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IN THE UNITED STATES DISTRICT COURT
FOR THE 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
and
THE HONORABLE JOSEPH J. FARAH
GENESEE COUNTY CIRCUIT COURT JUDGE
Virtual Hearing Via Zoom - Wednesday, August 27, 2020

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Wednesday, July 29, 2020

2:29 p.m.

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THE CLERK OF THE COURT: The United States District Court for the Eastern District of Michigan is now in session. The Honorable Judith E. Levy is presiding, joined by the Honorable Joseph J. Farah of Genesee County Circuit Court. Now calling the Flint Water Cases.

THE COURT: Okay. Thank you, Abigail.

Well, thank you all for being here. And I hope that you're all staying healthy. Your families and your loved ones as well. So it's good to see everybody and have this opportunity to make progress on our work together.

And I want to thank Judge Farah from Genesee County for once again joining all of us to work together on these cases.

JUDGE FARAH: Thank you, Judge Levy.

THE COURT: You're welcomed.

I think Mr. Williams from DOJ on the EPA cases needs to be admitted.

MR. STERN: Your Honor, I'm so sorry to bother you. This is Corey Stern. Renner Walker is on the line as well. He's the 515 number. And to the extent there's anyone discussion or potential argument regarding the status of the EPA cases, he would be the person on our end who might engage.

1 So if he could be unmuted for that purpose, that would be good.

2 THE COURT: Sure.

3 Okay. Thank you. Well, before we get to the bulk of
4 the agenda ...

5 Just one second. Okay. I think it's difficult to add
6 a phone number as a panelist. But we can unmute him. And I
7 don't know if he'll need to make a contribution or not. So
8 we'll find out.

9 But before we go any further with the agenda, I want
10 to acknowledge a milestone in the case of great importance to
11 all of us and congratulate those parties who reached the
12 proposed settlement that's been reported on quite widely. And
13 I understand that that will be presented to the Court for
14 consideration of preliminary approval within -- it sounds like
15 a month to two months from now.

16 Is there a clearer idea that anyone can provide me for
17 approximately, like, within a week to two weeks of when you
18 plan to file the motion for preliminary approval? Or that's
19 not known?

20 MR. KUHL: At least a 45 day time period.

21 Sorry. This is Richard Kuhl for the State defendants.

22 We have a 45 day process built in to finalize the
23 agreement and to encourage other defendants to join in in
24 helping Flint move forward. So we would anticipate after that
25 time period's expired that it would be a week or two before we

1 would have the preliminary motions that are filed.

2 THE COURT: Okay.

3 MR. KUHL: Does counsel or co-class class disagree
4 with that?

5 MR. SHKOLNIK: We agree.

6 MR. LEOPOLD: Ted Leopold on behalf of interim co-lead
7 class counsel, Your Honor. That's correct. We're already in
8 the process of where we can to start formulating those
9 papers.

10 MR. SHKOLNIK: On behalf of co-liaison, we agree.
11 We're all working together to meet that deadline, Your Honor.

12 THE COURT: Good. Okay. I had seen the 45 days, but
13 I didn't know when you anticipated filing it after that.

14 So I want to again congratulate those of you who
15 worked on that and were able to achieve the proposed
16 settlement. And I want to also acknowledge that I had a
17 meeting with the lawyers who were involved in that process on
18 Monday. It's on the docket, you can see. No other counsel was
19 required or expected to be there. And so in case those of you
20 who are monitor- --

21 Could everybody mute their phones or themselves, if at
22 all possible? I think we're getting some sort of feedback.

23 Okay. Well, we'll just keep doing our best.

24 (Pause.)

25 THE COURT: So I did hold a meeting with the

1 plaintiff's counsel as well as for the State of Michigan and
2 Governor Whitmer. And we discussed generally communication
3 issues related to the proposed settlement.

4 So I don't want any of the other lawyers who were not
5 present to have any concern that you missed out on something
6 that you were expected to be at.

7 I will set up a procedure hearing on the motion for
8 preliminary approval as soon as the motion is filed and I
9 assured everybody on Monday that I will turn all of my
10 attention that I possibly can afford, in light of my docket, to
11 addressing that motion when it's filed so that it can be
12 handled in a timely manner.

13 I wanted to say one other just sort of procedural or
14 thing related to this case. This morning I denied the EPA's
15 motion to dismiss the United States Environmental Protection
16 Agency from this litigation. And that's posted on the Walters
17 slash Meeks docket, which is 17-10164.

18 So with that, I wanted to ask Deborah Greenspan to
19 provide some remarks about the proposed settlement and where we
20 are with that because she was very involved in the structure of
21 how that process moved forward.

22 MS. GREENSPAN: Thank you, Your Honor. I think you've
23 covered a couple of the items that I was going to address in
24 terms of schedule and process, but I'll go over a few comments
25 and a few thoughts about this. As you noted, I think you had

1 requested that I get involved in what we're calling the
2 structure of the settlement, if there could be a settlement
3 worked out. I think this has been about an 18-month process.
4 It's been a long process. There's been a lot of work put into
5 this.

6 I wanted to acknowledge that the -- and note, really,
7 for the record, that the negotiators on behalf of the
8 plaintiffs are the four lawyers that Your Honor appointed to be
9 the co-liaison counsel and the interim co-lead counsel; that
10 is, Mr. Stern, Mr. Shkolnik, Mr. Pitt and Mr. Leopold. They
11 are the lead negotiators on behalf of the plaintiffs. Of
12 course, there were many other lawyers who participated and
13 provided assistance from their firms and related firms.

14 And on the side of the State, we have the lawyers that
15 have been appearing in this case regularly, and in the
16 litigation who have worked double time to participate in the
17 settlement. And I'm just going to say that they've met every
18 single deadline that we all tried to impose on the process. So
19 it's been much appreciated.

20 As I said, this was a long, hard process and we now
21 have a proposed settlement. And as Your Honor has noted, that
22 is not yet filed. There are many additional components of the
23 settlement, subsidiary documents, that are being worked on
24 right now. This group is working well together to get those
25 documents in order and ready for filing.

1 So at the moment, the information that everybody
2 has -- and the only information that everybody has -- is the
3 summary that was posted by the governor on the governor's
4 website and I think probably by all of the lawyers who are
5 involved in this case as well. It's a summary that describes
6 generally what the structure looks like. It gives some
7 monetary terms and some terms about the allocation of the
8 settlement proceeds.

9 And I know people are anxious to hear more and
10 understand it in more detail and at this point there really is
11 no more detail to be provided on the actual terms. But I can
12 tell you that there is, as Mr. Kuhl has noted and you have
13 noted, that the expectation is that the more detailed papers
14 will be filed within -- you know, I think we keep saying 45
15 days, but approximately that time frame. And at that point, as
16 you have noted, there will then be a schedule for going forward
17 to consider the preliminary approval application and consider
18 all the steps that need to be taken for the Court's review and
19 consideration of the settlement. So I think at that point
20 we'll have -- Your Honor will be able to issue a schedule and
21 there will be additional information about the time frame.

22 One thing I do want to note is that at the time of
23 the -- when these documents are filed, by that point in time,
24 there will be a -- an official website and a facility that will
25 maintain information and will be an accessible point for people

1 to go to to find more information and look at documents. That
2 has to be established at least by the time these documents are
3 filed so that it can be operative if the Court -- once the
4 Courts sets the schedule and we know what -- how we're going to
5 proceed.

6 I think, also, that I have received inquiries from
7 lawyers who have been getting calls from clients or people who
8 may not be clients, currently, but wanted to get some advice of
9 counsel. If -- I know there's concern about lawyers who -- or
10 people who are represented maybe calling a lawyer that isn't
11 their lawyer. If lawyers who are involved here have questions
12 about whether somebody is already represented, I'm going to
13 send an E-mail out to everybody who participated in the census
14 process and reported cases about a process for confirming the
15 status of an individual.

16 There are many sources of information. All of the law
17 firms have provided phone numbers or websites so people can go
18 to and I think Your Honor has been addressing the
19 communications issues to make sure that those communications
20 comport with all of the guidance that they need to comply with.

21 And I think -- I think although everyone's anxious to
22 see this process, we'll move forward quickly. We will see
23 these documents in due course and then proceed from there. And
24 if Your Honor has any questions or anything else I can respond
25 to, I'm happy to do so.

1 THE COURT: At this point I don't. I just want to
2 thank you, Ms. Greenspan, with a hearty thank you and sense of
3 appreciation and respect for the diligence with which you've
4 approached this effort. It is remarkable and very much
5 appreciated. So ...

6 Let me also say that there are three lawyers who filed
7 appearances on the 16-10444 docket, the *Carthan* or *Wade*
8 docket -- Ms. Thomson, Mr. Turchyn and Ms. Stamler. And they
9 each said that they are -- each of you are counsel in state
10 court. I think before Judge Murray in the Court of Claims and
11 are filing a limited appearance in this case in order to be
12 kept apprised of the settlement process in the event that you
13 might have an objection -- or I don't know what all. I mean,
14 that wasn't clear. But I certainly understand what you're
15 trying to communicate.

16 And what I can say to you -- and if you're
17 communicating with other people who might be in your
18 position -- is that I have been in touch with Judge Murray and,
19 of course, Judge Farah who has attended all of these
20 conferences since these cases were reassigned to him. And we
21 will be working together on whatever is -- because I don't know
22 exactly what's coming in terms of the preliminary -- the motion
23 for preliminary approval.

24 But Judge Murray, Judge Farah, will be kept apprised
25 of everything and involved with everything to the extent the

1 structure requires or would be assisted by that. So I don't
2 believe that a limited appearance is necessary in this case.

3 But, Ms. Greenspan, can you fill us in because I'm a
4 little worried that we're going to have an onslaught of lawyers
5 joining this case who don't need to spend their time doing
6 that.

7 MS. GREENSPAN: Your Honor, I think that is correct.
8 I don't think there's a limitation that if you are somehow not
9 in this case that you would be precluded. The settlement would
10 apply across the board to all -- to everyb- -- I'm not going
11 try to characterize it exactly here. But it doesn't matter
12 whether you have a case in this court or another court or no
13 case at all, the settlement will be open to all and I think you
14 can find all of the information that you will need. Once the
15 papers are filed it will be available and I think it will
16 become more understandable at that point.

17 THE COURT: Okay. Thank you.

18 Well, the first item that was on the agenda, then, is
19 to hear from Judge Farah about what you're currently
20 addressing. We will get to Mr. Weglarz motion that is
21 primarily addressed to Judge Farah on opening the discovery
22 with respect to your cases against McLaren and other defendants
23 regarding Legionella

24 But, Judge Farah, is there anything you would like to
25 fill us in on what is going on in Genesee County?

1 I'm learning that Judge Farah is having a 30-second
2 delay.

3 JUDGE FARAH: We got squared away, Judge Levy.
4 Hopefully, everybody can hear me. This is Judge Farah in
5 Genesee County Circuit Court in Flint. And I will give just a
6 little bit of a summary from what happened at the earlier
7 meeting and then we are going to go officially on the record on
8 Mr. Weglarz' motion. And I believe Mr. MacDonald has an
9 interest in. Ms. Smith has an interest in about discovery
10 issues on Legionnella.

11 We met at 1:30 and I, basically, just asked Mr. Kim on
12 the City's couple of motions that he has outstanding, the City
13 has outstanding. And we've agreed to sort of back burner those
14 motions. They're not withdrawn. They're not dismissed, but
15 they are back burnered until other things are looked at,
16 including getting this settlement off the record and finalized,
17 as everybody is hoping for.

18 Now, I have another matter. And that is *In Re Flint*
19 *Water Litigation*, 17-108646, pertaining to the legionella cases
20 involving principally, as a defendant, McLaren Hospital.
21 Mr. Weglarz, on behalf of a number of plaintiffs, has asked for
22 the ability to conduct discovery.

23 I've read your motion, Mr. Weglarz. I've read the
24 response from McLaren. I guess my first question for both of
25 you would be because this has been an Ongoing issue to an

1 extent and there have been some measure of fluidity to the case
2 management orders from the very restrictive that Judge Ewell
3 may have imposed, Chief Judge Ewell many, many months ago, to
4 what is now been sort of mirrored orders, what Judge Levy has
5 entered and my acceptance of that process.

6 Is there something about what you want, Mr. Weglarz,
7 that is being thwarted now by what is soon to be released a
8 fifth case management order next week? Is there something that
9 you're not able to do that you would like to do?

10 MR. WEGLARZ: Well, Your Honor, as it currently
11 stands, I mean, right now we just have a federal case
12 management order. And it does allow us to begin our discovery
13 at McLaren, but we are restricted. We can only submit 25
14 Interrogatories, 30 Request to Produce, 25 or 30 Request to
15 Admit.

16 And that case management order applies only to the
17 federal cases. We only have two federal legionella cases. I
18 get it if that applies just to those two cases, but to have
19 those limitations imposed on our 26 cases pending in state
20 court -- plus I know there's a few more state court cases, I
21 mean, that's just going to be impossible to do adequate
22 discovery with those limitations. So our request is to allow
23 us, at least on the state side with the 26 to 30 cases pending
24 against McLaren only, to have a regular scheduling order. No
25 limits on Interrogatories or Request to Produce. And by me

1 asking for that, I'm not suggesting that I intend to inundate
2 McLaren with that.

3 So, Your Honor, we're not stating, "Look, allow us to
4 have unlimited discovery."

5 We're just saying allow us to proceed with these
6 30 cases under the general rules and parameters of the Michigan
7 Court Rules. That's all we're asking for.

8 JUDGE FARAH: Let me ask you, though, Mr. Weglarz,
9 your motion on one page in particular -- actually, I believe
10 page six. It says your request is to be able to issue and
11 serve third-party subpoenas, issue and serve Interrogatories.

12 Which you've referenced.

13 Request to produce and request for inspection and to
14 notice and take depositions. Now, are you telling me at this
15 juncture, then, you're just concerned about the number of
16 Interrogatories that you want to submit?

17 MR. WEGLARZ: Well, that's one of the concerns. I
18 mean, right now we're restricted to submitting only 30 Request
19 to Produce and that's jointly amongst every plaintiff having a
20 case against McLaren. So that's the concern.

21 Right now there's an issue. I don't know if we're
22 allowed to submit our own third-party record subpoenas.
23 McLaren seems to suggest that I can't and I have to do it
24 through the individual liaison counsel. And we would like to
25 just do that ourselves individual. The liaison counsel is very

1 busy. He's taking care of thousands of claims. I don't think
2 it's necessary. I believe each Legionnella plaintiff can do
3 that on his or her own.

4 And with respect to --

5 JUDGE FARAH: All right. Tell me about your request
6 to notice and to take depositions. Of course, that might very
7 well be the most time consuming for all involved. Can you tell
8 me about what your position is now on whether or not you can
9 take depositions? Certainly, we don't want the same people
10 deposed all over again, if any of them have been deposed in the
11 federal litigation.

12 So what's your position on that part of your
13 request.

14 MR. WEGLARZ: Well, our position is to be able to
15 notice depositions. Now, we're fine with coordinating this. I
16 mean, the other counsel is still involved on these cases.
17 That's fine. We can give them notice. "Hey, we intend to
18 depose McLaren employee Mr. Jones, and if you want to join, you
19 can join."

20 JUDGE FARAH: Let me ask other counsel on this, then.

21 I think Mr. MacDonald, Ms. Smith and whoever else
22 would like to address the Court. What is your position on the
23 evolved request of Mr. Weglarz to work with counsel to see what
24 can be agreed to constant with other orders in the case and
25 what will be disagreed on that the Court will have to

1 eventually make a ruling?

2 Now, before you answer that, I want you -- everybody
3 to understand. And I don't know to the extent that this is
4 going to be impactful or not.

5 To the extent that I make any orders about discovery
6 on the Legionnella cases that draw counsel away from their
7 responsibilities of advancing and effectuating the settlement
8 on the broader scope of cases, that isn't going to happen.

9 So in all likelihood, frankly, not much of anything
10 that isn't agreed to is going to happen for the next 45 days.
11 Because I do not want anybody saying, "Well, I'm tied up on
12 Mr. Weglarz' estoppel and I can't help put together the
13 particulars of the resolution that Ms. Greenspan has worked so
14 hard to achieve."

15 So Mr. MacDonald, Ms. Smith, positions on this? Do
16 you want to work with Mr. Weglarz or what would you like to do?

17 MR. MacDONALD: Your Honor ...

18 MS. SMITH: Your Honor, this is ...

19 MR. MacDONALD: Go ahead, Susan.

20 MS. SMITH: Your Honor, this is Susan Smith. I need
21 to clarify where we are with these cases in the discovery.
22 Mr. Weglarz indicated there is a federal court CMO only that
23 applies to these cases and that is not correct. Judge Ewell
24 entered a CMO coordinated litigation.

25 THE COURT: Ms. Smith, your voice is going in and out.

1 Can you stand closer to your microphone?

2 MS. SMITH: I can certainly try. Is that any better?

3 THE COURT: I think so.

4 MS. SMITH: So there is, in fact, a state court CMO
5 entered by Judge Ewell.

6 Individual Legionnella cases against McLaren were
7 brought into that coordinated litigation by the February 6th
8 order. And it was earlier this year, Your Honor, we discovered
9 that Judge Ewell's docket -- that our objections to that
10 coordination order were resolved. And so all of the individual
11 Legionnella cases are coordinated under that state court CMO.
12 When we discussed the Legionnella discovery protocol, it was
13 discussed whether that would encapture the state court cases
14 and federal court cases.

15 THE COURT: If we can just go off the record to
16 problem solve for a second.

17 (A brief discussion was held off the record.)

18 THE COURT: So let's keep going.

19 So everybody agrees with what Judge Farah just said
20 that Darlene's record will be -- it's just our record. So it
21 will cover if anyone wants to order this regarding a decision
22 that Judge Farah makes.

23 MS. SMITH: Yes..

24 Okay. Go ahead.

25 JUDGE FARAH: All right. Mr. Weglarz, is that good

1 with you?

2 MR. WEGLARZ: Your Honor, that is fine.

3 JUDGE FARAH: Okay. I will point out, too, just in
4 case you can't tell, I am now surrounded by half-inch
5 Plexiglass around the bench, around the jury box and I'm
6 talking about Plexiglass that is two feet by seven feet,
7 half-inch thickness. It's not bulletproof glass. It is
8 anti-COVID glass. So we are trying jury trials here in
9 September and that was a requirement we agreed on.

10 So I don't know if that is effecting anything. When
11 it comes to my knowledge of these things, you can put it in a
12 thimble. But in any event, that could be affecting things,
13 too, because I'm completely nearly surrounded by Plexiglass.

14 So that being the case, now let's hear from Mr.
15 MacDonald and Ms. Smith and anybody else on the merits on what
16 Mr. Weglarz would like to see happen.

17 I think we left off, Ms. Smith, with you saying, "It's
18 not just a federal court case management order. Judge Ewell
19 previously had a state court case management order that would
20 apply to Mr. Weglarz' situation." Is that correct?

21 MS. SMITH: That's correct. And I was providing the
22 context that when we were all discussing and working very hard
23 on the litigation, that the discovery protocol for the
24 Legionella cases and it was the June 3rd discovery conference
25 with both Your Honor and Judge Levy present that we discussed

1 the need to update the state court CMO. And the proposal was
2 to have a Legionnella discovery protocol incorporated into that
3 state court CMO when it's updated. The same way we've updated
4 the federal court CMO.

5 JUDGE FARAH: All right.

6 MS. SMITH: So the idea that the state court cases are
7 twisting in the wind is not completely accurate.

8 And I left off in June understanding that there was
9 going to be a joint effort to update the collective -- let's
10 see. I'm not signing up to do that jointly.

11 A collective effort to update the state court CMO and
12 add to it a Legionnella discovery protocol consistent with what
13 we've done in federal court.

14 And I'll defer to Mr. MacDonald now because I know
15 that he had some comments with respect to Mr. Weglarz' point.

16 Brian?

17 JUDGE FARAH: All right. Mr. MacDonald, if you would
18 like to go ahead.

19 MR. Mac DONALD: Yes. Judge, as you pointed out --
20 first of all, good afternoon. As you pointed out, you inquired
21 whether or not I was happy that Mr. Weglarz had evolved and I
22 can tell you I am very pleased that he's evolved and that we do
23 get along and work well together. However, my concern is
24 what's being suggested here would be chaos in all of this
25 litigation.

1 There's an attempt, at least, by this motion to carve
2 out Mr. Fieger's and Mr. Weglarz' Legionnella cases so they can
3 go off and play in their own sandbox relative to discovery. If
4 that's the case and if that's the Court's ruling, we'll abide
5 by it. But, for example, Judge, if that's the case and a
6 McLaren individual is deposed, then only Mr. Weglarz and myself
7 will be parties allowed to depose and question those witnesses.
8 All of the state players, DEQ, Veolia, LAN, none of those
9 people are parts of that case and, therefore, would have no
10 standing to question those witnesses, if we're off on our own.

11 That's not what was considered, I think, very
12 correctly by Judge Levy. That we're going to have deponents
13 testify one time and we're going to go through this in an
14 orderly fashion.

15 Judge Farah, as you recall when you sat in the May and
16 June conferences on this issue, we were directed to create a
17 new fourth CMO which was worked up on by all of the parties and
18 submitted to Judge Levy, which became the fourth CMO. And on
19 that it says that it's anticipated that all state litigation,
20 other federal litigation, everyone's going to cooperate. We're
21 going to coordinate and be under the plan.

22 In order -- for example, Mr. Weglarz has several cases
23 in federal court where he is constrained by his own admission
24 as to numbers of Request to Produce, Admit, Interrogatories.
25 To allow him to go out in the state cases and circumvent that

1 CMO by submitting 150 Interrogatories to the same defendant,
2 McLaren, would completely circumvent the intent and the
3 integrity of that CMO. I don't see -- there's been no showing
4 that the 30 Interrogatories that he's limited to in federal
5 court is somehow too small a number.

6 We've never heard that raised in federal court that
7 he's being hampered at all. So on the Interrogatory, I think
8 that's somewhat of a spacious argument.

9 Relative to discovery of witnesses, I can tell you
10 that counsel for Veolia has already indicated and placed notice
11 that they wish to depose several McLaren employees. That's
12 under the impression (ph) already. So they have an interest in
13 deposing the same people that the Weglarz wants to and they
14 should have that right.

15 The problem may come, Judge, that I had in front of
16 me a list of over 47 people that are under the auspices of
17 Mr. Kuhl of the state and others -- CDC, DEQ -- that we need to
18 depose as well. And those are ones that, if you're going to
19 say we can go off on our own and do our own discovery in
20 Legionnella, those are ones I'll notice up immediately and will
21 conduct it in state court. I think that that would be
22 completely contrary to the full intent of what the -- the CMO
23 that was entered by Judge Levy.

24 I see no reason that we should change it. I see no
25 reason, really, why Your Honor can't enter the same

1 complementary order that goes along with the CMO that's in
2 federal court.

3 That's our position.

4 MR. WEGLARZ: Your Honor, could I address the --

5 JUDGE FARAH: Hold on, Mr. Weglarz. Let me just set
6 this up for you.

7 MR. WEGLARZ: Sure.

8 JUDGE FARAH: We certainly don't want, Mr. MacDonald,
9 in your words, another sandbox. Because it provides greater
10 opportunities for kicking sand in faces the more sand that we
11 have. So let's hope that doesn't happen.

12 On top of that, we'll come to Mr. Weglarz and simply
13 ask him this question: Given the relative amenability of
14 Ms. Smith and Mr. MacDonald, do you think that you can pool
15 your desired intentions with their resistance and,
16 nevertheless, come up with an amended CMO to be signed by me,
17 but not inconsistent with that signed by Judge Levy?

18 Now, they don't have to read exactly the same. But is
19 there worth at least an endeavor to do that? Given that I have
20 just told you that probably nothing is going to happen for 45
21 days. Would you like to use these 45 days to come up with some
22 understanding and then what can't be decided between -- amongst
23 the three of you, I will decide after those 45 days.

24 MR. WEGLARZ: Well, Your Honor, under normal
25 circumstances, sure we'd like to try it. But over the last six

1 months we've been trying it.

2 McLaren doesn't want to have to -- and I have a
3 proposal, by the way, I think that will satisfy the Court's
4 concern, the other party's concern and even McLaren's purported
5 concern here today. I understand the Court does not want to
6 impose a distraction on any of the other parties who are
7 heavily involved in the settlement. I get that. How about we
8 agree I won't request any depositions over the next 45 days.
9 The only thing I'll request from McLaren is document exchanges.

10 McLaren has not had to produce a single document in
11 almost two years. Not a single co-defendant in these cases
12 have sent a Request to Produce, have issued a subpoena against
13 McLaren and that's because McLaren really isn't that relevant
14 to the Flint water cases as a whole.

15 So let me at least request documents from McLaren over
16 the next 45 days. It is not going to distract any
17 co-plaintiffs or co-defendants because, really, it really
18 doesn't involve them. And if it really did, they would have
19 requested those documents by now. And then by the time those
20 documents are requested and received, Your Honor, we will be
21 well beyond the 45 days. And then I think that's a good time
22 to address how do we handle the remaining of the case
23 management order for the state cases.

24 JUDGE FARAH: All right. So the --

25 MS. SMITH: Your Honor?

1 THE COURT: -- request is evolved somewhat to where
2 only the Request for Documents is being pressed and the other
3 request -- I think you've numbered them 2 or 3 -- will not be
4 pressed at least until after 45 days.

5 Ms. Smith, Mr. MacDonald, your position on document
6 requests only.

7 MR. MacDONALD: First of all, Judge, I have to take
8 issue with what Mr. Weglarz said. McLaren has turned over
9 thousands and thousands and thousands of pages of documents.
10 Mr. Weglarz has those. They have been turned over to the
11 State, to DHHS. They have all been produced. We have provided
12 all the co-defendants in the federal court all the documents
13 that have been produced. So that's just not an accurate
14 statement.

15 As far as this 45 days, Judge, that's very relevant to
16 everyone trying to pursue a settlement. But as was discussed,
17 we have a bellwether trial that all of the co-defendants that
18 are on this call are deeply involved in getting ready for a
19 March trial date in the bellwether and to pull them away for
20 other discovery purposes relative to McLaren is going distract
21 them from what is already an unwielded schedule for motions and
22 the like.

23 And, quite honestly, Judge, I don't know how we put
24 this into perspective when Mr. Weglarz has federal court cases
25 again McLaren and that by coming into the state court and

1 asking for your assistance, this is nothing more than end run
2 around the restrictions he has on him in federal court. So
3 what he's asking you for runs contrary to what the dictates are
4 of the fourth CMO.

5 JUDGE FARAH: Okay.

6 MR. WEGLARZ: And, Your Honor, I have one case in
7 federal court against McLaren and 26 in state court against
8 McLaren.

9 JUDGE FARAH: Okay. But it's against McLaren.

10 MR. WEGLARZ: Yes.

11 JUDGE FARAH: So it's a common defendant, all right.

12 MR. WEGLARZ: Right.

13 JUDGE FARAH: In my view, the paramount concern here
14 is not doing anything, frankly, that is going to upset the
15 progression of the resolution of what we'll call the much
16 larger plaintiffs' case and much larger defendant case.

17 I'm not saying it's anymore important. I'm not saying
18 it's any less important. But what I am saying is I wouldn't
19 want to do anything that might in any possible way through any
20 possible purviewation of any attorney activity, client
21 activity, slow, delay or in anyway retard the progress of the
22 settlement.

23 So while it might be in a given case advisable to
24 carve out a request and allow that to take part, frankly, I
25 don't see that being that much of a benefit when weighed

1 against even, even a slight risk.

2 So the request by Mr. Weglarz will be deferred until
3 sometime after the first day of November.

4 So you may represent that to me at that time. In the
5 meantime, however, I trust counsel will make every effort to
6 try to at least get those things they can to Mr. Weglarz. Set
7 up distant depositions, whatever the case may be, in this
8 interim through their own cooperation.

9 So that will be the Court's ruling. The Court will
10 generate its own order.

11 Okay. Thank you.

12 MR. MacDONALD: Thank you, Judge.

13 MS. SMITH: Your Honor, just so the record is
14 explicitly clear, the efforts that you are encouraging in terms
15 of depositions, I take it those are subject to the existing CMO
16 processes and protocols that Judge Levy has signed?

17 JUDGE FARAH: Yes. Everything thus far will have to
18 be consistent with what Judge Levy has ordered. Unless you
19 have a stipulation and then it's okay.

20 MS. SMITH: Thank you, Your Honor.

21 MR. WEGLARZ: Now, the plaintiffs, the Legionnella
22 plaintiffs, have jointly prepared a Request to Produce to serve
23 on Defendant McLaren and we have given those to individual
24 liaison counsel Mr. Stern for service on the federal cases, not
25 on the state court cases. I'm presuming we can still go ahead

1 and at least serve those requests because that's consistent
2 with the fourth amended CMO. I just want to clarify.

3 JUDGE FARAH: Mr. Stern, unless you have a different
4 view of it, it's consistent and I'm not going to stand in the
5 way unless Judge Levy tells me otherwise. Because it is on her
6 order.

7 MR. STERN: I felt comfor- -- Your Honors, I just
8 felt more comfortable waiting to see how the courts ruled
9 regarding the present motion before I sent out any discovery.
10 But I'm happy to serve that discovery today or tomorrow. I
11 asked Mr. Weglarz yesterday or the day before for a clean copy
12 because there were a few versions that I saw and I have it and
13 I'm prepared to serve it.

14 I would just like to note that to the extent that
15 defendants object in any way to any of the discovery, you know,
16 I'm, literally, the liaison between the discovery and the
17 defendants to whom they're being prounded. You know, I'm not
18 drafting the discovery. I'm not authoring the discovery. I'm
19 just serving the discovery.

20 JUDGE FARAH: Okay.

21 MR. ERICKSON: Your Honor, this is Mr. Erickson.

22 I just want to note that there is already an order in
23 place requiring the coordination of discovery. So as part of
24 Judge Levy's case management order, there's a section called
25 "The Discovery Cooperation Protocol Order" or something very

1 similar to that. And a complimentary order was entered by
2 Judge Ewell before he retired. So there is a requirement to
3 coordinate regarding discovery already in place in the orders
4 of both courts.

5 JUDGE FARAH: Okay. Thank you, Mr. Erickson. You've
6 reminded everybody and I'm as well reminding everybody.

7 Okay. Anything else on this?

8 All right. Then we will generate our own order.

9 Thank you very much.

10 THE COURT: Thank you.

11 JUDGE FARAH: Back to you, Judge Levy.

12 THE COURT: Thank you. It's always great not to be
13 the one making the decision. So thank you.

14 The next issue on the agenda is addressing deadlines
15 for defendants to file answers to the fifth amended class
16 action complaint. There were two additional plaintiffs added.
17 Defendants do not need to repeat their answers to any portions
18 of *Wade* that they have already answered. They would only need
19 to address the two additional plaintiffs and any allegations
20 regarding those plaintiffs.

21 So starting with Mr. Campbell. How much time do you
22 need to get that done?

23 MR. CAMPBELL: Your Honor, I believe that we have
24 responded. And if I may defer to Ms. Devine.

25 Am I right about that, Alaina?

1 MS. DEVINE: Yes.

2 THE COURT: Okay. So you've answered.

3 Who has not answered? Has everybody answered who is
4 answering?

5 MR. KLEIN: The City has not answered, Your Honor.

6 THE COURT: Okay. How much time do you need, Mr.
7 Klein?

8 MR. KLEIN: I would think 10 days is more than enough
9 for the very limited allegations.

10 THE COURT: Yeah. Okay.

11 MR. KLEIN: I am going from my memory that there was
12 no change other than to add the new plaintiffs.

13 THE COURT: I think that's correct.

14 MR. KUHL: And I would note, Your Honor, the state
15 defendants have not filed an answer yet, but as we've
16 previously discussed, we intend to file a motion to stay in
17 short order.

18 THE COURT: Okay. So let me go to that, Mr. Kuhl.
19 And I understand from the brief conversation that, quote,
20 unquote, was in chambers because before the pandemic we met for
21 an hour or so in chamber to just knock our heads together and
22 try to work together to prepare for these hearing.

23 But in that pre-hearing meeting, we -- Mr. Kuhl
24 informed me that the state is preparing a motion to stay
25 pending the submission. Stay any deadlines specific to the

1 state. Not discovery that they would still need to produce
2 witnesses and so on who have been subpoenaed, but to stay the
3 requirements that they file answers in *Walters, Sirls* and the
4 fifth amended class action complaint. And I asked -- I think
5 that makes sense. But I asked that the plaintiffs meet with
6 the state and see if you can come up with a stipulated
7 agreement on that.

8 It's not a foregone conclusion that the proposed
9 settlement will be approved preliminarily. I just -- I haven't
10 seen it. So I just can't speak to it. But I think it's well
11 worth preparing something that takes that into consideration
12 and stays the state's response until a reasonable time after
13 the motion has been filed.

14 It will take some time to get -- to do the research.
15 To have a hearing and to rule on it. But so building that into
16 it, it makes great sense to me.

17 MR. KUHL: And we will work with co-class counsel and
18 co-liaison counsel before we submit anything, Your Honor.

19 THE COURT: Okay.

20 MR. LEOPOLD: Your Honor, Ted Leopold, for the class.
21 Just to put on the record, also, the comment I raised about the
22 expert depositions that are being set for the middle of
23 September. We'll continue to work with the state and others to
24 make sure those those depositions stay as schedule.

25 THE COURT: Okay. Great.

1 MR. CAMPBELL: Your Honor, James Campbell.

2 THE COURT: Yes.

3 MR. CAMPBELL: Something somewhat related to this
4 issue. Your Honor had I think at the end of July plus or minus
5 issued an order staying a couple of depositions.

6 And those depositions now by agreement of everybody
7 will take place after the bellwether discovery cutoff date. I
8 don't think it's going to make any difference on any
9 substantive issue, but I just wanted to make -- I wanted to
10 make sure that it was okay with you, assuming we have the
11 agreement of all the parties, to take that after that discovery
12 cutoff just because of the way this happened with the state
13 settlement and Your Honor's order regarding the stay of a
14 couple of depositions.

15 THE COURT: Okay. That's fine with me.

16 MR. CAMPBELL: Thank you, Your Honor.

17 MR. CLARE: Your Honor, this is Chris Clare. I just
18 wanted to note the MDEQ defendants have also have not yet filed
19 answers.

20 THE COURT: Okay. But I think Mr. Kuhl's motion would
21 address MDEQ as well.

22 MR. CLARE: Okay. I was going to say, yeah, we'll
23 convene with Mr. Kuhl.

24 MR. GRASHOFF: As long as everybody understands we've
25 not answered in *Carthan* -- the MDEQ employee defendants have

1 not answered *Carthan* yet and it would be folded into the
2 State's motion to stay, as I understand.

3 MR. KUHL: That's correct.

4 THE COURT: Yeah. That's my understanding.

5 MR. GRASHOFF: Thank you.

6 THE COURT: So we have the question of the city. City
7 of Flint defendants filing their answers.

8 Mr. Klein, do you ...

9 MR. KLEIN: I think I volunteered 10 days and I guess
10 I shouldn't have spoke for the individual defendants.

11 THE COURT: Okay. I guess what I'm talking about now
12 and I didn't tell you what I was talking about. Is I'm
13 anticipating the mandate from the Sixth Circuit to be issued
14 relatively soon in *Walters* and *Sirls*. And I think Mr. Kuhl's
15 motion would address the State of Michigan defendants and MDEQ
16 defendants' answers in *Walters* and *Sirls*, but it certainly
17 wouldn't address the city defendants.

18 MR. KUHL: That's correct. We're hopeful the city
19 will be joining the settlement and in that case filing their
20 own motion.

21 MR. KLEIN: And I will defer to one or more of the
22 counsel for the individual city defendants to respond to
23 that.

24 MR. RUSEK: Good afternoon, Your Honor --

25 THE COURT: How about this? Instead of ...

1 MR. RUSEK: Good afternoon, Your Honor.

2 THE COURT: Oh, Mr. Rusek, go ahead.

3 MR. RUSEK: I was just going to weigh in, Your Honor,
4 as far as responding to the fifth amended class complaint and
5 the *Walters* and *Sirls* complaint. If we can have 30 days after
6 the mandate issues, I think 10 days. At least for myself would
7 be fine to answer the fifth amended. If it's only responding
8 to those very few paragraphs, that will not be complicated.
9 As far as *Walters* and *Sirls* maybe additional time as settlement
10 talks Continue would be appropriate, though.

11 THE COURT: Why don't we take this under advisement
12 until the next conference. No answers will be due from City of
13 Flint or state of Michigan defendants, including MDEQ until our
14 next status conference when we will discuss it. I mean, they
15 won't be due that day. But we'll set a deadline then and that
16 next status conference is September 30th.

17 Okay. So the next issue is these multiple motions, 33
18 cases have pending motions to dismiss based on statute of
19 limitations issues for adult plaintiffs.

20 And most of these are filed by Mr. Shkolnik's firm.
21 And we talked briefly in the earlier time together about how to
22 address that.

23 And I think -- Mr. Shkolnik, when I say "how to
24 address that," apparently, there was a stipulated order that
25 you have your response brief filed by August 18th in a good

1 number of these.

2 MR. SHKOLNIK: Yes, I believe that's the date. I
3 believe that's the date, Your Honor.

4 THE COURT: And it's now August 26th.

5 MR. SHKOLNIK: Yes.

6 THE COURT: And I don't think they have been filed.

7 MR. SHKOLNIK: I have to reach out to Mr. Lanciotti.
8 He's on. I thought ...

9 MR. LANCIOTTI: Your Honor, this is Patrick Lanciotti,
10 if I can?

11 THE COURT: Yes.

12 MR. LANCIOTTI: Those oppositions have been filed.

13 THE COURT: Okay.

14 MR. LANCIOTTO: They were filed on, I believe, the
15 19th of August was the stipulated date.

16 THE COURT: Okay.

17 MR. LANCIOTTI: Then our office had inadvertently not
18 filed two of the oppositions in two of the cases and that was
19 brought to our attention by counsel for VNA on Monday and those
20 oppositions were filed yesterday.

21 MR. KLEIN: Your Honor, may I be heard? This is
22 Sheldon Klein.

23 THE COURT: Yes.

24 MR. KLEIN: We filed, I believe, 29 statute of
25 limitation related motions to dismiss. We have not received a

1 response brief as to those 29 motions. There was a stipulation
2 extending the response date until, I guess, August 19th
3 whatever exact date it was. But we have neither stipulated to
4 a further extention nor received a response.

5 THE COURT: Something tells me that Mr. Lanciotti is
6 referring to response briefs to VNA or MDEQ's motion and not
7 the City of Flint. But if the response is substantively the
8 same ...

9 MR. LANCIOTTI: The response would be the same. I was
10 referring to the VNA motions that had been filed. Our
11 oppositions were addressing that motion. They did not address
12 the city motion, but the argument would be the same.

13 THE COURT: Okay. So --

14 MR. KLEIN: Nothing else -- I apologize for talking
15 over you. But, obviously, to clean up the record, we have to
16 have something to reply to and something for the court.

17 THE COURT: Yeah, the CM/ECF system requires when you
18 file a reply, that you link it back to something.

19 So if Mr. Lanciotti, potentially, you could just
20 rename them -- I don't know.

21 Mr. Klein, can't you just link it can back to your
22 original motion? No?

23 MR. KLEIN: Well, I have no idea about the limitations
24 of the ECF system. But it's still -- I mean, one, I'm not sure
25 that our arguments were cookie cutter with whatever VNA -- I

1 mean, they're all statute of limitations. I can't tell you,
2 I've done a compare and contrast. It just seems to me
3 to -- and if all they have to do is change the title to
4 response to city's motion, that's fine.

5 THE COURT: Okay. That's what we'll do.

6 MR. KLEIN: It seems to me that having a response to
7 which we reply just makes sense.

8 THE COURT: Mr. Lanciotti, I'll permit a late response
9 because I understand what you're saying is you considered your
10 response brief to all of the motions to dismiss, but it wasn't
11 labeled as such, apparently. So if you'll just file -- submit
12 your brief identifying the cities' motions to dismiss in those
13 29 cases, that would be helpful.

14 MR. LANCIOTTI: Yes, Your Honor. When would you like
15 that by?

16 THE COURT: By the end of this week.

17 MR. LANCIOTTI: Okay. Will do.

18 THE COURT: The reason I had put this on the agenda
19 was because I wanted to find a way to not address Potentially
20 33 or 29 motions or however -- a 100 motions there might be
21 when you add them all together, but pick a couple of casess
22 that have all of the representative issues and we've agreed that
23 there would be a meet and confer by September 2nd to pick cases
24 that the Court should use to address the relevant issues.

25 All right. On the bellwether cases, VNA had asked to

1 put this on the agenda. And we've come to an agreement and I
2 have made a decision that there will be a total of four
3 bellwether plaintiffs in the first group and two selected -- I
4 guess two are selected by defendants and two by plaintiffs.

5 And those will be our first trials. They are
6 currently set for trial March 1st, but I've asked counsel to
7 submit a new set of dates for those cases that take into
8 consideration filing of motions for summary judgment, *Daubert*
9 motions regarding experts and motions in limine regarding
10 evidence that might or might not come in at trial.

11 But when did we decide you would do that by?

12 MR. CAMPBELL: Next Wednesday, Your Honor.

13 THE COURT: Okay. Thank you.

14 Very briefly, I did see Mr. Val Washington on here
15 earlier. Mr. Washington, are you still -- there you are.

16 I think we've got it all cleared up. For the city had
17 asked to sort this out that the operative complaints in
18 Anderson is entry number 64 on the docket and in Lee it's
19 number 73. Do I have that right?

20 MR. WASHINGTON: You do.

21 THE COURT: So, Mr. Klein, you've got your answer.

22 MR. WASHINGTON: I don't know it was my question.

23 THE COURT: Oh, okay. I thought it was.

24 MR. KLEIN: It could have been.

25 THE COURT: Maybe not.

1 MR. WASHINGTON: Judge, if I may, this is Val
2 Washington. I just wanted to -- I have one brief item on the
3 agenda. I don't know if you're ready for it or not or you want
4 to come back do it.

5 THE COURT: Is your issue the notice of death in
6 Anderson.

7 MR. WASHINGTON: No.

8 THE COURT: Because I never got your submission.

9 MR. WASHINGTON: No. My issue is the service of
10 pleadings in the state court matter. There's been a dropoff --

11 THE COURT: Oh, okay. Go ahead. That's right.

12 MR. WASHINGTON: There's been a dropoff in getting
13 pleadings that were filed. And I think it's because the state
14 court E-filing system does not do what the federal E-filing
15 system does which is to automatically serve counsel of record.
16 And part of it is because we are technically -- we're in a
17 limbo. I talked with the core administrator yesterday about
18 another matter and this came up.

19 There's no automatic service because we're not an
20 approved E-filing circuit yet, but we've been allowed to do
21 E-filing because of the COVID-19 matters. And, therefore, when
22 something is served, it's not automatically served on everyone.
23 And I just would ask that if people are serving something that
24 affects Lee or Anderson in state court, that they make sure
25 that when they're sending it in to the court filings for the

1 Seventh Circuit, that they copy counsel that's going to be
2 involved with responding to it. That was really my only issue,
3 Judge.

4 THE COURT: Okay. Thank you.

5 MR. WASHINGTON: And to your point about the notice of
6 death and substitution, there has not been an estate for either
7 Mr. Seniff or -- I forget the other gentleman who passed away
8 at this point. So there's nobody to substitute in at this
9 point.

10 And I know the rules require there be a substitution,
11 but I can't make people open up an estate if they don't want to
12 open up an estate.

13 THE COURT: No. But the Federal Rule of Civil Procedure
14 25 has requirements that have been incorporated into the soon
15 to be issued fifth amendment case management order -- fifth
16 amended case management order.

17 MR. WASHINGTON: Yes.

18 THE COURT: So I just caution you that if the case is
19 going to proceed, you'll have to take some action to get that
20 done.

21 I don't have all the deadlines sitting in front of me
22 right now to know if the time has come and gone, but just be
23 aware of that.

24 MR. WASHINGTON: Will do, Judge. Thank you.

25 THE COURT: And is Ms. Glazer and Mr. Giroux, are

1 either of you on the call regarding Williamson versus City of
2 Flint?

3 MS. GLAZER: I am, Your Honor.

4 THE COURT: Okay. That's Ms. Glazer. I received a
5 stipulation dismissing the adult plaintiffs from Williamson.

6 MS. GLAZER: Correct, Your Honor.

7 THE COURT: Okay. And was that because of the statute
8 of limitations issues? You think that the defendants have the
9 correct argument there.

10 MS. GLAZER: We do not agree with defendant's argument
11 but for matter of principle, we've sought their consent to
12 dismiss the matters without prejudice and all defense counsel
13 have consented on behalf of all of the defendants. We did
14 answer the motions, though, Your Honor. We answered every one
15 of the motions.

16 THE COURT: I see. Okay. Well, I'll take a closer
17 look at that. I just didn't know if your clients had dismissed
18 you from the case or just what the reasoning was.

19 MS. GLAZER: Your Honor, we represent 26 individuals.
20 Six of whom are minors. One of whom was under the age of 19 at
21 the time that we initiated our action. So all of those
22 plaintiffs would remain in our action.

23 THE COURT: Okay.

24 MR. GRASHOFF: Your Honor, if counsel for plaintiffs
25 in Williamson are not amenable to a dismissal with prejudice,

1 that gives us no alternative but just to proceed to a decision
2 and make sure that our responses and replies are filed and we
3 ask for a decision on the motion.

4 THE COURT: Well, Ms. Glazer said this was stipulated
5 by all defendants.

6 MS. GLAZER: It was, Your Honor. It's clearly laid
7 out in the proposed stipulation as well as the E-mail that was
8 sent around to all counsel.

9 THE COURT: Yeah. I read it. So I'll take a close
10 look at the stipulation. I really have to do the research on
11 the substantive issue of the statute of limitations and that's
12 coming up very soon.

13 Okay. I wanted to turn back to Deborah Greenspan and
14 see if there is anything further from your general work as our
15 special master to provide for everyone.

16 MS. GREENSPAN: Your Honor, I know that typically I
17 give a report on claim filings and submissions to the census.
18 At this point, since the last conference I really have not
19 compiled a lot of new submissions. I'm expecting some soon. I
20 got a few the other day. So I think I will defer that report
21 to our next status conference.

22 THE COURT: All right. Thank you. The next item is
23 not on the agenda which is that I wanted to on the record thank
24 Abigail DeHart, who has been my law clerk for the last year,
25 has worked on this case almost exclusively all day and many

1 evenings and some weekends and some weekend evenings and some
2 holidays. So I wanted to sincerely express my gratitude to
3 Abigail on the record and for her work.

4 She has been the person who has communicated all of my
5 messag to you and yours back to me. She's done remarkable
6 research, assisted me with writing and case management. She is
7 an eagle eye for issues that come up on individual dockets that
8 I should be focused on.

9 So I can't thank Abigail enough and I think I speak
10 for all of you that her work has just been exceptional and has
11 helped all of us move this process forward.

12 So thank you, Abigail, we are going to all miss you.
13 So there is silent clapping going on.

14 MR. SHKOLNIK: Thank you. We'll miss you. You were
15 great to work with. Thank you so much. Good luck in the
16 future.

17 MR. STERN: Your Honor, I said earlier today during
18 our in-chambers conference just the level of respect that
19 Ms. DeHart gave to everybody on my staff throughout this
20 process, even sometimes to deliver messages that may not have
21 been welcome or desired, she's just a pro and has brought a
22 great level of dignity to this litigation and to our
23 profession. And I think she's got an amazing future and I just
24 want to say thank you on behalf of my team for everything
25 you've done.

1 MR. SHKOLNIK: And I would reiterate the same on
2 behalf of our office, Your Honor, on behalf of the other
3 co-liaison. Thank you for everything you've done. Best of
4 luck in the future.

5 THE COURT: Yeah. Abigail is going on to the Attorney
6 General's Office in Illinois for sort of a fellowship position
7 for a year and then to the Ninth Circuit to be doing more law
8 clerking. So she might run into some of you in your cases in
9 the Ninth Circuit. So thank you all.

10 And you might see on this call, Leslie Calhoun. She
11 is my law clerk who will step in to very big shoes and she's up
12 to the job. So I'm looking forward to working with Leslie on
13 this case. And you will all get to know her.

14 The next status conference is Wednesday, September
15 30th at 2:00 p.m. and all of that is set forth in the agenda.
16 I have set aside time for discovery issues to be resolved on
17 September 2nd and September 23rd at 2:00 p.m.

18 So we will just keep working. All of us.

19 And thank you all. Stay healthy. Keep staying
20 focused on being healthy and safe.

21 MR. WEGLARZ: Your Honor, could I just raise one more
22 thing? I apologize.

23 I'm not sure if we covered the one agenda item
24 regarding the record subpoenas. And it should just take a
25 second. We wanted to just clarify that under the current CMO,

1 that we were allowed to go ahead and serve our record subpoenas
2 directly rather than having to distract individual liaison
3 counsel.

4 I've looked through the CMO several times. I don't
5 see anything in there that says I have to go through liaison
6 counsel, but I know that McLaren has raised it a couple of
7 times and so to be safe, that's what we've been doing. But I'd
8 like to be able to just do it directly.

9 MS. SMITH: Your Honor, I'm sorry this is Susan Smith.
10 I've been engaged in communications with Mr. Weglarz about the
11 nonparty records he's seeking to serve. He has been working
12 diligently with his co-liaison counsel to help refine that and
13 make sure it's consistent the CMO requirements for
14 coordination. And absolutely the CMO requires coordination and
15 service of those subpoenas through co-liaison counsel for a
16 very specific process set out in multiple orders entered early
17 often in this litigation.

18 There is a particular issue with respect to a nonparty
19 records subpoena Mr. Weglarz is seeking to serve on Dr. Janet
20 Stout, who McLaren has retained as an expert. We've gone
21 through several iterations of the proposed subpoena and despite
22 representations that he is not seeking expert witness material,
23 the body of the records subpoena does, in fact, reach expert
24 witness material. And that's the issue we've been unable to
25 resolve. And, hence, the hangup on co-liaison counsel issuing

1 the subpoena.

2 THE COURT: Let me just say --

3 MR. WEGLARZ: That's not just to ...

4 THE COURT: Stop, Mr. Weglarz. I have set up a
5 protocol that's in the case management order that if you have a
6 discovery dispute, which this, apparently is. I think there's
7 probably an easy answer, but you are required to follow the
8 rules that are set forth that require you to submit it through
9 Abigail, now Leslie Calhoun, for consideration for the next
10 discovery dispute call meeting. And so you'll need to follow
11 those very same rules that everybody is following.

12 MR. WEGLARZ: Your Honor, I --

13 THE COURT: In that ...

14 MR. WEGLARZ: I'm sorry. I thought you were finished.

15 THE COURT: Go ahead.

16 MR. WEGLARZ: I understand that, Your Honor. I do not
17 have a discovery dispute right now. And I agree. The subpoena
18 regarding Janet Stout, I told Ms. Smith I won't --

19 THE COURT: I don't want to hear about Ms. Stout. I
20 don't know who she is. I don't know what you're talking about
21 and that's why we don't do it this way.

22 MR. WEGLARZ: Your Honor ...

23 THE COURT: Because it's not a good use of your time
24 and all of these other people. They have time that's valuable
25 too.

1 MR. WEGLARZ: Your Honor ...

2 THE COURT: It's not an orderly process.

3 MR. WEGLARZ: I understand.

4 THE COURT: Ms. Smith is going to speak next.

5 MS. SMITH: I simply wanted to clarify. I think with
6 respect to the non-party record subpoena issue, your guidance
7 is clear. In an effort to clarify something that had been
8 addressed earlier, Mr. Kuhl spoke of a motion to stay that
9 they're planning to serve -- file with respect to the state and
10 specific to the staying the responsive deadlines because of the
11 settlement.

12 On behalf of McLaren, as Mr. MacDonald indicated, we
13 have about -- I think it's 49 state and county and local
14 officials we'd seek to depose on the Legionnella issues and we
15 want to request clarifications as to whether the motion is
16 going to seek to stay any depositions of those witnesses as
17 opposed to simply staying responsive deadlines as to clients
18 and so forth.

19 MR. KUHL: This is Richard Kuhl for the state
20 defendants. In response -- well, first of all, I have to ask
21 Ms. Bettenhausen, who is the brains of our group as to what
22 she's planning on seeking. I don't believe it will. We
23 understand that other parts will have to continue discovery
24 against the state. As you do know, with respect to the
25 legionnaires disease claims, we are concerned because the same

1 people that were involved in the legionnaires disease are also
2 involved in leading the state's response to the COVID-19,
3 pandemic, which makes it difficult to schedule their time for
4 discovery.

5 MS. SMITH: Yes. We talked about that and we'll work
6 with you on scheduling to accommodate that request. I simply
7 wanted to make sure we weren't going to have an issue with
8 respect to revisiting the stay of producing witnesses as
9 opposed to a stay of any responsive obligations, to respond to
10 complaints and so forth.

11 Mr. Kuhl, we can talk about this offline, then. I
12 think that resolves the issue.

13 MR. KUHL: Absolutely.

14 THE COURT: Okay.

15 MR. WEGLARZ: The only thing I'm asking, if it's an
16 unobjected to subpoena and it's a record subpoena and there's
17 no objections, may I just simply serve it myself in accordance
18 with the protocol or does the Court want me to have individual
19 liaison counsel do it?

20 THE COURT: I would need to re-review the protocol.
21 But my recollection is those have to go through the co-liaison
22 counsel.

23 Am I correct, either Mr. Shkolnik or Mr. Stern? I
24 have not reread that portion of it.

25 MR. STERN: Your Honor, this is Corey Stern. That's

1 how I've understood it.

2 THE COURT: So you'll just follow that, Mr. Weglarz.

3 MR. WEGLARZ: Thank you.

4 THE COURT: Thank you. Thank you all very much.

5 Court is adjourned.

6 (At 3:42 p.m., matter concluded.)

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