

November 15, 2017

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In re* FLINT WATER CASES Case No. 16-10444

STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

NOVEMBER 15, 2017

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P R O C E E D I N G S

THE CLERK: The matter before the Court is In Re Flint Water Cases.

THE COURT: Well, welcome. Could we have appearances for the record? And before we -- please be seated. Before we do that, I want to make sure that everyone signed in so that my court reporter, Jeseca Eddington, can be sure to have the record reflect all of you who are here.

So why don't we start with counsel table. And then we'll move around the room.

MR. STERN: Your Honor, Corey Stern as liaison counsel for the individual plaintiffs.

THE COURT: Thank you.

MR. SHKOLNIK: Good morning, your Honor. Hunter Shkolnik co-liaison for the individual plaintiffs.

MR. PITT: Good morning. Michael Pitt, co-lead counsel.

MR. LEOPOLD: Ted Leopold, co-lead counsel.

MS. BETTENHAUSEN: Margaret Bettenhausen for State defendants.

THE COURT: Thank you.

MR. KIM: Good morning, your Honor. William Kim for the City of Flint, Dayne Walling, and Michael Brown.

THE COURT: Thank you, very much.

MR. KLEIN: Good morning. Sheldon Klein for the City



1 of Flint.

2 MR. RUSEK: Good morning, your Honor. Alexander  
3 Rusek on behalf of Mr. Croft.

4 MR. BERG: Good morning, your Honor. Rick Berg on  
5 behalf of the City of Flint.

6 THE COURT: Thank you, very much.

7 MS. BEREZOFSKY: Esther Berezofsky for the  
8 plaintiffs' counsel, class counsel, and for the individual  
9 Gulla plaintiffs.

10 THE COURT: All right.

11 MR. MCALPINE: Good morning, your Honor. Mark  
12 McAlpine, class counsel for the State case.

13 THE COURT: Thank you.

14 MR. HART: Good morning, your Honor. David Hart on  
15 behalf of the Guertin plaintiffs.

16 THE COURT: All right. Thank you, Mr. Hart.

17 MS. BINGMAN: Good morning, your Honor. Teresa Caine  
18 Bingman on behalf of class plaintiffs.

19 THE COURT: Great. Thank you.

20 MR. WASHINGTON: Good morning, Judge. Val Washington  
21 on behalf of Mr. Lee, the individual plaintiff, and as local  
22 counsel for the Gulla plaintiff.

23 THE COURT: All right. Thank you. You look like  
24 you're ready to serve as a juror as well.

25 MR. WASHINGTON: It's the closest I'll get to the

1 jury box, Judge.

2 THE COURT: Okay. I know. Well, thank you, for your  
3 willingness. All right. So now let's start over here in the  
4 back.

5 MR. WITUS: Morley Witus and Eugene Driker of behalf  
6 of Governor Snyder.

7 MR. LARSEN: Good morning, your Honor. Zach Larsen  
8 on behalf of State defendants.

9 MR. KUHL: And good morning. Richard Kuhl on behalf  
10 of State defendants.

11 THE COURT: Thank you.

12 MR. BOLTON: Good morning, your Honor. Jordan Bolton  
13 on behalf of Mr. Wyant and Mr. Wurfel.

14 MS. WEINER: Jessica Weiner on behalf of class  
15 plaintiffs.

16 THE COURT: All right.

17 MR. WEISS: Good morning. Daniel Weiss on behalf of  
18 the individual plaintiffs.

19 MR. NOVAK: Good morning. Paul Novak on behalf of  
20 class plaintiffs.

21 MR. BRONSTEIN: Good morning. Peretz Bronstein,  
22 plaintiffs' executive committee.

23 THE COURT: All right. Thank you.

24 MS. LABELLE: Deborah LaBelle, your Honor, on behalf  
25 of the class plaintiffs.

1 THE COURT: Thank you, very much.

2 MR. BROADDUS: Good morning, your Honor. John  
3 Broaddus class plaintiffs.

4 MS. HURWITZ: Good morning, your Honor. Julie  
5 Hurwitz on behalf of class plaintiffs.

6 THE COURT: All right. Thank you.

7 MS. LINDSEY: Good morning, your Honor. Cynthia M.  
8 Lindsey on behalf of the class plaintiffs.

9 MR. BLAKE: Good morning, your Honor. Jayson Blake  
10 on behalf of class plaintiffs.

11 MR. ERICKSON: Good morning. Philip Erickson on  
12 behalf of the LAN defendants, co-counsel.

13 MR. MASON: Wayne Mason, your Honor, on behalf of the  
14 LAN defendants.

15 MR. CAMPBELL: Good morning, your Honor. James  
16 Campbell. I represent the Veolia North American firm.

17 MR. WILLIAMS: Good morning, your Honor. Michael  
18 Williams on behalf of Veolia North American defendants.

19 THE COURT: Thank you.

20 MR. BARBIERI: Charles Barbieri representing MDEQ  
21 defendants, Prysby, Cook, and Rosenthal.

22 THE COURT: Thank you.

23 MR. THOMPSON: Good morning, your Honor. Craig  
24 Thompson appearing on behalf of defendant Rowe Professional  
25 Company.

1 MR. SZOKOLY: Good morning, your Honor. Nick Szokoly  
2 on behalf of plaintiffs Boler, et al.

3 MR. MURPHY: William H. Murphy, III, your Honor, on  
4 behalf of the Boler plaintiffs. Thank you.

5 THE COURT: All right. Thank you.

6 MS. JACKSON: Krista Jackson on behalf of Stephen  
7 Busch.

8 MR. WOLF: Barry Wolf on behalf of Gerald Ambrose.

9 MR. GALVIN: Joseph Galvin on behalf of defendant  
10 Jeff Wright with the Genesee County Drain Commission.

11 THE COURT: All right. Thank you.

12 MR. MEYER: Good morning, your Honor. Brett Meyer on  
13 behalf of defendant Michael Glasgow.

14 MS. CHARTIER: Good morning, your Honor. Mary  
15 Chartier on behalf of Robert Scott. And I'm filling in today  
16 for Michael Cafferty, who represents Nancy Peeler. He's in  
17 trial today.

18 THE COURT: All right. Thank you.

19 MS. CHARTIER: Thank you.

20 MR. MEYERS: Good morning, your Honor. David Meyers  
21 on behalf of Daugherty Johnson.

22 MR. RUSSELL PERKINS: Good morning, your Honor. Good  
23 morning to your staff. May it please this Honorable Court, my  
24 name is Todd Russell Perkins appearing on behalf of Darnell  
25 Earley.

1 THE COURT: Thank you.

2 MR. WILSON: Good morning, your Honor. Ken Wilson  
3 also appearing on behalf of Darnell Earley.

4 MS. FLETCHER: Good morning, your Honor. Shayla  
5 Fletcher on behalf of Alexander, et al.

6 MS. WILLIAMS: Good morning, your Honor. Shawntane  
7 Williams appearing on behalf of Alexander plaintiffs.

8 MR. SANDERS: Herb Sanders on behalf of the Alexander  
9 plaintiffs. Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. WISE: Good morning, your Honor. Matt Wise on  
12 behalf of defendant Jeff Wright.

13 MR. VANCE: Good morning, your Honor. Paul Vance for  
14 defendant Liane Shekter-Smith and Thaddeus Morgan.

15 MR. SHEA: Good morning, your Honor. David Shea on  
16 behalf of the class plaintiffs.

17 MR. GILDNER: Michael Gildner on behalf of defendant  
18 Ed Kurtz.

19 THE COURT: And he's saying I'm not making an  
20 appearance.

21 MR. CUMMINS: Also -- your Honor, good morning, your  
22 Honor. Richard Cummins also on behalf of Mr. Kurtz.

23 THE COURT: Well, welcome to everyone. Well, this is  
24 the date and time that we set for a continuation of the  
25 October status conference. And I issued, on November 9th, an

1 agenda for the issues that I hope to get through in the course  
2 of this conference.

3 And so what I'd like to do is just start through this  
4 list of things. And if at any time there are additional  
5 subjects that any of you believe ought to be addressed before  
6 the conclusion of this hearing, I'm open to hearing what those  
7 are. But at least this material I think we need to get  
8 through in order to continue making progress on this case.

9 The first thing I want to do is acknowledge the  
10 important work that has taken place from in between the last  
11 conference and this conference. I received a series of  
12 filings related to the Fifth Amendment immunity issues. And  
13 I'm anticipating the responsive briefing on that.

14 I also received a very comprehensive docket entry 255  
15 in case 16-10444, a joint status report regarding the list of  
16 items that the Court had set forth that needed to be  
17 addressed. And we'll be able to work through what is  
18 unfinished in that list in the course of this hearing, I hope.

19 So and it is evident to me from reading these  
20 submissions, including the briefs as well as the joint status  
21 report, that a great deal of work has been undertaken. And I  
22 appreciate that. And I have been attempting in the same time  
23 period to do the work that I need to do to be ready to address  
24 the legal issues as well as case management issues in the  
25 case.

1           So beginning with the Leo A. Daly briefing schedule,  
2 I have set forth on the first and top of the second page a  
3 schedule for addressing the motion to dismiss for lack of  
4 personal jurisdiction. I've set a hearing date for oral  
5 argument on April 16th at 2:00 PM. And so that -- I don't  
6 know if it's actually on the docket at this point. But it  
7 will be on the docket.

8           I've also set a briefing schedule in the motions  
9 regarding the consolidated class action which now has a case  
10 caption of Carpenter v Snyder with the same case number. And  
11 this has motions being filed on December 1st; responses  
12 February 13th of 2018; replies March 20th of 2018; and the  
13 hearing May 10th at 10:00 AM.

14           And those dates were adopted based on submissions  
15 from, I believe, the plaintiffs. But I didn't see any  
16 opposition from any defense counsel to those dates. So if  
17 there is an opposition now, now would be the time to set it  
18 forth if these dates are in some way a hardship or  
19 unacceptable for reasons I wouldn't know. Okay. So I don't  
20 see any and that's great.

21           So the page limits are undecided here. And so what I  
22 have in item 2E is that there will be a -- I would appreciate  
23 a stipulated order regarding the page limits on the motion to  
24 dismiss by November 21st. I know that's soon, but it's not a  
25 big issue.

1           So and here's my approach generally, which is that if  
2   you submit more pages than is just reasonable for anyone to  
3   work through and it leads to more words that's just words that  
4   won't help decide an issue, then that would be a negative.  
5   But having said that, I'm willing to read what you submit. So  
6   just if you can be reasonable, I would rather read a little  
7   more than a little less than not know what the issues are. So  
8   with that in mind, I will expect a stipulation by November  
9   21st on the page limits.

10           So the next issue here is setting a follow-up status  
11   conference. And I have heard from all of you in the course of  
12   handling this case so far that Judge Yuille needs the first --  
13   is it the first Wednesday --

14           MR. STERN: Yes.

15           THE COURT: -- of each month? And I'd like to be as  
16   efficient as possible with everyone's resources which include  
17   time and money and energy and have these status conferences  
18   back to back with his. So I picked January 4th at 2:00 PM.

19           Generally to me, 2:00 PM permits people who are  
20   flying from out of state to come in that morning. But if  
21   anyone wants to suggest at a later point that 10:00 AM is  
22   better, you come in that night and leave that day, it's  
23   entirely -- what I'm trying to do is accommodate all of you.  
24   And I can move my schedule around to do that.

25           So to that end, it would be helpful to me to have



1 agenda items submitted by December 22nd so that I can issue an  
2 informed agenda for the meeting so that everyone can be  
3 prepared. And I would do that by the 28th.

4 And here's something that I realize I need to clear  
5 up, which is that I've used the word submit and I've used the  
6 word file. So from hereon out, I'm going to be clearer that  
7 submitting will be e-mailing it to my law clerk and case  
8 manager, and filing will be filing on the docket.

9 That said, these proposed agenda items should be  
10 filed on the docket even though it says submit here. And then  
11 I will file on the docket the final proposed agenda items.  
12 And that includes agenda items for the individual cases as  
13 well as the class case.

14 MR. LEOPOLD: Your Honor?

15 THE COURT: Yes. Mr. Leopold.

16 MR. LEOPOLD: One procedural question going back for  
17 a moment on the page limit issue for the jurisdictional issues  
18 related to Leo A. Daly.

19 THE COURT: Yeah.

20 MR. LEOPOLD: Since the issue is generally the same,  
21 is the Court expecting one brief from the class and the  
22 personal injury cases? Or would the Court like separate  
23 briefing? I'm not sure. And we're happy to do it jointly.  
24 Again, I'm not sure the issue really --

25 MR. SHKOLNIK: Your Honor, there's no problem. This

1 is a joint issue.

2 THE COURT: Okay.

3 MR. LEOPOLD: I just want to make sure from a page  
4 limit standpoint there are a little bit broader groups. So  
5 there may be just a couple of more pages that may be  
6 necessary. But I just want to make sure the Court was okay  
7 with that.

8 THE COURT: Yeah. If it can be a joint brief, I  
9 would appreciate that. And we can -- I can accept additional  
10 pages if it's required to make the point. But I believe Mr.  
11 Mason had a -- standing up.

12 MR. MASON: You've already answered it. I think it  
13 should be jointly done and we can work together on the pages.

14 THE COURT: Yeah. Okay. Thank you. The next issue  
15 here is the defendants' proposed executive committee  
16 structure. And I realize that I left my marked up copy of  
17 that upstairs. It's on my desk.

18 So I received -- and thank you, very much. I guess  
19 I'll just look generally. Because you're interspersed amongst  
20 one another -- the defendants' proposed executive committee  
21 structure. It reduces the number of defense counsel who are  
22 going to be available to respond on administrative issues only  
23 and not on substantive legal issues to a total of six.

24 And that requires some of the defendants to speak for  
25 a variety -- or some of the counsel to speak for a variety of

1 clients who are not their own clients, but they are in some  
2 way aligned with them.

3 I appreciate that a great deal. And what I wanted to  
4 do -- because that process didn't include a response from  
5 plaintiffs' counsel as to whether there are problems you see  
6 or foreshadow in that proposal. So Mr. Leopold?

7 MR. LEOPOLD: From the plaintiffs' perspective, we  
8 don't see any particular problem other than with the hopes  
9 that we can move forward and work cooperatively with the six  
10 or so representatives. But if there becomes a point in time  
11 where perhaps it doesn't become manageable, we'd like to have  
12 the opportunity to renew that issue with the Court, and the  
13 Court can address it at that point.

14 THE COURT: Okay. Thank you. And I very much  
15 appreciated the time and attention and care that went into  
16 drafting that. And it made very clear for all of the  
17 defendants that no issues would be waived or deemed admitted  
18 or anything like that.

19 There would be no legal consequence to a decision  
20 that was made by a member of that executive committee that  
21 would be binding on anyone who didn't specifically sign off on  
22 the decision.

23 And the purpose, again, is to bring some form of --  
24 some format as to how this case can be effectively managed as  
25 we go forward. And the point is not to try to snag anybody up

1 in legal defenses or admissions that they do not think are  
2 appropriate for their clients.

3 The duties are set forth very clearly. And it also  
4 -- in addition to saying what the executive committee will do,  
5 it says what the executive committee cannot do. And that each  
6 defendant will retain the right to conduct their own  
7 discovery, to develop their own objections and so on. So I  
8 think it is what I was seeking and I appreciate the  
9 submission.

10 So is there anything from Mr. Shkolnik or Mr. Stern?

11 MR. SHKOLNIK: Your Honor, Hunter Shkolnik. We  
12 support this process just as long as it's made clear to these  
13 liaisons for defendant that they must include liaisons for all  
14 the plaintiffs in these types of communications.

15 THE COURT: Sure. So the idea is there's going to be  
16 one e-mail group called plaintiffs' liaison or plaintiffs'  
17 counsel, and it will include individual plaintiff's liaison  
18 counsel. And there will be one e-mail group that will be  
19 defendants' executive committee.

20 MR. SHKOLNIK: Thank you, your Honor.

21 THE COURT: And they'll communicate back and forth.  
22 And the same can be done with text. You just make a little  
23 group and you'll have it. So all right. So we'll move on  
24 from there. Okay.

25 Moving to the submission that was received on

1 November 13th on the items that counsel was ordered to report  
2 back on, I see that the parties have concluded that a common  
3 repository for documents is not desirable and that's agreed  
4 upon. So we will move on.

5 On the establishment of an electronically restored  
6 information protocol, what I understand is that there will be  
7 a draft protocol anticipated by December 7th. Okay. And  
8 starting with -- is there someone who would like to speak on  
9 behalf of the defendants about this process at this point?

10 MR. KLEIN: Your Honor, if no one else will  
11 volunteer, I'll do so.

12 THE COURT: Mr. Klein, okay. What I'm interested in  
13 is whether this draft protocol is going to be filed -- I won't  
14 need a great deal of discourse on it. You can remain there.

15 What I'm just looking for procedurally is whether --

16 MADAM COURT REPORTER: Excuse me. I'm sorry. Can  
17 you sit back where you were at?

18 THE COURT: Yeah. There is a very complicated but  
19 successful process for identifying who's speaking and we can't  
20 mess with that.

21 So do you anticipate filing the proposed process and  
22 areas where there's disagreements? By December 7th.

23 MR. KLEIN: Well, hopefully there will be no areas of  
24 disagreement. Especially on the ESI protocols. Just in my  
25 mind a question of working out some technical details.

1 Plaintiffs may disagree, but I think it's fair to say we have  
2 an agreement in principle.

3 THE COURT: And then you would file it by close of  
4 electronic business on December 7th.

5 MR. KLEIN: And I'm optimistic that it won't take  
6 that long.

7 THE COURT: Okay. All right. I see no disagreement.  
8 So I am going to include in the follow-up order from this  
9 hearing that there will be a joint filing by close of  
10 electronic business.

11 So I won't say close of electronic business in the  
12 order. It will just have the date. But that means 11:59 PM.  
13 And if for any reason I need something by the close of actual  
14 Court business, I'll indicate 5:00 PM or close of business.

15 But if there are areas that are disputed, if they can  
16 be identified in the submission, then it can be adjudicated at  
17 the following meeting, following the status conference.

18 The evidence preservation order to parties is  
19 anticipated to be filed by December 7th, 2017. And if there  
20 is disagreement, that will be filed as well.

21 On the evidence preservation order to nonparties, the  
22 report indicates that the parties wish to have more time to  
23 continue discussions in an effort to reach agreement. But I  
24 think we need some sort of date on this because continued  
25 discussions could go on indefinitely if we don't set a date.

1 Mr. Leopold?

2 MR. LEOPOLD: Plaintiff would like to propose also  
3 the December 7th date in terms of having a workable agreement  
4 presented to the Court. That said, there has also been  
5 discussions -- and I'm not sure presently the position of the  
6 defendants. They may have some concerns about it.

7 But the plaintiffs would like to send out very  
8 shortly a nonparty subpoena to third parties, if you will,  
9 just to put them on notice about the preservation issues. The  
10 sooner we can get that issue before those third parties, we  
11 believe the better.

12 THE COURT: Okay. That makes a great deal of sense  
13 to me. And whether the third parties try to quash subpoenas  
14 and all of that can take place. But knowing that there's a  
15 preservation order, it probably seems equally critical to both  
16 sides. But is there a response, Mr. Klein?

17 MR. KLEIN: Your Honor, I know that there were some  
18 of the defendants that had at least in the meet and confer  
19 strong feelings about this. I don't know if they want to  
20 speak to it or not.

21 THE COURT: They're looking at you, Mr. Mason and Mr.  
22 Campbell.

23 MR. MASON: Well, it wasn't me. I think they were  
24 making strong feelings. But I can articulate where I think we  
25 are in this, at least for the engineering, my client.

1           We think this is important to go forward in terms of  
2   third party discovery. There could be spoliation issues and  
3   things inadvertently. I'm not accusing anybody of anything.  
4   But we would like to move this process forward. The  
5   discussion was more about do we do this in two parts. In  
6   other words, a notice of preservation versus just issuing the  
7   subpoena to trigger whatever objections and get the ball  
8   rolling.

9           Mr. Klein can speak to the concerns the government  
10   has of doing any of this. We don't share those concerns from  
11   the third party's standpoint. We would like to go forward.  
12   But we think if we do, let's do it in one document in terms of  
13   a request and then trigger whatever responses or objections  
14   might happen.

15           THE COURT: You're suggesting a subpoena goes out  
16   with the preservation order?

17           MR. MASON: That would be our preference.

18           THE COURT: Okay. Mr. Campbell?

19           MR. CAMPBELL: Yes, your Honor. I think some of the  
20   issue that was raised with the nonparty preservation orders  
21   came from my office.

22           THE COURT: Okay.

23           MR. CAMPBELL: And we had, you may recall, provided  
24   to your Honor I drafted a letter that we proposed to send to  
25   third parties, nonparties advising them of the litigation and



1 preserve it. I believe the plaintiffs would like to issue a  
2 subpoena, sort of, with no date -- and I'm not sure about  
3 whether there would be a document request with the document  
4 only subpoena.

5 I think our point was if we're going to do that, we  
6 should issue the document only subpoena and start the process  
7 of collecting it. And I think that has raised some concerns  
8 with some of the government defendants if I have the complex  
9 facts correct.

10 MR. KLEIN: It would probably be claiming the obvious  
11 that this isn't a two-sided issue.

12 THE COURT: Well, yeah, I'm aware of that.

13 MR. KLEIN: If I can speak to at least the City of  
14 Flint's concerns. And there's a couple of different balls  
15 floating around here.

16 With respect to the subpoena, we -- for a couple of  
17 different reasons, we believe -- at a minimum it is  
18 inappropriate to start in essence preliminary discovery where  
19 there's actual return date, an expectation that documents will  
20 be produced.

21 Especially when we're talking about putting burdens  
22 on third parties that the parties at least agree or at least  
23 the status quo is, the parties are going to be free to  
24 discovery obligations until important things are resolved, but  
25 we're going to start imposing obligations on third parties, it

1 just, I guess it affects my sensibility.

2 The other aspect of this is there are three different  
3 proposals with respect to -- well, four different proposals  
4 with respect to third party preservation obligations. One is  
5 to send out, in essence, a letter. One is to do it as a Court  
6 order. The third is to do it by the subpoenas, and I guess  
7 the fourth is some combination of those.

8 The concern that a number of defendants have raised  
9 about a court order is we question this Court's authority to  
10 issue an order to nonparties who haven't had notice, an  
11 opportunity to be heard, etc. You know, we, as attorneys, can  
12 potentially send a letter notifying people that you have  
13 relevant information and we ask you to preserve it. But  
14 that's different than the Court entering an order that binds  
15 strangers to litigation.

16 THE COURT: Okay. I think that's an important point  
17 to address.

18 MR. LEOPOLD: Your Honor, from the plaintiffs'  
19 perspective, as counsel just stated, those were all matters  
20 that have been addressed. From the plaintiffs' perspective  
21 and from experience perspective, going to third parties with a  
22 letter about -- from a law firm, if you will, saying you, a  
23 third party, need to do X, Y, and Z, does not have a lot of  
24 boldness to it in terms of what the third party needs to do.

25 At least in my experience, it has always been

1 accompanied by a court order, a preservation order, if you  
2 will, irrespective of the fact that a nonparty may not have  
3 been part of the process of the order. Certainly courts have  
4 and do often times enter orders to nonparties to do certain  
5 things.

6 And here we have an important issue that as each day  
7 goes on, no nefarious conduct involved, but as each day goes  
8 on, a defendant -- a nonparty may have a record retention  
9 policy, may be getting rid of certain things. And time is of  
10 the essence.

11 We've been trying to move this forward and parties  
12 have been working in good faith to do that. But we aren't  
13 there yet.

14 So we need, as soon as possible, we believe a  
15 preservation order to be able to forward to in either a  
16 subpoena or a cover letter to nonparties about the  
17 preservation of documents, computers, whatever it may be.

18 And in addition, as the Court may recall, there is  
19 ongoing active, if I can use the word, construction work at  
20 various main lines where we had advised the Court and have  
21 advised the defendants that we might want to take sampling of  
22 various piping to do exemplar testing, if you will, of lead  
23 content, things of that sort.

24 And we have set forth in a preservation protocol a  
25 process by which we can give appropriate notice to all parties

1 and the third party that is doing that so we can come and not  
2 take the entire pipe because it's, from what we understand, is  
3 staying in the ground. But take a small sample snippet, if  
4 you will, of it and to put that in the protocol.

5 And again, time is of the essence. That's an ongoing  
6 process. And I'm sure there's a lot more piping that needs to  
7 get replaced or fixed. But as each day goes by, that is  
8 becoming less and less the opportune time.

9 MR. KLEIN: And your Honor.

10 THE COURT: Yes.

11 MR. KLEIN: I don't know if you were done. I didn't  
12 mean to interrupt.

13 MR. LEOPOLD: Yes.

14 MR. KLEIN: This is -- two things. One, this is too  
15 complex of a question to deal with on the fly, in my opinion.  
16 I certainly wouldn't think it was within the scope of what I  
17 expected to talk about today. But the bottom line --

18 THE COURT: Well, let me just stop you there. The  
19 scope of what we're going to talk about was identified on the  
20 agenda as items that are in the joint status report. But I do  
21 appreciate that this may require some briefing. Ans so go  
22 ahead.

23 MR. KLEIN: And you know perhaps it's my fault for  
24 not appreciating that this was within the scope. But the more  
25 substantive concern is what they propose will materially

1 obstruct the City's pipe replacement program. And we have the  
2 tail wagging the dog if you allow that to happen.

3 THE COURT: Now you're talking about something that's  
4 not on here, which is what might actually be requested of a  
5 third party. Is that what I hear you saying? That Mr.  
6 Leopold's indication that an example of a third party  
7 production might be sampling of pipes that are being worked  
8 on?

9 MR. KLEIN: I think there -- well, I guess I'll let  
10 Mr. Leopold respond to that question. I won't speak for him.  
11 But then I do have some more to say.

12 MR. LEOPOLD: Your Honor, the example is, which we  
13 have -- we had already put in our papers and it has been  
14 discussed over the last few weeks, is a process, a protocol,  
15 testing protocol if you will.

16 THE COURT: Right.

17 MR. LEOPOLD: That there would be 72 hours notice,  
18 for example, given to a third party contractor that is doing  
19 the main line work that we can put on notice that when you,  
20 i.e., the third party is going to X location and begin to dig,  
21 we would like 72-hour notice where we can come and be there  
22 and just take a snippet of that line.

23 In the 72 hours and maybe it's less or maybe it's  
24 more or something in between, just so that there is a  
25 framework by which we can cooperatively work with the State,

1 the City, the contractor so that there is no hindrance to what  
2 they are doing.

3 MR. KLEIN: If I --

4 THE COURT: Mr. Mason's standing up.

5 MR. MASON: Your Honor, I'm just concerned that we're  
6 getting diverted from the core issue here, which, to me, is  
7 particularly document retention. Let me give you an example.  
8 Professor Edwards who's done a lot of work, and he needs to be  
9 provided with a request and a preservation in some form to  
10 maintain all that.

11 This information may be favorable to the plaintiffs,  
12 may be favorable to the defendants, or both. But regardless,  
13 it's something that should be done. And I'm sympathetic to  
14 the government's position of always preserving and not waiving  
15 anything.

16 But in this issue of fundamental fairness, they're  
17 taking the position they should be dismissed from this case  
18 and may not be around and all those type of things. While at  
19 the same time taking a position that holds up the ability to  
20 get and preserve important information in this.

21 And so that's the rub here. And that's the  
22 fundamental issue. If it needs to be briefed, then I would  
23 suggest that it gets briefed by the 7th so we can move that  
24 issue along.

25 THE COURT: I think it should be briefed by the 7th

1 as well. Because Mr. Klein suggested that it's a difficult  
2 thing to just handle on the fly, as he said. And so I'll take  
3 that to heart and I'm not prepared to -- I don't have a  
4 proposal in front of me yet anyway.

5 But what I would like by the 7th is sort of the last  
6 best agreement that all of you can come up with on how this  
7 would be done, and where you disagree to file a motion, a  
8 brief, a memorandum, whatever you want to call it, that tells  
9 me what you think the appropriate course of action is and why.

10 MR. LEOPOLD: Thank you.

11 MR. SHKOLNIK: Your Honor, just to assist the Court  
12 on that, would it help the Court if the best -- the best last  
13 approach includes sections that are plaintiff proposed  
14 language, defendant proposed language.

15 THE COURT: Sure.

16 MR. SHKOLNIK: So you can either strike one, strike  
17 the other.

18 THE COURT: That would be very helpful.

19 MR. SHKOLNIK: Thank you.

20 THE COURT: Thank you. So in addition to the  
21 preservation issue of whether an order from the Court is  
22 appropriate for nonparties or whether another avenue is  
23 appropriate, that's one thing.

24 But now I've been alerted that the plaintiffs are  
25 seeking a testing protocol. That at least the City defendants

1 do not think it's appropriate or think might impede the  
2 ability of the contractors to do their work. So I would like  
3 to see the protocol also. Can that be -- can the draft  
4 protocol be submitted by the 7th as well?

5 MR. LEOPOLD: It can, your Honor. Absolutely.

6 THE COURT: Can responses --

7 MR. KIM: Yes, your Honor. We were going to request  
8 that given that the City's objections are essentially very  
9 specific to whatever proposals that the plaintiffs are going  
10 to make, we'd like a week or two weeks to review and respond  
11 specifically to those proposals.

12 MR. LEOPOLD: Your Honor, what we can do just to  
13 expedite the issue is so that the defendant City has the  
14 opportunity to respond by the 7th is by Wednesday, next  
15 Wednesday -- the day before Thanksgiving.

16 THE COURT: Wednesday is the 22nd.

17 MR. LEOPOLD: We will if not before then have at the  
18 latest at that time a protocol to the defendant City for them  
19 to review. And then they could make whatever filings they  
20 wish by the 7th as relates to that protocol.

21 THE COURT: Okay. So plaintiffs -- and Mr. Leopold,  
22 is this something, Mr. Shkolnik, that is going to be a joint  
23 proposal between liaisons?

24 MR. SHKOLNIK: Yes, your Honor. This would be a  
25 joint. It applies across the board. We'll cooperate.



1 MR. LEOPOLD: And we've been in touch with them about  
2 that as well.

3 THE COURT: Okay. So by the 22nd of November,  
4 plaintiffs will provide to defendants a proposed protocol.  
5 And by December 7th, there will be a joint submission to the  
6 Court as to what's agreed upon and what is not agreed upon.

7 And I think that same format of plaintiffs' proposed  
8 72 hours notice taking of the sample, that sort of thing.  
9 Defendants object for the following reasons or agree. Is that  
10 agreeable, Mr. Kim?

11 MR. KIM: Yes, your Honor. Thank you.

12 THE COURT: Okay.

13 MR. LEOPOLD: I guess the only issue -- and it may  
14 not be an issue from the plaintiffs I guess depending on what  
15 the position is of the City. But by the 7th, they'll put  
16 their position we made -- although they'll know what our  
17 protocol is, we may not have an opportunity on paper to  
18 respond to it. But depends, they may not have any objection  
19 or they may lay out something. I guess we can respond to if  
20 appropriate.

21 THE COURT: Yeah. In that filing you can say we need  
22 three additional days to more fully respond.

23 MR. LEOPOLD: Sure. That's fine.

24 THE COURT: But I still want to get something on the  
25 7th. Okay. And is the current -- it's a separate issue. A

1 protocol can be worked out. But it sounds like it's a  
2 separate issue as to whether it is appropriate to put it into  
3 place at this time. Is that true, Mr. Klein?

4 MR. KLEIN: That would be true to the extent that  
5 some parties are seeking not just to issue subpoenas for  
6 preservation purposes, but to actually start third party  
7 document production.

8 THE COURT: Okay.

9 MR. KLEIN: We believe that that falls within the  
10 general category of preliminary discovery, early discovery,  
11 whatever label we were using along with everything else and  
12 until that question is resolved.

13 THE COURT: That question is a complicated question.  
14 There's one question that relates to parties. And some of  
15 those parties have criminal charges and have Fifth Amendment  
16 concerns. Other parties have Eleventh Amendment concerns.  
17 But third parties don't have any of that.

18 And so I'll do some research, or I assume that most  
19 of the third parties are not also criminally charged and they  
20 are not the State.

21 So but I think I have a great deal of discretion in  
22 terms of preliminary discovery that can be ordered and can be  
23 -- I can determine if it is narrowly tailored in a sense that  
24 without this discovery, these documents might be destroyed or  
25 might not be here should the case proceed beyond the motion to

1 dismiss stage.

2 So why don't we put that -- that will be on the  
3 agenda for the January 4th conference is third party  
4 discovery. Was it the plaintiffs intention to issue some of  
5 that discovery before the 4th of January?

6 MR. LEOPOLD: We wanted to try and do that. Again,  
7 on the issue similar to what Mr. Mason has raised is the  
8 timeliness issue. Certainly, again, as I had indicated --  
9 excuse me, your Honor.

10 THE COURT: That's okay.

11 MR. LEOPOLD: Has indicated with the Court, at least  
12 in our experiences having the stamp of approval, if you will,  
13 as a court order means more. But in terms of the timeliness  
14 issue, until that issue -- until that matter is filtered  
15 through, that at least we can get a subpoena out so that they  
16 -- there is some judicial stamp of a subpoena service, if you  
17 will, that means something to those nonparties that they need  
18 to preserve.

19 THE COURT: Okay. Mr. Mason?

20 MR. KLEIN: Oh, go ahead.

21 MR. MASON: Your Honor, I was just going to suggest,  
22 I had assumed that this was all consumed in the same issue for  
23 the December 7th, to not put it off past that. And I would  
24 respectfully ask, just for the record and the Court, to allow  
25 engineering defendants to weigh in by the 7th on the issue as

1 well.

2 THE COURT: Oh, I consider you a defendant.

3 MR. MASON: I'm not sure how to take that, your  
4 Honor. But I'll accept it as stated. Also, just for  
5 clarification, this Friday I think is similarly is the Fifth  
6 Amendment, Eleventh -- the immunity issues. And -- I'm sorry,  
7 Monday the 20th. And that we would like the opportunity to  
8 weigh in on that as well, if appropriate.

9 MR. KLEIN: Your Honor, there's --

10 THE COURT: Let me just answer that. You would like  
11 the opportunity to weigh in -- you've not already submitted  
12 anything on the Fifth Amendment. And the way I had set it up,  
13 I was hearing first from those most directly impacted, a  
14 response from plaintiffs. But you'd like the opportunity to  
15 file a response along with the plaintiffs, so to speak?

16 MR. MASON: On a call the other day, Veolia asked one  
17 of the other engineering defendants if there was any  
18 opposition and there was none to them participating. I just  
19 wanted to raise it to the Court to allow us as well. Because  
20 I do think this is becoming an issue for all defendants.

21 THE COURT: Oh, it is. Yeah. You don't want to be  
22 the last person standing there.

23 MR. MASON: Correct.

24 THE COURT: Okay. And so certainly you can file a  
25 brief on the same timeframe as the responsive briefs.

1 MR. MASON: Thank you.

2 THE COURT: Yeah.

3 MR. KLEIN: I'm puzzled. We are coming up, and  
4 indeed, we may have passed the two-year anniversary of the  
5 first of these lawsuits. And suddenly as of three weeks ago  
6 there's an emergency that has to be resolved on an expedited  
7 basis as to doc preservation of third parties.

8 I'm suggesting that allowing another couple of weeks  
9 or another couple of months, there is no emergency. It could  
10 have been raised a long time ago. And it's not -- I mean,  
11 obviously, you know, any day, any minute a document might be  
12 thrown out. But the notion that there's something special  
13 about this time, it just doesn't make a lot of sense to me.

14 THE COURT: Well, I can answer that. The fact is  
15 that from when the first case was filed until today, there  
16 have been a number of decisions made by various judges. Those  
17 decisions have traveled to the Sixth Circuit. They have  
18 returned.

19 The cases are now consolidated in this Court. And I  
20 am taking charge of case management. And I determined that  
21 it's an urgent issue to be resolved.

22 So even if the case got -- I don't know that it was a  
23 slow start. Certain decisions needed to be made. They took  
24 time. They took -- they required the consideration and input  
25 of the Court of Appeals. We have cert petitions.

1           We have a lot going on in this case. And it isn't  
2 clear, crystal clear, what can go forward and what can't. So  
3 what I'm doing is the best I can to -- now that these cases  
4 are with me to adjudicate what I can and make the decisions  
5 and keep things moving. And I think that would inure to  
6 everyone's benefit, including your clients.

7           MR. KLEIN: Understood.

8           THE COURT: So that's why it's urgent now. Did you  
9 --

10          MR. LEOPOLD: Nothing further.

11          THE COURT: Okay.

12          MR. LEOPOLD: Unless the Court has any other issues  
13 on the preservation matter.

14          THE COURT: No. I guess the only thing I'm  
15 interested in -- we'll put this third party discovery on the  
16 January 4th -- or third party subpoenas on the January 4th  
17 agenda. But I'm interested in knowing if there are other  
18 third parties that the plaintiffs are seeking documents from  
19 before that time other than the testing sampling of parts.

20          MR. LEOPOLD: There certainly will be. And we can  
21 provide as much of a comprehensive list as possible for the  
22 Court. But I know that there will be other third party  
23 subpoenas other than the construction crews that are doing the  
24 main line corrections.

25          THE COURT: Okay. If you could include that in your

1 submission, I think it would help me understand how to weigh  
2 the benefits and burdens --

3 MR. LEOPOLD: I will, your Honor.

4 THE COURT: -- of the pre-answer discovery.

5 MR. SHKOLNIK: Your Honor, Hunter Shkolnik. I just  
6 want to add an additional point on that. In some of the  
7 communications, there was a potential argument that since I  
8 think it's Rule 26 has not been conducted yet, therefore no  
9 subpoenas. We would ask that that be included. If that's  
10 going to be an issue, that that either be waived now or be  
11 briefed as well as part of any submission.

12 THE COURT: Well, I think that's what Mr. Klein is  
13 arguing here. Is that what you're arguing?

14 MR. KLEIN: Well, it's certainly part of the  
15 argument, the Rule 26 does kick in here. I don't think it's  
16 the only point. And I think it's been briefed.

17 THE COURT: Yeah.

18 MR. KLEIN: Off the top of my head I can't recall  
19 what brief it was in, but I distinctly recall briefing it.

20 THE COURT: I think it was in your response to  
21 outstanding document requests.

22 MR. KLEIN: You're correct. And we're glad to brief  
23 it again.

24 THE COURT: No, it won't be necessary. So what I  
25 would like to hear is what the information is that the

1 plaintiffs are seeking if the defendants wish to respond  
2 specifically, that something in here is outrageous, is -- I  
3 mean, it's not -- feel free to file a response. But it really  
4 is incumbent on those third parties to file a motion to quash  
5 a subpoena. And they are the ones who have standing to say  
6 what's a burden to them. Mr. Campbell?

7 MR. CAMPBELL: Thank you, your Honor. Just to  
8 clarify, what I heard you ask Mr. Leopold was a list of third  
9 parties that might be in play, if you will, or where we think  
10 there might be information.

11 For instance, Mark Edwards from West Virginia or his  
12 university is one. But there's lots of those types of people  
13 who have touched this litigation. Would it be helpful to your  
14 Honor if the parties either jointly or individually submitted  
15 a list of third parties that we think are important to or that  
16 we would direct these letters to or subpoenas to to  
17 preservation issues?

18 THE COURT: The list that would be helpful to me at  
19 this point is those third parties you think are important at  
20 the top of your list for chronologically issuing these  
21 subpoenas. If somebody's going to get a subpoena in a year  
22 from now depending on the status of the case, I don't need to  
23 know about -- I don't want an exhaustive list.

24 But I'm interested in what the initial subpoenas  
25 might look like to get a sense of how burdensome this might be



1 and how extensive it is.

2 MR. LEOPOLD: Your Honor, I think along the lines of  
3 Mr. Campbell's inquiry, I think it would be helpful for us to  
4 consult at least with whomever defendants wants to do that  
5 with us of putting together one list regardless of who's going  
6 to subpoena them, whether a defendant or a plaintiff so that  
7 we all are working off of the same list, if you will, of  
8 potential third party subpoenas.

9 Because the plaintiff may have some, but the  
10 defendants also on their own through their own contracts or  
11 communications may know of others out there and the list may  
12 have an ability to grow sooner than later. And it would be  
13 those individual groups that we will want to serve subpoenas  
14 for documents early in the litigation.

15 THE COURT: Okay. Thank you.

16 MR. CAMPBELL: Just to further the thought, your  
17 Honor, I think we're getting the sense of a triage. These are  
18 the most important.

19 THE COURT: Yes.

20 MR. CAMPBELL: And I think clearly we could come to  
21 some form of agreement on that. Would it also be helpful to  
22 your Honor if we listing a third party with a one sentence or  
23 two sentence description of why that entity or person is on  
24 the list in the spot where that is?

25 THE COURT: That would be very helpful. And is this

1 something that can be submitted by December 7th?

2 MR. LEOPOLD: Absolutely, your Honor.

3 MR. CAMPBELL: Yes.

4 THE COURT: Okay. Thank you.

5 MR. LEOPOLD: Your Honor, can I just go back for a  
6 moment, just for the record at least, along the lines of what  
7 Mr. Mason had raised about the engineering defendants  
8 providing papers on the Fifth Amendment issue?

9 THE COURT: Right.

10 MR. LEOPOLD: Plaintiff would just like to have the  
11 opportunity to respond to whatever papers they submit that's  
12 appropriate.

13 THE COURT: Did I work out a reply for -- no. It was  
14 just one brief from each. I've read your brief so far. And  
15 there's still more work to be done. So I appreciate what was  
16 submitted. But I think this is a pretty complicated area. So  
17 I'm happy to receive a -- I guess it's a reply. It's a  
18 supplemental memorandum.

19 So looking at the calendar, can we do by December --  
20 let's see, when is your -- your brief is currently due on the  
21 20th. So December 7th? Is that too much to do on the --  
22 let's not do all that. For somebody's paralegal, it's just  
23 going to be a terrible day.

24 MR. SHKOLNIK: Your Honor, we have enough people to  
25 brief these issues.

1 THE COURT: Okay. So December 7th?

2 MR. SHKOLNIK: Yes.

3 MR. LEOPOLD: That's fine.

4 THE COURT: Okay. I'm not worried about the  
5 briefers. I'm worried about the people who press the buttons.  
6 But okay. So on the protective or confidentiality order,  
7 there is an agreement to submit something by December 7th.  
8 We're almost done with what's going to be done on December  
9 7th.

10 MR. KIM: Your Honor, just to clarify.

11 THE COURT: Yeah.

12 MR. KIM: That would be essentially for all parties  
13 to file the reply brief? Any interested party to file a reply  
14 brief by the 7th?

15 THE COURT: Absolutely. Yes.

16 MR. KIM: Thank you, your Honor.

17 THE COURT: Yeah, I appreciate that. No, that's very  
18 reasonable. Okay.

19 So we're on the provision of insurance disclosures.  
20 And I see that the plaintiffs are seeking clarification  
21 regarding MDEQ's disclosure.

22 MR. LEOPOLD: Thank you, your Honor. There is, I  
23 guess, one clarification. We've had several conversations  
24 both orally and via e-mail exchange on this issue with the  
25 MDEQ defendants. The other defendants have responded pursuant

1 to the Court's query on that particular matter. And the  
2 plaintiffs are satisfied with the responses.

3 As it relates to the MDEQ, the response that the  
4 plaintiffs have gotten as relates to their response is, in the  
5 defenses' perspective, vague at best. Essentially, the  
6 response is, we will -- essentially we will let you know if  
7 there is any applicable insurance policies out there.

8 Our plaintiffs' understanding that the Court asked by  
9 X date to provide all applicable insurance policies. So that  
10 means there is a good faith effort on behalf of a party to go  
11 out and contact either the agents, clients and pull any  
12 applicable insurance policies. Not in the future, we'll let  
13 you know if there's any policy. Either there is or there  
14 isn't.

15 THE COURT: Okay. Mr. Barbieri?

16 MR. BARBIERI: Thank you, your Honor. Contrary to  
17 the suggestion by co-lead counsel, there hasn't been any  
18 specific date ever set for any disclosures. I responded on  
19 behalf of the MDEQ defendants to say that at this point there  
20 is no disclosure obligation. We've not been in other  
21 litigation where I believe some disclosures have occurred by  
22 some of the other defendants.

23 But we did indicate in response to Mr. Leopold that  
24 no one has found to date any policy that may cover. And I  
25 reiterated that if such policies were later discovered, they

1 would be disclosed if the Court requires that to be done.

2 And again, I make that representation that if the  
3 Court requires it, it will be done. But as of to date, we've  
4 not found any policies that apply.

5 THE COURT: And you have searched for the policies?

6 MR. BARBIERI: To some extent, yes. But keep in  
7 mind, your Honor, that we've been under no obligation,  
8 particularly at this pre-answer stage, to provide any of that.

9 THE COURT: Okay. What we can do is set an  
10 obligation for that. And then what we'll do is -- because I  
11 think these are -- this is a problem in search of a solution,  
12 the entire case. And part of crafting a way forward for this  
13 case is not waiting until the Supreme Court deals with the  
14 current preemption cert petition.

15 And that could be approximately a year from now or  
16 something of that nature or beyond that. And then may be it's  
17 remand. And so if everything waited until all of the case was  
18 lined up as a traditional plaintiff versus defendant case with  
19 this much discovery and a dispositive motion, I wouldn't even  
20 be around at that point.

21 So what I'm trying to do is have this case proceed as  
22 fairly as possible with the fewest unfair burdens. But there  
23 will be burdens on both sides. The fewest unfair burdens so  
24 we can continue to make progress in consideration of all  
25 possible outcomes.

1           So the Supreme Court could rule on that, that could  
2     take cert on the preemption issue and we're all going to go  
3     home, depending on the outcome. I don't know. But in the  
4     meantime, I'm not going to stop working.

5           So what we'll do is set a deadline for the MDEQ  
6     defendants to diligently review their records to find out if  
7     they have insurance and to disclose that to the plaintiffs.  
8     And I will ask you, Mr. Barbieri, what you think is an  
9     appropriate timeframe for that diligent review.

10           MR. BARBIERI: I think 30 days, your Honor.

11           THE COURT: Thirty days, okay. So why don't we do  
12     that by Friday, December 15th, just to keep it away from  
13     everybody's holiday travel.

14           MR. BARBIERI: Thank you, your Honor.

15           THE COURT: You're welcome.

16           Now we're on to -- speaking of burdens that go in the  
17     other direction. We're now on the proposed fact sheets.  
18     There have been multiple drafts and comments circulated. And  
19     it appears that you're hoping to have that resolved by  
20     December 7th.

21           MR. LEOPOLD: Correct.

22           THE COURT: Mr. Stern?

23           MR. STERN: Corey Stern, your Honor, for the  
24     plaintiffs. There's three issues with regard to the fact  
25     sheets. Number one, there are two groups of plaintiffs.

1 There's proposed class representatives who are named  
2 plaintiffs. And then there's individual plaintiffs who have  
3 filed lawsuits.

4 There may be differences between what's required of  
5 proposed named class reps versus what's required of  
6 individuals who have already filed lawsuits. So both lead  
7 counsel for the class and Mr. Shkolnik and I have agreed that  
8 we believe two fact sheets are more appropriate than one. The  
9 defendants have indicated that they don't agree with that.

10 Separate and apart from that --

11 THE COURT: And is the idea that the class  
12 representative fact sheets would be more expansive because  
13 there would need to be a decision later on as to whether they  
14 can adequately represent the class? Or is the idea that the  
15 individuals they've already sued --

16 MR. STERN: I would allow Mr. Leopold to the  
17 defendants to speak as to why the class fact sheets should be  
18 different. I can only state -- and this leads into point  
19 number 2 --

20 THE COURT: Okay.

21 MR. STERN: -- that the individual fact sheets that  
22 have been provided to the defendants in Genesee County were  
23 negotiated by the parties. They were agreed to by the  
24 parties. And they were signed off on by the Court.

25 To that end, for individual lawyers who have

1 individual plaintiffs, many of us have spent significant time  
2 circulating those fact sheets to our clients attempting to get  
3 those fact sheets returned to us. A, it would be an intense  
4 obligation to have them be required to submit a second fact  
5 sheet. No defendant has indicated thus far that that's a  
6 possibility, but it's a potential issue.

7 More importantly is the fact sheets that have not yet  
8 been submitted in Genesee County but have been circulated to  
9 the plaintiffs because they were agreed to by all the parties  
10 because they were signed off on by the Court. It would be a  
11 very difficult process to get new fact sheets to plaintiffs  
12 who may have already started the process of those fact sheets.

13 So while there's a negotiation taking place about new  
14 fact sheets that may be occurring between Mr. Pitt, Mr.  
15 Leopold, and all the defendants for the proposed class  
16 representatives, one of the reasons why it's important for us  
17 to have a separate fact sheet for the plaintiffs is to not go  
18 down that road of over requiring plaintiffs or their counsel  
19 to do something they've already begun which was agreed to by  
20 the parties.

21 With an interest towards what your Honor just said  
22 about putting burdens on parties and trying not to overburden  
23 folks, I've previously said how difficult it is to stomach the  
24 idea of producing fact sheets for new plaintiffs while  
25 simultaneously defendants aren't producing discovery.



1           That said, I understand it's an integral part of the  
2 process for everybody. And we are willing to continue the  
3 process of producing fact sheets as we've done in Genesee  
4 County. We just don't want to obligate lawyers or plaintiffs  
5 in individual cases here in Federal Court to have to do a  
6 second or a new fact sheet when they've already begun the  
7 process or previously submitted in Genesee.

8           THE COURT: Okay.

9           MR. STERN: And so what I would suggest in that  
10 regard is individual plaintiffs -- I sent an e-mail to all of  
11 the defendants last week with our proposal for a fact sheet.  
12 It is essentially the Genesee County fact sheet with a new  
13 caption to indicate that we're in Federal Court.

14           I would ask that if the defendants have specific  
15 objections to portions of that fact sheet, that that be  
16 submitted by December 7th, either a red line version or  
17 something that can indicate what about that fact sheet is now  
18 objectionable so that we can address it, you know,  
19 appropriately. And I would allow somebody from the class to  
20 talk about the class fact sheet.

21           THE COURT: Okay. Mr. Leopold?

22           MR. LEOPOLD: In terms of the class action fact  
23 sheet, the parties have been working together on both the  
24 defense and the plaintiffs, to attempt to both simplify and  
25 coordinate a unified document that the class representatives

1 only would be filling out. So we're along that process and we  
2 hope to have a final product in the near future.

3 I think the only issue was what Mr. Stern was just  
4 relaying to the Court from the liaison personal injury cases  
5 what, if any, involvement they have in that document or is it  
6 a totally separate and related document that they are going to  
7 respond to?

8 THE COURT: Okay. Okay. Mr. Klein?

9 MR. KLEIN: A couple of things, your Honor. First,  
10 that this remains the subject of active discussion and some of  
11 this may be worked out. Maybe some of it won't.

12 We don't see -- I appreciate what Mr. Stern said  
13 about there's been work that's been done in Genesee. And now  
14 I'm speaking only for the City of Flint. It may be possible  
15 to work out some sort of, for lack of a better word,  
16 grandfathering where work that's already been done doesn't  
17 have to be redone.

18 We have circulated an alternate form of fact sheet.  
19 In our mind, it is strictly stylistic, frankly, with the  
20 benefit of hindsight and closer reading. It doesn't seek  
21 substantively different information from Genesee. We think  
22 the instructions could have been clearer and simpler. But  
23 again, I would be optimistic that we can work that out.

24 THE COURT: Good.

25 MR. KLEIN: The biggest -- no promises. I'm a

1 cockeyed optimist and sometimes that bites me. The real bone  
2 of contention in the fact sheets that have been circulated --  
3 and again, I don't think there's anything that the Court needs  
4 to resolve at this moment. But that they have attached -- and  
5 I think this is the class plaintiffs, to be clear. Although  
6 Mr. Stern has expressed some similar reservations.

7 They've attached what they call stipulations that go  
8 to things like, nothing in the fact sheet waives any claim or  
9 defenses of the parties.

10 Now, you know, in my mind, this is a form -- it  
11 should have the same effect as any form of fact disclosure  
12 whether a pleading or a --

13 THE COURT: Well, is it a sworn -- is it sworn  
14 testimony?

15 MR. KLEIN: It is -- yes, the fact sheets say under  
16 penalty of perjury or similar words. I don't have the fact  
17 sheets in front of me.

18 But again, the fact sheets serve no purpose if, you  
19 know, it's not admissible evidence and potentially an  
20 admission. And it actually dovetails with a separate concern  
21 that plaintiffs have raised that they have asked us that, one,  
22 we won't -- basically we won't revisit the information, the  
23 fact sheets in discovery.

24 More importantly, two, that the fact sheets would  
25 count against our interrogatories. I mean, I don't want to

1 argue the substance of that. But obviously simplistic in that  
2 is the fact sheets are substantive information and not just,  
3 oh, by the way information they're sending to us.

4 THE COURT: I see.

5 MR. KLEIN: There's more talking that needs to go on  
6 this. But the bigger issues I suspect are those rather than  
7 precisely how we word the question, what year did you live in  
8 your house, or that sort of information.

9 THE COURT: Okay.

10 MR. KLEIN: I mean, that we'll work through.

11 THE COURT: Okay. Well, I'm glad to hear that you'll  
12 work through the fact portion of the fact sheets. And then  
13 the legal implication of the fact sheets we can leave for  
14 another day because I don't think that needs to be decided  
15 now.

16 I have -- I saw a draft fact sheet but -- and I  
17 looked at it, but I did not examine it carefully enough. I  
18 haven't done enough research to know how fact sheets can be  
19 used by both sides.

20 So just hearing what you're saying, if somebody is  
21 signing this under penalty of perjury or there's -- it's going  
22 to have some impact, it means something. But what it means  
23 sitting here right now, I don't know. And whether it's just  
24 sort of too many lawyers thinking of what it could mean and  
25 then signing something saying this doesn't waive my client's

1 claims, I just don't know what we're talking about.

2 So what I'll assume is that I'll find out. And that  
3 by December 7th, which is what your -- it will be -- the fact  
4 sheets will be -- the proposed fact sheets will be finalized.  
5 And then you can inform me if there is a dispute about  
6 attachments to it.

7 You know, when you're defending a deposition and  
8 somebody asks, well, do you think you were fired illegally.  
9 And then the other person says objection, that calls for a  
10 legal conclusion. But you can answer the question. So what I  
11 don't know if this is that kind of problem or something else.

12 MR. KLEIN: I don't think so. And again, maybe it  
13 will go away by December 7th. And I'm surprised to hear that  
14 there can be too many lawyers, but I guess sometimes it could  
15 happen.

16 THE COURT: It's possible it can happen right here.

17 MR. SHKOLNIK: Your Honor, I'd hate to sound like a  
18 broken record -- Hunter Shkolnik. Once again, once we come up  
19 with these forms, if there's something in there that a party  
20 objects to on that final day, highlight it in your color. And  
21 then have a letter of explanation why or why not it should be  
22 in there. I think it would assist the Court just like we're  
23 talking about the other items.

24 THE COURT: That would be helpful. Is December 7th  
25 too aspirational in light of what else is getting done? Is

1 that -- okay. Let's do it. It was agreed upon already. I'm  
2 not going to mess with that. Okay.

3 Well, I think that concludes the list of issues in  
4 the joint report.

5 MR. LEOPOLD: Your Honor?

6 THE COURT: Oh.

7 MR. LEOPOLD: One point of clarification in terms of  
8 the Court's November 9th agenda order. And maybe the Court  
9 can clarify it because there may be a little dispute between  
10 what the plaintiffs believe and what some of the defendants  
11 may believe.

12 In your Honor's order at the end, I believe on the  
13 last page -- and I'm quoting. It says, the Court will not  
14 hold oral argument on the issues related to preliminary  
15 discovery until the briefing previously ordered is completed.  
16 And where I think there may be some dispute amongst the  
17 parties is was the Court referring to the Fifth Amendment  
18 related issue?

19 THE COURT: Yes. The Fifth and Eleventh issues.

20 MR. LEOPOLD: Okay. Not dispositive motions that are  
21 in the springtime?

22 THE COURT: No, no.

23 MR. LEOPOLD: Because we would like to at least, for  
24 example, with the -- depending how the Court rules, but the  
25 engineering defendants, we'd want to start getting some

1 discovery out and things of that sort. And we don't want to  
2 have to -- the defendants -- I think some of the defendants  
3 believe that that wording meant the dispositive motions and  
4 that's not how we understood it.

5 THE COURT: No. It's not what I intended it to mean.

6 MR. SHKOLNIK: Your Honor, something that's not on  
7 the report for today but it's a carryover from the last  
8 conference was the motion for the master complaint for the  
9 individuals.

10 THE COURT: That is here, that we're going to have  
11 oral argument.

12 MR. SHKOLNIK: Oh, I'm sorry.

13 THE COURT: Okay.

14 MR. SHKOLNIK: I was going off the other sheet. I  
15 apologize.

16 THE COURT: That's all right. Okay. So what I want  
17 to do is discuss one more issue and then take a short break,  
18 which is the transcript ordering protocol. And what I want to  
19 do is bring the issue to your attention. And I don't have a  
20 proposal or an order to issue at this point.

21 But I would like to caution counsel that when  
22 transcripts are ordered they are supposed to be ordered and  
23 paid for and then not disseminated until all parties have put  
24 in their order. There is some flexibility in that and that is  
25 there are lawyers who are representing on the executive team

1 multiple -- or not representing, but present for multiple  
2 parties. And I don't think it's my intent to have each -- if  
3 a lawyer is ordering the transcript for three clients, you  
4 don't pay three times.

5 But I do -- I just want to caution you that there are  
6 standard operating procedures that do get set up in  
7 multidistrict litigation cases just to ensure that the hard  
8 work of the court reporter is compensated appropriately.

9 So I'd just ask you to keep that on your minds as you  
10 go forward. And I'll do the same. And I've asked Jeseca to  
11 do the same. And if we think it's necessary to issue an order  
12 to clarify how this should be done, then we'll do it at that  
13 time.

14 Before we -- we'll take a break after -- now, I have  
15 that -- there are two cases where there are expired summons  
16 for the Veolia defendants and several of the individuals.

17 MR. SHKOLNIK: Yes, your Honor. Unfortunately it's  
18 my firm's issue.

19 THE COURT: Okay.

20 MR. SHKOLNIK: And at this point I think we need to  
21 either work with defense counsel in getting these reissued by  
22 the clerk of the Court and served. I'm sure it was just an  
23 oversight in terms of the service , timely service.

24 THE COURT: Okay. Well, I'd just ask that that take  
25 place. I mean, we're trying to follow along the docket and



1 make sure that we're doing our part. And so we just have  
2 observed that this took place. Yeah.

3 MR. CAMPBELL: I just wanted to say I'm not sure that  
4 you just said it. But we have returned the waiver of service  
5 forms.

6 THE COURT: On these two cases now?

7 MR. CAMPBELL: From the Veolia defendant's point of  
8 view, we have returned it.

9 MR. SHKOLNIK: There may be something lost in the  
10 mail or in the process here. So we'll work it out with  
11 counsel and make sure it's corrected in the Court system.

12 THE COURT: Good. Then the last thing is to have  
13 oral argument on the motion for leave to file the master  
14 individual complaint. Will that be Mr. Stern or Mr. Shkolnik?

15 MR. SHKOLNIK: I'll be arguing it, your Honor. It  
16 will be very short from the plaintiff's standpoint.

17 THE COURT: Okay. All right. So we'll take a short  
18 break. Mr. Leopold?

19 MR. LEOPOLD: And your Honor, there's one other  
20 issue, too, which on the break we're going to discuss  
21 internally. But I believe there's an issue about  
22 consolidation of the Mays and the Boler matter.

23 THE COURT: Okay. All right. We'll add that. Okay.  
24 All right. So we'll just be adjourned for five to ten minutes  
25 then return.

1 THE CLERK: All rise. Court is in recess.

2 (Brief Recess)

3 THE CLERK: All rise. Court is back in session.

4 THE COURT: Please be seated. Well, we're now at the  
5 point in the agenda of hearing argument on the motion for  
6 leave to file a master individual complaint. Breaks are a  
7 good thing. It narrows the population.

8 MR. LEOPOLD: They may have been crazy enough to go  
9 outside of security.

10 THE COURT: Oh, boy.

11 MR. SHKOLNIK: Your Honor, Hunter Shkolnik on behalf  
12 of the individual plaintiffs. We really feel the briefing on  
13 the master complaint is fairly comprehensive and I'm not going  
14 to belabor --

15 THE COURT: Well, let me just tell you what my  
16 questions are instead of going this direction, which is that  
17 it's unclear to me from your motion whether you are suggesting  
18 that a master individual complaint with the short form  
19 complaint be the operative process going forward or whether  
20 those pending cases would need to be re-filed to conform to  
21 this process.

22 MR. SHKOLNIK: Your Honor, first, to answer the  
23 question, a master complaint is an administrative tool. So in  
24 and of itself, it's really nothing, no motions.

25 THE COURT: Right.

1 MR. SHKOLNIK: But what we know from experience in  
2 other cases and what we know what's happening here from being  
3 contacted by attorneys with in excess of probably 6,000 or  
4 7,000 cases, they are all sitting back waiting for an  
5 individual master complaint that they would then adopt so that  
6 they would not be briefing it over and over and over again  
7 themselves.

8 They would be much like the class complaint, people  
9 sitting back and saying we want this to be -- we want there to  
10 be one complaint. It's easier for us.

11 To answer the Court's question, we find it much  
12 easier that an order be entered that the parties adopt -- the  
13 presently pending parties adopt the master complaint as the  
14 amended complaint at this point so that one set of motions are  
15 entertained by the Court.

16 We are not seeing repetitive amendments of complaints  
17 by individual plaintiffs coming down the road where the  
18 Court's going to have to start re-looking at some issues.  
19 Obviously it's not as hard when you've already decided certain  
20 things.

21 But we feel that the parties should be directed to  
22 adopt a master. And that people going forward must use the  
23 master complaint to allow an orderly system. Because we see  
24 very quickly that there's going to be at the very least  
25 upwards of 10,000 cases filed here, possibly more. And we

1 want to streamline the process for the Court and be able to  
2 give some directions to these lawyers and say let's get these  
3 cases moving because discovery's going to start in the case.

4 THE COURT: Okay. All right. Well, that was the  
5 question that I had. And I know -- I believe Mr. Sanders is  
6 the only plaintiffs' counsel on an individual case to have  
7 weighed in. So why don't I hear from you. And then I'll -- I  
8 received the briefs from the various defendants who filed  
9 them. And we can turn --

10 MR. SHKOLNIK: Your Honor, just one point. I  
11 believe, and if I read it correctly, there is a claim that we  
12 didn't include in the master.

13 THE COURT: The CERCLA claim.

14 MR. SHKOLNIK: We are not suggesting that we would  
15 exclude his claim. We just probably overlooked it in the  
16 process and we would be happy to include that as one of the  
17 potential claims in the master if the Court wants to go that  
18 route.

19 THE COURT: Okay. Because the way I understood it is  
20 the master complaint has then the short form complaint where  
21 Mr. Sanders can add his count there as well.

22 MR. SHKOLNIK: That's the other option as well. If  
23 it's something that we -- I haven't looked at it myself. Mr.  
24 Stern has. If it's something that we think is so broad that  
25 everyone should have it, we would suggest adding it as one of

1 the potential. But if it's something isolated to their  
2 complaint, the add on section is what's usually done in the  
3 master procedure.

4 THE COURT: Okay. All right.

5 MR. SHKOLNIK: And we wouldn't object to that in any  
6 way.

7 THE COURT: So Mr. Sanders, you heard what Mr.  
8 Shkolnik said. And I read your brief. I want to give you an  
9 opportunity to be heard. But what I understood you to be  
10 saying is that you have a claim that's not included in the  
11 master complaint as an option. And you want that preserved.  
12 And what I'm hearing is that it can easily be preserved.

13 MR. SANDERS: Absolutely, your Honor. That was  
14 definitely a great portion of my concern.

15 THE COURT: Okay.

16 MR. SANDERS: Additionally, your Honor, I believe the  
17 scope and character of our complaint is unique because of the  
18 fact that we have included the comprehensive environmental  
19 response compensation and liability act which to my knowledge  
20 no other plaintiffs have included in their complaint.

21 THE COURT: I think that may be true. And so what  
22 I'm suggesting to you is that you will not lose the  
23 opportunity to pursue that cause of action at all.

24 MR. SANDERS: Okay.

25 THE COURT: If the Court adopts a master complaint

1 with the short form individual complaint. Either Mr. Stern,  
2 or Mr. Shkolnik will amend the master complaint to provide an  
3 option for a CERCLA or you can absolutely include it in the  
4 short form that indicates who your plaintiffs are and so on.

5 MR. SANDERS: And I guess part of my objection was  
6 not understanding procedurally how the master complaint  
7 affected my claim. And to that end, what I mean by that is to  
8 my knowledge we're the only plaintiffs that have 12(b)(6)  
9 motions pending. We have responded to those.

10 Our case was stayed. It's my understanding that the  
11 master complaint is supposed to help expedite the litigation  
12 process. But that I don't think has been the case for my  
13 plaintiffs. So I don't know what -- how the other foot drops.  
14 What happens once this master complaint takes affect if it is  
15 approved by the Court? What happens to the 12(b)(6) pending  
16 motions?

17 Additionally as it relates to the CERCLA claim, it  
18 appears as though the Court is leaving to the discretion of  
19 liaison counsel whether that claim becomes a part of the  
20 master complaint. And it was my understanding that the Court  
21 had contemplated an executive committee for individual  
22 plaintiffs.

23 It's my understanding, I believe, there's an  
24 executive committee for the class action. But I would think  
25 that an executive committee for the individual plaintiffs

1 might be appropriate in discerning what the substance of the  
2 master complaint is.

3 Moreover, it's my understanding --

4 THE COURT: Mr. Sanders, do you have any objection to  
5 the master complaint aside from the issue of whether surplus  
6 should be in it?

7 MR. SANDERS: No.

8 THE COURT: Okay.

9 MR. SANDERS: Moreover, it appears as though there  
10 has been negotiation and discussion as it relates to the fact  
11 sheet. And I would anticipate that that fact sheet will be  
12 based upon what's in the master complaint in discerning  
13 evidence that would address that master complaint.

14 So those are my concerns and the basis for my  
15 objection. I did not know procedurally how those things would  
16 be affected going forward.

17 THE COURT: I think you pose important questions.  
18 And why don't I give Mr. Shkolnik just an opportunity to  
19 respond in terms of the procedure that you see and whether you  
20 believe that there ought to be some expanded participation  
21 from representative plaintiffs' counsel -- from some  
22 plaintiffs' counsel. Thank you, Mr. Sanders.

23 MR. SANDERS: Thank you, your Honor.

24 MR. SHKOLNIK: Thank you. In terms of -- to answer  
25 the Court's question regarding participation, we are open to

1 work with counsel as liaison to address claims that we were  
2 not contemplating. And the more we think of the CERCLA, it  
3 may be an important claim to be across the board. And we'd be  
4 happy to coordinate with counsel on that.

5 In terms of expanding the leadership, it's not  
6 something we -- I don't remember being talked about in terms  
7 of the individual. And it's something we'd be happy to talk  
8 to counsel about. I think we're capable of leadership as is,  
9 but we're not all knowing and all seeing. And I'd be very  
10 happy to talk to counsel about that and report back to the  
11 Court at the January hearing.

12 THE COURT: Okay. That may be helpful. But what you  
13 were foreshadowing of an avalanche of cases once this is  
14 decided seems like it might impact any decisions about having  
15 some additional counsel assisting in communicating with  
16 individual counsel.

17 MR. SHKOLNIK: Understood. And that may be -- it may  
18 be something that is just appropriate. I'd like to talk to  
19 Mr. Stern, other counsel and report back.

20 THE COURT: Okay.

21 MR. SHKOLNIK: And then I think we'll be able to work  
22 an issue like that out.

23 THE COURT: Okay. And if the CERCLA -- I have not  
24 done no work on CERCLA. I don't -- I have not reviewed the  
25 pending motions. So if you were to add that to the master



1 complaint, how much time would be needed for that?

2 MR. SHKOLNIK: We would have that to the Court -- if  
3 today's Thursday, we can have that by Tuesday of next week.

4 THE COURT: Okay. Thank you.

5 MR. SHKOLNIK: Thank you.

6 THE COURT: So from what you're describing, the  
7 master complaint is a document that is incorporated by  
8 reference in the short form.

9 MR. SHKOLNIK: Yes.

10 THE COURT: A plaintiff actually files it by -- what  
11 you're doing if you filed the short form with your specific  
12 information filled in, any additional claims or additional  
13 defendants that are not previously -- no one is foreclosed  
14 from adding claims, parties.

15 MR. SHKOLNIK: No. In the usual context as we see it  
16 is someone wants to sue a doctor in a pharmaceutical case.  
17 And generally, people aren't naming doctors in all the cases.  
18 But some plaintiff may say they want Dr. Jones in their case.  
19 They're added as a party. And separate claims are then put  
20 into the box in additional pages.

21 THE COURT: Exactly.

22 MR. SHKOLNIK: So no one's ever foreclosed of  
23 additional claims or additional parties where necessary.

24 THE COURT: Okay.

25 MR. SHKOLNIK: And there was one other point counsel

1 made regarding the plaintiffs' fact sheet. We believe that  
2 the plaintiffs' fact sheet, which is monstrous in this case,  
3 will cover the CERCLA claims as well.

4 THE COURT: Oh.

5 MR. SHKOLNIK: If they don't, we will discuss that  
6 with counsel between now and the 7th and make sure if there is  
7 some changes that are needed specific to that CERCLA claim, we  
8 would do the same process as the defendants if they have  
9 problems with the Genesee County plaintiff fact sheet and just  
10 add it as one of our current sections, highlighted sections,  
11 and have a letter explaining why.

12 THE COURT: Okay. And then one further thing. So  
13 let's just assume -- and I'll hear from all the defendants --  
14 but should the Court grant the motion and for instance Mr.  
15 Sanders on behalf of Walters would then file the master  
16 complaint with the short form? Or is the master complaint  
17 filed on one docket entry and then referred to in each of the  
18 short --

19 MR. SHKOLNIK: There would be -- I should say our  
20 suggestion is that there would be a pretrial order or case  
21 management order adopting the form complaint and the checkoff  
22 complaint. No one then has to do more than refer to --

23 THE COURT: I see.

24 MR. SHKOLNIK: And in the checkout complaint, it will  
25 refer to the docket number of the master.

1 THE COURT: Got it.

2 MR. SHKOLNIK: And so all you do, as if you're filing  
3 your own complaint, you're just doing a three-page document  
4 instead of a -- or a four-page document instead of a 200-page  
5 document.

6 THE COURT: Okay. All right. And how would  
7 subsequent counsel find out about this?

8 MR. SHKOLNIK: Well, we would suggest that  
9 notification -- it's something we all talked about, we should  
10 be putting together and assist the Court with a notification  
11 page about this mass tort where the Court's CMO's and orders  
12 are all listed. And this would be one and there would be  
13 reference to the master complaint and checkoff complaints in  
14 it.

15 THE COURT: Okay. So there would be a link on the  
16 Eastern District's website that members of the public could  
17 get access to --

18 MR. SHKOLNIK: Yes.

19 THE COURT: -- that would have the case management  
20 orders. The master complaint would be available to be  
21 reviewed there.

22 MR. SHKOLNIK: And the same with even the class  
23 master complaint. I'm sure people in the public have a right  
24 to know. And it's there and it keeps the public -- and  
25 especially in a case of this nature where a lot of people want

1 to know what's going on. It helps them follow along with what  
2 we're doing.

3 THE COURT: Okay. All right. Thank you.

4 MR. SHKOLNIK: Thank you, your Honor.

5 THE COURT: Okay. Who would like to begin? I think  
6 we have Mr. Campbell.

7 MR. CAMPBELL: I was nominated by the other  
8 defendants.

9 THE COURT: Okay.

10 MR. CAMPBELL: Good morning or afternoon, Judge.

11 THE COURT: Good morning.

12 MR. CAMPBELL: James Campbell. I represent the North  
13 American Veolia entities. I just have a few brief comments.  
14 And I think they mostly go to some of the questions that your  
15 Honor was asking about how this process is going to work.

16 And one of the issues that I think needs to be  
17 decided was what was just raised by Mr. Sanders. And that is  
18 how is the existing cases that have been filed and maybe  
19 briefed, how does that -- how do we address that? Whether we  
20 leave them alone or they fold somehow into this process.

21 THE COURT: I think that they need to be brought into  
22 this process. If the purpose of this is a combination of  
23 judicial efficiency and ability to manage a complex piece of  
24 litigation, then it would not be helpful to have 50 cases that  
25 are not a part of it and then 10,000 that are, or something,

1 or 1,000.

2 It seems to me its value is in creating a uniform  
3 process for adjudicating claims and understanding what the  
4 claims are. So I would think we need to have it apply to all  
5 pending cases.

6 MR. CAMPBELL: And we agree, your Honor.

7 THE COURT: Okay.

8 MR. CAMPBELL: And one of the things that we put in  
9 the briefing was in order for this process to work -- and I  
10 don't perceive or understand that there's any dispute to this  
11 or controversy to this. But as we get new plaintiffs and new  
12 plaintiffs' lawyers even to the process that the master  
13 complaint and short form complaint is the process by which  
14 they're filed here.

15 Now, what we'd like to make sure that we avoid is  
16 that we have 10,000 people or claimants and lawyers following  
17 the process. And then someone who perhaps is new to the  
18 courtroom files it in the traditional way. That wouldn't be  
19 helpful and would be outside the process.

20 THE COURT: It wouldn't be helpful to the defendants  
21 and it wouldn't be helpful to me. And I don't even think it  
22 would be helpful to the individual plaintiffs in those cases  
23 if their lawyers chose to do that.

24 So what I would envision is working out a short  
25 friendly order that instructs newly filed cases that this is

1 the process. And it would provide a link.

2 MR. CAMPBELL: Very good.

3 THE COURT: Yeah.

4 MR. CAMPBELL: And one of the other issues that we  
5 had in our brief was also somewhat highlighted by Mr. Sanders.  
6 And that is we have a lengthy master complaint. And that's  
7 fine. It has many, many pages and many, many paragraphs and  
8 the like. And that's all fine.

9 We are here before your Honor for the third or fourth  
10 time. And I think the lawyers and the claimants in the cases  
11 know what the potential counts of the complaint are. We have  
12 an example here with this CERCLA claim that may or may not get  
13 added to the master complaint and that's fine.

14 But my point would be at some point, your Honor, when  
15 -- assuming that you do adopt the master complaint and short  
16 form complaint process, that we have a briefing schedule that  
17 will be motions to dismiss some of the complaints.

18 Some of the counts of the complaint have been  
19 addressed by your Honor in, for instance, the Guertin case.  
20 And we'll see how that all plays out. We need a briefing  
21 schedule. But I also suggest, your Honor, that we should have  
22 a date by which any amendments to the master complaint are  
23 made so that we know what we're dealing with. And not two  
24 years from now there's something that, perhaps, could have  
25 been added now that gets added.

1           And I'm not at all suggesting contrary to what you  
2 spoke about earlier. But there is a certain level of let's  
3 figure out where we're at, what the counts are. And absent  
4 good cause, which I think would be in federal rules for an  
5 amendment.

6           THE COURT: Right.

7           MR. CAMPBELL: That would be the standard. And that  
8 is what we would suggest. Again, this goes to the issue of we  
9 have 10,000 individual complaints. And this would focus us, I  
10 believe.

11           And then my most important point and finally, your  
12 Honor, is this, the short form complaint, the master complaint  
13 now we understand is an administrative filing, meaning that's  
14 what plaintiffs are going to draw from for the complaints.

15           And in the short form complaint, we have the  
16 individuals serving certain defendants and moving forward  
17 individually. The short form complaint that was provided to  
18 your Honor or filed with the motion we believe needs some work  
19 and some additional information.

20           I spoke to Mr. Stern about this in the hallway. And  
21 what I would propose is that, again, December 7th is a real  
22 busy day. But I think we can advise as to what we perceive  
23 might be things that are needed in that complaint. You know,  
24 meeting --

25           THE COURT: But what -- in some ways your response

1 brief would have been an opportunity to tell me about that.

2 MR. CAMPBELL: It's in there.

3 THE COURT: Well, I read your response. And it  
4 confused me a little bit in that it was talking about the  
5 master complaint being sort of too detailed. I think you did  
6 say this in the short form --

7 MR. CAMPBELL: The top of page 4.

8 THE COURT: Yeah. Short form -- okay. Let me look  
9 at page 4. Hold on. You're looking at an existing --

10 MR. CAMPBELL: Yes. Nope, that's the admission. Oh,  
11 I'm sorry. It's at the bottom of page 3, your Honor.

12 THE COURT: But let's just look at this first  
13 paragraph. Third, the existing plaintiff should be required  
14 to identify in their short form complaint the allegations and  
15 causes of action and along with the master complaint that they  
16 intend to adopt. And I think that's exactly what it does.

17 MR. CAMPBELL: Yes.

18 THE COURT: Okay.

19 MR. CAMPBELL: I misquoted you, your Honor.

20 THE COURT: Oh.

21 MR. CAMPBELL: Where we point out that the short form  
22 complaint might need some additional information regarding  
23 exposure, injury --

24 THE COURT: Oh, I see.

25 MR. CAMPBELL: It's at the bottom of page 3. I



1 apologize.

2 THE COURT: Oh, bottom of page 3. Okay. Yeah, so --

3 MR. CAMPBELL: I can offer some examples. We're  
4 dealing, I believe, in the individual complaints with some  
5 minors, some adults, some businesses.

6 THE COURT: Yes.

7 MR. CAMPBELL: Some LLCs. Not all the plaintiffs are  
8 going to fit the short form that was provided, at least as I  
9 read it, your Honor. So there should be some mechanism in the  
10 short form complaint by which a plaintiff discloses, you know,  
11 certain basic things about the claim. How they were exposed,  
12 where they lived in Flint, how long they lived in Flint.

13 THE COURT: Question 7, plaintiffs lived in Flint,  
14 Michigan from approximately blank until blank. But you're  
15 right --

16 MR. CAMPBELL: That's the only piece.

17 THE COURT: Yeah. That doesn't say if it's a  
18 company, plaintiff was operating from blank until blank and  
19 lost business or --

20 MR. CAMPBELL: Or what the injury is, the exposure.

21 THE COURT: We have boxes for economic loss and  
22 property damage. But I think that number 3 would need to be  
23 expanded.

24 MR. STERN: Judge, we're happy to work with Mr.  
25 Campbell and anybody else on an appropriate short form

1 complaint to the extent there may be deficiencies in the one  
2 that was proposed.

3 THE COURT: Yeah. Well, thank you, for pointing out  
4 that it was in your brief. And I think you're right that  
5 there -- this appears to be designed for an individual or a  
6 family member or a child, and less so for property claims and  
7 lost economics -- or economic damages. So I think that would  
8 need to be added.

9 MR. CAMPBELL: Thank you, your Honor. Those are all  
10 -- unless you have any questions for me, those are all the  
11 points I want to make.

12 THE COURT: No. That's very helpful. Thank you.  
13 Mr. Klein?

14 MR. KLEIN: I wasn't sure if it was still good  
15 morning or good afternoon.

16 THE COURT: It's afternoon.

17 MR. KLEIN: Okay. Good afternoon, your Honor.  
18 First, I prepared a demonstrative that I expect to use. Can I  
19 hand a copy up to the Court?

20 THE COURT: Sure. Is it the Judge Battani?

21 MR. KLEIN: Well, no.

22 THE COURT: Oh.

23 MR. KLEIN: That was an exhibit to the complaint or  
24 to the motion.

25 THE COURT: Thank you.

1 MR. KLEIN: And I'll have copies, although certainly  
2 not enough for everyone to share. Your Honor, I appreciate  
3 that it appears you're inclined to go down the short form  
4 complaint route, master complaint, short form complaint. But  
5 I'm hoping to persuade you that it is not the efficient quick  
6 way.

7 THE COURT: Let me be sure that -- what I understand  
8 is your brief was suggesting is that the Levy Konigsberg  
9 cases, that they be consolidated and adjudicated and that  
10 there be a schedule to complete handling the motions to  
11 dismiss in the pending -- the two pending cases that are fully  
12 briefed.

13 MR. KLEIN: That's correct. And I note that and I  
14 see -- I won't even bother to explain it, because I see it's  
15 too small for anyone to actually see.

16 THE COURT: But I think that's your point.

17 MR. KLEIN: Well, that's one of the points. There's  
18 several. For example, Alexander is fully briefed except that  
19 some people still have to file reply briefs. That's the one  
20 case that has a CERCLA claim. That's the only one.

21 As we see it -- and if I can just briefly explain the  
22 -- what I've given you. There are five -- we think there are  
23 between the two previously decided cases, Guertin -- and if  
24 I'm mispronouncing that, forgive me -- McMillian. And then  
25 three additional cases, Alexander and then I use Gulla and

1 Wells as stand ins for the potential consolidated complaint of  
2 the Stern and -- Mr. Stern and Mr. Shkolnik's clients because  
3 they are brought by those respective parties.

4 We cover all of the issues in all of the complaints.  
5 I mean, the access, of course, indicate that claims are raised  
6 and -- go ahead.

7 THE COURT: So your point is that it's not necessary  
8 to be efficient. Because I could use this chart and then if I  
9 enter an order on equal protection or CERCLA, I can just look  
10 on the chart or make my own chart. And then I could just  
11 enter the order in those cases.

12 MR. KLEIN: Well, I think plaintiffs in the other  
13 cases would have -- would need an opportunity to be heard.

14 THE COURT: To be heard, yes.

15 MR. KLEIN: However, and that's the reason that I've  
16 attached the judgment in the order. The point of that is is  
17 after a couple of essentially repetitive motions where she  
18 already ruled, she entered an order, just tell me something's  
19 new.

20 THE COURT: Yeah. Tell me something I don't know.

21 MR. KLEIN: That's exactly right. So it's not that  
22 it's a matter of res judicata, the order you enter in  
23 Alexander is binding in any one of the other cases. But as a  
24 practical matter in both directions, both as to the claims  
25 that survive and the claims that don't survive. You know,

1 it's all over with the technicalities in terms of what's going  
2 to survive a motion to dismiss.

3 Here is the reason why I think it's more efficient.  
4 Going back to your very first question to Mr. Shkolnik, what  
5 is it that you're proposing. He says it's an administrative  
6 device only. Well, and I'm not going to repeat my brief  
7 because I think it's pretty thorough.

8 But the law is pretty clear that an administrative  
9 device is an administrative device, not a pleading. And  
10 therefore, there's nothing to -- we can't move to dismiss it.  
11 And I would --

12 THE COURT: Here's the thing. I read your brief and  
13 what I think you might be missing or maybe I'm jumping to  
14 conclusions that aren't warranted, but when it's filed, no one  
15 can move -- it doesn't have a plaintiff. And it hasn't been  
16 served on anyone. But once the short form incorporates it  
17 with the boxes checked, then those combined become a lawsuit.  
18 Is that --

19 MR. KLEIN: If they are, in fact, adopting the  
20 complaint, I mean the Sixth Circuit in the Refrigerant  
21 Compressors case differentiates between administrative  
22 complaints -- and I forget the label they use, but adoptive  
23 complaints where it actually becomes a superseded pleading.

24 If the intent is that the combination of the master  
25 complaint and the short form complaint supercedes all prior

1 pleadings and all future pleadings for that matter, then I  
2 agree with you that there is a pleading that -- but their  
3 recurrent reference including a few minutes ago to this is  
4 simply an administrative device at least causes me confusion.  
5 And I won't speak for them.

6 THE COURT: We'll clear it up. Let's just ask Mr.  
7 Shkolnik. Is my understanding correct or is there something  
8 you can do to help me understand?

9 The master complaint would be filed when the short  
10 form is filed that incorporates it by reference and checks off  
11 the boxes that are relevant. That's the lawsuit.

12 MR. SHKOLNIK: Now you have a lawsuit.

13 THE COURT: Yeah.

14 MR. SHKOLNIK: Exactly. And the perfect example, I  
15 think counsel, one of the sets of papers -- I don't have it in  
16 front of me -- cited to either NuvaRing case or another case  
17 both of which happen to have been mine.

18 In that case, the defendants wanted a master  
19 complaint but no one ever had any intention of adopting it.  
20 The court said until someone adopts it, I can't do anything  
21 with it. And it's correct.

22 But in this case, as soon as this Court issues its  
23 order -- if it does -- allowing for an adoption, I can -- and  
24 also the parties have to amend to include it -- all cases are  
25 to be amended in accordance with the master complaint,

1 immediately you're going to have all of the cases already on  
2 file being operative cases as well as all the ones I know my  
3 office is going to file. Mr. Stern as well as I think a lot  
4 of people who aren't defense lawyers in the back of the room  
5 are going to be filing.

6 THE COURT: Okay.

7 MR. KLEIN: I would agree if it is, in fact,  
8 superseding, then that concern goes away.

9 THE COURT: Yes.

10 MR. KLEIN: It was less than clear up until now.

11 THE COURT: Fair enough. But now it's clear.

12 MR. KLEIN: Putting that aside, it is still our  
13 belief that the process for going forward is certainly quicker  
14 and more efficient to take a short group -- short set of  
15 cases. And as I say, we think it can be done with three cases  
16 which will cover all of the issues as opposed to waiting for  
17 thousands of short form complaints to come in before there's  
18 something to file a motion to dismiss. The --

19 THE COURT: And let's stop there. Because I think  
20 you raise an important point. And I don't think that I will  
21 be sitting here waiting until this statute runs on the last  
22 case. I don't even know when that will be. But so that won't  
23 happen.

24 And there is -- there are the cases, the two that  
25 you're referencing that are fully briefed. And so I guess

1 what I'm going to turn back to is the plaintiffs' liaison  
2 counsel and ask them what timeframe they would anticipate the  
3 Court should set for the pending cases to be superseded with a  
4 master and short form. So let me do that right now.

5 MR. SHKOLNIK: Your Honor, we would suggest that with  
6 the entry of the master and short form that there is an order  
7 that incorporates an amendment immediately and you set a  
8 briefing schedule for either answering or --

9 THE COURT: But how long do you think is appropriate  
10 for filing it? For currently pending. So for Mr. Sanders to  
11 have an opportunity to review and consider it --

12 MR. SHKOLNIK: 30 days, your Honor.

13 THE COURT: -- and to file. Okay.

14 MR. KLEIN: Your Honor --

15 MR. SHKOLNIK: And then we start -- then we have the  
16 briefing scheduled for the defendants however time they need  
17 to file their master motion to dismiss.

18 THE COURT: Okay.

19 MR. SHKOLNIK: And response. We're talking  
20 springtime at this point for everything. Maybe a month behind  
21 or so behind the class action case.

22 THE COURT: Okay.

23 MR. KLEIN: Your Honor, that's just not right.

24 THE COURT: Why not?

25 MR. KLEIN: Because until short form complaints are



1 filed, you still have this endless -- we're moving to dismiss  
2 no one.

3 THE COURT: No, we're talking in 30 days. I'll do it  
4 all at once. I'll get -- once I have a final master complaint  
5 and short form, I will get them filed and set forth a case  
6 management order that will provide 30 days for the pending  
7 cases to amend their complaints to this format.

8 MR. KLEIN: Well, I mean, if what Mr. Shkolnik is  
9 telling you is that within 30 days he can have thousands of  
10 short form complaints filed --

11 THE COURT: No, I don't think he said that. I don't  
12 know if he did. But what I asked about was the current  
13 plaintiffs who are in this case and their lawyers. And the  
14 others, they'll do whatever they want. I can't concern myself  
15 with them right now other than to be apprised of the fact that  
16 more cases are likely to come in and I should be aware of that  
17 in terms of the work that I'm doing.

18 MR. KLEIN: But then we're in the same place in terms  
19 of the first question you asked me. So first of all, I  
20 believe last time I heard that between them they represent  
21 thousands of individuals.

22 THE COURT: I heard that, too.

23 MR. KLEIN: So again we're talking -- even putting  
24 aside other counsel in the cases, we're talking about  
25 thousands of short form complaints. But I don't envy him the

1 next month if he says he can do it within 30 days. But if --

2 THE COURT: I don't think a short form complaint has  
3 to be one plaintiff. You can have multiple plaintiffs.

4 MR. KLEIN: I agree there have been multiple  
5 plaintiffs --

6 MR. SHKOLNIK: Just to respond to that point. No  
7 one's suggesting that thousands of new cases that are on file  
8 are going to be filed in 30 days.

9 THE COURT: No.

10 MR. SHKOLNIK: We know there's a group that are on  
11 file. And I know from my office the operative date, my office  
12 will file some just to make it an operative complaint in a new  
13 case as well. I'm sure Mr. Stern and other plaintiffs will.

14 But that is -- as long as one, one case is filed, the  
15 Court now has a master complaint that is an operative  
16 complaint that can kick in the briefing schedule. I think  
17 that's what the Court has been suggesting.

18 MR. KLEIN: But this is -- if there's one master, if  
19 there's one short form complaint filed, it binds only that  
20 single person. It has the same issue that you raised with  
21 respect to this limited set of complaints.

22 We can -- if Jones files a short form complaint and  
23 Smith hasn't yet, the fact that you dismiss counts against  
24 Jones doesn't bind Smith any more than if you dismiss counts  
25 against Alexander. It binds Meeks. We need to have --

1 there's no efficiency if all we're doing is shooting at one  
2 plaintiff in essence in one case.

3 THE COURT: Well, the efficiencies I think have yet  
4 to be revealed entirely. But as I read some of the cases,  
5 there is an efficiency in managing and understanding what  
6 claims are pending.

7 And I had an intern over the summer who I asked to  
8 try to figure that out. And she was going into her second  
9 year of law school. But what we found is that she wrote  
10 substantive due processes in one. And then she would actually  
11 write the substantive due process claim in the other one. And  
12 I wouldn't know it's the same as the first because it wasn't  
13 articulated in the same way. And she did exactly what I asked  
14 her to do and she did a great job at it.

15 But if we could not tell what claims overlapped and  
16 what didn't and how to manage the litigation, so this will  
17 assist me if no one else.

18 MR. KLEIN: You're talking about the chart?

19 THE COURT: The chart -- I mean, having --

20 MR. KLEIN: I mean, that's what that was an attempt  
21 to do.

22 THE COURT: No. I appreciate that. And all the  
23 charts that are given to me , I use. But so don't hesitate to  
24 provide charts. But if the chart is not convincing me that  
25 the master individual complaint would not be helpful.

1 MR. KLEIN: Let me just add one more thing. And I  
2 think -- well, two more things. One, we share in the concerns  
3 -- more than share in the concerns regarding the adequacy of  
4 the short form complaint.

5 THE COURT: Okay.

6 MR. KLEIN: Which necessarily is further going to  
7 delay things but --

8 THE COURT: Can you identify what you think needs to  
9 be amplified in it?

10 MR. KLEIN: Absolutely. Vickie, if you can pull up  
11 the PDF. And again, I didn't bring extra copies.

12 THE COURT: Because if I want anything, I want it to  
13 be in the best possible shape it can be in so that we don't  
14 get a year into this and find out there needed to be an  
15 amendment.

16 MR. KLEIN: So this is the more, in my mind, the most  
17 glaring failure. If you can scroll through into the next  
18 highlighting. And I'm not sure if the Court can -- go back.

19 THE COURT: I can look at it here.

20 MR. KLEIN: All that they tell us, Flint water  
21 exposure is Roman numeral 3. Plaintiffs lived in Flint from  
22 date X to date Y. That's everything we know. That is for  
23 reasons I touched on last time. And I think the State may  
24 elaborate on a little bit more.

25 There is a relatively small portion of the people in

1 Flint who received -- who received water with excessive lead  
2 levels.

3 THE COURT: Okay.

4 MR. KLEIN: It tells and they need a good faith basis  
5 and it needs to be in the pleading to survive Twombly in our  
6 mind to be able to allege that, in fact, they consumed water  
7 with excessive lead levels. And they need to be able to say  
8 that as a result we suffered injuries.

9 That's entirely -- the fact that you lived in Flint  
10 proves nothing. It's not a reasonable inference for the fact  
11 that you lived in Flint --

12 THE COURT: Depending on your claim. If your claim  
13 is lead poisoning, that's one thing. If your claim is that  
14 the value of your house has gone down, you may not need to  
15 have consumed water if your claim is that you -- there's a lot  
16 of different kinds of claims.

17 MR. KLEIN: I would agree with that point. But  
18 certainly the primary claim in my mind that we're facing is I  
19 consumed bad water and I suffered injuries as a result. You  
20 know, maybe plaintiffs might disagree. But in any case,  
21 that's certainly a claim.

22 The check box in the short form complaint -- and  
23 again, I didn't think to bring a copy of it here. The simple  
24 check box of all we know is personal injury, property damage,  
25 economic damages, and there was one other I forget --

1 THE COURT: Emotional damages.

2 MR. KLEIN: Emotional distress. That's pretty thin  
3 information to understand what the complaints are here.  
4 Forgive me, I'm going to -- since I didn't bring my own copy  
5 up, I'm going to ask Vickie to scroll to the next -- again,  
6 scroll to the next one.

7 And this may be -- I see it as a bug. The Court may  
8 see it as a feature, the fact that in essence we have the  
9 master complaint but there's carte blanche to effectively  
10 amend it by having this open ended add your own claims. That  
11 defeats some of the purpose. But in truth -- the lack of  
12 information -- the lack of an allegation --

13 THE COURT: But I can't sit here as a United States  
14 District Court Judge and tell people that if you believe you  
15 have an injury stemming from the water situation in Flint,  
16 your only course of action is to sign on to what exists.

17 MR. KLEIN: I appreciate that. And I would -- and  
18 you know, as I'm talking, I think certainly the most important  
19 failing is the only allegation being I lived in Flint.

20 THE COURT: Okay.

21 MR. KLEIN: The only connection. And there was  
22 discussion before that we can work with defense counsel about  
23 possibly revising the short form complaint. And you know,  
24 we'll see where that goes. But that would be -- and then the  
25 final point I wanted to make --

1 THE COURT: What we have is paragraph 21, paragraph  
2 22 of the proposed master complaint that describe the kinds of  
3 personal injuries that the plaintiffs may have suffered.

4 MR. KLEIN: Well, yeah. And you know, that's  
5 different from knowing what a plaintiff is talking about.

6 THE COURT: Okay. Mr. Stern?

7 MR. STERN: But Judge, that's why we have fact sheets  
8 that are 20 pages long that everyone's making a very big deal  
9 about the sum and substance of because you can't read a short  
10 form complaint without in conjunction reading the fact sheet  
11 associated with it. And since it's a notice pleading, there's  
12 not a higher standard because it's a short form complaint.

13 THE COURT: Right. And so Mr. Klein, what you're on  
14 notice of in the master complaint is the range of injuries.  
15 And it's listed here in several -- physical pain and  
16 suffering, mental anguish, fright, shock, you know, all of  
17 that.

18 And so you know what the ballpark is that you're  
19 dealing with. Then you get a checkmark of personal injury,  
20 property damage, economic loss, and emotional damage. And  
21 then, as Mr. Stern is pointing out, you get a detailed fact  
22 sheet that would be significantly beyond what would be an  
23 approval.

24 MR. KLEIN: I'll assume that that's true. But now we  
25 have yet another delay before we have something to shoot at on

1 a motion to dismiss, versus we need the short form complaints  
2 and the fact sheets or we are going to be dealing with Twombly  
3 issues on the motion to dismiss because we don't believe that  
4 the short form complaints and the master complaint are  
5 sufficient to raise a plausible allegation. I'm not arguing  
6 the Twombly motion now.

7 THE COURT: Are you -- no, no, no. It's not pending.  
8 But let's just hypothetically you get this short form. You've  
9 got paragraphs 21 and 22 that -- which is what you'd see in a  
10 personal injury case anyway. You're suggesting that what else  
11 would you need?

12 If somebody says that they lived in Flint, Michigan  
13 from 1988 to the present and they've got their address --  
14 somewhere it's going to be in here. Whatever. And that they  
15 were exposed to the water. And that they have personal  
16 injuries. And we know that the personal injury is going to be  
17 health problems, physical pain, skin, digestive, etc.

18 What else would you see in an average complaint that  
19 would survive a motion to dismiss?

20 MR. KLEIN: If every person to the master complaint  
21 is making -- or every person who submits a short form  
22 complaint is making a Rule 11 representation in the fact that  
23 they were exposed to water with excessive lead levels, then,  
24 you know, perhaps that would be sufficient.

25 THE COURT: I see. So you're thinking that people



1 will be going to the lawyers hoping for recovery. People do  
2 that.

3 MR. KLEIN: I don't begrudge them that.

4 THE COURT: Yeah. I mean, this is the world we live  
5 in. And so if somebody would go up to Shkolnik and say, hey,  
6 Shkolnik, I want in. And then would check off personal injury  
7 and might not have actual -- and might have had brand new  
8 pipes that somehow did not -- were not involved in the  
9 situation we're here to address.

10 MR. KLEIN: I mean, it's far more --

11 THE COURT: And that's more likely to happen with the  
12 short form complaint than if we didn't do it. If they just  
13 went hey, Shkolnik, hey, Stern, file a lawsuit for me, that  
14 this would just make it more likely to happen?

15 MR. KLEIN: Yes. I do think when we're getting  
16 essentially rubber stamped short form complaints with a broad  
17 allegation that they were exposed to water, you know, that --  
18 I question whether -- given what I know about the actual  
19 incidents of lead in the water -- and I think the State may  
20 have a little more meat to put on these bones.

21 THE COURT: Okay.

22 MR. KLEIN: I question that. But of course I don't  
23 know for sure.

24 Just one final point and then I will sit down, which  
25 is the City is not opposed to a master complaint. The City's

1 position is the master complaint should follow the disposition  
2 of the three cases.

3 At the point that we know what's in play, then, yes,  
4 a master complaint probably makes sense. But we think going  
5 that route at this time as opposed to working through a  
6 limited number -- three motions to dismiss on three cases --

7 THE COURT: I see.

8 MR. KLEIN: -- is just the faster route to get there.

9 THE COURT: Okay. Well, thank you, very much. Mr.  
10 Mason?

11 MR. MASON: Wayne Mason, your Honor. Thank you.  
12 There's a reason why it's called complex litigation, right?

13 THE COURT: Yeah.

14 MR. MASON: Reality here is that we are trying to, as  
15 the manual on complex litigation discusses, for each case that  
16 is complex like this is to formulate things that make sense,  
17 to simplify, and what makes sense for this case.

18 We've got some experience through the State Court  
19 with Mr. Stern in doing this, in having some guidance as to  
20 when the short form claims can be filed. We can tweak that.  
21 People can weigh in on that. Put some guidance on that is  
22 appropriate. But it's already working there in terms of this.

23 Now, we did find from a short form complaint there  
24 that maybe there should be some tweaks. Rather than try as a  
25 group to figure that out all out now, I know your Honor wanted

1 some samplings of what the concerns were. But Mr. Stern, Mr.  
2 Shkolnik are willing to work with us and I think we can sort  
3 that out.

4 The big picture here is there's no perfect answer.  
5 It's not like a specific case. And what we are needing is a  
6 pleading that makes sense ultimately in a short form that  
7 could be moved upon. But also the comment was made about the  
8 supplementation of the fact sheets which could provide more  
9 meat on the bone. So it's a process in these complex cases  
10 like that to do that that can work.

11 Now, I don't oppose Mr. Klein said maybe we should  
12 have the motions heard first. Your Honor can make that  
13 decision. And we shouldn't have to -- the idea is if the  
14 master complaint is filed and then there's a date by which  
15 people have to do their short form, then it's -- to go back to  
16 his metaphor -- Jones and Smith, you would move against Jones  
17 and Smith and perhaps 10,000 others, once.

18 And so there is a mechanism to do that. There's also  
19 a mechanism that I think we can work with the Court on that  
20 existing motions don't have to all be re-briefed and things  
21 like that.

22 THE COURT: Right.

23 MR. MASON: And so I feel like we're losing the big  
24 picture here that this is an attempt to streamline that is not  
25 to prejudice people, to allow people to move. And we're one

1 of them that might likely move on the pleadings. But there is  
2 a mechanism in place. And I think if we have the opportunity  
3 to work with counsel on the short form, we can get more  
4 information than right now as proposed but not make it so  
5 burdensome.

6 I agree with Mr. Stern. His people shouldn't have to  
7 redo all this that he's done in State Court. And so I think  
8 we can work through this. Thank you.

9 THE COURT: Okay. Well, thank you. Ms. Bettenhausen  
10 or does someone from the State -- okay.

11 MR. LARSEN: Good afternoon, your Honor. Zach  
12 Larsen, on behalf of State defendants.

13 THE COURT: Thank you.

14 MR. LARSEN: And just before I begin, I will say  
15 obviously by being here today we're not waiving our Eleventh  
16 Amendment immunity assertion as we've indicated at previous  
17 status conferences.

18 Two quick points and that is I think in general we're  
19 in a similar situation as the City in terms of what we've  
20 proposed. We think that the question presented by this motion  
21 for the Court is really where it wants to be in three months.

22 Whether in three months it's ready to issue  
23 dispositive rulings on these threshold questions on Rule 12  
24 motions that would address each of the now pending claims  
25 together with Guertin and McMillian decisions. Or whether in

1 three months it's simply ready to select which cases to  
2 proceed on in order to do that.

3 Again, like the City, we don't disagree that at some  
4 point this may be an efficient means of proceeding. We just  
5 don't think it's an efficient means of proceeding at this  
6 moment.

7 To get into a little bit of the detail on that, we  
8 are proposing the 31 cases from the Levy Konigsberg firm in  
9 using Walters as sort of bellwether, but all those being  
10 addressed at once.

11 And so between that and then Alexander and Gulla,  
12 which are already briefed or partially briefed, we think that  
13 this Court could be ready for oral arguments by early February  
14 on those three bellwether cases that would address directly 34  
15 of approximately -- we have 44 lead cases that are currently  
16 pending before the Court.

17 One of the things that that might do in terms of  
18 efficiency -- as this Court has indicated several times that  
19 its got its eyes on moving the ball forward -- is that we have  
20 right now briefing ongoing about the discovery issues  
21 involving the Eleventh Amendment, involving the Fifth  
22 Amendment.

23 This, I think, is a way to move forward by addressing  
24 these threshold issues in a manner that may, in fact, resolve  
25 some of those issues. And therefore, allow the parties then

1 subsequently to move more quickly on those particular  
2 concerns.

3 So getting then to the question of if the Court is  
4 inclined to at this point to put in place some sort of  
5 mechanism like what's been proposed, the City eluded to the  
6 question of how much detail is necessary in the short form  
7 complaint?

8 And from the discussion with the Court, I understand  
9 that the Court in some ways may be suggesting that the fact  
10 sheets would be included or incorporated into --

11 THE COURT: I'm not suggesting that because I don't  
12 know the answer to that. But I'm suggesting that it's an  
13 ongoing process simultaneously with the filing of these short  
14 form complaints.

15 MR. LARSEN: Sure.

16 THE COURT: And so it could certainly supplement --

17 MR. LARSEN: Sure.

18 THE COURT: -- what's there.

19 MR. LARSEN: Sure. Just to address the question of  
20 what would be necessary to make out a plausible injury here.  
21 We don't think it's sufficient simply to say I was a resident  
22 of Flint from this date to this date. And if you look back at  
23 the blood lead data, we've been collecting -- the State's been  
24 collecting since 1997 all of the blood lead testing. Any time  
25 there's a test it's reported to the State.

1           Back in 1998, 40 percent of children had elevated  
2 blood lead levels in Flint. In 2010, it was approximately 8  
3 percent or between 6 to 8 percent at different points in 2010  
4 had elevated blood lead levels. In 2014 and '15, we're  
5 talking the annual average for those years was 3.9 and 3.3  
6 percent, respectively.

7           So again, 95 percent of the children did not have  
8 elevated blood lead levels. That's the most vulnerable  
9 population. And so it's not simply enough to say I resided  
10 here. There needs to be something more in terms of factual  
11 allegations to make out a plausible injury.

12           Understanding that's something that can be addressed  
13 on a Rule 12 motion. Nonetheless, it would be helpful to  
14 incorporate specific facts regarding addresses, blood lead  
15 testing that's been done, or something indicative of water  
16 lead level, exposure.

17           The bottom line is that when you're talking about  
18 being infected by a toxin, dosage is important. The question  
19 of how much did you consume? What were you exposed to? And  
20 what health indicators you had that would confirm that.

21           So if the Court is to move forward, we would suggest  
22 that whether it's working it out over the next several weeks  
23 or whatever, the short form is sufficiently modified to  
24 identify individual indicators of health effects.

25           THE COURT: Okay.

1 MR. LARSEN: And that's really our main concerns. We  
2 join with the engineering defendants on the ways in which  
3 they've suggested this process can be improved if the Court is  
4 moving forward.

5 THE COURT: Okay. Well, let me get a response from  
6 Mr. Shkolnik regarding the request that there be a street  
7 address for where individuals lived, because people moved.

8 MR. SHKOLNIK: Your Honor, we wouldn't have an  
9 objection if that's one of the issues they want.

10 THE COURT: Okay.

11 MR. SHKOLNIK: A better identification for an  
12 address. These are minor issues that we can work over in the  
13 next couple of weeks to tighten up the checkoff complaint.

14 THE COURT: The address was one. But exposure to  
15 lead.

16 MR. SHKOLNIK: Well, I think the general allegation  
17 that you're living in a house here in Flint, that has been  
18 subjected to the water that is contaminated, the pipes in  
19 their house. Especially in a situation where the government  
20 were telling people they didn't have to test the children  
21 specifically at the time of the problem.

22 It's very interesting now how the government now  
23 wants the plaintiffs to say what was the blood lead level at  
24 the specific time they were telling their constituents not to  
25 test.



1           So I think they're begging the question, I think the  
2     plaintiffs will be put to their proof down the road on whether  
3     or not the children in a specific house were exposed to lead.  
4     We would have the pipes which they're removing which we'll be  
5     testing. We'll be looking at the pipes inside of the house  
6     which we may be removing and testing that'll show that the  
7     lead is leeching out.

8           And from our experts, we'll be able to say that every  
9     member of the family not only drank it, cooked with it, bathed  
10    with it, and showered with it, that we think we can get over  
11    our burden when it gets to the point of summary judgment.

12           But for the purpose of a master complaint, a checkoff  
13    complaint, the fact that we were living in the house, the  
14    house had the water problem, that that pipes were contaminated  
15    or corroded, that is sufficient to get over the hurdle.

16           THE COURT: And what about the argument that the  
17    Court -- during this time period that master complaint would  
18    be operative with the short form complaint. It seems that the  
19    defendants are saying that the Court should go forward at  
20    least with Walters, for instance. One of your cases.

21           MR. STERN: That's my case.

22           THE COURT: Oh, that's your case okay.

23           MR. STERN: They haven't even filed anything in  
24    Walters. Nothing happened. It was stayed per Judge O'Meara  
25    and your different rulings on Guertin and Mays. And so the

1 idea that now we should address Walters is the same that now  
2 we should address the short form complaints. Because other  
3 than filing an appearance, there hasn't been a motion filed in  
4 any of the 32 cases or 31 cases that I filed. So it's odd  
5 that --

6 THE COURT: I had understood, Mr. Klein, that you  
7 were saying that Walters, Gulla, that those are fully briefed  
8 dispositive motions just waiting for a hearing and a decision.

9 MR. KLEIN: I'm sorry. Alexander is briefed with the  
10 exception of some reply briefs.

11 THE COURT: But what about Walters?

12 MR. KLEIN: And Walters and --

13 THE COURT: But Alexander is an outlier in the sense  
14 of it's not got the core -- well, it brings to the Court's  
15 attention an issue that's not common to all of the other  
16 claims.

17 So I don't think that adjudicating Alexander with all  
18 respect to Mr. Sanders and his client who are seeking an  
19 adjudication and I respect that, but that's not going to move  
20 this whole process forward if it's only that case.

21 MR. KLEIN: Well, no. Two points, your Honor. One,  
22 it's not only a CERCLA claim. The reason we chose the  
23 Alexander because it's the one case that had CERCLA claim.

24 THE COURT: Yeah.

25 MR. KLEIN: So if we're going to deal with CERCLA, we

1 need an Alexander. But Alexander has section 1983 claims. It  
2 has contract related claims --

3 THE COURT: But saying Section 1983, that's not a  
4 cause of action. You have to tell me is it substantive due  
5 process. Tell me what portion of the constitution is being  
6 brought.

7 MR. KLEIN: It's bodily integrity State created  
8 danger.

9 THE COURT: Okay.

10 MR. KLEIN: They have claims under the Safe Drinking  
11 Water Act. They have a variety of state law tort claims.  
12 There's a lot of checks in the Alexander box.

13 THE COURT: Well, I guess I could be looking at your  
14 box.

15 MR. SHKOLNIK: Your Honor, to address the point I  
16 think you're making here. First and foremost, I think we have  
17 the defendants, specifically the City defendants, suggesting  
18 that no motions be made in our cases. They want it stayed.  
19 They wanted extensions way out. We cooperated. We gave  
20 extensions.

21 We're appointed by the Court as liaisons for the  
22 personal injury cases. They would like to have the Court  
23 decide motions briefed by attorneys -- and I know that the  
24 attorneys are all good attorneys. But we would like to weigh  
25 in on issues that predominate across the individual cases.

1 And we will certainly work with the attorneys who brief these  
2 motions.

3 But we would like just as the class attorneys did --  
4 and what's very interesting we're hearing a lot of  
5 protestations here, but there were a lot more motions fully  
6 briefed in the class cases. I was on them. Each one of the  
7 these counsels with class cases were on them. Fully briefed.

8 No one suggested, well, your Honor, go ahead and  
9 decide those and then we'll worry about a class complaint  
10 later. It's just not what's done.

11 THE COURT: I doubt that.

12 MR. SHKOLNIK: Well, maybe it was. Well, then it  
13 didn't hold water then.

14 THE COURT: No. Okay.

15 MR. SHKOLNIK: I'm sorry. I won't belabor the point.

16 THE COURT: No. Mr. Kuhl, I think you were trying to  
17 get my attention regarding this representation.

18 MR. KUHL: Yes, your Honor.

19 THE COURT: And no one here is sworn, has taken an  
20 oath to tell the truth or anything like that. So I don't want  
21 to get too far into the facts.

22 MR. KUHL: I completely understand that, your Honor.  
23 And I'm glad that there has not been an oath taken because it  
24 might have been violated. Which is that I have been involved  
25 in this matter far longer than just about anybody else. And I

1 have never seen a statement by anybody from the State that  
2 people should not get their blood lead levels tested.

3 THE COURT: Okay.

4 MR. KUHL: That has been the exact contrary as  
5 required under law for the vast majority of people in the  
6 State. And so I just wanted to correct that representation.  
7 Again, because it was such an outlandish statement.

8 THE COURT: Okay. Well, thank you. Okay. So here's  
9 --

10 MR. STERN: That's why we have trials.

11 THE COURT: Yeah. And I don't know whether what you  
12 were referring to as representations that are in the  
13 allegations that there's not a problem and you were taking  
14 that as if there's not a problem you don't need testing. I  
15 don't know. But I appreciate your remarks. Mr. Bolton?

16 MR. BOLTON: Your Honor, just a brief point on this  
17 issue as the Court's considering it.

18 THE COURT: Okay.

19 MR. BOLTON: And for the record, Jordan Bolton on  
20 behalf of Mr. Daniel Wyant and Mr. Bradley Wurfel. I think  
21 particularly with respect to Mr. Wurfel, the former  
22 Communications Director for the Michigan Department of  
23 Environmental Quality, he stands in a very unique position  
24 here in that the claims against him are solely based on  
25 allegedly wrongful statements that he made to the media.

1 THE COURT: Right.

2 MR. BOLTON: And so as a result, as your Honor is  
3 considering and as the Court's considering this master  
4 complaint process, the short form complaints, etc., I think  
5 it's important to consider that whereas, most of the other  
6 claims in the various cases are just simply based on the  
7 consumption of the water, with respect to Mr. Wurfel in  
8 particular, the claim is based on the consumption of media.

9 And so for each individual plaintiff, that's a very  
10 specific analysis. What media did they consume? When did  
11 they consume it? How did they consume it? What did they do  
12 in response to that? Was that reasonable and did that  
13 occasion damages? So I think that's just an important  
14 consideration for the Court.

15 THE COURT: Yeah. Well, as somebody else said, this  
16 is complex litigation. And that's a layer of complexity. But  
17 the alleged harm that each of the defendants is alleged to  
18 have committed, it varies. And we'll work all this out as we  
19 go forward.

20 MR. BOLTON: Understood, your Honor.

21 THE COURT: Yeah.

22 MS. JACKSON: Your Honor, Krista Jackson on behalf of  
23 the MDEQ defendants Busch, Shekter-Smith, Prysby, Cook, and  
24 Rosenthal. You know, we continue to oppose the master  
25 complaint at this time. We do believe that there are -- it

1 makes sense to at least have the motions go forward that are  
2 fully briefed. In addition, we think that there can be quick  
3 briefing on some of these cases that have not had the motions  
4 to dismiss filed. And sort of narrow what could be included  
5 in that master complaint.

6 Further, and forgive me if I missed something but --

7 THE COURT: No, no.

8 MS. JACKSON: -- I'm still a little confused as to  
9 how the motion to dismiss -- if the master complaint moves  
10 forward whether a motion to dismiss would be required in every  
11 case, whether there would be some sort of master motion to  
12 dismiss.

13 Because if it's in every case, I fail to see how that  
14 creates any additional efficiency. And you know, we have  
15 cases in which we believe that there are already statute of  
16 limitations issues.

17 THE COURT: Okay.

18 MS. JACKSON: And so that's going, you know, to have  
19 people joined in at this point. We want to make sure that  
20 none of those statute of limitations arguments are lost or  
21 waived.

22 Further, we have noticed that we have not been served  
23 in this case but that there's a case entitled Marble that has  
24 Legionnaires case claims.

25 THE COURT: It has only Legionnaires?

1 MS. JACKSON: I believe so. Again, we haven't been  
2 served.

3 THE COURT: Oh, it's not on the list.

4 MS. JACKSON: And so, you know, I want to sort of  
5 make sure that -- I believe that the Legionnaires cases would  
6 have to be dealt with separately. They certainly aren't going  
7 to fall into the master complaint as it's currently set forth.

8 THE COURT: Are -- let me ask you, does anyone here  
9 know if there are other cases that are only Legionnaires --  
10 Legionella based?

11 MR. SHKOLNIK: Your Honor, we don't know -- we can't  
12 answer that question. We know there are some lawyers that  
13 only have Legionnaires cases I believe in the state court. I  
14 don't know of any in federal court yet. But there may be.

15 MR. PITT: In the master class complaint, one of the  
16 class reps, a Legionella case, a death Legionella case.

17 THE COURT: Okay. Yeah. I saw that. What I'm  
18 trying to figure out is whether another judge might have that  
19 case, those cases. Mr. Washington?

20 MR. WASHINGTON: Judge, Val Washington. I have Mr.  
21 Lee who doesn't live in Flint, has never lived in Flint, and  
22 he developed Legionella because he traveled on his work route  
23 through Flint. And he works for Schwan, the home food  
24 delivery company.

25 And he has regular customers for 20 plus years and he



1 would sit in their homes. He would chat with them, he would  
2 give them their food. And then December of 2016, he's in the  
3 hospital for six days. And he's a pretty sick guy with the  
4 Legionnaires. So if you're asking do you have any that are  
5 only Legionnaires, you do.

6 THE COURT: Okay. And that's case number 30 on the  
7 list here, Lee versus City of Flint.

8 MR. WASHINGTON: Flint, that's right, Judge.

9 THE COURT: Well, thank you.

10 MR. WASHINGTON: Sure.

11 THE COURT: Mr. Shkolnik, the short form in the  
12 master complaint, does it include Legionnaires?

13 MR. SHKOLNIK: I just conferred with Mr. Stern and he  
14 said yes.

15 THE COURT: Yeah. That's what I thought. So that  
16 issue can be addressed.

17 MR. SHKOLNIK: Yes, your Honor.

18 THE COURT: Okay. All right. Well, I think we've  
19 exhausted ourselves -- I'll speak for myself -- on this issue.  
20 And I have, of course, read the briefs, listened to the  
21 argument, reviewed the relevant case law, and focused somewhat  
22 on the Montgomery versus Hoffmann-La Roche, Inc. case, a 2012  
23 Eastern District of Pennsylvania that adopted a required  
24 master long form complaint and short form complaint.

25 I've reviewed the manual on complex litigation. Many

1 of you quoted it for me and attached it, which is also  
2 helpful. And I think it would be very helpful to my  
3 adjudication and management of these cases to have that form  
4 used in this case. I appreciate what the defendants have  
5 identified as some deficiencies in the short form. And I  
6 would ask that a period of time be set aside so that those  
7 issues can be taken into consideration.

8 I don't know that I agree with the detail that Mr.  
9 Klein and others have -- were seeking that that level of  
10 detail was needed to survive a motion. But I think the  
11 address is needed, the fact -- well, let me go to -- where the  
12 plaintiffs lived I think is necessary.

13 Where their business was located is necessary, if  
14 it's a business. Where their property is, if it's a property  
15 owner who's alleging damage to the property or lost income.  
16 So I think paragraph 2 and paragraph 3 need to be expanded. I  
17 don't think they need to be expanded dramatically because we  
18 just wouldn't see that in a normal complaint anyway.

19 But I think we do need a little bit more information.  
20 Because even if -- you have question 6 is plaintiff's state of  
21 residence. And so somebody might be living in Oklahoma now,  
22 so that's fine. But then you have when they lived in Flint,  
23 Michigan. But not anything about -- somebody may be owning  
24 property in Michigan that lives in Oklahoma.

25 So I'm sympathetic to the defendant's needing a

1 little bit more clarity as to what the claims might be and  
2 whether they are plausibly claims that can be brought in this  
3 forum. So there needs to be some time to work that out.

4 MR. SHKOLNIK: We'll work that out. And since  
5 December 7th seems to be a little heavy, how about a week  
6 later, your Honor, December 14th?

7 THE COURT: I think that's a good idea. Because I'm  
8 not going to look at it all on the 8th. I'll be very busy.

9 MR. STERN: Your Honor?

10 THE COURT: Yes.

11 MR. STERN: Just not to continue the discussion. Two  
12 things, one I attended a hearing you had in the Guertin case  
13 months and months ago and there was an issue raised by the  
14 sufficiency of the pleading associated with the plaintiffs, I  
15 believe. I sat in the back and I heard it.

16 THE COURT: Oh, okay.

17 MR. STERN: And I believe that there's -- and I'll  
18 find it in the transcript from that hearing. But I believe  
19 that your Honor already ruled a little bit about the  
20 sufficiency of the pleading in the Guertin case in terms of  
21 how they allege who lived where and enough information about  
22 the plaintiffs. We'll use that in our conversations with the  
23 defendants.

24 THE COURT: Okay.

25 MR. STERN: And secondly, in the state court

1 litigation, what we've done for people -- for lawyers who have  
2 clients that are more than one, the amended case management  
3 order in the state court allows for consolidated short form  
4 complaint that attaches the names and information of all of  
5 the folks who are adopting it so that for efficiency purposes,  
6 individuals -- the Court's not being bombarded with a thousand  
7 new short form complaints, but it could be one short form  
8 complaint.

9 And obviously, whatever the information that's  
10 required of those individuals could be included in an  
11 addendum. So you know, as long as your Honor's okay -- I  
12 don't want to go down that track if you would prefer to have  
13 it --

14 THE COURT: Oh, no. I think that makes a lot of  
15 sense.

16 MR. STERN: Okay. Thank you, Judge.

17 THE COURT: And this needs to be a PDF fillable or a  
18 Word document?

19 MR. PITT: We can work on the logistics of a fill-in  
20 document.

21 THE COURT: Okay. A fill-in document seems to make  
22 more sense than a Word.

23 MR. SHKOLNIK: I'm not a technical person. But we  
24 have technical people that know how.

25 MR. STERN: We'll get Paul.

1 THE COURT: Who can do all that. Okay. Then why  
2 don't we make it Friday, December 15th. Because I'd rather  
3 get it right than get it done fast. Having said that I want  
4 things to keep moving along. It just causes more delays if we  
5 don't get it as close to right as possible.

6 But by December 15th I would also like a proposed  
7 schedule for adopting it. I will adopt it. I'm hereby  
8 ordering that I want to use the master complaint and short  
9 form complaint process. And I think it absolutely must apply  
10 to those that are currently pending as well as those that  
11 might be filed in the future. But I would like a proposed  
12 stipulated order for the timeframe that would be reasonable  
13 for those already existing cases to be re-filed or amended.

14 MR. SHKOLNIK: Or your Honor, another option I've  
15 seen in other MDL's where the court issues an order that the  
16 case is on file or have been deemed to be amended as of such  
17 and such a date. And then we direct the plaintiffs that they  
18 have to do the -- fill in the necessary information.

19 THE COURT: Okay. So it can be deemed amended for  
20 the purpose of starting the clock for the responses and  
21 motions.

22 MR. SHKOLNIK: For the motions.

23 THE COURT: And then time can be provided to actually  
24 fill it in.

25 MR. SHKOLNIK: Yes.

1 THE COURT: Okay. That appeals to me.

2 MR. KIM: Your Honor, I'm just trying to make sure I  
3 understand what the Court wants to do with the process. So  
4 the plaintiffs would file their master complaint or whatever,  
5 file a version of that by the 15th. And we would -- and the  
6 Court would then issue an order deeming it adopted by all the  
7 pending actions.

8 When you say start the clock for responses, would we  
9 then -- I mean, we would still need the short form complaints  
10 that would have to be subsequently filed in order for us to --

11 THE COURT: No. For -- yeah.

12 MR. KIM: So I'm just kind of confused, your Honor.

13 MR. SHKOLNIK: We would have the obligation of  
14 notifying the ones that the cases are on file that they have  
15 the 30 days that the Court set to do the proper filing. And  
16 then the dates will kick in. We'll have that in our  
17 scheduling order.

18 THE COURT: But the dates kick in from when the  
19 current plaintiffs adopt the short form or from when I say I'm  
20 deeming --

21 MR. SHKOLNIK: From when they adopt.

22 THE COURT: When they adopt.

23 MR. SHKOLNIK: The purpose of the motion is just so  
24 these parties are -- they're being directed that they must  
25 amend their complaint.

1 THE COURT: Okay.

2 MR. SHKOLNIK: That's just so that people can't sit  
3 back and say, well, I'm not going to do it. It's a directive  
4 that they have to.

5 THE COURT: Mr. Klein, you have a question?

6 MR. KLEIN: I'm not going to --

7 MR. KIM: I mean, I'm understanding essentially  
8 whatever response that we're -- you know, our motions based on  
9 the short form complaints are going to be based on whatever  
10 the deadline for them to adopt the short form complaints is.

11 MR. STERN: As previously stated, the master  
12 complaint is not an operative complaint. As Mr. Klein pointed  
13 out in his argument to the Court, it only becomes operative  
14 once it's adopted. And so there is nothing that can be  
15 answered or moved upon until such adoption occurs.

16 I believe that what the Court is suggesting is that  
17 she will order said cases to be amended by X date. And upon  
18 that date or there before, once an amendment occurs, that is a  
19 operative moment in time where the clock starts ticking to  
20 file something against it or answer on behalf of defendants.

21 THE COURT: Yeah. I think we got confused for a  
22 minute that I was going to deem everything amended. But I  
23 can't because I don't know exactly how the individuals -- what  
24 boxes they're going to check, so.

25 MR. KIM: Thank you, your Honor.

1 THE COURT: I think that answers.

2 MR. SHKOLNIK: And your Honor, we're also going to  
3 file cases literally on the date that you approve the form.

4 THE COURT: Okay.

5 MR. SHKOLNIK: So there will be a trigger date with  
6 proper boxes as to cases almost immediately, within probably  
7 I'm sure 24 hours. And those other plaintiffs are going to  
8 have to pursuant to court order amend and do their complaint  
9 by adoptions.

10 THE COURT: Does that answer your question, Mr. Kim?

11 MR. KIM: I believe so, your Honor.

12 THE COURT: Okay. Mr. Hart?

13 MR. HART: Your Honor, just listening to this  
14 discussion towards the end with what Mr. Stern said about  
15 filing one short form with a list of plaintiffs, it just  
16 occurs to me is each of the plaintiffs who file a short form  
17 complaint essentially file an individual lawsuit, will each  
18 one of those have a docket number? And will each one by  
19 filing something with the list of identified --

20 THE COURT: If there's a multiple plaintiff case,  
21 there will be one docket number and one filing fee for that  
22 case. But we'll need to know the plaintiff, plaintiff's  
23 spouse, if applicable. We'll need to have answers for each  
24 plaintiff, so.

25 MR. CAMPBELL: Your Honor, it's something that we can



1 work on for the 15th filing date. But it seems to me that  
2 with an individual short form complaint with an individual  
3 lawsuit that needs to identify certain individual pieces of  
4 information where they live etc.

5 I'm just, I guess, thinking out loud on Court time.  
6 How is it that we can achieve that with a single filing versus  
7 a short form complaint for every plaintiff?

8 MR. STERN: Well, it's easy. To the extent, you  
9 know, there's 31 cases that were on the chart that are Levy  
10 Konigsberg cases, which is my firm. But those 31 cases  
11 involve 13 -- 1,800 individuals who were named in each of  
12 those cases.

13 Not each one of those plaintiffs is going to file a  
14 short form complaint because not each one of those plaintiffs  
15 previously filed his or her own complaint. However, to the  
16 extent that a short form complaint is filed on behalf of all  
17 of the plaintiffs named in that complaint, each of those  
18 plaintiffs is going to be required to fill in certain  
19 information that meets the pleading standard that's required  
20 under the law. Or else we wouldn't be able to successfully  
21 navigate the case in the first place.

22 I would suggest that the pleading that we filed for  
23 each of those plaintiffs in the 31 separate complaints already  
24 has that information. But to the extent it does or it  
25 doesn't, we're going to be required in the short form

1 complaint to provide it for each of those plaintiffs. But it  
2 doesn't require separate docket number.

3 MR. KLEIN: Your Honor, just one --

4 THE COURT: Oh, I've got Mr. Sanders.

5 MR. KLEIN: Oh, I'm sorry.

6 MR. SANDERS: My inquiry goes to brother counsel  
7 here's statement. I would anticipate from my clients I have  
8 the information that the judge discussed needs to be expounded  
9 upon. I believe you referenced paragraph 3 of where they  
10 live, property location, business, etc.

11 However, there was previous discussion as it relates  
12 to a fact sheet that was suggested as 20 pages long.

13 THE COURT: That's a separate process at this point.

14 MR. SANDERS: Well, I guess for me, if I'm going back  
15 to my clients and going to have to meet with them to provide  
16 additional detail for the amended complaint, I would like to  
17 have the fact sheet at that time so that I can get all  
18 additional information I'm being required to get from my  
19 client, some of whom I can only communicate with via U.S. mail  
20 because I can't communicate with them via telephone, text  
21 message, or otherwise, so --

22 THE COURT: Well, there will be 30 days following  
23 December 15th in which to file the short form for those who  
24 have already filed cases. So for your current clients. How  
25 many clients do you have, Mr. Sanders?

1 MR. SANDERS: Over 20.

2 THE COURT: Okay. What you're suggesting is perhaps  
3 you would need more time? Is that what it is?

4 MR. SANDERS: No. What I'm suggesting is if they're  
5 going to be various forms for inquiries that I need to make  
6 with my clients, I'd like to have them when I meet with them  
7 to prepare to amend the complaint if there's necessary  
8 information I have to get from them. I hear that there's this  
9 20-page fact sheet and --

10 THE COURT: Yeah. And I think we're just going to  
11 have to keep those as distinct and separate processes. And  
12 that is going to probably need to be mailed to your client  
13 anyway. Because the draft that I saw that was being  
14 circulated that was brought to me back in the October status  
15 conference is very detailed and I don't think it's something  
16 you can just sit down and fill out.

17 It includes when did you go to the doctor and all  
18 sorts of detailed questions that people may need to call their  
19 doctors, get their records, things of that nature. So I think  
20 we're just going to have to keep that as a separate process.

21 MR. SANDERS: And my co-counsel is reminding me that  
22 we have clients that are not literate.

23 MADAM COURT REPORTER: That are not what?

24 THE COURT: Literate.

25 MR. SANDERS: -- with many of them and indeed fill

1 out that form.

2 THE COURT: No. You may absolutely need to sit and  
3 fill it out. But it's not going to be on the same time  
4 schedule.

5 MR. SANDERS: Okay.

6 THE COURT: So you'll have ample time to do that.

7 MR. KLEIN: Your Honor, just one housekeeping matter.

8 THE COURT: Okay.

9 MR. KLEIN: It's going to require more than the usual  
10 amount of time to file our motions when this deluge of fact  
11 sheets hit. I would suggest that we meet confer with  
12 plaintiffs to see if we can work out a schedule for the  
13 motions, the responses, etc. I don't have dates in mind right  
14 now. Hopefully we can work it out. If not, the same December  
15 7th date, I'll let you know --

16 THE COURT: Well, here's what I need to understand,  
17 which is that all I have is by December 7th they'll be a  
18 proposed fact sheet and the people who would need to complete  
19 it. But I don't know -- I don't have a schedule for when it  
20 would be completed and provided.

21 MR. KLEIN: I fear I misspoke. I meant to say the  
22 short form complaint. I said fact sheet.

23 THE COURT: Oh, okay.

24 MR. KLEIN: In other words, our briefing obligation,  
25 our motion is triggered by receipt of the fact sheets --

1 THE COURT: The short forms. That's okay.

2 MR. KLEIN: I got fact sheets on my mind. The normal  
3 time for filing a dispositive motion, I think we need more  
4 time is all I was trying to say.

5 THE COURT: All right. Okay. And I would suggest  
6 that you do it exactly as you were suggesting and have a meet  
7 and confer and see if you can agree upon an extension.

8 MR. SHKOLNIK: We will work with counsel, come up  
9 with -- as the Court suggested for the 15th, try to come up  
10 with a schedule, proposed scheduling order that works for the  
11 defendants' and the plaintiffs' briefing.

12 THE COURT: Okay. Ms. Hurwitz?

13 MS. HURWITZ: Yes, your Honor. Julie Hurwitz on  
14 behalf of the class plaintiffs. Also one of the co-counsels  
15 on behalf of the Marble estate. And it was referenced earlier  
16 to the Marble case. And as I was sitting here, I received an  
17 e-mail from the Court --

18 THE COURT: From me?

19 MS. HURWITZ: -- acknowledging that all parties have  
20 been served and actually today's date and time has been set  
21 for the status conference on the Marble case.

22 THE COURT: With me?

23 MS. HURWITZ: With you, that's correct. The case has  
24 been assigned to you. Got the e-mail at 10:56 this morning.

25 THE COURT: Oh.

1 MS. HURWITZ: So I'm a little confused myself about  
2 how that case in particular, which is based -- it's a wrongful  
3 death case arising from Legionella. So I don't know how we're  
4 supposed to handle that case visa vie --

5 THE COURT: We'll look into it. Can you give me the  
6 case number?

7 MS. HURWITZ: Yes, your Honor. 17-CV-12942.

8 THE COURT: 12942?

9 MS. HURWITZ: Correct. Yes.

10 THE COURT: Okay. Well, we'll look into it because  
11 we have not had the conference. But I think obviously because  
12 we're all sitting here and that wasn't specifically addressed,  
13 but I would imagine that the idea was to get that case now  
14 that it's been fully served into this process.

15 MS. HURWITZ: Okay.

16 THE COURT: So we'll go from there. Thank you.  
17 Okay. Well, thank you, all, for being here. I will hear from  
18 you on the 7th, on the 15th -- I have the 14th also. 15th  
19 only. And then see you in January.

20 THE CLERK: All rise. Court is adjourned.

21 (Proceedings Concluded)

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November 15, 2017

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Jeseca C. Eddington, Federal Official Court  
Reporter, do hereby certify the foregoing 118 pages are a true  
and correct transcript of the above entitled proceedings.

/s/ JESECA C. EDDINGTON  
Jeseca C. Eddington, RDR, RMR, CRR, FCRR

12/19/2017  
Date