

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING * MDL No. 2:18-mn-2873
FOAMS PRODUCTS LIABILITY *
LITIGATION * October 31, 2023

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE, presiding

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1 Tuesday, October 31, 2023

2 (WHEREUPON, court was called to order at 10:00 AM.)

3 THE CONFERENCE COORDINATOR: Your Honor, would
4 you like to join the call in now?

5 THE COURT: Are counsel who need to be here in
6 the speakers area here already?

7 MR. LONDON: Yes.

8 THE COURT: Okay. Sure, let's join.

9 THE CONFERENCE COORDINATOR: Okay. Thank you.
10 If you would please all give me a moment of silence. If
11 you can self-mute your lines, I'm going to transfer
12 everybody into the main conference. Then I'll do a brief
13 opening statement and hand the call over to Judge Gergel.
14 So one moment of silence, please.

15 THE COURT: Thank you.

16 THE CONFERENCE COORDINATOR: Thank you.

17 (Pause.)

18 Good day, everyone, and welcome to today's AFFF
19 MDL October Status Conference call. At this time all
20 participants are in a listen-only mode. I will stand by
21 if you should need any assistance. It is now my pleasure
22 to turn the conference over to Judge Richard Gergel.

23 Please go ahead, Your Honor.

24 THE COURT: Thank you very much.

25 Good morning, everyone. This is the matter of

1 the October 31, 2023, status conference. Could counsel
2 for plaintiff who will be speaking identify themselves for
3 the record, please?

4 **MR. LONDON:** Yes. Good morning, Your Honor.
5 Michael London for the PEC. With me on the line I believe
6 is Mr. Summy, Mr. Napoli, Mr. Rice, and Mr. Thompson.

7 **UNIDENTIFIED SPEAKER:** Good morning, Your Honor.

8 **THE COURT:** Good morning, everyone.

9 And for defense counsel leadership,
10 Mr. Petrosinelli, could you identify who could be speaking
11 for the defense?

12 **MR. PETROSINELLI:** Good morning, Your Honor.
13 Joe Petrosinelli here, one of the defense Co-Leads, joined
14 on the phone with Mike Olsen, the other Co-Lead. And
15 then, as usual, we have on the phone lawyers for several
16 defendants who may speak depending on exactly what comes
17 up today.

18 **THE COURT:** Very good. Thank you.

19 And for the United States?

20 **MS. FALK:** Good morning, Your Honor. Christina
21 Falk on behalf of the United States. We have other
22 attorneys available as needed. Thank you.

23 **THE COURT:** Thank you, Ms. Falk.

24 Okay. Mr. London, do you want to walk us
25 through the highlights of the Joint Status Report?

1 **MR. LONDON:** Yes, good morning, Your Honor,
2 thank you. I will keep it to the highlights here.

3 The document production, Your Honor, does
4 continue in the case, continue to be produced. The
5 depositions as well continue. I think since the last
6 report in July we've had ten depositions taken, and eight
7 are scheduled. Many of those were in the Dupont matter,
8 those claims.

9 The settlement report update, Your Honor, in the
10 Joint Status Report, it's addressed later in more detail.
11 But Your Honor's well aware that the Dupont Public Water
12 Supplier settlement once it received preliminary approval
13 in August and there have been various filings since then.
14 And likewise for 3M Public Water Supplier settlement
15 received preliminary approval on the 29th.

16 Likewise, the bellwether report here is the
17 summary of the report and what's proceeding, CMO 27 or the
18 telomer water provider cases, four were selected on
19 September 27th. And those are going through the Tier One
20 discovery now. And the nominees to advance to Tier Two,
21 two of those will be due to the Court November 21st.

22 The CMO 26, which is the personal injury leach
23 cases, those selections are due to the Court December 1st.
24 The PEC and the DCC is working on assessing those and
25 reviewing those with the goal, which I'm confident we will

1 try and make, to have an agreed-upon selection of 28 cases
2 to the Court.

3 Continuing through, I am happy to report that
4 there are no recently arising potential disputes between
5 the parties. So that's an accomplishment for this Joint
6 Status Report.

7 Continuing, Judge, for the discovery updates by
8 each defendant, the large part of the Joint Status Report,
9 I don't think there's much beyond the report to discuss or
10 address. Certainly, I would bring the Court's attention
11 to on Page 17 to 19 and the Kidde update, nothing beyond
12 the report but simply that there is a lot going on in
13 Kidde bankruptcy world. Again, nothing beyond the report
14 but I think it's certainly worth noting.

15 **THE COURT:** Does -- Mr. London, on the Kidde, is
16 it basically you're understanding it's going to be a
17 liquidation or how do you understand that status?

18 **MR. LONDON:** I understand it as a potential sale
19 of the company, liquidation, correct. There's quite a bit
20 of happening going on right now with the mediation order
21 being submitted. I'm happy to report, Judge, Judge
22 Phillips has been engaged as well as Judge --

23 **THE COURT:** Hello?

24 **MR. LONDON:** Can you hear me, Your Honor?

25 **MR. RICE:** Judge Gergel, this is Joe Rice. I

1 have been on the Kidde calls recently. And the bankruptcy
2 is morphing into an attempt to have a number of other
3 non-debtor parties involved because of the potential
4 liability that others may have for the same products that
5 Kidde has liability for. So the injunction has been
6 extended. The court's sending a large number of parties,
7 including Carrier, to a mediation process. That's to
8 begin the first part of December. And the parties have
9 not filed any mediation statements or anything yet. So
10 we're not sure the total scope of that.

11 **THE COURT:** Okay. Thank you.

12 Mr. London, do you want to continue?

13 **MR. LONDON:** Surely, Your Honor. I think that
14 probably brings us to the United States section. I don't
15 think there's much else to report.

16 I would note that the Turnout Gear defendants
17 and all kind of counsel have made significant progress
18 since the filing of the Joint Status Report. As usual,
19 leading up to a conference, parties got together so good
20 work was done there by the parties.

21 Which brings us to Page 29 and the United
22 States.

23 **MR. NAPOLI:** Judge, Michael, just with the
24 United States and I will tell the Court that we've been
25 working with Ms. Falk and her team. We've recently served

1 a request for production of documents, which is consistent
2 with the order Your Honor entered. We're meeting and
3 conferring on the production of those documents and
4 interrogatories, which are forthcoming to them. We're
5 also working on scheduling depositions. And we're well
6 within the timeframe to do the briefing that the Court has
7 ordered.

8 **THE COURT:** Very good. And just for the record,
9 that was Mr. Napoli. Mr. Napoli, is your -- all that you
10 were just describing to me, the discovery, that is for the
11 -- relating to the Government's immunity issue; is that
12 correct?

13 **MR. NAPOLI:** That's correct, to the Government's
14 briefing on immunity issues.

15 **THE COURT:** Very good.

16 Okay. Ms. Falk, do you want to share with us
17 anything?

18 **MS. FALK:** No, Your Honor. I think Mr. Napoli's
19 aptly summed up where we're at. They've served us
20 discovery. We intend to answer it. If we need to meet
21 and confer, we will. We've substantially completed the
22 document request production for Cannon Air Force Base.
23 And I believe that we're moving right along and we're
24 happy to work with Mr. Napoli.

25 In addition, the manufacturers and the

1 plaintiffs have requested the assistance of the Department
2 of Justice in obtaining some sampling work done. The
3 DOD's done extensive work at all the sites. And in
4 particular, the cases are potential bellwether PI cases.
5 So we're assisting them in terms of collecting all the
6 sampling data so that they have that opportunity to review
7 that to make their decisions.

8 **THE COURT:** Very good. Thank you.

9 And I have not heard from the defendants
10 regarding the United States. Anything else you wish to
11 add, Mr. Petrosinelli or Mr. Olsen?

12 **MR. OLSEN:** This is Mike Olsen, Your Honor, I
13 don't think so. Ms. Falk just hit the issue. The only
14 issue we had was the off-site sampling data. And with the
15 amendment to the protective order we expect that soon and
16 don't envision any problems.

17 **THE COURT:** Very good.

18 Okay. Mr. London, do you want to continue?

19 **MR. LONDON:** Certainly, Your Honor. Thank you.
20 That brings us to Section 6 and the deposition report.
21 Again, I think we can skip over that. There's nothing
22 beyond the status report.

23 Which then brings us to the plaintiff fact sheet
24 update. And I'll defer to Mr. Petrosinelli if he has
25 anything to report on the plaintiff fact sheets.

1 **MR. PETROSINELLI:** That is Joe Petrosinelli.
2 No, Your Honor.

3 **THE COURT:** Very good. Okay?

4 **MR. LONDON:** And likewise for defense fact
5 sheets, nothing beyond the Joint Status Report.

6 The update on the non-MDL cases, again, I don't
7 believe anything beyond the Joint Status Report to report.

8 Which brings us to Page 44 and a more detailed
9 report on the bellwether process if the Court is inclined.
10 I think I covered it.

11 The only thing to note, Your Honor, we were
12 chatting this morning with the defense that under CMO 27,
13 the telomer water provider bellwether cases, there is a --
14 the parties owe the Court a proposed plan with respect to
15 the extent and scope of Tier Two depositions. That's due
16 to the Court November 1st. We're still working together.
17 Actually a meet and confer was set for this afternoon. We
18 may be asking the Court for a little extra time to submit
19 that proposed deposition plan for those Tier Two cases.

20 **THE COURT:** Okay.

21 (Indiscernible crosstalk.)

22 **THE COURT:** But this is just on the Tier Two,
23 the narrowed down to -- I'm looking at Page 44, those are
24 those four parties, is that what we're talking about
25 there?

1 **MR. LONDON:** That's correct, Your Honor. So
2 those four parties, those four cases will be winnowed
3 down, narrowed down to two cases on or about
4 November 21st. And so what we're looking to do is define
5 a scope and extent of the depositions for those narrowed
6 down cases. We owe the Court a proposal on November 1st.
7 We might need a little bit of extra time to get that
8 proposal.

9 **THE COURT:** Okay. Okay. Just let me know.

10 **MR. LONDON:** Thank you.

11 **THE COURT:** Anything further, Mr. London?

12 **MR. LONDON:** I think just lastly, Your Honor,
13 just the update on the other categories of bellwether
14 cases. The state and sovereign bellwether plan, the state
15 sovereigns have submitted a proposed plan for state
16 sovereign bellwether track of cases to the DCC a couple of
17 weeks ago and there's a meet and confer set on that. I
18 just wanted to put this on the Court's radar. Nothing to
19 report at this time. And the parties can report on the
20 status at the next CMC. And the PEC is working --

21 **THE COURT:** Mr. London, let me break it down
22 just to understand what you're talking about. The state
23 sovereigns want -- you're telling me they want a
24 bellwether, is that it? Or they -- there's some working
25 up of their claims? Tell me about that.

1 **MR. LONDON:** Yes, Your Honor. So they are
2 proposing a bellwether plan to address working up their
3 claims, exactly that.

4 **THE COURT:** Okay. And we're in the middle of
5 discussions about a potential CMO on that, correct?

6 **MR. LONDON:** I'd probably say we're not at the
7 middle, but we are starting those discussions. The first
8 meet and confer is set for this Friday. We will hear the
9 DCC's reactions to such a plan.

10 **THE COURT:** Okay.

11 **MR. PETROSINELLI:** Your Honor, this is Joe
12 Petrosinelli. Could I just make a comment on that and
13 maybe just a couple of things on these bellwether issues?

14 **THE COURT:** Yes.

15 **MR. PETROSINELLI:** On the state AG issue, as
16 Mr. London said, we did get an outreach from the lawyers
17 who are representing AGs to ask about starting up some
18 kind of bellwether process. And as Mr. London said, we
19 have our first meet and confer coming up. I mean, my --
20 it's the defense view that we have a lot of other stuff
21 going on.

22 **THE COURT:** Really? I hadn't noticed that.

23 **MR. PETROSINELLI:** I mean, the bellwethers on
24 the telomer water providers, the bellwethers on the
25 personal injuries, the US immunity motion. So, I mean,

1 we're, of course, happy to talk to them. But as
2 Mr. London said, it's not in the middle of discussions. I
3 mean, we've just gotten this outreach. And I mean, we'll
4 report back to the Court our views. But our view is
5 generally that we'll wait and hear what they have to say
6 and we'll come back to the Court and talk about our
7 reaction.

8 **THE COURT:** Okay. Very good. Anything else
9 from the defense on any of these other issues you wish to
10 comment, Mr. Petrosinelli?

11 **MR. PETROSINELLI:** Just one thing, Your Honor.
12 On the -- nothing to deal with right now, but just in
13 terms of the personal injury bellwether cases. As
14 Mr. London said, we have -- we're working together to come
15 up with -- try to come up with an agreed list of 28 cases.
16 And that's owed to the Court on December 1st.

17 I just wanted to let the Court know just one
18 thing has happened since we've submitted this Joint Status
19 Report, which is that in the last couple of days we've
20 gotten production of a number of blood test reports for
21 plaintiffs who are eligible. There's about 500-and-some
22 plaintiffs who are eligible for selection. And obviously,
23 PFAS blood levels is sort of a relevant fact in
24 determining representativeness of cases. So we've just
25 gotten those and we're sort of working through as quickly

1 as we can to look at them and consider them. And I just
2 wanted the Court to know that.

3 We're going to try to continue to work to get
4 these selections to the Court on December 1st. But that's
5 sort of a new piece of information that impacts, I think,
6 both sides, frankly, in terms of picking what are
7 representative cases. It wasn't noted in the JSR because
8 this just happened in the last week, and I just wanted to
9 let the Court know that.

10 **THE COURT:** You know, one of the things,
11 Mr. Petrosinelli, we recently discussed at the Judge's MDL
12 Conference in Florida this past week was that it's very
13 important when picking bellwethers that we pick cases that
14 are truly representative so that a result means something.
15 If we pick cases -- in the old days, they let the
16 plaintiffs pick their best case and the defense pick their
17 best case. If it didn't come out the way the parties --
18 somebody liked, they blamed, well, it wasn't
19 representative. So I think it's very important that we
20 pick cases that are not outliers, that they truly are
21 representative so they provide all of us some guidance as
22 to both liability and potential damages.

23 And I've always maintained through all of our
24 CMOs that in the end I'm going to make the choice. And
25 that's just a backstop to make sure we have representative

1 cases. And I know when we were picking for the first
2 round, ended up with the City of Stuart, you know, I
3 always reserve to the end that option. And I reiterated
4 it to the parties and I thought y'all did a very good job.
5 Every case is going to have its unique quality. But I do
6 think as we move to picking bellwethers first for the
7 telomer cases and then for the PI leach cases that we
8 really try to pick cases that the other side would find
9 the result meaningful. So I think that's -- I just want
10 to reiterate that to counsel.

11 **MR. PETROSINELLI:** Yes, thank you, Your Honor.
12 The defense totally agrees with that. And I must say,
13 we've been working with the PEC I think pretty
14 cooperatively in trying to do that and not propose the
15 outlier cases. So I hope, like I said, on these PI cases
16 where representativeness is to my mind particularly
17 important. We hope to have an agreed list of 28 rather
18 than sort of competing lists. But I totality agree with
19 Your Honor's sentiment on that.

20 **THE COURT:** On the 28, how do they break down in
21 terms of different leach diseases?

22 **MR. PETROSINELLI:** They are -- so remember there
23 are four leach injuries that are at sort of issue in these
24 28 cases. And for three of them, kidney cancer,
25 testicular cancer, and thyroid disease, that would be

1 eight apiece, so that gets you to 24; and then four with
2 ulcerative colitis. So that's the 28.

3 **THE COURT:** I just want to remind y'all, I don't
4 have any fixed views on this. But I don't want a case in
5 which the diseases are so different that the jurors would
6 become confused. So when we're thinking about this, I am
7 going to have to -- we're going to have to -- I just want
8 to make sure that whatever we present to the jury is
9 comprehensible. Because in a normal personal injury case,
10 you don't have multiple diseases trying to be analyzed at
11 the same time, some of which are quite different from each
12 other.

13 So let's just all keep that in our mind about
14 how do we ultimately get that down to bellwethers that
15 mean something. And it may be that we will do different
16 bellwethers on different diseases. I want to alert you
17 that I've had that concern not to overwhelm my jurors.

18 **MR. PETROSINELLI:** Yes, Your Honor. I think
19 that in terms of picking the cases themselves, just with
20 single plaintiffs, we're trying to avoid a situation, at
21 least on a defense side, where you have one plaintiff that
22 has two of these diseases instead of one. Although that
23 wouldn't be disqualifying, it seems to me that would
24 complicate things.

25 And then, certainly, our view and we've talked

1 to Your Honor about this and certainly been to many MDL
2 judge conferences on this, that sort of having these
3 single plaintiff cases rather than with diseases rather
4 than binding cases together, certainly our view as to the
5 way to go, otherwise it sort of risks jury confusion, and
6 length of the trial, and the like. So I think these are
7 all things we'll be talking about with the PEC. But it's
8 good to have your views on it.

9 **THE COURT:** Anything further, Mr. Petrosinelli,
10 from the defense committee?

11 **MR. PETROSINELLI:** No, Your Honor. Thank you
12 very much.

13 **THE COURT:** Mr. London, did we finish with you?
14 Were there further things you wanted to cover?

15 **MR. LONDON:** I think that covers it, Your Honor.
16 And certainly these conversations about the leach injury
17 trials and selection were in discussions last September
18 and how we group potential cases for trial. And I think
19 the CMO is, you know, 26 is -- it sets that out well by
20 just limiting cases to two sites in the injury category.
21 So we will be guided towards keeping trials simple and
22 possibly with the multi-plaintiffs, I think your guidance
23 is helpful.

24 But in the report, nothing further, Your Honor.
25 Although, the last section, to the extent the Court has

1 any questions, is a more detailed analysis of the
2 settlement posture on Pages 45 and 46. Not sure if
3 there's anything beyond that that the Court wishes to
4 discuss.

5 **THE COURT:** I've been -- obviously, I have
6 followed the filings regarding the efforts to communicate
7 with plaintiffs in the 3M and Dupont settlements. I want
8 to commend y'all. I think y'all are doing a very
9 comprehensive job.

10 It's very predictable that when money hits the
11 table, people who are strangers to us suddenly show up.
12 That is a well known phenomena and we'll address that and
13 address their issues as they arise. But I think y'all are
14 doing a yeoman's work in trying to counteract
15 misinformation.

16 And it's a complicated settlement. It's subject
17 to confusion. And I think that the best anecdote to
18 misrepresentations is to be out there repeatedly telling
19 the story and telling it accurately and precisely.

20 **MR. LONDON:** Well, thank you, Your Honor. This
21 is certainly -- Mr. Petrosinelli noted that we're busy.
22 This is certainly another busy, busy front for some of us.
23 So I thank you and we'll continue apace.

24 **MR. RICE:** Judge Gergel?

25 **THE COURT:** Yes?

1 **MR. RICE:** This is Joe. When you're talking on
2 that, can we get some guidance at some point in time from
3 you on how you'd like to have the standards hearing
4 conducted, whether you're looking to hear from experts or
5 exactly what your interest is in the fairness hearing?

6 **THE COURT:** Let's see what the objections are.
7 I think that's the key here. And when I get the
8 objections in, that will help me sort out about what we
9 might need. So I will alert you ahead of time if there
10 are specific people I want present. But a lot of it is
11 going to be guided by objections that are made.

12 **MR. RICE:** All right. Thank you, sir. And if I
13 can, Your Honor? Since -- in the last two months we have
14 held two very well attended PEC meetings that had 60 to 70
15 attorneys in both. One was held in Florida and one was
16 held here in Charleston. And the group wants to get
17 together again in December.

18 The PEC is concerned about the growth of this
19 MDL, which I know Your Honor's also concerned about. And
20 we also have defendants that are looking for us to be able
21 to give them a more comprehensive scope of relief than
22 just the -- the water providers are just one segment. So
23 we're in the process of trying to get our arms around all
24 of the pieces of this MDL.

25 We have brought a lot of attention to people

1 looking at their filings on the personal injury cases and
2 to the injuries that they have asserted. And we are
3 trying to get people to dig down deeper on that and go
4 back and double check their science on it. We appreciate
5 the involvement of Judge Seymour. And we have been
6 dealing with her and hopefully getting her more up to
7 speed on what she is going to be focused on.

8 But we are concerned about not having more
9 tracks to move things simultaneously so we can get our
10 arms around it so we can help the defendants get a more
11 robust resolution instead of a piecemeal process. So I
12 just wanted to bring to the Court's attention that those
13 are in process. And at some point in time we would like
14 to revisit with the Court when we have our ducks a little
15 bit better, the concept of multi-tracking in order to try
16 to move this MDL in a reasonable period of time versus
17 what could end up being a decade.

18 **THE COURT:** Well, I share your concern. And
19 Mr. Rice, I want you to know that when I was at the
20 conference this year, multiple members of the
21 multi-district panel expressed concern to me that, you
22 know, they've been trying to put the brakes on the
23 expansion of the MDL, which I have encouraged them to do.
24 We've got to have some -- number one, we have to have some
25 limitation on what this MDL is.

1 And then secondly, the defendants are entitled
2 to some peace if, you know, things are worked out. And we
3 can't have this thing in sort of endless litigation where
4 there's never finality.

5 So I do think thinking strategically about how
6 we -- what's the end game here is important. I'll be
7 candid with you, I do think we need to take a hard look at
8 sciences, of the science on personal injury cases, that
9 y'all have peer reviewed backup for connecting to AFFF.
10 All of us know that when you get down to personal injury
11 cases it gets more challenging than in something like the
12 water district cases. Because the water districts don't
13 have to prove causation other than the cause that the
14 toxic chemical is in their water. It gets more
15 complicated.

16 And because of the earlier work done and
17 regarding the Dupont case, we have these leach studies
18 that provides some data. But when we get beyond that, and
19 I'm told these other personal injury cases have been
20 referred to as non-leach cases, you know, I do think we
21 need to bring some rigor to this thing and in trying to
22 design something that, you know, recovers -- that provides
23 recovery for injured people and provides defendant's
24 peace. I think that big picture needs to be in our
25 sights.

1 **MR. RICE:** And Your Honor, we recognize that --
2 (Indiscernible crosstalk.)

3 **MR. RICE:** And we also want to move in that
4 direction.

5 **MR. LONDON:** Sorry, Joe. I was speaking over
6 you. It's Michael London.

7 And Your Honor, I think that's noted as well in
8 CMO 26 and 26A plans. And we discussed it with
9 defendants, with Joe, a plan to use the non-leach personal
10 injury cases. And as Joe indicated, Judge Seymour, who
11 we've visited with a few times, is really getting up to
12 speed and I think is going to be very helpful and thank
13 the Court for that.

14 **THE COURT:** And I will just be candid. I told
15 Judge Seymour that if there is a significant difference
16 between plaintiffs and defendants on the merits and value
17 of these cases, you know, down the road I've obviously got
18 a lot going on here, down the road doing a bellwether or
19 two, you know, to ask the questions can they survive
20 Daubert? Can they otherwise survive summary judgment?
21 That might be something that if the parties can't get
22 together, that's probably where we need to go. And I'm
23 also open --

24 (Indiscernible crosstalk.)

25 **THE COURT:** Let me also say, I have also

1 mentioned to Judge Seymour that not right this moment, but
2 at some point it may be worthwhile to think about a
3 Science Day on those non-leach injuries to see just where
4 the science is. And, you know, it's been a number of
5 years since the leach studies so there might be other data
6 out there worth looking at.

7 **MR. NAPOLI:** And that's what -- this is Paul
8 Napoli. That's what I was going to say, Judge. A lot has
9 happened since leach, a lot of studies at universities,
10 federal studies from, you know, ATFD, the CDC, but also
11 the universities, nationally and internationally. And
12 we're learning a lot more about these chemicals that years
13 ago you couldn't test for in the blood at these levels and
14 years ago scientists weren't aware of.

15 So I hate to categorize things in leach and
16 non-leach. It's sort of just levels of understanding.
17 And certainly we understand the rigors that you look for
18 when it comes to these types of injuries. And we are
19 working with the defendants to try to come to some
20 agreement, not only on the plaintiffs, but the injuries
21 that would survive a Daubert challenge now.

22 And, of course, things happen today. And as
23 science develops we hate to preclude people in the future
24 forever as science develops. You know, a hundred years
25 ago or more, they didn't know mesothelioma was or they

1 didn't know it was associated with asbestos. So, you
2 know, I think there's some of that going on here, too.
3 The science is developing not only at the water level and
4 understanding its consequences to humans, but also to
5 human health.

6 **THE COURT:** Well, you know, I thought -- we
7 spent a lot of time a couple of years ago working about
8 the Tyco factory settlement. And, you know, we dealt with
9 people who had exposure but no documented injury at that
10 time. And I thought that the parties were pretty creative
11 about fashioning a path where there might be some
12 compensation for exposure. There was a tolling of the
13 statute of limitations. And a possibility that if a
14 recognizable injury arose, the statute -- the case could
15 still be brought, the statute would have been tolled. So
16 I mean, I commend y'all to think back about those. I know
17 I drove Mr. Petrosinelli crazy reviving those documents.
18 But I really did think they were potentially our blueprint
19 for some of this.

20 **MR. NAPOLI:** And we certainly are talking, and
21 Judge Seymour is going to help us. And I think some of
22 the challenges come with is it national, is it site by
23 site, is it occupational, is it drinking water? And we're
24 trying to tackle some of those issues. So we are hard at
25 work even though, you know, we're not, you know, here in

1 court talking about it for obvious reasons. But we think
2 about those things on the plaintiff's side, and Mr. Rice
3 talked about our meeting a couple of weeks ago. And we
4 meet regularly to try to work through these issues. And
5 we're hard at work at it, Your Honor.

6 **THE COURT:** Good.

7 **MR. PETROSINELLI:** Your Honor, this is Joe
8 Petrosinelli. I do remember you putting me through my
9 paces on the Tyco factory settlement. I think, you know,
10 from the defense perspective, not to lighten the
11 conference today, but just one comment which is that I go
12 back to -- and I agree with what Mr. Rice said, which is
13 the problem is the sort of mushrooming of the filings,
14 particularly personal injury filings. There are people
15 now -- I mean, there are over 200, I think, injuries that
16 people have alleged, which is just crazy, honestly. And
17 the problem is when you get beyond the four leach
18 injuries, because you'll remember one of the leach
19 injuries was high cholesterol, which I think --

20 **THE COURT:** Unmanageable, right? You couldn't
21 do that.

22 **MR. PETROSINELLI:** Just crazy in terms of the
23 science and the specific causation questions. But you
24 remember the settlement we did on the Tyco factory thing,
25 which was just two years ago, it was the four leach

1 injuries. And then as Your Honor pointed out, we had some
2 provisions about people who just had exposure and didn't
3 have one of those injuries yet, that there were ways to
4 deal with that.

5 But I totally agree with the sentiment that Your
6 Honor expressed, and I'm sure we'll be talking to Judge
7 Seymour about, which is at some point we're going to have
8 to deal with the fact that there are people who are
9 alleging all these other injuries that weren't supported
10 by the leach panel, because the leach panel looked at all
11 these other injuries and didn't find anything, any
12 connection other than the four that we're talking about.

13 So I think at some point, whether it's through
14 agreement or teeing up Daubert proceedings, a Science Day
15 as you say, as Mr. Rice says, if we're going to wind down
16 this MDL as opposed to having it explode, we have to deal
17 with those situations. And we'll be prepared to do it.

18 **THE COURT:** And Mr. Petrosinelli, I want to
19 mention that to the extent you or the plaintiffs see the
20 panel preparing to add things that you think will, you
21 know, expand unnecessarily the scope of this MDL, I wish
22 you would alert me to it. Because the panel wants to hear
23 from me if I have concerns.

24 **MR. PETROSINELLI:** Will do, Your Honor. Thank
25 you.

1 **MR. LONDON:** And Your Honor, we went down this
2 road of these non-leach perfunctory cases -- I'm sorry,
3 this is Michael London. And this has always been
4 something that the PEC has envisioned with the DCC
5 assessing, following the leach bellwether plants, and
6 frankly, working in parallel conjunction.

7 And I think Joe brought this up, Mr. Rice
8 brought this up, excuse me. And I think our plan and the
9 DCC is on board with this is to assess these non-leach
10 injury cases as to which of the Mr. Petrosinelli indicated
11 200, which of the 200 injuries can and should be culled
12 out through some process, and then which have advanced in
13 the sciences Mr. Napoli was talking about. Because those
14 leach studies started in 2005 and culminated in '12. And
15 we are now 11 years post-leach, the leach studies CA
16 plaintiff's panel, so a lot has changed.

17 But suffice it to say, this is on our radar.
18 This was addressed in CMO 26. And we will be working with
19 the defendants and Judge Seymour to come up with a plan to
20 advance the cases that should be advanced. And we hope to
21 do that I think in the first part of 2024, just to put this
22 on the Court's radar. There's a lot going on and I think
23 that's the plan that we discussed with the defendants that
24 makes sense and will allow us to get our arms around it
25 and prep them as well.

1 **THE COURT:** I mean, I don't think there is any
2 lawyer in a case who is following it closely has ignored
3 my order on In Re: Lipitor or orders, plural, on
4 causation. I would just -- I believe that's the correct
5 standard. It was affirmed by the Fourth Circuit. It's
6 been a widely followed order around the country. And I
7 just would say that's your roadmap. That's the barrier
8 you have to overcome to establish causation.

9 **MR. NAPOLI:** We thought so, Your Honor. Thank
10 you.

11 **MR. RICE:** Your Honor, this is Joe Rice.

12 **THE COURT:** Yes, Mr. Rice?

13 **MR. RICE:** One of the other concepts that we've
14 been looking at following up on the history around leach
15 is the medical monitoring process. And a medical
16 monitoring process that tolls the statute of limitations
17 on injuries that science hasn't definitively gone one way
18 or the other on is something that we're also hoping to
19 discuss with the Court and the defendants.

20 **THE COURT:** Mr. Rice, here's a complication --
21 there are several complications with medical monitoring.
22 One of them is, you know, unless it's voluntary, a lot of
23 states don't recognize it. But to me, additionally
24 significant is the plaintiffs allege almost universal
25 exposure to PFAS. If that's true, then we're talking

1 about medically monitoring every citizen in America.
2 That's not practical. That's just not practical.

3 **MR. RICE:** Agreed.

4 **THE COURT:** Again, that's part of the
5 containment that we have to -- this is not like a discrete
6 regional area where we're monitoring. This is the entire
7 United States, some would argue the entire world.

8 **MR. RICE:** But we have before us a universe of
9 people that have come forward and made allegations that we
10 could unite in some type of class approach to limit it, to
11 give them some peace that they're scared now, they don't
12 know what's going to happen. So we're just trying to
13 figure out how to address that side of the equation as
14 well.

15 **THE COURT:** Well, I think it's worthy of y'all
16 talking among yourselves. You know, again, medical
17 monitoring out of control is no relief. I mean, that's
18 just -- that can be very expensive. I think an
19 understanding that involves tolling statute of limitation,
20 now that, to me, would be an essential element there for
21 people who don't have a documented injury but have
22 documented exposure.

23 So, listen, I'm open to learning more. There
24 have been a number of years since leach, so is there new
25 data that would meet Daubert standards? Well, you know,

1 at some point we could tee it up with some bellwethers.
2 And then we could have a definitive answer as to that.

3 Okay. From the United States, is there anything
4 further, Ms. Falk?

5 **MS. FALK:** No, Your Honor.

6 **THE COURT:** Folks, in addition to all that we
7 have discussed and I'm sure most of you are aware of this,
8 that there is an insurance coverage dispute involving one
9 of the telomer defendants, Tyco. And as if I didn't have
10 enough to do, I have determined I do have jurisdiction
11 over those coverage claims. I'm not going to abstain.
12 And I'm going to have all the discovery done and the
13 briefing done on any coverage issues by June 1. And I
14 intend to rule in advance of the bellwether trial because
15 I do think leaving the coverage issue unresolved presents
16 problems for resolution. So I presume a whole nother set
17 of lawyers are involved in that from Tyco. Is that
18 correct, Mr. Petrosinelli?

19 **MR. PETROSINELLI:** Yes, Your Honor, it is.

20 **THE COURT:** Yeah. So, you know, as if I didn't
21 have enough to do, I'm now doing this. But I do think --
22 if I didn't think it was important, I wouldn't be doing
23 it. And I do think I'm persuaded that it is a necessary
24 set of decisions that need to be made to determine whether
25 there could be a negotiated resolution of the telomer

1 cases.

2 Okay. Anything further to come before the
3 Court? First from the plaintiff?

4 **MR. LONDON:** Michael London, Your Honor. I
5 don't believe so. So thank you.

6 **THE COURT:** Very good.

7 And from the defense?

8 **MR. PETROSINELLI:** No, Your Honor. Joe
9 Petrosinelli here. Thank you.

10 **THE COURT:** And Ms. Falk, again, you have
11 nothing further?

12 **MS. FALK:** That's correct, Your Honor. Thank
13 you.

14 **THE COURT:** Everyone be safe. This hearing is
15 adjourned. Thank you.

16 **ATTORNEYS IN UNISON:** Thank you, Your Honor.

17 (WHEREUPON, court was adjourned at 10:43 AM.)

18 ***

19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21 s/Karen E. Martin

10/31/2023

22 _____
Karen E. Martin, RMR, CRR

Date _____

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Karen E. Martin, RMR, CRR

US District Court