

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 WEST PALM BEACH DIVISION

4 CASE NO. 20-md-02924-ROSENBERG

5 **IN RE: ZANTAC (RANITIDINE)** .
6 **PRODUCTS LIABILITY** . West Palm Beach, FL
7 **LITIGATION.** . July 28, 2021
8 .

9 STATUS CONFERENCE (through Zoom)
10 BEFORE THE HONORABLE ROBIN L. ROSENBERG
11 UNITED STATES DISTRICT JUDGE

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1 *THE COURT:* Good afternoon, everybody. I understand
2 that most everybody has been admitted. We waited a little
3 bit just so we could ensure that we had most of the
4 participants who were planning on joining. I know that we have
5 all of our speakers. I think those new ones who have helped
6 coordinate admitting everybody into the Zoom -- I understand
7 that our usual suspects are taking well-deserved breaks and
8 have handed the baton off to others who are helping in the
9 administration of this Zoom proceeding.

10 So, it is nice to be here, nice to hopefully start
11 seeing everybody soon in person, and seeing a few of you who
12 will be turning your videos on and presenting here today.

13 We are here in the MDL Zantac litigation. We are here
14 for a status conference. There was discussion that it might be
15 nice to check in at this point, and there was discussion of
16 another status conference, case management conference, that we
17 are looking to have in September. I want to address that in
18 greater detail.

19 The plan was, with such excitement I know on all
20 parts, to have somebody appear in person. That is still the
21 plan, although it is a situation that I think we need to
22 continue to monitor, as we have done throughout the course of
23 the past year and a half. All proceedings, as everyone knows,
24 or should know, have been conducted in this litigation by Zoom.
25 Today's proceeding, of course, is also on the Zoom platform.

1 This is due to the COVID pandemic.

2 While we are coming out of the pandemic, hopefully,
3 and many of us are feeling freer to enjoy and to experience
4 travel again, hopefully everybody is having a nice break this
5 summer and able to do things perhaps that you were not able
6 to do last summer. With some recent reports about some up tick
7 in numbers with the Delta variant, I know that I will be
8 monitoring it closely, but as a Court, we monitor these matters
9 very, very closely.

10 We have opened up the courthouses throughout the
11 Southern District of Florida as recently as this month, in the
12 beginning of the month, for pilot jury trials, and they have
13 gone successfully. We have held them in each of the
14 courthouses.

15 Fortunately, everything has gone well, smoothly. The
16 trials have been taken to completion, both jury and nonjury,
17 but we have a COVID task force that remains in full force and
18 we continue to discuss the situation and monitor it, and would
19 only be inviting you to come and be in our courthouses if we
20 felt it was safe for you to do so.

21 For planning purposes, let's count on our
22 September 15th proceeding being in person, but I would want to
23 hear from counsel, whether it is on our Zoom conference today
24 or at some other date, when would be the latest you would want
25 confirmation that, in fact, we are doing our proceeding in

1 person so that you would know how to book -- when you needed to
2 book your trip and make accommodations.

3 I would like to get you the information in a manner
4 that allows you to efficiently and cost effectively plan for
5 being in West Palm Beach. We look forward to hopefully being
6 able to have you there.

7 So, I look forward to our agenda today. I understand,
8 given some perhaps unexpected matters as it relates to certain
9 travel plans with some of the speakers, as this has been
10 provided to me through the special master, that maybe we are
11 going to go a little bit out of order.

12 There was an agenda that was circulated, a sketch of
13 an agenda, a little bit earlier, but to the extent that we are
14 going to go a little bit out of order, I want to explain that
15 it was because I wanted to be sure that everyone that needed to
16 be here for purposes of speaking on the topics were here and
17 didn't feel in any way stressed out that they might not be able
18 to make it for the time that they were originally going to
19 appear on the agenda.

20 For right now -- but again, if anything has changed in
21 the last few minutes, you will let me know. I am not wedded to
22 the schedule, but I understand that we will do pro se litigants
23 first, motion practice next, talk about LDC and hear from a
24 couple of our LDC members, hear from you as to what plans you
25 may think would be good for the Court and for the LDC NextGen

1 members to be able to gather next.

2 We want to always hear about the registry and I know
3 that there is a State/Federal update. I understand a
4 PowerPoint presentation will be provided to the Court, and I
5 thank counsel in advance for having submitted that PowerPoint
6 and Word document to the Court so the Court was apprised of the
7 nature of that presentation.

8 So, with that, let's get underway. I want to thank
9 all of those who have helped coordinate with the Zoom
10 instructions that were circulated. So far, so good. Almost a
11 year and a half into our proceedings everything has gone really
12 smoothly. Again, if anything doesn't go smoothly on Zoom for
13 anyone, please don't ever worry about that, things happen. I
14 could freeze in a moment and hopefully you will be patient and
15 understanding of that.

16 I do hope everyone is well. I hope that you have had
17 a chance or will have a chance to take some rest and relaxation
18 over the summer. I know everybody has been working hard, you
19 have other matters. Zantac is not the only case, I suspect, on
20 most of your dockets, and I hope that you have been able to
21 spend time with friends and family, that you have been well and
22 healthy.

23 And again, I appreciate everything that everyone has
24 done throughout the course of the litigation to make it a
25 meaningful litigation for the Court to preside over. The

1 professionalism remains something that has not gone unnoticed
2 by the Court. The efficiencies by which all of you are working
3 also is something that the Court recognizes each and every time
4 and at every juncture of this case, and I can't express enough
5 how appreciative I am of the ability to preside over a case
6 with such professionals who are willing to do their jobs in
7 ways that reflect creative and innovative techniques that have
8 not been used before.

9 But by the same token, also relying upon the expertise
10 and experience that, through your many other cases, you have
11 brought to bear and have educated the Court along the way, as
12 well as those who are participating in the litigation, some for
13 the very first time in an MDL.

14 With that, let me turn it over, and if I could hear
15 from our attorneys who will be presenting on the pro se
16 Plaintiff access to courts. It is an important issue. We do
17 get emails from time to time, we get calls from pro se
18 litigants wanting to know how things are happening in the
19 litigation, how they can get access to information. They don't
20 have Pacer, for example, they are confused, and each and every
21 time we take note of that.

22 We try to be responsive if there are orders that we
23 can enter independently. If it is something that I think the
24 leads and liaison should be handling, I reach out to our
25 special master, Jaime Dodge, and almost immediately get

1 positive feedback as to what lead counsel endeavors to do to
2 make navigating a difficult case even for those who are astute
3 and practitioners in how to use all of the technology
4 associated with a case like this.

5 You can imagine those who are unrepresented how
6 difficult this would be, so it is a very, very important issue
7 to the Court and I know to you as well. I want to thank you
8 for giving it thought and I look forward to hearing what ideas
9 you have about how we can make the process as accessible as
10 possible to pro se litigants who do not have the benefit of
11 counsel such as yourself to navigate them through a complex
12 case of this nature.

13 So, if I could ask those counsel to turn on their
14 video and their audio.

15 Good afternoon, Ms. McGlamry. How are you?

16 *MS. McGLAMRY:* Well. How are you?

17 *THE COURT:* Good. First of all, let me congratulate
18 you on the birth of your baby son. It is Michael James, I
19 understand.

20 *MS. McGLAMRY:* Yes, it is. Thank you.

21 *THE COURT:* It is great to see you and to have you
22 back so soon after giving birth. Thank you so much.

23 *MS. McGLAMRY:* Thank you. So, for the pro se
24 litigants, by the parties' counts there are nine pro se
25 Plaintiffs who filed that way. There are an additional

1 approximately 186 cases where the lawyer has withdrawn due to
2 some issue, mainly nonresponsiveness on behalf of the client,
3 and they have 30 days to appear and otherwise the case would be
4 dismissed. So, should any of those clients appear, they would
5 be pro se and added to the list of pro se litigants.

6 So, obviously, the issue that came before your Honor
7 was the access to most of the motions in the case and that are
8 available to those of us who practice via Pacer, and although
9 the Court's website does post the PTOs and some of the
10 transcripts, obviously not all of the motions are available.

11 The parties got together and came up with a solution
12 that we hope will be something that the Court approves of, and
13 that is to create a Dropbox link where the parties will upload
14 all of the motions, a file for the general MDL motions and then
15 also folders for the individual cases should there be a motion
16 that pertains to the specific litigant's case.

17 The process would be to send a letter to each of the
18 pro se litigants informing them of this solution, asking that
19 they provide us with their email address so that they can be
20 provided with a link that they would then obviously need to
21 keep up with and check the link, you know, on their own to stay
22 apprised of motions and other filings that are loaded to the
23 Dropbox site.

24 We thought that this was hopefully a good solution,
25 particularly given the current number of pro se litigants, and

1 this isn't a huge group that we are talking about, and this
2 seems to be the best way to facilitate disseminating this
3 information to the pro se litigants at this time.

4 So, if that is agreeable to your Honor, the parties
5 will submit a draft PTO next week kind of explaining the
6 process prior to effectuating it.

7 *THE COURT:* Okay, that sounds terrific, and I think
8 getting a draft PTO for the Court's review would be helpful
9 because I can match what you're proposing in the PTO with the
10 kinds of calls we get to ensure that there is a connection
11 between what you are proposing in the PTO and at least to our
12 knowledge the kinds of inquiries, confusion, and questions that
13 we are getting. If I see that there is something missing,
14 certainly I will fill that in and send it back for you all to
15 review.

16 Furthermore, when we do get calls, which I suspect we
17 may still get in the future -- while I do recognize the number
18 is small, as you mentioned, about eight or nine, it potentially
19 could grow with the pending withdrawals, and who knows in the
20 future. So, I think this is a good proactive preemptive
21 measure to take.

22 It would also ensure that should we continue to get
23 the phone calls when the PTO is entered, that those who answer
24 the phone call in our chambers, because we do like to be
25 responsive, while not giving legal advice, is to be able to

1 point them to a particular PTO and, quite frankly, we can even
2 draw from the PTO to give them the kind of information that is
3 in it.

4 I suspect it will work if people, one, I guess have
5 access to a computer and an email, number one; and two, the
6 onus would be upon them to regularly check it. They wouldn't
7 be getting notices of filings and things of that nature, so
8 they would have to regularly check it.

9 MS. McGLAMRY: Perfect.

10 THE COURT: Okay. That sounds really good. I will
11 look to get that, you think sometime next week?

12 MS. McGLAMRY: Yes.

13 THE COURT: Excellent. I appreciate it so much.

14 MS. McGLAMRY: Thank you.

15 THE COURT: Good to see you, and be well.

16 Okay. Thank you so much on that, I really appreciate
17 it. It is something that we are always mindful of. We treat
18 everyone the same and the standards are the same for pro se
19 litigants and non pro se litigants, but we recognize the
20 difficulties that the pro se litigants have in navigating
21 litigation in general, particularly in a case like this.

22 So, anything we can do on your part and our part to be
23 sure that they are aware, that they know how to get access to
24 the information and can make informed decisions is in the best
25 interest of the system overall. So I really appreciate that.

1 XX So, let's move on, then, to a discussion about
2 potential motion practice, I guess is the best way to generally
3 refer to it. The special master has informed me of some
4 discussions that have been going on over the course of the last
5 couple of weeks, maybe a few weeks, resulting from the orders
6 that the Court entered on the Motions to Dismiss, and as I
7 understand, the potential for motion practice as it relates to
8 certain procedural rulings, perhaps, that the parties may
9 believe are needed, although they may not see exactly eye to
10 eye on what is needed.

11 I am speaking in very vague and general terms because
12 I have not seen anything, and as you know, I am someone who
13 likes to kind of know what I am talking about before I embark
14 on talking about it.

15 I figured the best way to learn about it, not getting
16 into the substance because we are certainly not having motion
17 hearings today, is simply to have those who are knowledgeable
18 about what it is that you want, and why you want it, to tell me
19 that, not getting into substantive argument, and let's see if
20 we can't come up with a schedule for notifying, apprising,
21 motioning the Court to apprise the Court that if it is a ruling
22 that you need, or an entry of a particular order, or an entry
23 of a judgment or something of that nature, that I can
24 accomplish that if I think that that is appropriate.

25 So, with that, let me have those of you who are here

1 to tell the Court a little bit more, take the mystery maybe out
2 of the vagueness that I am referring to.

3 So, let's see. Let's have counsel state their
4 appearance for the record who are appearing on the Zoom
5 platform at this time.

6 *MR. McCLOUD:* Good afternoon, your Honor, Luke McCloud
7 of Williams and Connelly.

8 *THE COURT:* Good afternoon, Mr. McCloud.

9 *MR. GILBERT:* Good afternoon, your Honor, Robert
10 Gilbert on behalf of the Plaintiffs.

11 *THE COURT:* Good afternoon, Mr. Gilbert. I hope both
12 of you are doing well and have had some time to take a vacation
13 this summer.

14 *MR. GILBERT:* Thank you, Judge, trying.

15 *MR. McCLOUD:* Same here, your Honor.

16 *THE COURT:* All right. Great.

17 So, tell me what it is that is needed in the
18 litigation from each of your perspectives and how the Court can
19 accomplish that for you, if it is something the Court can
20 accomplish.

21 *MR. McCLOUD:* Mr. Gilbert, you can start.

22 *MR. GILBERT:* Thank you, Mr. McCloud. Your Honor,
23 good to see you again and hope you and yours are well also and
24 enjoying some down time.

25 I am standing in for Mr. Keller who is on a plane

1 right now. I participated in a lengthy conversation with Mr.
2 McCloud and Mr. Keller and Special Master Dodge yesterday. I
3 will try to do this justice as best I can. There essentially
4 are two issues or two concepts at play here.

5 First, there is an appellate deadline coming up, a
6 hard and fast appellate deadline coming up based on your order
7 at Docket Entry number 3750, the order granting the generic
8 Defendants' Rule 12 Motion to Dismiss on preemption.

9 It is our belief that while the order itself standing
10 on its own is clearly appealable as a final order with regard
11 to those claims that are addressed for those parties set forth
12 in that order, there is the need for a clarifying order that
13 will make it clear to the Plaintiffs' Bar writ large that the
14 ruling set forth in Docket Entry 3750 applied to those
15 applicable short form complaints where the claims covered by
16 your ruling are addressed.

17 And so, the initial conversation -- the initial idea,
18 let's call it order number one, if you will, that Mr. Keller
19 and Mr. McCloud and the special master were discussing
20 yesterday was a clarifying order that the parties are working
21 to try to reach agreement on, but have not yet been able to do
22 so.

23 Absent the ability to do so, say, by the end of today
24 or tomorrow, given the pending appellate deadline, which I
25 believe is either August 8th or 9th, the parties have worked

1 out an arrangement, subject to your Honor's approval, to submit
2 our competing orders to the Court under one filing tomorrow, by
3 the close of business tomorrow. The orders would be attached
4 to a simple administrative motion.

5 It would not really present argument in the motion
6 itself, but simply attach the two orders, and the Court would
7 be able to see the two orders, and by close of business Monday,
8 both we and the Defense would file our respective submissions,
9 no more than 15 pages each, that would address why we believe
10 the order that we submitted is the appropriate one and why the
11 order that the other side submitted is not the appropriate one.

12 We thought that by submitting both orders together
13 with one simple non-argumentative administrative motion, it
14 would allow the Court to have a clean entry on the docket, see
15 what both sides have to say on Monday, and then enter one of
16 the two orders, either with or without argument, later next
17 week in advance of the August 8th or August 9th deadline.

18 From Plaintiffs' perspective, I would be remiss in
19 saying, and Mr. Keller would scold me if I didn't say this,
20 that whether the Court enters one of those two orders or not on
21 or before August 8th or 9th -- and I apologize for not knowing
22 exactly which of those two dates it is -- prior to the
23 appellate deadline arising under Docket Entry 3750, it is our
24 view that that is a hard and fast appellate deadline, and so
25 notices of appeal will be filed by all that believe they are

1 affected by Docket Entry 3750 on or before that appellate
2 deadline with or without this order.

3 This clarifying order, though, would help not only in
4 terms of the Appellate Court, but also in terms of the
5 Plaintiff's Bar writ large. So, that is the first issue.

6 The second issue -- maybe I should turn over to Mr.
7 McCloud so he can address the first one. Then we can take the
8 second one afterwards.

9 *THE COURT:* Before you turn it over to Mr. McCloud,
10 you didn't really articulate what the relief sought in the
11 order is. Can you just encapsulate that so I have kind of a --
12 even just a terminology that I can refer to it as?

13 What is the relief sought? When an order is issued,
14 it is doing something. It would normally be preceded by a
15 motion, and we can talk about that in a moment, but I want to
16 hear from Mr. McCloud. What is the relief that you envision
17 being sought in these proposed orders?

18 *MR. GILBERT:* Put simply, your Honor, the relief
19 sought would be an order that makes it explicit and clear that
20 the rulings under Docket Entry 3750 apply to all short form
21 complaints where the relief that is being sought by those
22 individual Plaintiffs is sought on claims that are brought only
23 against the generic Defendants, the distributor Defendants,
24 and/or the retailer Defendants, and where they have no further
25 litigation to pursue because they have no further claims

1 pending against the brand Defendants under their individual
2 short form complaints.

3 Does that help answer your question?

4 *THE COURT:* Yes. And you have identified those short
5 form complaints, or you would be in the process of doing that,
6 or is that not necessarily relevant to the relief sought,
7 because it would be ultimately incumbent upon the Plaintiffs to
8 know who they are, who would qualify for falling into that
9 category that you have just described?

10 *MR. GILBERT:* I believe the best answer would be both.
11 Both sides have done their best to identify, using the data
12 available through LMI, those short form complaints that appear
13 to name -- to raise claims only against the dismissed
14 Defendants, but we are unable to be certain, one hundred
15 percent certain, and also, frankly, do not view it as being our
16 exclusive responsibility to make that decision for individual
17 Plaintiffs' lawyers around the country who have filed these
18 short form complaints.

19 Therefore, while we are doing our best to identify
20 those and apprise those lawyers, there is responsibility on the
21 part of the individual Plaintiffs Bar at large to know what
22 they have filed and to know what their appellate deadlines are.

23 Therefore, this order will help memorialize that on
24 the CM/ECF docket, coupled with a Plaintiffs webinar that we
25 will undertake to hold ourselves.

1 THE COURT: Okay. All right, Mr. McCloud.

2 MR. McCLOUD: Thank you, your Honor. I think that Mr.
3 Gilbert has accurately characterized the nature of the dispute
4 between the parties and what the parties are seeking.

5 In terms of the exact procedural mechanism that would
6 be at issue, it is Defendants' perspective that the most
7 appropriate procedural vehicle would be the entry of a
8 judgment under Rule 54(b), and we this morning circulated to
9 Plaintiffs' counsel a draft of a proposed order that would make
10 clear that the category of cases that are at issue are now
11 being dismissed, both the claims in the long form complaints
12 and the claims in the short form complaints.

13 From our perspective, your Honor, it would be valuable
14 to have a list of the short form complaints that are subject to
15 the Rule 54(b) order and so we have proposed in our draft order
16 to include that as an exhibit to the pleading.

17 I take Mr. Gilbert's point that the LMI data is not
18 always one hundred percent accurate, and so if it was
19 necessary, we can certainly include some language to the effect
20 that this is not an exhaustive list and not necessarily totally
21 binding on the parties, but is a good faith effort to come up
22 with a list of the Plaintiffs who would be affected by the
23 order.

24 So, I think, your Honor, that the end result is, there
25 is agreement between the parties in terms of what we would like

1 the Court ultimately to do. There is still some disagreement,
2 although I am hopeful we can resolve that, on the exact nature
3 of the procedural order.

4 To answer your Honor's earlier question about the
5 structure of the briefing, what we had proposed during the
6 conversation yesterday with Mr. Keller and Special Master Dodge
7 was a truncated briefing schedule along the lines that Mr.
8 Gilbert described, and from our perspective there were two
9 advantages to that.

10 One was it would get the issue in front of the Court
11 for the Court's consideration more quickly. As Mr. Gilbert
12 mentioned, from Plaintiffs' perspective, they have a deadline
13 of August 9th to file appeals from the Court's orders. So we
14 thought that if it was possible to get a ruling from the Court
15 prior to that date, that would be desirable.

16 The second point was that having the proposed orders
17 together with the briefing all at the same time might make the
18 differences between the parties' legal positions and any
19 potential effect of the orders that would be entered more
20 understandable to the Court.

21 All of that said, if the Court would prefer a more
22 traditional briefing structure, we would absolutely go along
23 with that. I think the goal here was just to come up with a
24 structure that would be workable for the Court, and if that is
25 the traditional briefing structure, we would be happy to do

1 that.

2 *THE COURT:* Thank you, Mr. McCloud, I appreciate it.

3 I think this may be an example of where you all have a
4 much clearer picture of where you are than I do,
5 understandably, because you have been talking about it, I
6 presume, for weeks, because it is July 28th, and the last order
7 came out on July 8th, so it is 20 days.

8 While I referenced the special master raising it with
9 me, that is really all she has done, is communicated, with your
10 all authority, that there was this issue out there, and I have
11 been waiting really over the past few weeks to hear whether you
12 wanted me to do something or not. So, I still don't have the
13 particulars, I haven't seen anything, nor necessarily should I
14 have seen anything until you are ready to file.

15 So, because I am not as comfortable with the
16 particulars as you are, I kind of feel that a more traditional
17 schedule would work, and I will tell you why.

18 What I mean by that is, to receive two proposed orders
19 with no explanation doesn't tell me anything about why. If
20 they are different, I will just be looking at them, and I kind
21 of feel like, so I will be looking at them and I won't be able
22 to do anything with them, think about them, research them, give
23 it the kind of analysis and thought that I'd like to, and so I
24 am just sitting idly by until whenever the date was you propose
25 that the oppositions, even Monday, and could be the end of

1 Monday, so then I am looking at Tuesday.

2 We are getting down to the wire now. Next week is the
3 last week, whether it is the 8th or 9th.

4 So, I want to really understand -- so, one, it
5 wouldn't give me the benefit of all of the things you know and
6 have, quite frankly, had the benefit of discussing for three
7 weeks. I am not privy to those conversations and I feel I
8 would be disadvantaged, and I wouldn't want to jump to any
9 conclusions erroneously about a proposed order or orders
10 without the benefit of hearing why, why the order.

11 Also, you know, a proposed order doesn't usually get
12 docketed in CM/ECF. You could, but it doesn't really carry any
13 weight, it is just there. Normally what you would do is you
14 would file a motion. You could consider attaching the proposed
15 order to the motion if you wanted it as a matter of record, but
16 then I would probably also ask you to email it to me to the
17 Zantac email, because to the extent that I use one or the
18 other, I would want it in Word format and either adopt it in
19 full or I'd tweak it, just like I do with your PTO's.
20 Sometimes you see them back just as you submitted them. Other
21 times you see that they have been changed.

22 So, what I think would be most helpful to the Court --
23 and again, it is speaking a little bit out of ignorance, so I
24 have to fall back on what I know and how I generally do
25 things -- is, I would want to see -- if the Plaintiffs are

1 seeking a certain type of relief, relief for final judgment,
2 relief for partial judgment, relief for final orders of
3 dismissal, relief for clarification, whatever that relief is,
4 I'd want to see a motion, because that is how you get relief,
5 it is from the motion. Because without a motion, I'd really
6 kind of be acting sort of on my own, and then the Appellate
7 Court might say, well, why is she just acting on her own.

8 But less so really for the Appellate Court, although I
9 certainly like to do things right, I would want to know by what
10 authority I am acting, why I am acting. Maybe it is something
11 I could or should have done sua sponte, but I don't even know
12 yet because I haven't seen what you have to present to me.

13 I would like to have a Plaintiffs' motion articulating
14 the relief you seek, why you seek it, the legal basis for it,
15 so the substantive law, any procedural, Rule 54, or any other
16 rules that you are looking at, and a proposed order, I suppose,
17 attached to it. So then I have the benefit of looking at your
18 order and understanding your thinking, your brain power behind
19 it, your rationale, your legal basis for it.

20 Then on Monday, I would like to see the opposition or
21 the response, and it could be you agree in part and you oppose
22 in part, and maybe the opposition is just very slight, and you
23 will tell me why you agree. So that would give me further
24 corroboration that you are in agreement, let's say, as to 70
25 percent of the law, or maybe all of it, but you just don't

1 think it should produce -- the results should be the same by
2 way of an order.

3 Maybe you have a different view on the law or what
4 procedural vehicle is invoked. I don't know, but I would learn
5 that through an opposition memorandum, where you do all of the
6 things you do in a memorandum, and you all do them very well
7 and very thorough, and then you would have your proposed order
8 by Monday.

9 Then, by the end of Monday, which still gives me the
10 week, I have a fully briefed motion. Now, a fully briefed
11 motion would involve a reply. We could have the reply due on
12 Wednesday. The default could be the reply comes in, so it
13 gives the Plaintiff one last opportunity to respond to the
14 opposition.

15 If I look at both of them and I see I don't need one,
16 and you want me to let you know I don't think I need one to
17 save you the time, I can do that, but I don't know when you
18 would be submitting the opposition on Monday, so maybe it comes
19 in really late on Monday. I really won't know if I need a
20 reply until later on Tuesday after I look into it myself. So,
21 maybe the default should just be there is a reply on Wednesday.

22 And so, this is really called like an expedited
23 briefing schedule for motion practice under Rule 7 of the local
24 rules.

25 Does the issue lend itself to that?

1 MR. GILBERT: Your Honor, Robert Gilbert on behalf of
2 the Plaintiffs. First of all, of course the parties will do
3 whatever makes more sense to the Court, and I hear what you are
4 saying. Given that you want a traditional motion, given that
5 Mr. Keller is today on a five-hour flight, and we did not
6 anticipate actually filing a formal motion with argument
7 tomorrow, here is what I would propose to the Court for your
8 consideration. Unfortunately, I haven't had a chance to
9 discuss it with Mr. McCloud, so he will have to reply to it on
10 the fly as well.

11 Rather than submitting something tomorrow, which we
12 may not have adequate time to prepare a full motion, what I
13 would propose is we submit our formal motion per your request
14 with our proposed order attached by Friday evening, by midnight
15 Friday evening. That gives us tomorrow -- the balance of today
16 and tomorrow and Friday to get it together. We will attach our
17 proposed order.

18 The Defendants, rather than having to get their
19 response in by Monday, could file their response or opposition
20 by Tuesday, and we'll waive the reply. We'll waive the reply.
21 That way you will have the fully briefed motion by Tuesday
22 night. If you feel the need to have a short oral argument on
23 it you could do so later next week. If not, you will have the
24 fully briefed motion when you come into court or when you turn
25 on the computer on Wednesday morning.

1 But we would be willing to waive the reply under those
2 circumstances, but it will give us enough time this week to get
3 a formal motion filed for your Honor's consideration.

4 *MR. McCLOUD:* Your Honor, Luke McCloud for Defendants.
5 That is acceptable to us.

6 *THE COURT:* Okay. So, what you are saying, then,
7 is a -- that the Court -- pursuant to agreement by all parties
8 as a result of our discussion here at the status conference,
9 the Court could go ahead and enter an order reflecting the
10 agreement of the parties that a motion will be filed -- shall
11 be filed -- to the extent that the Plaintiffs seek further
12 relief emanating from the Motions to Dismiss as it relates to
13 appellate related issues, that any such motion that the
14 Plaintiffs seek to file shall be filed by no later than Friday,
15 along with a proposed order, and a response shall be filed by
16 the Defendant no later than Tuesday, with Plaintiffs waiving
17 the reply to such opposition.

18 *MR. GILBERT:* That makes sense to the Plaintiffs, your
19 Honor. Again, Robert Gilbert for the record.

20 I am pausing and would ask the Court to just consider
21 one thing. This only relates to matters arising -- relating to
22 the personal injury -- the amended master personal injury
23 complaint, and I don't know, and would not want your order to
24 be misconstrued to somehow negate any potential discretionary
25 1292 motion that may or may not be filed in the near future

1 with regard to your rulings under the class complaints.

2 We are only talking today -- Mr. McCloud and I are
3 only discussing with you the appellate rights arising from your
4 rulings as to the amended master personal injury complaint, and
5 I think that that is what we are addressing through this
6 motion, and I believe that your order directing this briefing,
7 or this motion practice should be limited to that, with
8 respect.

9 *THE COURT:* Okay. I want to make sure I get the
10 language right, that the parties have agreed any motion
11 practice relating to, um-m-m, an order that it wishes to have
12 the Court issue relating only to appellate rights arising from
13 the Court's rulings on the amended personal injury complaint
14 would be subject to the abbreviated expedited briefing schedule
15 that has been set forth here.

16 Motion by Friday with proposed order, opposition with
17 proposed order by Tuesday, all filed on the CME docket, but
18 with the proposed orders in Word form also being filed in the
19 Zantac email.

20 *MR. GILBERT:* Your Honor, Robert Gilbert for the
21 Plaintiffs. That is acceptable.

22 *THE COURT:* And waiving the reply. Okay.

23 What about time, did you want until midnight on those
24 two days? Do you want the Court to set a deadline at five
25 o'clock, or something of that nature, close of business? What

1 were you thinking?

2 *MR. GILBERT:* I would appreciate that you not set a
3 deadline, that we simply use the 24-hour clock for those two
4 dates, both for ours as well as for the Defendants.

5 *MR. McCLOUD:* I agree with that. I am hopeful we can
6 get the submissions in before midnight, but just in case, I
7 think that is advisable.

8 *THE COURT:* Okay. Did you want page limitations on
9 your motion and your opposition?

10 *MR. McCLOUD:* We had previously suggested 15 pages in
11 our conversations with Special Master Dodge. I think that
12 would be acceptable in this context as well, but we are also
13 fine to rely on the default limits.

14 *MR. GILBERT:* Judge, we are okay with 15 pages. We
15 had talked about it yesterday.

16 *THE COURT:* Okay. 15 pages for the motion and 15
17 pages for the opposition. Just try to be very clear what you
18 want, why you want it, what it pertains to. If you are going
19 to point out all the short form complaints and pursue that,
20 then do so. If you're not, then don't and explain what the
21 implications are of what you are asking the Court to do, what
22 the legal authority is, whether this is something that is sort
23 of, you know, founded in law, you know, case law, MDL case law,
24 the rules of procedure.

25 Just try to be as clear -- and if there is no law you

1 are relying upon, but you just want it because it is cleaner
2 and clarifying and you are trying to anticipate maybe something
3 the Eleventh may say, and trying to get to it first, be
4 transparent with the Court about that, too, just so I am not
5 searching for something that doesn't exist, and I know that
6 it -- you know, it is something you are asking for, but I
7 wouldn't necessarily find a rule that provides for it or a case
8 that supports it.

9 *MR. GILBERT:* Robert Gilbert on behalf of the
10 Plaintiffs. Your Honor, we, of course, will do so, and we'll
11 endeavor to make it as clear and as concise as possible.

12 *MR. McCLOUD:* Luke McCloud for Defendants. We will do
13 the same, and, your Honor, just to reiterate something I said
14 before, we are still hopeful that we can reach agreement with
15 the Plaintiffs on this issue. If we are able to reach
16 agreement we will keep Special Master Dodge and the Court
17 apprised, because that would likely moot the need for briefing.

18 *THE COURT:* Yes. I guess the only thing I would say
19 about if you reach agreement is, if agreement is reached, you'd
20 want to get your agreed upon motion in on Friday with the
21 agreed upon proposed order.

22 I still think there should be a motion, it could
23 probably be much shorter, but I would want to know why I am
24 being asked to do some things, I'd want an explanation. I
25 could see it being a joint agreed upon unopposed motion for

1 entry of X, here is X attached, and here is why we believe it
2 is the right thing to do.

3 I don't think it moots out the motion, but it does
4 sort of change the procedural. If you are very close, but you
5 haven't reached the agreement and it is still Friday, then I
6 would expect the unilateral motion from the Plaintiff with the
7 proposed order.

8 *MR. GILBERT:* We understand, your Honor, and we will
9 do as you request.

10 *THE COURT:* Okay. I know you had a second point, so I
11 didn't want to overlook that. That takes care of what we will
12 call proposed motion practice, with an order that the Court
13 will set out today memorializing what we have just discussed
14 that relates to appellate rights arising from rulings on
15 amended personal injury complaint and the briefing schedule.

16 *MR. GILBERT:* Thank you, Judge. I am going to invite
17 Mr. McCloud to actually discuss the second issue initially and
18 then I will respond to him.

19 *MR. McCLOUD:* Your Honor, with the Court's permission,
20 I am actually going to invite either Mr. Barnes or Mr. Gugerty
21 to address that issue. They have been taking the lead on that.

22 *THE COURT:* Okay. Great. Good afternoon, Mr. Barnes
23 and Mr. Gugerty.

24 *MR. BARNES:* Good afternoon, your Honor. Your Honor,
25 on behalf of generic Defendants, we have engaged in discussions

1 with the Plaintiffs regarding the cases involving -- the claims
2 involving the generic Defendants, the distributors and the
3 retailers, and cases that also involve the brands. So, what we
4 have asked the Plaintiffs to agree to is the entry of Rule
5 54(b) certification of the final judgment as to all claims as
6 to the parties that were subject to your July 8th order
7 dismissing all claims, as well as the June 30 order as well.

8 Mr. Keller advised us yesterday that the Plaintiffs
9 would not be willing to agree to the entry of a 54(b)
10 certification of a final judgment as to the claims that were
11 ruled on as to the generics only and the distributors only and
12 the retailers.

13 So, we have agreed, with the special master's
14 assistance last evening, to propose a briefing schedule to your
15 Honor where you could consider the merits of our 54(b)
16 arguments and rule in an orderly way pursuant to motion.

17 The schedule we have outlined on those claims is
18 Monday, August 2nd, the Defendants would submit their motion in
19 support of their request for a 54(b) certification as to the
20 claims I have described, the Plaintiffs would file their
21 opposition on August 11th, and we would file our reply on
22 August 16th.

23 There is no time limit for your Honor in terms of a
24 ticking clock as to jurisdictional issues for appeal, and the
25 appeal would run from -- the time for appeal would run from the

1 date of the certifying order.

2 So, I think that is the state of play on the claims
3 that involve the brands and the dismissed Defendants, the
4 claims that we would want to take up with the other claims that
5 are going up pursuant to the Plaintiffs' Notice of Appeal per
6 your Honor's order on January 9th -- I'm sorry, on August 9th.

7 *THE COURT:* Again, to summarize, we sort of talked
8 about the relief sought in the first motion that was being
9 discussed, being by the Plaintiffs, relates to relief sought
10 for purposes of appellate rights arising from rulings on
11 amended personal injury complaint.

12 How would you characterize the relief that the
13 Defendants are seeking and which Defendants, again, would be
14 seeking it?

15 *MR. BARNES:* I believe I am accurate in saying that
16 the retailers and distributors will join in this motion, but it
17 would be the generic retailers and distributors motion
18 requesting the Court to certify certain claims by certain
19 parties under Rule 54(b) for final judgment, leaving behind the
20 claims that are not dismissed against the brands to be before
21 your Honor and continue in this MDL.

22 We can with work on the language, but that is my
23 summary for your Honor's consideration.

24 *THE COURT:* The briefing schedule that you would be
25 proposing would be Monday would be the motion. Which day would

1 be the --

2 MR. BARNES: I'll repeat them, your Honor. August 2nd
3 would be the Defense motion requesting the relief, August 11th
4 would be the Plaintiffs' opposition to the motion, and then the
5 Defense would file their reply on August 16th.

6 THE COURT: Okay. Attached to your motion, would you
7 envision, or could you also envision having a proposed order so
8 I can also visualize what the relief looks like in the form of
9 a -- not just a form order, granted or denied, but what it
10 actually looks like, which could be attached to the motion, but
11 also emailed to the Zantac email?

12 To the extent that the opposition by the Plaintiffs
13 would feel -- the Plaintiffs would feel that it would be
14 helpful -- the Plaintiffs may say we don't want anything at
15 all, so we are not submitting any proposed order because you
16 shouldn't do this, but to the extent that they agree in part
17 with what you are asking, but they think the order should look
18 differently, that they would include a proposed order with
19 their response.

20 Is that something -- and I am going to turn to the
21 Plaintiff in a moment to see whether you even agree with this
22 briefing schedule and want to be heard on that as well.

23 Is that something Defendants would contemplate and be
24 amenable to?

25 MR. BARNES: Yes, your Honor. I think we would be

1 submitting a proposed order setting forth the grounds for the
2 relief as required under the Eleventh Circuit case law, yes.

3 *THE COURT:* Okay. Do the Plaintiffs agree -- it
4 sounds like you don't agree with the relief being sought, but
5 with this kind of a briefing schedule as to the issue relating
6 to the generic distributor and retailers' request to have a
7 certification of certain claims and parties under 54(b)?

8 *MR. GILBERT:* Your Honor, Robert Gilbert on behalf of
9 the Plaintiffs. Before answering your question let me just say
10 I want to make sure the record is clear with regard to
11 something Mr. Barnes noted.

12 This is an issue that was, to my understanding, first
13 raised with us the day before yesterday during a lengthy call
14 that I participated in for almost two hours. This is not
15 something that we have been discussing for weeks, unlike the
16 matter that Mr. McCloud and I just covered with your Honor.

17 It was raised for the first time the day before
18 yesterday, and we informed the Defendants yesterday -- I think
19 we informed them on the call on Monday that it was not
20 something we would agree to, but we confirmed that yesterday.

21 So the record is clear, this, so the Court can
22 understand it, we view as being extraordinary relief. It would
23 implicate all one thousand plus short form complaints that are
24 on file in this MDL, not just the approximately one hundred
25 complaints that I believe only implicate claims brought against

1 generic retailers and distributors. So, we will vigorously
2 oppose this motion on the merits.

3 We had agreed yesterday to the briefing schedule that
4 Mr. Barnes just outlined. We agreed to it in part with the
5 understanding that our submission on the first issue would
6 be -- would find favor with the Court.

7 Now that we are going to be submitting a traditional
8 motion and the Defendants are going to be submitting a
9 response, and we have waived the reply, I do think that the
10 landscape has changed a little bit. I have no problem with the
11 Defendants filing their motion. They have apparently been
12 taking about this for weeks, but shared it with us recently.

13 I think we should go ahead and respond to that motion
14 within the local rules provision and let them file their reply
15 within the period that is provided. As Mr. Barnes noted, there
16 is no urgency to this issue. There is no appellate deadline
17 that is implicated by it, and it will give all parties the
18 opportunity to provide thoughtful analysis of a much more heady
19 issue, frankly, that I think deserves the Court's
20 consideration.

21 If the Court wants to shorten our response time by a
22 few days and have us stick with ten days after they file their
23 motion being -- not being any earlier than August 11, we, of
24 course, will abide by the Court's ruling. But given the change
25 in how we are doing the first one, it does implicate the second

1 one as well.

2 So, can we do it in ten days, our opposition? Yes.
3 Would I prefer to have the 14 days? Yes.

4 *THE COURT:* Okay. If there is no time urgency, can
5 that one be briefed out under the local rules by both page
6 limit and timing, or at least by timing? Then I will hear from
7 you on page limit.

8 *MR. BARNES:* By the local rules is fine with us, your
9 Honor. We would like it expedited, but I'd like to comment on
10 Mr. Gilbert's comment.

11 *THE COURT:* Before you do that, just so I heard you,
12 you are okay with the local rule?

13 *MR. BARNES:* Yes, your Honor.

14 *THE COURT:* Okay. So. we will do that by the local
15 rule deadline. Before you respond, are you all -- should you
16 do the page limit by local rules as well?

17 *MR. BARNES:* Yes, your Honor.

18 *THE COURT:* Mr. Gilbert?

19 *MR. GILBERT:* Yes, that works for us, Judge.

20 *THE COURT:* Okay. We will do an order on that as
21 well. I will hear from you, Mr. Barnes, but two orders will go
22 out today simply setting briefing schedules for two motions
23 that I will be getting along the lines of what we have just
24 discussed here today. Mr. Barnes.

25 *MR. BARNES:* Briefly, Mr. Gilbert was not involved in

1 this conversation, but the entire Defense team met with Mr.
2 Keller and the special master well before Monday to discuss
3 briefing issues and appellate issues, and on that call, while
4 we didn't get into the specifics, he was aware that we intended
5 to have all claims before the Eleventh Circuit by the generics.

6 It wasn't sprung on them in any sense, and we went
7 over in detail the Plaintiffs' proposal as to how -- the
8 appeals, and we worked with Mr. Keller before that. So, his
9 statement isn't entirely accurate.

10 *THE COURT:* All right. I know you have a lot going
11 on, and a lot of people are on some calls, some people are on
12 other calls, so I am going to assume that everyone is trying to
13 keep apprised, but it is hard for any one person, maybe other
14 than Special Master Dodge, to have all of the knowledge of all
15 of the issues, and maybe she doesn't even have that, but she
16 may be the closest person.

17 So, not a problem at all, and it's not affecting my
18 thinking. I want to give you the time you need, and with the
19 other motion, I will just reiterate the same things. Please be
20 very clear in what you are seeking, on whose behalf you are
21 seeking, what the relief is, what the basis is for it in the
22 law, whether there is case law, is this a MDL kind of relief,
23 is it -- if so, are there other MDLs that have done this, what
24 are the rules that you are relying upon.

25 Just try to be very, very clear and very much based in

1 the law, if the law exists. If you believe this is sort of a
2 discretionary thing, let me know so I am not -- if you don't
3 cite law, I am not chasing law that doesn't exist. Just try to
4 lay it all out there for me, and the same for the response.

5 *MR. BARNES:* Thank you, your Honor, of course.

6 *THE COURT:* Okay. Does that cover motion practice?

7 *MR. BARNES:* Yes, your Honor.

8 *THE COURT:* Post Motion to Dismiss motion practice.

9 *MR. GILBERT:* From the Plaintiffs' perspective, it
10 covers the post MTD motion practice, relating to the MTDs, yes,
11 Judge.

12 *THE COURT:* I can't shut it down because it is not on
13 the case management schedule, I have to allow this to go
14 forward? It didn't make it on to the schedule.

15 *MR. GILBERT:* We can always redo the schedule if the
16 Court --

17 *THE COURT:* No, no, no. Let's not open that can of
18 worms, not today at least. It sounds like everybody will be
19 heard, will be heard in the fashion and in the time that you
20 want to be heard. I understand that the first motion is the
21 one that is more time sensitive, the second one not so much,
22 although things are always treated as time sensitive in our
23 chambers.

24 What I mean by time sensitive, by a date, and I
25 suppose it probably would behoove the Plaintiffs to let the

1 Court know that date, whether it is the 8th or 9th, in your
2 motion papers. We will look forward to getting those by both
3 motion and also the proposed orders in Word format to the
4 Zantac email address.

5 Is that everything from everybody?

6 *MR. BARNES:* Yes, your Honor. Thank you.

7 *MR. GILBERT:* Yes, your Honor.

8 *THE COURT:* All right. Thanks so much, appreciate it.

9 Okay. So, now we will talk about something lighter
10 and of a different ilk. I guess we will call Mr. McCloud back
11 on and Mr. Lear.

12 It is actually always nice when the LDC and NextGen
13 lawyers are not only appearing just to tell me what should we
14 do with the LDC and NextGen lawyers, but they're actually there
15 on the screen because they are doing the heavy lifting and
16 doing the work, which I know you are doing. It's not that if I
17 don't see you on the screen I don't think you're doing it. I
18 know you are doing it.

19 I just think it is always nice for the judge to be
20 able to see the lawyers, and that goes for everyone, even,
21 let's say, PSC members who are doing work, but are not
22 necessarily having the interaction with the Court. I guess I
23 should let the leads know that, that it is helpful. It is
24 helpful for judges to know what lawyers are doing.

25 I think I mentioned this before, but, you know, when I

1 went through the leadership selection process, among the many
2 things that I did, I called other judges about the applicants
3 whom I had received in the application process when those
4 applicants had listed the cases they had worked on and the
5 judges with whom they had performed work in those cases to ask
6 what the judge's experiences were with those lawyers.

7 If the judge doesn't see the lawyer, and the judge
8 doesn't know the lawyer worked on a particular matter, and the
9 lawyer's name isn't on the submissions, and often it is just
10 the leads, it is hard for the judge to know, and I think it is
11 important that you apprise the judge, particularly in this
12 business of MDL where you may be seeking leadership
13 appointments in the future and will be using me or other judges
14 as references, so to speak.

15 I don't mean in the traditional sense, but someone may
16 call and say, oh, Lear, I saw he was on the Zantac case, or
17 McCloud, how did he do, or what did he do. I don't know, I
18 never saw McCloud, I have no idea, or, oh, yeah, McCloud, he
19 appeared several times, and this was my experience with him.

20 So keep that in mind. I don't really do this just for
21 like showcasing. I want you, Mr. McCloud, and Mr. Lear to know
22 that, and everyone else, this is real. How you conduct
23 yourself, even if it is a small matter -- I have always said
24 how you handle the small matters is equally important as how
25 you handle the big matters. Our talking about whether we are

1 going to have a breakfast on September 15, while it may seem
2 small, how you handle it is going to be noted by the Court and
3 that is sort of why I do it.

4 Also, it kind of takes the fear away a little bit,
5 right. The more you do something, the less intimidated you
6 are, the less mysterious it is. I just want you to know there
7 is substance behind why I like to see you, even though I like
8 to see you anyway, and I think it is good for you and it's good
9 for the other lawyers on the case so that they are really
10 mentoring you and helping you in this case and also the career
11 that you follow after this case with future MDLs, if you are
12 going to stick with the MDL business, and also it is good for
13 me to know and hear what you are doing.

14 With that really awesome introduction, let's hear what
15 you have on the agenda for this part of what we are discussing
16 today.

17 *MR. McCLOUD:* Thank you, your Honor. For the record,
18 Luke McCloud of Williams and Connelly for the Defendants.

19 Your Honor, we completely agree and we really
20 appreciate the opportunity to be seen and heard by the Court.
21 It is a very meaningful opportunity, as your Honor said, and I
22 think I speak for all of the LDC members and the NextGen
23 lawyers on that point, which actually brings me to the subject
24 that we wanted to raise with the Court today.

25 I know from speaking to my colleagues, the LDC members

1 greatly enjoyed the opportunity to meet the Court during the
2 earlier Zoom brown bag lunch session the Court hosted. If the
3 Court is amenable to it, we would be interested in another LDC
4 event, perhaps one scheduled around the September 15th case
5 management conference.

6 We thought that since that conference is currently
7 scheduled to be in person, we could also have a small in-person
8 LDC event, perhaps, as your Honor suggested, a breakfast before
9 the conference or a coffee after the conference.

10 Of course, as your Honor noted at the outset of the
11 hearing today, the situation with COVID-19 is evolving,
12 sometimes day to day, and we recognize that it may not be
13 feasible to have an in-person event in September, but we do
14 think that there would be real value in another LDC meeting
15 with the Court in whatever format the Court is comfortable
16 with.

17 Unless the Court has questions for me, I believe Mr.
18 Lear would also like the opportunity to say a few words on
19 behalf of Plaintiffs.

20 *THE COURT:* Thank you, Mr. McCloud. Mr. Lear.

21 *MR. LEAR:* Thank you, your Honor. Thank you, Mr.
22 McCloud. I don't have much to say other than ditto in the
23 sense that, for the Plaintiffs' side, we agree that having
24 another LDC and NextGen event for us -- the NextGen piece of
25 that has helped. Our Leadership Development Committee is, of

1 course, aware there is a smaller set, but there are a lot of up
2 and coming counsel also on the Plaintiffs' side that can get
3 benefit from these events, so we appreciate your Honor having
4 expanded the scope somewhat to afford that.

5 I suppose I would put in a word for in person. I
6 totally agree heartfeltly at the notion that safety is a
7 prerequisite, but when it comes time for the Court to have an
8 in-person case management conference, for example, having an
9 LDC NextGen component to that would be very valuable.

10 For some of the reasons at the very beginning of this
11 case management conference you already articulated, I know I
12 would just be preaching to the choir, but I guess I'd also make
13 the point, too, that there is a benefit to the litigation
14 itself, having an opportunity for the lawyers both within our
15 sides, given an opportunity to be together, because we are all
16 by Zoom ourselves, across the aisle with our colleagues on the
17 other side, and with the Court, all of that is sort of grease
18 to the wheels of the litigation.

19 It makes for a more impactful event in the moment, but
20 it also pays dividends down the line, so that is very
21 beneficial.

22 That is the only thing I would add to the excellent
23 presentation that Mr. McCloud has already made. With that, if
24 you have any questions I'm sure either or both of us are happy
25 to field those.

1 THE COURT: Excellent. I appreciate that. I take it,
2 since both of you were the ones designated to speak on the
3 issue, that I will conclude for purposes of this topic and this
4 proposed event that you all are taking the lead on behalf of
5 your respective sides. To that end, I guess what I would say
6 is, why don't you -- I am fully on board, so why don't you take
7 the lead and put it together.

8 I guess we should have plan A and plan B. Plan A
9 would be in person because, as of now, it is in person with our
10 case management conference. I would say be sensitive to both
11 the need to be inclusive and to have those participate in
12 person whom you think and they think and everyone thinks should
13 be present.

14 Be mindful also of whatever cost and logistical issues
15 there are. I want to be sensitive to that. I don't want
16 anyone to be heard saying, well, I had to go, and it is costing
17 us this. So, I am going to leave that up to you to balance
18 those. I would understand if somebody didn't come or if
19 someone's leadership didn't want someone to come because that
20 is costing someone X amount of money. Everything is always a
21 balance.

22 You can tell me whether, if we do it in person, should
23 it be fully in person, should it be hybrid, some in person,
24 some on Zoom for cost saving measures. I don't have a point of
25 view, I am just saying these are the kinds of things I would be

1 thinking about if I were leading this effort, but you are.

2 Also, what do you want to talk about. It doesn't have
3 to be scripted, so it could be that you don't have anything
4 scripted and it is open, or if there are particular topics that
5 you think you really want to hear the Court talk about, or you
6 want to talk about, I would say take that into account.

7 The other thing is, always think in terms of, like,
8 how can we do something that will not only benefit all of us in
9 this case, but might be able to be replicated in other cases.
10 The things that work well, of course, we hope we can share with
11 other judges. There is a vast array of communication channels
12 that go on within the MDL world. There is the Rules Committee,
13 there are conferences around the rules, there are conferences
14 around best practices.

15 You know that LDC has gotten a lot of coverage, you
16 know that diversity in all aspects of what we are doing,
17 including an MDL litigation, is a really big topic, so what can
18 we contribute to that conversation. What can we, as members of
19 the Zantac team, if you will, not only contribute to this
20 litigation, but how we might express that to others.

21 Just keep all of those things in mind and I will look
22 to Special Master Dodge to get updates about what you are
23 thinking and what it looks like, and I am just going to take
24 your lead on it. So thank you.

25 *MR. McCLOUD:* Thank you, your Honor.

1 MR. LEAR: Thank you, your Honor.

2 THE COURT: All right. Great. Take care and I
3 appreciate your presentation.

4 I think we will go to registry next. I know Mr.
5 Pulaski is hanging on by a thread with connectivity issues. I
6 am getting texts that he is on, he is off, so let's see.

7 Hi, Mr. Petrosinelli. Let me see if Mr. Pulaski is
8 with us or not. I don't see your video. Are you there by
9 audio? He is back off. If he gets on, anyone can let him know
10 he is welcome to butt in and join.

11 Mr. Petrosinelli, do we have anyone else -- I had in
12 my notes Ms. Johnston. Are you going to address first and then
13 Ms. Johnston should come on? All right, it's all yours.

14 MR. PETROSINELLI: Thank you, your Honor, Joe
15 Petrosinelli here for the Defendants.

16 Actually I have a pretty short report on the registry
17 this afternoon. I thought I would take advantage, since Mr.
18 Pulaski is not here to rebut anything I say, but he and I
19 actually spoke yesterday, and so we agreed on what we would
20 cover with the Court.

21 I think there are three things. One is, the registry
22 continues to grow. We continue to get claims submitted to the
23 registry, albeit at a slower pace than had been, which is to be
24 expected, but that, of course, as your Honor knows, under the
25 various pretrial orders, once a claim gets filed, that triggers

1 a new set of deadlines that are applicable to such claim,
2 namely the filing of a Census Plus form within 60 days, and
3 then we check to see if there are deficiencies. There might be
4 a deficiency process if there are, and then potentially an exit
5 notice process if the deficiencies can't be corrected.

6 So that machinery of the registry, I think it
7 continues to work well and is up and running and LMI is doing a
8 great job assisting us with that. So that is report number
9 one.

10 Number two is, we have made substantial progress,
11 probably even more so since the last conference, on the
12 collection of proof of use and proof of injury records, which
13 is a core function of the registry in connection with the
14 vendor Lexitas, the collection vendor for the registry. We
15 have many thousands of -- these would be claims in the registry
16 this are -- where the forms are not deficient, so people who
17 have filled out a complete form and have alleged one of the ten
18 cancers that the Plaintiffs' leadership has designated at the
19 moment that they are going to pursue.

20 Those are the ones we are focused on, I think for
21 obvious reasons, and we are making good progress on collecting
22 proof of use and proof of injury records as to those claimants.

23 That leads me to my third point, which is the next
24 step is to use those records to what I call -- Mr. Pulaski and
25 I have called true up the forms, meaning we have now

1 non-deficient forms where claimants have filled out their
2 allegations about use or injury, and now we have to look at the
3 records and see whether those match.

4 I think it is undoubtedly true that some of them
5 aren't going to match, and Mr. Pulaski and I are discussing a
6 process for and a timetable for doing that true up where --
7 because, as the Court knows, we want the data to be reliable in
8 the registry, because if it is not reliable, it is not very
9 useful, particularly as we head into discussions about, for
10 example, bellwether -- a process or bellwether selection, so
11 that is probably our next step.

12 It leads to perhaps the discussion with -- I know
13 Ms. Johnston wants to have with the Court about, because a
14 piece of that is getting records from the retailers, to -- that
15 is perhaps one of the more reliable proofs of use, is if
16 retailer records show that a certain claimant had purchased a
17 certain product.

18 So, I know Ms. Johnston is going to address the Court
19 as to that subject, but those are the main things that we are
20 dealing with in the registry now, and I guess, unless the Court
21 has any questions about that, I'd turn it to Ms. Johnston to
22 describe what the status is as to the retailer records.

23 *THE COURT:* Thank you, Mr. Petrosinelli.
24 Ms. Johnston, I will hear from you first.

25 I can't hear you. I am not seeing a mute button on

1 your computer, so it might be a computer setting. It doesn't
2 look like a Zoom setting, you are not muted.

3 *MR. PULASKI:* Judge Rosenberg, can you hear me?

4 *THE COURT:* Mr. Pulaski is on, and I can hear and see
5 you. I won't ask where you are, what kind of a room that is,
6 but I do know you are traveling and I think to a very nice
7 place. I won't disclose the whereabouts.

8 *MR. PULASKI:* Yes, your Honor. I apologize, I have
9 had a bit of a planes, trains, and automobiles day, and it
10 seems to just be getting worse, but we are all here and ready
11 to go.

12 I agree with everything Mr. Petrosinelli said, and we
13 are continuing to get additional CPS filed into the registry
14 daily. Everything is going well with the exit notices and
15 notifications to Plaintiffs' attorneys --

16 *THE COURT:* I think you froze, Mr. Pulaski. I heard
17 you up to a point.

18 *MR. PULASKI:* (inaudible) barely, and that is
19 really -- everything that Mr. Petrosinelli said I agree with.

20 *THE COURT:* Just so you know, there was a momentary
21 pause, so I know that the transcript -- don't worry, Pauline,
22 it will be okay. We will acknowledge there was an interruption
23 and we got the essence, Mr. Pulaski, of what you said, which is
24 things are going as anticipated and you agree with Mr.
25 Petrosinelli and his report. Is that accurate?

1 *MR. PULASKI:* That is accurate, your Honor.

2 *THE COURT:* Let's hear what Ms. Johnston has to say.
3 Do we have your audio on? No. I think that has happened
4 before. I don't remember how you fixed it. Do you have IT
5 support there? No.

6 *MR. PETROSINELLI:* Your Honor, might we skip to the
7 next item and then maybe we could circle back to Ms. Johnston?

8 *MS. JOHNSTON:* Your Honor, is this working?

9 *THE COURT:* Yes, now I can hear you.

10 *MS. JOHNSTON:* I dialed in with my phone, I needed to
11 be admitted from the waiting room, so my apologies to you.
12 Apologies for the technical interruption.

13 *THE COURT:* No worries. Yes.

14 *MS. JOHNSTON:* So, good afternoon, and I understand,
15 your Honor, that you have requested, and we wanted to provide
16 an update on records collection on behalf of the retailer and
17 pharmacy Defendants.

18 As your Honor knows, we established a retailer portal
19 that would permit claimants in the registry to submit certain
20 information depending on the retailer they are requesting
21 records from. That process had a bit of a slow start, I think,
22 as the portal was being set up, but I think that we are caught
23 up now and are continuing to collect both prescription and
24 loyalty card records on behalf of the retailers and those who
25 have elected to continue to go through the registry process

1 versus a subpoena or other process following the recent Motion
2 to Dismiss order.

3 Currently, we are on the third wave of those records
4 collection, working with LMI, and it is my understanding, at
5 least as of this morning and not having spoken to each
6 individual retailer, but that the third wave is to be submitted
7 to LMI so that they can be dropped into the individual claimant
8 portals on their website, or through their database, towards
9 the end of this week and early next week as those continue to
10 come in from the various retailers.

11 I have spoken to LMI again this morning, and they have
12 collected a pretty substantial number of additional claims that
13 will present the fourth wave that they are going to roll out
14 shortly.

15 *THE COURT:* Okay. So, I know there was this window of
16 a 60 to 90-day period. Are you going to get the records in
17 full delivered within that time period?

18 *MS. JOHNSTON:* Yes, your Honor, we are on track to do
19 that.

20 *THE COURT:* What is that date? By when?

21 *MS. JOHNSTON:* I believe that -- it's somewhere in the
22 first of June, so 90 days would be the first week of August.

23 *THE COURT:* So, you are saying by the first week of
24 August the -- would it be rolling -- is it rolling now or would
25 it be rolling as of the first week of August, or would all

1 records be in by the first week of August?

2 MS. JOHNSTON: The goal is to have all of the records
3 that are currently out for collection produced by next week. I
4 believe that there have been rolling productions made. Certain
5 retailers are getting significantly more records request, and
6 those are the ones that have taken longer. For those that have
7 fewer requests, I believe LMI already has those records in
8 their database, but they have been rolling as the process has
9 continued.

10 THE COURT: Okay. So, you are kind of remaining as
11 the point person and overseeing all of those record productions
12 and keeping in touch with counsel who remain in the case about
13 the status of that?

14 MS. JOHNSTON: Yes, your Honor. I am continuing to be
15 the point person there and also speaking with the special
16 master on these issues. To date, I have not heard from any of
17 the retailers that they are having any difficulty meeting the
18 60 to 90-day window. We will certainly apprise the special
19 master and the other parties if there is an issue there.

20 THE COURT: Okay. As I understand it, different
21 requests come out from LMI, so maybe there are different and
22 new requests that are going to be coming out shortly, and so
23 the ongoing requests would then need to be responded to by the
24 retailers.

25 MS. JOHNSTON: Yes, your Honor, that is correct, and I

1 think that what they have been doing is getting the requests
2 that come in through the retailer portal and waiting until they
3 have a sizable bucket to then send out to the other retailers
4 via a spreadsheet that goes to each of the retailers' counsel.

5 So, I think they have gotten that fourth wave of
6 sizable buckets and they are going to be getting those out
7 shortly.

8 *THE COURT:* Okay. As I understand, they may be trying
9 to do it monthly or so.

10 Mr. Petrosinelli, does that all sound right? Is there
11 anything that you wanted to respond to in terms of that
12 timeframe and Ms. Johnston's ongoing role? For which I am
13 thankful for your ongoing participation in this, Ms. Johnston.

14 *MR. PETROSINELLI:* This is Joe Petrosinelli. No, your
15 Honor, thank you.

16 *THE COURT:* Okay. I appreciate it, and again, I would
17 ask that you continue to remain on top of it, diligent,
18 responsive, and to the extent that you perceive problems before
19 they occur, let Special Master Dodge know so that nobody is
20 unfairly surprised or unfairly prejudiced.

21 But based on your presentation today, everybody is
22 going to be working on the assumption that the records will be
23 timely produced within the first week of August so that, as Mr.
24 Petrosinelli says, among others things, the registry can work
25 as it always intended to operate.

1 MS. JOHNSTON: Yes, your Honor, and thank you.

2 THE COURT: Okay, thank you so much.

3 Mr. Petrosinelli, with respect to the registry in
4 general, any administrative matters, vendor expenses, any other
5 costs, bills, things of that nature that I can be helpful to in
6 terms of communicating what needs to be done? I'd hate for
7 anything to be shut down because entities aren't being paid.

8 MR. PETROSINELLI: Yes, your Honor, Joe Petrosinelli
9 again. In terms of vendor bills, there have been invoices sent
10 out to the Defense groups.

11 I should let the Court know, I guess, that -- I am
12 sure the Court probably assumes this, but with the dismissal of
13 the other groups of Defendants -- we had had a cost sharing
14 agreement per PTO 15 among the Defendants, and what we have
15 agreed as a Defense group is that that cost sharing agreement
16 would be in effect through -- for work done through June 30th,
17 and the timing of your Honor's orders is convenient because it
18 sort of lends itself to that cutoff for work that starts --
19 starting in July that the brand Defendants, as the only
20 Defendants remaining in the case, would be solely responsible
21 for the registry costs and invoices.

22 In terms of the outstanding invoices, to your Honor's
23 question, some of them have been paid and some have not. It
24 depends on the vendor and it depends on the Defense group.

25 I think that, you know, we should probably get the

1 vendors -- the older invoices paid, and I know we are trying to
2 do that. There is a little administratively challenge on our
3 side given the number of groups and number of Defendants, but I
4 know we are all trying to do that.

5 *THE COURT:* Okay. All right. I appreciate that, and
6 I know that in operating all of the things that are going on
7 between LMI, Lexitas, the special master, and maybe there are
8 other vendors and bills and invoices, and certainly it is not
9 my intent to get in the middle of those kind of administrative
10 details, but I do want -- to the extent that it implicates the
11 operations of the institutions and structures that the Court
12 has put in place, I feel obligated to at least address it.

13 So, to the larger audience, those of you who are
14 responsible for your portion of payments to the entities that I
15 have named and persons I have named, or any others, I would
16 just really, you know, implore you to focus on that during this
17 window that we have now to get the invoices paid. Maybe if we
18 can set a deadline of August 15th, if that seems fair and
19 reasonable -- do you think that is fair and reasonable, Mr.
20 Petrosinelli?

21 *MR. PETROSINELLI:* Your Honor, I think certainly for
22 the older invoices that would be fair and reasonable.

23 *THE COURT:* Okay. For whichever ones have been out
24 there for some period of time, if everyone can look to -- you
25 know, focus on that and have the discussions you need to have,

1 the questions that need to be asked if things need to be
2 clarified, and get that all cleaned up as of August 15th, that
3 would be great, and so we kind of have a clean slate moving
4 forward.

5 *MR. PETROSINELLI:* Thank you, your Honor. I will
6 communicate with the groups and look to clean things up by that
7 date.

8 *THE COURT:* Okay. All right. I think that sounds
9 great. Was there anything else that you wanted to go over with
10 respect to the registry?

11 *MR. PETROSINELLI:* No, your Honor, not for me. I
12 don't know where Mr. Pulaski is, but I will send the hostage
13 rescue exculpation team as soon as the conference is over.

14 *THE COURT:* I couldn't quite tell if he was in a
15 train, a plane, a contraption, but he may need some help.

16 *MR. PETROSINELLI:* One never knows with Mr. Pulaski.
17 I will try to help him. Thank you, your Honor, good to see
18 you.

19 *THE COURT:* You, too. Be well.

20 Last, but certainly not least, the Federal/State
21 presentation with Mr. Agneshwar and maybe Mr. McGlamry may
22 join. Whoever would like to join, welcome.

23 *MR. PULASKI:* Your Honor, Adam Pulaski for the
24 Plaintiffs again. I am going to let Mr. McGlamry take over for
25 me just because the quality is poor with the audio and the

1 video here and I don't want to interrupt the Court. Mr.
2 McGlamry and I have been working hand in hand for the last 48
3 hours on this, and he is prepared and ready to go.

4 MR. McGLAMRY: Yes, your Honor, Mike McGlamry. I
5 guess I am going to play Steve Martin to Adam's John Candy in
6 the movie, so I am prepared to go forward, although I
7 understand that Anand will lead this off.

8 THE COURT: Okay. Terrific.

9 MR. AGNESHWAR: Your Honor, I am used to being double
10 teamed. I think on my last document it was me against four of
11 them, so two is nothing.

12 THE COURT: Take it as a badge of honor.

13 MR. AGNESHWAR: On this one, your Honor, though, we
14 have talked -- at least I talked to Adam in advance, and I
15 think this presentation will be relatively uncontroversial and
16 factual.

17 We provided the Court ahead of time with a chart that
18 I think is hopefully responsive to what you are looking for,
19 which is a listing of all of the State Court Zantac cases and
20 what kind of orders have been entered in those cases, how many
21 Plaintiffs are pending, and that sort of thing.

22 I do have a little PowerPoint that I wanted to focus
23 on, just a couple of the jurisdictions where there has been
24 more activity just to advise the Court as to what is going on.

25 So, let me try to -- I actually haven't shared my

1 screen since the very first CMC that we had here, so hopefully
2 this will work.

3 *THE COURT:* We did a trial run today and it went well.

4 *MR. AGNESHWAR:* We did, yes.

5 *THE COURT:* Hopefully it will go as it had. There you
6 go.

7 *MR. AGNESHWAR:* Okay. So, your Honor, as with every
8 large-scale nationwide litigation, there is an MDL, but there
9 is also various State Court cases pending around the country at
10 varying levels of activity.

11 In this litigation, the vast majority of cases,
12 particularly when you take the registry into account, are in
13 the MDL. I think we are up to nearly 2,000 cases filed and
14 over 100,000 cases in the registry. And after that, we have --
15 there is the California litigation, there's a JCCP in
16 California, and I have a slide about that.

17 There is litigation in Tennessee, in two different
18 counties in Tennessee, and those cases have been proceeding,
19 and they have also been coordinating between single judges in
20 Chattanooga and in Memphis.

21 And then there is a handful of one off cases, one in
22 New York, one in Illinois, one in Texas, and a couple of State
23 AG cases in Baltimore and in Santa Fe, New Mexico.

24 So, with that, I will go to the first slide and talk a
25 little bit about California.

1 So, the California cases have generally been filed
2 against the brand Defendants and local retailers. By local, I
3 mean local to California. And there was -- there is a
4 mechanism in California to coordinate those cases to a
5 particular county, and those cases have been assigned to Judge
6 Winifred Smith in Alameda County. Alameda is where Oakland is.
7 But Judge Smith is retiring, I believe she is retiring this
8 coming month, in August, so we are expecting a new judge to be
9 assigned any day now.

10 We have had two case management conferences before
11 Judge Smith, and at the last one she told us that a new judge
12 would be assigned by the time of the August case management
13 conference. California is a jurisdiction that is very
14 sophisticated and far along in its management of these types of
15 cases, and has their own rules and processes and the like that
16 the parties have to take into account when you litigate there.

17 With that in mind, the parties basically sat down and
18 negotiated a whole series of agreements, and some of these were
19 waiting for the judge to sign off on them, but we think that is
20 going to happen, we just haven't seen them yet.

21 Basically, what we have in California is that we are
22 going to have a trial in October of 2022, and leading up to
23 that is, we are going through a bellwether selection process
24 right now, that is going to be narrowed down, and ultimately
25 there will be Sargon, that is California's version of Daubert,

1 briefing and presumably argument and hearing in the summer of
2 2022, as well as dispositive motions and the trial on
3 October 10, 2022.

4 Now, in Alameda County there are 1135 Plaintiffs, but
5 actually there is only 720 California residents, and it is our
6 position -- the Defendant's position is that there is not
7 jurisdiction over the non-California residents. One of the
8 orders deals with the process to adjudicate those issues. But
9 the bellwether selections are from these 720 California
10 residents.

11 *THE COURT:* So, the briefing on Daubert, or Sargon, is
12 that akin to what we have when we have our briefing on general
13 causation Daubert motions where we have it fully ripe by July
14 of 2022? Would I be comparing apples to apples if I looked at
15 our July 18, 2022 date and that September 7, 2022 date?

16 *MR. AGNESHWAR:* That is right, your Honor. Sargon is
17 California's version of Daubert. So, the scheduling order has
18 a briefing that ends up, in California, closing on September 7,
19 2022, and I believe our case has briefing that closes in July
20 of 2022.

21 So it is kind of very similar timeframes, maybe the
22 MDL is a month or two in advance of that.

23 *THE COURT:* And in your experience -- I have been
24 privy to certain judges talking about sitting together, hearing
25 arguments together, coordinating. Before we leave the

1 California slide, and I don't want to put you on the spot and
2 if you are not comfortable responding at this point, it can be
3 for another day, but would there be something that would make
4 sense for this Court and that Court to be discussing,
5 coordinating on any issues, including, but not limited to,
6 Sargon, Daubert, given the close proximity in timing it
7 appears?

8 Are these dates, by the way, that have been set in
9 place or you are hoping or expecting that they will be?

10 MR. AGNESHWAR: I have not seen the final order. I
11 believe the docket says that it has been entered, but I haven't
12 received a copy of it. At the last hearing that we had before
13 Judge Smith there was nothing to indicate that the judge had
14 any disagreement with this order.

15 Obviously, everything is subject to change, and a new
16 judge is going to be assigned to the case that may have
17 different views, but I expect that something close to this will
18 remain in effect, especially since this was all part of a, you
19 know, very, very detailed, lengthy, roll up your sleeves
20 negotiation on a whole bunch of issues related to case
21 management that this was just a part of that.

22 So, I am optimistic that it will ultimately be
23 approved.

24 But in response to your question, I think the
25 opportunities for collaboration are absolutely there, and in

1 two recent litigations that I have done, one with Judge Rogers
2 in the Northern District in the Abilify gambling litigation,
3 and one Judge Wilson did in New Jersey in the Plavix
4 litigation, even though the Courts had their own rules and
5 their own process and their own case law, the judges in the
6 other State Court litigations were invited by the Federal
7 judges to sit in on the Daubert hearings and they did so in
8 both of those cases.

9 So, I think that is definitely something that we see
10 on our side as something that would be useful, I mean as long
11 as the judges believe it is useful to them.

12 *THE COURT:* So you will keep the Court apprised if a
13 new judge is assigned and maybe the contact information for
14 that judge?

15 *MR. AGNESHWAR:* Yes, absolutely. With the chart that
16 we provided, your Honor, we included the contact information
17 for all the judges assigned to these cases right now, and we
18 will update it when we learn of the new judge in the California
19 cases.

20 *THE COURT:* All right. Thank you.

21 *MR. AGNESHWAR:* Of course. Moving on to Tennessee, it
22 is one state, but there is not a mechanism for statewide
23 coordination, so it is done on a county-wide basis.

24 *THE COURT:* I am sorry, Mr. Agneshwar, can you go
25 back? Could I just ask another question?

1 MR. AGNESHWAR: Sure.

2 THE COURT: I asked about Daubert, and just noting the
3 date kind of close to our date, assuming that their date
4 remains as is -- it is true we are a little ahead because ours
5 is fully briefed in July. Then they have jury selection for
6 first bellwether trial.

7 I am presuming that the -- that would contemplate that
8 the motions are fully ripe on Sargon, as well as any other
9 dispositive motions, argument, rulings, and then going right
10 into a bellwether trial? I mean, is it contemplated that there
11 might not be rulings, but there would still be a bellwether
12 trial, or is it contingent upon whether rulings will come out?

13 MR. AGNESHWAR: I don't think those kind of details
14 have been fleshed out, especially since we don't have a new
15 judge. I think right now, it is contemplated that things will
16 move pretty quickly between the close of briefing and the
17 trial.

18 Obviously, if the judge feels that they need more time
19 or something else happens, or they want to push something back
20 a little bit, or push something forward, that all can be
21 discussed with the new judge, but right now, this is what has
22 been agreed to by the parties and proposed by the Court.

23 THE COURT: So the selection of that bellwether trial
24 would be exclusively among and between the attorneys who are
25 litigating in that case, and whatever points of interest there

1 may or may not be from that trial and that case selected as it
2 relates to the MDL, it will be what it will be.

3 MR. AGNESHWAR: Yes. So, in California there is
4 not -- as your Honor knows full well, this was the subject of a
5 large section of the argument that we did on the schedule.

6 We have a structure in the MDL where general causation
7 is going to be decided first, and then depending what, if
8 anything, is left after that, we get into case specific
9 discovery.

10 That structure is not there in California. General
11 causation will be adjudicated as part of the initial bellwether
12 cases, and basically they will be -- basically, the way the
13 cases will be tried, there is an agreement they will be several
14 months apart, but the first one will be, after a lot of
15 winnowing down and strikes and things, will be a single
16 Plaintiff case selected by the Plaintiff, and then it will be
17 the Defense selection, then it will be the Plaintiff, and then
18 it will be the Defense again, so that is the way that is going
19 to work.

20 But because in our case we have the structure where
21 the Plaintiffs have taken basically everything that has been
22 filed and narrowed it down so far to ten cancers, and then
23 these are going to be litigated in general causation, then
24 whatever is left, if anything, is left, it is a different
25 structure all together.

1 THE COURT: Okay. Thank you.

2 MR. AGNESHWAR: So, that brings us to Tennessee. I
3 believe the Court has already reached out -- I don't recall if
4 you have actually spoken to Judge Bennett or not, but I think
5 at one of the prior conferences your Honor mentioned that you
6 reached out, at least emailed back and forth with him.

7 THE COURT: Yes, I did.

8 MR. AGNESHWAR: There are 43 Plaintiffs in Hamilton
9 County, and there is a case management order in that case, and
10 Judge Bennett had motions to -- we filed Motions to Dismiss
11 very much similar to the ones we filed in the MDL. Judge
12 Bennett ruled on those motions and pretty much aligned with how
13 this Court ruled in the MDL.

14 The Plaintiffs then amended their complaints and now
15 there is briefing on the second round of Motions to Dismiss
16 underway.

17 There is a limited case management order in place that
18 has the workup of these cases through responses to expert
19 interrogatories, and essentially the key dates here are, by
20 October we have deadline for depositions of Plaintiffs;
21 December, deadline for depositions of Defendants; February, the
22 deadline for Plaintiffs' expert interrogatory responses; and
23 April 2022, deadline for Defendants' expert interrogatory
24 responses.

25 THE COURT: So they have only gone that far, in other

1 words.

2 MR. AGNESHWAR: Exactly. Exactly. But it is another
3 situation where I believe in our case, that the Plaintiffs'
4 expert reports are due in December of 2021, and then -- I wrote
5 this down actually. January 31st for ours, and then
6 February 21, 2012 for rebuttal, so again pretty similar time
7 frames.

8 THE COURT: Yes, that is correct.

9 MR. AGNESHWAR: That brings us to the other
10 jurisdiction, Shelby County in Tennessee, and this case has
11 been assigned to Judge Stokes, and again we had a round of
12 briefing on Motions to Dismiss and the judge entered orders on
13 those motions that, again, pretty much tracked this Court's
14 rulings, and I believe that the Plaintiffs are going to amend
15 after that. Amended complaints are due in September of 2021,
16 and we haven't gotten to the point in these cases of agreeing
17 to, or the Court entering a scheduling order.

18 There are about half the number of cases in Shelby
19 County as in Hamilton County, there are 20 Plaintiffs there.

20 THE COURT: Okay.

21 MR. AGNESHWAR: And finally, just to give the Court a
22 sense of what else is out there, there is a single Plaintiff in
23 New York County, and that case is going through Motions to
24 Dismiss. I think the briefing is going to be -- it has either
25 been completed or shortly will be completed.

1 There is a single Plaintiff case against the brands in
2 Cook County, Illinois. That is going through Motions to
3 Dismiss briefing.

4 There are two AG cases, which are kind of consumer
5 fraud, nuisance, that type of case, one in City of Baltimore
6 and one in New Mexico. Your Honor has ruled on motions to
7 remand in those cases. Now they are back and they're going
8 through Motions to Dismiss. I think Baltimore, the briefing
9 has not yet started yet, but will commence pretty soon.

10 Then there is a Texas case in Nueces County, which is
11 Corpus Christi, Texas, and that case was a single Plaintiff
12 case and it was filed close to a year ago, i believe, and it
13 was filed against a local retailer, a third party, and named
14 the brands. In that case, there is a scheduling order and I
15 expect motions will be filed shortly.

16 In that case, there is a scheduling order that has the
17 Plaintiffs' expert reports due on February 1st; the Defendants'
18 expert reports due on March 3rd, this is 2022; an April 4,
19 2022, discovery deadline, that is my wife's birthday; an
20 April 11th deadline for Daubert and dispositive motions; and a
21 trial date right now of May 2, 2022.

22 *THE COURT:* Okay. Do we get all of the scheduling
23 orders as attachments to what you submitted to the Court?

24 *MR. AGNESHWAR:* It was our intent to attach them all.
25 If one was inadvertently left off, I apologize.

1 *THE COURT:* They may be here. Those would be things I
2 would want to look at more carefully.

3 Which was the case that you said there was going to be
4 a trial, and what did you say the trial date was, May?

5 *MR. AGNESHWAR:* The trial date is May 2, 2022. This
6 trial date was entered, I believe, in January of this year, and
7 that was when the schedule in the MDL was what it was before it
8 was pushed back.

9 *THE COURT:* You said that was New York, the May 22?

10 *MR. AGNESHWAR:* No, that was Texas, a Nueces County,
11 Texas case.

12 *THE COURT:* Yes, I see that. I have that docket
13 control order with the judge's signature there.

14 Okay. And again, your experience with state trials
15 that may be going to trial, do they actually go to trial --
16 State cases that actually go to trial in advance of any trial
17 in the MDL is --

18 *MR. AGNESHWAR:* Honestly, your Honor, it happens
19 sometimes and it doesn't happen other times, it just depends on
20 a lot of factors, the jurisdiction, the docket in the
21 jurisdiction, how fast the Court wants to move it, the
22 Plaintiffs' lawyers and whether they want to go ahead of the
23 MDL or with the MDL. There is just no rule, but in nationwide
24 MDL litigation this just happens from time to time.

25 *THE COURT:* They have their Daubert motions to be

1 filed by 4/11 in the Texas case.

2 MR. AGNESHWAR: Exactly.

3 THE COURT: Okay. All right.

4 MR. AGNESHWAR: I think that is the end of my
5 presentation. I just want to reiterate that -- I want to
6 reiterate that this Court has, you know, obviously presided
7 over this case the longest and has delved into the science, has
8 delved into like key issues of the case, has heard multiple
9 rounds of briefing, and there is a lot of opportunities, I
10 believe, for collaboration with these various Courts.

11 I think it has already been happening, as the Court
12 has pointed out, with the judges in Tennessee. At many of
13 these conferences we go to everyone is, obviously -- whether or
14 not they are ultimately going to -- whatever they are going to
15 do vis a vis the MDL, there have definitely been questions at
16 each case management conference as to what is going on in the
17 MDL, so I think there is definitely interest there.

18 In my own experience, that kind of collaboration most
19 of the time is helpful and desired.

20 THE COURT: Okay. I do see the chart that you
21 attached that has the -- all of the contact information for
22 those judges who are involved in these various cases, with the
23 exception of Judge Smith who may be replaced, and that will be
24 updated.

25 Mr. McGlamry, do you agree or disagree with anything

1 that has been presented or said with respect, or have any views
2 about -- and Mr. Pulaski, about collaboration that can and
3 should look like from your experience?

4 *MR. McGLAMRY:* Your Honor, Mike McGlamry for
5 Plaintiffs. Let me kind of respond to that in this way,
6 because I think it is sort of one of those longer answers than
7 a yes or no.

8 Let me begin by saying, as you know this, and I know
9 the special master knows this, from the beginning of this
10 litigation, the PSC, Plaintiffs Steering Committee, and the
11 coleads, and even before we were officially in those positions,
12 we were committed to this MDL, and we have remained that way
13 from that point, and we have worked to make it the focus of all
14 of this litigation. I think if you look at the numbers that
15 Mr. Agneshwar referenced, that is clearly the case.

16 I also will say, though, that we do not speak for the
17 Plaintiffs' counsel in those State Court litigations so that,
18 you know, they don't have a voice here, and my guess is,
19 although I --

20 *THE COURT:* May I ask you in that regard, are there
21 some Plaintiffs' attorneys who are litigating in the MDL and
22 also litigating in these State cases?

23 *MR. McGLAMRY:* Yes, I am sure there are in some
24 combinations, yes, your Honor.

25 What I would say is that most likely, if you ask those

1 Plaintiffs' counsel -- you talked about an interest in
2 collaboration and coordination with us. I am not sure exactly
3 what their position would be. Your Honor asked about this
4 issue of the Sargon and the Daubert, which I will get to in a
5 minute, about whether or not they would be interested and so
6 forth.

7 From our perspective as coleads in this MDL, I will
8 use California, the JCCP, as sort of an example, number one,
9 because it is the largest piece of litigation other than the
10 MDL. Mr. Agneshwar referenced what has been called -- or what
11 has been submitted jointly by the parties as PTO 4, which deals
12 with bellwether selection schedule and preference motions, as
13 we understand it, although it is secondhand, that the Court has
14 entered it, but it just has not made its way to counsel. As I
15 understand the JCCP rules out there, they don't necessarily
16 have to have an electronic system set up for that coordination.

17 But the point being is, for example, that PTO 4, we
18 were not consulted. In fact, until maybe yesterday, we were
19 not even informed that that was negotiated by the brand counsel
20 and counsel for the retailers in California, with Plaintiffs'
21 counsel, under a confidentiality agreement to where we would
22 not be engaged, consulted, informed.

23 And so, again, I say that for the purpose of -- I
24 cannot speak for Plaintiffs' counsel there, and I would expect,
25 just like the Court might wonder, why were we not consulted if

1 there is really an interest in coordination and collaboration.

2 I would say also, for example, with the California
3 scenario, as I understand the PTOs that have been gathered and
4 are part of the submission here today, PTO 1 I understand is
5 sort of a leadership order in that proceeding which was
6 entered, I believe, the 1st or 2nd of June of this year, and
7 then PTO 4, obviously, was submitted before PTO 5, which has
8 been entered.

9 That order was negotiated and submitted to the Court
10 in less than a month or so. We did not participate, were not
11 consulted or informed about these decisions, proposals, or even
12 that there was an agreement from either Plaintiffs' counsel or
13 from Defense counsel, the brands and the retailers.

14 For example, as to the bellwether process, we
15 understand, as Mr. Agneshwar referenced, there are about 720
16 cases that are California cases that are subject to that
17 selection. There are no designations of cancers in that
18 litigation that I am aware of, so there are no limitations on
19 type of cancers.

20 And there is no, as far as I can tell from the orders
21 and what we have heard, any, you know, limitations or
22 parameters of usage, dosage, formulation of Zantac in terms of
23 usage, and under that PTO, as I believe, the date was July 2nd,
24 and I don't know how this plays out in terms of time, that
25 Plaintiffs would provide what I consider rudimentary

1 information about each of those 720. It is an attachment to
2 that order, I think it is 18 data fields, name, address, Social
3 Security number, it is very limited. That then the Defendants
4 would reduce that bellwether pool from 720 to 100 within two
5 weeks without any more information, and that within that point
6 in time, the Plaintiffs would provide what I think they call a
7 PPF form, which here we have a CPF. I am not sure if they are
8 exactly the same, comparable, smaller, larger, but whatever
9 that is, that order contemplates that that will be provided to
10 the Defendants.

11 And that within 60 days, the Defendants, without
12 anything else, will pick ten out of those hundred, so that by
13 October of this year, the Defendants and the Plaintiffs would
14 each have selected ten cases for bellwether.

15 So, you know, I say that in the sense that I know your
16 Honor has PTO 65 outstanding here for us, that we will be
17 discussing with the special master that process as well. And I
18 say that also in the sense that, again, we have not been
19 consulted or had any discussions with the Defense about this in
20 the context of putting those things together.

21 And just like in Texas, I know Mr. Agneshwar mentioned
22 Texas, we were not consulted by Plaintiffs or Defendants as it
23 related to their scheduling order, and same with Tennessee.

24 So, although we are obviously committed to this MDL
25 and we want to push this as expeditiously as possible, we

1 cannot speak for those counsel in those cases, and they are
2 different at some level, as I mentioned about the California
3 scenario. Mr. Agneshwar did reference the Texas case as being
4 one against the retailer, a then third party, the brands and
5 others, which I think is correct, but I don't know that -- we
6 are not looking at sort of the scope of that case, that is one
7 case, just like the other litigations.

8 I did not even know until sort of -- we were provided
9 this information that there was a case filed in New York, and
10 so we don't know sort of the context of it. Obviously, I
11 assume that is something that has just come on board in terms
12 of a filing.

13 So, as you know, your Honor, we are here, we are
14 working as hard as we can go on what we have, and what is
15 before us, and what we agreed to do, and what we negotiated
16 with the Defendants and with the special master and the Court,
17 and because we were not invited to any of the others, you know,
18 we can only sort of respond to what we have going on, which we
19 think is where we want to be, and what we want to do.

20 So, we don't want anything to sort of mess up our
21 process either that we have in place, that we can put together
22 to make this happen as expeditiously as possible here.

23 *MR. PULASKI:* Your Honor, if I may, Adam Pulaski. Am
24 I coming in clear okay now?

25 *THE COURT:* You are, you are in a new location.

1 MR. PULASKI: I apologize for that. I just wanted to
2 say that, in addition to everything that Mr. McGlamry so
3 eloquently spelled out for you with respect to the agreements
4 that have happened with the other State courts that we were not
5 made a part of, we are committed to the MDL being the focal
6 point of this litigation. Over 95 percent of the claims are in
7 this litigation. We continue to push forward, as Mr. McGlamry
8 stated, pursuant to your scheduling order that you have put
9 out, and we will continue to do that and move forward.

10 As it relates to the scheduling orders and trial dates
11 in Texas, in California, and elsewhere, we are okay with that.
12 We don't believe it takes away from the MDL being the focal
13 point of this litigation. Obviously it was agreed to in
14 California by Defendants' and Plaintiffs' counsel. They agreed
15 to the date November of 2022. They did that without our
16 knowledge, and we are okay with taking a verdict in California
17 before we get to trial here, but we will continue down the path
18 that we have, and we will pursue it as long as we can and as
19 far as we can.

20 And with respect to everything else, we -- including
21 Texas, we just want to make sure the Court understands that we
22 do consider this the focal point of the litigation, and the
23 states -- the State Court attorneys that I have spoken with a
24 number of times over the last several days, we have talked
25 about loosely coordinating, which we have, so that there is not

1 duplicative discovery, that they will have access, pursuant to
2 the common benefit orders, to the discovery that has been
3 propounded to us in our litigation, and they will have their
4 additional discovery that they have either agreements --
5 private agreements with Defense counsel already to get
6 additional discovery in State courts pursuant to their rules
7 and state laws, and additional discovery that they are going to
8 get on their own through their State Courts without agreement.

9 *THE COURT:* You said we have access to the common
10 benefit materials. Is that because they signed an agreement
11 under the common benefit order here? Are they
12 participating attorneys?

13 *MR. PULASKI:* Correct.

14 *THE COURT:* Do they have cases in the MDL?

15 *MR. PULASKI:* I can tell you the attorneys in
16 California have cases in the MDL that I am aware of, and the
17 attorneys in Texas have cases in the MDL that I am aware of, as
18 I believe the Court is as well.

19 *THE COURT:* Do you have any attorneys who are not --
20 who do not have cases in the MDL, but have cases in these other
21 states and are signing participating agreements -- I hope I am
22 referring to it correctly -- from the common benefit order? I
23 think that's what they were called, weren't they?

24 *MR. PULASKI:* Yes, your Honor. There are attorneys
25 that don't have cases in the MDL that are signing participation

1 agreements with the MDL as a coordination effort, so that there
2 is not duplicative discovery, and so that the Defense does not
3 have to provide the same discovery that they have already
4 provided in the MDL.

5 They may have to provide additional discovery to the
6 State Courts, but that is how we are loosely coordinating with
7 them, and it is going splendidly well, as can be seen through
8 the scheduling orders, trial dates, and everything else that
9 seems to be moving forward expeditiously and efficiently in
10 State Courts, and we are moving at our own pace, which is fine.

11 We are happy with where we are at here. We are happy
12 with where the State Courts are, where they are at, and as far
13 as co-counsel with me, leadership, Mr. Gilbert, Ms. Finken, and
14 Mr. McGlamry, we couldn't be more pleased with the way that
15 everything is being coordinated as is.

16 MR. AGNESHWAR: Your Honor, could I respond to -- I'm
17 sorry, if Mr. Pulaski is not done, I will let him finish.

18 MR. PULASKI: I am finished.

19 THE COURT: Yes.

20 MR. AGNESHWAR: I don't want to belabor this, but I do
21 want to respond to a couple things.

22 I don't know what Mr. McGlamry is talking about when
23 he says there was some confidentiality agreement that the
24 parties could not tell the MDL lawyers about negotiations in
25 California. My understanding is Grant Wisner was negotiating

1 there and he has cases in the MDL, too, and I think he is even
2 on this hearing right now.

3 So, I'm not sure what he is talking about. I know
4 from our standpoint, we have to deal with the hand that is
5 dealt us. We have cases filed against our clients in various
6 jurisdictions, and no matter what we believe is the ideal way a
7 case should be litigated, we have to negotiate what we think is
8 the best agreement for our clients in light of what the
9 particular procedures and rules and processes are in every
10 particular jurisdiction.

11 That does not in the slightest mean that we are
12 suggesting anything -- anything less about the leadership in
13 the MDL. From day one in this litigation, when I presented the
14 opening, basically, of this litigation on behalf of the
15 Defendants, I mentioned that the MDL is not just the
16 coordinating center for the Federal litigation, but the MDL
17 plays a leadership role in coordinating among State Court
18 litigations.

19 In my career, we have had so many instances where
20 State Court judges are not threatened by an MDL or trying to
21 get to something different, but work collaboratively with the
22 MDL. The MDL tends to have cases from all over the country
23 with lawyers from all over the country, and nothing that we
24 have done in what we have negotiated in State Courts has in any
25 way lessened our view of the significance of this MDL.

1 In fact, you know, our eye is on the long game and
2 this is where most of the cases are. Yes, this is where we are
3 going to get to Daubert by the middle of next year. It has
4 been our consistent position since the beginning of this
5 litigation that this -- the elephant in the room is the lack of
6 scientific evidence connecting real world use of Zantac to
7 cancer, and that is the result that we believe should happen
8 here, and that is the process and procedure that we believe
9 should happen here.

10 The Court, you know, has heard already one day of
11 science, where there was a science presentation. It has come
12 up in various Motions to Dismiss. The Court is contemplating a
13 science day that the parties are talking about. Maybe that is
14 an opportunity to invite State Court judges to listen in as
15 well.

16 That is still -- whether we can accomplish that in
17 every jurisdiction, you know, having general causation Daubert
18 first, does not in any way lessen the fact that that is what we
19 believe is the right thing for this litigation.

20 So, I just want to be clear that the fact that we are
21 negotiating in various State Courts and reaching agreements
22 that may not be what we have done in the MDL, there are -- they
23 are different jurisdictions, and we do the best we can, but we
24 are still complete believers in the structure and process and
25 the leadership role of this MDL.

1 MR. McGLAMRY: Your Honor, this is Mike McGlamry. Can
2 I very quickly respond?

3 I kind of want to calm myself down a little bit,
4 particularly after what Mr. Agneshwar said about he didn't know
5 that the conversations were confidential in California when he
6 knows that Mr. Wisner sent him an email, and others, yesterday
7 confirming that and asking him not to convey those beyond that.

8 So, I take offense at what he would say to that,
9 knowing that they sent an email to him calling him out on that.

10 Secondly, I am offended by him bringing up that this
11 is a science issue, and there is no science. That is not true,
12 that will not be the case. We will pass Daubert and we will
13 prevail in these cases.

14 If we are going to argue science, we will argue when
15 we need to, but coming up and saying there is no science is not
16 true.

17 Look, it is not our fault that they did this
18 negotiation behind our back confidentially, or however they did
19 it. That is what they did. We are not focused on that, we are
20 focused on here.

21 THE COURT: Okay. So, I guess -- I don't want to turn
22 this into any kind of a dispute between the parties. This was
23 intended as an update on what was happening in Federal and
24 State. I am sure there are many lawyers to what is going on
25 and how cases arrived at where they have arrived. I was a

1 State Court judge once, I understand that.

2 I think it is important for me, at a minimum, to know
3 what is going on, so in that regard it was helpful. And I just
4 want to confirm that I have an understanding as to what, if
5 anything, either the Plaintiffs or the Defendants would suggest
6 to this Court, independent of what the Court may decide in her
7 own judgment to do, to further adequate and productive
8 coordination.

9 So, looking at it from a positive, proactive,
10 productive standpoint, I am hearing from Defense coordination
11 is good. So, it is true I have reached out to judges in the
12 past. I have not spoken with the California judge.

13 So, let me hear kind of in a summary form what, if
14 anything, if you are prepared to say, you believe this Court
15 should do in the interest of State/Federal coordination. And
16 it won't be the last time you can be heard, and if you need to
17 confer with colleagues and elaborate at a later point, but in
18 light of what you have said, in light of what you have
19 presented.

20 Let me go back to Mr. Agneshwar and then Mr. McGlamry
21 or Mr. Pulaski. What, if anything, do you think this Court
22 should do in the interests of productive, coordinated,
23 collaborative efforts, if anything? I am not suggesting that
24 anything could or should be done, but I would like you to be
25 heard on that.

1 MR. AGNESHWAR: Exactly what I said earlier, your
2 Honor, I think -- and what I have asked earlier, which is why
3 we provided the contact information. I believe the Court
4 should reach out to the various State Court judges and offer,
5 you know, your perspective based on your two years of presiding
6 over this case, listening to the parties argue various things,
7 brief various things, conduct -- do presentations on various
8 issues, and offer avenues of collaboration wherever possible.

9 I think your Honor raised one very particular area,
10 which is in the hearings on scientific evidence, and I think
11 you know our perspective. That, to us, is the big issue in the
12 case, so that would absolutely be a point of collaboration,
13 also perhaps inviting them to listen in to the science day
14 whenever it is that your Honor holds that, and there might be
15 other points along the way where -- I think the most important
16 thing is communication and coordination.

17 THE COURT: Okay. And Mr. McGlamry or Mr. Pulaski.

18 MR. McGLAMRY: Yes, your Honor, Mike McGlamry for the
19 Plaintiffs.

20 Your Honor, at some level I consider this coordination
21 issue somewhat disingenuous when they are talking about
22 communication because, again, until right now there has been no
23 such communication.

24 Your Honor, I think that with the numbers of cases and
25 claims here and most of this litigation focused here we should

1 just push forward.

2 What I would say, if there is going to be any
3 consideration of coordination, that the Plaintiffs' counsel be
4 included in that discussion or be, you know, allowed to have
5 some involvement. It is -- from our perspective, we weren't
6 consulted. So, as far as we were concerned and as far as what
7 the Plaintiffs' counsel in those places told us, it was their
8 case, they were proceeding with their courts under their
9 process, schedule, what they negotiated, what they worked on,
10 and as Adam indicated, we would otherwise loosely coordinate
11 particularly with discovery so there wouldn't be
12 inefficiencies, but that otherwise it is their case and they're
13 proceeding with their court.

14 We just think that they need to be engaged in this if
15 that is going to be an issue.

16 MR. AGNESHWAR: Your Honor, I would just say I might
17 have one view, the other side might have another view.
18 Ultimately, it is really up to the judges on how they want to
19 communicate and collaborate, if at all.

20 MR. PULASKI: Your Honor, Adam Pulaski for the
21 Plaintiffs.

22 Quickly, in my conversations with all Plaintiffs'
23 counsel for Illinois, for Tennessee, for California, for Texas,
24 they have all informed me that they are not in need of any
25 further coordination with us at this point other than our loose

1 coordination that we have now, which working very well.

2 Again, it is your Honor's prerogative as to what you
3 would like to do in this situation, but as far as Plaintiffs
4 leadership is concerned and as far as Plaintiffs leadership in
5 every State Court that I have spoken to is concerned, is that
6 everything is going so smoothly and so efficiently and so well
7 for them right now that they are very happy with where they are
8 at and everything is going, and they don't think it could be
9 going better with us coordinating any more than we are.

10 *THE COURT:* Okay. All right. Thank you for the
11 presentation. Has everybody been heard on the State/Federal?
12 Coordination?

13 *MR. McGLAMRY:* Yes, your Honor, thank you.

14 *MR. PULASKI:* Thank you, your Honor.

15 *THE COURT:* Are we coordinated on this screen?

16 *MR. PULASKI:* Always.

17 *MR. McGLAMRY:* Yes.

18 *THE COURT:* We can't coordinate with others if we are
19 not coordinated amongst ourselves, so thank you.

20 *MR. AGNESHWAR:* Thank you, your Honor.

21 *THE COURT:* Okay. All righty. Well, that does
22 conclude the conference for the day, for the afternoon, so I
23 want to thank everyone. I think that we have covered a lot of
24 really important issues. It has been helpful to the Court.

25 We, I think, had our heads down for quite some while,

1 at least the Court did I should say, with your MTDs and
2 hearings and rulings that the Court tried to issue in a prompt
3 fashion, and so, it was important for me to be able to check
4 back in with you and see how things are going.

5 I recognize that you are doing a zillion things a day
6 on the case, and so this is really maybe is only the tip of the
7 iceberg, but you should be assured that it is an important one
8 for the Court. So, I thank you for taking the time. I know
9 they go longer than probably you would like and I guesstimate,
10 so we are at two hours and 17 minutes, but it was important for
11 me to hear how we were doing with pro se.

12 It was important for me to understand what you have
13 been discussing with respect to post Motion to Dismiss motion
14 practice that you feel is necessary, always important to hear
15 from our LDC members, the registry remains critically
16 important, and then to get an idea of where we stand with the
17 State/Federal.

18 I appreciate there may be differences in how that
19 process works, and I know that it works differently with every
20 case and with every judge. There is no one size fits all, I
21 get that.

22 There was a conference recently at GW, I was on one
23 part of it with respect to vetting and initial census, but I
24 took the time to listen to all of the other sessions, and there
25 was a session that was devoted to State/Federal and even the

1 judges on that session had different ideas and different views
2 about everything from sitting with other judges in Daubert
3 hearings, to phone calling, to anything in between.

4 So, I just wanted to get the benefit of your thinking.
5 It was not intended to bring up any issues that relate to
6 differences that you may have, and it is fine. It is okay to
7 have those differences, to be professional about them, and to
8 continue to operate in good faith and cordially and
9 transparently with colleagues here in this case.

10 The Court certainly doesn't have any concerns about
11 State Court cases and State Court orders. That is just the way
12 things work. Litigants are free to file in whatever forum they
13 choose to, and some have filed in State Court, and many have
14 filed here, and I have done the best I can, with your input, to
15 issue scheduling orders that make sense for this case, and I am
16 sure the State Court judges have done exactly the same thing.

17 So, we all try to do our best, and I will continue to
18 ask you about it, and continue to think about ways that
19 coordination makes sense from an efficiency standpoint for the
20 benefit of the litigants, the people who have a stake in this
21 case, the parties themselves who want to see the case move
22 along as expeditiously as possible, where resources are spent
23 in a conservative and efficient way.

24 I think we all have an obligation to explore avenues
25 all the time as to how that can be done. So, when I use the

1 word "coordination" that is really what I mean, what is
2 efficient, what makes sense. It's not taking rights away from
3 anyone. It's not trying to get in the way of anybody. It's
4 not trying to get ahead of anybody. It's not trying to be
5 first. It's not trying to be last.

6 It is just trying to do the right thing, but being
7 aware and educated about what is going on around you will
8 inevitably, I think, inform you, that is me, the Court, and
9 hopefully other judges about how they can best do their job, as
10 I hope to always be informed about how best I can do my job.

11 I continue to believe it is a joint effort and we have
12 to do this as a team. That is everybody from the support that
13 each of you get every day from people in your office who are
14 helping you, to the attorneys who appear, the ones who are
15 working behind the scenes, to myself and the staff that works
16 with me. We couldn't do what we do if we didn't do it together
17 in an open and transparent and collaborative way.

18 That is how I intend to continue presiding over this
19 case. I hope it continues to be the theme that motivates all
20 of you to do the work that you would expect of yourselves and
21 the Court would expect of you.

22 With that, great to see those who I was able to see,
23 great to know that a hundred plus of you were here and
24 interested in knowing what was going on.

25 I do look forward to seeing many of you in person in

1 September. I would ask that you apprise Special Master Dodge
2 over the next week or so what your preferred deadline is for
3 knowing, and I will just have to make a judgment call, just
4 like I did back in March of 2020, weeks before we were planning
5 our first in person, when I had to sort of make the decision --
6 it was still early, we didn't know, but I had to make the
7 decision that we couldn't go forward in person, and it turned
8 out to be the right decision, as we saw from the many, many
9 months that ensued.

10 I will attempt to do the right thing with our
11 September hearing, and inviting you if it seems the right thing
12 to do, if it is safe and manageable. If I have reason to
13 believe it is not, we will set it for the next month in person
14 and continue to meet in the Zoom platform.

15 With that, I wish everyone well, stay healthy, please
16 enjoy your summer. It is important to relax, to take time off
17 to clear your head and be with family and loved ones, and I
18 look forward to seeing you again at our next opportunity.

19 Thank you.

20 (Thereupon, the proceedings concluded.)

21 * * *

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

3
4 Date: July 30, 2021

5 /s/ Pauline A. Stipes, Official Federal Reporter

6 Signature of Court Reporter
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Pauline A. Stipes, Official Federal Reporter

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