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## Proceedings

1 THE CLERK: Good afternoon. This is a video  
2 status conference in this multi-district litigation case  
3 for case number 22-md-3044, *In re: Exactech Polyethylene*  
4 *Orthopedic Products Liability Litigation*.

5 As a reminder, pursuant to Local Civil Rule  
6 1.8, the parties may not independently record any court  
7 proceedings. A transcript of this proceeding may be  
8 ordered through the clerk's office.

9 That being said, counsel for plaintiff, each of  
10 you please state your appearances for the record.

11 MR. POPE: Kirk Pope, co-lead for plaintiffs.

12 MS. RELKIN: Ellen Relkin of Weitz & Luxenberg,  
13 co-lead for plaintiffs. Good afternoon.

14 MS. KESSLER: Good afternoon, your Honor.  
15 Rayna Kessler, plaintiff's liaison counsel.

16 MR. CUTLER: Good afternoon, your Honor.  
17 Michael Cutler from Wagstaff & Cartmell, discovery chair  
18 for plaintiffs.

19 MS. WALL: Good afternoon --

20 MR. WARRINER: Good afternoon, Judge. I'm Cal  
21 Warriner. Sorry. I'm Cal Warriner and one of your PEC  
22 members for the plaintiffs.

23 MS. WALL: Good afternoon, your Honor. Cara  
24 Wall from Zoll Kranz, also PEC member and plaintiff's ESI  
25 liaison.

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1 MS. FERNANDEZ: Good afternoon, your Honor.  
2 Amanda Fernandez with Rivero Mestre on behalf of the TPP  
3 plaintiff, MSP Recovery, (indiscernible) LLC. And I'm  
4 also here with Jorge Mestre with Rivero Mestre as well.

5 THE COURT: Is that everyone for all the  
6 plaintiffs?

7 THE CLERK: Yes, Judge.

8 THE COURT: Okay. Good afternoon to each of  
9 you.

10 THE CLERK: For the defense, each of you please  
11 state your appearances.

12 THE COURT: The Exactech defendants first.

13 MR. KANUTE: Yes, thank you, your Honor. Good  
14 afternoon. This is Mike Kanute from Faegre Drinker for  
15 the defendants Exactech Inc. and Exactech U.S. Inc.

16 MS. SHARKO: Susan Sharko from Faegre Drinker  
17 for the Exactech defendants.

18 MR. POWELL: Good afternoon, your Honor. Sean  
19 Powell on behalf of Exactech defendants.

20 THE COURT: Good afternoon.

21 THE CLERK: And for TPG Incorporated, state  
22 your appearances.

23 MS. COTTRELL: Good afternoon, your Honor. New  
24 to the case. Christa Cottrell with Kirkland & Ellis on  
25 behalf of the TPG defendants.

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1 MR. PREMO-HOPKINS: Good afternoon, your Honor.  
2 Also Mark Premo-Hopkins from Kirkland & Ellis on behalf  
3 of the TPG defendants.

4 THE COURT: That's all for TPG?

5 MS. COTTRELL: That's right, your Honor.

6 THE COURT: Good afternoon and welcome.

7 All right. So we have even more to cover this  
8 time than we did the last time. Always a good thing as  
9 cases move forward.

10 As a reminder, please state your names before  
11 you speak. Our last transcript was pretty clear. I'd  
12 love for this one to be the same as well.

13 And just to confirm, let me go to either Ms.  
14 Relkin or Mr. Pope, are one of the two of you going to be  
15 taking the lead today in speaking?

16 MS. RELKIN: We're breaking it up. Ellen  
17 Relkin speaking. We're breaking it up on subject matter.

18 THE COURT: Okay. Understood, understood. All  
19 right. Thank you for that.

20 MS. RELKIN: And your Honor, we also have a few  
21 other members speaking on different topics.

22 THE COURT: Yes. Okay. That's fine. Thank  
23 you.

24 Just as a reminder to anyone else who's joining, we  
25 have over 100 folks on this call and if you're not

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1 speaking, please keep your camera off.

2           With that, I'm not even going to try to recap  
3 all of the things that have happened since our last  
4 conference. I think your extremely comprehensive joint  
5 status report at document 151 that was filed on March  
6 13th I think is a good roadmap for us, and even some of  
7 the things in that document have changed since March  
8 13th. So as we go through those different topics we'll  
9 just address any updates to that.

10           I do want to thank you all again number one,  
11 for having a joint submission. That really helps things  
12 a great deal. And number two, for the comprehensive  
13 nature of your filing. It really does help their  
14 conversation and helps us to keep track of all of the  
15 moving pieces in this case. So thank you again for that.

16           All right. Well, is it still 390 cases  
17 pending?

18           MR. KANUTE: Your Honor, Mike Kanute for  
19 Exactech. I can tell you that as of this morning the  
20 total number of cases in the MDL is 403. I can also tell  
21 you there are nine more that we know of that are waiting  
22 to be tagged into the MDL. And those cases break down  
23 360 of them are knee cases, 38 are hip cases, and four of  
24 them involve ankles.

25           THE COURT: Thank you very much for that. And

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1 now you indicated that there are, in addition to the  
2 group of cases that's in Florida, you've indicated that  
3 there are also other cases pending in various state  
4 courts and you've attached that to the motion, excuse me,  
5 to your joint status report.

6           There's also a request here regarding one  
7 particular case in California. So can you just talk to  
8 me a little bit about that?

9           MR. POPE: Your Honor, this is Kirk Pope for  
10 the plaintiffs. Since I'm counsel of record in that  
11 case, I think I should probably lead off with regards to  
12 that. That's the Collum-Bradford case. It's in state  
13 court in California in Joaquin County. It involves a  
14 Optetrak thinned fray with a recalled polyethylene liner.

15           With regards to those claims, it's not just the  
16 polyethylene that we are claiming defective but also the  
17 thin fray.

18           And I was brought into the case I guess last  
19 year around April. It had been pending since 2019. And  
20 I have had, I guess my firm's had I guess a dozen meet  
21 and confer with both previous and current counsel for  
22 Exactech on discovery issues. And part of those  
23 discussions has to do with the coordination whether or  
24 not that case can be coordinated. And frankly, I thought  
25 this had already been resolved.

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1           Because it's dealing with the thin fray, it's  
2 plaintiff's position that even though we believe that  
3 ultimately in the MDL the discovery materials involving  
4 the thin fray will be in this MDL. It is Exactech's  
5 current counsel's position that such material will not be  
6 in this MDL and so therefore, there is absolutely no way  
7 we can agree voluntarily to coordinate the case because,  
8 you know, it would negate the discovery with regards to  
9 claims that we currently have pending.

10           And so from our position on the plaintiff's  
11 side, we don't believe it is a case that is ripe for  
12 coordination and we believe that it should continue on  
13 its course as it has since 2019.

14           THE COURT: Okay. Thank you, Mr. Pope.

15           Mr. Kanute, did you want to respond?

16           MR. KANUTE: Yes, Judge. Thank you. Mike  
17 Kanute.

18           Your Honor, the Collum-Bradford case does  
19 involve a recalled polyethylene component. And Mr. Pope  
20 is correct it does involve this other mini component  
21 called the thin tibial tray which may be in some other  
22 MDL cases. We don't have complete product identification  
23 yet. But the thin tibial tray is kind of a separate  
24 product with its own particular discovery issues.

25           But there is quite a bit of overlap with the



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1 MDL because of the fact of the polyethylene and there has  
2 been discovery served, discovery answered, dates  
3 proceeding in Collum-Bradford. It's been pending for  
4 some time. We do believe it should be coordinated. We  
5 believe that actually both parties could benefit from  
6 coordination particularly because as we move further into  
7 the year and we get toward a trial assignment date later  
8 in the year it's really going to kind of get in the way a  
9 lot of the proceedings here in the MDL.

10           So that's why we suggested, Judge, that we  
11 continue to believe we'd benefit from coordination. And  
12 we even think it would be a good idea to invite the judge  
13 in that case, Judge Castillo I believe it is, to  
14 participate in Science Day even if that's through a Zoom  
15 connection.

16           THE COURT: Okay. I'm going to leave Science  
17 Day till last because since your letter there have been a  
18 number of developments relating to Science Day, so I'm  
19 going to leave that for last and we can revisit that  
20 portion of the discussion. In fact, I think we should  
21 revisit the entire portion of this discussion when we get  
22 to Science Day because it's sort of all related to  
23 coordinating.

24           But one question that I did have is whether  
25 there is a trial date set in Collum-Bradford.

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1 MR. POPE: This is Kirk Pope, your Honor. No,  
2 there is not a trial date per se set. It is basically a  
3 trial readiness day. So I think that is set at in or  
4 around September, the end of September of this year, your  
5 Honor.

6 THE COURT: Okay. A trial readiness but not a  
7 trial date?

8 MR. POPE: That is correct, your Honor.

9 THE COURT: Okay.

10 MR. POPE: We have a schedule. There's been  
11 depositions that have been taken in the case. We have a  
12 schedule for purposes of expert disclosures and the like.  
13 However, there is not a specific trial date. It's just  
14 once all of that is completed, including the pretrial, we  
15 will then on September I believe it's the 23rd, notify  
16 the Court that we have completed everything and ready for  
17 a trial date setting.

18 THE COURT: Okay. I was a little unclear what  
19 you meant by trial readiness but it sounds like what you  
20 mean is the close of discovery and you're ready to go on  
21 to trial. Okay. Understood.

22 All right. Again, the rest of this part of  
23 your report deals with Science Day. We'll come back to  
24 that.

25 The second topic here is master and short form

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1 complaints and I know that there has been an additional  
2 filing after this report. You filed a letter on March  
3 20th indicating that you would, because the amended  
4 master or personal injury complaint was being filed, and  
5 it was filed yesterday on March 23rd [sic], that you  
6 would finalize the short form after that which makes  
7 sense to me but let's talk about the when of that. Who  
8 would like to start?

9 MR. POPE: Your Honor, again, this is Kirk  
10 Pope. You're correct, your Honor. We have been working  
11 to put together some agreements with TPG primarily. We  
12 had already had some agreements with the Exactech  
13 defendants with regard to the short form complaint, the  
14 direct filing order, and an implementation order.

15 So as this Court knows, there was a change with  
16 regards to counsel for TPG wherein we had been working  
17 with Sidley Austin who is representing the TPG defendants  
18 for, I don't know, a month and a half to get all this  
19 time. And then we had to deal with the change in defense  
20 counsel. And so we have been working very hard with them  
21 to try to get agreements as to the short form complaint  
22 and the implementation order, and then the direct file  
23 order, and also an electronic service order. And I  
24 believe that we have agreements on all of those things  
25 but it necessitated us to -- it required us to amend the

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1 master complaint to remove some of the defendants and  
2 put them also in the tolling agreement. And so we did  
3 that and we got that filed. So we expect that we are  
4 going to see the short form complaint, the direct file  
5 order, the electronic service order, and an  
6 implementation order to be filed pretty quick in the next  
7 couple of days.

8 THE COURT: Okay. Why don't we put a date on  
9 that and why don't we give you a week to do that, March  
10 30th.

11 MR. POPE: Thank you, your Honor.

12 THE COURT: All right. Now --

13 MR. KANUTE: Your Honor, before you leave the  
14 amended master complaint, short form complaint issue, may  
15 I just add one thing? Mike Kanute for Exactech.

16 THE COURT: Yes.

17 MR. KANUTE: So your Honor, we have not yet  
18 filed our answer to the master complaint. Your Honor  
19 granted us until April 14th. Now that the amended master  
20 complaint was filed yesterday, there is in addition to  
21 the changes that Mr. Pope referenced regarding the TPG  
22 defendant, there is an additional allegation of defect  
23 that appears to have been added. We've not had a chance  
24 to yet discuss that with our client but I raise that only  
25 because it may be an attempt to expand the focus of this

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1 MDL because in our view that may not involve the  
2 allegations relating to the recalled polyethylene. All I  
3 would ask, your Honor, is that we have 30 days from  
4 yesterday, till April 21st, to answer that complaint.  
5 That will give us time to review that issue with our  
6 client and then get the answer on file.

7 THE COURT: Any objection from the plaintiff?

8 MR. POPE: This is Kirk Pope. No, your Honor,  
9 that's fine to give that extension. I mean we agree with  
10 that extension.

11 MS. RELKIN: And this is Ellen Relkin. We're  
12 talking about only a couple of additional paragraphs  
13 regarding that and it's based on a brand new study that  
14 came out of Hospital for Special Surgery studying many of  
15 these devices describing this additional failure mode  
16 which also we believe can relate to polyethylene.

17 MR. POPE: Again, this is Kirk Pope. Just for  
18 the convenience of the Court, those two paragraphs that  
19 were amended were paragraph number 5 and paragraph number  
20 522 and it's referencing the Hospital for Special  
21 Services report that was published at the beginning of  
22 March.

23 MS. COTTRELL: Your Honor, it's Christa  
24 Cottrell for the TPG defendants. We do intend to move to  
25 dismiss the complaint, not answer it.

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1 THE COURT: Yes.

2 MS. COTTRELL: We are looking for the proper  
3 party that should be involved in this litigation. I  
4 would just ask for that same date to apply to our motion  
5 to dismiss that Mr. Kanute proposed.

6 THE COURT: Hang on.

7 MS. COTTRELL: Okay.

8 THE COURT: Hang on. So first let me deal with  
9 the defendant who are staying in the case. And first,  
10 thank you, Mr. Pope, for pointing at the paragraphs that  
11 you're referring to and Ms. Relkin for initially raising  
12 what they're about.

13 Mr. Kanute, your application is granted and the  
14 date for the response, can you repeat the date, please?

15 MR. KANUTE: April 21st, Judge.

16 THE COURT: Yes, that's fine.

17 MR. KANUTE: Thank you.

18 THE COURT: Okay. Now for the TPG defendants.  
19 If I recall, did you not already file a letter motion for  
20 a pre-motion conference?

21 MS. RELKIN: No, Exactech did actually.

22 MS. COTTRELL: Yeah, your Honor. I don't  
23 believe that TPG has yet filed that.

24 THE COURT: That's right. Okay. Exactech  
25 filed it with respect to the MSP claims. Right. So

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1 TPG's pre-motion conference letter would have to be filed  
2 and a briefing schedule would depend on Judge Garaufis's  
3 rulings regarding that. So once you file your letter --  
4 I mean when do you -- it sounds like you clearly plan on  
5 doing this. When --

6 MS. COTTRELL: We do, yes. We do, your Honor.  
7 We just got the amended complaint last night but we can  
8 file a letter in short order.

9 THE COURT: Okay. Do you need also about a  
10 week to do that?

11 MS. COTTRELL: I think that should be fine.

12 THE COURT: Okay. So then let's see, hang on.

13 MS. COTTRELL: I'm pulling out my calendar,  
14 your Honor.

15 THE COURT: What you're doing is filing your  
16 pre-motion conference letter, not the actual motion.

17 MS. COTTRELL: Motion. Yep.

18 THE COURT: Okay. All right. So did you still  
19 need a month to do that?

20 MS. COTTRELL: No. I think we were  
21 contemplating that letter could come out like next week.  
22 The 30th would be fine if that's okay with your Honor.

23 THE COURT: Yes.

24 MS. COTTRELL: And then I think we were  
25 thinking our actual motion, but we could defer --

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1 THE COURT: Right.

2 MS. COTTRELL: -- (indiscernible). Okay.

3 THE COURT: Remember, with the pre-motion  
4 conference letter, there's the initial letter and then  
5 there's the responsive letter from plaintiffs. And then  
6 Judge Garaufis will rule on whether or not a conference  
7 is granted. If he does, then you have a conference and  
8 he'll either set a briefing schedule or something else.  
9 If it's denied, then he may just order the parties to set  
10 their own briefing schedule for approval.

11 MS. COTTRELL: Sounds great, your Honor.

12 THE COURT: Okay. So March 30th for TPG.  
13 Okay. Anything else on this topic before we move on?

14 MR. POPE: This is Kirk Pope. Not for  
15 plaintiff, your Honor.

16 THE COURT: Okay. Or any defendants?

17 MR. KANUTE: No, not for Exactech, Judge. Mike  
18 Kanute.

19 THE COURT: Okay. And we've got TPG's position  
20 on it.

21 MS. COTTRELL: You're right, yes.

22 THE COURT: All right. Thank you.

23 Section 3, preliminary disclosure forms, fact  
24 sheets, and record authorizations. So I do have the  
25 proposed amended fact sheet that's at document 137-1.



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1 And I'm actually glad that I held onto it because I think  
2 that you are referring to the amended complaint in this  
3 document and I just wanted to confirm that. So at 137-1  
4 it says that the plaintiff fact sheet shall be completed  
5 by all plaintiffs within 75 days of the filing of the  
6 complaint. Do you want me to then start the time from  
7 the amended complaint instead?

8 MS. RELKIN: I think that would be helpful,  
9 your Honor.

10 THE COURT: Okay. Ms. Relkin says yes. Ms.  
11 Sharko is shaking her head no. So talk to me, folks.

12 MR. KANUTE: Yes, your Honor. For Exactech, I  
13 think that this has been in place and we are already  
14 starting to receive them. I'm happy to report we're  
15 starting to receive preliminary disclosure forms from the  
16 plaintiffs. We have about 200 of them I think. So I  
17 think that time period is running and I think we ought to  
18 keep it on the track that it's on rather than start that  
19 clock over as of yesterday. If they only amended two  
20 paragraphs there's no reason to delay the provision of  
21 the preliminary disclosure forms in our view.

22 MS. RELKIN: And your Honor, if I may, Ellen  
23 Relkin. We're not talking about changing the preliminary  
24 disclosure form deadline. That was something we agreed  
25 on I think Christmas week and so yes, there was more than

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1 200 preliminary disclosure forms that have been uploaded,  
2 which is terrific, and that should not be impacted. The  
3 plaintiff fact sheet is a longer form that required --  
4 the disclosure form is done by the attorneys based on the  
5 medical records. The fact sheet has some overlap but  
6 it's a lot of other stuff from the clients.

7           So I believe Mr. Kanute is right that there's  
8 no significant change in how a plaintiff would answer  
9 them based on the amendments to the complaint. Just  
10 because things have gotten delayed for all the various  
11 reasons, it would be nice to provide this additional time  
12 for the plaintiffs to get that done. So they're still  
13 going to have the disclosure forms which are rolling in.

14           MR. KANUTE: And your Honor, Mike Kanute. I  
15 misspoke when I said preliminary disclosure form. The  
16 same would apply to the plaintiff fact sheet. We believe  
17 that the timing is already running and should continue to  
18 run so we get that information and keep things moving  
19 forward. Thank you.

20           THE COURT: Well, Mr. Kanute, then by that  
21 logic you wouldn't need 30 days to respond to the amended  
22 complaint.

23           MR. KANUTE: Well, your Honor, the provision of  
24 the information by the plaintiffs though is really not  
25 tied to that new allegation. That's just a pleading

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1 issue. And the pleading from our view, it does affect a  
2 different issue and that's the attempted expansion of the  
3 definition of this MDL. That's why I asked for the  
4 additional week so we can consider that with our client.  
5 But if your Honor -- that's not crucial to us. I mean if  
6 it moves things along, we're happy to stick with the  
7 April 14th date.

8           THE COURT: This may be an academic  
9 conversation because really for the purposes of me  
10 signing the amended fact sheet implementation order the  
11 line here is -- as you know, I like to put in date  
12 certain and I wanted to put a date. And if the  
13 calculation is 75 days, it's 75 days from either the  
14 filing of the complaint or the signing of this order,  
15 whichever is later. The order is getting signed today.  
16 So either way, it's the later date. I'll just put 75  
17 days from today and we'll make that a lot easier. Okay.

18           Anything else that's contingent upon events  
19 that haven't happened yet we'll leave the days to be  
20 calculated without putting a date certain.

21           MS. RELKIN: Right. Your Honor, it's Ellen  
22 Relkin again. On the short form complaint, I didn't  
23 speak up before, but some of those dates were keyed to  
24 the filing of the -- plaintiffs having to do certain  
25 things related to the short form. And since the short

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1 form hasn't yet been entered, there may be some ambiguity  
2 there.

3 THE COURT: Okay. Understood. Well, what  
4 we'll do is we'll look at all the respective dates, make  
5 sure that they make sense. But notwithstanding the  
6 dates, the document at 137-1, the content is approved.  
7 So we'll just make sure that the dates themselves make  
8 sense and then get it docketed. All right?

9 Okay. There's also a stipulation at document  
10 138 that I just wanted to flag since I have it in front  
11 of me before I forget regarding (indiscernible-feedback)  
12 documents. And I'm just going to so order that only  
13 because it's sitting in front of me. Any issues with  
14 that?

15 ATTORNEYS: No, your Honor.

16 THE COURT: Okay. All right. Then document  
17 149, which is the amended case management order number  
18 two, and again, the content of this is approved. We'll  
19 just make sure that the dates make sense. Okay?

20 All right. Okay. Anything else on this topic  
21 before we move along?

22 MS. RELKIN: No, your Honor.

23 THE COURT: All right. Custodians, search  
24 terms, and ESI.

25 MS. WALL: Your Honor, this is Carol Wall for

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1 the plaintiffs. I'm plaintiff's ESI liaison, so I'll  
2 speak to this portion.

3           As we noted in the joint status report, the  
4 Exactech defendants have been undergoing a process to  
5 migrate and process data from prior counsel. I want to  
6 supplement that with some descriptions of the continuing  
7 impact that migration and process has on our ESI  
8 discovery as it stands now.

9           So as your Honor ordered, Exactech defendants  
10 were to serve the documents previously produced in the  
11 Florida litigation to the MDL plaintiffs by February  
12 27th. And so we have been having many meet and confers  
13 with defense counsel. They alerted us in advance that  
14 because of the migration process, they would not be able  
15 to fulfill a complete production to us on that date. As  
16 anticipated, they did produce the documents but they were  
17 not able to produce the metadata that was required by the  
18 agreed-upon ECI protocol.

19           So we're continuing to meet and confer as they  
20 get that information available. And counsel for Exactech  
21 can give a better status update as to where they are in  
22 that process. But that's kind of the first moment where  
23 we saw a significant impact because of the unavailability  
24 of the electronic data. It's also impacting the search  
25 terms and custodians process.

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1           So again, we've had multiple meet and confers  
2 to try to identify and negotiate search terms and  
3 beginning custodians, but the ability to get anywhere  
4 substantively has been limited by the unavailability  
5 again of that electronic information.

6           So while we are still talking, I believe there  
7 is a meet and confer scheduled for next week on these  
8 issues. That kind of stalled process on search terms and  
9 custodians is really a motivating factor behind us  
10 seeking a 30(b)(6) on ESI for the Exactech defendant.

11           So in the report defendants did note they  
12 believe it is premature. Our position is it's actually  
13 ripe for this time. As your Honor probably knows,  
14 efficient ESI discovery really requires both a deep and  
15 thorough knowledge of the data structures within a  
16 company for the entire time period. And we're discussing  
17 in this litigation products that were approved in 1994.  
18 So there's a very long history there.

19           So that is the type of information that even  
20 when these migration issues are resolved, it is still  
21 best obtained directly from knowledgeable persons  
22 internal to the company who can speak at that kind of  
23 technical deep level.

24           And so the last part I just wanted to  
25 supplement, your Honor, from the joint report is it does

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1 accurately portray our necessity for negotiations as to  
2 the ESI obligations for plaintiffs. For all plaintiffs  
3 responding to the PFS, we agree that documents are  
4 produced if they're responsive whether they're electronic  
5 or not. Additional ESI or metadata obligations are still  
6 in negotiation and will be limited to those plaintiffs  
7 either in the bellwether pool or the process to determine  
8 bellwether plaintiffs.

9           So that's my update for now, your Honor. And I  
10 can let Mr. Kanute provide their status.

11           THE COURT: All right. Thank you very much.  
12 Mr. Kanute?

13           MR. KANUTE: Actually, your Honor, Mr. Powell,  
14 my colleague, will address this issue for the Court.

15           THE COURT: Certainly. Mr. Powell?

16           MR. POWELL: Thank you, Judge. Sean Powell  
17 here. Yeah, so a few things to unpack there.

18           Ms. Wall is correct. So as you know, Faegre  
19 Drinker entered your appearance back in November in this  
20 case and transferred in for Bowman and Brooke. Bowman  
21 and Brooke had collected a substantial amount of work  
22 product that we have been working to migrate over onto  
23 our system. The process for collecting that work product  
24 has not been insignificant. One of the reasons is is  
25 because we're using a different e-discovery platform.

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1           So as Ms. Wall said, we have been meeting and  
2 conferring with her and her colleague, Mr. Cutler,  
3 multiple meeting confers, to update them on our status of  
4 transferring that work product over and doing  
5 remediations on the new e-discovery platform, you know,  
6 quality control, to ensure that we have everything.

7           I can report that that was completed over a  
8 long weekend, last weekend, so the remediation is  
9 complete and the migration is complete. As Ms. Wall  
10 said, we have a meet and confer next week when we are  
11 going to update them on the status and move forward.

12           I will note that we have provided search terms  
13 and custodians and sources of data as of right now.  
14 Those are being worked out. Obviously, the plaintiffs  
15 have a different view of the amount of search terms and  
16 custodians, so we're working through that with  
17 plaintiffs.

18           So that is kind of the background of how we got  
19 to where we've gotten here today. Again, we have the  
20 meet and confer next week where we hope to make good  
21 progress with the plaintiffs.

22           In terms of the document production from  
23 Florida, so what Ms. Wall was alluding to is they wanted  
24 an overlay of the production to comply with the ESI order  
25 for the metadata for the MDL ESI. Because of the quality



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1 control we were going through with our e-discovery  
2 platform, we were not able to produce that metadata in  
3 the exact format as agreed to in the MDL. We are going  
4 to produce that to the plaintiffs I believe next week. I  
5 can tell you that the metadata is virtually the same.  
6 But we'll make that production to ensure we're complying  
7 with your Honor's ESI order that you entered in this  
8 case.

9 THE COURT: Okay.

10 MR. POWELL: And then for the 30(b)(6) issue --

11 THE COURT: Hang on.

12 MR. POWELL: -- as we put in the --

13 THE COURT: Sorry, hang on. Just to stop you  
14 before you get to the 30(b)(6). So responsive to the  
15 issue about when the metadata is going to be produced, so  
16 that's going to be produced by next Friday?

17 MR. POWELL: Yeah. I believe we can get that  
18 produced by next Friday.

19 THE COURT: Okay. So March 31st. All right.  
20 Okay. 30(b)(6) witness.

21 MR. POWELL: Yeah. Thank you, your Honor. So  
22 again, as we put in the joint status report, we do think  
23 that issue is premature. As we continue to meet and  
24 confer and now that we have completed the ingestion  
25 process from the other e-discovery platform, we think

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1 we'll be in a much better position to provide the  
2 plaintiff's with certain information that they're  
3 requesting in terms of sources of data which we've  
4 already produced or provided certain sources, but I  
5 understand that the plaintiffs are seeking additional  
6 sources. We're in a much better position to do that and  
7 that's why we think it is premature at this time. I'm  
8 sure that this will come up next week in our meet and  
9 confer as well. You know, it's essentially doing  
10 discovery about discovery which I understand plaintiff's  
11 position but at this point to keep things moving we think  
12 that the more efficient course would be to continue to  
13 meet and confer on search terms, custodians, provide the  
14 sources of information prior to any 30(b)(6) being  
15 required which we think even if we did reach that point,  
16 maybe there could be alternative mechanisms to get them  
17 the information they need short of a full-blown 30(b)(6)  
18 deposition.

19 THE COURT: All right. Thank you, Mr. Powell.  
20 Ms. Wall?

21 MS. WALL: Yes, your Honor. Thank you. I just  
22 want to add to that. Mr. Powell is correct. There has  
23 been some discussion of data sources and custodians but  
24 it's essentially just been skimming the surface. What  
25 we'd be looking to do with that discovery on discovery,

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1 as Mr. Powell correctly described it, is really  
2 understand not just kind of the surface level of where  
3 the documents are and the format, but it is a very in-  
4 depth process. There's 18 topics in the draft of the ESI  
5 notice we have. It is a process that is very involved  
6 and typically requires a binder's worth of information to  
7 get the entirety of the databases used.

8           And so even with a very cooperative meet and  
9 confer process on this, it tends to be in the litigations  
10 we've done this in, the most efficient manner just to go  
11 directly to the source and get someone internally who can  
12 speak to that very fine technical details of file  
13 formats, folder names, things to that extent.

14           THE COURT: All right. Well, here's what I  
15 think. I think that since the time of your report the  
16 material change is that the migration of the data has  
17 been completed. Why don't you have your conversation  
18 next week and if these issues still remain, then we can  
19 revisit them. I just think there's been a material  
20 difference such that a longer conversation, now that the  
21 landscape has changed, would actually be helpful.

22           MS. WALL: Thank you, your Honor.

23           MR. KANUTE: Thank you, your Honor.

24           THE COURT: That's as to Exactech. All right.  
25 And now there's another section here regarding ESI

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1 relating to personal injury plaintiffs. Anything to add  
2 to this report?

3 MS. WALL: Your Honor, Cara Wall again. That  
4 was contained in my reference to the PFS data and ESI.

5 THE COURT: All right. Nothing different than  
6 what you were talking about. Not a problem. Anything  
7 else on this topic before we move on?

8 MR. POWELL: Nothing to add from Exactech, your  
9 Honor. This is Sean Powell.

10 THE COURT: Okay. In terms of your meet and  
11 confer, if you think it's necessary to raise the issue  
12 before the next full-blown status report, then you should  
13 do that in a joint letter. Okay?

14 MS. WALL: Understood, your Honor.

15 THE COURT: If not, then just add it to the  
16 next status report.

17 MS. WALL: Understood.

18 THE COURT: Okay. Well, we sort of talked  
19 about discovery from Exactech which is topic five.  
20 Anything else to be covered here or anything else in the  
21 notes?

22 MR. KANUTE: Your Honor, Mike Kanute for  
23 Exactech. I do have just a couple of things to alert  
24 your Honor to.

25 THE COURT: Yes.

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1           MR. KANUTE: We've already discussed the  
2 production of documents in the MDL and we touched upon  
3 the Collum-Bradford case. There is a group of cases that  
4 are filed in state court in Circuit Court of Cook County,  
5 Illinois, eight of them to be exact and with word that  
6 there may be another three or four filed in the near  
7 future.

8           We are in the process of trying to get those  
9 cases consolidated for pretrial purposes for discovery  
10 before a single judge in Cook County. That has not  
11 happened yet but we're optimistic that that will happen  
12 in the very near future. We're actually working with the  
13 plaintiff's counsel in those cases to get that done. And  
14 when that is done, I intend to alert your Honor as to who  
15 that judge is in the hopes that we may be able to get  
16 those cases in some manner of coordination as well with  
17 the MDL. There's already been written discovery served  
18 in at least three of those cases. So I'm just alerting  
19 your Honor that we may be coming to you with that either  
20 at the next status conference or sometime in the near  
21 future.

22           THE COURT: Okay. I think this might be a good  
23 time to just talk about generally the other state cases  
24 other than Florida where we've been pretty firmly  
25 coordinating for a while. Given that there are a number

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1 of different states with different actions in different  
2 stages, I think that this is something that needs to be  
3 raised with the judges there. So for example, the  
4 suggestion to invite Judge Castillo to the Science Day is  
5 something that needs to be raised with Judge Castillo in  
6 the first instance. Similarly with the remaining cases  
7 if that's something that you think is important because  
8 we cannot dictate that from here. That is something that  
9 needs to be raised with those judges first. I'm going to  
10 return to that topic more with Science Day. But since  
11 you raised another group of state cases, I just wanted to  
12 put that out there. Okay?

13 MR. KANUTE: Understood, your Honor. It's Mike  
14 Kanute again. I think when we get the Illinois cases  
15 before a judge we probably will consider a motion to  
16 coordinate in a certain court of Cook County. If we do  
17 file that, we'll send your Honor a copy just so you know  
18 that that's happening as well and keep you in the loop on  
19 that as well.

20 THE COURT: All right. Thank you very much.

21 MS. RELKIN: It's Ellen Relkin. I just wanted  
22 to say as to the New York County cases that are on that  
23 Exhibit A to the status report, all but one of them are  
24 my firm's cases. And so, you know, I intend to --

25 THE COURT: All but one of them are.

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1 MS. RELKIN: All but one of the cases on the  
2 list that are in New York County are cases filed by my  
3 firm.

4 THE COURT: Oh, okay.

5 MS. RELKIN: So we have informed essential  
6 coordination and Ms. Sharko and I will work out applying  
7 the same kind of disclosure forms, et cetera, to New  
8 York. And I'm not going to reinvent the wheel.

9 THE COURT: Okay. No problem. Thank you.  
10 Okay. Any specific updates on the Florida  
11 cases while we're on this topic? Mr. Saunders is not  
12 here.

13 MR. KANUTE: Your Honor, Mike Kanute for  
14 Exactech. I can tell you we do have a status before  
15 Judge Keim next week on Tuesday. We're continuing to  
16 work with the plaintiff's lawyers in Florida. Hopefully  
17 we'll have in place a bellwether trial process soon. So  
18 we're working with the larger group of cases.

19 Then there's that one case that's out front,  
20 the Freeze case, which remains set for trial in early  
21 November. That is Mr. Saunders case and I'm working on  
22 that case with him. We're continuing to engage in  
23 discovery on that case including two additional  
24 depositions of Exactech employees which took place last  
25 week.

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1 THE COURT: Okay. Oh, the additional besides  
2 the chief strategy and medical officer?

3 MR. KANUTE: Yes, your Honor. Yes.

4 THE COURT: All right. So they did happen last  
5 week. All right. And who are they specifically? Or  
6 what were their roles?

7 MR. KANUTE: Yes, your Honor. Mike Kanute. So  
8 one was the director of the quality management system for  
9 Exactech, Ms. Jacobson. And the other witness was a  
10 product evaluation engineer who examined the Freeze  
11 components at the company.

12 THE COURT: Okay. Anything else before we move  
13 on?

14 MR. WARRINER: Your Honor, this is Cal  
15 Warriner. Can you hear me? I've got all kinds of mutes  
16 going on because I'm on my phone but I've also got the  
17 Zoom going on my screen. Can you hear me okay?

18 THE COURT: I can. I just have to find you in  
19 my Hollywood Squares here. Go ahead, Mr. Warriner. I  
20 see you. You're in the top row.

21 MR. WARRINER: Okay. Great. I'm the one with  
22 the giant glow on top of my head from the LED lights  
23 right above me and no hair. I should be easy to point  
24 out.

25 I'm co-lead counsel with Mr. Saunders in the



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1 Florida cases. I don't know how much communication  
2 you've had with Judge Keim but in addition to the Freeze  
3 matter, Judge Keim has set aside four trial dockets in  
4 2024. And she has cases that are slotted in those trial  
5 dockets and has asked the plaintiffs and the defendants  
6 to come up with a bellwether process to select some  
7 representative cases to be tried on those for dockets.  
8 But everything we are hearing from the court is that  
9 regardless of which cases get tried, she is intending to  
10 keep those four trial dates firm for 2024.

11           So we continue to meet and confer on discovery  
12 issues. Documents have been produced. We anticipate  
13 pretty soon once that bellwether process is in place  
14 moving forward rapidly with more robust discovery  
15 depositions, et cetera, et cetera, et cetera. So Judge  
16 Keim's got her foot on the gas pedal down there.

17           THE COURT: Yes. Thank you for that. And yes,  
18 we have been in contact with Judge Keim and she did  
19 mention that she was looking forward to keeping those  
20 trial dates. But thank you for confirming that.

21           Anything else before we move forward?

22           MR. KANUTE: Nothing further from Exactech,  
23 Judge.

24           THE COURT: All right. Thank you. Okay. So  
25 the TPP plaintiffs. Anyone?

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1 MS. FERNANDEZ: Sure, your Honor. Amanda  
2 Fernandez on behalf of the TPP plaintiff. I just want to  
3 address a couple of things.

4 So first of all, although I've been appointed  
5 to the discovery committee, the TPPs have not been able  
6 to meaningfully participate in this litigation. It was  
7 our understanding from the preliminary case management  
8 conference that all of the orders would apply to all of  
9 the parties including the TPPs. For example, we know  
10 they used that protocol, the protective order. However,  
11 we have not been able to participate in negotiating any  
12 of those orders even though we reached out to both sides  
13 on multiple occasions. We've been told by the individual  
14 plaintiff's counsel and the defendants that it's  
15 premature for us to be involved because the defendants  
16 will be filing a motion to dismiss. And also  
17 plaintiff's, the individual plaintiffs have told us, you  
18 know, we've got it covered, you go negotiate your own  
19 things with defendant and then defendants tell us, you  
20 know, they're not negotiating those things with us  
21 because we're not plaintiff lead counsel.

22 So we would just like some clarification from  
23 the Court moving forward how those things are going to be  
24 handled. We think it's not only not protecting the  
25 interest of TPP but it's inefficient because we will have

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1 to now go back and renegotiate all these orders and any  
2 future orders going forward or any other deadlines. For  
3 example, the protective order, you know, we represent  
4 health insurance companies and third-party payers that  
5 deal with HIPAA protected information. In order for us  
6 to produce any documents in this case or any information,  
7 we need those HIPAA protections in the protective order  
8 which are not there right now. There's no encryption, no  
9 attorneys' eyes only in the protective orders. So now  
10 we're going to have to go back and renegotiate all those  
11 things, all those orders.

12           And this also I'm sure will be brought up by  
13 Mr. Kanute, but as they plan to move forward now with the  
14 motion to dismiss and your Honor mentioned they had filed  
15 a pre-motion litigation or pre-motion letter, we'd like  
16 to expedite everything. As I mentioned, everyone, you  
17 know, the both sides have told us that it's premature for  
18 us to be involved in any of these discussions or to  
19 meaningfully participate in the litigation until the  
20 motion to dismiss is decided. Therefore, we'd like to  
21 expedite this briefing.

22           We've spoken to defendants about this.  
23 Defendants informed us that their motion to dismiss will  
24 almost mirror the motion to dismiss that they filed in  
25 the Northern District of Florida. We are prepared to

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1 respond to it as soon as possible. We would ask that the  
2 Court order them to file their motion to dismiss by  
3 Monday and we could respond by Friday.

4 THE COURT: Okay. Well, as I mentioned with  
5 respect to the TPG pre-motion conference letter, that's  
6 on a schedule set by Judge Garaufis's individual rules.  
7 So I think the letter was filed for Exactech with respect  
8 to MSP, or the TPP plaintiffs, on March 21st. And I  
9 would just check Judge Garaufis's rules as to the due  
10 date for the response. I know from other judges is  
11 usually a week but check his rules.

12 And then as before, he will make the decision  
13 as to whether or not to grant that, have a conference,  
14 expedite the briefing. Those are requests better  
15 directed to the district judge who'll be handling the  
16 motion.

17 MS. FERNANDEZ: Understood.

18 THE COURT: But in terms of the rest of it, Mr.  
19 Kanute or any of lead plaintiffs' counsel, did you want  
20 to chime in?

21 MR. KANUTE: Yes, Judge. Mike Kanute for  
22 Exactech. So your Honor's correct, we filed our  
23 pre-motion letter on March 21st in accordance with Judge  
24 Garaufis's rules. So we'll proceed through that process.  
25 And Ms. Fernandez is correct, we had a prior motion to

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1 dismiss that was filed when the case was down in the  
2 Northern District of Florida. I suspect the motion we  
3 filed before Judge Garaufis will look very much like that  
4 prior motion.

5 I'll note one other thing and that's Ms.  
6 Fernandez served written discovery in early March on us  
7 which consisted of interrogatories, production requests,  
8 and requests for admission. We think those are premature  
9 because of the fact we have advised her that we were  
10 going to be pursuing the motion to dismiss but also  
11 because it's out in front of all the other plaintiffs in  
12 the MDL as well and we're just not to that point yet. So  
13 we asked her to withdraw that discovery.

14 I know she did agree to an extension of time  
15 until May 1st for us to answer, but we believe that the  
16 written discovery in connection with the MSP claims  
17 should be stayed until the motion to dismiss is decided  
18 particularly because the motion to dismiss is based on  
19 jurisdictional grounds and the fact that they have no  
20 standing to be in this lawsuit. So I think it's  
21 important to decide those before we're forced to respond  
22 to discovery in connection with those claims.

23 MS. FERNANDEZ: Your Honor, if I could respond  
24 briefly?

25 THE COURT: Does anyone from personal injury

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1 plaintiffs want to chime in before Ms. Fernandez, or you  
2 can respond to both?

3 MS. RELKIN: I'll be happy to chime in briefly.  
4 The discovery that was served by MSP, originally we  
5 weren't served with a contemporaneous copy. I learned  
6 about it from defense counsel. I should say that the  
7 lawyers who are on your Honor's executive committee and  
8 steering committee have a wealth of experience on medical  
9 device product liability hip cases and, you know, I think  
10 were well qualified to know the appropriate discovery to  
11 ask. So you know, it was just done on their own without  
12 conferring with us. Your Honor's January 26th order  
13 paragraph 6 said discovery propounded on behalf of the  
14 plaintiffs should be done by the executive committee.

15 So trying to coordinate now that Ms. Fernandez  
16 has been appointed to the discovery committee, she's not  
17 on, at this time, on other committees, so it's been a  
18 little uncoordinated.

19 MR. POPE: And this is Kirk Pope. If I may,  
20 your Honor?

21 THE COURT: Yes.

22 MR. POPE: You know, I think part of the  
23 difficulty is that there is a leadership structure that  
24 the Court appointed. And we know that every plaintiff  
25 lawyer out there would love to come in and represent and

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1 run the show, but that's the reason why we have  
2 leadership structure. And so Ms. Fernandez has been  
3 appointed to the subcommittee and she attends the  
4 meetings. And it's very difficult to I guess now  
5 everything that we have accomplished and/or will  
6 accomplish we are being requested to run through Ms.  
7 Fernandez. I think it highlights the real need for this  
8 to be their own track because what she just advocated for  
9 purposes of where we are in managing this litigation is  
10 counterproductive to what we are trying to do on the  
11 plaintiff leadership side, on the personal injury  
12 plaintiff leadership side. So I think it highlights the  
13 need to have a real discussion about the MSP being on a  
14 separate track.

15 MR. MESTRE: And Judge, this is Jorge Mestre  
16 for the third party payers.

17 THE COURT: I'm sorry, Mr. Mestre, I'm sorry, I  
18 have to hear from Ms. Fernandez because she --

19 MR. MESTRE: Sure.

20 THE COURT: -- she is the appointed by the  
21 Court attorney. Your request to be part of that group  
22 was denied. So I do have to permit Ms. Fernandez to  
23 speak on this point. Ms. Fernandez, did you want to  
24 respond?

25 MS. FERNANDEZ: Yes, your Honor. So as to Mr.

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1 Kanute's point with the discovery that we propounded, the  
2 Court should not stay discovery. We granted them or we  
3 agreed to extend the time for them to respond to the  
4 discovery. It's not pending. We could brief the motion  
5 to dismiss before the time has even come up for them to  
6 have to respond to the discovery.

7 We spoke to them about expediting the briefing  
8 schedule. They said they didn't oppose it as to the  
9 motion to dismiss, therefore it's premature.

10 Additionally, from what I understand, TPG is  
11 planning to move to dismiss as well. Does that mean that  
12 all discovery should be stayed in this case pending all  
13 the motions to dismiss? No. I mean that's not what's  
14 going to happen. We shouldn't have to stay our discovery  
15 pending our motion to dismiss.

16 Additionally, as to Ms. Relkin's point, we  
17 reached out to plaintiff's, the individual plaintiff's  
18 counsel on several occasions about coordinating  
19 discovery. We were ignored. Therefore, we sent out our  
20 own discovery requests. After that, we were told by Mr.  
21 Cutler that there was actually master discovery that was  
22 being drafted that was going to be sent out on behalf of  
23 the plaintiffs. There was a meeting which I attended for  
24 the discovery subcommittee. I asked to see a draft of  
25 that master discovery and was told no. I was told you



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1 already sent out your discovery, we don't need your  
2 comments, we don't want to coordinate with you. So we  
3 are attempting.

4 I mean this actually highlights how much TPP  
5 counsel is needed in a leadership position to protect the  
6 TPPs interest. It doesn't matter if it's a separate  
7 track. There still needs to be leadership from the TPPs  
8 and coordination with the TPPs. We can't have separate  
9 ESI search terms, separate discovery. Are we going to  
10 have to depose everyone twice in this case? I mean that  
11 doesn't make any sense. It's inefficient.

12 So regardless if there's a separate track,  
13 there still needs to be a TPP lead counsel and there  
14 still needs to be coordination especially as to  
15 discovery. That's what was told to us in the beginning  
16 of this case with the case management conference. The  
17 judge does not want a duplicate discovery effort. And we  
18 think that should be a point moving forward. And we just  
19 ask that there be some guidance as to that.

20 THE COURT: Okay. So in terms of the expedited  
21 briefing on the motion to dismiss -- well first of all,  
22 let me ask this. Let me go back to Mr. Kanute. Are you  
23 officially seeking a stay of discovery as to the TPP  
24 plaintiffs?

25 MR. KANUTE: Yes, your Honor. We would like

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1 that. Since the TPP plaintiffs will not voluntarily  
2 withdraw that, yes, we'd like to ask the Court to stay  
3 that discovery particularly since we've initiated the  
4 procedure leading to the motion to dismiss.

5 THE COURT: Right. Yes. So on the one hand,  
6 Ms. Fernandez, you've indicated that you want to move  
7 forward with discovery but then there's going to be  
8 expedited briefing on a motion to dismiss that if I  
9 understand the conversation and reviewing the pre-motion  
10 conference letter would be a fully dispositive motion.  
11 Is that accurate, Mr. Kanute?

12 MR. KANUTE: Yes, your Honor, it would be  
13 dispositive.

14 THE COURT: Okay. And so Ms. Fernandez,  
15 assuming that that motion is granted, then TPP would no  
16 longer be part of the case. And while I certainly  
17 understand that you want to move forward with discovery,  
18 there has been a concern, and it's been our concern from  
19 the moment that this case became an MDL, that having  
20 multiple tracks of discovery is challenging. But there's  
21 also the very real issue that your clients may not be in  
22 the case anymore.

23 And so now, I'm a little concerned that your  
24 attempts to have a conversation were not answered and I  
25 don't know if that's something, Ms. Relkin, you wanted to

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1 chime in on. You're doing things with your head.

2 MS. RELKIN: I'd be happy to chime in.  
3 Literally the day before Ms. Fernandez served the  
4 discovery she sent me an email and I responded the next  
5 day and told her discovery was sent.

6 And then we had a conversation, I had a Zoom  
7 with her and her partners. It wasn't a very pleasant  
8 Zoom. I was outnumbered. And we were criticized for why  
9 were they not part of the negotiations on the plaintiff  
10 fact sheet and the preliminary disclosure. And I said  
11 well those are documents that are specific to injured  
12 plaintiffs. It has nothing to do with a subrogation  
13 claim, third party payer claim. They were expecting by  
14 getting appointed very recently, the discovery committee,  
15 they were trying to kind of undo prior orders which  
16 really are inapplicable to the TPPs. So it's been a  
17 little challenging, unfortunately. If they stay in the  
18 case, I hope we can get back on track.

19 But you know, with regard to discovery, the  
20 defendants as to the liability issues in the case, the  
21 committee that the Court has appointed, we are proceeding  
22 full fledged and obviously it will be very complicated  
23 and we'll coordinate as appropriate with depositions and  
24 so forth. But if they remain in the case, they have  
25 their own issues that I'm sure they will work with

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1 defendant on on their damage proofs and so forth. If  
2 they need a special amendment to the protective order,  
3 that's fine by us. It shouldn't impact the injured, you  
4 know, personal injury plaintiffs. But the overall  
5 liability case, we are proceeding with the appointed  
6 committee so far. And you know, every other member who's  
7 on a subcommittee is not, you know, second guessing every  
8 decision made by the leadership.

9 MS. FERNANDEZ: Your Honor, if I may just  
10 quickly address what Mr. Kanute and Ms. Relkin have  
11 stated?

12 As to Ms. Relkin's comments, she's not  
13 representing correctly what's happened between the TPP  
14 plaintiffs and the individual plaintiffs. We've been  
15 trying to coordinate with them since we filed a notice of  
16 tag-along into the MDL. Then we went back to the  
17 Northern District of Florida, and then we're back in the  
18 MDL. I mean I've never experienced where a plaintiff has  
19 filed an objection to essentially a motion to dismiss,  
20 right, of a case on a transfer order. And they have been  
21 every step of the way trying to block us out of the case.  
22 They are not trying to protect us. They are not trying  
23 to have us be involved.

24 Now, as to your concern that what happens if  
25 the motion to dismiss is granted, I mean what happens if

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1 it's not granted?

2 First, their claims are baseless on their face.

3 THE COURT: I don't want to --

4 MS. FERNANDEZ: Right. We're not going to get  
5 into the legal points. I agree with you.

6 THE COURT: Right.

7 MS. FERNANDEZ: But even if they -- what is the  
8 harm of us participating now and ensuring that there are  
9 protocols and ways to protect the TPPs, the ESI search  
10 terms, the protective order, things like that? And if we  
11 do get over the motion to dismiss, with our part of the  
12 case, which we think we will be, then we're not going to  
13 have to go back and redo all those things. I mean it's  
14 just inefficient. If we participate in them now and  
15 let's say the motion to dismiss is granted, okay, then  
16 you don't have to do it, like we're out of the case. But  
17 now you're not having to go back and redo all those  
18 orders or redo any discovery.

19 And we've already agreed to extend the time for  
20 the defendants to respond to our written discovery that  
21 we propounded. We're not asking them to respond to our  
22 written discovery before the motion to dismiss has been  
23 decided. We're just not going to withdraw our written  
24 discovery. I mean I don't think these are --

25 THE COURT: Okay. Thank you, Ms. Fernandez.

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1 Thank you, everyone.

2 So what was the date that you permitted the  
3 extension until?

4 MS. FERNANDEZ: I believe it's May 3rd, your  
5 Honor.

6 THE COURT: All right. I'm going to hold the  
7 discovery request in abeyance until then. Okay? Because  
8 according to what you all are saying, you're going to be  
9 moving as expeditiously as possible to move, Mr. Kanute,  
10 the motion to dismiss forward. So the speed of that is  
11 not within my control but at the very least we don't have  
12 this kind of dispute going on about that particular  
13 discovery that was propounded.

14 As to the larger issue of the -- I mean that's  
15 essentially the stay. So I think that that resolves  
16 things for now. And if we need to revisit this pending  
17 the outcome of the motions or anything else, we will do  
18 that. Okay?

19 All right. Anything else on this point before  
20 we continue? Hearing nothing, I'm going to move on to  
21 the discovery case management order the only update to  
22 which seems to be that you're still talking about it.

23 MR. CUTLER: Correct, your Honor. This is  
24 Michael Cutler on behalf of the plaintiffs.

25 THE COURT: Wave your hand. Thank you.

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1 MR. CUTLER: Can you see me, your Honor? There  
2 we go. Okay.

3 That's correct, your Honor. We're still  
4 working on some of the issues for the case management  
5 order, the discovery order. I believe that we've agreed  
6 to get that done by April 10th submitted to your Honor.  
7 So that is in the works and that's the date that we're  
8 shooting for there.

9 THE COURT: Well, is that the date that you're  
10 shooting for or is that the date that you're going to do  
11 it?

12 MR. CUTLER: That's the date, your Honor.  
13 That's the date.

14 THE COURT: Okay. All right.

15 MR. KANUTE: Yes. Mike Kanute for Exactech.  
16 Judge, we will get you that CMO by that date. We're  
17 working with plaintiffs on that and we're confident we  
18 can do that.

19 THE COURT: Okay. Then we will leave that as  
20 April 10th.

21 MR. CUTLER: Thank you.

22 THE COURT: Just wanted to clarify before I  
23 moved on. Anything else on that point?

24 MR. KANUTE: No, Judge.

25 MR. CUTLER: No, your Honor, not from us.

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1 THE COURT: Okay. Who is going to be  
2 discussing preservation for the calls and orders for  
3 plaintiffs? Mr. Warriner? Okay. Thank you. Go ahead.

4 MR. WARRINER: Yes, ma'am. Judge, Mr. Kanute  
5 and I are on point on that. We've had several  
6 discussions about it. Mr. Kanute tells me that he had  
7 intended to have me a draft that incorporated some of our  
8 suggestions, their suggestions before the hearing today  
9 and he said if it's not before the hearing today, which  
10 we didn't quite make it, that we might have it by close  
11 of business today and if not, tomorrow. And it is our  
12 full intention to have something agreed in front of you  
13 on the 10th which is the date that was selected in the  
14 document you've been referring to.

15 THE COURT: Again, is it your intention or are  
16 you going to do it by that date?

17 MR. WARRINER: We're going to do it by that  
18 date.

19 THE COURT: Okay. And that goes in the order.

20 MR. KANUTE: Thank you, Judge.

21 THE COURT: All right. Next topic is the TPG  
22 defendants. Did we kind of already cover that at the  
23 beginning?

24 MS. COTTRELL: I think so, your Honor. Christa  
25 Cottrell. I think so.



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1 THE COURT: Okay. All right. Anything else on  
2 that before we move on to --

3 MS. COTTRELL: No. We'll follow the procedure  
4 you laid out to move to dismiss and go from there.

5 THE COURT: Okay. Good. All right. Science  
6 Day. Okay. So there's going to be an order from Judge  
7 Garaufis about some of the issues that have been raised  
8 already but the first issue is that it is not changing.  
9 It is going to be May 10th at 9 a.m. And to the extent  
10 that TPG will still be in the case, I am sure that you  
11 can find someone from Kirkland and Ellis to defend.

12 MS. COTTRELL: Yes, your Honor. And I was  
13 going to update -- Christa Cottrell again for TPG. We  
14 actually were going to withdraw that motion. We talked  
15 to plaintiffs last night and worked it out. So  
16 understood.

17 The one question we did have for your Honor is  
18 if there would be a closed Zoom link available for folks  
19 who can't be there in person? If that would be something  
20 your Honor would be open to, I think it would be helpful.  
21 But I see you're shaking your head no. We thought we'd  
22 at least ask. But I think on the date it's understood.

23 THE COURT: Okay. Ms. Relkin?

24 MS. RELKIN: Yes. What I had suggested in the  
25 papers, I mean it's now moot in terms of that, we're

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1 proceeding with that date which is fabulous, but I  
2 understand the danger of a Zoom link because it's not  
3 consistent with what happens and Science Day stays within  
4 the room. However, if a recording was done and kept by a  
5 reporter for the Court and then a different date is  
6 picked to show it in New York for anyone who couldn't get  
7 to Florida and for any of the TPG counsel who couldn't be  
8 there, with the courtroom deputy supervising, you know, I  
9 think that's a way to enable anyone missing to see it.  
10 But it's absolutely up to the Court of course.

11 THE COURT: Well, let me just give you a  
12 preview of the order that's going to be issued on this  
13 because all of these issues came up in one go.

14 One, the date's going to be May 10th in  
15 Gainesville.

16 And two, what Ms. Relkin, you just mentioned,  
17 yes. So first of all, just as a reminder, this is not an  
18 evidentiary hearing and the presentation is inadmissible.  
19 So this is not intended to be a trial. This is a  
20 presentation to educate the Court.

21 And the recording, yes, the event can be  
22 recorded for anyone who's not able to attend because  
23 remember, we're primarily hearing from the experts and  
24 asking questions, the Court is asking questions of them.  
25 And the recordings can be made available on a

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1 confidential basis essentially. So that's point one to  
2 address anyone who's unable to attend.

3           The issue that was raised with respect to the  
4 scope of the materials to be presented, so plaintiffs are  
5 going to be permitted to present material that illustrate  
6 the alleged types of injuries that gave rise to the  
7 claims but only as generic examples of injuries that can  
8 arise from the alleged defects. So you're not providing  
9 testimony that identifies specific individuals or those  
10 specific individual's claims against defendants. Okay?

11           I think I've already -- well, returning to the  
12 point about the state coordination and inviting other  
13 judges, again, that is something that the attorneys need  
14 to notify. For example, since you mentioned Judge  
15 Castillo, notify Judge Castillo that this is happening  
16 and that yes, there is an opportunity to attend. But  
17 that is something that we are asking the attorneys to do.  
18 All right? For Judge Castillo or any other judge you  
19 think should be attending.

20           And then with respect to the last request which  
21 was having a joint status conference on that same day, we  
22 are not doing that because the judges will certainly need  
23 to digest a lot of the information that's been provided.

24           Anything else regarding Science Day?

25           MS. RELKIN: No, your Honor.

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1 MR. KANUTE: Not from Exactech, your Honor, no.

2 THE COURT: Okay. There'll be an order  
3 regarding all of the above with respect to Science Day  
4 after this conference.

5 Okay. Let's see. That brings us to the end of  
6 the status report. Now it's an open floor. So anything  
7 else that needs to be raised by anyone else?

8 MS. KESSLER: Hi again, your Honor. This is  
9 Rayna Kessler from plaintiff's liaison counsel. Hello.

10 THE COURT: Yes. You're my first square. Go  
11 ahead.

12 MS. KESSLER: Great. I'll take this  
13 opportunity to just provide some resources to plaintiff's  
14 counsel, remind them of the resources that they have to  
15 help make sure that they know that they can always come  
16 to me with questions and to hopefully not burden the  
17 clerk's office with questions that we can answer from the  
18 plaintiff's side.

19 One of the best resources that we have, just as  
20 a reminder to counsel, is a website that we created,  
21 that's Exactechndo (indiscernible) .com. We have been  
22 posting the Court's orders. Yes?

23 THE COURT: That was my question. Has that  
24 been updated with all of the filings?

25 MS. KESSLER: Yes, your Honor. Well, it's been

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1 updated manually with all the key court orders and case  
2 management orders and policies and procedure orders that  
3 have come out. There's also a template section on there  
4 where we have the template for the preliminary  
5 plaintiff's disclosure form. And now that the plaintiff  
6 fact sheet will be ordered it sounds like today, we will  
7 put up a template for that as well.

8           We also have templates related to the pro hac  
9 vice requests and instructions laid out on there as well  
10 that pull from the direct filing order number 2. I'm  
11 sorry, the direct filing order and policies and  
12 procedures order number 2, the amended order.

13           We have not been able to automatically be able  
14 to code the docket entries which is what ideally we'd  
15 like to do for counsel because that way counsel can  
16 subscribe and receive docket entries as pdfs as they  
17 become entered on the docket.

18           I know your Honor reviewed our letter from the  
19 last status conference and suggested we do it as a  
20 secondary email. Unfortunately, that isn't a solution  
21 because a secondary email is tied to the primary which  
22 means that if the primary were to check, then the coding  
23 doesn't work for a secondary email receiver. So I'm  
24 happy to talk with the clerk's office more about that to  
25 see if there's some other solution and also coordinate

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1 with BrownGreer from MDL Centrality who is doing that  
2 coding for us. So hopefully we can come up with a  
3 solution that works for the Court as well. We thought it  
4 would be very helpful for all counsel.

5 THE COURT: Okay. Understood. And yes,  
6 coordinate and speak with the clerk's office about its  
7 capabilities. You would likely have to speak to -- it  
8 would probably need to be escalated within the clerk's  
9 office.

10 MS. KESSLER: Okay. I've mostly been talking  
11 with Tiffany.

12 THE COURT: Yes. But for example, I know on  
13 the docket there was a posting by the chief deputy  
14 regarding filings in the case and some guidelines as to  
15 how to file the newest cases. So you may need to have a  
16 longer conversation with multiple --

17 MS. KESSLER: Okay. Understood. Thank you,  
18 your Honor.

19 And then also as an update from our last status  
20 conference, we do have a plaintiff's counsel list now  
21 that we've been updating weekly with new counsel that  
22 become interred or cases that become transferred. We  
23 grab those from the docket. And I have been circulating  
24 emails to counsel including the Zoom link for today that  
25 went to all plaintiffs' counsel, your Honor. And if

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1 anyone is on this call that has not been receiving my  
2 emails, please email me directly to make sure that you  
3 get on that list. And we'll keep using that list as a  
4 living counsel list and continue to update it.

5           And then also I wanted to mention that related  
6 to the plaintiff fact sheet and the amended CMO2  
7 regarding the preliminary plaintiff disclosure form, MDL  
8 Centrality is now up and running for any counsel that  
9 hasn't used it yet. You can email BrownGreer at  
10 [Exactech@BrownGreer.com](mailto:Exactech@BrownGreer.com) which is also listed in the  
11 amended CMO2 and also on the plaintiff fact sheet  
12 implementation order. It's very important now that  
13 counsel, now that the Court is going to order it, utilize  
14 MDL Centrality rather than the email boxes that were  
15 originally provided in the CMO2. We have been capturing  
16 all the information that has been sent to that email box  
17 and served on defense counsel and liaison counsel to make  
18 sure that data gets into MDL Centrality. But in order to  
19 make this as efficient as possible, we ask that all  
20 counsel now utilize MDL Centrality and if you have  
21 questions about that, to also email me as well.

22           And then I'll also say that related to the  
23 plaintiff fact sheet and implementation order that's  
24 expected to be entered, we will be hosting a webinar for  
25 plaintiffs' counsel with BrownGreer to go over how to use

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1 that platform and we'll do the same for the preliminary  
2 disclosure form as well. We'll cover both in that  
3 webinar just to make sure that counsel has all  
4 instructions related to that.

5 I think that's all the updates from plaintiff's  
6 liaison counsel. Thank you, your Honor.

7 THE COURT: Thank you. Anyone else before we  
8 set a date for our next status conference?

9 MR. KANUTE: Your Honor, Mike Kanute for  
10 Exactech. Just one more thing. It was actually I think  
11 our suggestion for a joint case management conference at  
12 the end of Science Day but I understand that your Honor  
13 is not -- we're not going to do that. It's probably too  
14 much to pack into one day. But we do see a benefit in  
15 having joint case management conferences if possible with  
16 either you and Judge Keim or you and Judge Garaufis and  
17 Judge Keim. I don't know if your Honor is open to that  
18 possibility of doing that by Zoom in the future. We've  
19 done that in other MDLs and found it tremendously useful  
20 and efficient. So if that's at all possible, something  
21 your Honor would consider, we would certainly be in favor  
22 of that.

23 THE COURT: Noted for the record, Mr. Kanute.

24 MR. KANUTE: Thank you, Judge.

25 THE COURT: All right. Anyone else with



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1 anything else before we set the date for the next status  
2 conference? Hearing nothing.

3           So Science Day sort of complicates things. I  
4 typically have my conferences in the odd numbered months.  
5 So normally I would have set the conference for late May.  
6 But actually it's not just Science Day that complicates  
7 things, it's Memorial Day. And so that then leads me to  
8 June 1st, the next conference, because it is not the  
9 Thursday before Memorial Day and I know that you have a  
10 conference with Judge Keim right before Memorial Day. So  
11 I've got Thursday, June 1st at 2:30. And while I know I  
12 talked about an in-person conference in warmer weather, I  
13 think this one will still have to remain a video  
14 conference. Perhaps the one after that we can endeavor  
15 to coordinate the logistics for an in-person. But for  
16 now June 1st, 2:30 p.m. eastern time and that would be by  
17 Zoom. In which case your joint status report would be  
18 due ten days before that and you all put the date in the  
19 order for this.

20           Now, given the lengthier period of time, I  
21 think it would be helpful for me to have an interim  
22 status report because we actually have discussed a number  
23 of things that are going to happen between now and the  
24 next conference including filings that are happening in  
25 April and the like. So if you can just do a shorter one

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1 on some of the issues that have just been discussed? As  
2 you can see, things changed between the ten days when you  
3 file your status report and then when we get together.  
4 That would be very helpful for me.

5           So why don't you submit something at the end of  
6 April, April 27th? It's a Thursday. About a month from  
7 now. I think there'll be a few things percolating during  
8 that time. Okay? But then there'll also be the second  
9 one before the next conference and that's is because we  
10 have a longer period and there's more that can happen.  
11 Okay? So April 27th and then ten days before June 1st.

12           All right. Anything else from anyone else  
13 before we adjourn for today. I do think today has been a  
14 productive conversation. And again, I appreciate all of  
15 you raising issues as necessary.

16           Okay. Hearing nothing, we are adjourned. I  
17 will see some portion of you on May 10th.

18           ALL: Thank you.

19                           (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 30th day of March, 2023.

  
\_\_\_\_\_  
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