

1 IN THE UNITED STATES DISTRICT COURT?
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 IN RE: PHILIPS RECALLED CPAP, Master Docket No. 21-mc-1230
4 BI-LEVEL PAP, AND MECHANICAL
5 VENTILATOR PRODUCTS LITIGATION MDL No. 3014

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7 Transcript of Status Conference on Wednesday,
8 October 19, 2022, United States District Court, Pittsburgh,
9 Pennsylvania, before the Honorable Joy Flowers Conti,
10 District Judge.

11 APPEARANCES:

12 For Plaintiffs: Sandra L. Duggan, Esq.
13 Kelly K. Iverson, Esq.
14 David Buchanan, Esq.
15 Steven A. Schwartz, Esq.
16 Kathryn Harrison, Esq.
17 Shauna Itri, Esq.
18 Peter St. Tienne Wolff, Esq.

19 For Philips RS John P. Lavelle, Jr., Esq.
20 North America LLC: Lisa C. Dykstra, Esq.
21 Caitlin Barrett, Esq.

22 For Other Philips Michael H. Steinberg, Esq.
23 Defendants: William B. Monahan, Esq.
24 Tracy Richelle High, Esq.

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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

(2:26 p.m. in open court.)

THE COURT: We will move into the Philips case.

Good afternoon. This is the scheduled status conference in IN RE: Philips Recalled CPAP BiLevel PAP and Mechanical Ventilator Products Litigation. It's at MDL No. 30-14.

The parties have already entered their appearance through the joint notice. If anyone else wishes to enter their appearance, there is a pad of paper that is being circulated. If anyone wishes to have their name included, put your name on the paper and then provide it to the court reporter. Thank you.

Okay. So the first thing on the agenda is the status of the proceedings with the discovery master.

Who's going to report on that?

MS. IVERSON: Good afternoon, Your Honor, Kelly Iverson from Lynch Carpenter on behalf of plaintiffs.

We have been having weekly meetings with Special Master Katz that we think have been very productive. I have looked over our initial discovery plan and the addendum to our ESI order. We're still in the process of getting a deposition protocol to you.

The parties have had extensive meet and confer, including with each other and in front of Special Master Katz. There are a few issues that we still have disputes on that we're

1 going to be submitting on Monday to Special Master Katz, and so
2 hopefully, we'll get those finalized and to you as soon as
3 possible.

4 Similarly with the limitations on written discovery,
5 we're fairly close. We have one open issue with respect to the
6 number of interrogatories with respect to certain of the
7 defendants that we're going to get submitted to
8 Special Master Katz to the extent that we don't reach an
9 agreement this week.

10 Also, on the discovery plan, which I don't think is
11 in -- I think it is with Special Master Katz, the device
12 inspection protocol.

13 Right now plaintiffs had raised concerns about the
14 Philips proposal, that it might be destructive. We're
15 continuing to have a meet and confer if those concerns can be
16 alleviated or not and what we can do with that.

17 The final issue is ESI. There's been productive --
18 spending significant time every Friday on meet and confers with
19 the defendants. We've spent a lot of time trying to work
20 through the custodial and noncustodial sources.

21 There is a certain agreed upon list of priority
22 custodians that the parties came to agreement on. So custodial
23 productions just started September 30th, consistent I believe
24 with the addendum. I think there's only been about 600
25 documents so far, but those are the priority custodians, and the

1 productions are supposed to continue rolling productions from
2 here on out now with those.

3 Oh, the final item, the PFS, the plaintiffs' fact
4 sheet and the census registry that Your Honor had entered, we
5 found a couple typos that we need to fix on those. As well as
6 with the census, we want to make the process a little more clear
7 for the pro se plaintiffs. So we're going to be submitting a
8 red line to you of a proposed amendment on those two documents
9 in short time.

10 That's everything we have unless you have questions on
11 discovery.

12 THE COURT: Okay. Have you been in communication by
13 prioritizing the discovery that you might need for the
14 mediation?

15 MS. IVERSON: We have. Both parties exchanged lists
16 of some information and documents that they sought for mediation
17 and have done a follow-up list, and the parties have been
18 working through that.

19 The initial lists, we've already exchanged all of that
20 information, and we're currently working through the
21 supplemental and additional information that the parties have
22 requested.

23 THE COURT: Okay. From the defendants, is there
24 anything you wish to be heard on?

25 MS. DYKSTRA: Thank you, Your Honor. Lisa Dykstra for

1 Philips RS.

2 We concur with the description of our process so far.
3 We do plan to come back with questions on a device inspection
4 protocol, about whether to remove certain pieces from the
5 device, if that will open up the device and subject it to
6 contamination of some kind or somehow particulates would leak
7 out of the device.

8 So we are going to be providing them responses to that
9 so we can hopefully reach a resolution and hopefully get some --
10 at least some of the plaintiff devices and the inspection of
11 those devices underway.

12 And confirming that we also have been discussing
13 productively data to be exchanged to make the mediation as
14 productive as possible.

15 And I'll defer to my colleague, Ms. Barrett, to give
16 you a further update on the discovery process.

17 THE COURT: Thank you.

18 MS. BARRETT: Caitlin Barrett, Philips RS.

19 Just to provide a brief overview of the parties'
20 discovery efforts in meet and confers thus far, on
21 September 15th, in accordance with the ESI addendum, we provided
22 updates on the custodial sources that will be collected and
23 searched, additional information consistent with the ESI
24 checklist for this district and responses to plaintiffs'
25 informal information requests on ESI.

1 Specifically, we have reviewed the processes for using
2 the agreed upon search terms and imposing it on custodial data
3 for collection and production.

4 We also agreed to produce policies relating to the
5 storage of documents on Teams and OneDrive.

6 We provided detailed information consistent with the
7 Western District of Pennsylvania ESI checklist, including the
8 number of individuals whose custodial data is being preserved,
9 description of the noncustodial sources of ESI data, including
10 SAP, which has complaint files, sales data, things along those
11 lines, also sources that have regulatory submissions, CAPA files
12 and data, compliance and quality data, as well as sales training
13 data and recalled remediation data.

14 Finally, we also confirmed at that time that there are
15 no data files with relevant information that are not reasonably
16 accessible or not properly preserved.

17 As mentioned earlier, the parties have continued to
18 meet and confer since that September 15th correspondence,
19 participating in weekly and sometimes biweekly meetings and
20 exchanging detailed letters about the noncustodial sources. The
21 parties provide Special Master Katz with updates on these meet
22 and confers during the weekly check-ins if any issues arise.

23 For example, on September 29th, Philips RS provided
24 additional information that plaintiffs had sought on our
25 databases that have the complaint data. We provided further

1 information about that, those database.

2 We also provided information on what complaints have
3 been and information on the complaints had been given to the FDA
4 during the recall and remediation process.

5 Finally, we have proposals that have been discussed
6 between the parties for accessing additional complaints for
7 review and production in this matter.

8 Throughout October, we've had various other
9 correspondence and meet and confers on the other noncustodial
10 sources that we've discussed.

11 These meet and confers are happening alongside
12 continuing productions, both of noncustodial data as well as
13 custodial data. At this time, Philips RS has made 21
14 noncustodial productions consisting of over 30,000 documents and
15 over 1.25 million pages.

16 For the productions that went out since the last
17 status conference, this included five 10K submissions, CAPA
18 files, communications with FDA, design history files and some
19 underlying engineering reports in those design history files,
20 and also sales training and marketing policies.

21 And as mentioned earlier, Philips defendants have also
22 begun the custodial productions, making its first production on
23 September 30th of about 500 documents and 6,000 pages, and we
24 will continue with the simultaneous review and production of
25 custodial and noncustodial sources. Thank you.

1 THE COURT: Sounds busy.

2 So the next matter is the plaintiffs' motion to
3 withdraw from the rescinded stipulation and vacate order.

4 MS. DUGGAN: Good afternoon, Your Honor, Sandra Duggan
5 for the plaintiffs.

6 THE COURT: Do you want my overview first?

7 You can both come up at the same time.

8 MR. MONAHAN: Your Honor, Bill Monahan for Koninklijke
9 Philips from Sullivan and Cromwell for the Dutch parent company
10 in the Netherlands.

11 THE COURT: Okay. So I'll give you the option, you
12 know, do you want my overview, and you can tailor your
13 arguments, or do you want to be able to make your arguments, and
14 then I'll provide my comments?

15 MS. DUGGAN: I think we'd like your overview.

16 MR. MONAHAN: I'd certainly prefer your overview.

17 THE COURT: So the first thing -- and you'll find this
18 is something that I routinely do in all of my cases. I first
19 want to know, you know, what the issue is, what the standard is,
20 and then how does that standard apply on the particular issue.

21 So the issue here is whether or not the plaintiffs
22 should be able to withdraw from a joint stipulation, and the
23 standard for that is interesting. It was brought up by the
24 Philips parent company that the applicable standard should be
25 the Waldorf vs. Borough of Kenilworth decision.

1 The Court there applied that -- explained that a
2 pretrial stipulation is analogous to a pretrial order under
3 Rule 16 of the Federal Rules of Civil Procedure, which can be
4 modified subsequently only to prevent manifest injustice.

5 And the portion of Rule 16 that is applicable is
6 part E, and it says that the Court may modify the order issued
7 after a final pretrial conference only to prevent manifest
8 injustice, and that is triggered by the finality of the pretrial
9 conference order, and that generally comes up pretrial, right
10 before pretrial.

11 So we have case management orders in this case that
12 are not the final pretrial conference order, clearly. You know,
13 we're on our way to having hundreds of those in this case.

14 So this is not a final pretrial conference order, and
15 in the Waldorf case, what was distinctive there, it was a
16 question of a stipulation from liability for purposes of trial,
17 so that they were going to deal with damages first, if not
18 the liability issue.

19 So it was a substantive issue that went to the heart
20 of the case, and it was a pretrial order in the sense of a
21 Rule 16 order. So that's dramatically different from what we
22 have here.

23 And so in doing some independent research, the Court
24 has come across a decision from a district court in New Jersey,
25 I-MED Pharma Inc. vs. Biomatrix, Inc., No. 03-3677, 2011,

1 Westlaw 6140658, District New Jersey, December 9, 2011. In that
2 case, there was a request to withdraw the stipulation, and the
3 stipulation in that case had to do with E-discovery protocols.

4 And the plaintiff asked to modify the protocols
5 because it did not want to produce documents recovered from any
6 unallocated space files filed on its system. This, according to
7 the plaintiff, would be a costly obligation, and they felt --
8 the plaintiffs felt that the data that would be retrieved would
9 not be relevant to the other issues in the case.

10 And the standard that was applied was good cause to
11 modify the order because the burden on the plaintiff outweighed
12 any potential benefit from the implementation of the original
13 order.

14 Now, the defendant argued that it should have been the
15 Waldorf standard that was applicable, meaning the manifest
16 injustice, and the Court went on to distinguish the factual
17 setting in Waldorf from this sort of discovery protocol in this
18 case.

19 And the Court went on to hold, in any event, there
20 would be a manifest injustice if the Court had not permitted the
21 protocol to be -- the stipulation to be modified.

22 So under those circumstances, it appears to the Court
23 that this falls more in the good cause kind of standard than it
24 would in the manifest injustice standard.

25 So I'll hear from the parties on that when you give

1 your arguments, but my initial sense is this is a pre-discovery.
2 You know, we're talking about a motion to dismiss practice in
3 the sense of how -- you're not waiving or giving up any issue
4 about personal jurisdiction. It's still in the case. It's just
5 a question of the timing; when are we going to address personal
6 jurisdiction for the Philips parent company.

7 So when we are in that kind of situation, it strikes
8 the Court we're more in that good cause rather than manifest
9 injustice.

10 And then I get into what the parties are arguing here,
11 and when I read the reply, it seemed to be, well, this is all a
12 tempest in the teapot. Because we have an argument by the
13 plaintiffs, well, they have pled enough that we can look at the
14 Philips parent and see where in the pleadings they're being held
15 for claims against them individually, regardless of whether they
16 could be consolidated for purposes of piercing the corporate
17 veil or an alter ego theory, which was the issue in the personal
18 jurisdiction, which is different from the pleading requirements,
19 you know, that if you wanted to have a claim against a party, a
20 defendant, you'd have to have facts that implicate that
21 defendant in the particular claim that you are asserting. You
22 can't just lump everybody together, which was the issue that the
23 Court had pointed out when I reviewed the pleadings.

24 But the plaintiffs say that they've cracked the data
25 in the amended complaint, and it's ready to go, and they have

1 enough there. So you know, should we proceed on the original
2 process, or do we really need to revise it and amend it?

3 And then the other thing that struck the Court as sort
4 of again the tempest in the teapot issue is this protocol for
5 putting off the personal jurisdiction only applied to the
6 economic loss complaint. We have two other complaints that are
7 coming along at a fast pace. We'll be seeing those very
8 quickly.

9 So the personal jurisdiction is going to be there, and
10 it is a threshold question. I've addressed this in other cases.
11 I typically -- when personal jurisdiction is raised, I shouldn't
12 be proceeding with the case, because if there's no jurisdiction,
13 you know, the Court doesn't really have authority to look at the
14 other issues that are being raised.

15 So if it's a threshold issue, my typical practice is
16 if it's not apparent on the face, and you have to have
17 discovery, then we have a period for jurisdictional discovery
18 only, and the parties address the jurisdictional things, and we
19 brief that, and I decide that at the threshold on personal
20 jurisdiction. That would be my typical practice.

21 When the parties broached here the idea, well, we'll
22 put that off, because I believe the defendants felt that they
23 had such strong positions on some of the other issues that they
24 would be attacking the claim on, you would never even need to
25 get to personal jurisdiction, and they wanted to highlight those

1 and deal with those up front.

2 So even though it wasn't something that I would
3 normally have found to be appropriate, when both parties agreed
4 to it as something that would streamline the case, I was willing
5 to go along with it.

6 But I mean, if we have to deal with it in the other
7 claims and the other complaints, then why are we fighting about
8 it here?

9 So my sense would be to tell the defendant, you know,
10 the good cause doesn't seem to have much sway in this case,
11 where you have to fight the personal jurisdiction up front in
12 the other two complaints, the class consolidated complaints. So
13 why are we fighting about it here?

14 Now, if you still want the benefits of putting it off,
15 my suggestion would be stick to your stipulation, but expand it
16 to say that we're not going to take up this alter ego kind of
17 pleading problem where you have lumped the defendants together.
18 That will be raised at the same time the personal jurisdiction
19 is raised.

20 Because if you fail on personal jurisdiction, you're
21 out anyway, and if it's a pleading problem, then we can address
22 it as to what have you failed to do in the complaint if you want
23 to sue them, if you're going to be suing them other than on the
24 basis of alter ego.

25 So I guess that's where I am. You know, I'm just

1 struggling to see why are we fighting all about this and what
2 makes the most sense to move forward, just so we can really get
3 to the issues and move these cases forward. So that's sort of
4 where I am overall looking at these issues that have been
5 raised.

6 MS. DUGGAN: I appreciate the Court's comments,
7 Your Honor. I think you've accurately summarized exactly where
8 we're at with this issue.

9 I think there was, in the beginning, a failure of a
10 meeting of the minds, because I had understood that we would be
11 putting off these various issues. It then became clear to me
12 when the motion to dismiss was filed that they don't want to put
13 those issues off, which is why this became an issue.

14 And you know, as we set forth in our amended
15 complaint, you know, Koninklijke Philips N.V. is the ultimate
16 parent company of the entire Philips enterprise, and it means
17 Royal Philips. That's what it literally translates to.
18 Royal Philips, from our investigation, tightly controls all of
19 the Philips entities.

20 THE COURT: I don't need to get into any of the merits
21 on these issues. I understand, you know, as to the question
22 of -- for personal jurisdiction, to get them here in the
23 Western District of Pennsylvania you'd have to show, you know,
24 the specific jurisdiction over them, and the only basis, my
25 understanding is, for that would be if there is the alter ego.

1 MS. DUGGAN: So there are two bases. That would be
2 one, and the second is that we have a negligent recall claim, a
3 failure to recall and a negligent recall claim, that
4 Royal Philips is in charge of the entire recall in the
5 United States and worldwide, and that has been defective, and it
6 has been insufficient.

7 So that claim would be against Royal Philips directly
8 for their acts as to the recall, in addition to the alter ego
9 claims that we have.

10 THE COURT: Does that have jurisdiction, personal
11 jurisdiction over that claim in Western Pennsylvania?

12 MS. DUGGAN: We would argue it does, but that would be
13 the subject of their jurisdictional motion.

14 THE COURT: Uh-huh.

15 MS. DUGGAN: Yes. So the question precisely at this
16 point, what do we do? Do we continue with the stipulation, deal
17 with the motion to dismiss on the economic damages claims. If
18 the plaintiffs are successful, we feel like we will be, then in
19 the spring they'll say, oh, but we're not supposed to be here
20 because you don't have jurisdiction over us.

21 That just doesn't seem like an efficient way to
22 proceed, especially in light of the fact that we have the other
23 two complaints, one that was filed this past Monday on medical
24 monitoring and the personal injury complaint, which will be
25 filed next Monday. There's no stipulation for those complaints.

1 So it's going to have to be raised anyway. So you're
2 mentioning a tempest in a teapot is exactly accurate. It's
3 going to all come up.

4 The question is, how do we do this in an efficient way
5 and conserve resources both for the parties and for the Court?

6 THE COURT: It struck me that should be pushed off
7 for all of the -- there should be a stipulation that cuts across
8 all of them, if we're going to have a stipulation, or have no
9 stipulation and just do the scheduling, the personal
10 jurisdiction, you know, right away for the discovery.

11 I do want to reflect on the record that if you have a
12 joint stipulation, it's not lightly withdrawn, and it's not
13 lightly modified, and you know, there are any number of cases
14 that stand with that proposition. That's why there has to be at
15 least a good cause standard met, if not the manifest injustice.

16 MR. MONAHAN: Thank you, Your Honor. Bill Monahan for
17 the Dutch parent company.

18 I appreciate very much Your Honor's perspectives at
19 the outset, just so we can all respond to that, and I want to
20 address each of your, I think, essentially three comments.

21 Before I do, though, I think it's important to keep in
22 mind that there really are two separate and independent reasons
23 why this motion should be denied, and the stipulation should
24 remain.

25 The first is the standard. I want to talk about that

1 given Your Honor's comments. The second is the fundamental
2 difference, on the one hand, between pleading nonconclusory
3 factual allegations as to each defendant, basic Twombly, Iqbal,
4 Rule 8, etcetera, etcetera, on the one hand, versus what some
5 courts, including the District of New Jersey, have called a
6 miniature trial, which is the question of whether you've pled a
7 claim -- if you've pled a claim, is there jurisdiction, what
8 does the jurisdictional discovery show, let's have an
9 evidentiary hearing, and all of that complicated very expensive
10 discovery that flows from it.

11 And of course, the whole point of the stipulation was
12 to put a pin in that. Maybe we don't need to deal, all of us,
13 all of the parties, with that very expensive process if they're
14 not going to get out of the starting gate on pleading in
15 accordance with Twombly and Iqbal.

16 I think those arguments still remain. I want to go to
17 Your Honor's last point about the other cases, the personal
18 injury one and the medical monitoring.

19 Of course, Ms. Duggan and Your Honor are correct that
20 we don't have a stipulation in those two. But I don't see why
21 that should drive the decision here, Your Honor, because if the
22 Court agrees that we have a threshold significant pleading issue
23 that's been raised, and I want to talk about why they haven't
24 fixed it, the tempest in the teapot issue, should we deal with
25 that first?

1 And Your Honor can decide whether we stipulate or not,
2 including in the personal injury cases, including in the medical
3 monitoring case, that we deal with this threshold issue, and
4 then if they survive it, great. We'll go right to jurisdiction,
5 jurisdictional discovery and deal with that, but at least
6 they've gotten past the starting gate, and we can all deal with
7 that issue before the expensive stuff.

8 Your Honor, there was this tempest in the teapot
9 analogy, and I think it's essentially the argument from the
10 plaintiffs' reply brief. We heard the Court about its group
11 pleading concerns.

12 Obviously, group pleading is not allowed anywhere in
13 the country, certainly not in the Third Circuit, and they say,
14 you know, we heard the Court, and we've addressed it all, and
15 that was their representation in the papers.

16 And I might submit, Your Honor, that what we have in
17 the amended complaint, or I should say the third amended
18 complaint, is group pleading by another name.

19 In the prior iteration, we took all of the defendants,
20 all five of them, and lumped them under an umbrella called
21 Philips. In this one, they take all of the defendants, the same
22 five of us or six of us, and they call it the Philips enterprise
23 umbrella. So it's the same thing by a different name.

24 Now, if they say, and they do, that they've pled
25 enough, whether -- I mean, part of their argument was group

1 pleading should be okay, and part of their argument was we've
2 done enough. Let's see, let's actually see if they've done
3 enough.

4 Let's do that stage one before we get to the expensive
5 jurisdictional stuff, because of course, you cannot -- and
6 there's plenty of cases we said in our brief on this,
7 Your Honor -- you can't just backfill through discovery,
8 jurisdictional discovery all of the pleading deficiencies that
9 you have in your complaint, and you have to plead your complaint
10 without the benefit, under Twombly, Iqbal, Rule 8, etcetera,
11 etcetera of this jurisdictional discovery, and that's really at
12 the core of our concern of what plaintiffs are doing here.

13 THE COURT: No, but the real issue here is, which
14 takes us out of some of the other cases that these -- this group
15 pleading has come up in, a lot of times when you have a group
16 pleading, there's no question of alter ego or piercing the
17 corporate veil.

18 You know, it's different defendants, individuals
19 perhaps, and they just call everybody the defendants, and it's
20 not a question of we're going to pierce this veil or not that
21 veil, and so then you do the -- you can have all of the factual
22 pleadings against an individual defendant that you want.

23 But if you have no jurisdiction, no personal
24 jurisdiction over them, they don't have to come here and answer,
25 and the Court has to address that right away.

1 In fact, if it's raised timely and not waived, then
2 the Court has an obligation to address that at the threshold,
3 because the Court has really no authority to resolve the other
4 issues, you know, because if there's no jurisdiction, there
5 isn't jurisdiction.

6 So you know, that happens in a lot of other cases.
7 The twist here is that the personal jurisdiction, as I
8 understand it, will hinge on whether or not the ultimate parent
9 here is subject to a piercing of the corporate veil or alter
10 ego, so that it's all one enterprise. It's all viewed as and
11 treated as the same.

12 So the Court, in resolving personal jurisdiction,
13 isn't just looking at what would be the typical, what are the
14 contacts with the individual jurisdiction, how do you go about
15 assessing that and the very standards you would apply to general
16 versus specific jurisdiction.

17 So here, the Court has to look to say, well, if
18 it's -- they're all the same entity, and you can get the
19 subsidiary because they're here locally, and they have all of
20 the contacts. So that's how you get to the contacts, because
21 it's all the same entity essentially, is the argument.

22 And that's intertwined with, if I want to say all of
23 these defendants did this, the enterprise defendants did that,
24 they're all one in the same, and so all of the factual
25 allegations are imputed to all of the defendants.

1 So it's really that problem, and you're going to have
2 that problem with the other complaints, and you have to address
3 it head-on, I think, unless the other side wants to agree to a
4 stipulation to push it off for all of the cases.

5 MR. MONAHAN: Or we can make an application to
6 Your Honor. But Your Honor --

7 THE COURT: Why would I do that if I don't really have
8 authority to push that off, you know, without -- you know, I
9 went along with it in the economic loss one because you both
10 agreed, and you're telling me it's more efficient this way. I'm
11 going to give you the benefit of the doubt even though it
12 wouldn't be what I would typically do.

13 MR. MONAHAN: Your Honor, I would submit you do have
14 that authority. This is not a subject matter jurisdiction
15 issue. It's a personal jurisdiction issue, and I would point
16 the Court to three decisions that I believe have all been cited
17 in our papers, in which the Court expressly deferred on ruling
18 on a 12(b)2 personal jurisdiction issue but considered and
19 granted in part the defendant's Rule 12(b)6 motion.

20 So we do not believe that there is any preclusion on
21 Your Honor's ability to proceed precisely in the fashion that
22 plaintiffs' counsel and we agreed was the way to go here, decide
23 the 12(b) --

24 THE COURT: But the problem that I have with this,
25 okay, say the Court were to do that and would find that the

1 group pleading wasn't sufficient to pick up the ultimate parent
2 in terms of the claims that are stated, they don't go away, you
3 know, in terms of it's not a merits -- it's not a merits-based
4 decision. It's just a pleadings decision.

5 And as you pointed out astutely in one of the
6 footnotes, if at a later time, you know, they get the facts,
7 they come back and seek leave to amend, and there are more
8 pleading problems, you know, in terms of do you have
9 jurisdiction now because they have been able to find this
10 information.

11 And they'll be able to get it because, you know, if
12 the parent was involved in various activities, you know, to find
13 that that's not relevant for the scope of discovery, I think
14 would be a stretch.

15 So a lot of these jurisdictional facts, I would think,
16 will come up during the routine discovery in this case, in terms
17 of who was doing what and when they were doing it, who was
18 directing the conduct of the activity that's at issue in this
19 case.

20 So you're going to have that type of discovery at some
21 point in any event, and then if they have enough grounds, we'll
22 be back here again.

23 MR. MONAHAN: So, Your Honor, this goes back to the
24 footnote point you alluded to. We know that there's an entity
25 that manufactured the products, that sold the products, that

1 warranted the products, that recalled the products. It's
2 Philips Respironics, Morgan Lewis' clients.

3 They can take discovery from Respironics. They have
4 been taking extensive discovery. If in the course of discovery
5 of Respironics, the entity here that really is the core
6 defendant, if not should be the only defendant, they uncover
7 facts that suggest that the parent company or one of the other
8 three entities --

9 THE COURT: They'll be able to take discovery of the
10 parent entity, too.

11 MR. MONAHAN: I think certainly their current position
12 is they can. We have been participating in discovery, to be
13 clear, but the problem is they're going above and beyond to this
14 jurisdictional discovery in order to, you know, attempt to plead
15 a claim against the parent company and fill their gaps.

16 The other thing I would note, Your Honor, and I think
17 Your Honor -- and I understand why Your Honor would say this
18 based on plaintiffs' papers, that there's an overlap in
19 plaintiffs' theory between the merits of a claim against us and
20 the jurisdictional issue, and that's actually not the case.

21 In their third amended complaint, they've actually
22 changed their personal jurisdiction theory from the second
23 amended complaint, and now they do not attempt to allege
24 personal jurisdiction based on alter ego or agency. The theory
25 now is a direct contact with the United States by the parent

1 company.

2 So the notion that this is all the same discovery
3 towards the merits and towards personal jurisdiction is
4 incorrect, Your Honor, and again, I think that's because of the
5 change that they recently made in the third amended complaint
6 that they filed last week.

7 So the efficiencies argument that we've heard from the
8 other side that, oh, it's all the same, and we're going to have
9 to do it no matter what --

10 THE COURT: So there's nationwide personal
11 jurisdiction if you subject yourself anywhere in the U.S.?

12 MR. MONAHAN: I don't believe so, Your Honor.

13 THE COURT: I think that's the problem, we get into
14 the Western District.

15 MR. MONAHAN: I agree, Your Honor. I think actually
16 they're going to have to show, for personal jurisdiction,
17 contacts, and under their new theory, direct contacts with each
18 of the relevant states in which the lawsuit was originally
19 filed, because personal jurisdiction is based on the transferor
20 court, not the transferee court.

21 Your Honor, I guess ultimately then to the good cause
22 point that you started on -- I don't want to lose that thread
23 either for sure -- I would say whether it's manifest injustice
24 or good cause, I want to fight you a little bit on that,
25 Your Honor, just looking at the cases. But I don't think that

1 because they have not pointed to a single changed circumstance
2 since they agreed to what Your Honor already said, and courts
3 have said, are stipulations that shouldn't be lightly set aside,
4 that they have met even the good cause standard, Your Honor.
5 But then just going back to manifest injustice, I would note
6 that --

7 THE COURT: In good cause, my recollection, is that
8 one of the main factors that the Court looks at in good cause as
9 opposed to manifest injustice has to do with is there prejudice
10 to the defendant, okay.

11 And how do you show prejudice to the defendant when
12 there's no stipulation in those other two class consolidated
13 complaints? I mean, if you're going to be facing it anyway,
14 what's the big deal?

15 MR. MONAHAN: Okay. I think on the other two
16 complaints, Your Honor, I would suggest there's at least two
17 paths forward. One -- and they're all based on the assumption
18 that the other side won't agree on a stipulation, which I assume
19 not to be the case.

20 One, we can make an application to Your Honor, and the
21 cases I had mentioned earlier indicate that Your Honor can in
22 fact order the jurisdictional issue to be paused subject to this
23 core threshold issue under 12(b)6.

24 THE COURT: See, the other problem you have here, you
25 know, with respect to looking at each of the transferor

1 jurisdictions to see whether there's personal jurisdiction, if
2 an alter ego prevails, if they're successful in that and say it
3 really should be looked at as one entity for these purposes --
4 and that's a hard threshold to do; I'm acknowledging that. But
5 if we assume hypothetically that they are able to show that,
6 then we don't need to be involved with looking at each of the
7 50 states or how many other districts, not 600 districts.

8 MR. MONAHAN: It's precisely my point.

9 THE COURT: Ninety-four districts I think there are.

10 MR. MONAHAN: That's exactly the reason we're making
11 this motion, is because of the complexity on those
12 jurisdictional issues.

13 Looking at each of these states, when did you send
14 employees to Alabama, when did you -- did you have, you know, a
15 little office in, you know, North Dakota or something like that
16 or whatever the states are, it just gets to be -- and we
17 received a whole set of like 50 discovery requests today.

18 Most of them seem jurisdictional, and it becomes very
19 expensive when none of it is necessary if they can't get past
20 the alter ego pleading stage, which under Twombly they're not
21 entitled to the benefit of discovery on.

22 Back on the manifest injustice, Your Honor, I would
23 just note, because you started on it, I don't want to not
24 respond to it for sure, Waldorf, that case itself, for sure was
25 a post-trial, and there, I don't know why the defendant did it,

1 but they tried to sort of undue the stipulated facts. I get
2 that, Your Honor, for sure.

3 There were two other cases we cite in our papers. I
4 would refer the Court to Thompson vs. Altoona, from the Western
5 District of Pennsylvania, 2011, and Clark vs. Samsung, that's
6 from the District of New Jersey, 2021.

7 Now, I'm not positive, and I will admit that,
8 Your Honor, but I believe that both of those were not before --
9 excuse me, not after the final pretrial conference.

10 So I don't believe that, as applied in this circuit,
11 manifest injustice as a standard only happens after the final
12 pretrial conference.

13 In the Clark vs. Samsung case, the stipulation was
14 that the plaintiff would not seek leave to further amend his
15 complaint. Plaintiff tried to say no, we want to amend, and the
16 Court said, no, you haven't met the manifest injustice standard.

17 In the Tompson vs. Altoona one, the Court denied a
18 motion to withdraw a pretrial trial stip under which the
19 defendant agreed to restore certain benefits to the plaintiff
20 during the pendency of the litigation.

21 And the Court said -- the Court said Waldorf involved
22 factual disputes, and the defendant was trying to undue a
23 factual stipulation.

24 But here, this had to do with the parties' agreement
25 regarding the course of conduct during the pendency of the

1 litigation, very similar to here. And what standard applied in
2 that case, Your Honor, manifest injustice.

3 On that I-MED Pharma case that Your Honor mentioned,
4 which the Court does apply good cause and then does apply the
5 Waldorf factors in any event, I might suggest that the
6 circumstances there are fundamentally different, and sort of
7 precisely the changed circumstances that have not been
8 identified by plaintiffs' counsel in their papers, there --

9 THE COURT: I think it's a mistake of fact as to what
10 the import of the stipulation was.

11 MR. MONAHAN: I agree.

12 THE COURT: At least as I understand it.

13 MR. MONAHAN: I agree with that.

14 THE COURT: It's like if you were in a contract
15 setting, if there's a mistake of fact by one party to the
16 agreement, you can sometimes be excused from performance.

17 MR. MONAHAN: I agree with that, Your Honor.

18 THE COURT: So I mean, you know, these are not easy
19 issues under these circumstances, but we're trying to be
20 efficient. That's what I think I'm asking the parties to really
21 look at.

22 Can we just push off this whole thing about the group
23 pleading versus not group pleading until you decide the other
24 thing? Because my approach was -- my understanding was that the
25 challenge here and why the reason to push it off was we have

1 such strong positions -- this is articulating from the defense
2 point of view -- such strong positions on some of the -- why
3 these claims don't, you know, can't pass muster.

4 It didn't have to do initially with the group
5 pleading. I mean, that's a technicality, because if you can
6 plead it separately, you know, you can go through all of that
7 and try to see it, or if they're not successful, it's without
8 prejudice. So if during discovery you get it, they come back,
9 and they can add it back in.

10 But if we get involved in this now, we have to look at
11 all of these issues on the pleadings standards. Then we go
12 through all of the technicalities, okay, look at this one, look
13 at that one, here's this fact, how does it go there. It can be
14 cumbersome for the Court, for the parties.

15 And then, you know, there just has to be enough facts
16 to make it plausible. And under Rule 8, it's not -- you don't
17 have to have each fact. You just have to have enough facts from
18 which you can draw reasonable inferences that during discovery
19 you're going to be able to show that the claim is plausible. I
20 mean, that's what the standard is.

21 So we'll have to go through this, each claim, looking
22 at that, you know, with respect to each of the defendants, and
23 that can be time consuming, as well.

24 So my suggestion would be if it's going to be better
25 to put off those issues and deal with the meat of what the real

1 problems are that the defense sees with these complaints, then
2 let's deal with that and put those things aside.

3 It should be across the board for all of the cases, so
4 that we, you know, are dealing with what would be the more
5 substantive, if you will, if that's the word to be used, at the
6 motion to dismiss stage. What is the basis; why do you think
7 there is no claim here?

8 And that's -- the subsidiaries have those issues, and
9 that would be the same issues that the ultimate parent would
10 have.

11 MR. MONAHAN: Your Honor, I think you've given us a
12 lot to think about and -- probably both sides.

13 Might I suggest as a path forward that with
14 Your Honor's guidance from today, we circle back with
15 plaintiffs' counsel, keep talking about a path forward here and
16 the options, and if we're unable to reach a resolution, we come
17 back to you at the next conference with --

18 THE COURT: I mean, I think if we just say, what do
19 you really want to accomplish here. Do you want the Court to
20 focus on these other issues that you really feel you have a home
21 run on, and you may or may not, I don't know, and then these
22 jurisdictional issues and the pleading problems, you know, that
23 we can put that aside.

24 And then we can decide how to deal with that going
25 forward, and that may be enough for one claim to keep the

1 parent, and then you're still going to have the issues of every
2 jurisdiction to look at.

3 MR. MONAHAN: Agreed, Your Honor. I think we should
4 keep talking about that. I think we have, on behalf of the
5 parent, a number of challenges that we have to their existing
6 complaint, not just the group pleading and the failure to
7 identify any real conduct by our part, but also the absence of a
8 duty by the parent company to consumers and users in the
9 United States.

10 So you know, let us think through this, what it might
11 look like. I'm certainly very aware, and in fact, what's
12 driving our opposition to this motion, Your Honor, is efficiency
13 and some of the issues that I think Your Honor is identifying
14 now, about 50 states and jurisdictional contacts and all of the
15 inefficiencies that might result from dealing with that now, and
16 I think that hopefully we can, working with Ms. Duggan, come up
17 with a plan to find a nice middle ground.

18 THE COURT: Okay, thank you.

19 MR. MONAHAN: Thank you, Your Honor.

20 MS. DUGGAN: Your Honor, I just --

21 THE COURT: How long should I give you?

22 MS. DUGGAN: A week, a week, Your Honor. To talk, you
23 mean?

24 THE COURT: Yes, to talk. The parent, over in
25 Amsterdam, I assume.

1 MR. MONAHAN: What's today? I think by the end of
2 next week, Your Honor, is that okay?

3 THE COURT: A week-and-a-half?

4 MS. DUGGAN: I want to be clear, Your Honor. The
5 plaintiffs have always wanted to be as efficient as possible.
6 That was the whole purpose, in the first place, the purpose of
7 our motion. And you know, I can respond to each of his points,
8 but I don't think it's necessary at this point, but I would like
9 to have an opportunity to speak with Mr. Steinberg and
10 Mr. Monahan, and we will report back to you.

11 THE COURT: If you're not in agreement, then we're
12 going to have a more robust briefing on manifest injustice
13 versus good cause so that --

14 MS. DUGGAN: I understand, Your Honor.

15 THE COURT: -- I have a better analysis from each
16 side.

17 MS. DUGGAN: And we did address that I-MED Pharma case
18 in our reply brief.

19 The stipulation itself didn't stipulate to any facts.
20 It really was just deferring for purposes of an efficient
21 process, an orderly process, the adjudication of their potential
22 defense, and both sides maintained all of their rights to argue
23 whatever they had to argue at the time it was filed.

24 THE COURT: I understand that. I understand that.

25 So today is the 19th of October. That would be

1 Friday, October 28th.

2 MR. MONAHAN: Thank you.

3 MS. DUGGAN: Thank you very much.

4 THE COURT: Thanks so much. Okay.

5 Now, the one item that was not on your agenda, but it
6 was on mine -- oh, we have to deal with the Philip RS
7 communications related to devices not subject to repair.

8 MR. BUCHANAN: Good afternoon, Your Honor.
9 Dave Buchanan from Seeger Weiss. My partner, Chris Seeger, was
10 going to handle this. Unfortunately, he has the flu. So with
11 your permission, I'll address the matter.

12 THE COURT: Okay.

13 MR. BUCHANAN: This relates to some recent
14 communications that Philips has been engaging with just
15 generally, as I understand it, as part of the FDA remediation
16 program. They're obviously in dialogue with regulators in
17 trying to come forward with solutions in connection with the
18 recall.

19 There was a more recent communication in which Philips
20 is addressing a large number of devices, to me, 3 to 4 million
21 devices of an earlier generation, and the communication is
22 saying essentially we can't really remediate your device, you
23 know, repair or replace, that type of situation.

24 So we'll offer you two paths forward. One path is
25 cash, you know, to send the device back. The other path is just

1 send us a prescription, and we'll give you an alternate device.

2 So we have some concerns as class counsel and counsel
3 of individual plaintiffs with a communication like this. We've
4 expressed those concerns to Philips. Obviously, we don't want
5 to stand in the way of somebody getting a proper device, you
6 know, a device that doesn't have the defect that's been so well
7 discussed.

8 But separately, we want to make sure that folks who
9 are specifically represented under, you know, retention
10 agreements, their injury claimants and others, that we have
11 evidence maintained in a way that's consistent with those
12 counsels' expectations. So it's fundamentally a preservation
13 and retention concern.

14 THE COURT: Are people retaining their devices and
15 being just told to throw them away, or what's happening to the
16 devices that are not subject to repair?

17 MR. BUCHANAN: The ask, I think in the letter, is
18 to -- if you'll send it back to us, we'll give you some
19 compensation. So that's what the letter asks for.

20 Obviously, there are those folks that may have injury
21 claims or otherwise retained counsel that, you know, that piece
22 of evidence may be relevant, and that counsel may have specific
23 guidance for that person.

24 So we want to work with the defendants to address that
25 issue, and separately, there's the issue of, you know, the

1 absent class members and the communication with them. We've had
2 some concerns about prior communications, but I'm mindful of the
3 law on that.

4 This one is -- it's a little more delicate, and we're
5 just trying to address it and anticipate issues that could arise
6 in a mediation context with this type of outreach. So we may
7 have to address that separately with Judge Welsh.

8 On this issue, counsel's proposed language, we've
9 raised the concern, and we're discussing it, and hopefully,
10 we'll work through it, and it won't be an issue.

11 Go ahead, John.

12 MR. LAVELLE: Good afternoon, Your Honor.

13 John Lavelle from Morgan Lewis for Philips RS.

14 So we think that this issue is premature to raise
15 before the Court today. There's not really any motion or action
16 item for Your Honor.

17 Plaintiffs raised this for the first time with us last
18 Friday when we saw the proposed agenda that they circulated. We
19 immediately reached out to them in an effort to understand where
20 they're coming from. We did have two conversations with them
21 prior to today, and as Mr. Buchanan correctly pointed out, we
22 proposed some language to them to try to resolve this issue.

23 So we're in the middle of a meet and confer on this,
24 so there's really nothing for Your Honor to address at this
25 time, but given what Mr. Buchanan said, there are just three

1 points I wanted to cover briefly to make sure that Your Honor
2 has the background on this.

3 Number one, Philips RS, our client, has been as a
4 matter of course reaching out to plaintiffs' counsel when there
5 have been mass communications relating to the recall, and we've
6 been providing them with those in advance.

7 We've been doing this for several months. There's no
8 certified class here. So there's no legal obligation for us to
9 do that, but we've been doing that in order to reach across the
10 aisle and try to avoid disputes and issues. Generally, I think
11 that has been a successful approach so far, and we have been
12 able to work through issues.

13 The second point is, there's no issue with respect to
14 the particular devices that Mr. Buchanan referenced of
15 plaintiffs or prospective plaintiffs unwittingly giving away
16 rights here.

17 The offer that Mr. Buchanan referenced relates to a
18 particular model of device, SystemOne. It's one where
19 Philips RS is not offering a repair option, and it's important
20 that those be returned to Philips RS in order to complete the
21 recall.

22 But users are not being asked to execute a release.
23 They're not executing a release in order to get the payment, and
24 they're being given the option of return the device, and you get
25 a replacement device, or return the device, and you'll get a

1 payment in instead.

2 Third, and Your Honor referenced this earlier, there's
3 not an issue of plaintiffs' devices not being preserved. Any of
4 these returned SystemOne devices are being preserved. They're
5 covered by Your Honor's initial order at the beginning of the
6 case. I think it was pretrial order number one. There's a
7 preservation provision in that that referred to preservation of
8 devices. We considered these SystemOne devices when they're
9 returned to be covered by that.

10 They're different, therefore, than the DreamStation
11 devices or the Trilogy devices. The DreamStations and
12 Trilogies, as Your Honor knows, are being remediated. They're
13 being reworked. Different foam is being put in, and then there
14 being returned to users.

15 These SystemOne devices, in contrast, are not being
16 remediated. At present, therefore, when they're returned,
17 they're being held by Philips RS. We do anticipate that at some
18 point, and hopefully not in the distant future, we're going to
19 be approaching plaintiffs about what to do with respect to those
20 devices and maybe approaching Your Honor about that, but that's
21 not for today. It's not going to be for next week either. It's
22 going to be some point in the future. As of now, all of those
23 devices are being preserved.

24 So the bottom line is we're optimistic we're going to
25 be able to work through this issue with Mr. Buchanan and

1 plaintiffs' counsel. We've had very productive discussions so
2 far on it. We've proposed some language. Mr. Buchanan asked us
3 for some context. We're going to give that to him, and we'll
4 continue working on it.

5 THE COURT: Okay. I will also suggest that if you
6 reach an impasse you reach out to the special master to see if
7 you can get some language that you can work with.

8 MR. LAVELLE: Yes, Your Honor, happy to do that.

9 THE COURT: Thank you.

10 Okay, leadership development.

11 MS. HARRISON: Good afternoon, Your Honor. I'm
12 Katharine Harrison on behalf of the plaintiffs' leadership
13 development committee.

14 First of all, thank you for the opportunity to
15 participate on this leadership committee. Our committee
16 continues to meet monthly and to update one another on our
17 various committee work and to discuss among ourselves various
18 issues arising in the case.

19 In addition, Your Honor, the chairs of our committee
20 and plaintiffs' leadership have instituted monthly meetings
21 specifically with leadership development and plaintiffs' lead
22 counsel, which have been very productive for our committee, as
23 well.

24 PSC leadership has also been very active in the
25 leadership development committee members committee work, and we

1 continue to have regular contact with our mentors.

2 On my own behalf, I can say Mr. Stroyd's mentoring and
3 this opportunity to participate on the LDC have been invaluable.

4 THE COURT: Are you doing substantive work? Are the
5 members of the committee doing substantive work?

6 MS. HARRISON: Yes, Your Honor. I, myself, am online
7 briefing, and you are seeing the fruits of that substantive
8 work, and each of our committee members are doing substantive
9 work on various committees, and we continue to talk to one
10 another about what that work looks like and have regular
11 communications with lead counsel, as well.

12 THE COURT: Thank you.

13 MS. HARRISON: Thank you, Your Honor.

14 THE COURT: From the defendant's side?
15 You get double duty.

16 MS. BARRETT: I do get double duty. Caitlin Barrett,
17 Philips RS.

18 As I mentioned earlier in the SoClean matter, we
19 really love the Court's encouragement of the sides to engage
20 their younger associates. Having the opportunity to stand up to
21 you today and have that experience is consistent with our firm's
22 new training initiatives that they have on giving these
23 opportunities to younger associates.

24 So we really value the opportunity to be here, to
25 participate, to attend these status conference hearings,

1 especially after a couple of years of remote work. We look
2 forward to having other opportunities to participate not only in
3 strategy development, facts development, but also to appear in
4 front of you and give you updates on our progress.

5 THE COURT: Thank you.

6 MS. BARRETT: Thank you.

7 MS. DYKSTRA: Your Honor?

8 THE COURT: Yes.

9 MS. DYKSTRA: Lisa Dykstra. One issue that was not on
10 the agenda, I was conferring with plaintiffs' counsel and with
11 Ms. McGee, as you know many of us come back and forth from
12 Philadelphia. Apparently, American has canceled all -- the last
13 flight now is at 4:00 p.m.

14 So we would ask if the Court, if it would work with
15 your schedule, if you would consider possibly moving our status
16 conferences earlier in the day, 11:30 or 12:00, so we could
17 maybe make the last flight out.

18 We usually come in the night before to make sure we're
19 here, but if it doesn't work with your schedule --

20 THE COURT: The dates that we have used for the status
21 conferences was the third Wednesday of every month, and that's
22 our Board of Judges' meeting at 12:30.

23 So we can move it to a different day, and I don't mind
24 working through the lunch hour to accommodate your schedules,
25 except if I have trial. And unfortunately, presently I have

1 scheduled for November trial dates, and if I have jurors, they
2 prefer to come in early.

3 I've worked with these jurors for a number of years.
4 They like to go home early. So I don't mind breaking early in
5 the day, but if I ask them to come in late at night, then
6 they're driving home sometimes two hours in the dark. So I
7 don't want to do that.

8 But there's a possibility that case may be postponed
9 or resolved. So I'll know more tomorrow, but that -- so you
10 can't move it around the days.

11 MS. DYKSTRA: Right.

12 THE COURT: But I could break at 1:30, and if we don't
13 have a lot of meaty issues, you know, I'd work the jurors
14 through 1:30. Then they can go home, and we can go from 1:30 to
15 hopefully be done in an hour. It depends on what the issues
16 are.

17 Like today, we had a more robust argument. So if we
18 have motions that are being argued, it's tough to do that when
19 I'm in trial. If I'm not in trial, I'll move you up. We'll
20 start at 11:00. You know, you will be done by 2:00, I would
21 imagine, even if we have a 15-minute break in there.

22 So I don't mind doing that.

23 MS. DYKSTRA: We'll certainly be accommodating for
24 you.

25 THE COURT: It probably would be on a Thursday.

1 MS. DYKSTRA: Why don't I confer with Ms. McGee and
2 plaintiffs' counsel and propose some times that might work with
3 your schedule, and we'll see what we can do?

4 THE COURT: It will probably be -- I think it would be
5 Thursday.

6 We'll just reissue a scheduling order. Is it just for
7 the winter months they're doing this or forever?

8 MS. DYKSTRA: I haven't conferred with
9 American Airlines, but I will let you know.

10 MS. DUGGAN: I think it's the winter.

11 MS. DYKSTRA: I think it's the winter, yes,
12 Your Honor.

13 THE COURT: We'll make a schedule that will take us
14 through March; how does that sound? Then in April, we will
15 revisit the issue, because if you can get out later in the day,
16 it's better for the Court because then I can have my criminal
17 hearings, and I have a lot of criminal proceedings.

18 I can have those earlier in the day, and then -- or if
19 I have trials, you know, we can, you know -- it's better.

20 MS. DYKSTRA: I don't want you to think it's that we
21 don't like Pittsburgh, but thank you.

22 THE COURT: It's nice to be able to get home; I
23 understand that.

24 You heard my remarks in the SoClean proceeding about
25 doing a timeline. It's particularly important in the Philips

1 case because we have so many moving dates for things that are
2 happening: discovery starts here, you have this obligation by
3 this date and another obligation by another date.

4 So if we have a nice detailed timeline, that would be
5 good, and then we can modify it from the time to time. But it's
6 just a good review process for the Court.

7 So when do you think you might have that? Meet and
8 confer; everybody has to agree on it.

9 MS. DYKSTRA: We can meet and confer this week and
10 hopefully get it to you within a week.

11 THE COURT: Okay.

12 MS. IVERSON: Yeah, I would say the end of next week.

13 THE COURT: We'll do it October 28th.

14 MS. DYKSTRA: Thank you so much.

15 THE COURT: Anything else to come before the Court?

16 This hearing is adjourned.

17 (Proceedings concluded at 3:28 p.m.)

18 - - -

19
20 C E R T I F I C A T E

21 I, SHARON SIATKOWSKI, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
above-entitled matter.

23 s/Sharon Siatkowski
24 SHARON SIATKOWSKI, RMR, CRR, CBC, CRI
25 Official Court Reporter