

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

IN RE: PHILIPS RECALLED CPAP,
BI-LEVEL PAP, AND MECHANICAL No. 21-mc-1230
VENTILATOR PRODUCTS LIABILITY
LITIGATION.

Transcript of Proceedings held on Wednesday, April 20, 2022,
in the United States District Court, 700 Grant Street,
Pittsburgh, PA 15219, before the Honorable Joy Flowers
Conti, United States District Judge.

APPEARANCES:

For the Plaintiffs: Sandra L. Duggan, Esq.
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For the Philips
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 Michael Steinberg, Esq.
 William B. Monahan, Esq.
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For the Burnett
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Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E E D I N G S

1
2 THE COURT: Now we are in the status conference for
3 in re: Philips recalled CPAP, bi-level PAP, and mechanical
4 ventilator products litigation, MDL number 3014. Any counsel
5 who intend to speak today, please enter your appearance.

6 MS. DUGGAN: Good afternoon, Your Honor. Sandra
7 Duggan, Levin Sedran & Berman, co-lead counsel.

8 MS. IVERSON: Good afternoon, Your Honor. Kelly
9 Iverson from Lynch Carpenter, also co-lead counsel for
10 plaintiffs.

11 MR. SEEGER: Good afternoon. Chris Seeger, Seeger
12 Weiss, co-lead counsel for the plaintiffs.

13 MR. SCHWARTZ: Good afternoon, Your Honor. Steve
14 Schwartz from Chemicles, Schwartz, Kriner & Donaldson-Smith,
15 also plaintiffs co-lead counsel.

16 MR. BUCHANAN: David Buchanan, Seeger Weiss, for
17 plaintiffs.

18 MR. LAVELLE: Good afternoon, Your Honor. John
19 Lavelle from Morgan Lewis for defendant Philips RS North
20 America LLC.

21 MR. STEINBERG: Michael Steinberg on behalf of
22 Koninklijke Philips NV and Philips North America LLC. Thank
23 you.

24 MR. MONAHAN: Hello again, Your Honor. Bill Monahan,
25 Sullivan & Cromwell, for the same defendants Mr. Steinberg

1 just noted.

2 MR. BODE: Rick Bode, Your Honor, for Burnett.

3 THE COURT: Okay. I believe the liaison counsel
4 wanted to enter your appearance.

5 MR. SHEPHERD: Martin Shepherd, Pietragallo Law, and
6 co-liaison.

7 THE COURT: You're really not the co-liaison,
8 Mr. Shepherd.

9 MR. SHEPHERD: I'm here on behalf of --

10 THE COURT: I know, but he's supposed to be here.
11 But you can sit in, but you're not going to be able to speak
12 for him because it's a personal appointment. It has to be
13 clear. Okay?

14 MR. SHEPHERD: He's out ill. He couldn't be here.

15 THE COURT: I understand. It's difficult. Not
16 everybody can make every hearing. And I do understand that,
17 and I'm happy that you're here. You can listen in, but it's
18 really a personal responsibility for him. Okay.

19 MR. RIHN: Aaron Rihn with Robert Peirce &
20 Associates, co-liaison for the plaintiffs.

21 THE COURT: First thing I want to say is that the
22 26(f) report was due yesterday. It only was filed today. I
23 haven't even had time to really read it. I skimmed it, but I
24 had hearings all day long, criminal proceedings all day long.
25 And, you know, I have to have more than 20 minutes if it's as

1 detailed as this one was to go through and there were
2 disputes. So it's really if you can't do it on time, you need
3 to file a motion to get an extension. I mean, you're out of
4 time. You are very professional parties on both sides. The
5 best lawyers in the country are here, you know. So I don't
6 expect that to happen again. Thank you.

7 All right. So we will get into your 26(f) report I
8 have said with the understanding I haven't had a chance to
9 give it the kind of review that I normally would do. So you
10 wanted to talk about your pleading deadlines. There are, I
11 think, some disputes here about a couple of things.

12 MS. DUGGAN: Sandra Duggan, co-lead counsel. On
13 behalf of the parties, Your Honor, I do want to apologize for
14 filing it late. We did make every attempt to get it in before
15 the deadline of midnight, but we did file. I'm sorry.

16 THE COURT: Midnight doesn't do it for me anyway.

17 MS. DUGGAN: I understand.

18 THE COURT: I'm not going to be sitting at my
19 computer to see if you're going to make the deadline. Quite
20 frankly, that's why for the SoClean they had to have something
21 filed by noon. So if there's a date that it's due, it's going
22 to be due by noon because otherwise there's no opportunity for
23 me to really look at it. If you got it filed by 11:59 last
24 night, it's still the same as if it were filed by today
25 because there's no opportunity for me to really look at it.

1 MS. DUGGAN: It's the same result.

2 THE COURT: Yes.

3 MS. DUGGAN: And for that we will do better in the
4 future.

5 THE COURT: Thank you.

6 MS. DUGGAN: With regard to the pleadings, I don't
7 think there is any disagreement, Your Honor. Since the last
8 status conference, the parties have met and conferred, and as
9 set forth in ECF 510 Section 5 the parties have agreed that
10 the plaintiffs will file three separate complaints. By
11 June 20th, 2022, we will file a consolidated class action
12 complaint for economic loss.

13 THE COURT: Now, the problem I have with this -- and
14 this is why I'm thinking about this as an issue. There's a
15 dispute about when discovery begins, you know, and the sense
16 that I get from the defendants in this case is that they don't
17 think that discovery has started and they don't think there
18 should be any discovery until you file your complaint. So you
19 know, I think they're thinking, well, you're going to be doing
20 this discovery so that you can file a complaint. I see a
21 difference here.

22 MS. DUGGAN: We thought, Your Honor, on our part that
23 it was clear when the court entered PTO 8 appointing us as
24 leadership for the plaintiffs that we were beginning discovery
25 because that was one of our duties. And so at the Rule 26(f)

1 conference we served discovery on defendants.

2 Now, separate and apart from that, we did issue to
3 the defendants early requests, initial requests for documents
4 that we thought they had readily available. And they had been
5 producing documents to us, and you'll hear more about that in
6 detail from both sides. So we have been getting some initial
7 discovery. Documents are being produced. And we are
8 proceeding with discovery. We're consulting with the
9 defendants with regard to --

10 THE COURT: Yes, but you're talking about a -- so
11 you're talking about you're going to have your consolidated
12 amended class complaint about 60 days from now.

13 MS. DUGGAN: Correct. And we are going to be
14 engaging in discovery prior to that and during the process so
15 they'll be proceeding on parallel tracks. Discovery will not
16 be stayed. I do not believe that will be the case. I don't
17 even think the defendants believe that will be the case. But
18 we would like an order from Your Honor officially declaring
19 that discovery is open and we are moving forward.

20 THE COURT: I'll hear from the other side when that
21 comes up, but I do think I have to officially do an order
22 lifting that stay. I think that's a fair call.

23 MS. DUGGAN: We would request that for a lot of
24 reasons, Your Honor, so that it's clear to both parties and
25 nonparties in the case so that nobody will raise that as an

1 issue.

2 THE COURT: Okay. The defendants are amenable to the
3 stay?

4 MS. DUGGAN: Yes, with regard to the consolidated
5 class action complaint for economic loss, we'll file it by
6 June 20th, 2022. By August 22, '22, we'll file a consolidated
7 class action complaint for medical monitoring relief and
8 damages. Then on that same date or on or before that same
9 date we'll file a master complaint for personal injury
10 damages. The defendants will have 60 days from the date of
11 each of those complaints to file -- either to answer the
12 complaint or file a motion to dismiss. We will have 60 days
13 to respond. And they've asked us for 45 days for replies, and
14 we've agreed to those dates. And that is set forth, as I
15 said, at Section 5 of the 26(f) report.

16 THE COURT: And will you do a joint motion for an
17 order for the court?

18 MS. DUGGAN: Yes, we will. We'd also like to, if
19 Your Honor is amenable to this, set forth some parameters for
20 page limitations, that sort of thing. I think we're going to
21 need to exceed --

22 THE COURT: Than what I have normally?

23 MS. DUGGAN: Yes.

24 THE COURT: I have to see what you say. Don't be too
25 generous to yourselves, you know, because then the time you

1 get so many pages of the one motion, so many pages of the
2 second motion, and then if I have to -- and if there's a
3 reply, then we have all these other ones, then there will be a
4 request for a sur-reply. By the time I'm done it's so
5 voluminous, it's difficult to make any progress.

6 MS. DUGGAN: Understood, Your Honor, and we'll take
7 that into consideration.

8 MR. LAVELLE: Your Honor, John Lavelle for Philips RS
9 North America. We agree with Ms. Duggan that Section 5 of the
10 Rule 26(f) report and what Ms. Duggan just read into the
11 record accurately states our agreement on the dates, deadlines
12 for filing the motions and papers, and we'll certainly work
13 with plaintiffs' counsel on trying to reach agreement on a
14 proposal with respect to page limits. We understand Your
15 Honor's preference is to have shorter briefs, and we will
16 certainly keep that in mind as we discuss that with counsel.

17 THE COURT: Thank you. Okay. So now we're on to the
18 ADR for the settlement. I can see here we've talked about
19 this in the SoClean status conference that Judge Welsh is
20 being proposed as the settlement special master and there's
21 issue about whether it should be the same person for both.

22 I have to tell you as I'm sitting here what I'm
23 really thinking about is having three special masters for
24 settlement purposes. One who will be the coordinator so that
25 I don't have any issues about people not knowing fully what is

1 happening at the mediation level in terms of the mediators.
2 And there will be separate ones for each one. They'll take
3 the lead on those but we'll also have the overlapping special
4 masters who will have a similar kinds of responsibilities but
5 for each case and they'll be the coordinator in terms of
6 making sure I'm not going to get any issues about overpayment
7 or things coming up like that. So that it will all be clear
8 and there's going to be one person who is very knowledgeable
9 about it.

10 MR. LAVELLE: Would Your Honor likes the parties to
11 confer and see if they can reach agreement on who is the
12 candidate for the coordinator position?

13 THE COURT: Yes, that would be good.

14 MR. LAVELLE: Will do.

15 THE COURT: It's a little more expensive, but I don't
16 think -- I understand the desire for each side to have
17 somebody separately or you're not seeing somebody doing it,
18 but if you have an overlapping one, they may be able to see,
19 well, maybe we can get together on something and there can be
20 ways to do it. And if there's going to be any overlap in
21 damages, they'll be able to sift through that as well. So I
22 just think I need that level of coordination.

23 For them to try to do it together when that person is
24 not in the mediation when the other one is in the mediation,
25 you know, different issues going on, I think you need to have

1 one person that's going to both and that can be the
2 coordinator. Okay? So think about that. Okay.

3 We have the timing on disclosures. This is where
4 there's issues on who is going to have to submit the initial
5 disclosures and when. The defendants are saying that it
6 should be by May 5. The class representative plaintiffs want
7 21 days after the filing of the consolidated complaints to
8 make their initial disclosures, and the personal injury
9 plaintiffs are saying that it should only apply to the
10 bellwether cases and conferring over fact sheets and all of
11 this. The defendant says it should be within 45 days of the
12 filing of the short form complaint for that plaintiff.

13 Just give me a little bit of understanding about what
14 the process is going to be for the case-specific issues as you
15 see them.

16 MR. LAVELLE: Your Honor, John Lavelle here. And
17 just to be clear -- and it may not be clear from what we tried
18 to present here. What there is agreement on between the
19 parties are the first two categories here. We're in agreement
20 that defendants' Rule 26(a) disclosures should be done by
21 May 5. We're in agreement that the class representative
22 plaintiffs' Rule 26(a) disclosures should be done within 21
23 days of the filing of the applicable consolidated class action
24 complaint. Where there's disagreement is on this third
25 category.

1 THE COURT: The personal injury.

2 MR. LAVELLE: The personal injury plaintiffs.

3 MR. SEEGER: Chris Seeger for plaintiffs. I just
4 want to make the court aware there's a few things that we have
5 to kind of work through on this, and I'm kind of picking up
6 from the last conference. Although I was away with my family,
7 I read the transcript. I think it's useful at this point, if
8 you don't mind, to set the table on this a little bit because
9 there's confusion between the census program and plaintiffs'
10 fact sheets and things like that.

11 THE COURT: Yes.

12 MR. SEEGER: So this is what we have to kind of work
13 through. The development of the census registry process has
14 come about in the last ten years mostly because folks have
15 said 20, 30% of the cases that filed in MDLs are meritless.
16 It's a concern that all parties have tried to drill down on.

17 One solution to it is to have a tolling agreement,
18 which the defendants have already offered generously and
19 that's very helpful. And for folks who are tolled, unfiled
20 cases, they file a two or three-page statement just saying
21 what their case is, basic information, what the injury is,
22 what device they used.

23 THE COURT: This is the fact sheet.

24 MR. SEEGER: No. This is the census.

25 THE COURT: I understood that the census was going to

1 be if somebody wants to have a personal injury claim here
2 without being a named plaintiff --

3 MR. SEEGER: Right.

4 THE COURT: -- they file on the registry. And they
5 can get listed on that and then it tolls everything. They can
6 be included in settlements, and they don't have to go through
7 the whole process of filing a separate complaint.

8 MR. SEEGER: And may never file a complaint.

9 THE COURT: And may never have to file one. Right.

10 MR. SEEGER: You have it right, Judge. I just
11 thought that was important.

12 THE COURT: What's the fact sheet? Why is that
13 different from -- because on the registry they still have to
14 give you the set kind of information basically.

15 MR. SEEGER: But it's more basic. These are unfiled
16 cases. They really shouldn't have to do full-blown discovery.

17 THE COURT: Actually, it's not discovery.

18 MR. SEEGER: Right.

19 THE COURT: It's about they bought this machine,
20 they've used this machine, they have this diagnosis.

21 MR. SEEGER: That's it, exactly. So where do the
22 fact sheets come in? Cases are going to be filed, complaints
23 will be filed, and we need to know more about those cases.
24 They need to file a fact sheet which gives more information.

25 THE COURT: So you're saying your view is that the

1 plaintiffs who have already filed personal injury claims,
2 they're a named plaintiff.

3 MR. SEEGER: Correct. Named plaintiffs in the class,
4 and I'm talking about now on the personal injury side.

5 THE COURT: Personal injury side.

6 MR. SEEGER: Yes. They file a full-blown fact sheet
7 that we have to negotiate still and work through. It would
8 include the initial type disclosures you'd make in any case
9 and maybe some additional things. From that pool we're
10 ultimately going to create a bellwether process. Some cases
11 will be selected by some process --

12 THE COURT: And there's going to be bellwether
13 mediation cases selected from that.

14 MR. SEEGER: I'm very familiar --

15 THE COURT: And they have to be on a fast track so
16 they can be mediated.

17 MR. SEEGER: I'm very familiar with that process. It
18 was initiated by Judge Martinotti in the District of New
19 Jersey in the Stryker litigation. So I know it very well, and
20 I'm very happy with it, but we still are going to have to work
21 toward what you want, which is a bellwether mediation process,
22 but we may have to go to trial. So we're going to have to
23 have a process for selecting those cases and working up
24 discovery on those cases.

25 I only give you this background by saying that all of

1 these things are really interconnected in some respect. And
2 that's what we're slugging away at right now and probably
3 won't be ready to give you much on it until the next time we
4 see you.

5 THE COURT: Okay. So this is a dispute that you're
6 still having further discussions about?

7 MR. SEEGER: Yeah. I don't think we've thrown our
8 hands up on it. We have got a few items on the fact sheet.
9 What we have not fully negotiated what would go into that, but
10 we've started.

11 THE COURT: But this personal injury complaint,
12 consolidated complaint isn't going to be filed until August.
13 So we can discuss this in May, in June.

14 MR. SEEGER: Yeah, right. Exactly.

15 THE COURT: All kinds of disclosures that should be
16 made.

17 MR. SEEGER: Yeah, exactly. I think the issue that
18 Sandy was raising about, you know, we're filing these
19 complaints, these master complaints, as an administrative
20 vehicle.

21 THE COURT: Right.

22 MR. SEEGER: For the court's benefit, for the
23 defendants' benefit to have something to shoot at in their
24 motions to dismiss, but in the meantime, I think it's really
25 important that we keep this case going as fast as we can for

1 one really big reason. Right now this MDL is the center of
2 gravity in the Philips litigation. If folks don't think we're
3 moving fast enough here, they're going to look to file cases
4 in state court and do all kinds of things. I think our group
5 has done a really good job coordinating with everybody right
6 now and we have it under one tent. And that's just one thing
7 I'd like to put that out there as a consideration.

8 THE COURT: I'd like to get that registry up and
9 running so people can start filing, and we have to get the
10 tolling agreement from the defendants to make that work.

11 MR. SEEGER: Yeah.

12 THE COURT: And you have to agree on a form that
13 you're going to be putting on there.

14 MR. SEEGER: We have a tolling agreement in place. I
15 mean, there is a tolling. It requires very basic information.
16 We are open to talking to the defendants about providing a
17 little bit more, this census that we're talking about, tying
18 that in, but we've got to work through some details on that,
19 too.

20 MR. LAVELLE: Your Honor, John Lavelle again.
21 Starting with the census registry, I agree with Mr. Seeger
22 that we have started discussions on that. We have provided
23 plaintiffs with a first draft of a profile or a form for
24 people to fill out. They're considering it. And those
25 discussions are ongoing. I don't think there's anything for

1 Your Honor to address or any dispute between the parties for
2 Your Honor to address today on the census registry. We
3 acknowledge that it has to be addressed.

4 From our standpoint, for the reasons that Mr. Seeger
5 identified, the tolling agreement we have in place is not
6 working. It provides us really no information about these
7 claimants. It doesn't help to determine who would be an
8 appropriate person for a bellwether mediation. It doesn't
9 give us any information about what the nature of their claims
10 are. So we want to have a census registry process that will
11 at least give us some basic information --

12 THE COURT: Right. If you're not on the registry or
13 a named plaintiff, then you're not going to be able to recover
14 in this case.

15 MR. LAVELLE: Right. We need to have some mechanism
16 to -- at least some basic information about the nature of
17 their potential claim to sort them.

18 THE COURT: I don't think the plaintiffs dispute
19 that.

20 MR. LAVELLE: Right. Going back to another point
21 that Mr. Seeger made with respect to the master complaints, we
22 think -- we agree that they serve an important role in giving
23 us an opportunity to present legal issues to Your Honor, but
24 they also serve another important issue which is to help us
25 understand what the claims are in the case. And it will guide

1 discovery.

2 And the discussion we had during the SoClean CMC
3 earlier today I think is a perfect example of that. We heard
4 and we had an extended discussion about how there are some
5 claims that are asserted that are potentially not going to be
6 in the master complaint. To some extent, until we see those
7 master complaints, we're really not going to know what the
8 scope of discovery should be, and that's something that we'd
9 like to address.

10 Now, this specific issue that's identified as in
11 dispute, we don't think that's an area that Your Honor needs
12 to address today. We can continue discussions with the
13 plaintiffs, and to the extent necessary, since we are in
14 agreement on appointment of a discovery special master,
15 Ms. Katz, to the extent we need help, we can ask Ms. Katz for
16 help on that.

17 MR. SEEGER: Judge, may I raise one more on the fact
18 sheet issue? I don't know if this has been made clear to the
19 court, but it's important. We're also seeking a fact sheet
20 from the defendants, and that's part of this process as well.
21 So the process would be the plaintiffs would serve a
22 complaint, they would serve a fact sheet which would give them
23 information and then work out a schedule on this.

24 Then the defendants would then serve a defense fact
25 sheet which we could get very important information like what

1 their sales rep said to the stores that purchased and resold
2 these devices, what were said to doctors about them, what they
3 said to the -- you know, what -- they are collecting devices
4 from, you know, plaintiffs and people who have not yet filed
5 cases right now, to repair them and to examine them.

6 Well, if they've done an analysis of John Smith's
7 device and John Smith is a plaintiff and John Smith serves a
8 fact sheet, we want to know what they found out in their
9 examination. I think we're entitled to get that.

10 I'm just trying to give you an idea of what might be
11 in a defense fact sheet. Not all the issues, but that's an
12 important part of this process as well and also takes
13 advantage of the efficiencies of the MDL. It's going to move
14 discovery along.

15 THE COURT: So I guess the next dispute, the parties
16 are I think going to work with a special master to come up
17 with the ESI protocol. The parties have hired -- the
18 plaintiffs have served the first amended request for
19 production. It seems to me is this where we get into when
20 discovery is to begin?

21 MR. LAVELLE: Yes, Your Honor.

22 THE COURT: So I'll hear from the defendants on that.

23 MR. LAVELLE: Your Honor, at the beginning of this
24 MDL, Your Honor stayed discovery as part of pretrial order
25 number one. That stay has never been lifted. And we

1 respectfully disagree with plaintiffs' counsel on their
2 contention that the appointment of plaintiffs' leadership and
3 charging them with, among other things, conducting discovery
4 served as a lifting of that stay. There's been no motion
5 filed to lift the stay, and there's no order that's been filed
6 yet to lift the stay.

7 At the last case management conference before Your
8 Honor, we understood you were directing us to meet and confer
9 on the timing of pleadings, which we've done, and how that
10 relates to discovery and the start of discovery.

11 And we did make progress on the timing of pleadings.
12 We didn't make quite as much progress on whether a formal
13 start of discovery should occur. We have spent a lot of time
14 talking about discovery, and we have done a lot of work in
15 terms of informal discovery. As I mentioned earlier, we feel
16 we need the complaints, the master complaints in order to
17 inform the scope of discovery, and the examples we talked
18 about earlier from what happened in the SoClean litigation
19 show that we need that.

20 Nevertheless, we are cooperating on informal
21 discovery. And what we've done is we have received some
22 requests from plaintiffs starting back when we were
23 negotiating the amendment to the preservation order. They
24 asked us for information that we submitted to the FDA. We
25 provided that to them. We actually negotiated a

1 confidentiality order with them back in December. And we have
2 been continuing to receive requests from plaintiffs in
3 connection with various things that we've been discussing.

4 For example, we've recently been discussing an
5 amendment to the preservation order with respect to another
6 line of products that have been recalled, the Trilogy
7 ventilators. The FDA recently granted clearance to Philips to
8 do rework on those, and we've been discussing that we need to
9 present something to Your Honor on that. Plaintiffs asked us
10 for a series of pieces of information relating to that. We
11 provided that.

12 We've also gotten what the plaintiffs have
13 characterized as an informal discovery list, several
14 categories of information. We've been cooperating on that.
15 We've also -- and this is described on page 5 of the Rule
16 26(f) report. We've discussed that we will have ongoing
17 discussions with them about custodial and noncustodial sources
18 of information.

19 So we're cooperating, and discovery is not on hold
20 here, but to have an opening of formal discovery we think is
21 premature without those master complaints. There's another
22 factor here which is that if formal discovery starts here and
23 the SoClean litigation is behind, it's going to make it harder
24 and harder to coordinate that discovery. We think it's
25 important that there be coordination.

1 The special master has an important role to play.
2 And if we were on a different track here and we're off to the
3 races on discovery without the benefit of complaints to inform
4 what the scope of that should be plus the SoClean litigation
5 is behind, I think we're at risk of having discovery unhinged
6 from what the claims are and uncoordinated with the SoClean
7 litigation.

8 So we would submit that the parties should be
9 directed to continue the discussions of informal discovery,
10 and we've already reached an agreement with plaintiffs'
11 counsel on when we will provide responses to those first
12 amended requests for production of documents. That's not in
13 dispute. And we'll continue to work with them up until that
14 deadline, which is 30 days after the filing of the
15 consolidated amended class action complaint. We'll continue
16 to work with them on lots of different elements that are
17 necessary to help us on discovery such as custodians, ESI, and
18 the like.

19 THE COURT: Okay. This is what -- anybody on the
20 plaintiffs' side?

21 MS. IVERSON: Kelly Iverson, Your Honor. Thank you.
22 Your Honor, as you indicated in pretrial order number one and
23 as stated in federal rule number one, the purpose here is for
24 just an expeditious resolution of this case. I believe you
25 said that to us as well when we had a phone call with you

1 early on.

2 Your Honor, when you entered pretrial order number
3 one, our understanding was you were putting a pause on
4 anything in order to appoint leadership and get this MDL
5 moving. Our understanding when you filed pretrial order
6 number eight appointing leadership and providing that we can
7 initiate discovery consistent with Rule 26, that when we had
8 the Rule 26 conference scheduled, that we could proceed with
9 discovery.

10 And I want to be clear, defense counsel has suggested
11 that we have done something in a violation of a court order,
12 and it's certainly -- you know, we're not under the
13 impression --

14 THE COURT: I'm not going to hold it against the
15 plaintiffs, but let me tell you what I had envisioned. Okay?
16 Maybe I wasn't clear enough with all of this. We do have the
17 stay in place. I did say it was very important to get the
18 discovery going, but we needed to get a special master
19 involved. I think the special master will be critical in
20 trying to coordinate the discovery here and the discovery over
21 in the SoClean case. And you've chosen the same special
22 master.

23 And I was expecting that we would have the special
24 master involved in setting up the calendar, so to speak, for
25 the discovery, how it was going to go forward, that you would

1 all be in agreement. You know, we were all going to do this
2 kind of written discovery by this date, this by that date,
3 then you go on for your depositions, are you going to phase
4 it, when are you going to do the experts. Because you have to
5 have so much done in the way of fact discovery before the
6 experts get involved.

7 And that's a very complicated situation. And I, as
8 the judge, I'm not as up to speed with each of your individual
9 issues that you're seeing, how you're going to go about it.
10 That's why the special master in these kind of complex cases
11 is to take the time and effort to get that all in place so it
12 can be efficient.

13 So the most important thing, from my standpoint, is
14 to get the order appointing the special master in place. And
15 that has to include what will be the traditional items that
16 the special master would be reviewing and also that there
17 should be the coordination, as I mentioned at the SoClean
18 matter hearing -- you all were present for that -- so that
19 there's coordination. And I think the big thing that the
20 special master has to try to do is get a handle on the time
21 frame for how the discovery is going to go about.

22 And that's what I envisioned. And then the stay gets
23 lifted, and you float through with the schedule that
24 everybody's agreed upon.

25 MS. IVERSON: And I think that's --

1 THE COURT: It's not just one side gets to pick I'm
2 going to go for this. I think there has to be a meeting of
3 the minds, and if the minds don't meet, then you come to me
4 and I'll work it out. The special master can be there to try
5 to facilitate these discussions and to get everybody moving
6 forward. So the sooner the special master's appointed, the
7 sooner this process will begin. And then I think we can have
8 an orderly process. Otherwise, you know, you're doing some
9 things and then maybe you have to go back and start all over
10 again, if there's a problem that comes up.

11 So if you think about what the progression should be,
12 are you going to be phasing, what are you going to tackle
13 first? You also have to coordinate this, quite frankly, with
14 the people doing the settlement. So the settlement committee
15 that you have, whoever is working with the defendants on
16 settlement, you know, prioritize what you're going to need for
17 the settlement. What are the big issues going to be? What's
18 the big stumbling blocks to getting an efficient settlement
19 process going?

20 I mean, all of that has to be coordinated, and it is
21 complicated because of all of the issues, the numbers of
22 parties that are involved here. Then you have the SoClean
23 that is a further complication. So it's the kind of thing
24 that needs a great deal of thought and effort and time, quite
25 frankly, that I'm hoping your special master, Carole Katz --

1 I'm familiar with her. She has an excellent reputation. She
2 hopefully has the time for this. Because it's not going to be
3 easy. It's going to be time-consuming.

4 MS. IVERSON: And Your Honor, before the parties
5 discussed special masters, I did reach out to Carole Katz to
6 see if she was interested and had the time. So she did
7 indicate her willingness to serve for our MDL. I am not sure
8 that she knows necessarily the SoClean MDL and what that
9 entails. I did invite her, to the extent she was available,
10 to join us at happy hour today, and she said she has a
11 mediation but will make it if she can.

12 THE COURT: I'm amenable to appointing her. I need
13 the order. Once you can get that order in here, then you can
14 start negotiating the time frame and the process for the
15 discovery. And as soon as that's presented to me, that's when
16 I'm going to lift the order. Okay?

17 MS. IVERSON: Okay.

18 THE COURT: I did encourage this voluntary
19 cooperation because that helps, but I think there has to be a
20 process here that everybody understands this is how it's going
21 to go.

22 MS. IVERSON: And I think we are on the same page,
23 Your Honor. And I do think that Attorney Katz will handle a
24 lot of this. And I know how much you want to have a
25 scheduling order and have those milestones and deadlines in

1 place.

2 THE COURT: Right.

3 MS. IVERSON: I know, you know, to look at the
4 complex manuals, case management schedules and that you want
5 us to have those deadlines.

6 THE COURT: Right.

7 MS. IVERSON: So we had our 26(f), and as we continue
8 to try to talk through deadlines, we continue to meet a
9 defense side saying, well, discovery's stayed. So we were
10 struggling with coming up with deadlines and ESI. We've been
11 able to work through a lot.

12 Their concerns about the complaint, we've agreed that
13 their written responses would be due after the first
14 complaint's filed. I don't think a suggestion that they're
15 not aware of what the case is about and what the claims are
16 generally necessarily goes far where there's, you know,
17 200-some complaints filed and it's all, you know, based upon
18 the same recall and issues that have occurred. I don't think
19 wading through the process of motions to dismiss makes sense
20 because --

21 THE COURT: Well, I'm going to hold off on the
22 motions to dismiss. And then the discovery will start. And
23 if one party is unwilling to really be reasonable about a
24 schedule for discovery and how it's going to be phased or not
25 phased as the case may be, then you should bring that to me.

1 But I mean, no later than the next meeting we should have that
2 order in advance for me to look at because I may have some
3 additions to it that I would feel that the special master
4 would be helpful for.

5 And so I think it's going to be important for the
6 special master to be on board and starting to work right away.
7 And then you can get your schedule together, and we can have
8 the discovery really be effectively starting sometime in June,
9 you know, if after the June meeting when the special master
10 hopefully will be meeting with you all working up to that date
11 and I'd have at least a preliminary proposal. You may not
12 have everything nailed down, but at least the first part of
13 the discovery can start.

14 MS. IVERSON: Yeah. Your Honor, the plaintiffs would
15 like to get some third-party subpoenas out. The defendant has
16 said they don't, you know, object to that, but then they've
17 taken the stance that there's a stay of discovery, and we're
18 concerned that if we --

19 THE COURT: You want to get your part of the
20 discovery started?

21 MR. LAVELLE: Your Honor, we don't object to sending
22 out third-party subpoenas for preservation purposes, and we've
23 discussed that with them. We don't think it's necessary to
24 lift the stay. We agree with Your Honor that it's appropriate
25 to address the stay after we've got the special master

1 appointed and had a chance to talk with her.

2 THE COURT: So you can mutually agree on something,
3 that's fine with me. The stay's in place except for mutually
4 agreed upon discovery or, you know, there's not an objection
5 to one party's proposed discovery. So you can go ahead and
6 get those subpoenas out.

7 MS. IVERSON: Okay. And with the special master, if
8 we submit a schedule by the next scheduling order, we can then
9 go ahead and proceed.

10 THE COURT: I think we have to get the special master
11 appointed. So I need that proposed order setting forth the
12 duties and the responsibilities.

13 MS. IVERSON: We've already started that.

14 THE COURT: So you're in sync with me, and I may have
15 some other duties I feel should be important. So normally
16 what I do, how I would approach this is the parties come up
17 with the initial proposal. I review it. If I have additions
18 to it, I put those in. I send out a draft so that you get the
19 chance to look at it and object. And then we have a final
20 hearing where I approve it.

21 MS. IVERSON: Okay. And as far as the ESI plan, and
22 in our court we typically have a checklist, things of the
23 sort. We've struggled a little bit with discussing those
24 deadlines as well because of the stay. The expectation is
25 that we should be already getting through the process, you

1 know, and they do have our omnibus discovery request to know
2 what we're going to generally be seeking to talk about, the
3 custodians, and have a process, to have that done timely --

4 THE COURT: Right.

5 MS. IVERSON: -- and in place before the stay is
6 lifted so that the process and we can immediately exchange
7 discovery? Okay. And I am aware of the, you know, wanting to
8 have an order in place. We have started one on plaintiffs'
9 side. We will get that now that we have agreed on Carole
10 Katz --

11 THE COURT: We want to avoid problems down the road.
12 If everybody has a meeting of the minds on how the ESI's going
13 to go, what's being preserved, are you going to phase it, are
14 you going to take so many custodians, the time frames for the
15 discovery, all of the those kinds of issues. That's where the
16 quality control, how is that going to go, you know, what
17 process is going to be used. If that's all in place, then
18 people won't be fighting about it two years from now.

19 MS. IVERSON: Yes.

20 THE COURT: And that's what I want to avoid because I
21 don't want to get bogged down in contentious litigation two
22 years from now if we could have avoided it by having
23 appropriate meetings of the minds early on and everybody knows
24 what their responsibilities are.

25 MS. IVERSON: And we were not trying to take

1 unilateral discovery. We've been asking for fact sheets.

2 THE COURT: I'm not faulting you. I'm not faulting
3 you. I know there's ambiguity there. That's fine. But I
4 think we're making it clear now. I think the best thing to do
5 is get the special master in place, get the order appointing
6 the special master. Then the special master can start meeting
7 with you all coming up with the appropriate discovery plan.
8 You present the plan to the court. It doesn't have to be, you
9 know, written that it can't be modified. It can be modified.

10 But there has got to be some dates, some timing, how
11 you're going to go about it with what the parties anticipate.
12 And then you can present it to me and I can say if it's going
13 be phased, then we'll have this part of discovery now, and
14 then start the next phase. And if it's not phased, have the
15 date for the completion of fact discovery.

16 So it can be a simple discovery plan or it can be a
17 little more complex, and it may be more complex. I don't know
18 how you're going to envision the most efficient way to process
19 this case fully.

20 MS. IVERSON: Those are all matters we're open to.
21 We've served kind, you know, kind of as much as we can kind of
22 what we think is the omnibus request. We certainly might have
23 more, but, you know, we've served them extensively always with
24 the understanding -- I mean, I've been in front of you, Your
25 Honor. We're happy to discuss priorities.

1 THE COURT: And for them to take discovery as well.
2 And we've talked about having bellwether, bellwether
3 mediations, bellwether trials, and you're going to front end
4 some discovery I think for those bellwether cases, whether
5 it's mediation or for trial. So you need to think about that
6 process and get the special master involved as to how that's
7 going to take place, how are you going to do that discovery,
8 how are you going to prioritize it.

9 MS. IVERSON: So from what at least we're discussing
10 here --

11 THE COURT: Do you have a bellwether committee?

12 MS. IVERSON: We do have a bellwether committee. We
13 actually had representatives from our bellwether committee,
14 discovery committee and settlement committee at -- I mean,
15 obviously, the co-leads are, but from PSC members from those
16 committees present at the 26(f) conference, Your Honor, and
17 they participated in the conference.

18 You know, what I'm -- I'm struggling with the idea of
19 the stay being in place where, one, the parties are already
20 kind of -- they -- we're in agreement. We've served our
21 request. They've delayed their written response. Everybody
22 is going to get with Carole Katz once she's appointed, come
23 get through our process of the timing and that we can serve
24 nonparty discovery.

25 I'm concerned if we serve nonparty discovery, that

1 they are going to come to us and say PTO number one --

2 THE COURT: That discovery that they said they would
3 consent to is nonparty discovery where you have a preservation
4 subpoena, you know, to the effect that they have to preserve
5 everything.

6 MS. IVERSON: Okay. We were looking to actually
7 engage in nonparty discovery. There is intermediaries in
8 play --

9 THE COURT: Well, I quite frankly had expected that I
10 would have a special master. While you did identify the
11 special master for today, but there was no proposed order to
12 appoint that special master submitted to me in advance where I
13 could consider or I could have signed it today and you could
14 be off and running.

15 So we are where we are right now. And if there was
16 some ambiguity as to the effect of the stay and what people
17 thought was happening, I don't think it's proper to in this
18 kind of complex case just to willy-nilly start some discovery
19 without some thought behind it as to the process, what you're
20 going to be doing, how it's going to be going forward. That's
21 why I thought we would have a discovery plan presented to the
22 court for approval.

23 MS. IVERSON: And Your Honor, we were not -- we did
24 not hide the ball from defendants. We were on a call with
25 them. We asked them --

1 THE COURT: I'm not --

2 MS. IVERSON: -- if we can serve before the 26(f) --

3 THE COURT: No need to apologize. There's no blame.
4 There's no problem. There's no issue here. I just think we
5 need to get it clarified so that everybody is on the same --
6 is operating under the same understanding.

7 MS. IVERSON: And that is why we're here. We've run
8 into a little bit of a roadblock with the stay with some of
9 the negotiations discussions we've been having with timing,
10 and we expect all of those timing negotiations will be worked
11 out with Carole Katz, but I also worry that they were going to
12 use the same approach when we get into those discussions with
13 Carole Katz, the discovery special master, that, you know, we
14 can't move forward with anything.

15 THE COURT: No. She can. But what I'm telling you
16 is that kind of discovery and a full-blown lifting of it will
17 be once I see what your plan is. Then you're going to go
18 forward and that's what you're going to do. It's in
19 everyone's best interests to get the discovery moving.

20 MS. IVERSON: No, we agree with you.

21 THE COURT: Why would you be setting up -- sending
22 out certain kinds of -- it would be wasteful, you know, if
23 you're going to be phasing things, to start discovery on
24 something that's in phase three rather than phase one. You
25 know, that doesn't make any sense to me. So unless there's

1 not going to be any phasing and you're just going forward,
2 that's not a problem.

3 MS. IVERSON: Yeah, we're open to hear that. I had
4 really hoped, Judge, that we would be here today with a
5 discovery plan. We had our 26(f) conference scheduled. We
6 told you that the last time we were here. And the stay I
7 believe really caused a lot of roadblocks in having that plan
8 developed and getting through things at the 26(f) conference.

9 And that's why we're here addressing it with you to
10 make sure that we can move things forward. We're happy to do
11 that in the process you just discussed. We definitely can
12 confer. I just want to make sure that it happens, Your Honor.

13 THE COURT: I'm happy to -- you present a proposed
14 order to me and go through the process, as I said, so we don't
15 need to wait, you know, until the next status conference.

16 MS. IVERSON: Absolutely. We proposed special
17 masters before the last status conference, and unfortunately,
18 the agreement only happened last week. So we are happy to
19 continue forward and appreciate your guidance on it, Your
20 Honor.

21 THE COURT: Thank you.

22 MS. IVERSON: Thank you.

23 MR. LAVELLE: Your Honor, John Lavelle. I just first
24 wanted to apologize about the lateness of the 26(f) report on
25 behalf of the defendants also. And in order to avoid that

1 issue and in order to follow up, I had a specific proposal,
2 which is that we set a deadline for us to be working with to
3 submit to Your Honor the proposed orders appointing Carole
4 Katz as the special master. And I propose that we try to get
5 it to you a week before the next conference at the latest.

6 THE COURT: I think you should have it two weeks from
7 now.

8 MR. LAVELLE: Two weeks from now.

9 THE COURT: That gives me a week to work on it, get
10 it out and your input back, and we're not further delaying
11 things. So two weeks from today would be May the 3rd.

12 MR. LAVELLE: We will do that, Your Honor. Thank
13 you.

14 MS. IVERSON: Your Honor, do you want us to seek any
15 input at all from Carole Katz with respect to that order or
16 just work out between the parties?

17 THE COURT: Well, I mean, she's going to have to see
18 it at some point. I usually do share it with the special
19 master to make sure they're comfortable or he or she is
20 comfortable with the order. So I mean, I think you both have
21 to agree on it and send it to her for any input she might
22 have. Then it will come to me.

23 MS. IVERSON: I just want to make sure we had that
24 all set between the parties for timeline.

25 THE COURT: It doesn't necessarily have to be that

1 way, but because of the complexities of this case and the
2 timing and the responsibilities that she may have, especially
3 for two cases, I think it's important that the format of the
4 order is something that she's also comfortable with.

5 MS. IVERSON: Thank you, Your Honor.

6 THE COURT: And she has to submit an affidavit about
7 conflicts.

8 MS. IVERSON: Yes, Your Honor. I believe she used to
9 be a partner at Morgan Lewis and has disclosed that, and we're
10 okay with that. It was a very short time for a very long time
11 ago.

12 THE COURT: That's part of the process for the
13 appointment. Okay?

14 MR. STEINBERG: Michael Steinberg. That will also be
15 shared with SoClean plaintiffs, right?

16 THE COURT: Yeah, you're going to be coordinating.
17 Who is your liaison counsel? Who are you going to be
18 appointing as liaison counsel both from the plaintiffs and the
19 defense side?

20 MR. SCHWARTZ: Your Honor, Steve Schwartz for the
21 plaintiffs. The co-leads for the Philips plaintiffs' co-leads
22 will be the overall liaison, but you have the committee which
23 includes me, includes Elizabeth Avery, who is sitting right
24 there from Ms. Iverson's office, and Mr. Schaffer who I
25 believe is back there.

1 THE COURT: So Mr. Schaffer, Ms. Avery and
2 Mr. Schwartz will be the liaisons officially?

3 MR. SCHWARTZ: Correct.

4 THE COURT: And you all have overall responsibility,
5 but I'll ask for a separate order for this liaison.

6 MR. SCHWARTZ: Sure. We can provide that for Your
7 Honor. We've already had discussions with the plaintiffs'
8 counsel, the co-lead counsel for SoClean. We've had
9 discussions -- I've had discussions with Mr. Cabral for
10 SoClean. So we've already started the work on establishing
11 those relationships and the coordination, and we'll work very
12 hard to make sure --

13 THE COURT: And the defendants will be establishing
14 whoever they're going to be using.

15 MR. LAVELLE: Yes, Your Honor.

16 MR. STEINBERG: I think you've been very clear and we
17 appreciate very much your expansion of what your expectations
18 are with the discovery master and creating discovery plans,
19 which is a lot more familiar to what we were thinking how this
20 case would proceed. So we appreciate that.

21 THE COURT: It's how I've handled my other complex
22 cases.

23 MR. STEINBERG: That's what we've seen in the past.
24 Because what we view this process, and Your Honor has sort of
25 done it nicely, is really setting the table for the rest of

1 the case.

2 THE COURT: Yes.

3 MR. STEINBERG: And unless we have that
4 overarching -- unless we know what the meal's going to look
5 like, it's going to be a mess. So we appreciate it, and
6 that's going to be our guiding post. Am I correct that in
7 connection with meeting with the discovery master, that
8 SoClean is to be invited as well --

9 THE COURT: Yes.

10 MR. STEINBERG: -- so that we can make sure that that
11 process coordinates?

12 THE COURT: Yes.

13 MR. STEINBERG: Thank you, Your Honor. Appreciate
14 it.

15 THE COURT: That's why the liaison relationships are
16 very crucial.

17 Okay. Changes to default Federal Rule of Civil
18 Procedure discovery rules on timing. I think that's part of
19 the whole discovery plan? Okay. And I will enter the 502(d)
20 order. I think everybody is on board for that.

21 MR. LAVELLE: I believe we already have that entered,
22 Your Honor, in this case.

23 MR. SEEGER: That was entered, yes.

24 THE COURT: We talked a little bit about the
25 discovery, the settlement, the coordination with SoClean, ESI

1 protocol. Privilege log protocol, that's another big issue.
2 There could be a lot of issues on that. You may need to get a
3 separate special master for that. It's going to be
4 overwhelming for Ms. Katz to have to do that as well, but if
5 she's amenable to it, I mean, she could do the privilege log
6 protocol as well, but sometimes you need somebody who is
7 really just dedicated to that to keep that process going.

8 MS. IVERSON: Your Honor, that was our expectation as
9 well that there might come a point that we do need to do that.
10 Our view was to see where it goes and let Carole Katz kind of
11 lead the charge to the extent we get into privilege disputes
12 where there is a lot of privilege disputes, we expect that we
13 might want to get another special master.

14 THE COURT: Sometimes it's very tedious work. When I
15 get those requests, and I have to go through them, depending
16 on the volume, I will order a special master. I do it myself
17 if it's a reasonable number, but when it becomes voluminous,
18 it's very difficult. So sometimes you need a specialist on
19 privilege logs. So check with Ms. Katz if she would like
20 somebody else to worry about that.

21 MS. IVERSON: We will, Your Honor. I'm sure you do
22 not want to do this one yourself.

23 THE COURT: No. I understand I have to do the
24 disputes that will come up, but if somebody can resolve
25 amicably most of the issues, it makes it very efficient for

1 judicial purposes. Okay.

2 The deposition in extremis protocols. Is that
3 something that you've both been working on? I don't think we
4 need any outside help on that, do we?

5 MS. IVERSON: No, Your Honor.

6 MR. LAVELLE: I'm optimistic we'll reach a conclusion
7 on that very soon.

8 THE COURT: If you don't, then we'll have to --
9 that's the kind of thing that we may have to submit to
10 Ms. Katz. There should be something in the order that says
11 that if I want to refer something to her, I can do that.

12 MS. IVERSON: Yes, Your Honor.

13 THE COURT: And that would be if you can't agree on,
14 there's a real serious problem, maybe she'll be able to work
15 with you.

16 The science tutorial, we talked about that a little
17 bit with SoClean. If there's a problem with the summer
18 because of holidays and vacations, we can pick a date in
19 September. I told you just, unfortunately, that one week in
20 July is a problem unless we stay late at night.

21 MR. SEEGER: We had proposed September. I'm not
22 standing on that. We wanted to talk about it. I don't have
23 an objection to moving it up a little bit. But would it be
24 okay if we had a huddle-up on that and we can get back to you
25 in a day or two I think on a date?

1 THE COURT: That would be fine. If you can pick a
2 date amicably, that would be good. It should be a Tuesday,
3 Wednesday or Thursday. Then I have to check my calendar to
4 make sure I don't have any dates. I have a very long
5 three-month criminal trial that's supposed to start in
6 September. So hopefully, maybe there will be a resolution to
7 that, but if not, it's going to be a long fall for me.

8 We talked about that registration, the registry.
9 Preservation order updates? Anything new on there?

10 MR. LAVELLE: Your Honor, just very briefly. We
11 provided plaintiffs' counsel with a status report on the
12 preservation under the existing preservation order. We were
13 supposed to do that on a monthly basis starting on April 1st.
14 We were a bit late on that. We provided it two weeks late.
15 We apologize about that. We won't be late again. But we will
16 provide that going forward.

17 We had scheduled a call with plaintiffs' counsel to
18 talk about the format. We ended up having to reschedule that,
19 but we will have that call and make sure we're getting the
20 information that we mutually agree is appropriate.

21 On the preservation order, there are two things I
22 just wanted to bring to Your Honor's attention. Number one,
23 there was some issue that had been left open in the interim
24 preservation order that the parties had been discussing
25 addressing an amendment. We hopefully will have something to

1 present to Your Honor in the near future on that.

2 And as I mentioned earlier during this conference
3 that the FDA has granted clearance for rework of the Trilogy
4 ventilators to Philips RS, and we are in discussions with
5 plaintiffs' counsel about a separate preservation order to
6 address those devices. We don't have anything to present to
7 Your Honor today. Those discussions are ongoing, but
8 hopefully, we'll have something to present to Your Honor in
9 the near future as well.

10 THE COURT: Okay. Thank you. Anything on those
11 matters?

12 MS. IVERSON: No. I believe that John Lavelle here
13 got everything correct and appropriately addressed them all.
14 Thank you, Your Honor.

15 THE COURT: How about the Burnett defendants? You're
16 still here?

17 MR. BODE: We wish we weren't, Your Honor. So we
18 have been -- we've had, I would say, a lot of discussions with
19 the plaintiffs and forwarded to them a document which we're
20 hoping will allow for the Burnett defendants to extricate
21 themselves from all of this. And it all sounds very expensive
22 and very detailed, and my poor bulk phone supplier is hopeful
23 that they will be out of this case perhaps in the next week or
24 so. We're working hard toward that. And I have a stipulation
25 that I've sent to plaintiffs, and my thought is that they will

1 get back to me on that.

2 MR. SEEGER: I was just going to say, Mr. Bode has
3 provided us with information, I don't know, about a week or
4 two. A number of folks throughout the country have either
5 named Burnett or are thinking of naming Burnett. We're
6 looking into it. And we're working cooperatively, and
7 Mr. Bode has been great in that respect. I just didn't want
8 the court to expect that in two weeks there will be
9 stipulations of dismissal. I can't promise that.

10 MR. BODE: I'll have to manage the expectations of my
11 clients because as a bulk supplier who really feels like they
12 had no dog in this fight at all, to use a trite expression,
13 they would love to no longer be a part of this. Yes, Your
14 Honor.

15 THE COURT: Okay. Liaison update, liaison counsel
16 update.

17 MR. RIHN: Thank you, Your Honor. Aaron Rihn,
18 plaintiffs' co-liaison. Just a brief update, Your Honor, on
19 what myself and my co-liaison, Mr. Wolff, are doing. We have
20 interviewed and received four bids from potential website
21 developers, and we recently got those proposals along with our
22 recommendations to lead counsel. I know the website is very
23 important to Your Honor, and we hope to have that up if not by
24 the next conference, certainly by the one after, but we'll do
25 everything we can to get that up by the next conference.

1 After we have that up and running, we'll make sure
2 that we put the transcript of every hearing up there so all
3 plaintiffs counsel can go and review those. And every new
4 plaintiff filing an MDL will receive an email from us
5 directing them to the website once it's up.

6 In the interim, until the website's up, which will
7 hopefully be only today's hearing but may be the next hearing,
8 they'll receive an email from us with the transcript once we
9 receive it. We've made arrangements to pay for the
10 transcript, and I don't know if the court needs anything more
11 from us to get those transcripts up on your website as well.

12 THE COURT: They have to be paid for. I can't make
13 them public until they've been paid for.

14 MR. RIHN: It's my understanding that they have been
15 paid for.

16 THE COURT: They have been paid for?

17 MR. RIHN: Yes.

18 THE COURT: The transcripts of these proceedings will
19 be?

20 MR. RIHN: Yes.

21 THE COURT: Once the transcripts are ordered and paid
22 for, they'll go up. So we don't need anything from you for
23 that process.

24 MR. RIHN: Great, Your Honor. In the interim, again,
25 until the website's up, any time something important happens,

1 there's a development, we'll email all plaintiffs' counsel.
2 We've done that with respect to the issues regarding the
3 preservation order and, you know, and we do that at the
4 direction of plaintiffs' co-leads when they think there's
5 something important, they let us know, and we get it out.

6 THE COURT: Okay.

7 MR. RIHN: Any other issues, Your Honor?

8 THE COURT: Just trying to see. No, I don't think
9 so. I don't think we've been getting any calls to my
10 chambers. So that's good.

11 MR. RIHN: That's good. Thank you, Your Honor.

12 THE COURT: Thank you. Now, I'd like to hear from
13 the -- is there anybody here from the leadership development
14 committee that would like to make a report on how they're
15 coming along?

16 MS. FRESCO AGRAIT: Good afternoon, Your Honor.
17 Miriam Fresco Agrait on behalf of the plaintiffs' leadership
18 committee. We're trucking along a little slowly right now
19 just because we haven't been able to engage in discovery yet
20 which I think is when you'll see us be a bit more useful, but
21 we still have our mentors. From what I've heard from the
22 co-chairs that were selected to that committee, everyone is
23 working well with their mentors. We're dealing with --
24 everyone's assigned to a specific subcommittee, and we're
25 putting our name out there for work as it comes. But, you

1 know, a little slow to start, of course, because there just
2 hasn't been that, you know, engage and exchange of paperwork
3 and so forth.

4 THE COURT: Okay. Thank you.

5 MS. FRESCO AGRAIT: Thank you, Your Honor.

6 THE COURT: Is there anything else to come before the
7 court?

8 MS. IVERSON: Nothing from plaintiffs, Your Honor.

9 MR. LAVELLE: Nothing from defendants, Your Honor.

10 THE COURT: Well, thank you all.

11 (Proceedings concluded at 5:35 p.m.)

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

14 I, JANE PROUD, RDR, CRR, certify that the
15 foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

16 S\ Jane Proud
17 JANE PROUD, RDR, CRR
18 Official Court Reporter
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