UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 20-md-02924-ROSENBERG

IN RE: ZANTAC (RANITIDINE) PRODUCTS LIABILITY LITIGATION.

West Palm Beach, FL
January 12, 2023

MOTION HEARING (through Zoom)
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

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THE COURT: **All right. Good afternoon, everybody. Why don't we have those who are presenting put on your screens so we have everybody there, and we will have you introduce yourselves in a moment. This is the MDL In Re: Zantac (Ranitidine) Products Liability Litigation, MDL 2924.**

If we could begin by having all counsel who will be arguing the motion state your appearance for the record.

MR. PULASKI: **Adam Pulaski, colead counsel, on behalf of the Plaintiffs, your Honor.**

THE COURT: **Good afternoon.**

MS. FINKEN: **Tracy Finken, good afternoon, your Honor, on behalf of Plaintiffs.**

THE COURT: **Good afternoon.**

MR. CHEFFO: **Good afternoon, your Honor, Mark Cheffo on behalf of the brand Defendants.**

THE COURT: **Good afternoon. Before the Court is the Plaintiffs' expedited motion to permit multi complaints for registry claimants at Docket Entry 6133. Defendants filed a response at Docket entry 6151, and the Plaintiffs filed a reply at Docket Entry 6192.**

We touched on this matter at the status conference we held last week, but today we are here for oral argument on the motion.

In the motion, the Plaintiffs emphasize their need for an expeditious ruling for reasons that they have set forth in

their motion. As the Court understands it, and I will turn it over to the parties in a moment, the Plaintiffs have filed their motion on behalf of approximately 58,000 claimants in an MDL registry. Each claimant is an individual who has registered a claim in the registry, and while the claim was registered, the claim was tolled for Statute of Limitation purposes. Each claimant has certified under penalty of estoppel that the claimant's claim will be filed, if it ever is filed, in Federal Court, not State Court.

The registry expired on January 5, 2023, and the Court is currently in the process of finalizing and terminating the registry. As a result of the expiration of the registry, the claimants' tolling will expire on April 5, 2023, and so the Court understands that due to the pending expiration of tolling, the claimants must soon file their claims if they do intend to elect to file.

So, the question before the Court in the briefing is how the claimants must file their claims.

So, I thought that I would have you present and ask you if you would incorporate in your presentation some of the issues that I flagged at the January 5th status conference.

Just to take a moment, at the status conference I reminded everyone that, pursuant to amended pretrial order 31, all direct filed Plaintiffs must file individual complaints pursuant to pretrial order 15. The registry has expired on

January 5th. In light of the April deadline the Plaintiffs have moved to file one consolidated complaint on behalf of each law firm with clients enrolled in the registry. So, therefore, it is the Court's understanding that the Plaintiffs move either to amend pretrial order 15's requirement for individual complaints or to be exempted from it.

The Defendants, as the Court understands it, oppose, arguing that pretrial order 15 should remain in full force and effect, that there are approximately, as I said, 58,000 Federal form certified claimants in the registry and approximately 330 law firms representing those claimants.

In your argument I hope that you will address topics such as specific causation, remand, and the Court's obligation to prepare the cases in the MDL for trial. I reminded the parties last time, I think we got this far, that in reviewing the law firms and how many claimants some firms have in the registry, that there is a firm that has 6,783 registered claimants, another one has 3,894 claimants. I think about 16 law firms have greater than a thousand clients enrolled in the registry.

Going forward, and assuming Plaintiffs are successful in obtaining a reversal on appeal, the Court would like to understand how this Court could remand a case with 6,783 claimants in a single complaint. The Court presumes that those claimants would not all have originated in the same Federal

district.

Do the parties agree that, at a minimum, the claimants would have to be severed by judicial district for remand? Relatedly, suppose that of the 6,783 claimants represented by a single law firm a hundred reside in the same Federal district, how could a District Judge upon remand address specific causation for those hundred claimants?

Do the parties agree that a District Judge would likely sever the individual claims for specific causation and eventually trial? Thus, the Court's ultimate question for the parties is: Given that these cases must likely be severed for specific causation and trial, what case management reason is there for the Court to exempt the registry claimants from pretrial order 15's requirement for individualized short form complaints? Doesn't the Court have an obligation to prepare all of these matters for trial?

I wanted to recap some of the points that I raised at the last status conference.

It is the Plaintiffs' motion, so I thought the Plaintiff could go first, and I would think that ten minutes should be sufficient to argue the motion, and then Defense can take ten minutes to respond, and then if the Plaintiffs need an extra three to five minutes to reply, that would be fine.

So, with that, if we could have whichever counsel is going to argue the motion from the Plaintiff and keep track of

the time, but I will also let you know when ten minutes is up.

MR. PULASKI: Thank you, your Honor. May it please the Court, Adam Pulaski, colead counsel for the Plaintiffs, your Honor, and I believe we will address all of your questions in this ten minutes.

The MDL Plaintiffs' leadership expedited motion requests entry of an order authorizing the filing of multi Plaintiff complaints for the approximately 58,000 plus registry claimants who are certified Federal participants who allege one of the five designated cancers. There are multiple ways the Court can --

THE COURT: Mr. Pulaski, I think probably you are going to have to slow down.

MR. PULASKI: Okay. I will slow down for Pauline.

There are multiple ways the Court can permit these multi Plaintiff complaints to address the Court's expressed concerns, and I will talk about a couple of those options in a few moments. These registry claimants must now decide how best to protect their rights and claims in light of the Court's December 6th Daubert and summary judgment order.

Registry claimants other than those represented by senior leadership only have 83 days left on tolling and those represented by members of senior leadership only have 53 days left to act. Time is of the essence.

The facts supporting our motion are undisputed.

First, final judgments will soon be entered in approximately 1,500 to 2,000 individual personal injury cases currently on file in this MDL that allege a designated cancer, thus triggering the clock for commencing an appeal.

Second, MDL Plaintiffs intend to appeal the Court's Daubert and summary judgment order on behalf of the 1,500 to 2,000 individual personal injury Plaintiffs where final judgments will soon be entered.

Third, in the event the Eleventh Circuit reverses this Court's Daubert and summary judgment order, those 1,500 to 2,000 cases where appeals were timely taken will benefit from the decision and return to this Court for continued pretrial proceedings.

Fourth, what about the approximately 58,000 registry claimants who are certified Federal participants alleging a designated cancer who do not have complaints on file? Pursuant to this Court's pretrial orders, they and their counsel voluntarily consented to become part of the registry with the stated goal of making mass torts litigation more efficient. The lawyers representing these registry claimants have already spent tens of thousands of dollars, or in the cases of firms like mine, millions of dollars, uploading detailed Plaintiff fact sheet information through LMI to help facilitate the orderly and efficient administration and resolution of this MDL.

Now, since those approximately 58,000 registry claimants do not have cases on file, they cannot appeal the recent Daubert and summary judgment order in their current posture.

Fifth, under PTOs 15, 72, and 79 tolling for the registry claimants who are certified Federal participants alleging a designated cancer will soon end, thus they must, per PTO 15, and I quote, "elect whether to file their claims, not individual claims, but to file their claims before their applicable Statute of Limitations expires to preserve their right to bring a claim or risk losing that right forever."

In light of the procedural posture of this MDL based on this Court's Daubert and summary judgment order, coupled with this Court's ruling on the definition of tolling under PTO 15, we believe this Court should enter an order allowing the 58,000 registered claimants who are certified Federal participants alleging a designated cancer to preserve their ability to pursue their claims by filing multi-Plaintiff complaints. There is solid legal footing to support an entry of such an order.

First, Federal Rule of Civil Procedure 20 specifically permits party joinder so allowing the 58,000 registry claimants who are certified Federal participants alleging a designated cancer to file multi-Plaintiff complaints as contemplated and permitted under the rules, and this Court

previously contemplated the reduction or elimination of filing fees. After previously granting Rule 54(b) judgments, this Court stated, and I quote, "the Court stands ready to issue any order that the Plaintiffs may identify as a valid option to reduce or eliminate filing fees."

Further, Federal Rule of Civil Procedure 1 directs the Court to construe, administer, and employ the Federal Rules of Civil Procedure to secure the just, speedy, and inexpensive determination of every action and proceeding. Allowing multi-Plaintiff complaints will facilitate the just and inexpensive determination of these 58,000 registry claimants' cases by eliminating the payment of over $25 million in filing fees that will otherwise be required in the event this Court requires individual complaints to be filed. This amount does not include the additional fees associated with filing notices of appeal.

It is indisputable that allowing multi-Plaintiff complaints will enable this Court to administer and secure the just determination of these proceedings. Allowing multi-Plaintiff complaints will significantly reduce the burden on the Clerk's Office. Instead of opening up to 58,000 individual PI dockets, the Clerk's Office will deal with several hundred or several thousand multi-Plaintiff complaints depending upon how many Plaintiffs the Court permits on each multi-Plaintiff complaint.

Allowing multi-Plaintiff complaints will also reduce the burden on this Court in promptly and efficiently resolving these actions. While the Defendants may be able to file an omnibus motion for summary judgment attacking each of the newly filed complaints, due process requires that the Plaintiffs of each of those complaints have an opportunity to respond to the omnibus motion. That will not be done on an omnibus basis.

If this Court requires individual complaints to be filed by each of the 58,000 registry claimants, each will be entitled to respond individually to the Defendants' omnibus motion for summary judgment, thus necessitating this Court's review of each individual response.

Conversely, if the Court allows multi-Plaintiff complaints, whether one per law firm or some other breakdown, all of the named Plaintiffs on each multi-Plaintiff complaint will file a single response to the Defendants' omnibus motion for summary judgment, substantially reducing the number of responses that must be analyzed by the Court before issuing a summary judgment order.

Defendants will not, Defendants will not suffer any prejudice if this Court allows multi-Plaintiff complaints, which begs the question: Why are they opposing this motion? For one reason and one reason alone; they are trying to make it as expensive and difficult for the Plaintiffs' Bar who represent these 58,000 registry claimants to preserve their

claims in the event the Eleventh Circuit reverses the Court's Daubert and summary judgment order.

Defendants hope that if individual complaints are required to be filed by these 58,000 registry claimants that some number of the lawyers representing these 58,000 registered claimants, as well as the pro se registry claimants, will elect not to file all these individual complaints and their clients' claims will not be preserved pending the outcome of the upcoming appeal.

So, by taking this position, Defendants hope to substantially reduce the potential cases against them. If that happens, a reversal by the Eleventh Circuit would be a hollow victory because some substantial number of registry claimants would no longer be able to pursue their claims in this MDL. That is fundamentally unfair and unjust and easily and efficiently avoided.

While PTO 31 required each registry claimant to file his or her own individual complaint, there are a plethora of reasons to modify this order such that the multi-Plaintiff complaints are now allowed given the recent material change in circumstance.

Throughout the course of this MDL there have been multiple instances where this Court modified existing PTOs. These changes were jointly made to adjust to the changing status of the litigation, to adopt to a change in circumstance

that was either unforeseen or called all for change because of reasonableness, efficiency, and the justness of the change.

This is precisely one such change in circumstance that warrants modification of PTO 31. In my 30 years of practice I have never seen another set of circumstances that would warrant multi-Plaintiff filing more than this instance.

Had the Court ruled in Plaintiffs' favor on Daubert, most of the 58,000 registered claimants would have remained in the registry where their claims would have been tolled through the conclusion of the second bellwether trial. If this MDL were not resolved by the conclusion of the second bellwether trial, the parties would have met and conferred to determine the most efficient manner to proceed for the remaining registry claimants, as well as the remaining filed Plaintiffs who were not selected for bellwether treatment.

During last week's hearing your Honor raised several issues that were on your mind. You asked about severability, asked about how specific causation would be handled if multi-Plaintiff complaints are allowed, and about remand of those cases at the conclusion of pretrial proceedings. Those are all interesting and questions that can be easily addressed.

For instance, your Honor could limit the total number of Plaintiffs on any single multi-Plaintiff complaint to several hundred or cap it at a hundred per complaint. Also,

the Court could include in its order a provision stating that all of the Plaintiffs on each multi-Plaintiff complaint will be severed and required to pay their own filing fee if the Eleventh Circuit reverses your Daubert ruling and remands to this Court for further pretrial proceedings.

In that event, there would be no concerns about individual treatment of specific causation as well as ultimate remand following the conclusion of pretrial proceedings in this MDL.

To your question from last week about where these multi-Plaintiff complaints will be filed, your order could limit them to being direct filed to this Court in accordance with PTO 31. Bottom line, the mechanics are easily resolved if this Court allows multi-Plaintiff complaints.

But the threshold question is whether your Honor will allow multi-Plaintiff complaints consistent with Rule 20 and Rule 1 of the Federal Rules and your prior modifications to other PTOs.

Your Honor, there are an abundance of legal, equitable, and administrative reasons for granting this motion. It is not only legally correct, but the right thing to do. If this Court agrees with that fundamental premise, figuring out the mechanics and limitations of the multi-Plaintiff complaints, including limits on the number of Plaintiffs who can be on each multi-Plaintiff complaint, how and when the

Court might later sever those claims in the event the Eleventh Circuit reverses the Daubert and summary judgment order, and whether and how this Court will address specific causation for those cases, and how those cases would be remanded if this MDL is not resolved by the conclusion of the second bellwether trial are all easily resolved.

Thank you, and I appreciate your time.

THE COURT: Okay. Great. Thank you so much.

I have questions, but I will wait for the response argument first and make sure that my questions are still relevant.

MR. CHEFFO: May I proceed, your Honor?

THE COURT: Yes.

MR. CHEFFO: Thank you, Mark Cheffo for the brand Defendants, and I will try, as Mr. Pulaski did, to stay within my ten minutes.

I am going to also try to respond to some of his questions and certainly the questions that your Honor raised last week and reiterated today. I have five quick points.

The first is that, as your Honor noted and what we all have all kind of lived with is a deal is a deal, and these were negotiated PTOs that were of no surprise, and what you are hearing today about the parade of horribles is, of course, exactly what the parties contemplated.

The second is, there is no prejudice or inequity here.

This is not some nefarious kind of mean-spirited effort by the Defendants in order to incur costs, just the opposite. What the Plaintiffs have done trough kind of 24/7 advertising for the last two years is to accumulate these thousands of cases and now they are saying, oh my gosh, I have actually signed up so many Plaintiffs that I don't want to pay $400 per Plaintiff for a cancer case, and that is somehow unjust.

Third, what the Plaintiffs are proposing will -- not only is, frankly, unprecedented, but it will create mass confusion. There is no proper joinder here, we won't have an understanding of who is in, who is out. There's duplication issues, there's filing issues. This will be a total morass, whether it is thousands or hundreds of cases.

Fourth, you know, I think we heard last week, and we didn't hear today from Mr. Pulaski, but these are not hard logistic issues. In fact, PTO 31 specifically speaks to this, and we know that it is easy because the Plaintiffs did it for the 1,500, 2,000 cases. All they need to do is not go to some other Court, not go to some far away place, they need to file a short form complaint pursuant to PTO 31.

Then what happens, an index number gets issued. This is not some massive logistical concern by the Clerk's Office, in fact, it is what they do every day. After those complaints are filed and there are docket numbers, all we would do is file one I think very short -- there is precedent for this, this

happened in the Lipitor litigation before Judge Gergel, Judge Rufe in Zoloft that I am aware of. Essentially it is just an index number of all of the different complaints that orders are entered. And to be clear, we are not suggesting that they need to file separate appeals for each of these, they would just take an appeal of all of the cases.

Remember, these people have never even filed a lawsuit, so what we are asking them to do is basically just get an index number like every Plaintiff in America does.

Then, there is this parade of horribles that I think we have heard about. Again, this is an easy process. What the Plaintiffs are asking you to do would literally be unprecedented, right, to allow people to avoid filing fees, and file multi-party complaints. It is not what the Federal Courts do and for good reason.

We had reason to avoid some of these before, but now, to the extent that Plaintiffs want to pursue their appeals, asking them to file individual cases, again, as every other person in America would do -- and we have also noted, and your Honor certainly and the Clerk's Office have an ability to, if people can't afford it, the pauperis kind of provisions. So, those are certainly all available.

The one thing, I think a little bit of an elephant in the room, if your Honor were to ask, and I don't want to be presumptuous, but are the Plaintiffs telling you that they

won't file or someone is going to be prejudiced for $400 when they sign these folks up? And they have their ethical obligations and they are all good lawyers and they are well funded. The answer is, of course they are going to appeal. No one is going to be prejudiced.

And the other answer is -- if you were to ask them, are you telling me that you couldn't file the cases that you signed up a short form complaint in the next three months? We have heard, again, the parade of horribles, but it is not realistic. It is not what is going to happen. If your Honor rules as we have all agreed to pursuant to these PTOs what the Plaintiffs will do is they will file their appeals for people they think are appropriate, and for those that they don't, they won't. No one is going to essentially be left out in the cold.

I don't want to forget your Honor's questions. You asked, what is the case management reason? I don't know that Mr. Pulaski -- there is none, in fact, it's just the opposite. The only reason we have heard is that there might be some filing fees and costs, and I would just note something that I think is, frankly, ironic because the Court staff and the Clerk's Office -- I don't know the intricacies, your Honor does know them better -- largely they are funded through these fees because they do work. They manage these cases.

To the extent that this money would go to the Clerk's Office, I don't think that is an incredible burden at all. I

think that is what should happen so that the people, the men and women who work really hard in the Clerk's Office and have had to deal with this litigation for the last two years, the Court would get the compensation that, frankly, it has so far avoided.

The remand issues, as your Honor said, no one is saying that these cases shouldn't be severed. In fact, they are saying, well, we know they are really not appropriate to file together, and of course let's have a work around because when they come back they will be severed, but that begs the question. These are not cases that are appropriately joined. These would never be allowed to be joined in the normal course, certainly not 50, not a hundred, not 6,000 claims.

To the extent of remand, all the things your Honor asked, everything that you said would have to happen is this would create a morass where we couldn't keep track of individual Plaintiffs. If they ever did come back, they would have to be segregated, disaggregated, de-duped. All of that this is extra case management work really to no effect, except apparently the dollars that the Plaintiffs are essentially complaining about here today.

I think that it is really no different whether there is 100, or 6,000, or 5,000, it is really the same effect here. I am not aware of any Court that has ever allowed something like this. Plaintiffs point to these issues where the Court

talked about efficiencies, and that would be on the appellate level, and as I've said before, we agree. What I think would happen is people would file their short form complaints, it would happen very quickly.

We have also said in our papers, and I will say it again now, to the extent that this really was some type of burden on service, these are issues that we stand fully prepared to meet with the Clerk's Office, to meet with Mr. Pulaski and his colleagues on service. We could work out an electronic service issue. So, there is really no burden, no burden on the Plaintiffs. There is certainly no burden on the Clerk's Office again, because we can do this in a methodical way. This is all done largely by computer.

This idea that we would have to somehow have separate motions, what I heard Mr. Pulaski, maybe I misunderstood this, but he said if you allow us to file 300, or whatever number complaints it is, and the Defendants file a motion, then we will file an omnibus for the 58,000, an omnibus response, but if they have to file individuals, then 58,000 people are going to somehow file responses.

That sounds a little bit like a threat, but the reality is, it is an illusory threat because the only thing that would happen here -- your Honor has already granted summary judgment. Once a Plaintiff files a short form complaint, if necessary we will file an omnibus motion saying

essentially two lines: Your Honor, pursuant to your order, summary judgment should be entered. There is no opposition to that. The opposition is the appeal. We understand, I am sure your Honor does, too, the Plaintiffs fundamentally disagree with the Court's ruling and they have said they are going to appeal it. That is their right, that is what they could do.

But your order is very clear, without an expert, and they have none, they can't get to trial, they can't get past go, summary judgment will be granted. I see mu time is almost up. That can be done really easily. Once they file whatever number of cases they are going to file, we give the Court a list, literally a printout of Mrs. Smith's name and her index number, the Clerk enters judgment as to each.

This is the way it has been done on multiple MDLs, and then on appeal the Plaintiffs take all of those and they file their Notice of Appeal and appellate papers.

And the last thing I will say is, we have no objection from an efficiency perspective if the Court were to wait to enter judgment on the 15 or 2,000 filed cases such that you wouldn't have a difference in time period. So you could wait until after their 90 days expired, right, to file the cases. You would then know all of the cases that were filed, enter summary judgment, and then all the dates would be coordinate for the appeal, so again, no inefficiency.

I will stop there, your Honor, because I know you may

have some questions and Mr. Pulaski may have some responses.

THE COURT: Thank you. Any reply from the Plaintiff?

MR. PULASKI: Sure, thank you. If I may have a couple minutes, your Honor.

THE COURT: Yes.

MR. PULASKI: First of all, I can't speak on behalf of every single individual attorney as to how they would respond to an omnibus motion for summary judgment by the Defense, but there may be individual responses for each and every Plaintiff that is filed.

Secondly, while Mr. Cheffo stated that there are three months left to file claims, a large portion of these claims have to be filed within the next 53 days.

And thirdly, while I don't think it has ever been improper to do the right thing, or the fair thing, or the just thing where you have 58,000 plus individuals who are trying to preserve their right to move forward with trial should there be a successful appeal, and to charge them some 25 plus million dollars for filing fees and an additional almost 15 to 20 million dollars to file fees for their appeal, bringing it close to 40 million dollars just to await the fact as to whether or not they will be able to pursue their claim back in the MDL Court seems egregious, unfair, unjust, and expensive.

I am sure I am missing another point, but I don't think this is unprecedented, I don't think fairness is

unprecedented. Even though Mr. Cheffo so eloquently put there is no burden on the Clerk's Office, there is going to be a burden on the Clerk's Office. If and when the case came back to your court, to the MDL, if we were successful on appeal, you could then sever the cases, and as Mr. Cheffo talked about, one, the cost of this Court's time, at that time when the Court would have to start working on the 58,000 cases, and the cases were severed, all of the filing fees would then be paid and each individual would then proceed as they would as to the current PTO 31.

And secondly, Mr. Cheffo is incorrect as to the fact that this $450 per client is not a burden. A lot of the clients' contracts with their attorneys call for them to pay for the appellate fees individually, and $450 is a lot of money to some of these people. You have people that are in stage four cancer, you have some people who have passed away whose families don't have the money to pay the $450, you have pro se individuals acting.

So, while we talk about this in generalities and in numbers, we are representing 58,000 individuals, 58,000 individuals who have to pay up to 40 million dollars in filing fees and appellate fees just to await a possibility that we are successful on appeal to get back into this court if we are successful.

Again, we already had an agreement in place until the

second bellwether trial, had we been successful in Daubert, that nothing would have been filed until then and we would have pursued our bellwether cases as we had planned and had already started discovery on them.

So, to this Court I believe there is ample -- like I said, I have never seen a case that more warrants a situation for multi-Plaintiff filing for this particular instance. When you ruled on PTO 31 it was a completely different situation. We had 36 different Defendants, and retailers and distributors, and you name it. You made your ruling with that in mind, and now we are down to four Defendants and Patheon, and a much simpler process and an event now that calls for multi-Plaintiff filing, period, end of story.

I am going to stop because I don't really have much else to say. Tracy, if you have anything that I have forgotten please just jump in, but that he is pretty much it.

THE COURT: Okay. Let me see. I have a few questions.

You mentioned you have never seen a case like this where maybe everybody had to pay a filing fee. Have you ever seen in your other MDLs close to 50,000 potential cases having their filing fees waived?

MR. PULASKI: We are not asking to waive the filing fees. What we are asking for is to ask for a multi-Plaintiff filing during the pendency of the appeal, and should the appeal

be successful and the cases be remanded back to this Court for further proceedings, you may then sever the case and then everybody would pay their filing fees.

In this instance, as you have already ruled on December 6th in your Daubert rulings, I think asking these individuals to pay up to 25 million dollars in filing fees at this point, when we are not going to proceed with a large number of processes in this Court until and unless the case is remanded back to this Court, would be unfair and unjust. It would fly in the face of Rule 1. Rule 20 permits you to do this, and again, this is a circumstance that is a little different than other circumstances.

It is not like we are asking for a multi-Plaintiff filing just to move forward in this Court.

THE COURT: We will get to Rule 20 in a minute.

We will take it step by step. So I understand the Plaintiffs' position, the Plaintiffs are contemplating in their request one case and one complaint for each law firm. Is that -- am I understanding that correctly?

MR. PULASKI: That is what we stated in our motion, your Honor, but truly the mechanics of that, whether it is a hundred per complaint or 200 per complaint or 50 per complaint, to necessitate the goal that we are trying to achieve here would be, you know, up to the Court to determine what the best way to move forward with this is.

We are not saying that is the only way it can be done, that is the way we put it forth in our motion, but obviously there are a number of different ways to handle this.

THE COURT: Have the attorneys about whom you are aware broken down their individual cases in the -- claims in the registry by Federal district, by the particular product he or she consumed, for how long, the type of cancer? In other words, has there been that kind of analysis and thought given to similarities among --

MR. PULASKI: There has been, and that is the beauty of what we have been doing for the last two and a half years, Judge. As we proceeded through this registry process -- and again, I can attest that the Plaintiffs in this have spent somewhere between 10 and 20 million dollars in uploading and procuring the data in the Census Plus forms to put in this registry, and LMI at the click of buttons can tell each individual firm who the named Defendant should be in each case, what products they were using, whether it was a pill, whether it was a tablet.

And to whatever this Court's favor is and how you would prefer cases be broken down in a multi-Plaintiff filing is so easily done right now because of what we have done over the last two and a half years. That's the beauty of what we have done in the last two and a half years to allow us to ask for this.

In this particular instance, now that you have ruled on Daubert, it seems like the perfect opportunity to put all of that in place and allow for these multi-Plaintiff filings.

THE COURT: To be clear, that is not relief you sought. You are saying you can do it, but your proposal of the three -- of all cases per law firm didn't contemplate distinguishing among those claims.

MR. PULASKI: It did not, but we are not opposed if the Court feels that that is the best way to move forward with this and it is not a difficult process. It is one that is easily manageable.

THE COURT: Let me see here. This is a little off topic, but kind of a logistical question. From the Defendants' standpoint, Defendants have represented that they intend to file a motion for summary judgment in the cases. Once the April 5th tolling deadline expires, would the Defendants be filing instead motions to dismiss on Statute of Limitations grounds?

MR. CHEFFO: Yes, your Honor. Here is what I think would happen, looking at the rubric that we proposed and your Honor adopted and that we have been living under, which made some sense, but you first start with the idea that if someone does not want to the file, they don't have to file. That is the first, and that was the registry. If they do file, they ultimately need to file in Federal Court before your Honor.

So, there would be no reason to file -- if someone just decided I don't want to file my complaint, I am not going to take an appeal, I am going to move on, then that claim would not become a lawsuit, so there wouldn't be a Statute of Limitation motion. It just essentially would be not viable.

If they ever were to file it six months from now before your Honor's Court, then I suppose we would argue that the statute had run and there was a Statute of Limitations, and also that they didn't appeal the Court's ruling, so they were bound by summary judgment.

So, as a practical matter -- that's why I think this is much more simple -- is we would just wait until April 5th, the Plaintiffs would file the tens of thousands of short form complaints that they file. We would then get a printout of all of those. Again, we can talk to your Honor about the process. I actually think it is self-effectuating from your order, but let's assume we file just one motion saying, based on all these cases and your Honor's ruling, we request that you grant summary judgment in these -- say there's 50,000 claims, 58,000. Your Honor would do that and they would get docketed.

There are two things about that. One is, I don't think -- we are not suggesting that they need to pay appellate costs for each one of those, but there would just be an appeal on the record.

And to reiterate, this is not meant to be -- and this

is true for the Plaintiffs. I think we both tried to litigate this before your Honor in ways that you'd think would be responsible and professional, and this isn't really a gotcha. That's why I take some offense at that. We have highlighted the fact that if someone really has to pay the 400 or $450 and they can't do it, there are provisions, you know, the in forma pauperis rule. If someone had a legitimate claim, I can't imagine that any of the Defendants would object to that.

So, this is not about gotchas, but that is the way I think it would work. It would just be a very clean motion. Lawyers can't do anything in two or three sentences, but two or three pages basically saying, based on your Honor's ruling, you need an expert in a product liability like this in order to proceed.

They have no experts, they have all been determined to be not reliable under Rule 702 and Daubert, therefore summary judgment should be granted. That would be granted, and from there we would all go up on appeal and the Plaintiffs can make whatever arguments they would make before the Eleventh Circuit.

THE COURT: Okay. With respect to the service of process, I know that was mentioned, if all of these cases are filed -- pretrial order 13 allows for informal service via email upon the brands. Would the same -- is it contemplated that the same email service would be permissible for these new cases on the brands; and if so, would that apply to non brands

as well?

MR. CHEFFO: I think it is only the brands. So, with a caveat, I am going to go out on a limb a little bit, speaking on behalf of all the brands I haven't polled them or, frankly, gotten their permission, but as I understand it, the goal here is to be efficient for the brands as well as the Plaintiffs.

That is why I suggested, yes, we would have a provision -- we are not going to ask people to go and get process servers to serve the companies 58,000 times. There would be some mechanism where there could be electronic service in a way that would be verified, and that they would be done essentially either from tranches or kind of at one time so that there wouldn't be these significant costs for service.

It would literally probably be a legal assistant on either side kind of working out those logistics. So, the only costs would be the costs of filing a complaint that everybody in America files when they file a lawsuit.

THE COURT: What about non brands?

MR. CHEFFO: I don't know that they are -- maybe if they are on, I apologize, your Honor, I thought only the brands are left.

THE COURT: Right. So, are these claims that are to be filed as cases, some or all of them going to be just against the brands?

MR. PULASKI: I can't speak on behalf of everybody in

the country, but in order to preserve rights for their appeal, should people believe they have claims against retailers or distributors or generic manufacturers, obviously they would have to be named because the tolling will expire and in order to preserve their rights for the appeal they would have to be filed.

I can tell you that I may not be doing that, but I can't speak on behalf of the other 400 law firms in the country. I don't know who will be named as Defendants, but certainly there is a possibility that others may be named as well.

THE COURT: I guess if non brands are named, what about service?

MR. CHEFFO: Here is what I would commit to, your Honor -- again, I only represent my clients and I speak for the brands. I do know that they are reasonable actors as well, and I believe -- this is something I would be happy to poll them very quickly and get back to your Honor and see if they would agree -- that they would agree to the electronic service that your Honor kind of highlighted just for the limited specific purpose of accepting service for these short form complaints. I could probably do that quite quickly.

THE COURT: Okay. So, just circling back to what I think is a substantive matter to -- that the Court must address, and it has been mentioned, Rule 20, but there really

hasn't been a lot said about it. I will give you a quick thumbnail of what I have looked at and let you respond, because the Court has an obligation to follow the law, the rules.

So, the case in In Re: Baycol Products Liability Litigation appears to this Court to be analogous. In that case the Plaintiffs moved for permission to file a 50 Plaintiff complaint, citing Rule 42(a), and the Court declined to consider the request under Rule 42(a), pointing out that Rule 42(a) merely allows for cases that are already filed to be consolidated for the purposes of trial.

The proper rule for consideration, according to the Baycol Court, B-A-Y-C-O-L, was Rule 20. Rule 20 allows for multiple parties in litigation to be joined "if they assert any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action."

The question then, according to Baycol, was whether the 50 Plaintiffs' claims arose from the same set of basic facts.

The Plaintiffs in that case relied upon Norplant Contraceptive Products Liability Litigation, 168 F.R.D. 579, Eastern District of Texas, which held that Rule 20 is met if the same acts and omissions of the Defendants gave rise to the Plaintiffs' claims. However, the Baycol Court noted that

Norplant has not been followed by other District Courts and that the decision has been criticized.

What the Baycol Court found to be persuasive was the cases cited by the Defendants, the Bone Screw case, 1995 WL 428683, Eastern District of Pennsylvania, Diet Drugs, 1999 WL 554584, Eastern District of Pennsylvania, and Rezulin, R-E-Z-U-L-I-N, 168 F. Supp. 2d 136, Southern District of New York 2001, cases.

As summarized by the District Court in Bone Screw, the Plaintiffs each had an individualized injury, each Plaintiff was harmed in a different way, in a different place, at a different time. As a result, according to the Court, to simply group the Plaintiffs by judicial district or simply group them primarily for filing convenience would not satisfy the terms required in Rule 20 nor the purpose for which rule 20 seeks to ease the burden of litigation in groups of similarly situated persons.

Relatedly, the Diet Drug case considered the issue of filing fees. The Plaintiffs filed a complaint with 62 Plaintiffs. Although each Plaintiff alleged that the same drug had caused each Plaintiff the resulting injury, the District Court found that Rule 20 was not satisfied. After the District Court severed the claims, the District Court required each severed Plaintiff to pay the requisite fling fee.

The Court also noted that it had previously severed

over 2,000 Plaintiffs in a separate order in the MDL litigation. The Court found that the filing fees upon severance were necessary because were the fees to be waived, the Government will suffer a loss of hundreds of thousands of dollars in revenue at the very time the workload of the Clerk's Office was being greatly increased because of the added filings. The Court declined to reconsider that the filing fee be imposed by its prior order.

So, I guess my question is, applying the Baycol and Diet Drug cases to this MDL, why would the result be any different? Given many thousands of registry claimants cannot be remanded to the same district were an appeal successful, and given that each claimant's individual causation inquiry will be distinct and a major issue at trial, why would the reasoning of the Baycol Court be wrong? Wouldn't the claimants, if consolidated in a single complaint, be misjoined?

The Clerk's Office is going to have a lot of work either way, and certainly on the front end, regardless of whether it is multi-Plaintiff complaint or individual complaints. It is not just if there are multi-Plaintiff complaints now there is no work and than on the back end, if they are severed, there is work and they get their filing fee to account for the staffing needs that will be required for this major undertaking.

So, it's not an answer to the question that, well,

they will get their filing fees, it will be at the end when all of the work is done with the severing. I can tell you unequivocally, based on what I have learned about how the Clerk's Office operates throughout the duration of this MDL and what would be involved in this next phase, that it is very, very labor intensive.

So, let me hear the Plaintiffs' response to my overview, and if you disagree with it, let me know, but these are some of the cases I have read and how I have come to understand the rule. If I am going to be governed by these cases and by the rule, how is it that I can do what you are asking me to do?

MR. PULASKI: If I may. I will go ahead. And Tracy, jump in if you need, but if I may, Judge -- I am sorry, there were a number of different issues, so I may miss some of them as I discuss.

First of all, I think there is a difference between Baycol and Rezulin and Bone Screw litigation just amongst those themselves. The Bone Screw litigation was a pharmaceutical device where the device was implanted in different sections of the body and different types of screws and different lengths of screw and all different types of things. So, I can see a difference in situation there however.

While I was involved in Baycol, and it was one of the first mass tort cases I worked on back in 2001 or 2002, I don't

particularly recall this request in that litigation. We resolved our cases and we never filed anything asking for a joint complaint.

However, here I believe we have two things; we have a same series transactions, and we also have the same common question, and the common question is a failure to warn.

It is not about a specific causation issue related ed to whether there is a dosage change or something. We are talking about a failure to warn. We have the same problem in every case.

We are not talking -- as far as Rule 20 goes, the requirements are the same series of transactions and a common question, and I believe we fully fall into both of those categories.

With respect to the cost of the Court, I am completely sympathetic to that as a business owner, and someone that runs and operates a business and runs a machine that has different cogs and needs to be paid for. Again, should your Honor choose to allow multi-Plaintiff filings in this litigation, and while our motion asks for one complaint per firm, it could break it down into groups of a hundred capped, or 50 capped, which would bring a substantial amount of money for the Clerk's Office. We don't want the Clerk's Office working without being paid for the work they have done.

And again, if and when we are successful on an appeal

and the case is then brought back into this Court the cases could be severed and larger amounts of money due to the severance would be filed in individual cases which would be necessary to compensate the Clerk's Office at that time where there is an abundance of work that then is laid upon the Court, especially if we get past first or second bellwether.

Here, I just think that Rule 20 is different than the cases that you have stated, and I certainly think the situation in and of itself where Daubert has already been ruled on and the cases are being filed to preserve their rights pending an appeal is probably different than most of those situations.

Again, I look to Rule 20, i look to Rule 1 for justice and efficiency and reasonableness, and in the years that I have been practicing, I have never seen a case that warrants multi-Plaintiff filing joinders as much as I have seen it here. I just don't.

THE COURT: Do you think these cases meet Rule 20 given different specific causation questions?

MR. PULASKI: Yes.

THE COURT: Have you briefed that or do you think that needs to be briefed?

MR. PULASKI: I have not briefed that, your Honor. It is not something that we had looked at to brief or whether -- I haven't briefed it, and I don't know if anybody on our team has briefed it, but I think it is pretty, to me, plain and clear

that we are talking about a failure to warn as the instance, and what we are looking for to satisfy Rule 20 here where we have the common question of law and fact to all Plaintiffs, which is the failure to warn, and I don't believe we need to get into specific causation in order to satisfy that requirement of Rule 20.

MR. CHEFFO: Your Honor, may I?

THE COURT: Response, yes.

MR. CHEFFO: First of all, this is exactly -- this couldn't be any closer to Baycol. Baycol was a statin, Baycol was removed because the claim was the company failed to warn about something called Rhabdomyolysis, which is a muscle pain, an issue. Just like the failure to warn claim, it was a pharmaceutical product, it was literally exactly the same in an MDL, and the Court held that they are all different.

In fact, that is why -- I can't speak for every clerk, but based on experience, if anyone walked in with 500 or a thousand, even 50 or a hundred into a Clerk's Office and said we want to file these, most clerks would reject them or the Court's clerks would initially deal with it.

It is interesting the Plaintiffs are now arguing this, because what they told you all along is -- they kind of conceded that these would be severed, that Rule 20 doesn't apply, because what they say is, Judge, just do this from a case management, and ultimately, if it comes back on appeal,

then you can automatically sever it. Why would you automatically sever it if Rule 20 applied? It doesn't apply.

So, their whole function here is we don't want to pay the filing fees, let us go up on appeal and if it comes back, then you can disaggregate and do all the things that should be done. I think this would an incredibly problematic and troubling precedent to set because if your Honor were to allow this, the Plaintiffs would say, look, Judge Rosenberg allowed people from Wisconsin who claimed X cancer to file in a claim.

Rule 20 and the joinders are for family members, husband and wife. That I am aware of in the Federal Courts, they don't allow kind of mass tort plaintiffs from different states with different injuries using different products at different times, with generics and all the complications. Even if this was just one defendant the court wouldn't allow it.

Rule 20 absolutely applies. This would be the classic case of misjoinder. Again, we are never in the position of questioning your Honor's authority to do it, and certainly you have a lot, but this would be kind of a sea change of what the Federal Courts allow in terms of filings.

MR. PULASKI: Your Honor, if I may, if you read the particular language in Rule 20, it says any question of law or fact common to all Plaintiffs will arise in the action, and any question of law or fact is the failure to warn, and I just -- you know, whether we are talking about remand later or

severance later, which is a discretionary act for the Court, I believe Rule 20 is very clear about meeting these two requirements that it seems like we meet, that we have any question of law or fact common to all Plaintiffs, we have a failure to warn claim in each and every individual claim, and we have a series of transactions.

So, I just don't -- I don't see where we don't meet Rule 20 regardless of what another ruling in a District Court on a completely different set of circumstances with different facts and different positions in the litigation process ruled on a particular case that really isn't -- doesn't correlate with this instance.

MS. FINKEN: Your Honor, could I add to that, please? Tracy Finken on behalf of Plaintiffs. Pauline, I hope you can hear me. If you can't, please speak up and I will adjust my sound.

Your Honor, I think the biggest difference between those District Court cases and what we have here is the procedural posture of the case. Under Rule 20, there is no question that these individuals are all bringing failure to warn claims, and there is no question that they have common questions of law and fact as it relates to appealing the Daubert order.

What we understand, your Honor, it that it is within your discretion to do this. What we are requesting and

pleading with the Court is for an economically feasible way to preserve the rights of these cancer victims for purpose of this limited set of circumstances that is not cost prohibitive, that preserves their rights in the future, and that also promotes the same efficiency that we did with the registry going forward.

The registry itself -- this is kind of in line with the whole registry, the efficiency of the cost savings on doing these types of things, and with the procedural posture of this case as it is currently, which is different from Baycol, which I was involved in, which is different from Diet Drugs and Rezulin, which I also was involved in -- those case were not seeking multi-Plaintiff filings for purposes of preserving rights on appeal.

Your Honor, what we are asking and pleading with the Court, really, is you utilizing your discretion to provide or assist us with an economically feasible way to preserve these cancer victims' rights for purposes of their appellate rights and everything else going forward.

MR. CHEFFO: Your Honor, may I say two brief things? The first is, Plaintiffs have cited no precedents, not one. This is exactly like Baycol. And the equities are in favor of -- in all the Baycol cases, in every one of those cases they had actually filed complaints. Right. No Defendant would actually agree to registries going forward if they thought that

Plaintiffs never had to file complaints. It was always contemplated that we would get to a point and then they would have to file, and that is what the end of this was about.

So, all that requiring them to file the short form complaints would do, as I said earlier, it is literally putting them on the same footing as every single Plaintiff in America in any other litigation. But the Plaintiffs here seem to want an exception to that rule and claim that it is inequitable when it would be inequitable to allow these Plaintiffs to essentially avoid the fees.

The other point is -- we have talked about if they come back. Your Honor has been dealing with this litigation for two and a half years, there has been a massive amount of work. It's not like we haven't worked or your Honor hasn't. I know the Plaintiffs are not suggesting that. But the point is, the Clerk's Office has already dealt with massive amounts of work.

So, I think requiring them to file like everybody else is the most equitable thing, and not create exceptions that I think will cause, frankly, havoc around the country when the Plaintiffs try to file multi-party complaints using this as precedent.

MR. PULASKI: Your Honor, if I may reply to that one comment Mark made, and while I don't think Mark is disingenuous, I think maybe the response might have been a bit

disingenuous because the Defendants already agreed to tolling until the second bellwether case. We have never asked that we not pay for filing fees. We are asking for a multi-Plaintiff filing here and agreeing that at some point there be a severance, and that should the Court see that to be the proper thing to do, paying the filing fees at that time, which just would mean that we pay the filing fees at a later date should we be successful on appeal.

In Mark's case, and in this case with the Defense, they agreed to tolling for basically another year and a half or two years where no filing fees were going to be paid were we successful on Daubert. So, to come in now and say, oh, they should pay all the filing fees right now flies in the face of what they had already agreed to before where they didn't even want us to pay filing fees for almost years had we been successful in Daubert.

Again, I am not opposed to the fact of you in your discretionary abilities to sever the cases if and when we are successful, but for the reasons I have laid out, and for the reasons Tracy explained, and in just reasonableness in general, and the fact that I do believe we fit squarely into Rule 20 and obviously into Rule 1, we believe this Court should grant our motion.

MS. FINKEN: Your Honor, can I say one more thing, please?

Mr. Pulaski alluded to this earlier, there are firms that have cost shifting provisions for purposes of appeal in their retainer agreements, and while Mr. Cheffo talks about $400 filing fee, and to some of us on this call that is not a lot of money, but to the clients it is, it is. And they -- you know, they have a right to preserve -- they have a preservation of rights here that needs to be preserved. Given the procedural posture of the case, we are asking the Court to please give us an economically feasible way to file these claims. Thank you.

THE COURT: Thank you.

Well, I think a couple of new issues arose on the call here today. One is a more robust discussion of Rule 20 that really hasn't been briefed, and the other is that it seems as if the Plaintiffs are putting forth alternatives to their request for relief than was in the motion.

The motion spoke pretty clearly to the relief being sought was that every law firm, about 330 of them, be able to file all of their claims in a multi-Plaintiff complaint, and in doing so the Plaintiffs would be asking the Court to modify 31, or to extend the date for the close of the registry, but we know that isn't happening because the registry is closed.

What has come out on the call today is, well, you can do less than the full amount that any one lawyer or law firm has, you could do a hundred, you could do 50, and that seems a

little arbitrary to me.

So, what I am thinking out loud, which isn't always a good thing to do, is that maybe there be a very expedited resubmission of the motion whereby the Plaintiffs undertake an analysis of their LMI data, which we also spoke about, in whatever fashion you think makes sense in light of the Court's questions, and in light of Rule 20, and in light of some of the things we have spoken about, and come back to the Court in a renewed motion with these types of alternatives, including -- I suppose you can put forth sort of the arbitrary cap of a hundred, or 50, or 10, or 20, but I would think included should be, since you have the data and you have explained, and I know it is detailed and has been helpful on many fronts, what a proposal would look like that would call upon the LMI data that might take into account the Defendant, the product, the cancer, any other category that has some seem semblance -- oh, and the judicial district where it came from, and then -- and then give the Court your view on Rule 20.

I heard that this case is like Baycol, it is not like Baycol, I have discretion, even if it is not squarely a Rule 20, it is Rule 20, but you can still sever. I think you should be heard on that in a formal considered way.

So, my thoughts out loud would be to allow you an opportunity to come back with a renewed motion that puts forth a proposal, or some proposals that you have alluded to today

and discuss Rule 20, and let the Defendants respond on an expedited basis, since it sounds like the Defendants are willing to have the Court withhold any kind of a final judgment maybe until after April anyway.

So, I recognize the Plaintiffs have to get moving, or the claimants. I suppose you should start getting moving anyway, and it is just a matter of how you are going to do it, but presumably lawyers are working now to figure out which of their claims they are going to bring over, so nothing I am asking you to do hopefully will interfere with that.

What do you think about that?

MS. FINKEN: Your Honor, I think that we can certainly do that. I think that we are open to suggestions on what the Court's preference would be certainly in terms of how to accomplish this task. It is significant, to say the least. So, we can certainly do that, but the only problem --

THE COURT: What part is significant? What is significant, the filing?

MS. FINKEN: No, no, the lift of getting all these on file is a significant lift and we are running out of time. That is really one of the problems that is ongoing for is, but we can certainly do that and provide your Honor with different options that fall within your discretion under Rule 20, and what we believe is our basis under Rule 20 to allow multi-Plaintiff complaints at this -- given this procedural

posture at this stage of the litigation. We can certainly do that.

THE COURT: I don't know that Rule 20 is different, maybe it is. I look at Rule 20 differently depending on the posture of the case?

MS. FINKEN: No, what I meant was -- Rule 20 is not different obviously, but when you are talking about any question of law or fact common to all Plaintiffs that arise in the action, Rule 20, for purposes of this, is applicable for preserving appellate rights. That is what we are looking at.

Those are all the same questionable in fact. There is no question that the appeal will be the same for all of these people going up to the Eleventh Circuit. It is not going to differ per Plaintiff. So, it is a common question of law and fact under Rule 20. All of these claims are failure to warn claims, that is what is left and pled in the master complaint.

So, from our perspective, Rule 20 is met for this procedural posture of preserving rights on appeal. That is our position, but we can certainly provide your Honor with different options on how to go about doing this in a way that isn't putting ever single Plaintiff on one multi-Plaintiff filing. I don't think that was anybody's intent, if it's by jurisdiction or --

THE COURT: I can tell you my research has shown that we are not even sure that if you were given the relief you

asked for, that it actually could be done. The lawyer -- it might be you, Mr. Pulaski who has the 6,000. I don't think you can file a complaint in this district or any district putting 6,000 Plaintiffs, and if you did, which we have no reason to believe you can -- in fact, everything points to you couldn't -- you certainly can't do it at one sitting.

So, you would be inputting like three, four, five, six, and then you will get timed out and you go back in and you will do it again, and again, and again, and again. So, I actually share that with you, so be careful what you ask for because that actually -- we don't have reason to believe that can even be done.

So, I think it is fair to say that, putting aside the law and the PTO for just a moment, not that we are going to in the end, I am not sure how you have framed your request for relief could be granted logistically.

That is another reason why I think maybe you should be given another opportunity given the Court has had a chance to look into some of these things just from a logistical standpoint, as well as the law and the rule, as you can tell, and whatnot, so --

MR. PULASKI: I appreciate that. Again, I think throughout my remarks I discussed, you know, the mechanics of actually implementing this process is something that I think needs to be worked out. If you determined that it would be

permissible to, and you would rule in favor of the multi-Plaintiff filing, those were the issues that we would have to address, and obviously we don't want people timing out. I am not the person with the 6,000 Plaintiffs, but I --

THE COURT: You are not, I think you have 3,000.

MR. PULASKI: Tracy and I and the rest of the team will get together and provide a response to you with options that would allow for this process to work in an efficient and reasonable manner.

MR. CHEFFO: Your Honor, two quick things.

The first is, obviously we'll look at what the Plaintiffs say and we'll respond as expeditiously as possible.

I would make two quick points on Rule 20. If it was that simple, you just read the language and there is a common question, it's kind of like saying Rule 23, it is a common question, certified class. That is not the way the Courts determine it. I think the cases you have read are exactly why, because those were exactly the same thing.

Someone claimed they took a product, they had a failure to warn, they weren't told, and the Court said, no, no, no, you can't do that. So, we'll look at what they have to say, but I think there is a crushing amount of case law that supports this.

I would also say in terms of Rule 20, I understand the practical arguments that Ms. Finken is raising, but Rule 20

governs the filing of a complaint. It doesn't say, well, if you file a complaint in a registry after, there are all these exceptional rules and things. I think the rules have to apply, and I don't think they do here.

Lastly, and I know your Honor -- I don't think you misinterpreted it at all, but I want to make sure I was clear. We were not suggesting that in any way the deadline for Statute of Limitations purposes would be extended. In other words, they have their 60 or 90 days afterwards. All I was saying from a practical perspective is that the Court could wait until after that to enter judgment on the 1,500 or 2,000 cases, such that it wouldn't extend any deadlines, rather than do it now than whenever it was, April. I think your Honor understood that.

THE COURT: I did, and hopefully that is what I said. I did not understand you to be saying you were extending any deadlines, including Statute of Limitations, it was that you would not necessarily be seeking to have the final judgment entered until after April 5th, so we could see everybody together and it could be done in a more coherent way -- cohesive.

So, when can the Plaintiffs file their renewed motion in light of what we have discussed today?

MR. PULASKI: I would say as soon as possible.

Tracy, I don't know what you are thinking.

MS. FINKEN: **I would say Monday.**

We need to -- your Honor, for obvious reasons, we need to get resolution one way or the other of this motion. That is why it was filed on an expedited basis.

THE COURT: **Can you get to LMI and get all that data?**

MS. FINKEN: **We can certainly try. I don't know. Adam would probably be better --**

THE COURT: **The Court is closed on Monday.**

I could leave it up to you to be honest about when you want to file it, because it is the Plaintiffs who need it. Maybe the question is, you file it as soon as you can, but I don't know that I have to put a deadline, but I do think I would like to put it on an expedited basis.

So, I guess what I will do is, I will see how lengthy it is. Defendants should know that when it comes in, I will issue an order for an expedited response, there should be no surprise about that, and an expedited reply, but I will leave it up to the Plaintiffs when you can file it. I know you want to file it quickly. We will be waiting for it and looking at it, and the Court appreciates the time sensitivity of this.

MR. PULASKI: **We will file it as soon as practicable, and in light of the fact that while some of the deadlines are April 5th, some of the deadlines are March 5th, and I think there are over 20,000 of them that need to be filed by -- it is less than 60 days away.**

The soonest time frame that we could get to finalize this, the better. We will do our part in pushing this quickly.

THE COURT: All right. That sounds good, I appreciate it. I will see when it comes in. I know I will see some of you next week for the continuation of the status conference, but I appreciate your time, it has been very helpful.

Let's see here. The Clerk's Office -- regardless of where we land on all of this, you know, there is going to be time that the Clerk's Office is going to need, so we will have to talk about, I guess, you know -- once you file it, you know best when you need to file the claim to become a case to preserve the Statute of Limitations, but regardless of which way we go, there is a ton of work that needs to be done in the Clerk's Office.

So, I can't represent any date beyond what you all do, and I have started meeting with the Clerk's Office. It is a monumental undertaking, so I want to make sure everybody understands that. You take care of what you need to do and we will take care of what we need to do.

MS. FINKEN: Thank you, your Honor, we appreciate your consideration.

THE COURT: All right. Be well, good to see everyone. See you soon.

(Thereupon, the proceedings concluded.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: January 16, 2023

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter