,  
14 your attempts to influence that doctor so that you can  
15 set up eventually discovery on that individual case and  
16 know who from their side has been in contact with their  
17 people. That's generally what defendant fact sheets  
18 do.

19 We're talking about the defendants about  
20 that, and I think two -- I don't want to speak for  
21 them --

22 MR. FAHEY: You don't have to, I'll hook it  
23 up.

24 MR. ANDRUS: -- but two thing, I think,  
25 occur. Why don't I let them refer to that, and then I

1 will give my response.

2 THE COURT: Mr. Fahey.

3 MR. FAHEY: Vance would probably do a good  
4 job, but the issue with the defendant fact sheet is  
5 it's really form over substance.

6 We had proposed a case management order in  
7 connection with some of the Philadelphia litigation  
8 that is in front of Judge Tereshko, and identify the  
9 list of ten things that I think are very consistent  
10 with the issues that they are looking for in terms of  
11 the defendant fact sheet.

12 So, I think the real issue, and Vance and I  
13 talked about this, Mr. Andrus and I talked about this  
14 yesterday, I think the issue is really the timing of  
15 that.

16 We have all been in MDLs where a lot of  
17 filings occur at the beginning of the litigation, and  
18 ultimately when they start to have the light shone on  
19 them, some of the plaintiffs don't appear for their  
20 depositions; some of the plaintiffs decide they want to  
21 pursue their case; the medical records that come in  
22 show that they really don't have a case, even if the  
23 allegations of science are true.

24 So, our issue is we don't want to be running  
25 around, in addition to all of the general discovery

1 that we have to do under the discovery plan.

2 The case specific information that is  
3 required in a defendant fact or some type of CMO is  
4 very labor intensive, and we just want to make sure  
5 that the timing of that is somehow borne in relation to  
6 some sense of progress and the case is actually going  
7 to be going forward.

8 So, we talked about maybe using it as a  
9 method when we get to identify which of the trial  
10 cases, we're going to have a trial pool, focus it there  
11 because those are the cases we know are likely going to  
12 go forward.

13 We may not need to be running around doing  
14 this type of work on the four hundred and fifth hundred  
15 case in line until we get to that point. So, I think  
16 it's really a timing issue and really, to be frank,  
17 whether it's in a red box or a blue box, the defendant  
18 fact sheet or in a CMO.

19 But, I think we'll be able to at least  
20 substantially reach agreement and get to the point  
21 where we may have a couple of open issues.

22 THE COURT: Well, whatever system you can  
23 agree to has to be flexible enough to allow an  
24 exception for those cases.

25 This is case, after all, where some

1 plaintiffs are claiming that they're dying because of  
2 the effects of the drugs, the side effects of the drug  
3 and it seems to me that some preservation of their  
4 testimony has to be take precedence even if they are  
5 five hundredth in line.

6 MR. FAHEY: On the plaintiffs' side I agree  
7 with that. I think if they identify someone who has a  
8 cardiac issue that they are concerned about, I think we  
9 should talk about deposing that person so that their  
10 testimony is preserved. If we obviously hear of the  
11 doctor that's, you know, on the heels, we can make  
12 arrangements to do that.

13 So, I think the issues in terms of the  
14 defendant fact sheet, really it's materials that we  
15 have inhouse at GSK that needs to be pulled from  
16 various computers and put into a production and, it's a  
17 lot of different places we have to look for it and it's  
18 very labor intensive.

19 THE COURT: Yes, it is.

20 MR. FAHEY: So, as long as it's staged in  
21 a way that is consistent with the overall discovery  
22 plan, I don't think we're going to have a problem with  
23 it.

24 THE COURT: All right. Make sure then that  
25 when you give me the suggestions and proposals in that

1 overall discovery plan, that this is contemplated  
2 therein.

3 MR. FAHEY: Right.

4 THE COURT: So, we can incorporate it in a  
5 comprehensive master discovery plan.

6 MR. FAHEY: Yes, I think we have plan, you  
7 know, as we've talked to have a date when the fact  
8 sheets are due, and then we would have a date for when  
9 our information on a case specific basis would be  
10 provided. In a lot of MDLs it's thirty days before the  
11 doctors deposition or thirty days before the  
12 plaintiffs' deposition.

13 So, we totally agree and I think we're  
14 agreement with the PSC that all of that needs to be  
15 incorporated, so everybody knows that the rules are and  
16 they can to look on order for all the rules.

17 THE COURT: I hope so.

18 MR. ANDRUS: Your Honor, with respect to the  
19 defendant facts sheets, the information that we just  
20 shared with the Court, I have not had an opportunity to  
21 visit with my fact sheet committee. I'm assuming that  
22 we will be reasonable and we will try to work something  
23 out along those lines, but we just haven't gotten there  
24 yet.

25 THE COURT: I'm going to rest on that

1 assumption as well.

2 MR. FAHEY: Yes, and Mr. Andrus in defense,  
3 he didn't agree to anything, he was fighting on  
4 everything, so his colleagues are worried.

5 THE COURT: Okay. We're up to -- let's see.  
6 I think that the case management order number two has  
7 generally been covered by either the joint report or  
8 this discussion except for other matters that counsel  
9 may wish to address at this time, and for the multiple  
10 complaints.

11 MR. MILLER: Your Honor, if I could. The  
12 Court mentioned the motions to remand in California,  
13 and --

14 THE COURT: Yes, Mr. Miller.

15 MR. MILLER: -- those are our cases --

16 THE COURT: Yes.

17 MR. MILLER: -- and we propose with the  
18 Court's agreement as always and defense counsel  
19 perhaps, the Court is going to have a hearing in thirty  
20 days that we could put down on the docket at that time.

21 THE COURT: Very well.

22 MR. MILLER: All right. Thank you, Your  
23 Honor.

24 MR. FAHEY: Your Honor, just for one issue.  
25 We are still getting a number of California filings

1 which are going to raise very similar issues, and  
2 it might be better to let the litigation settle just  
3 a little bit more because there are a number of  
4 different firms that are getting involved now in  
5 California.

6 So, I want to try to make sure that to the  
7 extent they have a view about what the arguments are,  
8 that we kind of pull those arguments in so we don't  
9 have to -- as the defense counsel have five different  
10 arguments on whether McKesson has some actual role in  
11 this litigation.

12 THE COURT: Well, certainly, but when do you  
13 expect the additional cases to be filed?

14 MR. FAHEY: They are already filed, they have  
15 already been removed. They are just on their way to  
16 the MDL.

17 So, my concern is if it's the next status  
18 conference, particularly if we're talking about it  
19 being on an accelerated basis, that may be a little bit  
20 too soon. If we maybe wait for the next status  
21 conference --

22 THE COURT: Mr. Miller, do you agree?

23 MR. MILLER: Your Honor, I'm always  
24 reasonable and that's fine, but I would like to do it  
25 within sixty days. I think we have plenty of time, we

1 know who the California firms are here and we know who  
2 has the cases.

3 THE COURT: Right.

4 MR. MILLER: I can promise the Court and  
5 counsel that I will get together with them and we will  
6 make sure we have a coordinated effort on these remand  
7 motions, but sixty days I would hope would be --

8 THE COURT: Well, let's --

9 MR. MILLER: -- the outside.

10 THE COURT: Let's start at sixty upon your  
11 agreement, and if more time is necessary because of the  
12 status of filings, you will let me know. But, I would  
13 like to see if can resolve that by sixty days.

14 MR. MILLER: Thank you very much, Your Honor.

15 THE COURT: Thank you.

16 MR. LEHNER: Your Honor, could I just raise  
17 one last point that wasn't on the agenda.

18 THE COURT: Yes.

19 MR. LEHNER: In the same mode, too, you  
20 indicated that it was the Court's intent to -- to  
21 coordinate the litigation with the proceedings in the  
22 State Court.

23 As you know, there are a number of filings in  
24 Philadelphia here in State Court. Judge Tereshko is  
25 overseeing that. We propose that we would provide a

1 letter to the PSC, but the Court may send indicating  
2 the Court's interest in advancing coordination if that  
3 would be appropriate if the Court would use our  
4 letter.

5 We will send them a letter for their  
6 consideration and hopefully could have something joint  
7 to submit to you that you might then consider then  
8 sending to the State Court, but that's in light of  
9 things to come.

10 THE COURT: Well, I appreciate the notice in  
11 that regard. I have to say I haven't had any  
12 communication with the Philadelphia Courts in this  
13 matter, so if counsel wish to expose this Court to  
14 their coordination efforts, I will be happy to do what  
15 counsel chooses. It's not necessary to coordinate, but  
16 it certainly is a practical issue facing the same  
17 defendants.

18 MR. ZONIES: Your Honor, Joe Zonies, again.  
19 Mr. Vale provided me a draft letter or a letter that  
20 he's used in other litigations this morning and I have  
21 confirmed with him that we are happy to sit down and  
22 discuss the form of that letter and, if appropriate,  
23 present it to the Court hopefully jointly.

24 THE COURT: Thank you. Thank you, both.  
25 All right. I would like to take a brief recess and

1 then come back and hear argument on the multiple  
2 unrelated claimants in one complaint issue that has  
3 been briefed.

4 MR. ANDRUS: Thank you.

5 (Recess, 11:20 a.m. to 11:54 a.m.)

6 THE COURT: The Court has made sure to read  
7 each of the briefs and attached exhibits and the  
8 memoranda submitted by the parties.

9 The gist of the plaintiffs' proposal is  
10 really to have the Court consider a temporary, I think,  
11 a temporary order being entered that would allow  
12 multi-party complaints for personal injury complainants  
13 who live or are domiciled in the same federal district  
14 without prejudice to revisiting the joinder issue in  
15 the future.

16 It would permit discovery to move forward and  
17 I think that's the sticking point with the defendants,  
18 but the premise is that there are common questions of  
19 law and fact, however, the Rule 20, that it's common  
20 transaction is hotly contested by the defendants.

21 I think that may be true, that may be true,  
22 but we are an MDL coordinator, and we want to do what  
23 we are permitted to do within our discretion, not abuse  
24 it, and still move this case forward without prejudice  
25 I think at this point.

1 I would like to hear succinct arguments from  
2 each side briefly, because I think that this matter  
3 right now is not one of a momentous legal decision. I  
4 think we have to help you get your cases organized. I  
5 see discovery problems down the pike if this is  
6 permitted, but I don't know that I see them right now.

7 MR. VALE: May I address this, Your Honor.

8 THE COURT: Yes, you may.

9 MR. VALE: Anthony Vale on behalf of GSK. I  
10 appreciate Your Honor having laid out your concerns  
11 because that will make it easier for us to address  
12 them.

13 As Your Honor has said, the plaintiffs'  
14 proposal is that plaintiffs from one district be  
15 permitted to join. I think implicit the PSC's position  
16 -- implicit in the PSC's position is that Rule 20 would  
17 not be met if plaintiffs from several different  
18 districts which are joined in one complaint.

19 I think the law is very clear on that. It  
20 has been addressed particularly in this district first  
21 by Judge Bechtle in the Bone Screw litigation about ten  
22 years ago, and Judge Bechtle, in fact, addressed the  
23 very point that the plaintiffs are suggesting here,  
24 that plaintiffs from one district should be permitted  
25 to join in one complaint and that that would be comply

1 with Rule 20.

2           When Judge Bechtle looked at it in the  
3 context of the Orthopaedic Bone Screw litigation, he  
4 decided that that would not comply with Rule 20,  
5 because Rule 20 requires that the right to relief arise  
6 out of the same transaction occurrence or series of  
7 transactions, and it is that requirement that Judge  
8 Bechtle found would not be met even if the plaintiffs  
9 were to come from one district.

10           That ruling was followed later by Judge  
11 Bechtle himself obviously when he took over the diet  
12 drugs litigation. It was also followed by Judge Bartle  
13 when he assumed supervision of the diet drugs  
14 litigation from Judge Bechtle.

15           The very issue was also addressed by Judge  
16 Kaplan in the Southern District of New York who has  
17 the Rezulin litigation. Rezulin was a diabetes drug,  
18 actually --

19           THE COURT: Yes.

20           MR. VALE: -- in the very same class as  
21 Avandia, and Judge Kaplan is a very experienced judge  
22 up there.

23           He looked at this and he immediately agreed  
24 with the defendants position, with Warner Lambert's  
25 position, that Rule 20 would not be met by a mere

1 allegation that patients had taken the same drug.

2 So, I think that the law is really very clear  
3 on that. The plaintiffs have cited some cases from  
4 outside this circuit and outside of this district where  
5 at least on a temporary judges seem to have I would say  
6 condoned multi-party complaints.

7 But, no judge appears to have really  
8 addressed it in the same way that Judge Bechtle, Bartle  
9 and Kaplan has and has ruled well, no, actually Rule 20  
10 is met if plaintiffs with no connection except taking  
11 the same drug are either joined in one complaint.

12 So, my first point, Your Honor, then is that  
13 Rule 20 is not met. So, let's then turn to the  
14 practical consequences and I know Your Honor is  
15 interested in that because, you know, that is important  
16 here. It's not just an academic question.

17 I think Your Honor should look at the  
18 experience of two judges, Judge Bartle in the diet  
19 drugs litigation and Judge Fallon in the Vioxx  
20 litigation.

21 Judge Bartle was very consistent through the  
22 diet drugs litigation in requiring that there not be  
23 multi-plaintiff complaints.

24 Judge Fallon in the Vioxx litigation  
25 initially did permit multi-plaintiff complaints, but as

1 Your Honor will see from the order that we attached to  
2 our brief, he changed his mind.

3           What was the reasoning behind the decisions  
4 of Judge Bartle and Judge Fallon in those cases. Well,  
5 it's this. First of all, I will address the situation  
6 where plaintiffs are not from the same district, I  
7 think that is pretty clear

8           But, plainly there is tremendous  
9 administrative difficulty there when cases need to be  
10 -- when you have to sort out well, where do these cases  
11 for trial.

12           If you have a civil action as we have here  
13 where say you have ten plaintiffs from eight different  
14 states, there is only one file. It's filed in, let's  
15 say, the Southern District of California and it comes  
16 here, it's under Mike Kunz's control here.

17           At some point it has to be figured out  
18 well, where do these ten plaintiffs go for trial, and  
19 that caused significant administrative difficulties for  
20 the --

21           THE COURT: But, I don't see a disagreement  
22 from the plaintiffs on that.

23           MR. VALE: No, there isn't. I just wanted to  
24 make that point very clear, because while there isn't a  
25 disagreement with the PSC on that, we do have those

1 very types of complaints before Your Honor, and we have  
2 identified them in our papers.

3 THE COURT: Right.

4 MR. VALE: So, I mean that is a live problem  
5 that we're asking Your Honor to address. And having  
6 just mentioned that the clerk's office, I believe Mike  
7 Kunz has made his views of this very clear in speaking  
8 to the Bar.

9 I can't point to exactly where he has  
10 expressed his views, but I think they are pretty well  
11 know that he thinks that the filing of multi-party  
12 complaints is not a good idea and it causes significant  
13 problems for the clerk's office.

14 THE COURT: Well, it's more than the clerk's  
15 docketing issues. It becomes problematic for the Court  
16 as well, when you have -- motions practice becomes even  
17 more active in any matter and you enter orders as to  
18 one claimant and one plaintiff in a multi-party  
19 complaint.

20 It is hard to designate that, you have to  
21 start saying A, B, C, D, E. It becomes a nightmare in  
22 terms of an MDL, that nightmare is compounded into a  
23 series of insomniac years. I don't think that works,  
24 but it particularly doesn't work when you're trying to  
25 remand the cases after the MDL for trial.

1 MR. VALE: Exactly, Your Honor. I just  
2 wanted to get out of the way the fact that there is a  
3 real problem with plaintiffs coming from several  
4 different districts and joining in complaints that are  
5 currently before Court.

6 But, even if you went to the plaintiffs, I  
7 should say the plaintiffs steering committee's proposal  
8 to allow joinder of plaintiffs from one district, I  
9 think the very problems that Your Honor has just  
10 identified are real problems, and they are problems  
11 that Judge Bartle and Judge Fallon identified and I  
12 will just mention some of them.

13 For example, if there were ten plaintiffs in  
14 a case, it may be that some -- to voluntarily the case,  
15 well, there are claims to dismiss, but the civil action  
16 remains alive.

17 If Your Honor were to grant summary judgment  
18 as to two plaintiffs in a case with ten plaintiffs,  
19 well it wouldn't be a final judgment unless Your Honor  
20 were to issue a 54(b) certification.

21 If you had ten plaintiffs in a case, it may  
22 be that the collection of medical records proceeds  
23 quite expeditiously as to say three, but not as to  
24 another three.

25 So, it's very difficult to get discovery

1 deadlines lined up with respect to all ten plaintiffs  
2 and then each of those ten claims is ready for the next  
3 stage, whether it's summary judgment or remand at  
4 different times.

5 So, the administrative difficulties sort of  
6 follow all the way through. So, what I would submit to  
7 Your Honor is this is a problem that should be nipped  
8 in the bud now as opposed to allowing the filing of  
9 multi-party complaints for Your Honor and the PSC and  
10 we to deal with another day.

11 It would be much easier if this were dealt  
12 with right at the beginning, and I think it's pretty  
13 clear from Judge Fallon's order in the Vioxx  
14 litigation, that if he had to do it over again, he  
15 would have nipped it in the bud as well.

16 THE COURT: I think that was Judge Bartle's  
17 approach as well.

18 MR. VALE: Thank you, Your Honor.

19 THE COURT: All right. Let me hear from the  
20 plaintiffs' steering committee.

21 MR. SANDERS: Thank you, Your Honor. It's  
22 important to note that in the defendants' counsels  
23 paper they mention fifteen actions that included a  
24 hundred and seventy claimants.

25 The only complaint that most of their

1 argument focuses on is out of state plaintiffs combined  
2 together. Most of those complaints probably contained  
3 claimants from the same federal district because that's  
4 probably how counsel chose to do it.

5 There is an efficiency in that fifteen  
6 actions for a hundred and seventy claimants. Imagine  
7 how many motions will be before this Court if it  
8 doesn't allow the temporary relief that we are seeking  
9 of allowing aggregation at the beginning.

10 It's also important to note --

11 THE COURT: Is that really a problem for the  
12 Court to have many more cases, as opposed to subparts  
13 of cases? Is it six of one and a half a dozen of the  
14 other?

15 MR. SANDERS: I would submit that it would be  
16 easier for the Court and the home states, the home  
17 federal states to monitor the litigation, to know how  
18 many cases could potentially come back on a remand if  
19 we allow this type of aggregation.

20 THE COURT: Well, see, that's an interesting  
21 argument because states can't really compute or  
22 estimate how many cases may come back for trial if they  
23 are joined, can they?

24 MR. SANDERS: Well, they could, depending  
25 upon how the index number was done by this Court. It

1 could actually include the district where the claimants  
2 reside from, and it could also have information as far  
3 as the number of claimants in parentheses at the end of  
4 the MDL number and, therefore, they would be able to  
5 monitor that and see how many claimants were actually a  
6 part of that federal district.

7 THE COURT: Well, in the same way that they  
8 could look at the number of separate cases. I am just  
9 trying to see is it a really big difference to the  
10 plaintiffs if they are separated? What is the problem,  
11 because discovery has to proceed in a comprehensive  
12 manner anyway.

13 So, when it comes which cases are ready for  
14 trial and not, to split them at that time even within  
15 the same district is problematic, you know, once case  
16 goes to Philadelphia, one case goes to Delaware within  
17 the same Eastern District of Pennsylvania, even dealing  
18 with this right now. So, I am trying to see what the  
19 advantage is, really.

20 MR. SANDERS: Well, there is a huge  
21 transactional cost to the claimants in having to file  
22 individual actions, whereas if they are allowed to  
23 aggregate, they can share in those costs.

24 THE COURT: Is the statute of limitations and  
25 tolling implicated at all?

1 MR. SANDERS: The statute of limitations  
2 and tolling has to do with aggregation in the sense  
3 that until the general discovery is done and the  
4 bellwether cases have been adjudicated, it's very  
5 difficult to know what is a viable case in this action  
6 potentially.

7 So, it would allow for some claims to be  
8 joined and ultimately to be withdrawn in the event that  
9 the discovery goes the wrong way. The purpose of the  
10 MDL is to create an expeditious proceeding for all of  
11 the claimants.

12 I submit that if there are more actions filed  
13 within the Court, that the docket will become larger  
14 and that goal will not be reached, and that this is a  
15 temporary application before the Court, and that the  
16 Court has the discretion to look the other way and to  
17 allow the remanding judge to make the determination as  
18 to whether or not severance is proper as Judge Bechtle  
19 said in his later decision in his softening and  
20 evolution of his stance on his position regarding  
21 aggregation.

22 THE COURT: Well, that's going to happen in  
23 any MDL that deals with this issue, because cases do  
24 whittle away and issues are clarified.

25 But, I am still trying to see what the big

1 issues is besides the cost to the plaintiff to file  
2 separate pleadings, because the docketing is actually,  
3 practically speaking, the docketing is more difficult  
4 rather than less difficult if we allow multi-party,  
5 multi-plaintiff complaints.

6 Having a separate number is not as big an  
7 issue to us, having subsets is. So, that is one of the  
8 most pressing practical concerns, that I think weighs  
9 against the plaintiffs' proposal even in a temporary  
10 contemplation of it, which is very tempting. Let's see  
11 what happens with the general discovery and see where  
12 things move around.

13 This Court isn't interested in making money  
14 for the clerk of courts with extra filing fees and I  
15 think I heard earlier that's not the issue anyway, you  
16 know, the clients absorb that eventually or they don't,  
17 maybe counsel does. But, I'm not letting that be my  
18 determination.

19 Doesn't the Court have to justify the first  
20 order of business and make sure that your request fits  
21 the rule of 20 and how are these cases the same  
22 transaction or occurrence?

23 If they are in the same district, let's give  
24 it that, plaintiffs proposal, are they all the same  
25 doctor giving out the drugs?

1 MR. SANDERS: It depends on how narrowly the  
2 Court determines to define transaction and occurrence.  
3 Mostly --

4 THE COURT: I don't even know that that  
5 defines it. I mean, I am just asking.

6 MR. SANDERS: I suggest --

7 THE COURT: They are not filed that way.  
8 They are filed according to whoever went to the counsel  
9 and, you know, they are grouped by somebody else and I  
10 don't know how yet, I can't tell.

11 MR. SANDERS: The complaint would have the  
12 (inaudible) component of the claims that are being  
13 asserted for each of the claimants regarding the  
14 conduct of the defendants.

15 At the beginning of the litigation where you  
16 are doing general discovery, they all share commonality  
17 as far as the transaction occurrence and that's the  
18 whole purpose of why we have an MDL.

19 If the transaction occurrence was so  
20 diametrically different for all of the claimants  
21 involved in this litigation, then there would be no  
22 purpose for an MDL.

23 THE COURT: Well, I am not sure that is the  
24 only ground to forming an MDL, and I am not certain  
25 that all of the plaintiffs have made identical claims.

1 But, at least they have to be similar in the same  
2 action, it seems to me. All right. Anything else?

3 MR. MILLER: I think it's also important to  
4 note that if the Court finds that this temporary order  
5 is ineffective, it could sever it at a later date,  
6 and that Judge Fallon severed in Vioxx many years  
7 after that litigation started, and that same result  
8 occurred in Phen Fen after ten thousand cases had been  
9 resolved. So, aggregation did work, it did allow for  
10 more cases to be adjudicated without the need for  
11 individualization.

12 THE COURT: Well, I am aware. The Phen Fen  
13 litigation is well known to this Court and I think that  
14 that decision was made by Judge Bartle on the basis of  
15 discovery results, what kind of cases were really being  
16 formed and what was not related. Claims were quite  
17 separate.

18 MR. LANIER: Do you allow two to speak on an  
19 issue, Your Honor?

20 THE COURT: I do, as long as everybody  
21 identifies themselves.

22 MR. LANIER: Your Honor, my name is Mark  
23 Lanier.

24 THE COURT: I know, but your partner --

25 MR. LANIER: That was Douglas Sanders.

1 MR. SANDERS: I don't think that anybody  
2 thought I was Mark Lanier.

3 MR. LANIER: Your Honor, there is one last  
4 thing that has not been said that maybe recognized  
5 below the surface, but I would like to bring it out to  
6 the front.

7 We are deliberating right now and consulting  
8 and discussing the tolling agreement. This has some  
9 bearing on that --

10 THE COURT: I know.

11 MR. LANIER: -- because if we are allowed to  
12 aggregate our filings -- let's say I've got eight  
13 hundred cases right now I'm looking at to file. I've  
14 got a statute of limitations arguably at the end of  
15 May.

16 Now, to write eight hundred checks and  
17 process the paperwork for eight hundred independent  
18 filings is a very different task for me, than if I can  
19 group all of those even just temporarily, if I could  
20 group all of those and get them filed, if I'm not able  
21 to reach a tolling agreement.

22 By grouping them by district or whatever  
23 groupings you deem appropriate, if I can group those  
24 and get them filed before the statute runs, even if  
25 later on you decide, hey, Lanier, that doesn't work, I

1 want you to go back and do it right, it at least allows  
2 me to get those filed prior to the end of this month in  
3 a much better fashion.

4 By the same token, if you grant us that,  
5 there is a recognition that I am able to file those  
6 much more readily and, perhaps, the defendants may not  
7 want that large number filed right before the end of  
8 the month.

9 There might be a little extra leverage for me  
10 in negotiating some type of a tolling agreement, that  
11 will allow us not to file hardly any at all in an  
12 effort to beat the statute of limitations, but rather  
13 keep the Courts filings pretty small, yet the Court  
14 still has within her robes all of the cases.

15 That's the biggest advantage to the Court and  
16 that's the efficiency advantage to the Court. If it  
17 all works out to where oh, we group them together and  
18 we file them, we have knock down drag outs, and we  
19 can't get along and everything else and you just wind  
20 up separating them, we have done you no service and you  
21 can look at us disdainfully for the rest of the  
22 litigation.

23 But, I don't think we're going to get there.  
24 I think instead if we got this temporary relief,  
25 hopefully all of this will be resolved through

1 negotiating the tolling agreement by the end of the  
2 month anyway, and then you can change your temporary  
3 order and you can be on the list with Judge Bechtle,  
4 Judge Bartle, Judge Kaplan and Judge Rufe, and the next  
5 time they say don't ever let them group, Judge Rufe  
6 started to, and she changed her mind as well, but it  
7 might help us in the meantime.

8 THE COURT: I understand there is a real need  
9 there. Mr. Sanders, are you through?

10 MR. SANDERS: Yes, Your Honor.

11 THE COURT: Because you have somebody  
12 standing in the back that is obviously interested that  
13 would like to address this. Mr. Becnel?

14 MR. BECNEL: Yes. May it please the Court,  
15 Tony and I always want to file those two thousand suits  
16 and (inaudible), and basically when Judge Bechtle did  
17 that, chased all of those cases most of which were  
18 non-suited and then went to State Courts all over the  
19 place. So, that's not a good thing.

20 Judge Pointif (ph) who originally wrote the  
21 Manual for Complex Litigation, and just died this week  
22 by the way --

23 THE COURT: I'm sorry.

24 MR. BECNEL: -- said that a federal judge in  
25 that Manual for Complex Litigation has to do practical

1 things that are not black letter law bound to make the  
2 thing work.

3 This first appeared -- that was with Judge  
4 Schell in the Northland case, in which I came up with  
5 let's do fifty cases in a group, up to fifty in the  
6 same judicial district and he went along with that.  
7 That was the first one that did it by difference, not  
8 by just one state. So, if you have the eastern, middle  
9 and western you would have three separate suits.

10 What happened in the discussion with Judge  
11 Fallon was many people filed thousands of suits and he  
12 was concerned about how do you do exactly what Tony  
13 just said, how do you dismiss each out?

14 Well, Judge Vance just came up with a  
15 solution which I think is the most practical. I had  
16 filed three thousand insurance cases and the flood  
17 cases and twenty thousand formaldehyde cases in that.

18 Of course, most of those people don't have  
19 any money to pay, and lawyers by and large are starting  
20 to be prohibited from paying a lot of things under the  
21 ethics rules and so it becomes a conundrum, what do you  
22 do. You throw these people who want access to the  
23 courts and people, for example, that are doing --

24 THE COURT: I'm afraid I am not familiar with  
25 any new rules of conduct that don't allow lawyers to

1 advance fees of litigation, cost of litigation.

2 MR. BECNEL: If you're doing, for example, as  
3 I am, representing tens of thousand of people pro bono,  
4 I can do the legal work, I can pay the salaries. But,  
5 am I going to really go not knowing exactly what claim  
6 is, telling people who don't have any resources to pay  
7 because they don't have housing, they don't homes, they  
8 don't have this, am I going to advance three fifty.

9 You know, if it was ten dollar a piece maybe  
10 you would, but when you have that large of a group to  
11 do, you put us all in bankruptcy. None of the lawyers  
12 here can afford to do that other than Lanier.

13 THE COURT: And he is not asking.

14 MR. BECKNESS: But, Judge Vance did something  
15 unique and Judge Fallon and I, who I have practiced  
16 with for years, I told him that very same thing in  
17 Vioxx right before the settlement, that he was going to  
18 de-bundle them because certain cases have to be  
19 dismissed, certain cases plaintiffs didn't care to  
20 pursue it.

21 Judge Vance came up with a unique solution.  
22 Last week she allowed us to file two thousand  
23 individual cases on insurance claims, each with a  
24 separate number but without the payment of three  
25 hundred and fifty dollars per case and so it took five

1 truckloads, just what Mark just said.

2 I mean, my office for the last five weeks  
3 have been doing nothing but copying a hundred and  
4 eighty-two page suit which is identical to each and  
5 every other one, but at least now when we go into these  
6 mediations when I settle ten this week and twenty next  
7 week, we have an individual number.

8 We did that as a practical reason because the  
9 insurance carrier was going to have to ultimately  
10 reimburse --

11 THE COURT: I understand.

12 MR. BECNEL: -- and she said I'd rather that  
13 money go on to the plaintiffs to resolve this case.  
14 And, you know, I have fourteen filed before you, some  
15 of which are multi-party, that's easy, that's not a  
16 bring problem.

17 But, I know a lot of these people have  
18 hundreds of these cases and that is a big problem. I  
19 have seen an MDL in thirty-five years of doing this  
20 remand a lot of cases back to the State Courts. This  
21 is either going to be resolved here, the plaintiffs are  
22 either going to win here and lose here or it's going to  
23 be resolved in certain State Courts.

24 So, I don't think you have that problem if  
25 you allow it to be it to be multi filed directly here,

1 and maybe you work the tolling agreement as Vance is  
2 trying to do right now and then if there is a day that  
3 comes when it's got to be remanded for trial in North  
4 Dakota or somewhere else, then you can say well, you  
5 know, that person because he wants to go to trial will  
6 pay the three-fifty before he gets out of here.

7 THE COURT: Thank you, Mr. Becnel. Mr. Vale.

8 MR. BECNEL: Thank you.

9 MR. VALE: Your Honor, two points in response  
10 to Mr. Lanier. First of all, he suggested to the Court  
11 that there might be some administrative convenience,  
12 but the administrative convenience of the multi-party,  
13 multi-plaintiff complaints was not to the Court, but  
14 was to Mr. Lanier's office. I don't think that's a  
15 relevant consideration under Rule 20.

16 Certainly Mr. Lanier suggested that there be  
17 some administrative convenience in his getting to file  
18 cases because of an apparently impending statute of  
19 limitations deadline that might expire on May the 20th.

20 Well, certainly I wouldn't seek to advise any  
21 plaintiffs' counsel about the statute of limitations,  
22 but I believe he was referring to the fact that May the  
23 20th would be the one year anniversary of the  
24 publication of some information.

25 But, there are only three one-year states in

1 the United States. One of them is Louisiana and the  
2 PSC's position is that tolling agreements are not  
3 effective in Louisiana, so that's not relevant.

4 There is only two other states, Tennessee and  
5 Kentucky, so with all respect to Mr. Lanier, I don't  
6 think there is a big problem there, and even if it were  
7 a problem, it's not one that is relevant under Rule 20.  
8 Thank you very much, Your Honor.

9 THE COURT: Thank you, Mr. Vale. Any other  
10 arguments?

11 MR. BECNEL: The other is Puerto Rico.

12 THE COURT: Puerto Rico, thank you.

13 MR. SANDERS: Your Honor, I would just like  
14 to point out one last thing for the Court.

15 THE COURT: Yes, Mr. Sanders.

16 MR. SANDERS: Judge Bartle in In Re:  
17 Medtronic did point out that joinder was effective for  
18 the Court in lessening expenses and the inconvenience  
19 to the parties.

20 He stated that "Defendants and plaintiffs did  
21 not waste resources relating to filing fees and the  
22 drafting responding to individuals complaints." So,  
23 there is an efficiency that can be recognized by this  
24 Court based upon another large MDL experience.

25 THE COURT: Well, it may not be relevant to

1 the legal requirement of the rule, but it is relevant  
2 to the Court's exercise of discretion.

3 MR. SANDERS: Thank you, Your Honor.

4 THE COURT: And that is how I interpret that  
5 use. Thank you. I will make this decision by the end  
6 of the day and notify everybody. Mr. Andrus?

7 MR. ANDRUS: Your Honor, for our next  
8 conference, our next status conference, we have  
9 conferred with the defendants and although no date is  
10 perfect or even better than any other, we suggest to  
11 the Court June 20th, I believe it is, George.

12 MR. LEHNER: That's correct.

13 MR. ANDRUS: A Friday, which would give us  
14 six weeks instead of four weeks, but would give us time  
15 to resolve some of these and then other matters we have  
16 discussed today have automatic triggers on them, of  
17 which we will be conferencing.

18 THE COURT: We don't know our schedule, we  
19 hope we're not in the middle of a trial, but on a  
20 Friday we could certainly take a break for the morning  
21 and devote it to this.

22 MR. ANDRUS: Great.

23 THE COURT: So, I think that would be  
24 acceptable.

25 MR. LEHNER: Thank you, Your Honor.

1 MR. ANDRUS: Thank you, Your Honor.

2 THE COURT: Mr. Becnel?

3 MR. BECNEL: May I suggest something, Your  
4 Honor?

5 THE COURT: Yes.

6 MR. BECNEL: Probably most of the lawyers  
7 that are trial lawyers are going to be here this summer  
8 for the American Trial Lawyers, now AAJ, during the  
9 month of July.

10 I might suggest to the Court that that might  
11 be a good date if it works with Your Honor and the  
12 plaintiffs' committee because everybody from around the  
13 -- you have probably have four or five thousand lawyers  
14 here for that convention, and it might serve this Court  
15 well --

16 THE COURT: Mr. Becnel, do you know when in  
17 July? I mean, if it's the end it becomes a sixty day  
18 meeting.

19 MR. ANDRUS: I've got it, yes, Your Honor.  
20 It runs from July the 12th which is a Friday until the  
21 16th. The Court may choose to -- Mr. Becnel's  
22 suggestion, the Court may choose to have it that Friday  
23 which is the first day, or have it the next Friday  
24 which would be immediately after and the people who are  
25 here can stay over either one.

1 THE COURT: We will take that under  
2 consideration.

3 MR. ANDRUS: With respect to that, we have  
4 also talked to the defendants, we believe these regular  
5 status conferences at thirty day or so intervals right  
6 now are very appropriate, and we hope after one or two  
7 more, we will be able to start stretching them further  
8 out.

9 THE COURT: So, if you want thirty days,  
10 we're talking sooner than June 20th.

11 MR. ANDRUS: Yes, ma'am, but for this next  
12 one, June 20th is okay with us because we have a lot of  
13 work that needs to be done between now and then.

14 THE COURT: All right.

15 MR. ANDRUS: And then if the Court would  
16 consider the July perhaps twelve plus seven, 19th, that  
17 would be about a month after that. We're at the  
18 Court's convenience.

19 MR. FAHEY: I think Mr. Andrus is suggesting  
20 June 20th and then the following one would be July  
21 19th.

22 MR. ANDRUS: July 19th.

23 THE COURT: Maybe we can work it into  
24 something other than a Friday if many of the lawyers  
25 will be here anyway. We will look at that and see if

1 we can do something on July 17th or either the 16th.

2 MR. ANDRUS: Thank you.

3 THE COURT: Okay. I appreciate you looking  
4 at those dates. It's good to coordinate. Anything  
5 else before we recess? I have another matter of an  
6 emergency nature.

7 COUNSEL: No, Your Honor.

8 THE COURT: Thank you very much. Nice to see  
9 all of you.

10 ALL: Thank you, Your Honor.

11 (Proceedings adjourned, 12:25 p.m.)

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CERTIFICATION

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

4/13/09  
\_\_\_\_\_  
Date

*Donna M. Anders*  
\_\_\_\_\_  
Donna M. Anders