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Proceedings recorded by mechanical shorthand,
transcript produced by computer-aided transcription.

1 THE COURT: Gail, we've got everybody on the phone
2 hook up?

3 THE CLERK: Yes, sir. The operator is on there and
4 they are on listen only mode.

5 THE COURT: Can't I put everybody here on the listen
6 mode here, too? Oh, well.

7 All right. I'll listen.

8 MR. HAHN: Thank you, Your Honor. Blair Hahn on
9 behalf of the plaintiffs.

10 We've provided the Court with an agenda. What I
11 thought I would do is just run through the agenda. I don't
12 think it's going to take too much of the Court's time.

13 THE COURT: Okay.

14 THE CLERK: Excuse me -- let me.

15 THE COURT: I guess since I'm in listen only mode,
16 we'll never know if they can hear. What the heck, all right.
17 That's fine.

18 MR. HAHN: Judge, number one on the -- one through
19 three are really just to update the court as to where we are
20 in the filed cases in the MDL state cases that we are aware
21 of.

22 And Hunter Shkolnik is the state liason from New
23 York. He came down for the hearing. He's in the courtroom
24 today.

25 MR. SKHOLNIK: Good morning, Your Honor.

1 THE COURT: Welcome back, Mr. Shkolnik.

2 MR. HAHN: And the status of depositions is not
3 complete, but I think it's representative of where we are.

4 We've completed a number of depositions; two of them
5 the plaintiffs reserve the right to re-open and then the
6 depositions to be taken is all the cases that, or all the
7 individuals that we are seeking deposition dates for at this
8 date, plus Brian Levy, which we are trying to get dates from
9 the defendants.

10 And we will touch on some of that as we move through
11 the agenda.

12 Number four is a document production status update.
13 The defendants have produced, to date, 640,000 documents. I
14 believe that's accurate.

15 MR. COLE: I think it's only three million pages.

16 MR. HAHN: Three million pages.

17 We are continuing to get production on a regular
18 basis.

19 While the plaintiffs are certainly appreciative of
20 those efforts, if there is anything that I can do to speed up
21 that production, I would certainly like that.

22 They have, in the past, certified that productions
23 are complete on certain files, and then some weeks, or even a
24 month later, have come back and given us additional
25 documents. And that's frustrated our efforts as it relates

1 to depositions.

2 I think that the parties are working through that as
3 best we can at this time, but that will become more critical
4 as we approach deadline dates.

5 Case specific discovery. Mike, do you want --

6 THE COURT: Mr. Hahn, while you are on that, how
7 about the privilege review that's going on in New York? And
8 I don't know whether that's on there. This might be a good
9 time.

10 MR. HAHN: No, sir, it's not. That would be under
11 that category. And I believe Ms. Fleishman is --

12 MR. COLE: As far as we know, it's all going well.
13 I mean, Judge Capra is hearing things and resolving things
14 and everyone seems satisfied.

15 MS. FLEISHMAN: Wendy Fleishman, Your Honor.

16 It's moving along quickly finally. And we've
17 filed -- the defense has filed a brief, and plaintiffs filed
18 a brief to complain because the defense brief was too
19 redactive. And then the defense filed a new unredacted
20 version of the brief. And plaintiffs have to file another
21 reply this week. And then the defense has another reply.
22 And then we'll do oral argument on the first round of
23 documents. And then we are going to move on to the second
24 round.

25 We are trying to resolve it. There is only 200

1 documents that are privileged that are still in dispute.

2 THE COURT: Okay.

3 MS. FLEISHMAN: So it's really been reduced from a
4 much bigger number.

5 THE COURT: So the process is working well?

6 MR. COLE: Yes.

7 MR. HAHN: Yes.

8 THE COURT: Everybody is satisfied and splitting the
9 baby and making both sides dissatisfied, so you are doing a
10 good job.

11 MS. FLEISHMAN: That's right. Equally.

12 THE COURT: Everybody is equally dissatisfied.

13 MR. COLE: That's right.

14 MS. FLEISHMAN: But it's moving right along.

15 THE COURT: That's the hallmark of a good decision.

16 All right. Thank you.

17 MR. HAHN: Your Honor, Number 5 is case specific
18 discovery on the non-Bellwether cases.

19 I have spoken with Mr. Cole and it is the position
20 of the parties that all discovery is opened and that Bausch &
21 Lomb can move forward with requests to produce and requests
22 for depositions of those individuals. And they are doing so,
23 which we believe is their right.

24 However, we do have an issue we wanted to raise with
25 the Court and just seek your guidance. Mr. Kaplan's firm has

1 been sending lawyers to the neighbors of some of the
2 plaintiffs to interview them and attempt to get more
3 information on the plaintiffs, their damages, etcetera.

4 They have been taking neighbors out to eat; calling
5 them at night; showing up at their house, etcetera. While I
6 cannot find anything that is technically wrong with that, the
7 plaintiffs believe that it is an intimidation of these
8 individual plaintiffs, and it has a chilling effect on these
9 individuals to move forward with this litigation.

10 We want to bring it to the Court's attention. If
11 there is any guidance that you can give us, we would
12 appreciate it.

13 THE COURT: Okay.

14 MR. KAPLAN: That is the first that Mr. Hahn has
15 raised this. If you have something you want to discuss, I'll
16 be happy to discuss it with you, and we will look at the
17 specifics. I'm not sure exactly what you are talking about.

18 I'm sure that any discovery that we are doing is
19 factual discovery that is not intended to intimidate anybody,
20 but to learn about the facts of the cases, which we are
21 entitled to do.

22 But I certainly will be happy to sit down with you,
23 Mr. Hahn, and discuss the specifics and see if there is
24 anything that you specifically object to and you think is
25 overreaching, we'll be happy to talk about that.

1 MR. HAHN: Well, I --

2 THE COURT: Let me -- Mr. Hahn, are these the named
3 plaintiffs that are going forward to trial or just somebody
4 else on the list?

5 MR. BREIT: Your Honor, Mitchell Breit.

6 THE COURT: Yes, sir, Mr. Breit?

7 MS. BRIGHT: I have been in touch with the counsel
8 for the Bellwether plaintiff, Marcia Shell, in Virginia
9 Beach, Virginia. And it was reported to me that Ms. Shell,
10 who was deposed and then named people who were coworkers,
11 contacted her local attorneys. And I was informed that the
12 coworkers who were named during the course of her deposition
13 were approached by two young lawyers from Shook Hardy in the
14 evening at their homes.

15 They actually showed up unannounced; knocked on the
16 witnesses' doors, um, and asked if they could speak to them
17 about Marcia Shell. And of course, the witnesses had no idea
18 what this was about; notified Ms. Shell.

19 And as I understand it, in fact, they did ultimately
20 interview the witnesses to ask about Ms. Shell's character,
21 um, and about her background; what was she like to work with.
22 And Ms. Shell reported to her attorneys that she felt that
23 that was inappropriate.

24 Now, echoing what Mr. Hahn has said, I don't know
25 quite, as a matter of law, what we can do about it, but I do

1 think that it has reached a point for the plaintiff that she
2 finds this difficult. And her counsel has asked my advice.
3 And that's why we raise it with the Court.

4 THE COURT: Okay. All right. So are you -- are
5 y'all saying, Mr. Kaplan, that this -- that was defense two,
6 did not occur, or are you saying that it did occur and you
7 want to talk about it?

8 MR. KAPLAN: I'm saying I am sure that it did occur.

9 THE COURT: Okay.

10 MR. KAPLAN: And that it seems to me that it would
11 be an appropriate factual investigation.

12 But if they want to talk about some specifics of it
13 that they are, you know -- I don't know how it is that we
14 would be limited in our right to talk to witnesses who may
15 have knowledge of relevant facts. And I don't think that,
16 you know, if there was something they think was inappropriate
17 in that, I'm not sure what it would be, but I'll be happy to
18 talk to them about that.

19 THE COURT: Why don't you three talk after this is
20 over with, okay?

21 THE COURT: And, you know, I don't know whether you
22 filed a Motion for Protective Order. There is lots of things
23 you can do. I don't know whether it applies or not. None
24 of -- you smart lawyers can figure out whether there is
25 something you do about it. I'm not going to be the first one

1 to figure it out; that's your job.

2 MR. HAHN: Thank you, Your Honor.

3 THE COURT: But I'll do what's appropriate in all
4 deliberate speed after you figure it out. How about that?

5 MR. HAHN: Thank you.

6 Number 6 on the list is mediation. We have filed a
7 Motion with the Court for mediation.

8 I believe that Mr. Cole has something that he wants
9 to talk with the Court about on that.

10 THE COURT: Okay.

11 MR. HAHN: From the plaintiff's perspective, we
12 believe that the liability issues are now known and well
13 established. The universal case is known and established.

14 What we seem to be arguing about, when we are
15 arguing, is the value of cases. In my experience, that's
16 when you need a third party to come in and tell you that, you
17 know, the case ain't worth what you think it's worth.

18 So we believe that it would be appropriate at this
19 time to start the process and would ask the Court to consider
20 an Order for Mediation.

21 THE COURT: Okay.

22 MR. HAHN: With that said, the defendants have given
23 us today a document I've not yet seen that is dealing with
24 what they think they need factually to consider settling the
25 case. I have not seen the document. I'll let Mr. Cole talk

1 about that.

2 THE COURT: Yes, sir, Mr. Cole?

3 MR. COLE: Your Honor, one thing that Mr. Hahn
4 didn't say that we need is all the information -- we don't
5 have the information on the medicals and the work history and
6 the lost wages and all that on all these plaintiffs.

7 So it's really early for us to know where we want to
8 go with them. We did communicate with them, and it took us a
9 while to get this communication out, but which lists the
10 things we need to look at a case. And we think it's too
11 early to order mediation or do a mediation. We don't think
12 that it would be very productive at this point in time.

13 There may be some other way of getting these cases
14 resolved without a mediation, and we would just like -- we've
15 sent them the communication. We would like to start getting
16 the communication. We would like to start a dialogue with
17 the plaintiffs, but we don't think at the present time that a
18 mediation would be very fruitful. If we can't do it some
19 other way, then maybe we'll need a mediator.

20 THE COURT: I guess they filed a motion, so y'all
21 are going to respond to the motion?

22 MR. COLE: We'll respond to the motion formally and
23 we'll see where we are.

24 THE COURT: You know, you've got a standing order,
25 all my cases are mediated before you go to trial. So you are

1 talking about just mediation of the FK cases or are you
2 talking about the bacterial cases? Are you talking about the
3 Bellwether cases or --

4 MR. HAHN: I would think, Judge, that it would be
5 helpful to give all of the cases to a mediator. We could
6 start with the Fusarium cases; we could start with the
7 Bellwether cases, but we need to start with values.

8 And I envision we are going to need some guidance
9 from a third party as to what documents are actually going to
10 be necessary to make those decisions.

11 As defendants have stated, they are going to want
12 everything. And I don't know that it -- that that's going to
13 really help us resolve the litigation just to give them
14 "everything". We need to have it narrowed a little bit and
15 start looking at the specific damage issues.

16 MR. COLE: Your Honor?

17 THE COURT: Sure. Mr. Cole?

18 MR. COLE: We actually did narrow it somewhat. And
19 we've asked for the basics of what we need.

20 And we -- well, I mean, this is going to be,
21 obviously, if they go forward, they are going to want to
22 evaluate the cases without us having the information. We
23 want all the information on the cases. We'll respond to the
24 Motion for Mediation and maybe we can continue to work
25 through this with them.

1 THE COURT: Okay. Assuming you are not deciding
2 this issue, can you in -- at the same time as you are
3 opposing this, decide on a mediator, assuming that I
4 appointed one? Because there is no reason to determine
5 whether or not there is a -- you know, and this solves one
6 step, as opposed to do it, I grant it and then you have to go
7 for two months and find a mediator.

8 MR. COLE: Judge Norton, one of our hesitations is
9 we don't know, you know, there is so many cases and so much
10 information and so many different ways of approaching this,
11 what that process would look like. And would Your Honor
12 envision, you know, appointing -- assuming we get there, and
13 say, appointing a mediator and having us work with the
14 mediator on that process, or Your Honor have a process in
15 mind and then appoint a mediator?

16 THE COURT: Just off the top of my head, it would
17 seem to me that if you could agree on a mediator and then
18 consult the mediator as to what he or she needs in order to
19 conduct a valid mediation, and then provide he or she with
20 that information, whether it's more than you want to give or
21 less than you want to give, that's the person who is really
22 going to be in charge.

23 So, I mean, that's -- it seems to give --

24 MR. COLE: Well, if we --

25 THE COURT: I'm just throwing it out.

1 MR. COLE: Can we have a little bit of time and
2 we'll get back to the Court?

3 THE COURT: I said in the next couple of weeks or
4 something like that. If you can identify a person, and that
5 just shortens -- because, you know, August and October are
6 coming closer every day, all right?

7 MR. COLE: We understand.

8 THE COURT: All right.

9 MR. HAHN: I believe that we are close on agreeing
10 on a mediator.

11 THE COURT: Okay.

12 MR. COLE: We have had some polite conversations,
13 we've had some discussions about it, and if we ever got
14 there, who would be an appropriate person? I actually think
15 finding something that we agree on this would be the easier
16 part of this.

17 THE COURT: All right. Okay.

18 MR. SKHOLNIK: Your Honor, before you leave the
19 mediation issue, can I just report on New York on this issue?

20 THE COURT: Sure. Yeah.

21 MR. SKHOLNIK: For the court reporter, I'm Hunter
22 Skholnik.

23 This issue was brought up before Judge Freedman at a
24 recent conference on March 25th. New York doesn't have the
25 same procedure in place as you do in the Federal Court where

1 mediation can be directed. And Judge Freedman so stated that
2 during the hearing.

3 But what she did go on to say was if this court
4 orders mediation --

5 THE COURT: You mean this court?

6 MS. SKHOLNIK: This court here orders mediation,
7 given the fact that defendants wanted coordination and have
8 agreed to coordination, she says that, Here is what I'm going
9 to do. If this court sets up mediation, she is going to
10 order it and require New York to have mediation, as well, as
11 part of a coordination.

12 And from the New York side, she suggested, um, a
13 mediator, Mr. Rosen or Francis McGovern, as possibilities for
14 our cases. But that would be something to be discussed up in
15 New York. But we wanted the Court to know that she said that
16 she would direct us to comply, as well.

17 THE COURT: Okay. Then does it -- assuming --
18 again, not deciding this -- assuming for the purposes of this
19 question, that there is a mediation, does it make any sense
20 to have a different mediator for the New York state cases
21 than it does for the federal cases?

22 MR. KAPLAN: With all due respect to Mr. Skholnik, I
23 was at the hearing and responded to Justice Freedman. That's
24 not exactly what she said. I think exactly what she said was
25 if you, Judge Norton, were to order a mediation, she would

1 order the plaintiffs to go down to South Carolina and
2 participate in that mediation, I think that's what she said,
3 as opposed to a separate process in New York.

4 I think this would all be worked out, the dynamics,
5 but the important point is she specifically said: "What I'm
6 going to do is if he sets up mediation, I'm going to order
7 you all to participate in this mediation." That was the
8 quote.

9 THE COURT: So that's what I said.

10 MR. COLE: That's exactly what she said.

11 THE COURT: Okay. So that necessarily means that
12 if, in fact, mediation is ordered, that the cases in New York
13 and the cases in the MDL will be mediated by the same
14 mediator?

15 MR. SKHOLNIK: I assume that. I don't know exactly
16 what Judge Freedman was contemplating because she did suggest
17 two means.

18 THE COURT: She said they are going to send you down
19 to South Carolina, you know, you don't get to bring your own.

20 So I guess since you are the coordinating counsel
21 between New York, I guess maybe you should have some input
22 into Mr. Hahn and Mr. Cole's, you know --

23 MR. SKHOLNIK: I'll be happy to do that.

24 THE COURT: -- discussions with regard to who this
25 should be.

1 MR. SKHOLNIK: Thank you.

2 THE COURT: Assuming we get that far.

3 MR. HAHN: Your Honor, one thing that we have
4 discussed very briefly among the parties was the idea of
5 having two mediators working together, given the complexities
6 in the cases, the number of cases.

7 And so if Your Honor was open to that, we might
8 suggest to you that we do that. And we would have somebody
9 from South Carolina and somebody else.

10 MR. COLE: Given that we haven't gotten there yet,
11 let's not get the cart before the horse and let's let us have
12 some discussion about that. We've got some time to respond
13 to mediation. We understand the atmosphere here. And I
14 don't think -- it's getting a little ahead of ourselves. So
15 if the Court would give us some time.

16 THE COURT: We can do the mediator just like we did
17 the Bellwether cases; just -- you pick three and I'll flip a
18 coin, all right?

19 MR. SKHOLNIK: Your Honor, on the point of dual
20 mediators, in fact, Shook Hardy specifically requested that
21 and it worked. And we worked to conclusion the case quickly.

22 THE COURT: Okay. Thank you, Mr. Skholnik.

23 MR. HAHN: Next on the list, Judge, is the
24 Assessment Order.

25 I have had some discussions with Mr. Cole on that

1 Motion for Assessment. The defendants have some objections.
2 They think that logistically there are some issues and they
3 need to get some terms defined and define which plaintiffs
4 would apply and not apply to an order if you were to grant
5 one.

6 He recognizes that we need to act quickly and
7 provide something to the Court within the next two weeks and
8 has pledged to work with me in the next week and see if we
9 can work it out so that it would be an unopposed motion.

10 THE COURT: Okay.

11 MR. HAHN: With that said, Your Honor, I would like
12 just to say on the record, I guess, that the defendants are
13 on notice that we are seeking this. And if they were to
14 settle any cases before an order was submitted, that would
15 have been included in the order. If it had been in place at
16 that time, we would be looking at Bausch & Lomb to pay that
17 assessment, whatever it may be, if they don't hold it back.

18 So we just wanted everybody to understand that we
19 are going down this road.

20 MR. COLE: We understand their position and we are
21 going to work with them hard to --

22 THE COURT: All right. It doesn't need to be -- I
23 assume that although you are going to work with them on this
24 mediation, this common benefit order that everybody over on
25 this side, on your side agreed on this one, more or less.

1 MR. HAHN: To my understanding, yes, Your Honor. I
2 don't think there is anybody in the courtroom that disagrees.

3 THE COURT: Okay. I understand that. I'm talking
4 about -- so this has been discussed among the plaintiffs?

5 MR. HAHN: It's been discussed among the plaintiffs,
6 yes, sir.

7 THE COURT: Okay. Good.

8 MR. HAHN: Number 8, expert report deadlines.

9 Um, we have had discussions with Bausch & Lomb on
10 changing some of the deadlines for expert report submissions
11 that are set forth in the Bellwether Trial Case Order that
12 was signed by Your Honor and by Justice Freedman jointly back
13 in November.

14 We have agreed on changes on those dates. I would
15 like to propose those to the Court. And if you are in
16 agreement with the dates, then maybe we can get those
17 changed.

18 THE COURT: Sure.

19 MR. HAHN: We would change the date for the
20 submission of plaintiff's expert reports from April 28, 2008
21 to May 16, 2008. And the deposition of plaintiff's expert
22 witnesses would be completed on or before July 3, 2008,
23 instead of June 20, 2008.

24 The defendants will identify their experts on or
25 before June 13, 2008, instead of May 28th, and that the

1 depositions of the defendant's experts will be completed on
2 or before August 1st of 2008, as opposed to July the 21st.

3 The parties would file dispositive motions and
4 *Daubert/Frye* motions on or before August 8th, as opposed to
5 July 31st.

6 Opposition briefs would be due on or before
7 August 20th, as opposed to August 13, 2008. And reply
8 memorandum would stay at August 29th. And then the rest of
9 the dates would remain the same.

10 So we would propose that to the Court, as it relates
11 to the MDL cases anyway. I know this is a joint order, so
12 we've got those logistics to work out.

13 MR. COLE: Your Honor, if I may? There are a couple
14 of issues.

15 One, Blair is right, we have agreed to that. We
16 already have a very -- and Your Honor knows this because you
17 were involved in our trying to get the schedule in place.
18 It's incredibly tight. And we really wanted, if we are going
19 to push any date back, to push all the dates back, including
20 hearings and everything else.

21 But we are also -- it's very important to us, I
22 think everybody, that we have joint hearings and keep that in
23 place.

24 So we've agreed to this, knowing that it's really
25 going to push everything, everybody. And just I want to tell

1 the Court that we don't know if these deadlines are doable,
2 quite frankly. If they are from the plaintiff's standpoint,
3 too, that's great. If they are going to need anymore time
4 later, there is no more time to give for us to get ready for
5 these hearings. But we think it's very important they stay
6 the same.

7 We also just -- and Hunter Skholnik is here -- we
8 hear that the plaintiffs in New York may want more time for
9 some of these things. We just want to tell the Court that
10 because we think it's very important that all the hearings
11 stay on the same schedule and track. And so there may be
12 some other movement here. And we may have to come back to
13 the Court. But for now, this is what the plaintiffs want
14 here.

15 We think it's important, you know, the hearings are
16 set. We are ready. So we are going to try and stay on this
17 track. But there just isn't anymore room in this date. So
18 we are -- just sort of where we are for now, we are fine.
19 I'm not sure where all this is going to shake out at the end
20 of the day, quite frankly.

21 THE COURT: All right.

22 Yes, sir, Mr. Shkolnik?

23 MR. SKHOLNIK: Your Honor, whether or not these
24 dates work in New York, we are going to try and make these
25 dates work in New York, but I am not in a position to make

1 any representations. There are issues about important
2 depositions that haven't been completed yet, and whether or
3 not experts can be exchanged, but we are trying --

4 THE COURT: Okay.

5 MR. SKHOLNIK: -- in New York and I think we are
6 going to address that with Judge Freedman.

7 THE COURT: I guess what I need to do is take your
8 dates that are agreed upon here and send them to Judge
9 Freedman and see what she thinks about them. I mean, I think
10 it's important, and it has been, to do everything jointly.
11 It doesn't make any sense to have a spattering of dates.

12 MR. HAHN: Yes, sir.

13 And one other issue is raised by all that that the
14 MDL plaintiffs would suggest to the Court. As we have moved
15 forward in this litigation, it has become clear that the
16 Fusarium cases and the bacterial cases, as it relates to
17 documents and experts, have met a fork in the road and they
18 are different cases.

19 We currently have set up or contemplated joint
20 *Daubert/Frye* hearings on both the Fusarium and bacterial on
21 the same day in the same courtroom with both judges.

22 We would suggest -- it appears that the Fusarium
23 case, that MDL Fusarium case, will be the first case ready to
24 go to be tried. We would suggest that the Court consider
25 having a joint hearing with Justice Freedman on Fusarium as

1 it relates to *Daubert/Frye* in Charleston first, and then have
2 a second joint hearing, if Your Honor is willing to travel to
3 New York, with Justice Freedman on bacterial once that group
4 of cases is ready for the *Daubert/Frye* hearings and they are
5 ready for trial.

6 THE COURT: Okay. All right. That kind of makes
7 sense to me.

8 But go ahead.

9 MR. COLE: Your Honor, this is the first we've heard
10 of this. And it would mean having to go in and tweak some of
11 these things. Because right now, everything is set on the
12 same date and the same schedule. But we are happy to sit
13 down and work with them and see if we can't come back with a
14 proposal.

15 MR. HAHN: That might take some of the pressure off.

16 MR. COLE: And we get Blair and Hunter to agree that
17 we could do something with that.

18 MR. HAHN: That's not the problem.

19 MR. COLE: I'm looking at Hunter's responsibility
20 here.

21 MR. SKHOLNIK: Your Honor?

22 THE COURT: You are giving him an awful lot of
23 responsibility in this case. We'll give you none of the
24 blame, Mr. Shkolnik. It's all responsibility, okay?

25 MR. SKHOLNIK: We have, as of the last hearing,

1 Judge Freedman was quite clear, we are going to have back to
2 back fusariums, and then whichever case the defendants choose
3 to follow. And so we would think that if there is going to
4 be some type of joint hearing, it should deal with Fusarium
5 first and bacterial second.

6 THE COURT: Okay.

7 MR. COLE: Can we have some time?

8 THE COURT: Oh, yeah, that's no problem.

9 Now, but getting back to the deadlines that y'all
10 have just maneuvered, I mean, just, whatever you did, are
11 those "expert" deadlines for FK and bacterial or just FK?

12 MR. COLE: For now, everything.

13 MR. HAHN: Currently for everything.

14 THE COURT: Okay.

15 MR. COLE: We have one. Is that it?

16 MR. HAHN: On that issue.

17 MR. COLE: That's all.

18 MR. HAHN: The only other issue that I have, Your
19 Honor, is the case dismissal procedure.

20 The defendants are wanting to bring to the Court's
21 attention deficient fact sheet plaintiffs. We have agreed, I
22 believe, that the procedure for doing that is they are going
23 to file separate motions by law firm. So that the plaintiff
24 lawyer that represents that batch of plaintiffs can come to
25 the Court and argue his or her case.

1 We would suggest to the Court, I have not spoken to
2 Mr. Cole about this, that once his motions are filed, if the
3 Court would give the plaintiffs steering committee time, we
4 would be more than happy to sit down with that individual
5 lawyer and interface with that lawyer and with Mr. Cole and
6 see if we can resolve those issues before coming to the
7 Court. But that would probably entail giving us a little bit
8 of time after the motion is filed.

9 THE COURT: Okay. Do you want to sit down and agree
10 on a procedure if you file this?

11 MR. COLE: We can do that.

12 THE COURT: Take that into consideration.

13 MR. COLE: We can do that.

14 We just wanted not to have to file a separate motion
15 for each plaintiff, but they want to be able to respond by
16 law firm, and that's sort of a compromise and we'll work it
17 out.

18 THE COURT: After last week's filings, my motion
19 calendar went from three pages to 425 pages. So if you only
20 filed one, that's great with me because we've got to get them
21 out of there.

22 Yeah. We'll go -- we will be getting them out to
23 you.

24 MR. COLE: Your Honor, that's all we have, I think.

25 MR. HAHN: That's all the Plaintiff Steering

1 Committee has, Your Honor. I don't know if there is anybody
2 else in the Court that has anything, but we don't, Your
3 Honor.

4 MR. KIRCHNER: Jesse Kirchner, plaintiffs liason
5 counsel.

6 If no one else has anything, we have the ability to
7 open the phone lines up for the people who are on the
8 conference call.

9 THE COURT: Okay. I guess go ahead.

10 THE CLERK: The Court is now open for discussion to
11 those on the telephone. Hello?

12 THE OPERATOR: At this time if you would like to ask
13 a question, please press star and the Number 1 on your
14 telephone key pad. We'll pause for just a moment.

15 The first question comes on the line of William
16 Chapman.

17 MR. CHAPMAN: Your Honor, this is William Chapman in
18 Clarksville, Mississippi. I'm the attorney of record on the
19 *Michael Terney vs. Bausch & Lomb* case, Civil Action Number
20 2:07-1192.

21 In March of 2007, a Motion to Remand was filed with
22 the Court. And I was just trying to follow-up on that and
23 see if or when the Court has any plans to rule on that
24 motion.

25 THE COURT: All right. We just got done filing an

1 Order, I think yesterday, I don't know whether everybody got
2 a copy of it, in your Motion to Dismiss. I think I dismissed
3 it, in part.

4 So I think you will be getting an Order by the 1st
5 of May, okay?

6 I don't know if he can talk and not listen.

7 MR. CHAPMAN: Hello?

8 THE CLERK: Could you hear the Judge?

9 MR. CHAPMAN: I was unable to hear anybody. I can
10 just vaguely hear some voices and --

11 THE CLERK: Can you speak into the mike maybe?

12 THE COURT: All right. How about May 1st?

13 MR. CHAPMAN: Okay. I can hear somebody now.

14 THE CLERK: That's the Judge.

15 THE COURT: That's the voice of God.

16 MR. CHAPMAN: Okay.

17 THE COURT: All right.

18 MR. CHAPMAN: Were y'all able to hear my question?

19 THE COURT: We'll get you an Order by May 1st. How
20 does that sound?

21 MR. CHAPMAN: May 1st? Okay. All right. That's
22 all I have today. And I thank the Court for its time.

23 THE OPERATOR: Dan Karon.

24 MR. KARON: Judge, good morning. Dan Karon,
25 Cleveland.

1 I guess by way of ruling on motions, thanks for
2 yesterday, that puts me back in the case. And this is more
3 by way of a comment rather than a question. I just wanted
4 you to know that we've all gone through it. Now that we have
5 something to think about, we are thinking about it by way of,
6 you know, discovery motion that will help prove our economic
7 case.

8 And to that end, I'm going to give John Beisner a
9 call at some point after we go and figure out how we are
10 going to move things on our end. And I don't expect that we
11 are going to need to trouble you with anything because John
12 and I work well together. But we are just out there, we are
13 going to get it underway again.

14 THE COURT: Okay. Thank you. Thanks a lot.

15 THE COURT: I can see Mr. Beisner, he's thrilled to
16 be receiving this phone call.

17 MR. BEISNER: My number hasn't changed.

18 THE COURT: All right. He's still in the same
19 place.

20 MR. KARON: Got it. Okay, John, got it.

21 THE OPERATOR: Again, if you have a question at this
22 time, please press Star 1.

23 THE COURT: Okay.

24 THE OPERATOR: At this time there are no further
25 questions.

1 THE COURT: All right. Anything else from anybody
2 else here present?

3 Yes, sir, Mr. Skholnik?

4 MR. SKHOLNIK: Just one last thing.

5 I just want the record to be clear that on the issue
6 of the Common Benefit Order, when the Court referred to
7 everyone on that side, the New York PFC has issues about a
8 common order affecting our cases. And I wanted to state it
9 on the record that it wasn't considered; that I accept it.

10 THE COURT: You didn't accept it, okay? You
11 vigorously objected to it on behalf of the New York State
12 Court plaintiffs, okay?

13 MR. SKHOLNIK: Thank you.

14 THE COURT: All right.

15 MR. HAHN: Nothing further from the plaintiffs, Your
16 Honor.

17 THE COURT: Okay. So what I need to get from you, I
18 guess, is a consent order with regard to you moving those
19 deadlines, so I can give it to Justice Freedman and we can
20 discuss that.

21 And then y'all talk about the mediation issues. And
22 I guess we'll get a response to the mediation issues and the
23 common fund issues in 15 days or whatever it is, okay?

24 All right. Anything else? Thank y'all. Welcome
25 back. Hope y'all have Masters tickets.

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

Amy C. Diaz, RPR, CRR

April 17, 2008

S/ Amy Diaz