

March 12, 2019

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re FLINT WATER CASES Case No. 16-10444

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STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

MARCH 12, 2019

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: Welcome. Please be seated.

And this is the first of our now monthly status conferences. We currently do not have one set for April due to issues with my docket and calendar, but we'll be meeting again in May on May 1st at 2:00 PM.

So my hope is that with more frequent conferences we can be efficient and not spend quite as much time here but also use the time wisely. So I'm going to spend a minute just logging on to my computer and then we'll have appearances. All right.

So could we have -- we've got Deborah Greenspan is here, our special master. And then could we have appearances for the record.

MR. HART: Good afternoon, Your Honor. David Hart on behalf of the Guertin plaintiffs.

THE COURT: Thank you.

MR. WASHINGTON: Judge, Val Washington here on behalf of the Anderson plaintiffs, Joel Lee. And local counsel for the Gulla plaintiffs.

THE COURT: Thank you, very much.

MS. CHRISTOPHERSON: Gladys Christopherson. I'm also here for Anderson.

MR. LANCIOTTI: Patrick Lanciotti for the individual

1 plaintiffs.

2 THE COURT: Thank you.

3 MR. BLAKE: Jayson Blake, liaison counsel for the
4 state court class action.

5 MR. NOVAK: Paul Novak on behalf of class plaintiffs.

6 MR. STAMATOPOULOS: Gregory Stamatopoulos on behalf
7 of class.

8 MS. BEREZOFSKY: Esther Berezofsky on behalf of class
9 plaintiffs and the Gulla plaintiffs.

10 MS. WEINER: Jessica Weiner on behalf of the class
11 plaintiffs.

12 MR. PITT: Michael Pitt on behalf of the class,
13 interim class, co-lead class. And for Mr. Goodman on the
14 Marble case.

15 THE COURT: Oh, okay. Thank you.

16 MR. SHKOLNIK: Hunter Shkolnik on behalf of the
17 individual plaintiffs. Good afternoon.

18 THE COURT: Okay.

19 MR. STERN: Corey Stern on behalf of individual
20 plaintiffs.

21 THE COURT: Thank you.

22 MR. BRONSTEIN: Peretz Bronstein on behalf of class
23 plaintiffs.

24 THE COURT: Good.

25 MR. KUHL: Your Honor, Richard Kuhl on behalf of the

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1 state defendants.

2 MR. KIM: Good afternoon, Your Honor. William Kim on
3 behalf of City of Flint and former Mayor Dayne Walling.

4 MR. RUSEK: Good afternoon, Your Honor. Alexander
5 Rusek on behalf of Howard Croft.

6 MR. BERG: May it please the Court, Rick Berg on
7 behalf of City of Flint.

8 THE COURT: Thank you.

9 MR. KLEIN: Sheldon Klein on behalf of the city as
10 well.

11 MR. GRUNERT: John Grunert on behalf of the three
12 Veolia North America defendants.

13 MS. BEACH: Karen Beach on behalf of LAN and Leo A
14 Daly.

15 MR. THOMPSON: Craig Thompson for defendant Rowe
16 Professional.

17 MS. JACKSON: Krista Jackson on behalf of Stephen
18 Busch.

19 MR. BARBIERI: Charles Barbieri on behalf of Michael
20 Prysby and Patrick Cook.

21 MR. PATTWELL: Michael Pattwell on behalf of Dan
22 Wyant and Brad Wurfel.

23 MS. CHARTIER: Mary Chartier on behalf of Robert
24 Scott.

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

1 MR. WISE: Matt Wise on behalf of Jeffrey Wright.

2 MR. GALVIN: Joseph Galvin on behalf of Jeffrey
3 Wright.

4 MR. MARKER: Christopher Marker on behalf of Michael
5 Glasgow.

6 MR. MEYERS: David Meyers on behalf of Daugherty
7 Johnson.

8 MR. JENSEN: Larry Jensen on behalf of Hurley Medical
9 Center Ann Newell and Birchmeier.

10 MR. CAFFERTY: Michael Cafferty on behalf of Nancy
11 Peeler.

12 MR. MARTINEZ: Cirilo Martinez on behalf of the
13 class.

14 MS. MACDONALD: Brian MacDonald on behalf of McLaren.

15 MR. WEGLARZ: Ted Weglarz on behalf of individual
16 plaintiffs Odie Brown and Gradine Rogers.

17 MR. PERKINS: Good afternoon, Your Honor. May it
18 please this honorable Court, my name is Todd Russell Perkins
19 appearing on behalf of Mr. Earley.

20 THE COURT: Thank you.

21 MR. MATEO: T. Santino Mateo on behalf of Mr. Earley
22 as well, Your Honor.

23 THE COURT: Okay.

24 MS. FLETCHER: Good afternoon, Your Honor. Shayla
25 Fletcher on behalf of Alexander plaintiffs.

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1 MR. WILDER: Good afternoon. Marvin Wilder appearing
2 on behalf of Kirkland, Gist, and Savage.

3 THE COURT: Okay.

4 MR. FAJAN: James Fajan on behalf of Adam Rosenthal.

5 MS. SINKOVICH: Madeline Sinkovich on behalf of the
6 Washington plaintiffs.

7 THE COURT: All right. I think that covers it. And
8 I've already misspoken. May 1st is the date when the parties
9 are to file proposed agenda items for the May 15th status
10 conference. Not May 1st. And so the May 15th status
11 conference will be at two o'clock here in the courtroom. And
12 we'll begin with a 1:00 PM in chambers status conference or
13 preconference as we have been throughout this process.

14 So the agenda for the meeting today began with a
15 report on the case management plaintiff. And we did meet
16 beginning at 10:00 AM until about 12:00 or 12:30 today on the
17 case management plan that had been jointly submitted by all of
18 the parties and for plaintiffs by co-liaison and interim class
19 counsel.

20 Of the 81 pages that were presented to the Court with
21 color coding for various parties' positions, we got through 12
22 of those pages. But don't be too discouraged because we
23 established some basic principles that we're going to try to
24 apply to the process. And we will be continuing that work on
25 this coming Monday at 10:00 AM in chambers.

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1 And I'll put a notice of that on the Carthan 16-10444
2 docket so that it's clear that it's taking place.

3 What I set for this meeting is that each party could
4 have one person there who would speak on behalf of that party.
5 And I think that's -- it's at least helpful to me. If it's
6 not helpful to your clients, I apologize. But it means that
7 we have a group that can function fairly, fairly efficiently,
8 or as efficiently as we can get it to.

9 So that will continue to apply unless there's any
10 objection that anyone wants to raise right now to that process
11 for working through a case management order. Okay. Good.
12 Okay.

13 So we'll continue at 10:00 AM. And various counsel
14 indicate -- a couple of counsel indicated that they weren't
15 available at that date and time and would send somebody in
16 their place, and that's perfectly all right with me.

17 So the second item is nonparty documents only
18 subpoenas. And I think this was primarily requested by Mr.
19 Grunert on behalf of the VNA defendants. So and you had
20 indicated to me that you've -- you and Mr. Leopold have been
21 trying to come to an agreement on how you might expand the
22 process that the Court originally set back in June.

23 MR. GRUNERT: Yes, your Honor. John Grunert for the
24 VNA defendant.

25 THE COURT: Do you want to step forward just to make

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1 sure that you can be heard for the record?

2 MR. GRUNERT: John Grunert for the VNA defendants.
3 Mr. Leopold and I for more than a month now have been trying
4 to connect to talk in a substantive way about suggested
5 improvements. And I think that many of us, maybe all of us
6 understood when we came up with the original plan that it
7 would probably require some tweaking as we go along.

8 It has not worked as efficiently as we might have
9 hoped. I think we all knew it wasn't going to be terribly
10 efficient.

11 But bottom line though, Mr. Leopold and I through no
12 fault of either of us, have not discussed substantively what
13 could be done and sort of the goal was to try to come up with
14 some joint suggestions maybe not from everybody but at least
15 from somebody on each side of the V to suggest to you.

16 And I can't do that today. But I think what I would
17 suggest is that you might set a schedule not too stringent in
18 light of the other things that we have going on the next
19 couple of weeks. But a schedule for us to talk and to give
20 you a report of what we have been able to come up with, if
21 anything.

22 THE COURT: Okay. And it occurs to me that based on
23 the discussion in chambers, working out the case management
24 order, that at least in Carthan and Guertin we have obviously
25 plaintiffs and we have some defendants who have answered.

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1 So we have active litigation that is now entering a
2 phase of discovery. And so the Court's supervision of
3 document only subpoenas can be relaxed significantly in light
4 of that. So I would just ask that in the course of your
5 negotiations and conversations you understand that that's my
6 perspective. As I'm ready for the gas pedal to be hit on
7 developing the facts in these cases.

8 MR. GRUNERT: The underlying problem I think are the
9 Court's wish and the wish of many of us that nonparties not
10 receive serial subpoenas.

11 THE COURT: Right.

12 MR. GRUNERT: And so there has to be this process
13 where we come up with a subpoena on behalf of everybody. And
14 then since those subpoenas obviously they typically need to be
15 negotiated to narrow them down or various things that
16 subpoenas always need to be negotiated about. There's a need
17 to collect a bunch of people together to do the negotiation.

18 And those have created some problems. And what we're
19 trying to figure out is how to preserve the benefits of those
20 kinds of provisions without disadvantaging anyone. And as I
21 say, maybe that won't be possible. But I am not sure that the
22 change in status conference resulting from discovery generally
23 starting will resolve those.

24 THE COURT: Okay.

25 MR. GRUNERT: In fact, a similar problem is going to

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1 arise from the one deposition rule when it comes to
2 testimonial depositions because there are going to be some
3 nonparty witnesses -- doctors are an obvious example -- who
4 are not going to be able to be deposed only once because
5 they're going to have information about multiple different
6 parties.

7 THE COURT: Can you remind me how many I approved on
8 June 5th?

9 MR. GRUNERT: You approved four.

10 THE COURT: Four, okay.

11 MR. GRUNERT: But you told us that you didn't need to
12 approve them anymore.

13 THE COURT: Right.

14 MR. GRUNERT: And there have been many more served
15 since then.

16 THE COURT: Okay. That's what I was trying to get a
17 sense of. Okay. So what I'm going to do is set a date by
18 which you'll report back on the progress of the next round of
19 nonparty documents only subpoenas.

20 Is two weeks from today agreeable to you? And Mr.
21 Leopold's not here, but Mr. Shkolnik is standing up.

22 MR. SHKOLNIK: Your Honor, we would like to -- we
23 appreciate that Mr. Grunert and Mr. Leopold were negotiating a
24 new procedure, but we thought it would be nice if we got added
25 to that.

1 THE COURT: Well, as far as I'm concerned you're in
2 it.

3 MR. SHKOLNIK: Thank you. We noticed some subpoenas
4 have gone out with neither Mr. Stern nor I as signatories. We
5 just believe it should be as contemplated a group process.

6 THE COURT: And I think we assigned a group and a
7 process to come up with the initial four.

8 MR. GRUNERT: Your Honor, if subpoenas went out
9 without Mr. Shkolnik or Mr. Stern's signature, it is because
10 neither of them chose to sign. Nobody has been excluded from
11 the process of negotiating subpoenas. Some have chosen not to
12 participate.

13 THE COURT: Okay. Here's what we'll do. This
14 morning we discussed a defense executive committee of up to
15 six people. So that executive committee will consult and
16 confer with co-liaison individual counsel and co-lead class
17 counsel in developing a plan for the next round of document
18 subpoenas to nonparties.

19 MR. SHKOLNIK: Thank you.

20 THE COURT: But what about the timing of this? I was
21 suggesting two weeks to report back.

22 MR. SHKOLNIK: We would make ourselves available.

23 THE COURT: Okay. Mr. Pitt.

24 MR. SHKOLNIK: Mr. Pitt says yes as well.

25 MR. PITT: That's fine.

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1 THE COURT: Mr. Grunert.

2 MR. GRUNERT: I or someone else will report back.

3 But I just want to make clear, it's not a matter of the next
4 round.

5 THE COURT: Yeah. What is it a matter of?

6 MR. GRUNERT: It's a matter of discussing the order
7 that you have issued regulating how negotiation and
8 enforcement is to be done. And seeing if we can come up with
9 ways to make it more efficient based on the experience we've
10 now had.

11 THE COURT: Okay.

12 MR. GRUNERT: That's the issue.

13 THE COURT: Thank you for clarifying that. So your
14 proposal to make the June 25, 2018 order -- to update it --

15 MR. GRUNERT: Yes.

16 THE COURT: -- will be due -- a stipulated order will
17 be due March 26th.

18 MR. GRUNERT: Okay. And just to make clear, I'm not
19 sure that it can be improved necessarily. We just -- so the
20 report may be, you know --

21 THE COURT: Okay.

22 MR. GRUNERT: We can't improve your work product.

23 THE COURT: I'm sure that's not true, but if it is,
24 it might be a first. So that would be welcome also.

25 MR. GRUNERT: Thank you.

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1 THE COURT: Okay. Let me add something that's not on
2 the agenda that was discussed in chambers, which is that I
3 have previously entered an order --

4 MR. GRUNERT: May I?

5 THE COURT: Oh, please be seated. That LAN did not
6 need to answer the Guertin or Carthan complaint until I think
7 further motion practice was completed. And I'm now setting
8 that aside and ordering that LAN answer the complaint. And
9 Ms. Beach can tell me what date. Was it the 26th?

10 MS. BEACH: April 26th, Your Honor.

11 THE COURT: April 26th, okay. So that will be
12 incorporated into a written order following this hearing.
13 Okay.

14 Next item is the -- defendants have requested --
15 particularly the engineering and consulting defendants have,
16 meaning VNA and LAN, have requested authorizations from named
17 plaintiffs in Carthan v Snyder.

18 And there was some discussion of this at our last
19 conference, particularly in chambers. And the issue is that
20 plaintiffs were objecting to including in the medical
21 authorization's mental health -- I think it was on the
22 telephone that we discussed this now that I'm bringing that
23 back to my ...

24 Plaintiffs were objecting to turning over mental
25 health records, HIV records, and substance abuse. I've done

1 some research with the assistance of my law clerk on so called
2 garden variety damages.

3 Which Mr. Pitt, is that what the Carthan plaintiffs
4 are seeking? Or are they seeking any particular emotional
5 distress damages that you can articulate?

6 MR. PITT: The majority of the class members that we
7 have had some communication with would fall into the category
8 of garden variety emotional distress damages. However, there
9 are some exceptions. And where those exceptions are noted,
10 you know, we're prepared to have a more expansive set of
11 authorizations issued.

12 But, you know, for the individual who may have
13 complained about anxiety or sleeplessness to their family
14 practitioner, you know, those would be picked up in the
15 general medical records. But there is no need to have any
16 psychological records produced that may not be -- that are
17 unrelated to the Flint water crisis.

18 For instance, you know, a family counseling that may
19 have predated the Flint water crisis or school issues for
20 children that are not related to the Flint water crisis.
21 Those should not be turned over unless the individual is
22 asserting some type of psychological -- discernable
23 psychological injury.

24 THE COURT: But if I understand what you're saying,
25 aside from -- one of your plaintiffs I think specifically says

1 I have bipolar and that was aggravated by this or something
2 like that. So that would be a situation where you'd need to
3 show that she has bipolar with her mental health records and
4 show the aggravation or --

5 MR. PITT: Yes.

6 THE COURT: -- increased symptoms.

7 But the rest of them you're still seeking what we're
8 going to call a garden variety emotional distress damages.
9 And in *Maday v Public Libraries*, the Sixth Circuit says to be
10 sure, if plaintiff were not seeking emotional distress
11 damages, then her conversations with the social worker about
12 how she was feeling would likely be privileged. But when the
13 plaintiff put her emotional state at issue, she waived any
14 such privilege and the records may come in subject to a
15 balancing test by the district court if it's truly unrelated.

16 So you're suggesting if there's marital counseling,
17 for example, that that's unrelated to stress brought on by
18 alleged lead poisoning, that that would not come in. But if
19 somebody went -- is having insomnia and goes to a
20 psychiatrist, that would come in.

21 MR. PITT: I agree. But those unrelated
22 psychological and psychiatric records should be protected and
23 should not be revealed unless there's a direct causal
24 relationship.

25 THE COURT: Is Mr. Grunert responding to this?

1 Because what I'd like to do today is get just that resolved.
2 And then I think the issue of substance abuse and HIV may need
3 further briefing.

4 MR. GRUNERT: I would like to respond.

5 THE COURT: Okay. Thank you, Mr. Pitt. I'll permit
6 you to speak again if needed.

7 MR. GRUNERT: I'd like to begin by asking you to
8 rather than deciding these issues to set a briefing schedule
9 on them. Because I don't think there are issues that can be
10 decided based just on an oral argument.

11 Mr. Pitt says, well, sure, psychological records can
12 come in if there is a causal relationship. How are we
13 supposed to tell if there's a causal relationship if we can't
14 see the records?

15 And if a plaintiff is coming in and saying, oh, you
16 know, I have these various psychological symptoms, if we can't
17 see whether the plaintiff had psychological symptoms like that
18 before the Flint water problems began, how can we say that the
19 ones existing now are not causally related?

20 Really it's a matter that needs briefing, not just
21 oral argument. And I would add that during our telephone
22 conference I understood that really all features of the
23 preliminary order you entered would be subject to further
24 briefing and argument.

25 I have a problem, for example, with the time limits

1 that you established on how the periods of time that we're
2 entitled to have records for, whether they're medical records
3 or other kinds of records.

4 THE COURT: Let me ask you this. In light of the
5 fact that you're counsel for the party seeking these records,
6 can you proceed -- if we set a briefing schedule, what I don't
7 want to do is postpone these authorizations altogether and
8 postpone progress in the case.

9 Will you proceed with getting the basic medical and
10 basic mental health documents that Mr. Pitt is agreeing would
11 be applicable while the issue of HIV and substance abuse and
12 the rest of it is being briefed?

13 MR. GRUNERT: And the answer to that is yes.

14 THE COURT: Okay.

15 MR. GRUNERT: And to the extent that we have been
16 provided medical records -- I'm sorry, medical authorizations
17 by Stern and by Mr. Shkolnik and by the class action lawyers,
18 we will execute them as soon as we have everybody signed up,
19 all of the defendants signed up with this third party vendor
20 that you told us that we should retain. And we're still
21 trying to get all the defendants signed up to that. But yes,
22 we will proceed.

23 I do want to make certain that you understand it's
24 not just VNA that asked for these releases. That they were
25 requested by all of the private defendants.

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1 THE COURT: Yes, I do. You've been the most
2 prominent spokesperson for them.

3 MR. GRUNERT: Not by choice.

4 THE COURT: Okay. Well, then we will set a briefing
5 schedule. And I would like in the briefs to have each side
6 tell me what you think the word garden variety damages
7 includes. Because that's what I find the Sixth Circuit has
8 not instructed me clearly on, is what is a garden variety
9 mental health or emotional distress condition.

10 And also we'll set a briefing schedule. But from the
11 plaintiffs I'd like to know of the named class action
12 plaintiffs which individuals you think are seeking more than
13 garden variety that you will already just check the box for
14 mental health.

15 So looking at the calendar, in light of the fact that
16 -- I mean, whoever has the opening brief gets a reply brief.
17 So the opening brief can be from plaintiffs on what they think
18 doesn't apply or it can be from defendants. So whoever speaks
19 first is going to get the opening brief.

20 MS. BEACH: Can I suggest, Your Honor, since the
21 defendants are seeking that we do the opening brief?

22 THE COURT: That's what I would suggest you suggest.

23 MR. GRUNERT: I defer to LAN counsel.

24 THE COURT: Okay. So Ms. Beach has requested to have
25 the opening brief. Can you have it filed by March 22nd? A

1 week and a half.

2 MS. BEACH: Could I have two weeks?

3 THE COURT: You can have until the 29th.

4 MS. BEACH: Okay.

5 THE COURT: Okay. And plaintiffs can respond by the
6 12th?

7 MR. SHKOLNIK: Yes, your Honor. As the individual
8 plaintiffs we can.

9 MR. PITT: Same for class counsel, Your Honor.

10 THE COURT: Okay.

11 MR. KLEIN: Your Honor, may I be heard briefly?

12 THE COURT: Yes, Mr. Klein. And I don't know that
13 I'm going to need a reply brief. I'll order a reply brief if
14 it's needed. And then what I'll assume I'm going to do is on
15 our May 15th, if oral argument is needed, we'll do it on May
16 15th. Go ahead.

17 MR. KLEIN: I appreciate the current demand for
18 records was initiated only by private defendants. This is
19 obviously an issue that's going to go beyond the named
20 plaintiffs, the named class representatives, or putative class
21 representatives.

22 I presume that it's going to at least lay the path
23 for lots of other similar types of discovery. For that
24 reason, I request that we have an opportunity to weigh in on
25 this question of what's fair game for discovery with respect

1 to health related records.

2 THE COURT: What I would ask you to do is consult
3 with Ms. Beach and her colleagues, with the defendants, and
4 file your brief on the same day.

5 MR. KLEIN: Sure. Thank you, your Honor.

6 THE COURT: And if it can be jointly filed, that's
7 all the better.

8 MR. KLEIN: I'd rather them take the laboring, if
9 that's possible.

10 THE COURT: Okay. Mr. Stern.

11 MR. STERN: Yes, your Honor. Corey Stern for the
12 individual plaintiffs. I note that Mr. Grunert said while he
13 was addressing the Court that once there was an agreement
14 amongst vendors that we will execute them and we will proceed,
15 referring to the fact to the authorizations that I've provided
16 for my clients. And he referenced Mr. Shkolnik.

17 There's a difference presently between what the named
18 class plaintiffs have provided in terms of who their medical
19 providers are versus what we've provided, which was in my case
20 1,500 or more executed authorizations that have in them a
21 blank space for the provider.

22 But we are not yet at a place in the litigation where
23 we have provided to the defendants the names or entities of
24 providers. And so there should not be a blanket carpet bomb
25 sending of executed authorizations to various healthcare

1 providers in Flint to try to get records for 1,500 people.

2 And so I just want to make sure --

3 THE COURT: I don't think that's going to happen.

4 MR. STERN: Well, I --

5 THE COURT: Do you?

6 MR. STERN: I heard that, yes. Yes.

7 THE COURT: How did you anticipate doing this, Mr.
8 Grunert?

9 MR. GRUNERT: Well --

10 THE COURT: Because it just wouldn't help to go to
11 every pediatrician's office with everyone's authorization when
12 Mr. Stern knows that child A went to Shmendrik. Then you're
13 only going to give it to Shmendrik.

14 MR. GRUNERT: I think during our telephone conference
15 that I understood the direction to be that those who did not
16 give authorizations with providers names in them were to
17 identify the providers.

18 THE COURT: Yes.

19 MR. GRUNERT: I don't intend to carpet bomb Genesee
20 County with authorizations going to every health provider
21 who's there. But I do intend to start sending authorizations
22 for individual plaintiffs as well as the plaintiffs in the
23 putative class action as soon as we're given the information
24 that we need to do that. And I'm trusting that we're going to
25 get that information soon.

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1 THE COURT: Mr. Stern.

2 MR. STERN: Respectfully that information will be
3 part and parcel with fact sheets as ordered by the Court
4 depending on what the methodology is that the Court ends up
5 using with regard to the CMO and how many groups of bellwether
6 cases there might be. And so we received in the census --
7 there's somewhere around 25,000 individuals --

8 THE COURT: Right.

9 MR. STERN: -- who either have or -- have retained or
10 have contacted attorneys. The majority of which retained.
11 Under the scenario that I think Mr. Grunert's describing, all
12 25,000 of them at some point very soon will provide the names
13 of their providers and the defendants will get 25,000 sets of
14 medical records.

15 THE COURT: I don't think that's what we're going to
16 do. Because with Carthan, I'm only ordering the named
17 plaintiffs to do -- to sign releases. And so as I saw the
18 chart from Ms. Greenspan, Mr. Pitt and Leopold have many more
19 than the named plaintiffs. So they're not at this point
20 providing releases for their clients who are not named in the
21 complaint.

22 MR. STERN: My point was more about -- I'm sorry --

23 THE COURT: Yeah.

24 MR. STERN: -- if I interrupted you.

25 THE COURT: No you didn't. Go ahead.

1 MR. STERN: My point is more about presently in
2 federal court my firm, for instance, has X number of cases for
3 1,600 children. The way that we anticipated the CMO
4 ultimately reading is to group in some form or fashion a
5 smaller number of plaintiffs such that a selection of
6 bellwether cases would occur. And then there would be a deep
7 dive into the selection of bellwether cases. If the idea is
8 to get medical records first for every single individual that
9 has a case --

10 THE COURT: Okay. Let me stop you there. Is that
11 what you're trying to do?

12 MR. GRUNERT: First of all, this was a Rule 34
13 request. It does not apply with people -- to people who
14 haven't filed suit --

15 THE COURT: Okay. But just answer the question
16 that's right here with us right now. Which is that Mr. Stern,
17 let's say he has 1,500 clients in federal court here.

18 MR. GRUNERT: What we have propose in the CMO here as
19 we did in state court, and I don't know whether it's going to
20 be accepted or not, but initially the pool of perspective
21 bellwether candidates are going to be several hundred
22 plaintiffs for whom --

23 THE COURT: Okay. But sticking with the question.

24 MR. GRUNERT: But I'm answering it, believe it or
25 not.

1 THE COURT: Okay.

2 MR. GRUNERT: Mr. Stern has given us fact sheets for
3 several hundred of his plaintiffs. And under the proposed CMO
4 he's going to give us fact sheets for another hundred of his
5 plaintiffs or to be more precise another hundred of his cases
6 whether they involve one plaintiff or a family group.

7 And those plaintiffs, those multiple hundreds of
8 plaintiffs are going to be the ones who are going to be
9 extensively discovered for purposes of selecting bellwether
10 cases. Those are the people we want the authorization for.

11 THE COURT: And is that a problem, Mr. Stern?

12 MR. STERN: In concept, it's not a problem. But you
13 know, we -- Mr. Grunert respectfully keeps talking about the
14 notice that he provided, the notice that he sent that never
15 was objected to, that there was never -- you know, the Rule 36
16 request --

17 THE COURT: 34.

18 MR. STERN: Rule 34 request that he made. And the
19 Rule 34 request is not in line with what we've just been
20 discussing. The Rule 34 request is for every single named
21 plaintiff. And even though there wasn't --

22 THE COURT: Every single named plaintiff in the
23 individual cases --

24 MR. STERN: Yes, yes.

25 THE COURT: Okay.

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1 MR. STERN: And so if that's the intent, which I
2 think it is because Mr. Grunert keeps talking about that
3 nobody objected to it and it was served and all those things
4 are true. Then we're not talking about a smaller group of
5 plaintiffs for whom the defendants will get medical records.
6 We're talking about everybody.

7 THE COURT: Okay. Here's what we're going to talk
8 about. We're not going to -- just because I have to have the
9 public's interest at stake. And these doctors in Flint need
10 to continue to treat patients and not solely turn their
11 practice over to producing documents.

12 So it will need to be phased for that reason alone
13 because I want these clinics and hospitals to continue to
14 function in treatment of patients.

15 So what I'm going to have to ask you to do is what
16 you just said you're going to do on the record, is select a
17 significant -- a small fraction of 1,500. So 200 or so at the
18 beginning from which you're going to end up picking these
19 bellwether cases. And maybe it's going to be 300. I don't
20 know. You're going to tell me. But it can't be all of them
21 all at once.

22 MR. GRUNERT: Could it be the number that is in the
23 proposed CMO that was --

24 THE COURT: Which we haven't gotten to that page yet.

25 MR. GRUNERT: For discovery.

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1 THE COURT: Yes.

2 MR. GRUNERT: I don't know. Another 12 pages. But
3 the number for taking affirmative discovery from the
4 plaintiffs, individual plaintiffs is what I described. It's
5 however many plaintiffs we've been given fact sheets for plus
6 an additional 100. And I think the number came up to around
7 500. That's what we are interested in getting medical
8 authorizations for at this time.

9 THE COURT: And is that agreeable, Mr. Stern or Mr.
10 Shkolnik.

11 MR. SHKOLNIK: I wasn't sure what the number was. It
12 was 200, 300, or 500. 500 is clearly excessive for bellwether
13 purposes. A couple of hundred is I think pushing what is
14 customary. I mean, that's even a lot. But 500 is just a
15 fishing expedition.

16 THE COURT: Okay. What we'll do --

17 MR. GRUNERT: That's the number in the state court
18 proposed CMO that was a negotiated number.

19 MR. STERN: There's a difference --

20 THE COURT: Okay. I'm not in the state court and we
21 haven't negotiated that number here. So what we'll do is I'm
22 going to ask you to send them in waves of 100, no more than
23 100 at a time to any one provider anyway. I mean, we've got
24 to be realistic. They don't have magnificent record
25 production operations at the clinic. You're going to have a

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1 record copying service and Bates numbering service.

2 MR. GRUNERT: I have no problem with sending them in
3 waves to individual providers. What I would like is to get
4 the authorization so that I can decide who gets the first
5 ones.

6 THE COURT: Okay.

7 MR. GRUNERT: I don't like to leave it to Mr. Corey
8 or to Mr. Shkolnik deciding whose records I get to get early
9 and whose I only get to see late.

10 THE COURT: Mr. Stern.

11 MR. STERN: Your Honor, two things. One, when we
12 provided the authorizations to Mr. Grunert we didn't provide a
13 select hundred. I provided authorizations for I think at
14 least 1,500 to Mr. Grunert.

15 I think that on Monday when we meet again to talk
16 about the CMO, it may be the most appropriate time to talk
17 about how many and what that process looks like and how
18 they're selected.

19 The only thing I can say to distinguish what happened
20 in state court versus here is when those negotiations took
21 place about the number of bellwether people, 300 -- at least
22 300 groups of medical records had already been provided by me
23 to the defendants. And so it's easier to pick from a larger
24 group when you've already provided a significant number of
25 medical records for them to look at rather than limit what

1 you've already provided to them to something smaller. That
2 was the reason why it was a higher number.

3 THE COURT: So this is what we'll do. I'm now
4 educated on what the conflict is. Please be seated. We will
5 resolve it on Monday. Yes.

6 MR. NOVAK: Your Honor, Paul Novak on behalf of the
7 class plaintiffs. At the last status conference when we spoke
8 about the issue of authorizations, one of the things that we
9 also discussed was the prospect of submitting an addendum to
10 the protective order or the confidentiality agreement.

11 THE COURT: Right.

12 MR. NOVAK: That was submitted I think a couple of
13 weeks ago and --

14 THE COURT: And I think I entered it. Did I enter
15 it? No. Okay.

16 MR. NOVAK: That was my only point.

17 THE COURT: And it's an disagreed upon addendum.

18 MR. NOVAK: It has been provided to everyone and I
19 haven't heard objections from anyone.

20 THE COURT: That's what it was. It was not
21 stipulated. We're going to take a recess for one minute and
22 I'm going to take a phone call.

23 (Brief Recess)

24 THE COURT: I took a spill over the weekend and I'm
25 going to be visiting with the doctor at 3:45. So we're going

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1 to finish this by 3:15 because it takes me about a half hour
2 to get to my doctor. So thank you for your patience on that.
3 And I'll be on the mend -- well, you're not worried about it,
4 but I am.

5 MR. STERN: Respectfully, Your Honor, we're all
6 worried.

7 THE COURT: Thank you. Okay. The reason I didn't
8 enter it is it wasn't stipulated. It's all coming back to me.
9 So what was the problem? Why wasn't it agreed upon?

10 Mr. Novak, why don't you just tell me. And what I'm
11 going to do is ask everyone to skip every other word that you
12 want to say so that we can get through this.

13 MR. NOVAK: Probably the easiest way to put it is I
14 think everyone received it but just for purposes of getting it
15 submitted by the day --

16 THE COURT: The deadline.

17 MR. NOVAK: The deadline, I wasn't able to obtain
18 everyone's consent for entry of it.

19 THE COURT: So who did you not get consent from?

20 MR. NOVAK: I don't know that everyone affirmatively
21 weighed in one way or the other. There were simply non
22 responses from the parties.

23 THE COURT: Does anyone here object to it?

24 MR. GRUNERT: VNA defendants do not object to it.

25 THE COURT: Thank you.

1 MR. KLEIN: I believe that the city defendants
2 approved it. I'm going on memory.

3 THE COURT: Yeah. We're looking for the e-mail. Mr.
4 Kuhl.

5 MR. KUHL: And Your Honor, I just can't recall what
6 was submitted. So I can't say.

7 THE COURT: Here's what I'm going to do, I'm going to
8 enter it Friday if I don't hear otherwise that it's objected
9 to. I'll enter it Friday by noon. Okay.

10 I think the point that we are -- there's a report
11 here on the motion practice in the non lead cases. Marble.
12 And so that's here already in the agenda. And I think we're
13 up to the point of getting a report from Ms. Greenspan.

14 MS. GREENSPAN: Thank you, your Honor. I'll be very
15 brief in light of the time considerations.

16 THE COURT: Okay.

17 MS. GREENSPAN: I simply wanted to give an update to
18 the Court and the parties on two items that I've been working
19 on. One is what we've been calling the census data and the
20 census compilation. And the other is time and expense
21 submissions of plaintiffs' counsel. So I'll give a very brief
22 report.

23 I had submitted a report that I called an interim
24 report on the census data on February 22nd. Since that time,
25 various firms have provided updated and more information. In

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1 terms of total numbers of claims identified, we have another
2 697 claims that have been submitted through this process. But
3 we are still in the process of identifying and resolving the
4 duplicate claims.

5 This is taking some amount of time for A variety of
6 reasons. But I think we have received some data that will
7 help us do that and I will be back in touch with all of the
8 plaintiff firms so that we can explain who's got all these
9 different claims so that we can make sure we've probably
10 identified duplicates we can account for the numbers.

11 Also in the next report that I submit that is going
12 to await a little bit more of a clarification than I'm
13 obtaining from plaintiffs' counsel, I will be distinguishing
14 between -- there -- we have been provided with information
15 about people who have been in contact with lawyers, have given
16 their name and given their information but may not have signed
17 formal retainer agreements. We're distinguishing between
18 those people in the report so you can see the differences.

19 And in terms of an overall population of people who
20 may bring claims, whether it's in a consensual resolution or
21 otherwise, all of those people are relevant people to keep
22 track of. And again we're asking for more details on some of
23 the underlying information so that we can report more
24 accurately some of the pieces of information that people are
25 most interested in, like test results for example.

1 On the plaintiffs' time and expense submissions, I'm
2 about to send out notices to all of the firms, you know,
3 explaining what we've received, any issues that we've seen or
4 any questions that we have. It will cover the entire period
5 through February or through the submissions that were made in
6 February and will identify any things that need to be
7 corrected or any questions or any adjustments that need to be
8 made in the submissions that we have.

9 And then at a subsequent time probably maybe in
10 conjunction with the next status conference, I'll probably ask
11 that we have a brief meeting with the plaintiffs' counsel to
12 go over any questions or issues. That's all I have.

13 THE COURT: Okay. Good. Are there any questions for
14 Ms. Greenspan on her report? Okay. And I want to thank those
15 counsel who responded after our last status conference and
16 submitted their census data.

17 The coordination between the federal and state court
18 litigation. Mr. Blake.

19 MR. BLAKE: Sure. Would you like me to --

20 THE COURT: I think that's helpful.

21 MR. BLAKE: Good afternoon, Your Honor. Jayson Blake
22 from McAlpine Law Firm, liaison counsel to the state court
23 class action. I can report to the Court that the lead and
24 liaison counsel in state court have been working diligently
25 together on a new case management order.

1 The Court will recall just to recap that there is a
2 case management order in state court. However, it's missing
3 certain information. It does not have provisions for class
4 actions and so forth. So at Judge Yuille's direction, we've
5 been working together on a new order.

6 The four appointed people by Judge Yuille have agreed
7 on most of the issues with one major exception. We submitted
8 that order to Judge Yuille I think in the middle of February
9 and I submitted a supplement on the one issue. All of the
10 other parties in state court were given the opportunity to
11 object and most of them that were not in the group before did
12 file objections.

13 Judge Yuille has that information in front of him.
14 He did contact the parties last week and asked us to resubmit
15 the order with some changes in the dates because some of them
16 have passed. At this point, everything is with Judge Yuille.
17 We're waiting on him to make decisions on that.

18 When an order is entered however, it's the intention
19 I believe of all of us to coordinate with the federal court.
20 If discovery begins, we will coordinate.

21 THE COURT: Okay. Is there any -- I don't mean
22 necessarily from you. Probably from Mr. Pitt. Is there any
23 coordination with Judge Parker's EPA case that needs to be
24 made evident here?

25 MR. PITT: We did have a status conference with Judge

1 Parker possibly two weeks ago. We did raise the coordination
2 issue with her. She declined primarily because the next
3 activity on the file is going to be her decision on the motion
4 to dismiss. And she said she would address it, you know,
5 after that.

6 THE COURT: Okay.

7 MR. PITT: If there's still a case left.

8 THE COURT: Okay. All right. Well, thank you.

9 Is there any other information that needs to go be
10 provided to me from Judge Yuille's litigation from anyone's
11 perspective? Okay.

12 Well, then the next -- we already discussed this.
13 The next status conference is May 15th. And I'll have an
14 agenda on the docket by May 8th following your submissions on
15 May 1st.

16 I did receive a motion that I haven't had a chance to
17 look at from Mr. Hart on the appointment of appellate liaison
18 counsel I think. Was that you, Mr. Hart?

19 MR. HART: Yes, that's right, Your Honor. We filed
20 such a motion yesterday.

21 THE COURT: Okay. I have not read it, but I'm aware
22 that it exists. I'll take a look at it and that can be a
23 topic for -- are you suggesting it needs to be addressed
24 before the May 15th status conference?

25 MR. HART: Well, there certainly are matters going on

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1 in the pending appeal. Some of the defendants have sought en
2 banc review in the Sixth Circuit. But I wouldn't say strictly
3 speaking there's a greater urgency. So unless something
4 arises and we bring it to the Court's attention I think it can
5 be considered in the course.

6 THE COURT: Okay. Then what I would do is put that
7 for issue for discussion on May 15th. It seems to me -- I
8 haven't read your motion. All I know is that you filed it.
9 Is that the Sixth Circuit sort of controls its docket and its
10 appointment of who it's listening to and not listening to.

11 So I'll be interested to read it and see what it is
12 that I might be able to do to facilitate that if anything.

13 MR. HART: Well, I think in part that's true, Your
14 Honor. But certainly Your Honor has not only authority but
15 certainly interest in managing, administering this case. And
16 coordination among all these people that are before you
17 certainly on the plaintiffs' side is very important.

18 Not only at this stage but -- and you'll read in the
19 motion -- there have been I won't call threats, but
20 indications by various defendants that they intend to seek
21 review by the United States Supreme Court. So the appeal
22 issues do continue and are very, very important to what goes
23 on in this case.

24 THE COURT: Yes. But I certainly couldn't influence
25 that decision. They've done it already in Flint Water Cases,

1 so.

2 MR. HART: I think that's true, but we could
3 establish a procedure by liaison counsel that allows all the
4 parties on the plaintiffs side in this case to move forward
5 efficiently and expeditiously. And also avoid some
6 duplication.

7 There have already been motions for a request to file
8 amicus briefs to the Sixth Circuit. And I think some of that
9 duplicity and effort and coordination among this group could
10 really assist the process. All of the plaintiffs and really
11 all the defendants have great interest in what occurs in those
12 appeals. Particularly the Guertin, which is the first one
13 that's really being substantively moving forward, so.

14 THE COURT: Okay. Well, thank you for filling in on
15 that. So if there's nothing else from anyone, then we will
16 call it a day. And I'll see some of you on Monday and the
17 rest of you on May 15th.

18 (Proceedings Concluded)

19 - - -

20 CERTIFICATE OF OFFICIAL COURT REPORTER

21 I, Jeseca C. Eddington, Federal Official Court
22 Reporter, do hereby certify the foregoing 41 pages are a true
23 and correct transcript of the above entitled proceedings.

24
25 /s/ JESECA C. EDDINGTON
Jeseca C. Eddington, RDR, RMR, CRR, FCRR

5/29/2019
Date