

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 IN RE:)
6 NATIONAL PRESCRIPTION) CASE NO. 1:17CV2804
7 OPIATE LITIGATION)

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10 TRANSCRIPT OF TELECONFERENCE PROCEEDINGS HAD BEFORE
11 THE HONORABLE JUDGE DAN A. POLSTER, JUDGE OF SAID
12 COURT, ON WEDNESDAY, DECEMBER 13TH, 2017,
13 COMMENCING AT 1:00 O'CLOCK P.M.

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2 James C. Peterson, Esq.

3 Peter Weinberger, Esq.

4 Joe Rice, Esq.

5 Paul Hanly, Jr., Esq.

6 Paul Farrell, Jr., Esq.

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9 Defense Counsel Speakers:

10 Mark Cheffo, Esq.

11 Enu Mainigi, Esq.

12 Tyler Tarney, Esq.

13

14

15 Requests from Prospective Speakers:

16 Lee Javins, Esq.

17 Steve Berman, Esq.

18 Frank Dudenhefer, Esq.

19 Dave Cates, Esq.

20 James Young, Esq.

21 Mark Troutman, Esq.

22 James R. Dugan, Esq.

23 Don Barrett, Esq.

24 Hunter Shkolnik, Esq.

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P R O C E E D I N G S

THE COURT: All right. Good afternoon, everyone. And thanks for getting available on short notice. This is the initial telephone conference in Opiate Litigation MDL No. 2804, and I do have a court reporter who is going to transcribe this.

I want to do a couple housekeeping things at the outset. The master MDL docket is up and running, and all or virtually all of the cases that have been transferred into the MDL, approximately 146, have been electronically transferred.

So if you have a filing in an individual case, you should file it in the individual case. If it is a filing that pertains to more than one case, you should file it in the master docket.

If any lawyer has an ECF account in any federal court around the country, you don't need pro hac vice status in our Court. We could make a whole lot of money, but we are not going to make it unnecessarily. So if you have an ECF account, you are in. If any attorney has already filed a notice of appearance in the transferor Court, you need not file a new notice of appearance in the MDL. With your being added to a roster of attorneys, a new attorney, you have got to file your notice of appearance, and any new case that comes into

1 the MDL, obviously, you have to file a notice of
2 appearance.

3 So also, at the outset, I want to give a big
4 thanks to Jim Peterson of West Virginia and his staff,
5 including Pam Perkins and Aaron Herra, without their
6 help, we never would have been able to pull this
7 together.

8 MR. PETERSON: Thank you, Judge.

9 THE COURT: Oh, all right. I want to
10 correct that. We just received the first 65 cases that
11 were on the transferor order. We haven't — there are a
12 lot of conditional transfers that haven't gone through
13 yet. So we don't have those individual dockets in
14 Northern District of Ohio. We do have individual case
15 dockets for the 65 government cases that were initially
16 transferred from the MDL. All right.

17 There are a number of agenda items. I guess
18 we can — the first thing, obviously, we are going to
19 have to organize this MDL. We have, I think, three
20 categories of cases. We have got the government — I
21 will call government plaintiff cases. That would be
22 cities, counties.

23 States. We have a category of cases filed
24 by other institutions, you know, ERISA pension, and
25 health and pension, welfare funds, et cetera, and then we

1 have some cases filed by individuals or groups of
2 individuals, and one of the things I am going to have to
3 decide is whether I am going to keep the non government
4 cases in this MDL or whether it is just not possible to
5 manage them and they need to go back. But I am going to
6 obviously hear from everyone, and at the outset, they are
7 all going to be in the MDL.

8 So we have got to figure out how we are
9 going to organize this effectively. So I assume that
10 some lawyers on the plaintiffs' side have given this some
11 thought as for the defendants, and we have a group of
12 manufacturer defendants.

13 We have, at least, three main distributor
14 defendants, and I know at least in the Ohio cases we had,
15 I believe, four doctors. I haven't really analyzed the
16 other cases to see if we have other defendants. So I
17 guess, Jim Peterson, you want to speak from the
18 plaintiffs on organization, and then I will hear from the
19 defendants.

20 MR. PETERSON: Jim Peterson here. Thank
21 you, your Honor.

22 And I would like to thank you and your
23 staff. Without them, we wouldn't be here today either,
24 so I would like to thank you again.

25 THE COURT: I have a very good staff. Thank

1 you.

2 MR. PETERSON: Thank you. As far as the
3 first issue, the agenda item, with the Court's blessing,
4 I would like to host an organizational meeting on Monday,
5 December 18, 2017, in Cleveland, Ohio, so that we can
6 first address the issue of liaison counsel and steering
7 committees, and that would be with the Court's blessing.

8 And if so, I have asked Peter Weinberger who
9 is listed here to address agenda items 3, 4, and 5, I
10 have asked him because he is in Cleveland with the
11 Spangenberg firm, to see if we can't round up a meeting
12 facility, a hotel, et cetera, so that we can start moving
13 this case forward.

14 MR. WEINBERGER: Your Honor, this is
15 Peter Weinberger. We have tentatively made arrangements
16 for a large meeting room at the downtown Hilton for
17 December 18th. We also have a block of rooms and are
18 prepared once we have the Court's agreement to this, to
19 send out information on venue hotel rooms, et cetera, for
20 a meeting presumably to start at about 1:00 o'clock on
21 Monday, December 18th in Cleveland.

22 THE COURT: All right. That's fine with me,
23 and of course, ultimately, it is my appointment, but I
24 will certainly rely heavily on suggestions from the
25 parties, and you want — you are going to have to file a

1 motion with me, with your recommendations, and again, I
2 will rely heavily on that. I have done so in my prior
3 MDLs. I want to make sure that the group is not too
4 large, that it is unwieldy, but you need to include the
5 right people, and of course, anyone who has a leadership
6 role, any lawyer on both sides, I am going to require his
7 or her personal involvement.

8 I've heard that in some MDLs people got
9 leadership roles, and then they sent other people in
10 their firms to court. We don't do that. If you have got
11 a leadership role, that's great, but it is because your
12 colleagues believed you personally are the one to
13 exercise that responsibility, and I will be relying on
14 that.

15 All right. Well, that takes —

16 MR. SHKOLNIK: Judge —

17 THE COURT: Yes.

18 MR. SHKOLNIK: — Judge Polster, this is
19 Hunter, Schkolnik. I am speaking for this purpose on
20 behalf of John Climaco, who I think advised the Court
21 that he could not be there due to a medical issue for his
22 wife, and he wanted me to offer to the Court that he
23 would jointly host this organizational meeting along with
24 Mr. Weinberger. He was going to suggest that himself,
25 but he couldn't be on the call.

1 THE COURT: Well, I know John; I know Pete.
2 You can — doesn't matter who is hosting it. You just
3 can do it, and I think that's fine.

4 All right. From the defendants' standpoint,
5 how are you suggesting organization?

6 MR. CHEFFO: Your Honor, and again, I echo
7 counsel's thank you, this is Mark Cheffo for the
8 manufacturing defendants today.

9 I think we understood that that meeting
10 would be largely plaintiffs, and we don't necessarily
11 have a dog in that fight as you might imagine. I think
12 from our prospective it is probably a little more
13 manageable just in terms of the number of defendants.

14 I think we probably would like some
15 opportunity to caucus amongst ourselves, but our view
16 generally is that we could also propose kind of a slate
17 of folks who would represent the key defendants. I think
18 one question that we would probably like to work through
19 amongst ourselves unless, of course, the Court has
20 specific issues or suggestions or concerns, we do think
21 that the issue — and your Honor addressed this
22 upfront — kind of how do we get our hands around this
23 and kind of how your Honor gets your hands around this
24 litigation in terms of tracks and how we are going to
25 step move that will be important.

1 So in other words, we could contemplate
2 certainly one steering committee that would involve
3 distributors and manufacturers. We could also
4 contemplate two separate defense steering committees
5 depending on how the Court thinks it is appropriate to
6 track that. So to directly answer your question, we
7 would be happy to caucus amongst ourselves.

8 Enu will speak certainly for herself and
9 then perhaps in the next coming weeks give the Court a
10 proposal for the defense side.

11 THE COURT: All right. That's fine, Mark.
12 I am open — I mean, good lawyers and smart clients know
13 how to organization themselves the best, and so if you
14 think one steering — one joint steering committee with
15 the manufacturers and distributors makes sense, that's
16 fine. If you think there should be separate ones, you
17 know, you make your proposal. That's okay, too, I
18 guess.

19 Enu, did you want to say anything on that?
20 Enu Mainigi, did you want to say anything on that?

21 MS. MAINIGI: Yes, your Honor.

22 Your Honor, I agree with Mr. Cheffo. I
23 think that we are planning on getting together with the
24 other defendants, including the manufacturers, obviously,
25 and we are open to whatever organizational structure

1 would seem to make sense. If your Honor has a certain
2 way that he has done it before, we are happy to hear more
3 about that. Otherwise, we will come prepared on January
4 9th with a proposal.

5 THE COURT: All right. Thank you.

6 Well, each MDL is different. This one is
7 different than my previous ones. So I am not set on
8 whether there should be one committee with both the
9 manufacturers and distributors or two. All right.

10 Then we have got, at least in my cases, in
11 the Ohio cases, there were, I believe, four doctors —

12 MR. TARNEY: Yes, your Honor.

13 THE COURT: — as defendants. So is this
14 Tyler?

15 MR. TARNEY: Yes, your Honor. This is
16 Tyler Tarney speaking on behalf of the physician
17 defendants. As far as the organization, we share in
18 the approach to justify the manufacturers and
19 distributors.

20 THE COURT: Well, do you think — do you
21 think there should be a separate steering committee for
22 the doctors? I haven't looked at the other hundred
23 cases. Are these four doctors named in a number of the
24 other cases around the country?

25 MR. TARNEY: They are named in 34 cases by

1 our last count in cases that are either in the MDL or
2 subject to the conditional transferor order.

3 THE COURT: All right. Are there other
4 individual doctors that have been sued in other cases to
5 anyone's knowledge?

6 MR. MANDEL: Yes, your Honor. Actually —
7 this is Aaron Mandel. I am in St. Louis, and we
8 represent an individual physician in a case pending
9 here.

10 THE COURT: All right.

11 MR. HANLY: Your Honor, this is Paul Hanly
12 from Simmons Hanly Conroy. I am one of the lawyers who
13 is listed on the list provided to the Court. We have a
14 doctor named in cases that were brought in Louisiana and
15 are in the process of being removed and tagged into the
16 MDL.

17 THE COURT: All right. Well, what I am
18 going to want is those lawyers who are representing
19 physicians to caucus and decide what is best
20 organizationally, and if you want to have a separate
21 steering committee for doctors, that's okay. If you want
22 to be part of the — if the manufacturers and the
23 distributors are proposing one Joint one and you just
24 want to have a representative on that, that's fine.

25 And that may be — I mean, candidly, it may

1 be best to have one defense steering committee, and just
2 make sure you've got at least one representative of the
3 manufacturers, one representative of the distributors,
4 and one representative of the physicians because I am
5 trying to deal with this as an organic hole.

6 I mean, there are pieces, but since many of
7 the defendants are in large numbers of cases, if I meet
8 with a steering committee, I am going to meet with the
9 steering committee. So it is probably best to have one
10 defense steering committee with individual members.

11 Okay. And then, I guess when — I will say
12 the same thing. When the defendants have caucused and
13 you have a proposal, just send me a motion or a motion,
14 recommendation, whatever. And again, I can't imagine I
15 am not going to approve it unless I see someone objects
16 to it. You are going to have to serve it, and if someone
17 objects, I will certainly look at the objection. I think
18 that's the way I will do it.

19 If someone objects to either what I get from
20 the plaintiffs or I get from the defendants, I will
21 certainly look at that lawyers' objection and try and
22 deal with it. If I get no objections, I am going to
23 adopt those proposals.

24 Okay. All right. The second item, I know
25 — oh, right. My law clerk, Mary Hughes, has reminded me

1 I will want to have liaison counsel that I can get hold
2 of very quickly sort of for organization purposes, to
3 distribute information, whatever, things come up. Those
4 of you who have been in MDL know that they come up.

5 So I will want a very small number from the
6 plaintiffs' side. You know, we are not talking like
7 probably no more than two or three from the plaintiffs'
8 side and two or three from the defendants' side. The
9 reason I am suggesting more than one, I mean, someone
10 could be tied up in court or out of the country or
11 whatever. So it is good to have two or three. But
12 that's what I am talking about.

13 LAW CLERK HUGHES: And if there are two and
14 one of them can't get on the phone, the other one will be
15 able to take the call.

16 THE COURT: Yeah. Right. If I can't reach
17 one, I can reach the other. That's the idea. I
18 understand and am not expecting everyone to be tethered
19 to their phone. Everyone is busy, and people have
20 personal lives. So why don't you aim for three liaison
21 counsel for the plaintiffs and three for the defendants
22 unless someone has a strong — strongly feels there
23 should be more than that. Okay.

24 MR. CHEFFO: For the defense, from the
25 manufacturers, that sounds like a good idea, your Honor,

1 and we will do that.

2 THE COURT: Okay. Thanks, Mark.

3 MR. WEINBERGER: Your Honor, from the
4 plaintiffs, Peter Weinberger —

5 THE COURT: Yes, Pete.

6 MR. WEINBERGER: — I think your suggestion
7 of three liaison counsel is a good one, and we will
8 certainly work with that number.

9 THE COURT: Okay.

10 MR. WEINBERGER: Thank you.

11 THE COURT: Okay. All right.

12 The second item — and again, I don't think
13 we are going to resolve this today, but it certainly is
14 out there — I know in my four or five cases, there are
15 motions to remand based on the same argument defendants
16 argued, that the distributor defendants were improperly
17 or unnecessarily joined to defeat diversity, and that
18 they don't need to be in the case.

19 And if they are not, well, they were removed
20 on that basis, they were removed on the basis that the
21 distributors didn't need to be in the case, and if they
22 were out of the case, there is complete diversity, and
23 they can be in federal court.

24 The plaintiffs said, look, we brought the
25 case. We have alleged a conspiracy between the

1 manufacturers and distributors, and it is our case, and
2 we have a right to try and prove it. I am sure there are
3 similar motions around the country.

4 My thought is to just leave them hanging for
5 a while. The cases are in the MDL, and my objective is
6 to get my hands around this and see if there is some —
7 maybe some framework for some resolution, and if so, it
8 is much more preferable to have more cases in the MDL,
9 the more the better, rather than having them out there in
10 individual state courts where there can't be any
11 coordination.

12 So it was my thought just to not do anything
13 with those motions to remand at the present time, but
14 again, we have got smart lawyers, a lot of them. So I
15 will hear from anyone who wants to talk about that.

16 MR. PETERSON: Your Honor, Jim Peterson
17 speaking in regards briefly to this second agenda item.
18 Thanks to Lee Javins and Jennifer Connolly, who I believe
19 are on the phone, they have endeavored to put forward an
20 exhaustive list of remand motions together with the
21 procedural posture.

22 And it appears we have, at least on these
23 lists, we have 17 that are in remand, and of the 17, one
24 involves federal question, and the other 16 involve
25 fraudulently misjoinders. So those are the issues, and

1 of course, your Honor, we do have requests from I think
2 approximately one, two, three, four, five individuals to
3 address any remand issue the Court would care to discuss
4 today.

5 We have Attorney Generals, we have cities,
6 we have counties and states involved in these remands so
7 there is some different types of dynamics going on here.
8 So I leave it up to the Court.

9 THE COURT: Well, I understand. Thank you,
10 Jim.

11 The point is this: I understand that most
12 of the plaintiffs sought an MDL. If you want an MDL,
13 that means you want your cases in here. The purpose of
14 the MDL is to coordinate discovery, avoid a lot of
15 duplication and expense, and explore all possibilities
16 for some global resolution with cases, you know, parceled
17 out all over the country in individual state courts,
18 that's not possible.

19 So I am assuming that plaintiffs want to be
20 in the MDL, and candidly, I don't think too many
21 distributors defendants want to be cut loose and have a
22 separate case proceeding against them in 17 different
23 states, which would be the result. I mean, if I were to
24 say that someone is fraudulently joined, the case isn't
25 dismissed.

1 Somehow, you know, that part of the case
2 gets sent to state court, so you got half the case in
3 federal court, half in state court. So it is my thought
4 just to keep those pending. Everyone is here, and we
5 will see what we can do, and if, you know, if I have got
6 to deal with them in the future, I will figure out some
7 way to deal with them but not to worry about that now.

8 MR. CHEFFO: Your Honor, this is Mark Cheffo
9 again. Just briefly, we agree with that analysis
10 completely for a few different reasons. One is, there is
11 some overlapping claims. There are some that are
12 different. There are still cases that are being
13 transferred. Some of them have been stayed.

14 There is — some of these motions haven't
15 been fully briefed, and for the reasons you were
16 articulating, frankly, seeing, number one, in terms of
17 counsel, you know, we do believe to the extent that in
18 our experience in these MDLs there is very good lawyers
19 on this phone, hopefully from both sides, we know many of
20 them, but having people who are fully committed to the
21 MDL — we are — we think this should be the center where
22 discovery and discussions about how the cases proceed or
23 potential resolution, all of those issues are kind of
24 best centered here.

25 And we think both for the remand issues that

1 your Honor articulated and, frankly, for even as factors
2 of consideration of who should be leading it, it should
3 be folks, again, who are fully committed to this Court
4 and your Honor as opposed to some other places where it
5 may be less easy to reach some of these interviews and
6 efficiencies that your Honor has talked about.

7 MS. MAINIGI: Your Honor, this is Enu
8 Mainigi on behalf of the Big Three distributors, and we
9 again agree with Mr. Cheffo. I think certainly what your
10 Honor said makes good sense for the time being, at least,
11 until we kind of get a lay of the land and leadership
12 teams are performed, just look with good intent leaving
13 the cases that are subject to remand decision here in the
14 MDL.

15 MR. TARNEY: This is Tyler Tarney on behalf
16 of the physician defendants. We completely agree with
17 the reasons articulated by the Court as the manufacturers
18 and the distributors.

19 THE COURT: All right. Anyone want to speak
20 for the plaintiffs on that?

21 MR. JAVINS: Lee Javins on behalf of the
22 State of West Virginia, and I heard your — you
23 characterized your discussion of the cases, and it is
24 true, there are 17 remands. Sixteen remands — there
25 will be more, I am sure — based on diversity arising out

1 of fraudulent joinder. I am simply here to say that the
2 state of West Virginia is an outlier, and I don't know
3 that it is appropriate for the West Virginia case to be
4 in the mix because of the federal question that has been
5 remanded once.

6 So I don't need to discuss the merits.
7 Judge Copenhaver did, improper remand, and it is not even
8 timely. And the truth of the matter is, Judge Favor
9 simply didn't get to rule on it, then briefed, and has
10 been argued. So respectfully, on behalf of the state, I
11 would ask that the federal question remand be put maybe
12 on a separate track or be subject to a separate analysis
13 because —

14 THE COURT: All right. Well, I agree,
15 that's different. And if there is no — I gather there
16 is no diversity, so it is in federal court on federal
17 question, or it is not. It seems to me that if the judge
18 has already ruled on it he should rule on it again if it
19 is the same thing.

20 MR. JAVINS: Well, the problem is, Judge
21 Copenhaver ruled on it the first time and said there is
22 no federal question, and then there came a number of
23 these cases filed in the Southern District of West
24 Virginia. And so McKesson filed a second remand of the
25 same federal question, and it was lumped as related, and

1 so Judge Favor —

2 THE COURT: You mean a removal?

3 MR. JAVINS: I'm sorry. A removal, yes. It
4 was removed a second time in front of a different judge,
5 and he simply hasn't — we even had an expedited
6 argument, and he simply didn't rule. But whether — you
7 know, currently, the ball is in your Court. That's the
8 reason I am bringing it up. And —

9 THE COURT: I will tell you what. I think I
10 am going to send that case back to West Virginia just for
11 ruling on that.

12 MR. JAVINS: Okay.

13 THE COURT: Because a judge in that Court
14 has already made a ruling.

15 MR. JAVINS: Correct.

16 THE COURT: So I am going to exercise my
17 discretion and send that case back — if you can give me
18 the name or the caption.

19 MR. JAVINS: I would be prepared to chart
20 for you, your Honor, it is state of West Virginia versus
21 McKesson.

22 LAW CLERK HUGHES: We have got it.

23 THE COURT: We have it. All right. I am
24 going to send that one alone back to the district of
25 West Virginia for ruling on this simple question on the

1 federal question and the removal and remand.

2 MR. JAVINS: Okay.

3 THE COURT: And if the Judge decides that it
4 is properly in federal court, then it is going to be
5 transferred into the MDL.

6 MR. JAVINS: I understand.

7 THE COURT: If the Judge decides it is not
8 in federal court at all, it has got to go back to the
9 state court in West Virginia, and it is not in the MDL.
10 And there are cases — I know there is an Ohio case that
11 Attorney General DeWine brought that I believe is in Ross
12 County. So there are cases in state court, and
13 presumably they will state there. All right. Thank you.

14 MR. JAVINS: Thank you, your Honor.

15 THE COURT: So that's what I will do.

16 Item 3 —

17 MR. YOUNG: Your Honor, this is James Young
18 on behalf of some West Virginia cases. I apologize, I
19 was waiting to see if perspective speakers 2 through 4
20 jumped in there on the remand motions.

21 I get a sense that the train is leaving the
22 station, so I won't belabor the point, but I do just want
23 to mention we specifically availed ourselves of state
24 court in West Virginia, and we amended our complaint to
25 include a West Virginia entity that is a bit of a unique

1 statutory structure and factual background in West
2 Virginia, that is, the State Board of Pharmacy. And
3 those remand motions were argued before Judge Favor, and
4 a ruling on them was pending. I think it was back in
5 October, and of course, the MDL was created.

6 So I would distinguish our cases a bit from
7 the other cases that your Honor referenced in that we did
8 not petition to create the MDL. We actually filed a
9 petition in opposition to it, and we would like to get
10 back to West Virginia. And West Virginia has an ability
11 to conduct coordinated discovery between and among state
12 court plaintiffs through the MDL process, and we would be
13 willing to submit to coordination with the MDL once back
14 in state court. I just want to get that on the record.

15 THE COURT: All right. Well, I understand
16 it. I am going to keep that case here for the time
17 being. I have limited time and limited staff, and I just
18 don't want to be tied up on individual remand motions at
19 the moment. If I have to deal with them in the future, I
20 will. So I want to see what we are going to do with this
21 constellation of cases.

22 All right. A big issue is whether it is
23 going to be possible to keep in this MDL the three large
24 categories that we have. We have got the government
25 entity cases. Those are here. They are staying. The

1 issue in my mind, it is an open question on the other
2 institutions and the individual plaintiffs. So I wasn't
3 going to come to a resolution today, but I want everyone
4 thinking about that. And, you know, if people have some
5 preliminary thoughts, we can talk about it for a few
6 minutes.

7 MR. WEINBERGER: Your Honor, this is Peter
8 Weinberger, the plaintiffs. It is our suggestion -- it
9 is my suggestion, and I think others would join in --
10 that we deal with this issue as part of our group meeting
11 that hopefully will take place this coming Monday from
12 the perspective of understanding what the Court has said,
13 and we agree that there are some unique issues associated
14 with the non governmental entities and the individuals'
15 cases.

16 And do one of two things: Either, one,
17 arrive at a consensus to provide the Court with a
18 position on this or -- and more likely -- select some
19 leaders from the plaintiffs' group, who will then address
20 this perhaps starting with a meet and confer with defense
21 counsel but then have an opportunity to report back to
22 the Court so that we are in a position by the January 9th
23 hearing to address this with the Court.

24 THE COURT: All right. I think that's an
25 excellent suggestion, Pete, because again, the MDL panel

1 left this open, and I am not looking to just, you know,
2 throw out cases or throw them back around the country
3 because of the logistics problem. But I want to make
4 sure that I can manage what I have got effectively, and
5 that if I keep them all, there are enough commonalities
6 that it makes sense. So why don't you confer, and
7 defense counsel should confer, and then you can confer
8 together, and we will certainly discuss that in January.

9 Anyone else have anything sort of different
10 to say on that?

11 MR. DUGAN: Judge Polster, this is
12 James Dugan with the Dugan law firm in New Orleans.

13 THE COURT: Yes, James.

14 MR. DUGAN: Thanks for putting this call
15 together and giving everyone an opportunity to speak. I
16 have filed class actions on behalf of what we call
17 private third-party payers. They are health and welfare
18 funds —

19 THE COURT: Right.

20 MR. DUGAN: — that they pay for
21 prescription costs for their members. We filed one in
22 Boston, a nationwide class, two in the Eastern District
23 of Pennsylvania, also class actions. To my knowledge,
24 there is a fourth case filed in the Eastern District of
25 Pennsylvania in front of Judge Savage, and then there is

1 one filed in Ohio —

2 THE COURT: I have got one.

3 MR. DUGAN: It is an Ohio only class. We
4 had filed an interested party response in support of
5 Judge Savage in the Eastern District of Pennsylvania. We
6 are also open to discussing whatever your Honor as the
7 MDL Court uses as his discretion about how to organize
8 these cases. There is precedent for having different
9 MDLs.

10 For example, in the Neurontin litigation,
11 which Mr. Cheffo was also involved and Mr. Barrett and
12 also Mr. Berman on this phone were involved, there was a
13 marketing MDL in front of Judge Saris in Boston, and then
14 there was also an antitrust MDL in New Jersey, both on
15 behalf of the drug Neurontin, but the claims were
16 different. So there is certain precedent for having
17 separate MDLs.

18 At this point, obviously, it is a short time
19 frame, and we are trying to organize, but I think my
20 particular group is six firms. There is probably another
21 four or five firms out there doing these types of cases,
22 and we would like an opportunity, we will participate in
23 the organizational process, but I would assume we will
24 also have some type of decision and recommendation with
25 options for your Honor.

1 THE COURT: All right. Thank you, James. I
2 mean, you know, we can have two or three tracks in the
3 same MDL. If there are a lot of similar issues in
4 discovery and liability, it may make sense for me to keep
5 them all. If they are really radically different, then
6 there certainly is an option for a second or even a third
7 MDL. But that's something I will listen carefully to,
8 what all of you propose.

9 MR. DUGAN: Thank you, your Honor.

10 MR. CHEFFO: This is Mark Cheffo. Briefly,
11 we agree with counsel that we should meet and confer on
12 this. To the extent your Honor wants our kind of
13 preliminary view from a manufacturers' perspective, we
14 think this can be handled by your Honor using separate
15 tracks. We have worked cooperatively with all of these
16 folks.

17 We think that, particularly as to these
18 third-party payer type claims, they are very similar in
19 terms of discovery, and they can be managed most
20 effectively. Admittedly, some of the personal injury
21 type cases are a little different than the others. We
22 recognize that, but we still think that we will be able
23 to have a plan that will make it most efficient, but I
24 don't want to be presumptuous. I haven't given a chance
25 for the plaintiffs to weigh in on it, but that's our

1 initial thinking, but we are certainly open to hearing
2 what they have to say in making this most efficient.

3 THE COURT: Okay. Well, again, that's why I
4 — quite frankly, that's why I wanted to set up this
5 phone call early. I don't have the answers. I think I
6 have got most of the questions, but again, there is an
7 incredible amount of experience on the other end of the
8 line. I have some experience, but it is dwarfed by all
9 of your collective experience, so I am looking to you.

10 I am definitely contemplating appointing a
11 special master in this case. I am going to need some
12 help. I may or may not request that the Sixth Circuit
13 consider giving me an emergency law clerk, but one, I
14 have no idea what funds are available, and I think the
15 help I need is not so much from a law clerk at this
16 point; it is from a special master.

17 So I wanted to pick someone I am experienced
18 with and comfortable with who is experienced. So unless
19 there is a strong objection from anyone, I am going to
20 appoint someone, and the cost would be split between the
21 plaintiffs and the defendants, which is how it has worked
22 in the other MDL when I had one. So does anyone have a
23 problem with that?

24 MR. WEINBERGER: Your Honor, this is
25 Peter Weinberger on behalf of the plaintiffs' side. You

1 know, it is clear from the way that your Honor is
2 expressing himself and communicating with us that the
3 Court understands, as we all do from the plaintiffs'
4 perspective, the importance of this case and the opioid
5 epidemic that is affecting our nation.

6 So anything that the Court wants to do to
7 expedite this matter, including the appointment of a
8 special master, is certainly something that we are very
9 interested in, and I want the Court to know also that, as
10 indicated, you know, we have three lawyers who are
11 designated speakers: Joe Rice, Paul Hanly, and
12 Paul Farrell who have a wealth of experience not only in
13 MDLs but in this particular case.

14 Some of these gentlemen have already been
15 litigating this case for a long time. So while there is
16 an interest in expediting this, there is also a
17 realization that the breadth, the scope of these claims
18 as well as the potential damages is astounding, and to
19 the extent that a special master can help us sort out
20 some of those issues with the Court, we are all in favor.

21 Obviously, the Court, if the Court has a
22 special master in mind, we are all ears to hear it. We
23 also would be prepared to discuss this issue on the 18th,
24 and perhaps have one or two people designated to confer
25 with the other side as well as with the Court on

1 potential special masters who we believe have the
2 expertise necessary to assist on this very important
3 case.

4 MR. CHEFFO: Your Honor, this is Mark
5 Cheffo. Just briefly, we agree with your Honor's
6 suggestion. We think it makes sense in a case like this,
7 and frankly, from the manufacturers' perspective, we
8 would be governed by the person that you think would be
9 best situated to assist the Court.

10 MS. MAINIGI: Your Honor, Enu Mainigi on
11 behalf of the Big Three distributors. We have no
12 objection if your Honor would like to appoint a special
13 master.

14 THE COURT: All right.

15 MR. TARNEY: Tyler Tarney on behalf of the
16 physician defendants, we have no objection to a special
17 master.

18 THE COURT: All right. Well —

19 MR. SHKOLNIK: Your Honor, this is
20 Hunter Schkolnik, if I can just add something on that —

21 THE COURT: Yes.

22 MR. SHKOLNIK: — we worked very closely
23 with a special master in the Minnesota MDL, and the point
24 I just want to bring up, I think it is important to have
25 someone local, much like you want to have local liaison

1 counsel, a special master, who is local to Cleveland, not
2 just Ohio; that the Court could entrust such important
3 matters as this in a major case like this.

4 THE COURT: Well, Hunter, that's a factor,
5 but if I think that the best person is not in Cleveland,
6 I would go with the best person. But that certainly —
7 there is a big plus to have someone who I can sit down
8 with any day I want to at the drop of a hat. That
9 certainly is a big plus. All right.

10 This is what I would like to do, is I would
11 say by next Monday, that's the 18th, if anyone wants to
12 make any suggestions, they can do so.

13 LAW CLERK HUGHES: How about after the
14 Monday meeting like Wednesday?

15 THE COURT: Well, right. Why don't we say
16 this: Pete, how long do you think your meetings are
17 going to go, two days? You know, what are you figuring?

18 MR. WEINBERGER: Your Honor, it is our hope
19 that we will be able to meet the afternoon of Monday, the
20 18th, and conclude at that time.

21 THE COURT: All right. Well, why don't we
22 just say that by —

23 LAW CLERK HUGHES: Wednesday at noon.

24 THE COURT: — by Wednesday, the 20th, at
25 noon. So that's a week from today, Wednesday, 12-20 at

1 noon. If there are any — and I guess I would suggest it
2 makes sense for the plaintiffs and defendants to concur.
3 If you jointly have any individuals to recommend, that's
4 fine. If you can't come — you know, if you — so
5 whatever way you want to get them to me, that's fine.
6 And I will consider anyone you suggest, and ultimately, I
7 will make a decision. So it may be someone you have
8 recommended; it may not be, but I will certainly consider
9 it.

10 MR. WEINBERGER: Your Honor, Peter
11 Weinberger again. That timetable will work out great and
12 give us the 19th to meet and confer with defense counsel
13 and then submit either agreed upon names or not to the
14 Court by Wednesday.

15 THE COURT: Okay. Thank you.

16 LAW CLERK HUGHES: And also, can they file a
17 motion to approve the liaison counsel and the committees
18 by Wednesday at noon, one of the reasons they are
19 meeting?

20 THE COURT: Well, yeah. I assume, Pete,
21 that by Wednesday at noon you'd — you will have your
22 recommendations for liaison and steering committee. Is
23 that right?

24 MR. WEINBERGER: Your Honor, Peter
25 Weinberger. Your Honor, I am hopeful that that will be

1 the case, but as you can hear, as you know from the
2 number of people involved from the plaintiffs' side, we
3 have a lot of people that we need to meet with, and from
4 everything that I've heard so far, we are a collegial
5 group.

6 We all are of one mind in terms of
7 importance of this case and the importance of
8 cooperation. So with all of that in mind, it is my hope
9 that we will be in a position to provide you with a
10 motion after our meeting on the 18th.

11 THE COURT: Well, that would be my hope. I
12 don't want to mess up anyone's holidays, and I realize
13 two weeks after that no one is going to be — everyone is
14 going to be out and about and celebrating their holidays
15 and that's fine. So I would like to get that by noon on
16 the 20th, and the same thing from the defendants' side
17 also, I mean, if at all possible. If it takes longer, it
18 takes longer. Again, I want you to be thoughtful about
19 it and make sure you include the people who need to.

20 Liaison and steering. Okay. All right. It
21 is my hope to have an in-person meeting on Tuesday,
22 January 9th if everyone thinks that they will be ready,
23 and if you have think that's too early, I will hear from
24 you on that because there is a lot of people coming and a
25 lot of expense and a lot of inconvenience, and it would

1 be my intention to have client representatives there,
2 too, because I want them to be involved, and I want to
3 speak to them, and I want to hear from them.

4 I mean, this is an unusual case because
5 sometimes in an MDL from the plaintiffs' side, it is
6 really attorney driven because you have a large number of
7 wholly unrelated plaintiffs. The only common thing they
8 have is, they feel they have suffered an injury from the
9 defendants' product. But here we have government
10 entities who are headed my mayors and commissioners,
11 county executives, governors. We have got large pension
12 funds with executives and boards. It is different. So I
13 would want those people. So do you think that Tuesday,
14 January 9th, is — is it too early?

15 I mean, this is a case — look, we all know
16 and I should have said at the outset — everyone knows
17 about this case. I have heard, people have called me,
18 non lawyers around the country, congratulations or
19 condolences, and so everyone is looking at this. And so
20 I want to move this as efficiently as I can, but I also
21 know that if you try to move too fast, you don't do it
22 thoroughly and effectively. So what do you think on
23 that.

24 MR. WEINBERGER: Your Honor, this is
25 Peter Weinberger again. Let me, off the top of my head,

1 react to what you said.

2 The date of January 9th, of course, has been
3 out there for counsel for, at least, three or four days
4 now, and I am assuming, at least as far as counsel is
5 concerned, those that want to be in Cleveland on the
6 9th have already set aside the time and have arranged for
7 travel, et cetera. It is a whole different situation if
8 you want representatives of the various political
9 subdivisions and other plaintiffs actually in Court.

10 I am also trying to think of the logistics
11 of all that as far as the Court is concerned. So I don't
12 think people, having knowledge of your January 9th date,
13 contemplated that this would include clients. And so I
14 am wondering, your Honor, if perhaps that couldn't be a
15 matter for us to discuss from the plaintiffs' side on
16 Monday, the 18th, and then report back to you with the
17 thought of, well, the 9th logically is a little too soon,
18 let's try for a date maybe two or three weeks beyond that
19 or the 9th will work. I don't think people are in a
20 position at this point to address this specifically now
21 because I don't think people contemplated that this was
22 how you wanted to run the first meeting.

23 THE COURT: Well, you know, Pete, what you
24 just said, I have an additional thought to throw out, and
25 again, you don't have to decide this today, this may be a

1 case where, in addition to having attorney steering
2 committees, that maybe there would be client steering
3 committees, that there be among the plaintiffs all this
4 disparate cities, counties, states, there be a small
5 group of officials who would be the clients' steering
6 committee and could address important things on behalf of
7 the group, and that there be some number of — you know,
8 whether it is mayors, county executives, commissioners,
9 governors, attorneys general, I don't know who would do
10 that, and maybe there would be a small group of what I
11 will call third-party institutions.

12 MR. CHEFFO: Your Honor, this is Mark
13 Cheffo. I know that your Honor —

14 THE COURT: And maybe the manufacturers — I
15 mean, how many — there are what, 10 or 15 manufacturers?
16 I didn't add them up but —

17 MR. CHEFFO: About, your Honor. This is
18 Mark Cheffo, and I am brainstorming as I hear your Honor
19 and welcoming this. One option might be — and point
20 well taken — obviously, your Honor wants participation
21 on both sides, but there is also logistics issues. So
22 maybe one kind of midway solution, if it would be
23 agreeable to the Court, is to keep the date of the 9th
24 and have kind of a lawyer meeting so we can work through
25 some of these procedural aspects and some of the initial

1 issues that we've discussed, and then keep in mind that
2 your Honor wants a subsequent meeting with a little more
3 lead time to decide how it is staffed with various
4 participants or whether it is necessary to have a
5 committee as you have suggested.

6 MR. WEINBERGER: Your Honor, this is
7 Pete Weinberger again. Mark, I think that's an excellent
8 suggestion, and it makes a lot of sense.

9 THE COURT: All right.

10 MS. MAINIGI: Your Honor, Enu Mainigi on
11 behalf of the distributors, the Big Three distributors, I
12 think that does make a lot of sense. We have had the
13 date set aside for several days, and because there are
14 some procedural issues to work through, I think a working
15 meeting with your Honor on the 9th in person would be
16 very productive for all of us and then, certainly, your
17 Honor could either at that time or prior set a date for a
18 meeting that could involve clients. It gives all of them
19 a bit more notice and ability to arrange for schedules to
20 attend.

21 MR. TARNEY: Tyler Tarney on behalf of the
22 physician defendants, we agree with that as well.

23 THE COURT: All right. That may be what we
24 do. I want you to explore the idea I threw out of client
25 — for want of a better term — client steering groups or

1 committees because I think it may be beneficial, and I am
2 mindful of everyone's time. And why don't you discuss
3 that? And you can report back as to whether that makes
4 sense.

5 LAW CLERK HUGHES: The January 9th date for
6 lawyers only and then a subsequent date?

7 THE COURT: Well, when we start involving
8 clients, whether there should be a committee, that there
9 would be the client reps that would come regularly as
10 opposed to requiring every governor or mayor or whatever
11 to come every time and every pension fund, to send their
12 key person and every manufacturer to send their person.
13 So you can explore that. And that sort of leads into the
14 last.

15 LAW CLERK HUGHES: Look at my note.

16 (Pause.)

17 THE COURT: The last subject was the
18 possibility of exploring early resolution. I mean, I
19 have had two substantial MDLs, and I know that you can't
20 try your way out of them, even though we have excellent
21 lawyers. You know, I have used bellwethers, and it
22 sounds good in concept, but they don't always work for
23 various reasons.

24 And this is a case where I think from both
25 sides there is some good reasons to seriously explore

1 some early resolution. And so I am throwing it out, and
2 I was certainly going to discuss this in greater detail
3 on January the 9th. So what I would like everyone, you
4 know, people have some great ideas now they want to raise
5 or just keep them privately, my plan on the 9th is to
6 have some separate discussions with the plaintiffs and
7 the defendants on this area. But if there is something
8 that someone thinks we should do between now and January
9 9th I would like to hear from you.

10 MR. WEINBERGER: Your Honor, this is
11 Peter Weinberger again. I know that this, having seen
12 this as an agenda item, that this is a matter that we are
13 going to, again, as part of our organizational meeting,
14 try to select some leaders who will talk about this
15 concept and report back to the Court on that and with
16 your clear indication to us that that is all right with
17 you and rightly so, what my preference would be, I think
18 those from the plaintiffs' side, because there are so
19 many different claims and potential damage models, some
20 of which are in the process of being explored, but you
21 know, I know that we have probably — I could tell you
22 that we have a difference of opinion from the defendants
23 as to how pervasive a problem and the damages are, and we
24 may even have differences of opinion among us.

25 But that having been said, we are cognizant

1 of this being a priority item, and I would suggest that
2 you let us talk about this on the 18th and select a
3 couple of people to work on this issue and then report
4 back.

5 THE COURT: That's fine.

6 MR. RICE: Your Honor, this is Joe Rice from
7 Motley Rice. A couple things I would ask the Court to be
8 thinking about in this regard as well as the overall
9 management. I know your Honor spoke of the coordination
10 between the states and the MDL, and we all in the MDL
11 understand the importance of that, but your Honor needs
12 to be aware that there are cases, for instance,
13 Santa Clara, California, representing all the California
14 cities and counties, has been in litigation since 2014 in
15 California state court, and it is proceeding now through
16 discovery. There is a consolidation of state court cases
17 in New York that has been going on now for several months
18 that is already into discovery.

19 And of course, there is, at least I think,
20 ten state attorney generals that have filed actions in
21 ten separate states that will remain in state courts. So
22 there is going to be some parallel state court litigation
23 that we will be having to coordinate with.

24 In addition, and you approached the concept
25 of the special master, I would ask you to think about the

1 talent pool and the selection as it relates to managing
2 what is apparently going to be a very extensive documents
3 production litigation.

4 In our Chicago cases pending since 2014 we
5 have already had 12 million documents produced, and we
6 aren't heavily into it. So we are going to have a lot of
7 document issues that you might want a special master or
8 someone of that nature, maybe a Magistrate Judge, working
9 with this, but that might be a different skill set than a
10 special master, that would be focused on helping the
11 parties in discussing particular resolution.

12 I just bring that to your Honor's table to
13 ask you to think about it as you are approaching some of
14 the decisions you are having to make while we will be
15 approaching the decisions in our meeting in Cleveland. I
16 have often had people ask me if this is like a tobacco
17 case, and we have said there is a bunch of similarities
18 and a bunch of differences, but I think this group is
19 going to be cooperatively working together to try to
20 address this as quickly as possible.

21 THE COURT: All right. Thanks for those
22 points, Joe. I will certainly, as I did in my gadolinium
23 MDL, because I had a lot of parallel state cases, do my
24 best to coordinate with those judges who are managing
25 those cases, to keep them advised if we can agree on

1 coordinating discovery, certainly not set dates that
2 interfere with each other. So when I get into this, I
3 will find out who those judges are, reach out to them,
4 make sure they know who I am, and they can always call
5 me. I may utilize one or more magistrate judges on our
6 Court. We have very good ones if I need help on certain
7 issues.

8 MR. DUGAN: Judge Polster, this is
9 James Dugan again from New Orleans. I wanted to bring to
10 the Court's attention I was co-lead counsel for a class
11 of third-party payers where we settled a nationwide class
12 in front of Judge Cottle in the Southern District of New
13 York in 2008 with Perdue Pharma over the drug Oxycontin.
14 So there is also some precedent for settling at least
15 this class of entities in a class settlement. When we
16 report to the Court, I will be more than happy to give
17 more detail about that resolution that occurred.

18 THE COURT: Okay. Thank you, Jim.

19 MR. CHEFFO: Your Honor, this is
20 Mark Cheffo. I didn't mean to talk over your Honor.
21 Just briefly, we agree with what you outlined earlier,
22 which is that we will be certainly prepared and very
23 interested in your Honor — obviously, your Honor has
24 given some thoughts in the case and others, so we will
25 welcome an opportunity to hear the Court's thoughts on

1 that. We will come prepared to have some thoughts on our
2 own about how we might approach the early resolution
3 process and maybe some idea about what needs to be done
4 in connection with pursuing that but also some of the
5 steps we think the Court needs to address early on.

6 No surprise, we think we have some legal
7 defenses here. Today is not the time to argue motions
8 and things like that, but we will be prepared to provide
9 some suggestions but also welcome the Court's thoughts on
10 what you think would be most efficient.

11 THE COURT: All right. I mean, obviously
12 these are — there are some novel theories of recovery.
13 There may be defenses to some or all of them, but again,
14 I don't think it is in anyone's interests to have this
15 dragging on for five or ten years, which it will if we
16 don't come to some resolution.

17 It will easily go that long, and there are a
18 whole lot of reasons from both sides why that doesn't
19 make sense, and quite frankly, I think the best use of my
20 time and my abilities will be to help see if there is
21 some sort of resolution we can reach.

22 I think that's why the MDL panel picked me.
23 I am sure there are better trial judges in the country,
24 maybe better trial judges right here in my Court, but I
25 think I was picked for that reason, and that's where I am

1 going to spend my time, and I will ask other people to
2 help me on the other aspects of the case. But that part
3 I don't plan to delegate. I will be doing that myself.
4 Okay. I think I covered all six points on the agenda.
5 Let me see if I had — oh, I had a couple factual
6 questions.

7 Do the manufacturer or distributor
8 defendants have insurers in this case?

9 MR. CHEFFO: This is Mark Cheffo for the
10 manufacturers.

11 THE COURT: It may be a complicated
12 question.

13 MR. CHEFFO: Your Honor, I think it may
14 depend on each of the different defendants. I don't know
15 the answer to that question.

16 THE COURT: All right.

17 MR. CHEFFO: But certainly, we can caucus
18 amongst the group and have an answer to that.

19 THE COURT: Okay. Well —

20 MS. MAINIGI: I concur —

21 THE COURT: Okay.

22 MS. MAINIGI: — Judge Polster. I think it
23 is a defendant-by-defendant issue.

24 THE COURT: Okay.

25 MS. MAINIGI: But we can be prepared to

1 address it on January 9th.

2 THE COURT: All right.

3 MR. CHEFFO: And your Honor, again, this is
4 Mark Cheffo. Just a housekeeping note if your Honor
5 could help us along with this, it will save a lot of
6 people maybe some weekends between now and the 9th. In
7 many of these MDLs, the Court is aware, the MDL judges
8 can put an order in place that suspends deadlines for
9 transfer cases so that no one is worried about filing an
10 answer or something.

11 THE COURT: Yeah. I was going to say that.
12 I don't want anyone filing anything. Okay? I mean,
13 seriously, other than the things we've talked about, I
14 don't want any more motions to remand. I don't think we
15 need — it is a good point. I suspended a bunch of
16 answers in my case until the MDL was created, which has
17 been — which obviously has been created.

18 LAW CLERK HUGHES: 60 days.

19 THE COURT: Unless there is a strong
20 objection, I am just going to put a moratorium on filings
21 for 60 days. Does anyone have a problem with that?

22 MR. WEINBERGER: Your Honor, this is
23 Peter Weinberger. Thank you for raising that because —

24 THE COURT: Well, I didn't. I had
25 forgotten, and Mark reminded me.

1 MR. WEINBERGER: So the other issue — and
2 Paul Farrell can address this directly — but it has to
3 do with the Rule 4 requirement of service within 90 days.
4 We know that there are a number of cases where we have
5 not been able to obtain an agreement of waiver of
6 service, and in fact, there are some international
7 defendants where we have had no ability to communicate.

8 We know there are a number of cases where we
9 have the 90 days coming up on, I think, January 8th, 9th,
10 or 10th. And so to the extent that the Court is willing
11 to do that, do this, if we could get an extension on
12 that, I think that's in line with what the Court is
13 saying in terms of not filing any answers. I think that
14 will help us a lot, and obviously, we would be interested
15 in what the defense has to say about that. So what does
16 the Court please in terms of that issue?

17 THE COURT: Well, I hadn't even thought
18 about that, Pete. I mean, I would strongly encourage
19 counsel to just work out the service issues. I don't
20 want to spend a lot of time and money for anyone on this.
21 You should waive — a number of defendants have been
22 served. No one is hiding. These manufacturers aren't
23 hiding. The distributors aren't hiding.

24 So if you want me to put — grant an
25 extension, Pete, is that what you are suggesting, I

1 extend the service deadline for 60 days?

2 MR. WEINBERGER: Yes, your Honor.

3 Paul Farrell, do you want to address this in any more
4 detail?

5 MR. FARRELL: Yes. This is Paul Farrell.
6 Judge, Rule 4(m) is the rule that includes the 90-day
7 deadline, and it also includes the ability for the Court
8 to issue an extension for good cause shown. So there are
9 just a number of deadlines between the CTOs and where it
10 is coming from the other transferor courts, we would just
11 ask for you to be open minded in giving us some leeway to
12 effectuate waiver of service for the most part with the
13 inventory that my group has.

14 The manufacturers and distributors have been
15 extremely cooperative. We just have a number of cases
16 that have been filed and are getting filed. So we have
17 been waiting for this call and for this MDL, and we would
18 ask for a little bit of leeway in effectuating service?

19 THE COURT: Well, what if I just extend the
20 service deadline for 60 days? Whatever it is, you got 60
21 days more. So Pete, if it was January 8th, that makes it
22 March 8th or March 7th, something like that.

23 MR. WEINBERGER: Your Honor, this is
24 Pete Weinberger. Yes, I think that would be great from
25 our perspective.

1 THE COURT: And I am going to put a
2 moratorium on all filings, case filings for 60 days.

3 LAW CLERK HUGHES: Except for the motions
4 that they are going to be filing, the motions for the
5 liaison counsel.

6 THE COURT: I mean, substantive motions, to
7 put a moratorium. Okay. All right. Was there anything
8 else that I left out or that someone wants to raise, that
9 they think would be productive?

10 MS. FREEMAN CAPPPIO: Your Honor, this is
11 Gretchen Freeman Cappio from Keller Rohrback for the city
12 of Tacoma. And I just want to mention that we just
13 learned about this hearing yesterday and got the agenda
14 today, so we have not yet had a chance to meet and confer
15 prior to today's hearing, and we definitely understand
16 there were instructions to contact all the attorneys.

17 THE COURT: All right. I am sorry you are
18 breaking up, and I can't hear you.

19 MS. FREEMAN CAPPPIO: Can you hear me now?

20 THE COURT: Yes.

21 MS. FREEMAN CAPPPIO: We wanted to advise the
22 Court that based on what we have heard some parties have
23 still not been notified of this hearing today.

24 THE COURT: Well, I apologize. Cases were
25 being filed very quickly, and we did the best we could.

1 There will be a transcript of this, and one of the
2 reasons I wanted a court reporter is obviously so I could
3 refer to it, but if any counsel wasn't able to be on,
4 they could get a full transcript.

5 MS. FREEMAN CAPPPIO: Thank you very much,
6 your Honor.

7 LAW CLERK HUGHES: Tell them the court
8 reporter's name.

9 THE COURT: All right. The court reporter
10 is George Staiduhar, S-t-a-i-d-u-h-a-r. Okay. Anyone
11 else want to raise anything?

12 MR. DANIEL: Your Honor, this is
13 Nixon Daniel. I represent a hospital plaintiff that
14 filed in the Northern District of Florida and also an
15 Indian Tribe, the St. Croix Indians in Wisconsin. Your
16 Honor's request, as far as the January 9 hearing is
17 concerned, do you want us to talk to hospital clients and
18 Indian Tribe clients and have them represented at that
19 hearing for January 9th?

20 THE COURT: No. Nixon, we are just going to
21 have lawyers. The hospital, obviously, you are
22 institutional. The Indian Tribes — that may be a fourth
23 category. Is that on behalf of a group of individuals in
24 the Tribe?

25 MR. DANIEL: No, sir. We represent an

1 Indian Tribe, the St. Croix Indians, and that case was
2 filed in the Western District of Wisconsin. We
3 anticipate filing a number of lawsuits on behalf of
4 Indian Tribes themselves.

5 And we do think that that's a separate track
6 just like the hospital track is going to be a separate
7 track. We don't think it is going to be subject to class
8 determination at the hospital level, so we think that's
9 going to be a separate track, too, and we represent a
10 number of hospitals that have already filed, and some
11 that we have not filed yet.

12 THE COURT: Well, the hospitals are a lot
13 like the pension funds. What are the Indian Tribes
14 claiming?

15 MR. DANIEL: The Indian Tribe claims are
16 very similar to a combination of all the other claims.
17 The local government entity claims that deal with law
18 enforcement and that kind of thing, the Indian Tribes
19 have those kinds of claims. They also have healthcare
20 kind of claims.

21 Actually, the hospital claims are a little
22 different from the insurer type claims because they
23 provide not — they provide the care, which has been
24 unreimbursed. The Indian Tribe has that kind of claim.
25 In addition, they have claims where they act as a

1 self-insurer for Tribe members. So they are actually a
2 microcosm of all of the claims.

3 THE COURT: Okay. Well, we didn't have any
4 of those in Ohio, Nixon, so I was not familiar with that.
5 Well, that's something for — all right. The hospital,
6 that may be a separate group. I don't know how many
7 hospitals we have got and how many Native American
8 Tribes. That's a new one, and that has elements of all
9 the other groups. I think you are right. So we will
10 have to figure out what to do with those. So I am open
11 to suggestions. All right.

12 MR. DANIEL: Yes, sir.

13 THE COURT: So just to summarize, and
14 obviously, I will get an order out by Wednesday, next
15 Wednesday, December 20th at noon, I will get any
16 recommendations on candidates for special master and
17 hopefully the motions, recommendations from each side for
18 liaison counsel and steering committee, and then we will
19 have an attorneys only conference on Tuesday, January the
20 9th.

21 LAW CLERK HUGHES: What time?

22 THE COURT: 9:00 o'clock a.m., and I would
23 say by noon on Friday, the 5th, January 5th, I would like
24 — I would like written filings from each side as to your
25 thoughts on some of the things we've talked about, and I

1 think it makes sense to — anything on organization you
2 should exchange so you each see it. So from one set —
3 one filing from the plaintiffs and one filing from the
4 defendants, and you should exchange them to the extent
5 you are talking about anything organization wise. If you
6 have anything you want me to — anything on the
7 settlement or resolution area that you just want me to
8 see, you don't have to share that with the other side.
9 Does that make sense?

10 MR. WEINBERGER: Pete Weinberger on behalf
11 of the plaintiffs, yes, your Honor, it does.

12 MS. MAINIGI: Yes, your Honor.

13 THE COURT: So again, these aren't to be
14 filed on the docket; just, I guess, e-mail them to the
15 Court. E-mail them to me. That's fine. And I will get
16 this —

17 MR. TROUTMAN: Your Honor, I am one of the
18 prospective speakers.

19 THE COURT: I'm sorry, what? Who is
20 speaking, please?

21 MR. TROUTMAN: I'm sorry. This is
22 Mark Troutman from Columbus, Ohio. Are you planning to
23 turn to the list of prospective speakers still, or may I
24 have leave to address the point that I was going to make
25 there now?

1 THE COURT: I am confused, Mark, but was
2 there something you wanted to raise? But go ahead.

3 MR. TROUTMAN: Yes, there is, your Honor.
4 Thank you. Again, I am Mark Troutman with the Isaac
5 Wiles law firm in Columbus, Ohio. We are in front of you
6 with Dan Karon and Ron Jackson and in some county cases.
7 Our law firm, along with some others, also represents the
8 Ohio Attorney General in a state case filed in Ross
9 County.

10 Mr. Rice pointed out some very important
11 things about the various status of cases filed in state
12 court, how this Santa Clara case is well into discovery.
13 And there is obviously a lot of cases that have just been
14 filed. Our case was filed seven months ago, again in
15 Ross County, and we are through 12(b)(6) briefing and
16 starting some third-party discovery in that case.

17 We think it is important early on to
18 identify where these cases are, who the judges are. For
19 the large participant, we might be talking about a lot of
20 the same counsel on this call and ultimately the status
21 of those cases. And we wanted to offer to help you make
22 a more informed decision on January 9th, to volunteer to
23 gather up a list of those cases and be able to present
24 you with that on January 9th, to help facilitate any
25 coordination with those cases that could be had.

1 THE COURT: All right. Thank you, Mark.
2 That will be helpful. So then, I will be able to
3 communicate with the state judges. I found if the
4 federal judge makes the initial communication, then it is
5 easier. Then, none of the state judges have any problem
6 in contacting me. That's how I did it the last time and
7 worked pretty well.

8 MR. TROUTMAN: We will be sure to have that
9 ready as soon as possible, your Honor.

10 THE COURT: Okay. Thank you. Okay.
11 Anything else anyone wants to say? So again, we will
12 have these submissions by noon on Friday, the 6th, for
13 your suggestions for the 9th —

14 LAW CLERK HUGHES: The 5th.

15 THE COURT: — to see what you come up with.

16 LAW CLERK HUGHES: Friday the 5th.

17 THE COURT: Oh, it is the 5th. Friday the
18 5th. I'm sorry. I looked at the wrong date, January 5th
19 at noon, and exchange those, but I am interested in
20 getting what I will call ex parte submissions from both
21 the plaintiffs and the defendants on ideas moving toward
22 resolution or some structure or ideas on that front.

23 Okay. Well, I want to thank everyone for
24 getting available on short notice. I apologize if some
25 people got late notice, and I particularly apologize if

1 there are people who should have been on but weren't, but
2 this was done pretty quickly, and we didn't have the
3 benefit of electronic notification. We now do, so that
4 shouldn't be a problem in the future, and I want to wish
5 everyone and their families a very happy holiday season
6 and Happy New Year, and I look forward to seeing you in
7 January.

8 (Counsel expressed thanks, and hearing was
9 concluded 2:50 p.m.)

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13 C E R T I F I C A T E

14 I, George J. Staiduhar, Official Court
15 Reporter in and for the United States District Court,
16 for the Northern District of Ohio, Eastern Division,
17 do hereby certify that the foregoing is a true
18 and correct transcript of the proceedings herein.

19
20 s/George J. Staiduhar
21 George J. Staiduhar,
Official Court Reporter

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