

August 7, 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

AUGUST 7, 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 I would like to log on to my computers and then have appearances for the record. And what I'll do is just start0. Over here we have Ms. Deborah Greenspan who's the special master appointed in this case. Then we can go down the front row of the jury box.

MS. CHRISTOPHERSON: Gladys Christopherson for the Anderson and Lee plaintiffs.

THE COURT: Thank you.

MR. WASHINGTON: Val Washington for the Anderson and Lee plaintiffs, Judge.

THE COURT: Good. You don't have your sling.

MR. WASHINGTON: I got full range of motion. How about that?

THE COURT: So this is good. Well, congratulations.

MS. LINDSEY: Good afternoon, Your Honor. Cynthia Lindsey on behalf of putative class plaintiffs.

THE COURT: Thank you.

MR. BLAKE: Good afternoon. Jayson Blake liaison to the state court plaintiffs, class.

THE COURT: Thank you.

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

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1 THE COURT: Thank you. Mr. Bronstein.

2 MR. BRONSTEIN: Peretz Bronstein on behalf of
3 putative class plaintiffs.

4 MR. STAMATOPOULOS: Gregory Stamatopoulos on behalf
5 of class plaintiffs.

6 THE COURT: Okay.

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

9 THE COURT: Thank you.

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

11 MR. GOODMAN: William Goodman for the class
12 plaintiffs and for the Marble plaintiffs as well.

13 MR. STERN: Your Honor, Corey Stern as co-liaison
14 counsel for individual plaintiffs.

15 THE COURT: Okay. And we had Mr. Napoli in place of
16 Mr. Shkolnik at our in chambers conference that was held at
17 one o'clock. And he indicated something about a flight
18 getting altered that he had to leave early.

19 MR. STERN: That's correct. He just left.

20 THE COURT: Okay.

21 MS. BINGMAN: Your Honor, Teresa Bingman standing in
22 for Michael Pitt, co-lead class counsel.

23 THE COURT: Thank you, Ms. Bingman.

24 MR. LEOPOLD: Good afternoon, Your Honor. Ted
25 Leopold, co-lead for the punitive class.

1 THE COURT: Thank you.

2 MR. KIM: Good afternoon, Your Honor. William Kim on
3 behalf of the City of Flint. I believe it's no longer
4 necessary to continue to appear on behalf of Dayne Walling who
5 has been dismissed on behalf of your last order.

6 THE COURT: Thank you.

7 MR. BERG: Good afternoon, Your Honor. Rick Berg on
8 behalf of City of Flint.

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

11 THE COURT: Thank you.

12 MR. ERICKSON: Good afternoon, Your Honor. Philip
13 Erickson on behalf of the LAN defendants and Leo A Daly.

14 THE COURT: Good. Thank you.

15 MR. KLEIN: Good afternoon. Sheldon Klein for the
16 City of Flint.

17 MS. DEVINE: Good afternoon, Your Honor. Alaina
18 Devine on behalf of VNA defendants.

19 MR. CAMPBELL: Good afternoon, Your Honor. James
20 Campbell for the VNA defendants.

21 MS. LEVENS: Good afternoon. Emmy Levens for the
22 class.

23 MR. MARTINEZ: Good afternoon, Your Honor. Cirilo
24 Martinez for the class.

25 MR. WILDER: Good afternoon, Your Honor. Marvin

1 Wilder appearing for Lillian Diallo for individual plaintiffs,
2 Gist, Kirkland, and Savage.

3 THE COURT: Good. Thank you.

4 MR. KUHL: Good afternoon. Richard Kuhl for state
5 defendants.

6 MR. THOMPSON: Good afternoon, Your Honor. Craig
7 Thompson for Defendant Rowe.

8 MR. MORGAN: Thaddeus Morgan for Liane Shekter Smith.

9 MR. GRASHOFF: Phil Grashoff on behalf of Stephen
10 Busch.

11 MR. ZEINEH: Good afternoon, Your Honor. Edward
12 Zeineh on behalf of Daugherty Johnson.

13 MR. MEYERS: Good afternoon, Your Honor. David
14 Meyers on behalf of Daugherty Johnson.

15 MR. KRAUSE: Good afternoon, Your Honor. Kirk Krause
16 on behalf of Robert Scott.

17 MR. BARBIERI: Charles Barbieri on behalf of Michael
18 Prysby and Patrick Cook.

19 MR. FAJAN: James Fajan on behalf of Adam Rosen.

20 MR. WEGLARZ: Your Honor, Todd Weglarz for individual
21 Odie Brown and Gradine Rogers.

22 THE COURT: Thank you.

23 MR. MATEO: T. Santino Mateo on behalf of Darnell
24 Earley.

25 MS. FLETCHER: Good afternoon, Your Honor. Shayla

1 Fletcher on behalf of the Alexander plaintiffs.

2 MS. MULDER: Good afternoon, Your Honor. Megan
3 Mulder on behalf of Defendant McLaren.

4 MR. LOTT: Your Honor, Austen Lott on behalf of the
5 Bern plaintiffs.

6 THE COURT: Okay. Thank you.

7 MR. MARKER: Good afternoon, Your Honor. Christopher
8 Marker here on behalf of Michael Glasgow.

9 MR. WISE: Good afternoon, Your Honor. Matt Wise on
10 behalf of Jeffrey Wright.

11 MR. GALVIN: Joseph Galvin, Your Honor, also on
12 behalf of Mr. Wright.

13 MR. WOLF: Good afternoon, Your Honor. Barry Wolf on
14 behalf of Gerald Ambrose.

15 MR. JENSEN: Good afternoon, Your Honor. Larry
16 Jensen on behalf of Hurley Medical Center, Ann Newell and Nora
17 Birchmeier.

18 MR. RADNER: Good afternoon, Your Honor. Solomon
19 Radner on behalf of the Washington plaintiffs.

20 MR. CAFFERTY: Good afternoon, Your Honor. Michael
21 Cafferty on behalf of Nancy Peeler.

22 THE COURT: Thank you. Okay. Well, welcome to
23 everyone who's here.

24 I set forth an agenda for this status conference.
25 And I want to begin with a couple of things that aren't

1 actually on the agenda. And the first is to discuss who needs
2 to be present in terms of lawyers at future status conferences
3 now that the motions to dismiss in Carthan have been
4 adjudicated and the motions to dismiss in Walters and Sirils
5 have also been determined.

6 And when you combine those two decisions there are a
7 number of defendants who were dismissed in those cases. It
8 was brought to my attention that there's not a final order of
9 dismissal as to those defendants because that ordinarily in
10 the ordinary course of litigation only happens at the
11 conclusion of either a verdict being reached or a final motion
12 to dismiss that adjudicates the entire case.

13 And in light of the fact that that may not be for
14 some time, I want to make sure that the lawyers for those
15 defendants who have been dismissed are not required to be here
16 at any future motion hearings or status conferences,
17 telephonic conferences and so on.

18 Anyone is welcome to be here who thinks it's in your
19 client's interest to be present or in the public interest. No
20 one is excluded from this courtroom under any circumstances
21 that I can think of. We've had a few disruptions in different
22 cases. But nothing like that would happen or has happened
23 here.

24 So from hereon out, those lawyers when there's a
25 notice to appear, you may get the notice because your client

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1 has not had a final order of dismissal entered, but you are
2 not required to be here. You won't be expected to be here.
3 And you'd certainly be welcome if you show up.

4 So is there any question? Is that clear? Anybody
5 have any questions about that? Okay.

6 Then the next thing I wanted to do is go over the
7 impact of the decision in the Walters and Sirls cases is. And
8 in terms of what's yet to be decided in terms of additional
9 short form complaints.

10 And I see that we have some members of the community.
11 I'm sure that you're plaintiffs in our case. I would
12 anticipate maybe you are. I want to especially welcome you
13 here. And to the extent there are defendants who are here who
14 are clients, I'd like to welcome you as well.

15 I will tell all of you that what we deal with in
16 these conferences is literally in the weeds. Like we are at
17 blades of grass that might show up between -- I don't want to
18 reference weeds because this is such an important case to
19 everyone here. So I'll just say blades of grass instead.

20 So it may be a little tedious and you're welcome to
21 talk to your lawyers at the conclusion to make sure any
22 questions are answered.

23 So this is one of those areas which is deeply in tiny
24 blades of glass. So what we have in the individual cases --
25 and Mr. Stern, I might call upon you to help me through this

1 because you're here representing the individual plaintiffs.

2 And so what we have is a master complaint that was
3 filed in Walters and Sirls. Then we have short form
4 complaints in Walters and Sirls. And those have been now the
5 motions to dismiss have been determined. Some claims continue
6 on. Some don't. Many defendants continue on. Some don't.

7 There are some claims, there's a CERCLA claim, an
8 intentional infliction of emotional distress. There are some
9 state law claims from some old -- a former complaint that may
10 have boxes checked on the short form complaints that are still
11 pending.

12 Mr. Stern, how do you suggest we address those?
13 Because they were not incorporated in your new long form
14 complaint.

15 MR. STERN: If I understand -- Corey Stern for the
16 plaintiffs. I just want to make sure I understand your
17 question. To the extent that claims still remain --

18 THE COURT: Boxes checked on earlier short form
19 complaints referencing counts that no longer exist.

20 MR. STERN: So in my experience, they just no longer
21 exist. But there are not -- there's not a necessity for an
22 amended short form complaint. It's just that the lawyers that
23 are prosecuting those cases based on the orders in Walters and
24 Sirls, based on the related orders that you previously entered
25 as to how you would deal with Walters and Sirls, when

1 juxtaposed with the other short forms would deem that your
2 order was applicable to each of the other short form
3 complaints.

4 Such that defendants who have those claims against
5 them at this point in time in those short form complaints that
6 are not Walters or Sirls should know that those counts have
7 also been dismissed as to those short form complaints.

8 THE COURT: That's the way I would like to address
9 it. But what I'd like to make sure all of the lawyers in the
10 individual cases know is that if you want to bring a CERCLA,
11 an intentional infliction of emotional distress, any other
12 state law counts or federal counts that are currently not in
13 Walters and Sirls, you will need to file a motion for leave to
14 amend to include those. Because they are not in your cases
15 anymore.

16 So the defendants do not need to answer those counts
17 that are not in Walters and Sirls, the master or those short
18 form complaints.

19 The one exception to that will be the cases in the
20 Marble and the Brown case. Those are two cases unlike many of
21 the others that raise legionella claims against two different
22 hospitals in Flint, McLaren and Hurley Hospital.

23 So for those cases, the amended short form complaint
24 is due August 19th. And what I'll say to be very clear about
25 that is in those instances, McLaren and Hurley are new

1 defendants that have not been adjudicated previously in
2 Walters, Sirls, or Carthan. So you will need to set forth
3 your allegations against those defendants in your short form
4 supplement or complaint.

5 And the answer -- the motion to dismiss or answer, it
6 will be due 30 days later on September 19th. And I will let
7 -- those defendants who've already been dismissed, you're out.
8 You don't have any work to do.

9 Those defendants who are still in, the only argument
10 that I want to hear in your motion to dismiss -- and certainly
11 if you're filing an answer this doesn't apply.

12 But if you choose to file a motion to dismiss, then
13 your motion should be regarding the new allegations and not a
14 repetition of all of the arguments that you've already made in
15 Walters and Sirls. Those will be -- I'll have one paragraph
16 at the beginning saying the Court incorporates all of its
17 decision in Walters and Sirls into this decision. Except
18 we're now going to address additional claims related to
19 McLaren and Hurley.

20 Mr. Goodman.

21 MR. GOODMAN: Your Honor --

22 THE COURT: Say your name and your client.

23 MR. GOODMAN: William Goodman appearing on behalf for
24 purposes on this question on behalf of the Marble plaintiffs.

25 I take it that by allowing an explicated version of

1 certain claims in the form of a short form complaint, the term
2 short form is a term of art here. And since these are
3 somewhat elaborate claims may require a little bit of --

4 THE COURT: An addendum.

5 MR. GOODMAN: Yes.

6 THE COURT: Yes.

7 MR. GOODMAN: And in particular in the case of the
8 Marble family and plaintiffs, we're talking about the claim of
9 intentional infliction of emotional distress which has both
10 state common law grounds and in my opinion substantive due
11 process over 1983 grounds as well.

12 THE COURT: Okay. Well, I don't know -- I can't
13 comment on whether it does or doesn't. But I can say that if
14 you want to bring a substantive due process claim that has not
15 previously been adjudicated, then you'll need to set it forth
16 in your supplemental filing to your short form.

17 MR. GOODMAN: Thank you, your Honor.

18 THE COURT: Okay. All right. So that's what will
19 happen.

20 Then in terms of answers being filed to Walters and
21 Sirls, those will now be due September 3rd. And an answer
22 should be filed on Walters, an answer in Sirls, and then with
23 respect to every other short form that currently exists, an
24 answer -- a one-page reference to that answer can be filed.
25 You don't need to repeat your entire answer unless you might

1 wish to.

2 Mr. Campbell, did I get that wrong? You looked at me

3 --

4 MR. CAMPBELL: No. I'm just listening intently, Your
5 Honor.

6 THE COURT: Okay. All right. You know the one
7 problem I foresee with this is that in the short form
8 complaint, there's going to be an allegation that like 15
9 people lived at a particular address or something. And you
10 may want to answer but you don't know if that's true or not.

11 So there could be some additional detail than the one
12 page. But you don't have to answer all of the allegations in
13 the long form complaint that are adopted in each short form.
14 Okay.

15 And what we're going to do is if the first few -- if
16 the defendants get busy working on these answers, a problem
17 arises that you realize, you know, I can't just adopt all of
18 that because of the way it's presented, you'll let me know and
19 we'll solve the problem.

20 MR. STERN: Your Honor?

21 THE COURT: Yes.

22 MR. STERN: When it comes to the short form
23 complaints, to the answers to the short form complaints and
24 filing a notice, it may be appropriate for defendants just to
25 say a boilerplate.

1 To the extent there exist facts that are specific to
2 the individual plaintiffs in the case, you know, defendants
3 are without sufficient information to admit or deny and
4 defendants further adopt their previous answer as filed.

5 And this way it's still a boilerplate notice.

6 THE COURT: Yeah.

7 MR. STERN: So they don't have to redo it every time
8 but it preserves their right to sort of, you know, discover
9 that information as the litigation goes on.

10 THE COURT: I think that's a good idea. So we'll do
11 that.

12 MR. KUHL: Your Honor.

13 THE COURT: Yes.

14 MR. KUHL: Richard Kuhl for state defendants. For
15 those of us that have state defendants, which is Governor
16 Snyder, we wouldn't be filing an answer.

17 THE COURT: No.

18 MR. KUHL: So do we need to file anything or is it
19 presumed that any appeal we file in Walters and Sirls will
20 stay our obligation to --

21 THE COURT: Absolutely. And I wanted to get to that
22 next. Yes. Well, Mr. Erickson.

23 MR. ERICKSON: Philip Erickson representing the LAN
24 defendants and Leo A Daly. Just to clarify. So defendants
25 will now file master answers. Defendants that were in Walters

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1 and Sirls that are still in Walters and Sirls will file a
2 master answer as to the master complaint. Then we'll also
3 file short form answers as to the short form complaints in
4 Walters and Sirls.

5 THE COURT: Yes.

6 MR. ERICKSON: But my question is, is it true that
7 the Court is not now requiring answers to short form
8 complaints in all of the other individual cases at this time
9 given the pendency of the bellwether process?

10 THE COURT: So you're suggesting -- what does the
11 bellwether process have to do with filing a one-page answer in
12 all of the other short form individual cases?

13 MR. ERICKSON: Well, it's just -- it seems
14 unnecessary in that none of those cases is going to be
15 proceeding to trial and only the bellwether claims in the near
16 term are going to be proceeding to trial.

17 THE COURT: Yeah, but those cases exist. They're on
18 my docket. I need to know that the defendants know about
19 them. I keep track of every case on my docket. If an
20 answer's not filed, I issue a show cause why it shouldn't be
21 dismissed for failure to prosecute because the plaintiff has
22 not brought it to my attention.

23 Just to satisfy that obsessive nature, I think it's
24 important to -- if you've got a lawsuit, there has to be an
25 answer. And then we're going to put those -- we're going to

1 hold on to those until it's time for them to be -- to go to
2 trial.

3 MR. ERICKSON: I understand, Your Honor. And I was
4 seeking clarification.

5 THE COURT: Yeah.

6 MR. ERICKSON: And you provided it. In light of the
7 Court's desire that we answer in all cases where there's been
8 a short form complaint filed, we --

9 THE COURT: Except Marble and Brown because we're
10 going to have new -- you know, that will go on its own track.

11 MR. ERICKSON: Understood. We talked upstairs about
12 having until September 3rd to answer in Walters and Sirs. I
13 would request on behalf of all defendants more time --

14 THE COURT: Absolutely.

15 MR. ERICKSON: -- to process the other answers.

16 THE COURT: Let's do October 3rd.

17 MR. ERICKSON: That's reasonable.

18 THE COURT: Okay. I don't know if that's a weekday.
19 Good. October 3rd.

20 MR. GALVIN: Your Honor, Joseph Galvin on behalf of
21 Jeff Wright. With respect to Marble and Brown, each of those
22 has a count styled 1983 due process denial of access to
23 judicial remedies. I do not believe that there has been a
24 determination by this Court.

25 Did I understand you earlier to say that defendants

1 who had been otherwise dismissed should not file a motion to
2 dismiss as to Marble and Brown because those cases were to
3 relate to the two hospitals only?

4 THE COURT: Let me -- that's a good question. Mr.
5 Goodman, this due process failure to have access to the
6 courts. What is that claim? I've never heard of it.

7 MR. GOODMAN: That claim is that if you deprive
8 people of information, which is what happened in the Marble
9 case and I think --

10 THE COURT: But McLaren and Hurley are private
11 actors. So you're not suing them for a constitutional --

12 MR. GOODMAN: We've alleged that they are 1983
13 coconspirators with the public defendants.

14 THE COURT: I see.

15 MR. GOODMAN: And I think that I can provide the
16 Court with case law on that.

17 THE COURT: No, I don't want to argue it now. But
18 what I'm trying to figure out is we just have a practical
19 question. Is Jeff Wright a defendant in that?

20 MR. GOODMAN: I think so. But I would have to -- I
21 would have to go back and review my pleadings and make sure.

22 THE COURT: Okay.

23 MR. GALVIN: As a technical matter, Jeff Wright is
24 included in the category of government defendants who are
25 alleged to have conspired.

1 THE COURT: I see.

2 MR. GALVIN: Even though what they had to say about
3 legionella. I don't know.

4 THE COURT: That's okay. We won't argue it.

5 MR. GALVIN: I understand, Your Honor.

6 THE COURT: Okay. I think -- what I would ask you,
7 Mr. Goodman, is to make sure when you're -- if you're
8 amplifying claims that we know who your defendants are.

9 If the drain commissioner of Genesee County conspired
10 to deprive people of their right to access to the courts, we
11 need to know specifically so his lawyer will know whether to
12 respond.

13 MR. GOODMAN: Understood, Your Honor. And I have
14 stood up with an additional question which is as to the date
15 on which the responses are due. I think you mentioned Sirls
16 and Walters but not Marble and Brown with regard to this
17 October 3rd extension.

18 Does that apply to legionella cases as well as the
19 October 3rd extension?

20 THE COURT: No. The legionella cases are going to be
21 -- you're going to file your amended short form August 19th.

22 MR. GOODMAN: That's right.

23 THE COURT: Answers or motions to dismiss on
24 September 19th.

25 MR. GOODMAN: Thank you.

1 THE COURT: Okay. Okay. All right. So the issue of
2 stays pending qualified immunity. I'll get to you Mr.
3 Erickson. I think it's clear. But to the extent it may not
4 be clear, Mr. Kuhl had asked about our former Governor Snyder
5 being a defendant in Carthan.

6 He has an appeal pending claiming qualified immunity
7 and other kinds of immunity. And any defendant that is
8 currently on appeal or will shortly be on appeal in a
9 particular case, the case is stayed as to unnecessary
10 discovery for that defendant.

11 But in the Guertin case, we have essentially all of
12 the defendants. We don't have Governor Snyder in there. But
13 any defendant that has answered is now in the case and must
14 respond as a party to the case and not a nonparty.

15 So then let me say on the issue of discovery -- oh,
16 Mr. Erickson, go ahead.

17 MR. ERICKSON: Thank you, your Honor. Philip
18 Erickson on behalf of the LAN defendants and Leo A Daly.

19 I wanted to raise another issue similar to the one
20 that Mr. Galvin just raised. And that is in the Brown case
21 and its companion case or similar case filed by Mr. Weglarz,
22 there is a claim, at least one and maybe more than one, that's
23 brought against the engineering defendants that is not in
24 Marble -- in Walters or Sirls. And that claim is a 1983 claim
25 against the private companies.

1 So that will have to be briefed and addressed in some
2 way in the Brown and Rogers cases.

3 THE COURT: It will. It certainly will. Thank you.

4 So basically what we have is defendants will only
5 need to dismiss -- move to dismiss claims that have not been
6 previously adjudicated. So if something new comes up in Brown
7 or the Marble case, that will absolutely need to be briefed.

8 Mr. Kuhl.

9 MR. KUHL: Your Honor, you mentioned --

10 THE COURT: Richard Kuhl on behalf of the state.

11 MR. KUHL: I'm sorry, Your Honor. Richard Kuhl on
12 behalf of the state defendants. You mentioned counts. But
13 the individual allegations that are made in Marble and Brown
14 could change the analysis.

15 For example, if somebody contracted legionella and
16 died in the fall of 2014 and somebody didn't become, as
17 alleged in Walters and Sirls, didn't gain knowledge of the
18 legionella problem until spring of 2015, the analysis is going
19 to be different. And so I'm assuming that we are going to be
20 permitted to address those.

21 THE COURT: Oh, you can address them. Yeah.
22 Anything that alters the analysis or is new or different, you
23 can address.

24 Mr. Washington.

25 MR. WASHINGTON: Judge, Val Washington on behalf of

1 the Anderson and Lee plaintiffs. As sometimes happens when
2 there's a lot of publicity surrounding litigation, people come
3 out of the woodwork. Individuals come out of the woodwork.

4 THE COURT: Okay.

5 MR. WASHINGTON: So my question is if we are
6 approached by people who have not previously filed short form
7 complaints or don't consider themselves part of any class
8 proceeding, should we at this time file a short form complaint
9 on their behalf or should we just have them stand down at this
10 point?

11 THE COURT: No, no, no. You should represent your
12 clients zealously in the way you see fit to represent them.
13 So if you -- you have clients who wish to sue and they're
14 within the statute of limitations, I leave it to you and your
15 client to decide what to do.

16 MR. WASHINGTON: Thanks, Judge.

17 THE COURT: Okay.

18 MR. GRASHOFF: May it please the Court, Phil Grashoff
19 on behalf of Stephen Busch.

20 Just so it can be cleared up. I want to understand
21 what happens to the CERCLA claim in the Brown case that has
22 been pending, box checked off, I agreed -- well --

23 THE COURT: Okay. I get you. I'll let you finish if
24 needed. What's going to happen to the CERCLA claim in the
25 Brown case is I'm assuming they're not going forward with it.

1 But should Mr. Weglarz decide that he wants to bring a CERCLA
2 claim, he's going to have to tell us the allegations that
3 would support -- the factual allegations that would support
4 such a claim.

5 MR. GRASHOFF: So that fits in with Mr. Stern's
6 earlier explanation. That claim is gone because it had
7 preexisted and it's the Sirls and Walters decision that was
8 made withdrawing that claim stands unless the plaintiffs'
9 counsel in Brown decides to reassert it with new facts.

10 THE COURT: With facts, yes.

11 MR. GRASHOFF: Got it. Thank you.

12 THE COURT: Okay. So the next issue is how discovery
13 disputes will be handled for the next six month period. And
14 I'm going to do this only for -- on a trial basis for six
15 months and amend it if necessary or change courses entirely if
16 necessary.

17 What I will do is reserve one hour on my docket every
18 two weeks to have a discovery conference call if necessary.
19 It does not need to be used for that purpose if there are no
20 disputes.

21 These hearings will be by telephonic status
22 conference. The telephone number will be on the docket. And
23 they will not be on the record because I think what we'll be
24 doing is problem solving. And we will be just trying to
25 resolve the issue. If they can't be resolved, then written

1 motions will be filed and a hearing held and so on.

2 But in order to reserve a spot for discussion of a
3 discovery dispute, the parties to it will be required to meet
4 and confer with one another to try to resolve it or to narrow
5 the issues. And if they cannot resolve or narrow the issues,
6 they will jointly contact the law clerk assigned to the case
7 to request time on the docket.

8 A response will be given where you'll know when the
9 hearing will be held. And a one-page single space letter can
10 be submitted through the law clerk to identify the dispute.
11 That will be accompanied by the subpoena, the requests for
12 production of documents, the requests for admissions.

13 Whatever the issue is, I'll want to see the
14 underlying documents just as they are or the answers, the
15 document with the answers that you may believe are
16 insufficient. I'll need that one-page single spaced letter
17 two days ahead of the telephonic status conference.

18 If the issues are not or cannot be resolved, then I
19 will set a briefing schedule for briefing of the motion to
20 compel or motion to quash or whatever the motion might be. So
21 we'll put that in an order following this hearing so that it's
22 clear how that will be handled.

23 Now in the submissions for this conference, there was
24 an indication that it may be helpful to have an update on
25 Freedom of Information Act requests. Is that still an issue?

1 No? Okay. And the document subpoenas -- Mr. Berg, I think I
2 was told that you may discuss with us a shared subpoena
3 tracking process.

4 MR. BERG: Rick Berg on behalf of the City of Flint.
5 I'll be very brief, Your Honor.

6 We had a conference call on Monday. The idea of a
7 centralized spreadsheet was discussed and the consensus was it
8 seemed like a good idea. We have, through my office, created
9 a Google Docs location that we would propose to use for that.
10 Rather than circulate it and begin using it because we knew
11 this was on the agenda and if there was opposition, I thought
12 I would talk about this first and invite others to talk about
13 it.

14 But we have the document uploaded and we'll make it
15 available. And the process is easy to use like any kind of
16 system of that nature.

17 THE COURT: And it's password protected because if
18 some of the information is medical information or blood tests
19 things like that it won't be available to the public.

20 MR. BERG: Yes. Although at the moment the process
21 that we're contemplating does not include any of the
22 responsive documents. It's only to track the process.

23 THE COURT: I see. I get it. Okay. Okay. Right.
24 Of course. You're not going to upload all the responsive
25 documents.

1 MR. BERG: No. It's just to see who's been served,
2 who's not been served, whether documents have been produced,
3 who has them, how many pages, what one might do if one wanted
4 to acquire them from a person who got them.

5 THE COURT: That's an excellent idea. Is there any
6 opposition to this plan? Okay.

7 MR. LEOPOLD: No.

8 MR. STERN: No.

9 THE COURT: Okay. Hearing from both the plaintiffs'
10 counsel that there's no opposition there, it sounds like a
11 very good idea.

12 MR. BERG: We'll circulate the information to the
13 subpoena subcommittee in the next day or so and we'll be off
14 and running.

15 THE COURT: Okay.

16 MR. BERG: Thank you.

17 THE COURT: Yeah. You're welcome.

18 Is there anything further from this agenda item on
19 bellwether selection? Anything that needs to be discussed?
20 Okay.

21 In the Burgess case versus United States and the
22 related cases, there are I think four or five, maybe five
23 cases in front of Judge Parker where plaintiffs, many, many
24 thousands of plaintiffs are suing the United States equal
25 protection agency.

1 She responded to me and let me know that the briefing
2 won't be done until the middle of August. I think something
3 like August 16th. And so she'll be turning her attention to
4 it after that.

5 Once that decision is made as to whether -- what the
6 government is doing there is they're seeking an opportunity to
7 appeal Judge Parker's decision denying their motion to
8 dismiss.

9 If she grants them the right to have an interlocutory
10 appeal, meaning an appeal to the Sixth Circuit before final
11 judgment, then that will certainly take place. If she denies
12 that, then she and I will discuss her -- whether she will
13 transfer those cases to this court so that all of the
14 litigation can be coordinated. But we won't have that
15 discussion until her decision is made.

16 So the next issue that I wanted to talk about is just
17 to have on the record here whether there is any coordination
18 with the state court litigation that I should try to
19 undertake. And my sense is that there isn't, but I think we
20 should have a report.

21 MR. STERN: Your Honor, there's a status conference
22 --

23 THE COURT: Corey --

24 MR. STERN: Sorry. Corey Stern on behalf of
25 individual plaintiffs as co-liaison counsel. Judge Yuille has

1 scheduled a status conference for a week from today in Genesee
2 County. Assuming that conference goes forward, the agenda
3 items will be the same as what's previously been discussed
4 with him.

5 There are numerous pending dispositive motions before
6 Judge Yuille that need to be ruled upon before anyone believes
7 he'll take or can take further action including adopting or
8 creating his own case management order to address bellwether
9 cases as well as class certification issues in state court.

10 So it's a holding pattern presently with a hope that
11 a week from today on Wednesday the 14th there is some movement
12 with regard to the pending motions or at least some direction
13 from Judge Yuille as to whether those motions are headed.

14 THE COURT: Okay. And thank you.

15 I wanted to ask Deborah Greenspan if you could
16 provide a report as the special master. And for those of you
17 who are not ordinarily here, Deborah Greenspan has been
18 appointed by myself to fill a role under the federal rules of
19 civil procedure that's called special master.

20 And she has a number of assignments. And one of them
21 is to keep track of the various cases that are filed, the
22 number of plaintiffs who are represented. The fees and
23 expenses that are expended in these representations, as well
24 as a number of other duties that she has been tirelessly
25 addressing.

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1 So Ms. Greenspan.

2 SPECIAL MASTER GREENSPAN: Thank you, your Honor. I
3 have a very brief report today and it's focused only on what
4 we've been calling the tracking the cases that have been or
5 the claims that exist that have retained counsel that we've
6 been receiving information on from the various plaintiffs'
7 forms.

8 So when I was here at our last status conference, I
9 reported that we had -- I was close to being able to submit a
10 second interim report on the status of all of these identified
11 claims. About a week after that status conference, I received
12 an extensive update from plaintiffs' counsel on claims, the
13 status of various claims, which caused a need to revise all of
14 the information in the report and the tracking charts and all
15 of the analysis of duplicate claims. So that has all been
16 completed.

17 I believe that there's another slight adjustment that
18 may occur that I'd like to incorporate in the next report.
19 I'll have some more information hopefully later in the week so
20 that I will then be able to submit an updated report. I just
21 don't want to submit one that's going to be changed in a
22 couple of weeks.

23 So just to give a little bit of information. When I
24 was here in June, I reported that we thought that there were
25 18,769 individuals who had retained counsel. That does not

1 include individuals who've contacted counsel or are on
2 counsel's notice list but actually have not signed a retainer
3 agreement. That was also accounting for duplicates. And a
4 duplicate means that we find the same individual in a list
5 presented by more than one plaintiff firm.

6 That number has now been reduced to 17,719 based on
7 the updates that we've had and the change in categories of
8 some of these individual claims. So it's about a thousand
9 reduction.

10 And I also wanted to report that at the last status
11 conference I think I noted that we were collecting injury
12 information. Meaning we'd ask firms to state what the claim
13 of injury is. What type of injury we're talking about.

14 Most firms had submitted data that suggested lead
15 exposure as the injury. But we were trying to get some
16 additional details about that. I have received a substantial
17 amount of information and will be -- it will be recorded in
18 the next report.

19 There's a range of different injuries alleged from
20 cognitive impairment to hair loss to things that we've heard
21 of in this litigation. But I now have some numbers associated
22 with those. So that will be included in the next iteration of
23 this report, which I hope we can get out in a week or so.

24 THE COURT: Okay. Thank you, very much.

25 SPECIAL MASTER GREENSPAN: Thank you.

1 THE COURT: And I appreciate the report a great deal.
2 And as brief as the report is, it does not come near to
3 representing the amount of work that goes into all of this.
4 So I want to repeat again my appreciation for Ms. Greenspan's
5 work. And just remind those lawyers who are submitting this
6 information how critical it is to the process.

7 If we don't know who the plaintiffs are, if we don't
8 know what has happened to your clients or what you alleged has
9 happened to them, it makes the whole process more difficult.
10 So I would just ask everybody to respond promptly and
11 accurately to the requests from Ms. Greenspan.

12 The next item on the agenda is a discussion of the
13 appointment of subclass counsel. And since we were last here,
14 plaintiffs made a written motion to appoint certain
15 individuals to be subclass counsel.

16 I denied that motion and have now had an opportunity
17 in chambers to hear from interim co-lead class counsel that
18 they have a new roster of individuals who could fulfill this
19 duty.

20 So they are going to submit that new motion I believe
21 within approximately a week or less. I would encourage them
22 to do it as soon as you can so that this process can move
23 along.

24 And I think in the agenda I called it subclass
25 counsel and it is for settlement allocation and settlement

1 purposes. So we do not have a class certified. What we are
2 working on is -- with this particular issue is seeing whether
3 the parties can reach a settlement in the case. And it
4 requires subclass settlement counsel on an interim basis.

5 So if there's nothing else -- is there anything else
6 that we have not covered? All right.

7 Then what we'll do is the next conference will be
8 held on September 25th, 2:00 PM here with a 1:00 PM meeting of
9 the executive committee in chambers.

10 And I would like to on the record thank my law clerk,
11 Hallam Stanton who has been here a little over a year working
12 almost exclusively day and many nights and some weekends to
13 assist me in this case. And Hal, I appreciate it
14 tremendously. I will miss you a great deal. But I told him
15 we'll send the U.S. Marshal service after him to bring him
16 back if we have some questions for him. So I want to thank
17 you, Hal.

18 And also Allison Hall is also leaving. She's been in
19 the background helping with this case as well as many other
20 cases. But I have a new Clark, Eric Baudry who has just
21 joined us from Minnesota. He comes from Minnesota via Yale
22 Law School. So he's going to be with us to help us.

23 And then I'll have two more law clerks by September.
24 And Antonia Giles is here. She is a student at U of D,
25 University of Detroit Mercy. So she's been great to have here

1 this summer a little bit. And she's leaving all too soon.

2 So if there's nothing else, then we'll adjourn until
3 September 25th.

4 (Proceedings Concluded)

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8 CERTIFICATE OF OFFICIAL COURT REPORTER

9 I, Jeseca C. Eddington, Federal Official Court
10 Reporter, do hereby certify the foregoing 37 pages are a true
11 and correct transcript of the above entitled proceedings.

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

8/28/2019
Date

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