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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NO. 14-MD-2592 "L"
NEW ORLEANS, LOUISIANA
FRIDAY, FEBRUARY 27, 2015, 9:00 A.M.

THIS DOCUMENT RELATES TO
ALL CASES

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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M O R N I N G S E S S I O N

FRIDAY, FEBRUARY 27, 2015

(COURT CALLED TO ORDER)

08:58:58 7 THE DEPUTY CLERK: All rise.

08:59:01 8 THE COURT: Be seated, please. Good morning, ladies
08:59:10 9 and gentlemen.

08:59:11 10 VOICES: Good morning, Your Honor.

08:59:13 11 THE COURT: First, call the case.

08:59:14 12 THE DEPUTY CLERK: MDL Number 2592, *In re: Xarelto*
08:59:19 13 *Products Liability Litigation.*

08:59:19 14 THE COURT: Will liaison counsel make their appearance
08:59:22 15 for the record, please.

08:59:26 16 MR. IRWIN: Good morning, Your Honor. Jim Irwin for
08:59:28 17 defendants.

08:59:28 18 MR. DAVIS: Good morning, Your Honor. Leonard Davis,
08:59:31 19 from Herman, Herman & Katz, for plaintiffs.

08:59:34 20 MR. MEUNIER: May it please the Court, Gerry Meunier,
08:59:38 21 co-liaison for the plaintiffs.

08:59:43 22 THE COURT: All right. First, I would like to welcome
08:59:44 23 everybody to the proceedings. I look forward to working with
08:59:45 24 you all in the coming period.

08:59:46 25 Let me make some general comments first.

OFFICIAL TRANSCRIPT

08:59:48 1 The procedure, just on procedure, as you know, or
08:59:54 2 you should know, I have a website that I devoted to this
08:59:56 3 particular case. On the website, I will put a calendar on all
09:00:04 4 the events that are happening and will happen.

09:00:08 5 Any depositions that are set will be on the
09:00:10 6 website and posted on the website. All of my orders, all of
09:00:16 7 the transcripts of these meetings will be on the website,
09:00:20 8 accessible to everyone, including your clients. If they are
09:00:26 9 interested, give them the website, and they can keep up with
09:00:29 10 the litigation also.

09:00:30 11 I'll have monthly meetings in open court. I have
09:00:36 12 the meetings transcribed. The transcripts will be, in time,
09:00:41 13 placed on the website, so that if you do miss a meeting, you'll
09:00:46 14 be able to catch up by looking at it.

09:00:48 15 We'll start our meetings at 9:00. Half an hour
09:00:56 16 before, I meet with liaison and lead counsel. You need to know
09:00:59 17 that they give me a proposed agenda. They get together and
09:01:06 18 talk with their leadership group and others and give me a
09:01:10 19 proposed agenda.

09:01:11 20 They give me that two days before the scheduled
09:01:16 21 meeting. I have an opportunity to look it over, add to it,
09:01:19 22 subtract from it. At the premeeting, I tell them what the
09:01:24 23 agenda will be, and what I think they should emphasize and
09:01:29 24 discuss in greater detail.

09:01:31 25 Nothing is secret at the meeting. I simply want

09:01:36 1 them to be prepared, so that when they step in the court for
09:01:40 2 the general meeting, they'll know what they are going to be
09:01:42 3 talking about. So it's a little more efficient doing it that
09:01:47 4 way.

09:01:47 5 The first meetings, this meeting, and perhaps
09:01:56 6 partially another one, will be devoted to infrastructure. In
09:02:01 7 the MDL's, it's unlike other cases. I think you need to deal
09:02:07 8 up front and get some infrastructure set down, so that you
09:02:12 9 don't have any problems along the way.

09:02:18 10 When I'm talking about infrastructure, I mean we
09:02:20 11 need to have some process of notifying people of what's
09:02:24 12 happening. That sometimes is difficult because of the numbers
09:02:30 13 of attorneys in this particular case, so we need some procedure
09:02:36 14 for notice.

09:02:37 15 Direct filing is another aspect of the
09:02:41 16 infrastructure. Deposition protocol. In a case of this sort,
09:02:48 17 you can't have a thousand lawyers asking questions. It just
09:02:52 18 does not work. So we need some deposition protocol.

09:02:58 19 Tolling agreements, that's another infrastructure
09:03:01 20 matter that I've talked to the liaison and lead about.

09:03:06 21 Protocol for serving foreign parties. In this
09:03:11 22 particular case, there may be some foreign parties. There
09:03:17 23 ought to be, if it can be worked out, some protocol for dealing
09:03:22 24 with that.

09:03:23 25 A form for a privilege log. You ought to have an

09:03:25 1 agreed form for a privilege log. If a party asserts a
09:03:30 2 privilege, it ought to be in the same type of structure as all
09:03:35 3 of the other privilege requests submitted.

09:03:38 4 Protective orders, we ought to have a protective
09:03:42 5 order issued. I believe strongly in the First Amendment, but
09:03:46 6 my responsibility in this case is in the Seventh Amendment, and
09:03:51 7 so I do the best I can to promote the Seventh Amendment and put
09:03:54 8 the First Amendment in time, but oftentimes a protective order
09:04:03 9 is necessary to allow adequate discovery so that the case can
09:04:10 10 be prepared and be ready for trial. That's important to me in
09:04:14 11 this particular case.

09:04:15 12 Form for fact sheets, or profile forms we
09:04:23 13 sometimes call them. As you know, I've begun the process.
09:04:27 14 Last time, we heard from Orran Brown -- we'll hear from him a
09:04:31 15 little later in this meeting -- on the type of form that's
09:04:40 16 possible.

09:04:41 17 In this particular case, I would like to see if
09:04:44 18 we could step it out into electronically-produced forms. It's
09:04:50 19 not only easy to do, but it is also searchable.

09:04:54 20 So, with the fact sheets, I will be able to get a
09:04:59 21 better feel for the totality of the litigation, the census, so
09:05:06 22 to speak, of the plaintiffs. We'll know how many cases there
09:05:09 23 are, how many are male, how many are female, how many are under
09:05:13 24 50, over 50, prior problems and so forth and so on.

09:05:17 25 That's helpful because when we get to a later

09:05:22 1 stage in the case, we'll have to devise a discovery pool and
09:05:26 2 from there take some bellwether cases. Hopefully, they'll be
09:05:32 3 representative and will be able to inform you as to the nature
09:05:37 4 and type of this litigation.

09:05:40 5 So those are the infrastructure matters that I've
09:05:47 6 asked the parties to be able to discuss with us here today.

09:05:52 7 After the infrastructure is established -- and
09:05:55 8 hopefully we'll be able to do that within the next couple of
09:05:59 9 weeks, nail down all of those aspects. Some of them have
09:06:05 10 already been dealt with, some need to be dealt with in the
09:06:07 11 future, but hopefully we can get that done in the next couple
09:06:10 12 of weeks -- then I'm going to look to the parties to prepare a
09:06:16 13 scheduling order.

09:06:16 14 The way I see this case -- it's just broad
09:06:21 15 comments. They are not written in stone because cases take
09:06:25 16 different turns, and some of these things may not be
09:06:30 17 necessary -- but I see first a period of time, hopefully not
09:06:36 18 any elongated period of time, but a short period of time where
09:06:40 19 document discovery can take place.

09:06:43 20 I think it's got to come from both the plaintiffs
09:06:46 21 and the defendants. The plaintiffs have to be prepared to put
09:06:50 22 up any past medical that they have or opportunities for the
09:06:58 23 defendant to get the past medical, a description of the injury,
09:07:04 24 a bit about themselves, their age and things of that sort.

09:07:10 25 From the defendants' standpoint, they have to be

09:07:14 1 prepared to give up material dealing with the design,
09:07:22 2 production, distribution of the particular drug involved, and
09:07:28 3 other documents from both sides need to be developed.

09:07:32 4 Then, from that, we ought to be moving into
09:07:38 5 depositions. Deposition, at that stage, ought to be focused on
09:07:41 6 the general causation questions.

09:07:45 7 In these cases, as you know, there are two
09:07:49 8 causations that predominate. One is the general causation.
09:07:54 9 That's generally meaning whether or not the drug has been
09:08:01 10 designed properly, whether the drug has been marketed properly,
09:08:04 11 whether warnings have been adequate and so forth. The focus is
09:08:13 12 whether or not that drug can create a difficulty or malady.

09:08:24 13 Then, after the depositions of those individuals,
09:08:30 14 I see expert exchanges because the experts need some
09:08:35 15 information on which to base their opinions. So experts then
09:08:40 16 need to come forward and perhaps be deposed and *Daubert*-ized.

09:08:47 17 After the *Daubert* motions, I expect that motions
09:08:53 18 will be filed, substantive motions, summary judgment motions,
09:08:58 19 either in whole or in part, to either dissolve the case or trim
09:09:05 20 it down, if that's possible.

09:09:08 21 After the motions, if the case proceeds, then I
09:09:13 22 think the focus then would be on creating a discovery pool.

09:09:17 23 I don't know how many cases there are at this
09:09:20 24 point, but it doesn't make any sense to me to have to take the
09:09:24 25 deposition of everybody out there. If there are thousands of

09:09:28 1 people, we'll waste a lot of time in taking depositions of a
09:09:31 2 thousand people.

09:09:32 3 So what I try to do is create a discovery pool.
09:09:36 4 I'll give the plaintiffs an opportunity to pick 20 or 30
09:09:40 5 people. I'll give the defendants an opportunity to pick 20 or
09:09:43 6 30 people. That will be the discovery pool.

09:09:49 7 Hopefully, the discovery pool, with the use of
09:09:53 8 the fact sheets, will be able to represent in microcosm the
09:09:59 9 whole census of the litigation. So we'll have the scope of the
09:10:02 10 litigation represented in that group, which we'll call the
09:10:05 11 discovery pool.

09:10:06 12 Then the plaintiffs or defendants have to
09:10:11 13 discover those individuals, and the focus of that is whether or
09:10:14 14 not this particular drug caused that malady. If the question
09:10:20 15 is bleeding to death, if somebody got shot in the head on
09:10:24 16 Canal Street, perhaps the drug didn't cause that bleeding
09:10:29 17 problem. So the defendants have to know what the individuals
09:10:35 18 are.

09:10:35 19 Now, from that discovery pool, we'll pick the
09:10:40 20 bellwether cases. I'll design a procedure for each of you to
09:10:45 21 pick bellwether cases. I generally try to pick about six
09:10:49 22 bellwether cases, and we start the process of trials, one after
09:10:54 23 the other. If one case settles, then the next one comes in
09:10:59 24 line. Hopefully, we'll be able to give you an opportunity.

09:11:01 25 Now, the whole purpose of this process is to give

09:11:04 1 the litigators, the lawyers, as well as the clients, an
09:11:10 2 opportunity to look at the case, to see whether or not this is
09:11:14 3 a case that can be resolved globally.

09:11:18 4 That's one of the advantages of an MDL procedure.
09:11:22 5 We've got all of the cases here. At that point, we will be
09:11:28 6 able to give you an opportunity to look at the case globally
09:11:31 7 and to see whether or not this is the type of case that can be
09:11:34 8 resolved by creative attorneys in some efficient way.

09:11:41 9 If it can't be -- and cases can not be, all of
09:11:46 10 them can't be resolved that way, for various reasons -- if it
09:11:52 11 can't be, then you need to know that I will have exhausted my
09:11:58 12 responsibility at that point.

09:11:59 13 I will have given you an opportunity to look at
09:12:02 14 the case and discover the case and to analyze the case. I will
09:12:08 15 have given your clients an opportunity to look at the case,
09:12:11 16 analyze the case. At that point, if it cannot be resolved
09:12:18 17 here, I will then send the cases back to the transferee court.

09:12:24 18 I think the biggest problem that an MDL has is
09:12:28 19 becoming a black hole that just stores the cases, and they stay
09:12:32 20 here. I don't do it that way. I give you an opportunity to
09:12:36 21 look at the case, to work the case, but if it cannot be
09:12:39 22 resolved, I send them back to be resolved.

09:12:43 23 That's what we need to do. The litigants deserve
09:12:46 24 that. The litigants deserve some finality.

09:12:49 25 That's basically the approach that I expect to be

09:12:55 1 taken in this case. After we get the infrastructure
09:13:00 2 established, I'll be focusing the parties on a scheduling order
09:13:04 3 which focuses on that procedure.

09:13:09 4 Well, with those general comments, let me turn
09:13:13 5 the matter over to liaison counsel, and we'll go through the
09:13:16 6 proposed order that they have given to me and that I discussed
09:13:20 7 with them a moment ago.

09:13:22 8 First item on it is Pretrial Order. Is there
09:13:26 9 anything on that?

09:13:26 10 MR. DAVIS: Your Honor, thank you.

09:13:28 11 Just so that it's very clear, co-liaison counsel
09:13:32 12 and myself have discussed on presentations, and we've agreed
09:13:35 13 that we'll alternate when we will make presentations. So, I'm
09:13:40 14 here today, and Mr. Meunier will be present next time.

09:13:43 15 With respect to pretrial orders, my appreciation
09:13:49 16 is, is that all of these records are posted on Your Honor's
09:13:52 17 website, which I understand is at www.laed.uscourts.gov, and
09:14:01 18 there is a tab for Xarelto. For those people on the phone,
09:14:04 19 they may want to check that out.

09:14:05 20 THE COURT: Right. With regard to that, I do
09:14:07 21 appreciate if you all use a microphone because we have several
09:14:10 22 hundred people on the phone. I allow people to call in, and I
09:14:13 23 will be posting the number and allowing you to call in if you
09:14:17 24 can't be present. Sometimes you can't. Feel free to call in
09:14:20 25 and monitor.

09:14:22 1 I will also be touching base with the state court
09:14:25 2 judges, and oftentimes they are interested in monitoring these
09:14:31 3 meetings. I invite them to do it. If they have any comments,
09:14:35 4 they can make their comments and discuss it with you all while
09:14:39 5 you are here.

09:14:40 6 MR. DAVIS: Your Honor, my understanding is, is that
09:14:41 7 you post the call-in number on your website in advance?

09:14:45 8 THE COURT: I do. I post the call-in number, the date
09:14:48 9 and time, so that everybody has access to it.

09:14:51 10 MR. DAVIS: Thank you.

09:14:51 11 Since the last status conference, there have been
09:14:55 12 a few new pretrial orders that have been issued. They are
09:14:57 13 listed in the joint report in Section Number 1.

09:15:01 14 In particular, Pretrial Order Number 5A, which
09:15:04 15 allows the transferor court to retain the original file;
09:15:11 16 Pretrial Order Number 6, which appoints defendants' co-lead
09:15:12 17 counsel; Pretrial Order Number 7, which appoints the
09:15:15 18 Plaintiffs' Steering Committee lead counsel, the executive and
09:15:19 19 state liaison counsel.

09:15:20 20 Your Honor, most of the steering committee is
09:15:25 21 seated in the jury box.

09:15:27 22 There is also Pretrial Order Number 8, which
09:15:31 23 establishes the time billing items.

09:15:35 24 THE COURT: Let me reinforce that, because I know that
09:15:40 25 from the standpoint of the plaintiff, it's a contingent fee, so

09:15:44 1 that means that you may or may not get to be paid, but I've got
09:15:48 2 to assume that you will be paid because I have to establish
09:15:54 3 some infrastructure and procedure for doing that.

09:15:58 4 I have approved the appointment of a CPA,
09:16:04 5 Phil Garrett. He has worked with me in the past, and we
09:16:07 6 designed together some software that can be used.

09:16:14 7 I need any lawyer who is doing work from the
09:16:19 8 plaintiffs' standpoint, any lawyer, whether they are on the
09:16:22 9 committee or off of the committee, on some subcommittee doing
09:16:27 10 work, anybody who does common benefit work needs to be able to
09:16:34 11 report that to Phil Garrett monthly, what they've done, and
09:16:41 12 what time they put in, and what they've done during that
09:16:46 13 particular time; if they've put any money in, what the cost is,
09:16:52 14 and what it was for.

09:16:55 15 That's collected by Phil Garrett. You need to
09:16:59 16 know that I meet with him monthly, and he gives me a report
09:17:03 17 monthly in brochure form. I look it over, and I meet with him,
09:17:11 18 and I discuss it with him.

09:17:13 19 I put those documents under seal because it's not
09:17:20 20 fair for the defendants to see what the plaintiffs are doing.
09:17:22 21 So I don't expose that report, but I look at it every month,
09:17:26 22 and if I see something that jumps out at me, I talk to liaison
09:17:31 23 counsel and get that message back to the person whose
09:17:36 24 information jumped out at me so we can straighten it out.

09:17:41 25 Every month I meet with him, as I say. At the

09:17:44 1 end of the case, if the case is resolved satisfactorily, and
09:17:48 2 there is a common benefit fee, then he prepares for me a
09:17:55 3 summary of all of the time sheets, what everybody has done,
09:18:01 4 what time they've put in, and what specific work they have done
09:18:05 5 during that particular time. It's all categorized, and I'm
09:18:09 6 able from that to make some intelligent-based decision on how
09:18:16 7 much each person is to receive.

09:18:19 8 I mention that to you because it's important for
09:18:22 9 you to keep in touch with Phil Garrett. You can do it online.
09:18:28 10 I've asked him to remain at the end of the case to meet with
09:18:31 11 all of the plaintiff lawyers to give them a presentation on
09:18:34 12 what to do. I'll also have him do it presently now.

09:18:40 13 MR. DAVIS: You would like him to do that now?

09:18:43 14 THE COURT: Sure. Let's do that, and then we'll go to
09:18:45 15 the next one.

09:18:46 16 MR. PHILIP GARRETT: Hello, Your Honor. Phil Garrett.

09:18:49 17 We're going to make a short PowerPoint
09:18:52 18 presentation this morning to show the system that we have
09:18:58 19 developed that can be used online.

09:19:01 20 Jim is here. He's also a CPA. Between the two
09:19:04 21 of us, unfortunately, we have about 80 years of accounting
09:19:08 22 experience. So we're the one -- Jim handles most of the
09:19:11 23 reviews on the end, so I'm going to have him do part of it.

09:19:14 24 The information that you see on the screen, the
09:19:17 25 most important information is pgarrett@garrettco.com. If there

09:19:25 1 are any questions anyone has, you can always reach me by e-mail
09:19:28 2 or reach Jim by e-mail, or Bridgett Rosa, who is one of our
09:19:30 3 main reviewers, by e-mail, and you can get to us.

09:19:32 4 On the top left corner of every slide, you'll see
09:19:35 5 where the site is that we have our program stored for this
09:19:38 6 case. It's <http://xarelto.garrettco-ccms.com>. When you go to
09:19:53 7 that site, you'll see some of the information that you have to
09:19:54 8 complete and what you have to do on it.

09:20:03 9 What we're doing basically with our system is
09:20:05 10 we're trying to take anywhere from 20 law firms to a hundred
09:20:10 11 law firms that are working on these various MDL's, and we're
09:20:13 12 putting them together as one law firm, so that, on one entity,
09:20:17 13 that then the judge can review all of the time at one time,
09:20:21 14 rather than we giving him a report on 40 different law firms
09:20:24 15 and him having to sort through his.

09:20:26 16 By doing the system the way we're doing it, we
09:20:29 17 can then give him who are the attorneys that work the most on
09:20:32 18 the case, who are the attorneys that work the least on the
09:20:35 19 case, which law firms have which jobs and so forth.

09:20:39 20 All of that is put into one major database, so
09:20:41 21 it, in essence, becomes one giant entity composed of 20, 30,
09:20:46 22 40 -- as many as over a hundred law firms can be put into the
09:20:50 23 system.

09:20:50 24 So we report all the time. It's totally
09:20:53 25 searchable, so if there is a case that the Court or the liaison

09:20:57 1 counsel would like to find out who put time in on this
09:21:00 2 particular case, I can search the database for all of the
09:21:03 3 descriptions and find wherever somebody mentioned that
09:21:05 4 particular case.

09:21:06 5 Held costs, which is mainly the travel costs,
09:21:11 6 printing costs, copying costs, LexisNexis costs, those costs
09:21:16 7 are costs that the firms hold inside of themselves and hold
09:21:21 8 within their firm until the end of the case. We ask that those
09:21:24 9 costs be sent to us.

09:21:25 10 We have guidelines in Pretrial Order Number 8,
09:21:29 11 which we will then apply those guidelines to your costs. So if
09:21:33 12 you flew from Florida over to New Orleans, and you flew first
09:21:39 13 class, we're going to have a little bit of a problem. Jim will
09:21:42 14 show you where the problem comes into because there are
09:21:44 15 guidelines about what costs you can use for airlines, what
09:21:47 16 costs you can use for hotels and so forth.

09:21:49 17 We would also look at shared costs and
09:21:52 18 assessments. Cash transactions we report to the Court as well,
09:21:55 19 who has put up the cash to keep the case going. You don't have
09:22:00 20 to report that stuff to us under held costs. We will pick that
09:22:03 21 information up as we maintain the -- we oversee the checkbook
09:22:07 22 of the PSC and balance it off every month, so I've got those
09:22:11 23 transactions already.

09:22:12 24 The main thing about our system is when you get
09:22:16 25 into the system, you will be putting your confidential

09:22:20 1 information into our system, but only you will be able to see
09:22:24 2 your information, other than the Court or whoever the Court
09:22:28 3 decides can see the information, which will probably just be
09:22:31 4 liaison counsel. But the information is password protected,
09:22:34 5 and you'll be the only ones that can see it.

09:22:36 6 QuickBooks for the accounting, we have an online
09:22:40 7 system that, again, we go through, and we record everything.
09:22:44 8 All those costs, even the held costs, are put into there, so we
09:22:47 9 have one financial report to give the Court on the cash
09:22:53 10 deposits and cash transactions that happen during the month.

09:22:56 11 Pro time tracking. One of the things we've found
09:23:01 12 from the last 10 years is that as we get more and more firms
09:23:04 13 involved in the MDL, some of the firms are plaintiff firms that
09:23:08 14 have never had a time system within their firm.

09:23:10 15 I had our programmers write a very simple time
09:23:14 16 tracking program. It's free for anyone that's involved in the
09:23:17 17 MDL to use. All you have to do is go to this system. You can
09:23:23 18 set up your people on this system. It's totally within your
09:23:26 19 firm. Nobody else will see this system.

09:23:29 20 It will create, at the end of the month, the CSV
09:23:34 21 file that you have to upload into the CCMS system in order to
09:23:38 22 get the -- it will do some of the work for you. It does not
09:23:41 23 keep your receivables. It does not keep your billing. But
09:23:44 24 I've told every firm that uses it, if you like it, and you want
09:23:47 25 to use it for other cases, that's fine with us. We're giving

09:23:49 1 it away as part of the service of our CCMS system.

09:23:56 2 So if you have an interest in using a time
09:23:58 3 system, and you don't have one currently, just send me an
09:24:00 4 e-mail, and I'll be happy to set you up and let you all play
09:24:03 5 with it and decide whether you like it or not.

09:24:05 6 Once you log in to
09:24:13 7 <http://xarelto.garrettco-ccms.com>, you'll need a user name and
09:24:16 8 password. All you have to do, there is a point on the login
09:24:22 9 sheet that says, "Download Data Sheet." You download that data
09:24:26 10 sheet, complete it, have one of the partners sign it, and
09:24:29 11 e-mail it to my assistant, Bridgett Rosa. Her e-mail is on the
09:24:34 12 login site. She will e-mail you back your user name, your
09:24:38 13 password, and your partner signature code.

09:24:42 14 The reason we have a partner signature code is at
09:24:44 15 the end of every submission, when you submit your time and your
09:24:46 16 costs, it has to be signed off by a senior partner in the firm.
09:24:51 17 Rather than having you print it out, having him sign it, then
09:24:55 18 scanning it and then sending it over to us, we use a partner
09:24:58 19 signature code that he can then sign off on.

09:25:01 20 We've also changed a few of the task codes. So
09:25:04 21 if you've been involved in the previous MDL's with us, we've
09:25:07 22 changed a few of the task codes. You can download that task
09:25:10 23 code list also on that site by just clicking a button.

09:25:13 24 Once you get into the system, you'll see these
09:25:17 25 are the menu items for every firm. You can view your

09:25:21 1 submissions. Viewing your submissions is important from the
09:25:26 2 standpoint of you can go to a page that will show you what time
09:25:30 3 you've put in, what's the month that you put it in for, how
09:25:34 4 many hours or how much costs you put in, whether we accepted it
09:25:37 5 or whether we rejected it.

09:25:39 6 You'll notice on the second line here a firm put
09:25:41 7 in 483.8 hours. We accepted 183.8 hours, but we rejected
09:25:47 8 300 hours. On our site, you will see the reasons we rejected
09:25:52 9 it. If we have to attach a spreadsheet, we will have the
09:25:57 10 spreadsheet attached.

09:25:58 11 So everything is there, but we're trying to make
09:25:59 12 it the responsibility of the firm to have access to go look at
09:26:01 13 these sheets and see what there is.

09:26:03 14 You will also receive an e-mail. When we post
09:26:06 15 that particular month's submission, you will receive an e-mail
09:26:10 16 telling you, we accepted 183.8, and we rejected 300 hours. So
09:26:16 17 you get the e-mail, and you have access to the site 24/7 to go
09:26:20 18 look at your particular firm, so there is no reason you
09:26:23 19 shouldn't.

09:26:23 20 At the very bottom, again, I'll reiterate, there
09:26:25 21 is a \$25,000 expense somebody submitted. More than likely,
09:26:28 22 that was a cash assessment. We're not going to accept that
09:26:32 23 because we're going to pick it up through the checkbook.

09:26:34 24 So you'll be able to view your submissions.
09:26:40 25 You'll be able to submit expenses. In submitting expenses, Jim

09:26:43 1 will go through it in detail in a little bit, but that's the
09:26:46 2 held costs. You'll be able to upload your time.

09:26:49 3 CSV file. A CSV file is, in essence, an Excel
09:26:52 4 file, but you can save it as a comma delimited file. According
09:26:57 5 to the programmers, when you save all these files as comma
09:27:01 6 delimited, they can merge them all together in one database.
09:27:05 7 So just think of it as an Excel file, but when you save it, you
09:27:07 8 have to save it as a CSV. Again, a little bit later, we'll
09:27:10 9 show you exactly what it is.

09:27:11 10 Add the firm employees, very important. If you
09:27:14 11 go through and you don't add any firm employees and you submit
09:27:16 12 all the time, the program is going to come back and give you
09:27:19 13 errors on every line because it doesn't know who the employees
09:27:22 14 are.

09:27:22 15 So you set up your own employees. You have a
09:27:25 16 three-digit code, it can either be alpha or numeric, that you
09:27:31 17 can set up for every employee. Most people just use the
09:27:35 18 initials of the person.

09:27:37 19 Then, from there, besides the view submission
09:27:38 20 report, you have nine different time reports, you have sortable
09:27:40 21 held cost reports. All of those reports can be copied into
09:27:44 22 Excel, and you can do a thousand different other reports, which
09:27:48 23 in almost every MDL, we find the need to do exactly that.

09:27:51 24 That's the menu stream you all will be dealing
09:27:54 25 with. The first month is always a little bit hazy. After

09:27:57 1 that, it usually runs very clean.

09:27:59 2 So what do y'all need to do? You need to gather
09:28:06 3 the cost and the time information. In this case, we've changed
09:28:08 4 it to 15 days that you have after the end of the month to
09:28:13 5 submit stuff.

09:28:14 6 If you can't make it within that 15-day period,
09:28:17 7 just give us a call. The Court has given us the discretion to
09:28:21 8 give an additional 60 days grace period, if there is a
09:28:25 9 reasonable reason, and they are not continual offenders, of
09:28:29 10 submitting the time.

09:28:30 11 So if there is a problem, it's a holiday season,
09:28:34 12 your bookkeeper has been sick or whatever, and you needed
09:28:37 13 another week, just call us up, and we'll be more than happy to
09:28:40 14 do it.

09:28:41 15 But after you get past that 75th day, it's no
09:28:44 16 longer in our ballpark. Now it goes to the Court, for the
09:28:47 17 Court to decide whether they are going to allow you to submit
09:28:50 18 that time or not.

09:28:51 19 In this case, in Pretrial Order Number 8, it says
09:28:58 20 by March 15th -- or starting March 15th, all time is submitted
09:29:05 21 for February and prior months. So it's time to get the data
09:29:08 22 sheet downloaded, get yourself a user name and password, and
09:29:11 23 get ready to start submitting all of this information because,
09:29:14 24 in about two and a half weeks, you'll be looking to do it.

09:29:19 25 THE COURT: Let's do this, Jim. You can deliver yours

09:29:23 1 to the plaintiffs later on because that will be more effective.

09:29:29 2 Thank you all very much.

09:29:32 3 All right, let's go to the next one.

09:29:33 4 MR. DAVIS: Thank you, Judge. I just want to add one
09:29:36 5 comment to that, that needs to be very clear, that when Phil
09:29:40 6 Garrett accepts the time, it doesn't necessarily mean that it's
09:29:43 7 compensable. It will still be reviewed, in that all common
09:29:48 8 benefit work must be approved in advance.

09:29:53 9 THE COURT: Also, as I understand it, the plaintiffs
09:29:56 10 are meeting after this meeting, so Phil and Jim can go into it
09:30:01 11 a little bit more with you and answer any questions that you
09:30:05 12 might have.

09:30:06 13 MR. DAVIS: Yes, Your Honor. We do have an
09:30:08 14 all-plaintiffs meeting in the courtroom after the status
09:30:10 15 conference.

09:30:11 16 THE COURT: What's the next item on the agenda?

09:30:14 17 MR. DAVIS: Counsel Contact Information Form. It's
09:30:16 18 just to remind people that if they haven't turned in the form
09:30:19 19 under Pretrial Order 4A, it really needs to be turned in, or
09:30:25 20 you won't be getting notice.

09:30:26 21 The next item on the agenda is the Plaintiffs'
09:30:30 22 Steering Committee. We have had meetings and phone
09:30:32 23 conferences, and your PSC that Your Honor appointed is up and
09:30:35 24 running.

09:30:36 25 THE COURT: Okay.

09:30:37 1 MR. DAVIS: The next item is File & Serve Xpress. We
09:30:42 2 have received a proposal from File & Serve Xpress. We have
09:30:47 3 reviewed it. We have spoken with defense counsel about that.

09:30:50 4 We've also received a proposal from BrownGreer,
09:30:55 5 which we are considering, and we're in discussions. We will be
09:30:59 6 back with a report to the Court very soon on that.

09:31:03 7 THE COURT: Okay. Tell us why that's important, some
09:31:08 8 mechanism for serving people.

09:31:10 9 MR. DAVIS: What that enables, Your Honor, is the
09:31:13 10 ability for all counsel to get copies of all documents filed
09:31:16 11 with the Court.

09:31:17 12 Now, I know that we have the electronic court
09:31:20 13 system where folks can get it, but this enables people to get
09:31:23 14 not only what's filed, but also the discovery and items such as
09:31:28 15 that.

09:31:29 16 THE COURT: We've found it more efficient to have
09:31:32 17 outside providers take on the task of disseminating
09:31:38 18 information. It just makes it easier and more effective.

09:31:43 19 So I've asked counsel for both sides to focus on
09:31:49 20 whether or not we can do this. It's too much of a burden on
09:31:52 21 the liaison counsel to be able to get it out to everyone
09:31:57 22 timely, and outside providers are able to disseminate it almost
09:32:02 23 immediately. So that's very helpful.

09:32:05 24 In a moment, I'll ask Orran Brown to discuss the
09:32:09 25 fact sheets a little bit more, and he may also touch on the

09:32:16 1 file and serve.

09:32:17 2 MR. DAVIS: With respect to direct filing master
09:32:22 3 complaint and answer, the PSC provided to defendants a draft
09:32:26 4 order in response to their initial provided order.

09:32:32 5 THE COURT: The Clerk's Office is getting a lot of
09:32:35 6 calls from litigants and lawyers asking about whether they can
09:32:40 7 directly file in this Court. There needs to be some agreement
09:32:44 8 by and between counsel in order to do that. It's more
09:32:49 9 effective because it's quicker.

09:32:53 10 Otherwise, the case has to be filed in a local
09:32:57 11 area, and then the local area then transfers it. Or the MDL,
09:33:01 12 it gets to the MDL, and then the MDL court then transfers it
09:33:06 13 here. It takes 60 to 90 days for that to happen. If it's
09:33:12 14 directly filed, the party is in this Court immediately.

09:33:16 15 But it needs to be dealt with by stipulations,
09:33:19 16 and so both sides have to be agreeable to it.

09:33:22 17 MR. DAVIS: We are in discussions, Your Honor, on that.

09:33:25 18 In addition to that, and I reference what's noted
09:33:28 19 in paragraph 7 of the joint report, which is Service on Foreign
09:33:35 20 Bayer Entities, there have been a number of individuals who
09:33:37 21 have raised questions regarding the timeframe for making
09:33:41 22 service and requested extension on the timeframe required by
09:33:47 23 the Federal Rules.

09:33:50 24 What folks have done is file their own motion,
09:33:52 25 but I believe the PSC will be asking for additional time to

09:33:57 1 make service; but, we are in discussions with defendants, both
09:34:02 2 Bayer and J&J, Janssen, to address service issues.

09:34:08 3 THE COURT: Jim, do you have any comments on any of
09:34:11 4 this?

09:34:11 5 MR. IRWIN: Your Honor, I would only add that we think
09:34:13 6 one of the things that helps to make this efficient is that we
09:34:16 7 have prepared, in two meetings, with Mr. Davis and Mr. Meunier,
09:34:22 8 and also lead counsel, to address each one of these issues.

09:34:27 9 There are contact people who are set up to do
09:34:31 10 that, like for ECF it is me and Mr. Davis. For the Bayer
09:34:37 11 service issues, it is Mr. Hoffman. So we've tried to make it
09:34:42 12 efficient for purposes of follow-up and also for purposes of
09:34:45 13 presentation today.

09:34:47 14 THE COURT: Yes. I would like to meet with liaison
09:34:50 15 counsel in about two weeks to see whether or not these can be
09:34:53 16 nailed down or have been nailed down, so that we can move on to
09:34:56 17 the next phase of the litigation.

09:34:59 18 MR. IRWIN: Thank you.

09:35:00 19 THE COURT: Tolling Agreement is the next one.

09:35:02 20 MR. DAVIS: Tolling agreement, Your Honor. We're in
09:35:04 21 discussions on that. We provided defendants a proposal on
09:35:08 22 February 24th, and we will have more discussions regarding
09:35:11 23 that.

09:35:11 24 I've addressed service on the Bayer entities.
09:35:17 25 With that discussion, however, we are trying to make sure that

09:35:20 1 we align the proper Bayer entities that belong in the
09:35:23 2 litigation, and we are addressing those issues.

09:35:28 3 THE COURT: With regard to tolling, oftentimes tolling
09:35:31 4 is very helpful to individuals to get in this litigation, but,
09:35:34 5 at the same time, refrain from having to put up the type of
09:35:38 6 costs that's required.

09:35:41 7 If you have a thousand claimants, and you have to
09:35:44 8 spend \$300 for each, pretty soon it's a lot of money. So
09:35:50 9 tolling agreements are sometimes helpful to allow participation
09:35:54 10 in the MDL.

09:35:57 11 Tolling agreements generally toll prescription
09:36:02 12 and provide that if prescription is going to be enforced, that
09:36:07 13 you have a month or two months in order to file a claim. So
09:36:11 14 it's some comfort there, and we are able to move the cases in
09:36:14 15 that fashion.

09:36:16 16 MR. DAVIS: We will continue to have those discussions,
09:36:18 17 Your Honor.

09:36:19 18 THE COURT: Okay.

09:36:20 19 MR. DAVIS: With respect to Item Number 8, the MDL
09:36:23 20 Centrality, both sides have met with Orran Brown. We are
09:36:29 21 having further discussions on that issue. Mr. Brown is here.

09:36:34 22 THE COURT: Yes. Let me hear from Orran at this time.

09:36:39 23 We call it either fact or profile forms. It's a
09:36:42 24 form that is filled out by the parties, particularly the
09:36:46 25 plaintiffs, to give information that is necessary for

09:36:55 1 collecting the census of the case.

09:36:58 2 In the past, it's been a problem because it's had
09:37:04 3 thousands of claimants and thousands of forms, and it's hard to
09:37:08 4 group those forms in paper form.

09:37:13 5 Electronically, you're able to search them, and
09:37:17 6 you're able to decide what the total census is. You're able to
09:37:22 7 decide what the various parts are in the census, so that you
09:37:28 8 can select from those various parts the discovery pool and
09:37:33 9 bellwether cases.

09:37:37 10 Orran Brown has worked up some software that I
09:37:40 11 think would be helpful. Perhaps we can do a pilot program and
09:37:45 12 see how it goes to give the parties some comfort in
09:37:49 13 confidentiality.

09:37:49 14 Let me hear from Orran Brown at this time.

09:37:52 15 MR. DAVIS: Both sides are very mindful of that,
09:37:55 16 Your Honor. We have discussed that. One of the issues that
09:37:56 17 we've discussed in particular is the security issue, and
09:38:00 18 Mr. Brown will address that.

09:38:02 19 MR. BROWN: Thank you.

09:38:04 20 Thank you, Your Honor. I'm Orran Brown, from
09:38:07 21 BrownGreer. Unless you want me to continue Mr. Garrett's
09:38:12 22 presentation, I need to switch to my own.

09:38:28 23 What I want to do this morning, Your Honor, is
09:38:30 24 update the Court on where we stand on the discussions I've had
09:38:34 25 with the parties.

09:38:35 1 I need to get out of Mr. --

09:38:41 2 THE COURT: Do you want to help, Phil?

09:38:44 3 MR. PHILIP GARRETT: I think if you hit escape.

09:38:47 4 MR. BROWN: Yes, I've just got to get my -- there we
09:38:47 5 go, right there.

09:38:52 6 Thank you, Your Honor.

09:39:01 7 I've been meeting with the parties and lead
09:39:03 8 counsel for both parties on the fact sheet exchange program and
09:39:06 9 the effort to modernize and automate the exchange and
09:39:10 10 completion of the fact sheets.

09:39:11 11 I also want to report on the other discussions
09:39:14 12 we've had, which are, if we're going to centralize electronic
09:39:19 13 work in this program, whether some of the other infrastructure
09:39:22 14 the Court mentioned could be put under this umbrella. So if
09:39:26 15 it's really going to be centralized, let's centralize as much
09:39:29 16 as we can in one place for one-stop shopping, so you all log in
09:39:34 17 to one place and you can do a lot of things without having to
09:39:37 18 keep track of multiple things.

09:39:39 19 So I've been talking with the parties, obviously,
09:39:41 20 about our fact sheet effort, which we discussed a lot the last
09:39:46 21 time I was here. I will mention some brief things about that,
09:39:50 22 but I want to talk about the security aspect.

09:39:52 23 We've gotten some very legitimate questions from
09:39:55 24 the parties about how this is secure internally and externally,
09:39:59 25 and I want to review that very quickly.

09:40:00 1 We've also talked about the concept of the
09:40:02 2 pleadings that were mentioned earlier. Matters that are filed
09:40:06 3 in the PACER docket, we've developed a program that will
09:40:11 4 automatically harvest those pleadings once they are filed in
09:40:16 5 PACER and then distribute them with an alert e-mail to whoever
09:40:20 6 is registered counsel who have signed up in this system. Then
09:40:25 7 they can log on and view them.

09:40:26 8 The automatic harvest program eliminates the need
09:40:33 9 to file in PACER and then file in another place, too, or upload
09:40:37 10 to another place. This handles it in one step. So we have
09:40:41 11 been talking to the parties about that system.

09:40:43 12 The other piece of it are matters that are not
09:40:46 13 filed of record in PACER, but are discovery requests that are
09:40:52 14 propounded and then responded, could also be done under this
09:40:56 15 central system, where a party logs on who is issuing some
09:41:02 16 discovery, directs who it goes to, it automatically goes to
09:41:05 17 them, then they can respond to it.

09:41:06 18 The beauty of that would be that all of this is
09:41:09 19 housed in one central place, including, if the parties want, a
09:41:13 20 central repository and an electronic eRoom that will hold all
09:41:17 21 the production, ESI, PDFs, Excel, native format documents and
09:41:25 22 information and data, if they want to.

09:41:26 23 So the goal is, there is this smorgasbord of
09:41:31 24 basically four mainstays of infrastructure that have to occur
09:41:34 25 in a proceeding like this. All four of those or one of these

09:41:39 1 or any number of these, if the parties wish, could be handled
09:41:41 2 under this umbrella as part of all one place, one place to go
09:41:46 3 to find them all.

09:41:47 4 This is the fact sheet process that we developed.
09:41:52 5 It's just a sample screen. The parties have asked that we make
09:41:56 6 up a test environment with a sample fact sheet or census
09:42:01 7 document for this proceeding. We're going to program that in
09:42:04 8 and make that available to them as soon as we can, so they can
09:42:07 9 play around in it and see how it works and enter some data and
09:42:12 10 then export it and get a feel for its functions.

09:42:16 11 We talked last time about the tasks that are
09:42:20 12 involved, what the purposes are of fact sheets, and what they
09:42:24 13 are supposed to serve, and how this automated feature will
09:42:27 14 serve all of these goals to keep this process moving and to
09:42:32 15 make it easy to use.

09:42:35 16 The goal is to enter this information once, and
09:42:39 17 never have to enter it again for the life of this proceeding.
09:42:43 18 So we have live data that then is used throughout every phase
09:42:47 19 of it, as the parties move along, through discovery, through
09:42:51 20 bellwether trials or anything else.

09:42:53 21 We've gotten a lot of questions about security.
09:42:57 22 In this day and age, with reports of breaches and hacking, we
09:43:01 23 worry about that a lot. We have to deal with this daily in all
09:43:06 24 of the claims programs we administer because we have personal
09:43:09 25 identifying information from claimants and Social Security

09:43:12 1 numbers and HIPAA-protected medical records that we have to
09:43:18 2 safeguard. This proceeding will involve very similar
09:43:20 3 information.

09:43:21 4 So this is just a little diagram that shows our
09:43:27 5 defensive approach. It's called defense in depth is the way
09:43:31 6 the IT people talk about this. It's a three-tiered, layered
09:43:36 7 structure to the databases that we build and the systems we
09:43:40 8 build that are trying to safeguard these as much as possible
09:43:43 9 from any sort of external penetration or internally preventing
09:43:49 10 people from seeing things they are not supposed to see.

09:43:52 11 Because a lot of the fact sheet work, for
09:43:55 12 example, involves drafting and materials that are not yet ready
09:44:00 13 for prime time, not yet ready to be served, and our system is
09:44:04 14 coded and set up to where if you're working in your own private
09:44:07 15 workspace, no one else sees that until you click submit and
09:44:12 16 serve, and you're ready for them to see it.

09:44:14 17 The CMO or order that adopts this, if it's used,
09:44:18 18 would say that those private spaces are private, and that using
09:44:23 19 this doesn't alter work product protections, and our code makes
09:44:28 20 sure that that happens.

09:44:31 21 But the way that we deal with security is that
09:44:32 22 the data that people enter in is in this database layer at the
09:44:37 23 bottom. That's the treasure. That's the tables that we build
09:44:40 24 that hold all the information about a particular plaintiff, and
09:44:43 25 all the records about that plaintiff are all down here at the

09:44:48 1 bottom in our tables and on our servers. This information all
09:44:56 2 rests on servers that we own, that we maintain.

09:45:00 3 Security means two things: It means technical
09:45:05 4 security and physical security. These servers are located in
09:45:08 5 two locations, each one of them on an independent power source.
09:45:13 6 One of them outside of Ashland, Virginia, in a secure physical
09:45:17 7 location that's really like a bunker that's got 24-hour
09:45:20 8 security, physical security. You have to have a thumbprint
09:45:24 9 registered to get into the place.

09:45:26 10 And inside it, our servers are in their own cage
09:45:29 11 that we only have access to, and we own and maintain those
09:45:35 12 servers. There is a similar redundant facility in Charlotte,
09:45:39 13 North Carolina, that's our disaster recovery site.

09:45:42 14 Both of those locations are all our equipment.
09:45:46 15 Nothing is in the cloud. It's all something you can touch and
09:45:49 16 protect from physical access. Security at those sites is very
09:45:55 17 robust, more secure than, say, this courthouse is or can be,
09:45:59 18 given the traffic that this place gets.

09:46:01 19 The technical security is based upon the
09:46:04 20 structure that we build. The architecture behind this is
09:46:07 21 people entering the system, users, claimants' firms,
09:46:13 22 plaintiffs' firms, lead counsel, defense counsel, come into the
09:46:19 23 system first through a firewall.

09:46:21 24 Now, these firewalls are virus protection,
09:46:24 25 penetration or intrusion protection, vulnerability protection.

09:46:29 1 They allow us to monitor everybody that's using it, where the
09:46:32 2 IP addresses are. This is as secure as you can make one of
09:46:36 3 these things, starting out with this first line of protection
09:46:39 4 to get through to just try to log on.

09:46:44 5 You get to this presentation layer, and this is
09:46:46 6 where people enter their login information. Like Mr. Garrett
09:46:50 7 mentioned earlier in his system, you have a password, you have
09:46:54 8 a login. Only people who have been authorized can get into
09:46:58 9 this. Those credentials have to match.

09:47:00 10 The passwords are encrypted and hashed, meaning
09:47:05 11 that when somebody enters it, the system assigns random numbers
09:47:09 12 to it, so even we can't see what the password actually is.
09:47:13 13 That changes as we go along.

09:47:14 14 So your credentials then allow you in, and if you
09:47:19 15 don't have been the right credentials, you're locked out. It's
09:47:22 16 up to the users to protect their password. Just like it's up
09:47:25 17 to all of us to protect our online passwords to check our bank
09:47:31 18 accounts, the user firms will have to safeguard their own
09:47:34 19 passwords; but, if that person has a login and a password, they
09:47:38 20 get into the system, and then the code that we build controls
09:47:43 21 what their role is. They can only see what we have allowed
09:47:47 22 them to see.

09:47:49 23 We find out from the parties from the start which
09:47:53 24 users are uber users that can see everything, which are users
09:47:58 25 that can only read, which are users that can access only parts

09:48:02 1 of it. This role-based credentialing is what prevents people
09:48:08 2 from seeing space in the tables down here that they are not
09:48:11 3 supposed to. That's what protects the private work areas. We
09:48:14 4 can guarantee that nobody is going to see what they are not
09:48:17 5 supposed to.

09:48:18 6 If your credentials get you in, you go through
09:48:21 7 another firewall, the same protection, virus and penetration
09:48:27 8 protection. Then you get to our business layer, which is our
09:48:31 9 code. That's where the code lies that we build and test and
09:48:33 10 maintain that defines which part of this data down here you can
09:48:37 11 see.

09:48:38 12 It's as robust as you can make one of these
09:48:42 13 things for security protection. We're working with the IT and
09:48:46 14 security experts at the defendants' firms and other -- the lead
09:48:50 15 counsel to make sure they are comfortable with this. We're
09:48:53 16 going to show them whatever they need to see to feel
09:48:57 17 comfortable with it, but we feel that we can answer and solve
09:49:01 18 any concerns about the protection that's afforded to this.

09:49:04 19 Beyond that, Your Honor, if there are any
09:49:07 20 questions, I'm happy to address any questions.

09:49:09 21 THE COURT: I would like you to continue to work with
09:49:11 22 the parties because I see this as an opportunity to solve some
09:49:14 23 problems that we have in MDL's. One is to be able to, as I
09:49:19 24 mentioned before, get a feel for the census, so that we can
09:49:23 25 begin bellwether trials and bellwether selections promptly and

09:49:29 1 effectively.

09:49:29 2 Also, at the close of the case, to assist us with
09:49:32 3 the close of the case, which is oftentimes a problem for the
09:49:35 4 Clerk's office.

09:49:36 5 Thank you very much.

09:49:39 6 MR. BROWN: Yes, Your Honor. Thank you.

09:49:41 7 THE COURT: The next item is?

09:49:43 8 MR. DAVIS: Your Honor, in connection with Item 8, MDL
09:49:46 9 centrality, we provided to defense counsel a draft of a profile
09:49:50 10 form for consideration, and we'll have further discussions on
09:49:52 11 that.

09:49:53 12 On Item Number 9, Master Discovery, the PSC has
09:49:59 13 provided a draft, and I say that again, a draft of a master set
09:50:04 14 of requests for production of documents to defendants. We have
09:50:07 15 told defendants that we will meet and confer on that before
09:50:12 16 they are formally served. So that is in the works, and that's
09:50:16 17 in our lines for further discussions with defense counsel.

09:50:20 18 With respect to Item 10, Preservation Order, we
09:50:26 19 have exchanged e-mails regarding preservation issues, as well
09:50:32 20 as had face-to-face meetings to discuss this. There will be
09:50:36 21 further meetings with defense counsel on addressing both
09:50:42 22 preservation order as well as document production protocol,
09:50:45 23 which is Item 12 in the report. We have had those discussions,
09:50:50 24 and we will be reporting back to the Court on those and
09:50:55 25 scheduling further meet and confers.

09:50:57 1 Item 11, we have provided to defense counsel on
09:51:03 2 February 24th a proposal regarding a Privilege Log, which is
09:51:07 3 one of the items that we know Your Honor is very in tune with,
09:51:12 4 especially in light of prior litigations.

09:51:15 5 We have tracked what I'll call the Vioxx model,
09:51:19 6 to use Professor Rice's type analysis in dealing with a
09:51:27 7 privilege log, and we do have that on the items for discussion.

09:51:31 8 With respect to Item Number 13, Protective Order,
09:51:36 9 that's another one of the items that's confidentiality. In
09:51:41 10 accordance with Your Honor's earlier comments, we're mindful of
09:51:45 11 that.

09:51:46 12 We did provide a response to defendants on
09:51:49 13 February 24th with respect to a confidentiality order, and we
09:51:53 14 are having further discussions on that.

09:51:58 15 THE COURT: Jim, do you want to fill in on anything?

09:52:01 16 MR. IRWIN: Yes, thank you.

09:52:01 17 Thank you, Mr. Davis.

09:52:03 18 Our point person on these four infrastructure
09:52:08 19 items is Mr. Tim Coon. We understand Mr. Birchfield will be
09:52:12 20 dealing with -- no, it's Mr. Barr will be dealing with Mr. Coon
09:52:17 21 on that.

09:52:18 22 I would add that we have also exchanged
09:52:20 23 information with liaison counsel, including preservation order
09:52:27 24 information, and we will be getting together and examining
09:52:31 25 those two proposals and trying to work them out.

09:52:34 1 THE COURT: Okay. I would like to get some dates for
09:52:39 2 you all. I would like to meet with liaison counsel in two
09:52:44 3 weeks. Let me see whether or not we can resolve these issues
09:52:46 4 and get them following form.

09:52:50 5 Steve, you had something?

09:52:51 6 MR. GLICKSTEIN: Yes, Your Honor. Steve Glickstein for
09:52:55 7 Bayer.

09:52:56 8 I didn't know whether to step up while Mr. Davis
09:53:00 9 was talking or wait until the end, and I decided to wait for
09:53:04 10 the end.

09:53:04 11 Your Honor, I think, has set out very cogently
09:53:09 12 sort of the course of proceedings in MDL's and has advised us,
09:53:15 13 after we get through these infrastructure issues, to talk about
09:53:18 14 a scheduling order.

09:53:20 15 I just wanted to emphasize that there are certain
09:53:24 16 things that are peculiar to this case that may require a tweak
09:53:31 17 here or there. I know Your Honor has always encouraged the
09:53:35 18 attorneys to be creative and to tailor the schedule to the
09:53:37 19 particular needs of the case.

09:53:39 20 For example, there may be dispositive issues that
09:53:44 21 need early focus on beyond general causation. There may need
09:53:49 22 to be some simultaneous discovery of plaintiffs and defendants.

09:53:53 23 I didn't take Your Honor's remarks to prevent
09:53:56 24 that kind of substantive discussion between counsel as to what
09:54:00 25 the ultimate scheduling order should look like.

09:54:03 1 THE COURT: Yes. No, that's correct. The lawyers know
09:54:06 2 the case better than the Court at this point, so I look to you
09:54:12 3 all for guidance in fleshing out some of the details.

09:54:14 4 The general scope is what I was talking about,
09:54:18 5 but you do need to tweak cases. I recognize that. Some cases
09:54:22 6 present different issues, so I'll look to you all for some
09:54:25 7 assistance there.

09:54:27 8 MR. GLICKSTEIN: Right.

09:54:28 9 The only other point that I wanted to make, as
09:54:31 10 Mr. Irwin has said, we do have a point person on each one of
09:54:35 11 these issues to discuss with our counterparts on the PSC how we
09:54:41 12 might resolve each one of those.

09:54:44 13 The only one that I wanted to mention,
09:54:46 14 particularly because Your Honor commented on it, was tolling
09:54:54 15 agreement.

09:54:56 16 I don't want to get into the debate about tolling
09:55:00 17 agreements at this early stage. Jim Irwin and I are tasked
09:55:04 18 with speaking with Mr. Birchfield and others about the issue,
09:55:10 19 but there are serious concerns among our clients about tolling.

09:55:15 20 We, of course, heard your Your Honor's comments
09:55:20 21 about that, but since Your Honor commented about it, I did want
09:55:25 22 Your Honor to know that that is a concern of our clients. I
09:55:32 23 don't want for there to be an implication that necessarily
09:55:34 24 there will be a tolling agreement.

09:55:36 25 THE COURT: Okay. All right. Thank you.

09:55:38 1 MR. DAVIS: Your Honor, we will address the scheduling
09:55:42 2 order in due course. We heard Your Honor's comments. We
09:55:50 3 understand Steve Glickstein's comments as well. We are
09:55:52 4 prepared to discuss dispositive motions at the appropriate
09:55:52 5 time.

09:55:57 6 We have assigned a member of the executive
09:55:59 7 committee to each one of those items for discussion, so we will
09:56:04 8 be united in our dealings with defense counsel.

09:56:08 9 THE COURT: So I'll meet with liaison in two weeks to
09:56:10 10 see which matters have been resolved, which matters need to be
09:56:14 11 resolved by the Court, and we'll get them resolved one way or
09:56:20 12 the other.

09:56:22 13 How about State/Federal Coordination?

09:56:24 14 MR. DAVIS: Your Honor has appointed Ms. Barrios as the
09:56:28 15 state liaison committee member. She is here with us. We have
09:56:34 16 already started that process.

09:56:37 17 Earlier today, defense counsel provided to us a
09:56:43 18 spreadsheet of various cases that have been filed throughout
09:56:46 19 the country. We'll be reviewing that. That also sets forth
09:56:49 20 the judge and the jurisdiction of each of those cases.

09:56:54 21 We've asked that defense counsel also provide
09:56:58 22 copies of the underlying complaint, so that we can review
09:57:01 23 those.

09:57:01 24 Ms. Barrios may have something to add.

09:57:07 25 MS. BARRIOS: Thank you, Mr. Davis.

09:57:09 1 Good morning, Your Honor. Dawn Barrios, State
09:57:13 2 Liaison Counsel. Ms. Sharko and Mr. Irwin have provided a very
09:57:17 3 detailed spreadsheet for us, and I think you have that --

09:57:21 4 THE COURT: I do have it.

09:57:23 5 MS. BARRIOS: -- in your hands.

09:57:23 6 THE COURT: Right.

09:57:24 7 MS. BARRIOS: As you can see, there are only four
09:57:27 8 jurisdictions right now who have other cases. I'll be
09:57:29 9 preparing a spreadsheet, as I've done for you in the past,
09:57:32 10 including the e-mail addresses for the judges as well.

09:57:37 11 We are discussing, as Mr. Davis said, I would
09:57:39 12 like to get copies of the underlying complaint because it gives
09:57:43 13 me information on the plaintiff's lawyer, if I need to talk
09:57:46 14 them, and we have been talking about that this morning.

09:57:49 15 Thank you, Your Honor.

09:57:49 16 THE COURT: Okay. Fine. Thank you.

09:57:50 17 Anything, Jim?

09:57:51 18 MR. IRWIN: No, thank you, Your Honor.

09:57:54 19 MR. DAVIS: Your Honor, the only other comment I have
09:57:56 20 is that we have had a number of meet and confers and a number
09:58:00 21 of discussions with defense counsel. It has been very
09:58:04 22 professional, and it is what you would expect out of opposing
09:58:09 23 counsel. I just want to make that comment.

09:58:12 24 Our steering committee has met. They have been
09:58:16 25 wonderful. We are off, we're ready to run, and we are prepared

09:58:21 1 to meet Your Honor's expectations.

09:58:23 2 THE COURT: Okay. Anything further, Jim?

09:58:26 3 MR. IRWIN: No, I just want to thank Mr. Davis for that
09:58:29 4 comment and return it in kind.

09:58:31 5 THE COURT: Okay. All right. Anything from anybody
09:58:33 6 that I haven't touched on? Any comment from the audience?

09:58:36 7 MR. DAVIS: The next status.

09:58:37 8 THE COURT: The Next Status Meeting will be April 1st
09:58:40 9 in open court. And the following one will be May 13th.

09:58:46 10 Before then, I'll be meeting with liaison counsel
09:58:49 11 to just police some of these matters. We've discussed them,
09:58:54 12 but some of them have been resolved, some of them need to be
09:58:56 13 resolved, but the point that I make is that we need to agree on
09:59:01 14 infrastructure.

09:59:03 15 I don't look to counsel to agree on substantive
09:59:05 16 matters. They represent their clients. They do it very
09:59:10 17 effectively. I suspect they have different views on substance;
09:59:13 18 but, on procedure, we ought to be able to come together with
09:59:17 19 some easy procedure that's comfortable with them that makes
09:59:22 20 sense and gets the job done, so that we can move on and
09:59:26 21 schedule the matter.

09:59:27 22 I really want to try to get this case over with
09:59:29 23 in about two to three years, so that we can decide one way or
09:59:35 24 the other whether there is a case that can be resolved, or it
09:59:40 25 cannot be resolved here, so that you can go back to the various

09:59:43 1 jurisdictions and handle the cases that way. But they do have
09:59:48 2 to be resolved, folks. That's what we need to focus on.

09:59:52 3 MR. DAVIS: Your Honor, I just have one announcement,
09:59:53 4 and that's for all plaintiffs' counsel, only plaintiffs'
09:59:57 5 counsel, we're asking if they would meet after the status
10:00:01 6 conference here in the courtroom.

10:00:02 7 THE COURT: Let me mention, too, that in this
10:00:05 8 particular case, what I would like to do -- and I told the lead
10:00:10 9 counsel and the PSC -- that I would like them to create
10:00:17 10 subcommittees, so that anybody who is interested, any plaintiff
10:00:21 11 lawyer who is interested in participating in this case in any
10:00:23 12 fashion, get on a subcommittee.

10:00:26 13 You'll see in my pretrial order, check with
10:00:33 14 liaison counsel. If you feel that you're not getting
10:00:37 15 attention, as my court order says, get with the Court, and the
10:00:42 16 Court then will make sure that you're on a subcommittee.

10:00:46 17 We've got to have some organizational structure.
10:00:50 18 You can't have hundreds of lawyers doing things that nobody
10:00:55 19 knows that they are doing. But if you're interested in doing
10:00:58 20 it, whether you're on a committee or not, please participate
10:01:03 21 and feel like you can participate, and you're welcome to
10:01:06 22 participate in the litigation and, likewise, participate in any
10:01:11 23 common benefit fee if you produce the work and put in the time.

10:01:17 24 Okay. Thank you very much. Court will stand in
10:01:20 25 recess.

10:01:20 1

MR. DAVIS: Thank you.

10:01:21 2

THE DEPUTY CLERK: All rise.

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(WHEREUPON, at 10:01 a.m., the Court was in recess.)

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REPORTER'S CERTIFICATE

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s/Cathy Pepper

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