

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
 3
 4 ROBERT STROUGO, INDIVIDUALLY : CIVIL ACTION
 AND ON BEHALF OF ALL :
 OTHER SIMILARLY SITUATED :
 5
 6 PLAINTIFFS :
 7
 8 VS. :
 9
 10 LANNETT COMPANY, INC. :
 TIMOTHY C. CREW :
 AND MARTIN P. GALVAN :
 11
 12 DEFENDANTS : NO.18-3635

11 -----
 12 PHILADELPHIA, PENNSYLVANIA
 13 TUESDAY, JULY 30, 2019

14
 15 BEFORE: THE HONORABLE MARK A. KEARNEY, J.

16 HEARING

17
 18
 19
 20 SUZANNE R. WHITE, CM
 21 FEDERAL CERTIFIED REALTIME REPORTER
 22 2609 U. S. COURTHOUSE
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24
 25 PROCEEDINGS RECORDED BY STENOTYPE-COMPUTER,
 TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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 8 MATTHEW SOLUM, ESQUIRE
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 11 AND
 12 NATHAN HUDDPELL, ESQUIRE
 FOR ROTHSCHILD, LLP
 13 2000 MARKET STREET
 PHILADELPHIA, PA 19103
 14 COUNSEL FOR THE DEFENDANTS

1 THE CLERK: PLEASE REMAIN SEATED. COURT
 2 IS NOW IN SESSION.
 3 THE COURT: WE ARE HERE THIS MORNING IN A
 4 SCHEDULED HEARING TO EVALUATE PRELIMINARY APPROVAL OF A
 5 PROPOSED SETTLEMENT IN THE MATTER OF STROUGO, A NAMED
 6 PLAINTIFF, VERSUS LANNETT COMPANY, INC.
 7 CAN I HAVE AN ENTRY OF APPEARANCE FIRST
 8 FOR THE PLAINTIFFS.
 9 MR. APTON: GOOD MORNING, YOUR HONOR.
 10 MAY IT PLEASE THE COURT, RYAN ERNST FROM O'KELLY ERNST &
 11 JOYCE ON BEHALF OF THE LEAD PLAINTIFFS. ALSO SEATED AT
 12 COUNSEL TABLE WITH ME IS ADAM APTON FROM LEVI &
 13 KORSINSKY.
 14 THE COURT: WELCOME.
 15 MR. APTON: GOOD MORNING, YOUR HONOR.
 16 THE COURT: AND ON BEHALF OF THE
 17 INDIVIDUAL AND/OR ENTITY DEFENDANTS. I DON'T RECALL
 18 WHETHER YOU HAVE SEPARATE COUNSEL.
 19 MR. SOLUM: SAME COUNSEL FOR ALL DEFENSE,
 20 YOUR HONOR. GOOD MORNING. MATT SOLUM, KIRKLAND &
 21 ELLIS, AND WITH ME IS DAN CELLUCCI ON BEHALF OF ALL
 22 DEFENDANTS.
 23 THE COURT: WELCOME.
 24 MR. HUDDPELL: YOUR HONOR, NATHAN HUDDPELL,
 25 FOX ROTHSCHILD, ON BEHALF OF THE DEFENDANTS.

1 THE COURT: WELCOME.
 2 MR. HUDDPELL: THANK YOU, YOUR HONOR.
 3 THE COURT: SO PLAINTIFF, I WANT YOU TO
 4 TAKE ME THROUGH THIS FOR A MINUTE. I HAVE A COUPLE OF
 5 QUESTIONS. IF YOU WOULD DIRECT ME AND TEACH ME HOW YOU
 6 ARE DOING THIS. EVERY TIME I HAVE A SECURITIES
 7 SETTLEMENT, I START WITH THIS QUESTION, AND I'M WAITING
 8 FOR SOMEBODY TO GIVE ME THE ANSWER. I ALWAYS WAIT
 9 BEFORE SEEING THE PAPERWORK, AND I WANT YOU TO ANSWER
 10 THIS FOR ME.
 11 HAS ANY COURT OF APPEALS OR SUPREME COURT
 12 EVER REVIEWED THE USE OF A CLAIMS SETTLEMENT PROCESS
 13 UNDER RULE 23 FOR THE DUE PROCESS CONCERN WHEN YOU
 14 REQUIRE SECURITIES HOLDERS TO RELEASE WITHOUT
 15 CONSIDERATION? HAS ANY COURT DONE THAT? I SEE A BUNCH
 16 OF COURTS JUST DOING IT, THERE IS NO OBJECTION. BUT HAS
 17 ANYBODY EVER ADDRESSED IT? IN CONSUMER CASES THEY HAVE
 18 ADDRESSED IT. HAVE YOU SEEN IT IN A SECURITIES CONTEXT?
 19 MR. APTON: YOUR HONOR, NO CASE COMES TO
 20 MIND, BUT I THINK THE PROCESS UNDER RULE 23 ADDRESSES
 21 THAT.
 22 THE COURT: HOW?
 23 MR. APTON: BY AUTHORIZING NOTICE AFTER
 24 THE JUDGE PRELIMINARILY APPROVES THE SETTLEMENT.
 25 THE COURT: THAT IS NOT THE QUESTION.

1 A MEMBER OF THE CLASS YOU WOULD SEEK TO
2 REPRESENT, YOU ARE AGREEING THEY RELEASE THEIR CLAIMS
3 WITHOUT CONSIDERATION.

4 MR. APTON: WELL, YOUR HONOR, UNDER
5 RULE 23(B), THIS WOULD BE AN OPT-OUT CLASS, AND SO IF
6 THE CLASS MEMBER WAS UNSATISFIED WITH THE --
7 THE COURT: DID YOU BRING IT AS AN
8 OPT-OUT CLASS?

9 MR. APTON: YES, YOUR HONOR.
10 THE COURT: SO YOU BRING IT AS AN OPT-OUT
11 CLASS. THE ONLY WAY THEY CAN GET COMPENSATION IS IF
12 THEY OPT IN.

13 MR. APTON: NO, NO, NO. I'M SORRY. THEY
14 ARE IN THE CLASS AND THEN THEY CAN HAVE THE OPPORTUNITY
15 TO OPT OUT IF THEY ARE DISSATISFIED.

16 THE COURT: BUT THEY GET NO CONSIDERATION
17 UNLESS THEY SEND IN A CLAIM.

18 MR. APTON: RIGHT, YOUR HONOR. THEY NEED
19 TO --

20 THE COURT: TELL ME ABOUT THE DUE PROCESS
21 CONCERN HERE. HAS ANY COURT ADDRESSED THAT IN A
22 SECURITIES CONTEXT? I AM TRYING THIS IN PENNSYLVANIA.
23 I KNOW THIS HAS BEEN USED AND I'M NOT GOING TO DO WHAT
24 THE JUDGE DID IN CALIFORNIA ABOUT SEALING. WE DON'T
25 SEAL ANYTHING IN THE THIRD CIRCUIT. READ AVANDIA. I

1 KNOW WHAT THEY DID THERE. WE ARE NOT SEALING ANY
2 SUPPLEMENTAL MEMORANDUM HERE, AT LEAST NOT ON THE RECORD
3 YOU ARE SHOWING ME TODAY.

4 BUT TELL ME, HOW THAT HAPPENS? HOW IS IT
5 THAT YOU CAN -- YOU WANT ME TO IDENTIFY YOU AND FIND
6 THAT YOU ARE -- I'M SURE YOU ARE QUALIFIED, NO DISPUTE
7 ABOUT THAT, BUT THE QUESTION IS, HOW IS IT YOU ARE
8 PROTECTING THE INTEREST OF ABSENT CLASS MEMBERS WHO
9 RECEIVE NO CONSIDERATION BUT ARE AUTOMATICALLY RELEASED
10 IF THEY DON'T SEND A CLAIM IN?

11 MR. APTON: WELL, YOUR HONOR, THAT IS
12 WHAT THE NOTICE PROCESS IS DESIGNED TO DO.

13 WE PROVIDE NOTICE TO AS MANY CLASS
14 MEMBERS AS WE CAN REACH, AND THEY ARE GIVEN AN ADEQUATE
15 AMOUNT OF TIME TO OPT OUT IF THEY WANT TO OR EXCLUDE
16 THEMSELVES FROM THE SETTLEMENT, I SHOULD SAY, IN WHICH
17 CASE --

18 THE COURT: IF THEY DO NOTHING, THEY GET
19 NO CONSIDERATION.

20 MR. APTON: IF THEY DO NOTHING AND THEY
21 DON'T SUBMIT A VALID CLAIM, YES, THEY WILL NOT RECEIVE
22 ANYTHING AND THEY WILL ALSO BE BOUND BY THE SETTLEMENT.

23 THE COURT: CAN I IGNORE HISTORICAL
24 EVIDENCE, HISTORICAL RECORDS, CASES, LOTS OF THEM THAT
25 SHOW THE RETURN RATE OF THOSE CLAIMS AND THE PERCENTAGE,

1 THE LOW PERCENTAGE OF THOSE RETURNED CLAIMS?
2 MR. APTON: WELL, YOUR HONOR, THAT IS
3 ACTUALLY AN INTERESTING POINT, BECAUSE WE ARE WORKING
4 WITH CONSULTANTS. WE, AS IN THE PLAINTIFFS' BAR AND I
5 THINK THE SECURITIES BAR IN GENERAL, INCLUDING
6 DEFENDANTS, WITH CONSULTANTS AND CLAIMS ADMIN TO GET A
7 BETTER GRASP ON THOSE STATISTICS.

8 THE COURT: SO IT'S ANECDOTAL NOW.

9 MR. APTON: YES.

10 THE COURT: BUT I CAN'T IGNORE WHAT I
11 KNOW AND WHAT IS OUT THERE IN MY CASES AND OTHER CASES
12 IN THIS THIRD CIRCUIT THAT THE NUMBERS ARE REALLY, AS
13 YOU KNOW -- LET'S BE GENEROUS, THEY ARE LESS THAN A
14 THIRD. I HAVE SEEN SOME. I HAD ONE THAT WAS
15 27 PERCENT, BUT I HAVE NOT SEEN ANY NORTH OF A THIRD.

16 SO LET'S ASSUME IT'S HALF. HALF THE PEOPLE RELEASE
17 THEIR CLAIMS WITHOUT CONSIDERATION.

18 MR. APTON: YOUR HONOR, HALF OF THOSE
19 PEOPLE MAY NOT HAVE CLAIMS THAT ARE SIGNIFICANT ENOUGH
20 TO LITIGATE FOR THEMSELVES, AND SO THEY MAY NOT REALLY
21 CARE TO FILL OUT THE CLAIM PAPERWORK. THAT IS THE
22 ULTIMATE ISSUE.

23 THE COURT: HOW IS IT AN OPT-OUT CLASS,
24 IF YOU HAVE TO OPT IN, GET PAID?

25 MR. APTON: WELL, YOUR HONOR, STRICTLY

1 SPEAKING YOU ARE NOT OPTING IN TO GET PAID.

2 THE COURT: WHAT CONSIDERATION ARE YOU
3 GETTING FOR A RELEASE?

4 MR. APTON: WELL, UNDER THE PLAN OF
5 ALLOCATION, EACH CLASS MEMBER WOULD HAVE A RECOGNIZED
6 LOSS AND IF THEY FILL OUT THE CLAIM PAPERWORK
7 SUFFICIENTLY, THEN THEY WOULD --

8 THE COURT: DEFENSE, WHAT IS THE LAW ON
9 THIS? HOW DO YOU GUYS DO THIS? I KNOW IT HAPPENS ALL
10 THE TIME. I ASK THIS IN EVERY SECURITIES SETTLEMENT,
11 I'VE STRUCK THEM DOWN WITHOUT AN ANSWER. TELL ME HOW
12 YOU DO THIS.

13 MR. SOLUM: YOUR HONOR, TWO THINGS.

14 ONE, I DON'T THINK THERE IS A CASE THAT
15 DIRECTLY ADDRESSES THAT. I THINK YOUR HONOR IS RIGHT,
16 AND YOUR QUESTION HAS NOT BEEN ADDRESSED YET.

17 THE COURT: NOT IN SECURITIES, IT HASN'T
18 BEEN.

19 MR. SOLUM: FAIR POINT. I UNDERSTAND
20 WHAT YOUR HONOR IS ALLUDING TO.

21 IN THE SECURITIES CONTEXT, I THINK THE
22 CONSIDERATION IS THE OPPORTUNITY TO PARTICIPATE IN THE
23 CLASS. THAT MAY NOT BE A SATISFACTORY ANSWER TO THE
24 COURT, BUT I THINK THAT IS THE CONSIDERATION. IT'S IN
25 EXCHANGE FOR THE RELEASE, MEANING TO THE EXTENT THAT ONE

1 HAS TO FILL OUT A FORM TO GET MONEY, THE MONEY IS
2 SOMETHING, BUT THE CONSIDERATION IS THE OPPORTUNITY TO
3 PARTICIPATE IN THE CLASS. THAT IS THE CONSIDERATION.

4 THE COURT: LET ME TAKE YOU BACK TO THE
5 STATEMENT OF CONTRACTS, FIRST YEAR.

6 MR. SOLUM: SURE, PLEASE.

7 THE COURT: THAT'S A LITTLE BIT OF AN
8 ILLUSORY CONSIDERATION. THEY ALREADY HAVE THAT RIGHT.
9 BY RULE 23 THEY HAVE IT. IF I CERTIFY THE CLASS, THEY
10 HAVE THAT RIGHT.

11 MR. SOLUM: NO, YOUR HONOR, I
12 RESPECTFULLY DISAGREE WITH THAT.

13 THE COURT: WHY NOT? TELL ME WHY NOT.

14 MR. SOLUM: IF YOU CERTIFY THE CLASS,
15 THEY HAVE A RIGHT TO PARTICIPATE IF THERE IS A TRIAL.
16 AND IF YOUR HONOR ULTIMATELY DECIDES OR A JURY DECIDES
17 THAT THERE IS SOME AWARD AT THE END OF THE DAY, THEN
18 THEY HAVE AN OPPORTUNITY TO PARTICIPATE IN THAT. BUT
19 UNTIL THERE IS A SETTLEMENT, UNTIL DEFENDANTS OFFER SOME
20 CONSIDERATION THAT THEY CAN POTENTIALLY PARTICIPATE IN,
21 THERE IS NO SETTLEMENT. THERE IS NO CONSIDERATION.

22 THE COURT: GOOD POINT, BUT THEY DON'T
23 RELEASE EITHER.

24 MR. SOLUM: EXACTLY RIGHT, YOUR HONOR.
25 SO TO THE EXTENT THAT FOR EXAMPLE WE WENT THROUGH A

1 TRIAL AND A JURY DECIDED THAT DEFENDANTS WERE LIABLE,
2 LET'S TAKE -- THAT IS NOT SOMETHING I WANT TO THINK
3 ABOUT, BUT LET'S SAY THAT A JURY DECIDES THE DEFENDANTS
4 ARE LIABLE. THE COURT WOULD THEN HAVE TO SET UP SOME
5 STRUCTURE TO ALLOCATE THAT FUND, RIGHT? THE DEFENDANTS
6 WOULD PAY WHATEVER IS DETERMINED THEY WOULD PAY, AND
7 ACTUALLY WHEN YOU GO TO SECURITIES CASES THERE IS THAT
8 ISSUE. LET'S SAY, JUST FOR THE SAKE OF DISCUSSION, THAT
9 THE JURY AWARDS A HUNDRED MILLION DOLLARS. THERE WOULD
10 HAVE TO BE SOME CLAIM SET UP AND I THINK THEN AT THE END
11 OF THAT THERE WOULD BE A JUDGMENT IN FAVOR OF PLAINTIFFS
12 FOR A HUNDRED MILLION DOLLARS ON BEHALF OF THE CLASS.
13 AND IF THE CLASS MEMBERS DIDN'T SOMEHOW EXPRESSLY OPT
14 OUT, THEY WOULD ALSO BE BOUND BY THAT JUDGMENT.

15 IF THEY DID NOT PUT IN A CLAIM FORM IN
16 CONNECTION WITH THAT, THEY WOULD NOT BE ABLE TO
17 PARTICIPATE IN THE ACTUAL MONETARY RECOVERY OF THE
18 HUNDRED MILLION DOLLARS.

19 THE COURT: SO NOW YOU ADDRESSED THE
20 ISSUE. THAT IS THE ANALOGY I SEE, EXCEPT THIS. HERE IS
21 MY WRINKLE.

22 TWO REASONS. IT MAY NOT MATTER BECAUSE
23 IF I DON'T HAVE AN OBJECTION, I DON'T KNOW IF I CAN
24 RAISE IT.

25 IN THE HUNDRED MILLION DOLLAR EXAMPLE,

1 PART OF ONE ALLOCATION PLAN IS WE IDENTIFY EVERYBODY ON
2 THE RECORD, ON THE BOOKS, OF WHO IS IN THE CLASS, AND WE
3 SAY OKAY, EVERYBODY IN THE CLASS GETS \$8. I DON'T KNOW
4 WHO IS IN THE CLASS, BUT LET'S ASSUME IT'S A DEFINED
5 GROUP. LET ME SEE IF I CAN HELP YOU GUYS, AND MAYBE
6 THIS IS THE ANSWER I CAN GET.

7 MAYBE YOU KNOW. ARE THESE SECURITIES
8 HELD IN NOMINAL NAMES LARGELY OR DO YOU HAVE A SERIES OF
9 INDIVIDUALS? IS MOST OF THE STOCK HELD THROUGH -- DO
10 YOU KNOW?

11 MR. SOLUM: YES. FOR THE MOST PART IT'S
12 HELD THROUGH STREET NAME AND SO WE DON'T KNOW THE
13 ULTIMATE BENEFICIAL HOLDERS, IF THAT ANSWERS YOUR
14 QUESTION. SO TO THE EXTENT THAT THE COURT ASKED US SORT
15 OF: LOOK, WE HAVE WORKED IN SITUATIONS TRYING TO
16 IDENTIFY THE ACTUAL LIST. LET'S SAY WE WANT TO COMPILE
17 A LIST OF ACTUAL, A THOUSAND PEOPLE WHO REALLY HOLD THE
18 SECURITIES. NOT, I HAVE A CHARLES SCHWAB ACCOUNT OR
19 WHATEVER IT IS, BUT I'M MATTHEW SOLUM, THE HOLDER OF
20 THIS SECURITY. WE CANNOT UNFORTUNATELY CREATE THAT LIST
21 FOR A BUNCH OF SORT OF VERY TECHNICAL SPEAR POINTS SO WE
22 DON'T HAVE LISTS. AND SO EVEN IF WE WENT TO TRIAL IN
23 THE HUNDRED MILLION DOLLAR EXAMPLE, TO THE EXTENT THAT
24 WE WERE SETTING UP A POOL OF MONEY TO BE DISTRIBUTED TO
25 THOSE INDIVIDUALS, WE DON'T HAVE THAT LIST OF --

1 THE COURT: IF YOU AND I WERE SITTING IN
2 CHANCERY COURT, WE WOULD CALL THAT A 220 DEMAND. YOU
3 WOULD NOT BE ABLE TO TELL ME -- OR THE CLASS COUNSEL
4 UPON DISTRIBUTION, YOU WOULD NOT BE ABLE TO SAY, BY THE
5 WAY, HERE ARE THE NAMES OF EVERYBODY AND THEIR ADDRESSES
6 AND SEND THEM A \$20 CHECK.

7 MR. SOLUM: CORRECT, YOUR HONOR, AND IT
8 IS EVEN WORSE WHERE I HAD A CASE IN CHANCERY WHERE THE
9 SAME ISSUE AND I THINK THE JUDGES THERE STRUGGLED,
10 WORKED THROUGH THE SAME KIND OF ISSUE. AND THERE THE
11 CLASS WE SORT OF MISIDENTIFIED, RATHER THE CLAIMS
12 ADMINISTRATOR MISIDENTIFIED THE NUMBER OF PEOPLE IN THE
13 CLASS, AND THE DEFENDANTS HAD TO SORT OF FUND ADDITIONAL
14 AMOUNT BECAUSE THERE WAS SOME GOOF-UP IN NUMBERS, IF YOU
15 WILL. AND SO EVEN ON FIGURING OUT THE QUANTUM OF PEOPLE
16 IN THE CLASS, WE CAN'T EVEN GET THAT WITH PRECISION,
17 MUCH LESS EACH OF THE INDIVIDUALS, BECAUSE PRINCIPALLY
18 THE STREET NAME ISSUE. IF I HAVE A CHARLES SCHWAB
19 ACCOUNT, I DON'T AUTHORIZE SCHWAB TO DISCLOSE TO ANYONE
20 IN THE WORLD THAT I AM IN FACT THE HOLDER.

21 THE COURT: SO ONE THING -- I HAD AN
22 OPINION IN 2016 -- I DID NOT EXPECT YOU TO FIND, BUT IT
23 ADDRESSED THIS ISSUE AND WHAT I FOUND THERE -- THAT WAS
24 A CASE INVOLVING URBAN OUTFITTERS, SCHWARTZ VERSUS URBAN
25 OUTFITTERS. AND WHAT I FOUND THERE -- THEY HAD VERY

1 GOOD PLAINTIFFS AND SECURITY BAR IN THE ROOM. AND WHAT
2 I FOUND THERE IS THAT, THAT IS THE ISSUE. THAT BRINGS
3 IT INTO THE CONSUMER CLASS WORLD, BECAUSE AS IN THE
4 CONSUMER CLASS, YOU DON'T HAVE ANY IDEA WHO BOUGHT THE
5 BAR OF SOAP. RIGHT? SOMEBODY SAYS THEY BOUGHT A BAR OF
6 SOAP, BUT YOU DON'T KNOW THEY BOUGHT A BAR OF SOAP; THEY
7 DON'T KEEP THEIR RECEIPTS FOR A BAR OF SOAP. AND THEN
8 YOU ARE THERE WITH AN EIGHT CENT RETURN CHARGED FOR A
9 BAR OF SOAP.

10 IN THIS CONTEXT, AND JUST CONFIRM THIS
11 FOR ME IF YOU WOULD, IS IT FAIR TO SAY THE MAJORITY OF
12 THE CLASS, THE HOLDERS, THE BENEFICIAL HOLDERS, PEOPLE
13 WHO GET THE MONEY, ARE UNKNOWN TO THE DEFENDANT?

14 MR. SOLUM: I WILL HAVE TO SEE IF IT IS
15 IN FACT THE MAJORITY, YOUR HONOR, THAT ARE UNKNOWN.

16 THE COURT: DO YOU KNOW YOUR BREAKDOWN OF
17 YOUR INSTITUTIONAL VERSUS YOUR STREET NAME VERSUS YOUR
18 BENEFICIALS?

19 MR. SOLUM: STANDING HERE RIGHT NOW, I
20 DON'T, BUT I THINK WE CAN WORK TO FIND THAT OUT AND
21 REPORT BACK TO THE COURT, IF THAT MAKES SENSE.

22 THE COURT: YES.

23 MR. SOLUM: SURE.

24 THE COURT: ONE OF THESE DAYS, ME OR
25 SOMEONE ELSE IS GOING TO HAVE THIS QUESTION AND WE ARE

1 GOING TO HAVE AN ISSUE WHERE IT IS WORTH HAVING YOU
2 BRIEF AND MAYBE A COURT OF APPEALS LOOK AT WHETHER WE
3 CAN WAIVE -- WHETHER YOU CAN WAIVE RIGHTS, RELEASE --
4 HAVE PEOPLE SIGN RELEASES WITHOUT CONSIDERATION OTHER
5 THAN THROUGH A CLAIMS PROCESS.

6 THE REASON IT WORKS FOR CONSUMER CASES,
7 BY THE WAY, AS YOU KNOW, YOU DON'T HAVE ANY IDEA WHO THE
8 PEOPLE ARE. SO THE COURTS HAVE SAID OKAY, WELL, THE
9 ONLY WAY TO FIND OUT IF YOU BOUGHT A BAR OF SOAP IS THE
10 CLAIMS PROCESS. I FIND IT MAKES SOME SENSE IN THE
11 SECURITIES CONTEXT TO DO THE SAME IF YOU COULD NOT FIND
12 OUT WHO THE SECURITIES HOLDERS ARE.

13 DO YOU KNOW THAT? I ASKED THE DEFENDANT.
14 I THOUGHT MAYBE THEY WOULD KNOW. DO YOU HAVE ANY IDEA
15 ABOUT THE CONSTITUENCY OF THE SHAREHOLDER POPULATION?

16 MR. APTON: YOUR HONOR, I CERTAINLY HAVE
17 AN IDEA. I THINK BASED ON PAST EXPERIENCE WE ALWAYS
18 REQUEST IN THESE TYPES OF CASES THAT THE DEFENDANTS
19 PROVIDE US WITH THEIR RECORDS, STOCKHOLDER LISTS, WHICH
20 IS THE PEOPLE WHO DEFENDANTS ACTUALLY HAVE RECORDS OF,
21 THEY KNOW HOLD THE SECURITIES. THOSE LISTS ARE VERY
22 SMALL COMPARED TO ALL THE OTHER PEOPLE IN THE CLASS.

23 ONE OF THE THINGS THAT WE AND OUR CLAIMS
24 ADMINISTRATORS DO IS THEY HAVE -- OUR CLAIMS
25 ADMINISTRATORS HAVE PROPRIETARY LISTS, PROPRIETARY,

1 QUOTE, UNQUOTE. I SAY THAT BECAUSE ALL THE CLAIMS
2 ADMINISTRATORS BASICALLY HAVE THESE LISTS WHERE THEY
3 SEND OUT THE NOTICE PACKET TO BROKERS, NOMINEES, PEOPLE
4 WHO TYPICALLY HOLD ON BEHALF OF OTHERS. AND IN TURN
5 THOSE BROKERS AND NOMINEES TURN AROUND, LOOK THROUGH
6 THEIR RECORDS AND SEND IT TO THE PEOPLE WHO ACTUALLY
7 HOLD THE SECURITIES. SO IT'S A TWO-STEP PROCESS, IF YOU
8 WILL, AND THAT IS HOW WE DO OUR BEST TO MAKE SURE
9 EVERYONE WHO OWNS THE SECURITY IS GIVEN AN OPPORTUNITY
10 TO PARTICIPATE OR EXCLUDE THEMSELVES FROM THE
11 SETTLEMENT.

12 THE COURT: SO UNLIKE THE CONSUMERS, YOU
13 COULD DETERMINE, YOU COULD DISCERN WHO ARE THE EVENTUAL
14 HOLDERS?

15 MR. APTON: WE COULD...I'M THINKING.

16 THE COURT: WITHOUT A CLAIMS PROCESS,
17 WITHOUT INVOLVING THEM, WITHOUT PROACTIVE CONDUCT BY THE
18 CLAIMS HOLDER.

19 MR. APTON: I MEAN WE WOULD NEED TO
20 SUBPOENA, I SUPPOSE, ABOUT BETWEEN 4 AND 7,000 DIFFERENT
21 BROKER NOMINEES WHO ARE ON THIS PROPRIETARY LIST. I
22 SUPPOSE IF WE DID -- AND MY POINT IS, IT'S PROBABLY NOT
23 TOO PRACTICAL OUTSIDE THE CLAIMS PROCESS.

24 MR. SOLUM: I THINK, YOUR HONOR, IN FACT,
25 HAVING WORKED THROUGH THIS BEFORE, THE ANSWER IS SORT OF

1 A SHORT NO. I THINK WITH A LOT OF WORK, SUBPOENAIING
2 THOUSANDS OF FOLKS, ONE CAN DO IT. I THINK IT'S
3 ANALOGOUS TO THE SOAP EXAMPLE. YOU COULD GO THROUGH
4 SIMILAR TYPES OF WORK TO --

5 THE COURT: HERE IS WHAT I'M GOING TO DO.
6 I'M GOING TO -- YOU HAVE NOW SHOWN ME A BASIS TO ALLOW
7 THE CLAIMS PROCESS IN THIS CONTEXT. HOWEVER, I'M GOING
8 TO DIRECT YOU -- IT'S NOT GOING TO BE IN MY ORDER, BUT I
9 AM TELLING YOU NOW, I WON'T FINALLY APPROVE UNLESS I
10 KNOW WHAT THAT SHAREHOLDER POPULATION LOOKS LIKE.

11 MR. SOLUM: UNDERSTOOD, YOUR HONOR.

12 THE COURT: I'M SAYING NOTICE IS FAIR,
13 BUT THAT MAY NOT MEAN THE SETTLEMENT IN THE END IS FAIR.

14 MR. SOLUM: UNDERSTOOD.

15 THE COURT: PARTICULARLY IF I GET 7, 4, 3
16 PERCENT RETURN RATE, RESPONSE RATE. THAT IS GOING TO
17 TELL ME -- MY CONCERN WILL THEN BE: WAIT A SECOND,
18 97 PERCENT OF THE CLASS ARE RELEASING WITHOUT
19 CONSIDERATION, AND THAT MAY RAISE A QUESTION AS TO THE
20 FAIRNESS ON THE FINAL. SO YOU SHOULD BE READY FOR THAT.
21 YOU HAVE GIVEN ME ENOUGH GROUNDS TODAY.

22 AS YOU KNOW, I HAVE SOME OBLIGATIONS TODAY, BUT IT IS
23 PRELIMINARY APPROVAL. LET'S SEE HOW IT WORKS, BUT
24 PLEASE DO THAT STUDY. BETWEEN THE TWO OF YOU I THINK
25 BETWEEN WORKING TOGETHER YOU MIGHT BE ABLE TO FIND THOSE

1 NUMBERS. MAYBE SPECIFICS, BUT SOME KIND OF IDEA.
 2 YOUR CLAIMS ADMINISTRATOR IS GOING TO
 3 KNOW HOW MANY PEOPLE THEY SENT IT TO, FOR EXAMPLE. AND
 4 THEY ARE GOING TO KNOW WHETHER THEY ARE STREET HOLDERS
 5 OR BENEFICIAL. THEY ARE GOING TO KNOW THE DESIGNATION
 6 OF WHO THEY SENT IT TO. SO LET'S SEE HOW IT WORKS OUT.
 7 MY ORDER WILL REFLECT THAT.
 8 YOU CAN BE SEATED UNTIL I ASK QUESTIONS.
 9 THANK YOU, COUNSEL.
 10 SO I'M GOING TO ADDRESS THAT ISSUE OF THE
 11 CLAIMS PROCESS IN THAT MANNER.
 12 SO IF YOU WOULD, I THINK THE WAY I'D LIKE
 13 TO DO THIS IS TO TAKE ME THROUGH -- WHICH I THINK IS A
 14 VERY HELPFUL, YOUR MEMORANDUM THAT HAS PAGE 17, WHICH
 15 ADDRESSES THE SCHEDULE. AND PLAINTIFF, IF YOU TAKE ME
 16 THROUGH THAT SCHEDULE REALLY BRIEFLY, TELL ME HOW THIS
 17 IS GOING TO WORK. OKAY?
 18 SO I HAVE 17, LAST DATE OF COMPLETE
 19 MAILING OF NOTICE OF CLAIM FORMS. OKAY. SO LET'S START
 20 FROM THE BACK. SO 110 DAYS FROM NOW, YOU ARE
 21 ESSENTIALLY TALKING MID DECEMBER. SO I HAVE A HEARING
 22 IN MID DECEMBER. WALK ME BACK. SO YOU HAVE FILINGS AND
 23 SERVING PAPERS, THAT IS YOUR PAPERS TO RESPOND TO
 24 OBJECTIONS, IS THAT RIGHT? 14 DAYS BEFORE THAT?
 25 MR. APTON: AS LONG AS YOUR HONOR IS OKAY

1 WITH THAT.
 2 THE COURT: THAT IS YOUR CONCEPT.
 3 CLASS MEMBERS CAN EXCLUDE THEMSELVES
 4 35 DAYS BEFORE A FAIRNESS HEARING, ASSUMING I ACCEPT
 5 THOSE DATES.
 6 MR. APTON: YES, YOUR HONOR.
 7 THE COURT: JUST TO BE CLEAR.
 8 TELL ME ABOUT THE DIFFERENCE BETWEEN THE
 9 OPT-OUT AND THE SORT OF OBJECTION PERIOD BEING THE SAME
 10 DAY. IS THAT RIGHT? AM I READING THAT RIGHT?
 11 MR. SOLUM: YES, YOU ARE, YOUR HONOR.
 12 THE COURT: SO TELL ME ABOUT THAT. MY
 13 EXPERIENCE HAS BEEN, AND YOU TELL ME IF I'M WRONG OR IN
 14 YOUR EXPERIENCE, WHAT DOES A PERSON THEN DO? THEY SAY,
 15 HERE IS MY OBJECTION AND IF YOU DON'T GRANT IT, I OPT
 16 OUT? IS IT A CONDITIONAL OPT?
 17 MR. APTON: NO, YOUR HONOR. IT'S NOT A
 18 CONDITIONAL, ALTHOUGH IN PRACTICE IT VERY WELL COULD BE.
 19 THE COURT: HOW? IT'S THE SAME DAY.
 20 HOW?
 21 MR. APTON: IF THEY OBJECT TO THE
 22 SETTLEMENT AND THE OBJECTION DOES NOT GO THE WAY THEY
 23 WANT IT TO, THEY COULD EXCLUDE THEMSELVES.
 24 THE COURT: NO, THEY CAN'T, BECAUSE IT'S
 25 THE SAME DAY.

1 MR. APTON: WELL, YOUR HONOR, I BELIEVE
 2 THAT WE WOULD HAVE -- AS LEAD COUNSEL, WE WOULD NOT
 3 FORCE THEM TO BE PART OF THE SETTLEMENT. IF THEY WERE
 4 UNHAPPY WITH THE SETTLEMENT, THEN THEY COULD EXCLUDE
 5 THEMSELVES. OR, YOUR HONOR, WHAT THEY COULD DO IS FILE
 6 AN OBJECTION AND AN OPT-OUT AT THE SAME TIME AND THEN
 7 REVOKE THE EXCLUSION IF THE OBJECTION DID NOT GO THE WAY
 8 THEY WANTED IT TO.
 9 THE COURT: SO WHAT YOU ARE CONTEMPLATING
 10 IS, THIS DOES NOT CONTEMPLATE -- SO YOU GET THE
 11 OBJECTIONS 35 DAYS AHEAD OF TIME. I DON'T SEE THEM.
 12 MR. APTON: RIGHT.
 13 THE COURT: AND THEN YOU GET TO RESPOND
 14 TO THEM 14 DAYS BEFORE THE FAIRNESS HEARING.
 15 LET'S ASSUME THAT YOU DISAGREE WITH THEM.
 16 MR. APTON: YES.
 17 THE COURT: THEY THEN HAVE TO FILE
 18 SOMETHING, I SUSPECT, RIGHT, TO TELL ME THAT THEY ARE
 19 GOING TO BE IN COURT THAT DAY IN DECEMBER AND TELL ME
 20 WHAT THEIR OBJECTIONS ARE, CORRECT?
 21 MR. APTON: YES.
 22 THE COURT: SO I CAN BUILD THAT IN.
 23 MR. APTON: YES.
 24 THE COURT: WHEN DO THEY DO THAT?
 25 MR. APTON: I BELIEVE THE PRELIMINARY

1 APPROVAL ORDER CONTAINS A FEW MORE PROPOSED ORDERS,
 2 DOCKET NUMBER 69-4. I BELIEVE THERE IS A FEW MORE
 3 DEADLINES IN THERE IN ADDITION TO WHAT IS LISTED ON
 4 PAGE 17. ONE OF THOSE DEADLINES WOULD BE A DATE BY
 5 WHICH WE NEED TO FILE ALL OBJECTIONS WITH THE COURT
 6 BEFORE THE FAIRNESS HEARING.
 7 THE COURT: OKAY. THERE IS SOME
 8 CONFUSION ON THAT, SO WE WILL GET TO THAT IN A MINUTE.
 9 SO THAT WOULD HAVE TO BE -- IF I
 10 UNDERSTAND IT CORRECTLY, THAT WOULD HAVE TO BE SOMETIME
 11 BETWEEN -- WITHIN TWO WEEKS OF OUR HEARING.
 12 MR. APTON: IT WOULD, BUT IN PRACTICE,
 13 YOUR HONOR, IF WE WERE OPPOSING OR RESPONDING TO AN
 14 OBJECTION, WE WOULD ATTACH THAT --
 15 THE COURT: BUT I DON'T HAVE THE OTHER
 16 SIDE'S ARGUMENT.
 17 MR. APTON: WE WOULD ATTACH THE ENTIRE
 18 LETTER -- TYPICALLY, THEY ARE IN LETTER FORMAT, BUT WE
 19 DO RECEIVE THEM.
 20 THE COURT: OKAY. ALL RIGHT. I DON'T DO
 21 IT THAT WAY. I'M RAISING A POINT BECAUSE I DON'T DO IT
 22 THAT WAY.
 23 MR. APTON: OKAY.
 24 THE COURT: I WANT THE PEOPLE TO HAVE THE
 25 RIGHT TO OBJECT AND THEN HAVE THE RIGHT TO OPT OUT. SO

1 I WANT YOU TO GET THE OBJECTIONS, SEE IF YOU RESOLVE
 2 THEM, AND THEN -- I'M TALKING ABOUT A TWO-WEEK
 3 DIFFERENCE. SEE IF YOU CAN RESOLVE THEM. YOU MAY NOT
 4 GET ANY OF THEM, BUT ASSUME YOU GET A FEW, GET ON THE
 5 PHONE, SEE WHAT THE PROBLEMS ARE, SEE IF YOU CAN RESOLVE
 6 IT BEFORE YOU GET TO THE OPT-OUT PERIOD. SO I'M GOING
 7 TO DO THAT A LITTLE BIT EARLIER THAN THAT. THAT IS WHY
 8 I DO THAT. I WAS THINKING OF A DIFFERENT REASON, BUT
 9 YOU DID NOT GIVE ME ONE, SO I'M GOING TO DO IT THAT WAY.
 10 OKAY.

11 THE FAIRNESS HEARING I HAVE. GOT IT.
 12 THE PAPERS I UNDERSTAND, AND THE LAST DAY FOR COMPLETING
 13 MAILING OF NOTICE OF THE CLAIMS FROM 60 DAYS. SO
 14 THAT'S -- LET'S BACK UP A SECOND.

15 HAVE YOU SENT OUT THE NOTICES TO THE
 16 STATE AND FEDERAL REGULATORS? HAS THAT HAPPENED,
 17 DEFENDANT? IT WAS SUPPOSED TO HAPPEN WITHIN 10 DAYS OF
 18 JULY 12TH.

19 MR. SOLUM: YOUR HONOR, I DON'T THINK WE
 20 START THAT PROCESS UNTIL THIS COURT PRELIMINARILY
 21 APPROVES THE SETTLEMENT.

22 THE COURT: REALLY. IT SAYS 10 DAYS
 23 AFTER THE FILING.

24 MR. SOLUM: YOUR HONOR, I'M CORRECTED.
 25 IT HAS GONE OUT.

1 THE COURT: IT HAPPENS -- UNDER YOUR
 2 AGREEMENT IT HAPPENS 10 DAYS AFTER JULY 12TH. SO IT HAS
 3 HAPPENED.

4 MR. APTON: IT HAS, YOUR HONOR. I
 5 APOLOGIZE. I MISPOKE.

6 THE COURT: NO PROBLEM. SO THAT IS OUT.
 7 SO WHAT HAPPENS NEXT THEN? LITERALLY TAKE ME DOWN THE
 8 ROAD. WHAT HAPPENS NEXT? I'M NOT TALKING ABOUT THE
 9 FAIRNESS.

10 MR. APTON: SO IF YOUR HONOR APPROVES
 11 PRELIMINARILY THE SETTLEMENT TODAY, WE ARE THEN
 12 AUTHORIZED TO SEND OUT THE NOTICE. I WOULD ALERT MY
 13 CLAIMS ADMINISTRATOR THAT WE RECEIVED PRELIMINARY
 14 APPROVAL. THEY WOULD FINALIZE OR FORMAT THE EXHIBITS
 15 ATTACHED TO THE STIPULATION. THEY WOULD GO OUT.

16 THE COURT: WHEN? HOW LONG DO THEY TAKE
 17 TO DO THAT?

18 MR. APTON: ON THE SCHEDULE WE HAVE HERE,
 19 WE WORK IT FROM THE FAIRNESS --

20 THE COURT: FAIRNESS? THAT IS NOT GOING
 21 TO WORK.

22 LET'S ASSUME I APPROVE IT TODAY. HOW
 23 LONG AFTER TODAY -- I TYPICALLY HAVE 20 DAYS, IS THAT
 24 ABOUT RIGHT?

25 MR. APTON: MY CLAIMS ADMINS USUALLY DO

1 IT WITHIN 14 DAYS.

2 THE COURT: 14 DAYS FROM PRELIMINARY
 3 APPROVAL, THE MAILING GETS OUT.

4 MR. APTON: YES.

5 THE COURT: THEN YOU HAVE SOMETHING
 6 CURIOUS AND I DON'T KNOW HOW IT WORKS. YOU DIRECTED ME
 7 -- AND I THINK IT WAS VERY HELPFUL, ACTUALLY. YOU
 8 DIRECTED ME TO EXHIBIT 68-4.

9 MR. APTON: 69-4, YOUR HONOR.

10 THE COURT: I'M SORRY, 69-4. THANK YOU,
 11 COUNSEL. 69-4. YOU HAVE A PARAGRAPH IN THERE AND MAYBE
 12 I DON'T UNDERSTAND WHAT IT MEANS. PARAGRAPH 9: ANY
 13 SETTLEMENT CLASS MEMBERS NOT TIMELY SUBMIT A PROOF OF
 14 CLAIM WITHIN 120 DAYS. SO THIS IS THE FIRST TIME I HAVE
 15 SEEN THIS.

16 THE PROOF OF CLAIM COMES IN AFTER -- IT
 17 DOESN'T, RIGHT? LET'S ASSUME 14 DAYS FROM TODAY, MID
 18 APRIL. I HAVE THE HEARING IN MID DECEMBER, WHICH IS
 19 110 DAYS FROM TODAY. MID DECEMBER, RIGHT? 120 DAYS IS
 20 IN THE NEW YEAR OR IT'S NEW YEAR'S EVE. HOW ARE THEY
 21 DOING THAT?

22 MR. APTON: YOUR HONOR, SOME JUDGES HAVE
 23 THE FINAL APPROVAL HEARING BEFORE THE CLAIMS DEADLINE;
 24 SOME JUDGES ELECT TO HAVE THEM AFTERWARDS. I HAVE DONE
 25 IT BOTH WAYS.

1 THE COURT: EXPLAIN TO ME HOW A JUDGE HAS
 2 A FINAL APPROVAL HEARING BEFORE HE OR SHE KNOWS HOW MANY
 3 PEOPLE ARE IN THE CLASS?

4 MR. APTON: WELL, YOUR HONOR, THE
 5 IMPORTANT OR CRITICAL ASPECT OF THIS PROCESS IS THAT THE
 6 FINAL APPROVAL HEARING OBVIOUSLY NOT BE HELD UNTIL AFTER
 7 THE OPT-OUT EXCLUSION DEADLINE. THAT IS THE CRITICAL
 8 INFORMATION FROM OUR POINT OF VIEW.

9 THE COURT: WHY?

10 MR. APTON: WELL, BECAUSE --

11 THE COURT: WHY DON'T I NEED TO KNOW HOW
 12 MANY PEOPLE ARE ACTUALLY IN THE CLASS? I MEAN, HOW MANY
 13 PEOPLE ACTUALLY FILE CLAIMS?

14 MR. APTON: WHY DON'T YOU --

15 THE COURT: HOW CAN I HAVE A FINAL
 16 APPROVAL HEARING WITHOUT KNOWING AS A FAIRNESS. I KNOW
 17 A MINIMAL NUMBER THEY ARE GOING TO GET, WHAT DOLLAR
 18 MINIMAL NUMBER IT'S GOING TO BE. RIGHT? I DON'T KNOW
 19 WHAT THE MAXIMUM NUMBER IS GOING TO BE WITHOUT KNOWING
 20 THE NUMBER OF CLAIMS.

21 MR. APTON: RIGHT. SO, YOUR HONOR, IF --
 22 I DON'T THINK THE TERMS OF OUR SETTLEMENT WILL
 23 NECESSARILY CHANGE BASED UPON HOW MANY PEOPLE FILL OUT
 24 CLAIM PAPERWORK. THAT IS THE ISSUE.

25 THE COURT: WHY WOULDN'T IT CHANGE AS TO

1 DEFINING WHAT -- FINDING IT FAIR, DON'T I HAVE TO KNOW
 2 HOW MUCH MONEY SOMEBODY IS GOING TO GET?
 3 MR. APTON: WELL, YOUR HONOR --
 4 THE COURT: OR IS IT SO NOMINAL IT DOES
 5 NOT MAKE A DIFFERENCE?
 6 MR. APTON: IN THIS CASE, IT MAY BE THE
 7 LATTER, UNFORTUNATELY. BUT, YOUR HONOR, I DON'T THINK
 8 THE FAIRNESS OF A CLASS SETTLEMENT IS NECESSARILY
 9 DETERMINED BY WHAT A PARTICULAR CLASS MEMBER RECEIVES.
 10 NOT ALL CLASS MEMBERS WILL RECEIVE THE SAME AMOUNT.
 11 THEY WILL RECEIVE THE SAME PROPORTIONATE AMOUNT, BUT IT
 12 WILL VARY FROM CLAIM TO CLAIM.
 13 THE COURT: DON'T THEY RECEIVE THE SAME
 14 AMOUNT PER SHARE?
 15 MR. APTON: YES, THEY DO, YOUR HONOR.
 16 BUT IF JOE HAS FIVE SHARES AND TOM HAS TEN SHARES --
 17 THE COURT: HYPOTHETICAL, ONLY FIVE
 18 PEOPLE SENT, HOW MUCH MONEY IS GOING TO BE SPENT ON THE
 19 CLASS, 300?
 20 MR. APTON: 300 UNLESS ANY AMOUNT YOU
 21 AWARD FOR FEES AND EXPENSES.
 22 THE COURT: 300 NET. I HAVE IT. LET'S
 23 ASSUME THERE IS 250, I'M NOT SAYING THAT IS THE NUMBER,
 24 LET'S JUST SAY THAT. YOU WOULD AGREE WITH ME THAT THERE
 25 IS 250 NET, THAT THE AMOUNT DISTRIBUTED TO THE -- AND

1 THERE IS ONLY A THOUSAND PEOPLE THAT SEND IN THE CLAIMS,
 2 THAT IS A MUCH DIFFERENT RECOVERY PER SHARE THAN IF
 3 20,000 PEOPLE SEND IN THE CLAIMS. RIGHT?
 4 MR. APTON: THAT'S TRUE, YOUR HONOR.
 5 THE COURT: SIMPLE MATH.
 6 SO ARE YOU SUGGESTING THAT JUDGES LOOK AT
 7 THE FAIRNESS OF THE SETTLEMENT BASED ON AN AGGREGATE
 8 NUMBER, RATHER THAN WHAT EACH CLASS MEMBER RECEIVES?
 9 MR. APTON: YES, YOUR HONOR. AND THE
 10 REASON THAT IS THE CASE IS BECAUSE UNDER THE PSRA THERE
 11 ARE CERTAIN METRICS OR CERTAIN INFORMATION WE NEED TO
 12 PROVIDE IN THE NOTICE, SUCH AS WHAT THE PER-SHARE
 13 RECOVERY IS GOING TO BE. AND THAT PER-SHARE RECOVERY
 14 REQUIRES US TO ASSUME THAT ALL DAMAGED SHARES ARE GOING
 15 TO SUBMIT CLAIMS, EVEN THOUGH THAT IS UNLIKELY TO
 16 HAPPEN.
 17 THE COURT: SO ANY OTHER RECOVERY IS
 18 GRAVY. ANY ABOVE THAT MINIMAL NUMBER, NOBODY IS GOING
 19 TO COMPLAIN ABOUT.
 20 MR. APTON: NO. YEAH. I SEE YOUR POINT.
 21 NO ONE IS GOING TO COMPLAIN ABOUT THAT.
 22 SO IN OUR CASE, WE ASSUME 8.5 MILLION
 23 DAMAGED SHARES I BELIEVE IS THE NUMBER. I BELIEVE THAT
 24 IS THE NUMBER. I WOULD HAVE TO DOUBLE-CHECK THAT, BUT
 25 WE CALCULATE OUT WHAT IT'S GOING TO BE. IN THIS CASE,

1 IT'S A NOMINAL AMOUNT.
 2 YOUR HONOR, TO BE CLEAR, THIS IS THE
 3 SMALLEST SETTLEMENT THAT I HAVE EVER SOUGHT APPROVAL
 4 FOR. SO I'M COGNIZANT OF THE NUMBERS AND WHAT IT MIGHT
 5 MEAN FOR THE ULTIMATE CLASS. THIS IS ONLY BEING
 6 SUBMITTED AFTER A THOROUGH CONSIDERATION OF THE
 7 INFORMATION RECEIVED AND SPEAKING WITH OUR CLIENTS.
 8 THE COURT: I WILL GET TO THAT IN A
 9 MINUTE. I'M JUST TRYING TO UNDERSTAND THE PROCEDURE.
 10 SO LET ME ASK IT THIS WAY. WHY CAN'T WE
 11 KNOW -- WHY CAN'T WE TIGHTEN UP THE CLAIMS FORM -- THE
 12 CLAIMS RESPONSE PERIOD? WHY DOES IT HAVE TO BE AFTER MY
 13 FAIRNESS HEARING? I CAN DO MY FAIRNESS HEARING AT THE
 14 END OF JANUARY. I WAS HOPING TO GET IT OUT BY YEAR END,
 15 IF NOT...
 16 MR. APTON: THAT WOULD BE IDEAL. MY
 17 CONCERN THAT I DO HAVE IS THAT WE GIVE CLASS MEMBERS
 18 ENOUGH TIME TO, A, OBJECT AND EXCLUDE THEMSELVES AS WELL
 19 AS FILL OUT THE PAPERWORK. IN MY EXPERIENCE MOST JUDGES
 20 ARE A LITTLE HESITANT TO TIGHTEN IT UP TOO MUCH. SO
 21 USUALLY 110 OR 120 DAYS IS THE TIME FRAME THAT WE MORE
 22 OR LESS WORK WITH.
 23 THE COURT: FOR THE CLAIMS FORMS?
 24 MR. APTON: FOR MORE OR LESS THE WHOLE
 25 PROCESS, NOT INCLUDING DISTRIBUTION.

1 THE COURT: BUT THE PROBLEM HERE IS THAT
 2 IS NOT WHAT YOU ARE DOING. I HAVE NEVER HAD THIS HAPPEN
 3 ON A FINAL FAIRNESS HEARING IS BEFORE WE KNOW HOW MANY
 4 PEOPLE AND HOW MANY CLAIMS ARE IN. IS THAT SOMETHING
 5 YOU SEE? YOU SAY ACTUALLY JUDGES SEE THAT?
 6 MR. APTON: YES. I DO, YOUR HONOR.
 7 AND IT VARIES FROM DISTRICT TO DISTRICT.
 8 FOR EXAMPLE, THE NORTHERN DISTRICT OF
 9 CALIFORNIA THERE ARE A LOT MORE RULES IN PLACE WITH
 10 THESE CLASS ACTION SETTLEMENTS, ESPECIALLY AFTER THE END
 11 OF LAST YEAR. THERE'S A LOT MORE REQUIREMENTS THAT THEY
 12 ARE ASKING FOR OR DEMANDING OR REQUIRING US TO PROVIDE.
 13 DISTRICTS LIKE THE EASTERN DISTRICT OF NEW YORK, A
 14 LITTLE BIT MORE RELAXED ON THAT POINT.
 15 THE COURT: WELL, I AM NOT GOING TO HAVE
 16 A FAIRNESS HEARING. SO TO THE EXTENT SOMEBODY WANTED
 17 MONEY FOR THE HOLIDAYS, THAT IS NOT GOING TO HAPPEN.
 18 I'M NOT GOING TO HAVE A FAIRNESS HEARING UNTIL I KNOW
 19 WHAT THE CLAIMS PROCESS IS, BECAUSE THIS WHOLE -- THE
 20 REASON I STARTED WITH THIS WHOLE IDEA ABOUT DUE PROCESS
 21 CONCERN ON CLAIMS IN THE SETTLEMENT PROCESS IS THAT I
 22 WANT TO SEE WHAT THE RESPONSE IS. I WANT TO KNOW HOW
 23 MANY PEOPLE ARE OUT THERE. SO I'M NOT GOING TO HAVE A
 24 FAIR NUMBER ON THAT. I'M NOT GOING TO EVALUATE THAT. I
 25 DON'T KNOW HOW ANY JUDGE CAN EVALUATE THAT UNTIL THEY

1 KNOW WHAT THE CLAIMS RESPONSE RATE IS. AND I'M NOT
 2 GOING TO KNOW THAT -- YOU HAVE 120 DAYS FROM TIME OF
 3 NOTICE. SO FOUR MONTHS FROM MID AUGUST, APPROXIMATELY
 4 14 DAYS FROM NOW. 120 DAYS FROM THEN.
 5 MR. APTON: YES.
 6 THE COURT: ALL RIGHT. SO EVERYTHING
 7 WILL GET MOVED BACK A LITTLE BIT.
 8 WHAT DO YOU DO THEN? DO YOU THEN FILE
 9 SOME KIND OF SUPPLEMENTAL MEMORANDUM BEFORE THE FINAL
 10 FAIRNESS HEARING THAT TELLS US WHAT THE NUMBERS ARE?
 11 MR. APTON: YEAH. I TYPICALLY DO. AND
 12 THAT SORT OF MEMORANDUM WILL DESCRIBE -- IT'S ACTUALLY A
 13 DECLARATION FROM THE CLAIMS ADMINISTRATOR WHO SAYS HOW
 14 MANY NOTICES THEY HAVE MAILED OUT. THERE IS A PRACTICAL
 15 ISSUE WITH -- MAYBE THERE IS AN ISSUE WITH YOUR HONOR'S
 16 PROPOSED SCHEDULE.
 17 THE COURT: TELL ME. HELP ME.
 18 MR. APTON: EVEN AFTER THE CLAIMS
 19 DEADLINE PASSES, THERE'S TWO ISSUES. ONE, WE DO ACCEPT
 20 AS A MATTER OF COURSE UNTIMELY CLAIMS SO LONG AS THEY
 21 ARE SUFFICIENT IN ALL REGARDS. AND NUMBER TWO, I THINK
 22 THE NUMBERS THAT YOUR HONOR IS ACTUALLY LOOKING FOR
 23 WOULD REQUIRE OUR CLAIMS ADMIN TO GO THROUGH THE ENTIRE
 24 VETTING PROCESSES. THEY CHECK FOR FRAUDULENT CLAIMS,
 25 THEY MAKE SURE ALL THE PAPERWORK IS IN PLACE, AND THEN

1 THAT PROCESS ITSELF CAN TAKE --
 2 THE COURT: I FIND THAT TO BE MARGINAL.
 3 HERE'S WHY. I'M NOT ASKING YOU TO TELL ME WHAT THE
 4 EXACT DOLLAR AMOUNT EACH SHAREHOLDER IS GETTING. I'M
 5 NOT SUGGESTING THAT. YOU ANSWERED THE QUESTION I ASKED
 6 YOU. YOU ANSWERED IT THE RIGHT WAY. I JUST HAVE TO
 7 KNOW THE BOTTOM LINE NUMBER, WHETHER THAT IS FAIR, THE
 8 MINIMAL NUMBER.
 9 BUT MORE IMPORTANTLY, THOUGH, I DON'T
 10 THINK IT'S THAT SIGNIFICANT, BECAUSE WHAT I'M LOOKING AT
 11 IS RESPONSE RATES IN THESE CLAIMS SETTLEMENT PROCESSES,
 12 AND I'M GOING TO -- 10 OR 15 PEOPLE? I'M NOT SAYING IT
 13 WOULD BE 10 OR 15. I'M NOT SAYING IT WOULD BE 200, BUT
 14 I DON'T REALLY KNOW THAT.
 15 THE SECOND THING IS, THE WAY YOU HAVE
 16 THIS DRAFTED, AND THIS IS WHY I'M NOT GOING TO SEAL THIS
 17 SUPPLEMENTAL AGREEMENT, IS BECAUSE THE DEFENDANT, IF
 18 THERE IS A CERTAIN NUMBER OF OPT-OUTS, THEY GET TO --
 19 THE DEAL IS OFF. AM I CORRECT?
 20 MR. APTON: YES.
 21 THE COURT: SO YOU DON'T KNOW THAT.
 22 MR. APTON: WELL, JUST TO CLARIFY, NOT
 23 AUTOMATICALLY OFF BUT --
 24 THE COURT: THEY HAVE THE RIGHT TO CALL
 25 IT OFF. I HAVE A HEARING THAT OCCURS BEFORE I KNOW IF

1 THE DEFENDANT -- RIGHT? DO I HAVE A HEARING BEFORE THE
 2 DEFENDANT KNOWS THE NUMBERS?
 3 MR. APTON: NO.
 4 THE COURT: WHY NOT?
 5 MR. APTON: THE EXCLUSION OR OPT-OUT
 6 DEADLINE AS WELL AS THE OBJECTION DEADLINE IS BEFORE THE
 7 FAIRNESS HEARING.
 8 THE COURT: IT HAS TO BE EXCLUSIONS.
 9 THAT'S RIGHT. BECAUSE EVERYONE ELSE IS RELEASING. I'M
 10 HAVING IT AFTERWARDS. I'M DYING FOR YOU GUYS TO MAKE
 11 THIS ARGUMENT TO THE COURT OF APPEALS. I DON'T WANT IT
 12 TO BE MY CASE, BUT I THINK THIS IS REALLY A DUE PROCESS
 13 PROBLEM.
 14 MR. APTON: YOUR HONOR, MAYBE I CAN
 15 UNDERSTAND IT BETTER. SO THE DUE PROCESS PROBLEM WOULD
 16 BE THAT PEOPLE ARE IN THEORY RELEASING BY NOT DOING
 17 ANYTHING AND THEREFORE NOT GETTING ANY CONSIDERATION IN
 18 EXCHANGE FOR THE RELEASE.
 19 THE COURT: YOU HAVE A FIDUCIARY
 20 OBLIGATION TO THE CLASS. I'M NOT SUGGESTING YOU'RE NOT
 21 DOING IT. BUT THEY HAVE A DUE PROCESS RIGHT TO BE HEARD
 22 BEFORE THEY RELEASE A CLAIM.
 23 YOUR WHOLE ARGUMENT IS A GOOD ONE. IT'S
 24 JUDGE, THESE PEOPLE CAN'T BRING THEIR OWN CLAIMS. IT'S
 25 ECONOMICALLY INFEASIBLE. I GOT THAT. HOWEVER, IF THEY

1 WANTED TO -- IF THEY WANTED TO INVEST AN AMOUNT OF
 2 MONEY, THEY HAVE THE RIGHT TO HAVE IT ALL WORKED OUT
 3 BEFORE THEY SIGNED A RELEASE. THEY WOULD HAVE THE
 4 KNOWLEDGE, SAY, OKAY I'M JUST WALKING AWAY FROM THE
 5 RELEASE, COULD IT BE A WALKAWAY.
 6 BUT HERE IS THE DUE PROCESS PROBLEM. YOU
 7 SAY NOTICE AND OPPORTUNITY. THEY HAVE NOTICE. THE
 8 PROBLEM IS THEY ARE ALREADY IN. THE CLASS ACTION
 9 PROCESS ALREADY PUTS THEM IN THE ROOM.
 10 MR. APTON: YES.
 11 THE COURT: NOW, ALL OF A SUDDEN THEY ARE
 12 GETTING KICKED OUT UNLESS THEY DO SOMETHING ELSE. AND
 13 AS A MATTER OF PROCESS, I'M CONCERNED THAT THAT -- I
 14 THINK THERE IS AN EXCEPTION IN THESE SECURITIES CASES.
 15 ABSOLUTELY IT WOULD NOT BE TRUE IF THIS WERE A 20-PERSON
 16 COMPANY. EVERYBODY WOULD AGREE WITH THAT. NOBODY WOULD
 17 COME INTO THE CLAIMS PROCESS IF A HUNDRED PERSON
 18 SHAREHOLDERS. IT'S THE SIZE. IT'S LIKE A CONSUMER
 19 CLASS ACTION IS MORE ANALOGOUS.
 20 MY POINT IS THIS. THE BOTTOM LINE IS, I
 21 CAN'T HAVE A FAIRNESS HEARING, FINAL FAIRNESS HEARING
 22 UNTIL I KNOW EXACTLY HOW TO WRITE THAT ORDER, OPINION ON
 23 THE DUE PROCESS CONCERN.
 24 MR. APTON: SUCH AS HOW MANY NOTICES WERE
 25 SENT OUT, WHO RECEIVED THEM, WHAT THE RESPONSE RATE WAS.

1 THE COURT: WERE THERE OBJECTIONS TO THIS
 2 IDEA?
 3 MR. APTON: WERE THERE OBJECTIONS?
 4 THE COURT: RELEASE WITHOUT
 5 CONSIDERATION? THIS CASE HAS SUFFICIENT SIZE OF
 6 SHAREHOLDERS. YOU PUT IT IN YOUR PAPERS. HOW MANY,
 7 8.5?
 8 MR. APTON: YOUR HONOR, LET ME JUST
 9 DOUBLE CHECK THAT REAL QUICK. I THINK IT IS 8.5, BUT
 10 IT'S IN MY --
 11 THE COURT: IT'S IN YOUR MOTION FOR
 12 NUMEROSITY. I SAW IT TOO. HERE IT IS. THERE WERE
 13 90.3 MILLION SHARES BEING TRADED DURING THE CLASS
 14 PERIOD. SO WE DON'T REALLY KNOW, BUT IT'S MORE THAN 40.
 15 MORE THAN 40 PEOPLE HOLD THE SHARES.
 16 MR. APTON: IT'S MORE THAN 40. AND THEN
 17 I DO KNOW THAT THERE ARE ROUGHLY 38 MILLION SHARES
 18 OUTSTANDING DURING THE CLASS PERIOD SO...
 19 THE COURT: IN ANY EVENT. THIS CASE, AND
 20 ANY MASS CLASS ACTION, WHEN I LOOK AT ALL THESE CASES,
 21 PARTICULARLY IF THE CLAIMS ADMINISTRATOR HAS DONE THEIR
 22 WORK -- I LOOKED AT SOME OF THEM. THEY ARE ALL MASSIVE
 23 AMOUNTS OF SHAREHOLDERS. IN THAT CONTEXT I THINK THERE
 24 IS SOME PROTECTION OF DUE PROCESS. THERE IS A BALANCE,
 25 BUT I NEED TO KNOW HOW THAT IS WORKING.

1 MR. APTON: YES.
 2 THE COURT: I HATE TO BE ACADEMIC HERE,
 3 BUT THERE IS A PROBLEM IF WE DON'T REALLY GIVE THE
 4 APPROPRIATE PROTECTIONS TO ABSENT CLASS MEMBERS AND A
 5 FINAL FAIRNESS HEARING BASED UPON WHAT THE RESPONSE IS.
 6 I THINK THE DEFENDANTS ARE SMART,
 7 CANDIDLY, TO HAVE THESE CARVE-OUT PROVISIONS THAT SAY WE
 8 CAN GET OUT. I THINK THE REAL REASON TO GET OUT IF I
 9 WERE -- AND I WAS A CLASS ACTION DEFENSE LAWYER, IS THAT
 10 I CAN SEE A WHOLE BUNCH OF LAWSUITS POPPING UP AND
 11 SAYING WHAT KIND OF CONSIDERATION DID I GET? AND THE
 12 WHOLE BAR AND WHETHER IT'S A JUDGE CAN BAR THAT.
 13 SECOND QUESTION I HAVE FOR YOU THEN IS,
 14 AM I JUST BEING COMPLETELY POLLYANNA BECAUSE YOU GUYS
 15 DON'T OBJECT? DOES IT MATTER THAT YOU DON'T OBJECT WHEN
 16 I HAVE THE OBLIGATION TO THE CLIENTS?
 17 MR. APTON: DOES IT MATTER THAT WHO DOES
 18 NOT OBJECT?
 19 THE COURT: YOU GUYS BOTH AGREE. THIS IS
 20 FINE, JUDGE. DUE PROCESS, WE WILL TAKE THAT UP LATER.
 21 WE AGREE TO DO IT THIS WAY. I STILL HAVE TO REVIEW IT,
 22 DON'T YOU THINK?
 23 MR. APTON: YOUR HONOR HAS AN OBLIGATION
 24 UNDER RULE 23 TO REVIEW IT, BUT UNDER THE CASE LAW THERE
 25 IS A LOT OF DEFERENCE SUPPOSEDLY GRANTED TO OPPOSING

1 COUNSEL WHO COMES TO THIS. YOUR HONOR, THE NOTICE IS
 2 NOT JUST THE FIRST CLASS MAILING. IT'S ALSO THE SUMMARY
 3 NOTICE THAT IS GETTING PUBLISHED. IT'S ALSO THE
 4 BUSINESS NEWS WIRE. WE REALLY DO -- AND THE WHOLE POINT
 5 OF THIS IS TO TRY TO ALERT AS MANY CLASS MEMBERS AS
 6 POSSIBLE ABOUT THE SETTLEMENT, AND THAT IS WHAT WE TRY
 7 TO DO.
 8 THE COURT: YES. OKAY.
 9 LET'S TURN NOW -- TELL ME ABOUT THE
 10 FAIRNESS PROCEDURE. THE HEARING IS GOING TO BE NOW
 11 TOWARDS THE END OF JANUARY. I WILL PUT THE DATES IN.
 12 DOES ANYBODY HAVE AN ATTACHMENT TRIAL THAT WOULD
 13 PRECLUDE YOU FROM BEING HERE AT THE END OF JANUARY?
 14 MR. APTON: IF I MAY JUST CHECK REAL
 15 QUICKLY HERE.
 16 THE COURT: SURE.
 17 MR. APTON: YOUR HONOR, I'M OPEN ANY DAY
 18 IN JANUARY.
 19 THE COURT: IT WILL BE AFTER MID JANUARY,
 20 BECAUSE I WANT THE 120 DAYS. I WANT YOUR CLAIMS
 21 ADMINISTRATOR TO UNDERSTAND HOW MUCH I'S INVOLVED.
 22 LAST PROCEDURE QUESTION -- TWO LAST
 23 PROCEDURE QUESTIONS.
 24 ONE IS, WHAT IS THE CONNECTION, WHAT IS
 25 THE NEXUS BETWEEN THE PHILADELPHIA BAR FOUNDATION AND

1 THESE SHAREHOLDERS? YOU KNOW THE STANDARD HAS TO BE AS
 2 NEAR AS POSSIBLE. THIS IS THE FIRST TIME I HAVE SEEN
 3 THAT. LOOK, I WAS A MEMBER OF THE PHILADELPHIA BAR
 4 FOUNDATION. I WAS THE PRESIDENT OF ANOTHER BAR
 5 FOUNDATION. WHAT DO THEY HAVE TO DO WITH THIS?
 6 MR. APTON: YOUR HONOR, I WOULD DEFER TO
 7 DEFENSE COUNSEL.
 8 THE COURT: WHAT DID THEY HAVE TO DO WITH
 9 THIS? DID YOU GUYS SELECT THE PHILADELPHIA BAR
 10 FOUNDATION? WHAT DO THEY HAVE TO DO WITH THIS? MAYBE
 11 THE PHILADELPHIA COUNSEL KNOWS. I DON'T KNOW IF THE
 12 OUT-OF-TOWN COUNSEL KNOWS ABOUT THE PHILADELPHIA BAR
 13 FOUNDATION. THIS IS A NATIONAL CLASS, I SUSPECT?
 14 MR. APTON: IT IS, YOUR HONOR, AND
 15 TYPICALLY IN THESE SETTLEMENTS WHAT I HAVE BEEN DOING AS
 16 OF LATE, WHEN THERE IS A CY PRES AWARD INVOLVED, I USE A
 17 501(C)(3) CALLED THE INVESTOR PROTECTION TRUST OUT OF
 18 D.C. THEY HAVE GREAT PROGRAMS SPECIFICALLY TAILORED FOR
 19 INVESTOR EDUCATION PROTECTION.
 20 THE COURT: DOES YOUR FIRM HAVE ANY ROLE
 21 IN THAT? DOES YOUR LAW FIRM OR YOU HAVE ANY ROLE IN
 22 THAT TRUST?
 23 MR. APTON: NO. THEY HAVE BEEN INVOLVED
 24 IN MAYBE -- THEY'VE BEEN NAMED IN MAYBE THREE
 25 SETTLEMENTS THAT I HAVE DONE SO....

1 THE COURT: NO, I MEAN YOU DON'T HAVE ANY
 2 --
 3 MR. APTON: NO, NO RELATIONSHIP.
 4 THE COURT: YOU ARE NOT MANAGING IT.
 5 YOU'RE NOT ON THE BOARD OR ANYTHING?
 6 MR. APTON: NO FAMILY MEMBERS, NO
 7 CONNECTION.
 8 THE COURT: YOUR FIRM NOT INVOLVED IN IT?
 9 MR. APTON: NO. NO.
 10 THE COURT: SO TELL ME, DEFENSE, DO YOU
 11 HAVE ANY OBJECTION -- I DON'T CARE IF IT'S THAT TRUST.
 12 I HAVE SEEN ANOTHER ONE THAT WAS GIVEN TO AN
 13 ORGANIZATION THAT EDUCATES STUDENTS ABOUT SECURITIES. I
 14 SAW ONE ACTUALLY THAT WORKED FOR THE STANFORD UNIVERSITY
 15 LAW SCHOOL'S SECURITIES LAW CLEARINGHOUSE, WHERE THEY
 16 EDUCATE PEOPLE ABOUT SECURITIES CASES. THAT MAKES SOME
 17 SENSE. YOU ARE EDUCATING THE WORLD ABOUT WHAT'S OUT
 18 THERE. I GO TO THEIR FUNCTIONS. I LIKE THEM VERY MUCH.
 19 I'M NOT DISRESPECTING. I KNOW THAT LOCAL COUNSEL'S
 20 NAMED PARTNER ON THIS WAS CHAIR OF IT. I HAVE NO
 21 DISRESPECT TO MR. REICH OR ANYBODY ELSE WHEN I SAY THIS,
 22 BUT I JUST DON'T SEE A TIE-IN. IS THERE ANYBODY ELSE
 23 THAT YOU KNOW OF THAT HAS TIE-IN TO SECURITIES?
 24 MR. SOLUM: NOTHING SPECIFIC, YOUR HONOR.
 25 THE COURT: WHY DON'T YOU GUYS -- WHY

1 DON'T YOU FIND SOMEBODY? THAT IS A PROCEDURE QUESTION I
 2 HAVE. IF YOU WANT TO VET -- I'M NOT GOING TO SAY IT
 3 HERE, BUT IT'S GOING TO BE SOMETHING I RAISE IN THE
 4 FINAL FAIRNESS HEARING. WHY DON'T YOU SEE IF YOU CAN
 5 COME UP WITH SOMETHING THAT IS A LITTLE MORE TIED IN. I
 6 DON'T CARE. AGAIN, I HAVE APPROVED STANFORD'S EDUCATION
 7 PROGRAM THAT YOU GUYS ARE ALL FAMILIAR WITH, I'M SURE.
 8 I HAVE NO PROBLEM WITH THIS TRUST YOU ARE TALKING ABOUT
 9 AS LONG AS YOU SHOW ME LEGITIMACY, THAT IS SOMETHING
 10 THAT ACTUALLY DOES SOMETHING FOR PEOPLE, TO HELP EDUCATE
 11 THEM ON INVESTMENTS. ANYTHING LIKE THAT, EDUCATING HIGH
 12 SCHOOL CHILDREN -- NOT COLLEGE STUDENTS, SOMETHING THAT
 13 HAS TO DO WITH THE SECURITIES MARKETS.
 14 THE PHILADELPHIA BAR FOUNDATION DOES
 15 GREAT WORK. IT REALLY DOES NOT HELP PEOPLE WHO HAVE
 16 ACCOUNTS AT BROKERAGE FIRMS. YOU KNOW, IT'S MORE ABOUT
 17 PEOPLE THAT DON'T HAVE ACCOUNTS AT BROKERAGE FIRMS.
 18 IT'S LIKE THE OPPOSITE OF THIS CASE AND MANY CASES. AND
 19 NO DISRESPECT TO THE PHILADELPHIA BAR ASSOCIATION. THAT
 20 IS NOT REALLY ITS FOCUS. IT'S LIKE PHILABUNDANCE. THEY
 21 DO THINGS THAT HAVE TO DO WITH HUNGER, NOT THIS. THESE
 22 PEOPLE PROBABLY ARE NOT TOO HUNGRY, HOPEFULLY NOT.
 23 THE LAST PROCEDURE QUESTION I HAD THEN
 24 FOR THE PLAINTIFF BEFORE YOU TURN TO FAIRNESS IS WHAT,
 25 IF ANY, RELATIONSHIP YOU HAVE WITH THE ENTITY THAT IS

1 NAMED AS THE CLAIMS ADMINISTRATOR, JND.
 2 MR. APTON: YOUR HONOR, NO FORMAL
 3 RELATIONSHIP. I HAVE USED THEM AS A CLAIMS
 4 ADMINISTRATOR IN MAYBE HALF A DOZEN SETTLEMENTS OVER THE
 5 PAST FEW YEARS. HAVE LUNCH WITH, I THINK, THE
 6 VICE-PRESIDENT WHEN HE IS IN TOWN.
 7 THE COURT: DO YOU HAVE ANY OWNERSHIP
 8 INTEREST IN IT?
 9 MR. APTON: I DO NOT, YOUR HONOR.
 10 THE COURT: DO YOU GET ANY FEES FOR
 11 SENDING -- DO YOU GET ANY PAYMENT OR FEES FROM THEM FOR
 12 SENDING WORK?
 13 MR. APTON: NO, YOUR HONOR, I DO NOT.
 14 THE COURT: DOES YOUR FIRM GET ANY
 15 PAYMENT OR FEES FOR SENDING WORK TO THEM?
 16 MR. APTON: NOT THAT I'M AWARE OF, YOUR
 17 HONOR.
 18 THE COURT: DO THEY GIVE YOU A BUDGET?
 19 MR. APTON: YES, THEY DO, YOUR HONOR.
 20 THE COURT: DO I UNDERSTAND THE
 21 SETTLEMENT CORRECTLY THAT DEFENSE IS PAYING THOSE COSTS?
 22 MR. APTON: YES. THOSE COSTS ARE
 23 ESTIMATED AT A HUNDRED THOUSAND DOLLARS.
 24 THE COURT: DEFENSE, HAVE YOU SEEN THAT
 25 BUDGET?

1 MR. SOLUM: YES, YOUR HONOR, WE ARE THE
 2 ONES WHO ASKED FOR IT.
 3 THE COURT: SO AS LONG IT'S -- IT IS NOT
 4 COMING FROM THE CLASS THEN.
 5 MR. SOLUM: IT'S NOT, YOUR HONOR.
 6 THE COURT: WE ARE NOT WORRIED ABOUT THE
 7 CLASS OBJECTING TO IT.
 8 MR. APTON: JUST TO PUT MORE DETAIL,
 9 DEFENSE COUNSEL AND I SENT OUT FOUR REQUESTS FOR
 10 PROPOSALS FROM FOUR CLAIMS ADMINISTRATORS. AND AFTER A
 11 LOT OF BACK AND FORTH AND THERE WAS DISCUSSION ABOUT
 12 CAPPING COSTS AND CAPPING EXPENSES AS WELL, JND WAS
 13 SELECTED BY DEFENDANTS BECAUSE THEY ARE FUNDING THAT
 14 PORTION.
 15 THE COURT: OKAY. THAT IS GOOD. THAT IS
 16 THE KIND OF DETAIL THAT I WOULD LIKE TO PUT IN. I WOULD
 17 LIKE TO TEACH THE NEXT LAWYERS IN FRONT OF US THAT THIS
 18 IS -- THAT IS EXACTLY WHAT YOU SHOULD BE DOING. I WOULD
 19 THINK THIS IS THE STANDARD YOU SHOULD USE. PARTICULARLY
 20 IF THE CLASS IS GOING TO PAY. SOMETIMES THE CLASS DOES
 21 NOT PAY FOR IT OUT OF A COMMON FUND. THEN I ALWAYS ASK
 22 FOR SOME KIND OF -- WHAT BIDDING PROCESS DID YOU HAVE.
 23 SO I VERY MUCH APPRECIATE YOUR -- THAT IS THE KIND OF
 24 STANDARDS YOU TEACH OTHER LAWYERS TO DO. I'M GOING TO
 25 PUT IT IN THE ORDER YOU DID THAT. I WANT PEOPLE TO KNOW

1 THAT THAT IS WHAT YOU SHOULD DO. SO THANK YOU FOR DOING
2 THAT.

3 TELL ME ABOUT THE FAIRNESS NOW. TELL ME
4 ABOUT THE FAIRNESS.

5 MR. APTON: YOUR HONOR, THE FAIRNESS, AS
6 I SAID, THIS IS A SETTLEMENT FOR A \$300,000 CASH FUND
7 PLUS ESTIMATED A HUNDRED THOUSAND DOLLARS OF NOTICE
8 COSTS, SO \$400,000 COMBINED. AND THIS IS A CASE THAT
9 WOULD OTHERWISE IN ALL LIKELIHOOD HAVE PROBABLY FAILED
10 IF WE TOOK IT TO SUMMARY JUDGMENT, RETAINED THE EXPERTS
11 FOR CLASS CERTIFICATION. SO AS I PUT IN MY PAPERS, I DO
12 BELIEVE THAT THIS IS A GOOD OUTCOME IN AN OTHERWISE NOT
13 GOOD SITUATION.

14 THE COURT: SO I REMEMBER YOUR ARGUMENT
15 ON THE MOTION TO DISMISS, AND I KNOW THAT WE PARSED
16 THROUGH A LOT OF THINGS TO GET TO ESSENTIALLY TWO
17 STATEMENTS THAT ARGUABLY COULD HAVE BEEN FALSE. DO I
18 READ YOUR PAPERS CORRECTLY THAT IT WAS THEREAFTER THAT
19 YOU GOT THOUSANDS OF DOCUMENTS OR EVIDENCE THAT SHOWED
20 YOU THAT IT WOULD BE A DIFFICULT CASE TO PROVE? SO MY
21 QUESTION IS, NO DISRESPECT TO YOU, BUT DID YOU KNOW THAT
22 WHEN YOU FILED THE LAWSUIT?

23 MR. APTON: NO, YOUR HONOR, WE DIDN'T,
24 AND THEN I WANTED TO MAKE SURE THAT THAT WAS KNOWN TO
25 THE COURT. WHEN WE FILED THIS LAWSUIT, WE BELIEVED THAT

1 IT WAS VERY UNLIKELY -- OR I SHOULD SAY THAT IT WAS MORE
2 THAN LIKELY KNOWN BY LANNETT THAT THIS CONTRACT WAS NOT
3 GOING TO BE RENEWED. BASED ON FACTUAL CIRCUMSTANCES
4 THAT WE UNCOVERED AND WE ADDUCED, YOUR HONOR GAVE US A
5 DECISION ON THE MOTION TO DISMISS THAT VERY MUCH LIMITED
6 OUR ABILITY TO MANEUVER IN DISCOVERY, TO TRY TO
7 RESURRECT SOME OF THE CLAIMS THAT WERE DISMISSED, WHICH
8 I THINK YOUR HONOR EVEN EXPRESSED SKEPTICISM AS TO
9 WHETHER WE WOULD BE ABLE TO RESURRECT THEM. BUT THE
10 BOTTOM LINE IS THE DOCUMENTS WE RECEIVED AFTER THE
11 MOTION TO DISMISS. WHETHER THE DEFENDANTS KNEW THIS TO
12 BE THE CASE OR NOT AT THE TIME OF THE STATEMENTS, JSP
13 AND ITS NOMINEES WERE SIGNIFICANT SHAREHOLDERS, OR AT
14 LEAST THAT IS WHAT THE DOCUMENTS TENDED TO SHOW. SO
15 WITHOUT THAT CRITICAL ELEMENT OF FALSITY --

16 THE COURT: THAT IS MY QUESTION. I WILL
17 TELL YOU PRETTY CANDIDLY THAT I THOUGHT THAT WAS GOING
18 TO BE TRUE, BUT I THOUGHT, WELL, IT IS PLED, SO MAYBE
19 YOU WILL BE ABLE TO SHOW THAT THERE WAS SOME KIND OF
20 SLIGHT THAT WAS NOT MADE AND I DID NOT KNOW. SO YOU
21 PLED IT AND IN THIS AREA, YOU KNOW BETTER THAN I DO, YOU
22 CAN SCRUTINIZE A LOT OF THINGS BUT THAT IS ONE AREA,
23 KNOWLEDGE OF THE -- OR REPRESENTATIONS CONCERNING
24 SHAREHOLDER STATUS IS SOMETHING THAT WOULD HAVE BEEN
25 KNOWN EMPIRICALLY BY THE DEFENDANT, IF YOU DON'T KNOW.

1 SO I LET YOU GO BECAUSE OKAY, THEY CAN'T FIGURE THAT
2 OUT.

3 MR. APTON: AND, YOUR HONOR, WE VERY MUCH
4 APPRECIATED THAT, AND WE WERE LOOKING FOR SOMETHING
5 THERE AND JUST THE WAY THE COOKIE CRUMBLED --

6 THE COURT: SO IT'S 400 -- 300 TO THE
7 CLASS. TELL ME ABOUT WHAT YOU -- I DON'T KNOW IF IT
8 NECESSARILY MATTERS, BUT THE CLASS SIZE THAT YOU THINK
9 WOULD HAVE BEEN INVOLVED WAS WHAT? WHAT DID YOU THINK
10 WAS GOING TO BE THE CLASS APPROXIMATE SIZE IF WE WENT TO
11 TRIAL, THE NUMBER OF SHARES AT ISSUE?

12 MR. APTON: WELL, SO, YOUR HONOR, THAT IS
13 THE NUMBER WE WERE LOOKING FOR BEFORE, THE NUMBER OF
14 DAMAGED SHARES. I KNOW THAT THERE WERE 38 MILLION
15 SHARES OUTSTANDING AT THE END OF THE CLASS PERIOD, BUT
16 THE NUMBER FROM THAT, THERE IS ONLY A PORTION OF THAT
17 THAT IS ACTUALLY, QUOTE, UNQUOTE, DAMAGED SHARE, ONE
18 THAT IS BOUGHT DURING THE CLASS PERIOD AND THEN SOLD. I
19 WISH I HAD THAT NUMBER IN FRONT OF ME, BUT I BELIEVE IT
20 WAS -- WELL, I DON'T WANT TO GIVE THE COURT WRONG
21 INFORMATION. BUT THE NUMBER OF CLASS MEMBERS WOULD
22 CERTAINLY BE IN THE THOUSANDS. I HAVE NO PROBLEM
23 REPRESENTING THAT TO THE COURT BECAUSE EACH CLASS MEMBER
24 WOULD, IN THEORY, OWN MORE THAN ONE SHARE. SO WHILE
25 THERE MAY HAVE BEEN 8-AND-A-HALF MILLION SHARES THAT

1 WERE DAMAGED, THOSE WOULD BE OWNED BY A LIMITED NUMBER
2 OF THOSE SHAREHOLDERS.

3 THE COURT: OKAY. I'M JUST LOOKING AT
4 HOW YOUR ORDER READS. I JUST WANT TO BE CLEAR HERE.
5 WHAT I WAS LOOKING FOR AND MAYBE JUST POINT TO ME. I
6 SEE THE AFFIDAVIT OF SEGURA. IS THE PLAN OF ALLOCUTION
7 ATTACHED?

8 MR. APTON: YOUR HONOR, THE PLAN OF
9 ALLOCATION --

10 THE COURT: ALLOCATION, NOT ALLOCUTION.
11 JUST FINISHED A BIG CRIMINAL CASE, ALLOCATION.

12 MR. APTON: 68-2, WHICH IS PART OF THE
13 STIPULATION OF SETTLEMENT.

14 THE COURT: THAT IS ATTACHED TO THE LONG
15 FORM NOTICE, AS PART OF THE LONG FORM NOTICE?

16 MR. APTON: THAT'S CORRECT, YOUR HONOR.
17 AND IF YOUR HONOR WOULD TURN TO PAGE -- IT'S USING THE
18 ECF HEADER, PAGE 13 OF 16, PAGE 11 OF THE DOCUMENT. THE
19 PLAN OF ALLOCATION IS LISTED OVER THE NEXT PAGE OR TWO.

20 THE COURT: YES, OKAY.

21 MR. APTON: THERE, YOUR HONOR, MAY BE
22 USED TO MORE OR LESS TWO DIFFERENT TYPES OF PLANS OF
23 ALLOCATION. ONE INVOLVES TABLES AND SUBTRACTING AND
24 DIFFERENT DATES OVER THE 90-DAY PERIOD FOLLOWING THE
25 CLASS PERIOD.

1 WE, IN THIS CASE, SELECTED TO USE THIS
 2 PLAN OF ALLOCATION, WHICH IS NOT WHAT I JUST DESCRIBED,
 3 BECAUSE IT'S MORE CONCISE, IT'S EASIER TO UNDERSTAND AND
 4 LOWER COSTS FOR THE CLASS TOO. AND REALLY WHAT IT
 5 ENTAILS IS JUST HOW MANY SHARES YOU HAD TIMES THE DROP,
 6 AND THEN YOU GET YOUR SLICE OF THE PIE, SO TO SPEAK.
 7 THE COURT: MORE DIRECT.
 8 MR. APTON: RIGHT, YOUR HONOR.
 9 WE HAVE DONE THAT IN A COUPLE OF
 10 SETTLEMENTS, ONE IN NEW JERSEY -- WELL, ALL OVER.
 11 THE COURT: WILL YOUR CLAIMS
 12 ADMINISTRATOR BE ABLE TO TELL US HOW MANY PEOPLE WHO
 13 SUBMITTED CLAIMS HAD LESS THAN \$10 SO WE FACTOR THAT
 14 INTO THE IDEA OF HOW MANY PEOPLE DID NOT GET
 15 CONSIDERATION FOR THEIR RELEASE?
 16 MR. APTON: YOUR HONOR, THEY WOULD BE
 17 ABLE TO DO THAT, BUT ONLY AFTER THE VETTING PROCESS THAT
 18 I DESCRIBED EARLIER, BECAUSE THAT \$10 DE MINIMIS
 19 THRESHOLD IS BASED OFF OF WHAT THE VALID AND TIMELY
 20 AUTHORIZED CLAIMS ARE. AND THEN THEY DO THE MATH TO
 21 FIGURE OUT EACH CLAIM MEMBER'S PROPORTIONATE SHARE. AND
 22 THEN THOSE THAT HAVE A PROPORTIONATE SHARE LESS THAN
 23 \$10, THEY GET HOLD WHOLED OUT.
 24 SO IN OTHER WORDS, YOUR HONOR, IF JOHN
 25 DOE WERE TO SUBMIT A CLAIM IN A MONTH FROM NOW AND HIS

1 CLAIM IS FOR A HUNDRED DOLLARS, HE MAY VERY WELL BE --
 2 STILL HAVE A DE MINIMIS CLAIM ONCE THE WHOLE PROCESS IS
 3 COMPLETED AND THEY FIGURE OUT WHO IS GETTING WHAT.
 4 THE COURT: IS IT ON A ROLLING BASIS, THE
 5 REVIEW, OR IS IT DONE AT THE END?
 6 MR. APTON: WELL, THE REVIEW WILL BE DONE
 7 AT THE END, ASSUMING YOUR HONOR APPROVES EVERYTHING AND
 8 FINAL APPROVAL. WE WILL HAVE TO MAKE A MOTION FOR
 9 DISTRIBUTION OF FUNDS. AND PRIOR TO THAT POINT WE WOULD
 10 ASK YOUR HONOR TO SET A BAR DATE OR -- WELL, ACTUALLY IN
 11 THE MOTION FOR DISTRIBUTION WE ASK YOUR HONOR TO SET A
 12 BAR DATE. WHILE THE CLAIM DEADLINE MIGHT HAVE BEEN
 13 SEVERAL MONTHS PREVIOUSLY AND WE ACCEPTED SOME LATE BUT
 14 OTHERWISE VALID CLAIMS THEREAFTER, FEBRUARY 1 IS THE BAR
 15 DATE. THAT IS REALLY THE DATE THAT MATTERS. SO ONCE
 16 THAT DATE PASSES, THEN THE CLAIMS ADMINISTRATOR WILL BE
 17 ABLE TO CALCULATE EXACTLY WHO'S GETTING WHAT BECAUSE THE
 18 UNIVERSE IS KNOWN AT THAT POINT.
 19 THE COURT: WHAT HAPPENS IS THEN THERE IS
 20 A FINAL HEARING OR FINAL MOTION PRACTICE THAT ALLOWS US
 21 TO DO THIS WHOLE TIME -- IT ROLLS A COUPLE OF TIMES --
 22 TO DO THE FINAL DISTRIBUTION?
 23 MR. APTON: TYPICALLY TWO MOTIONS. AFTER
 24 FINAL APPROVAL, WE'LL FILE ONE MOTION FOR DISTRIBUTION
 25 AND THEN ONE MOTION TO CLOSE THE SETTLEMENT FUND.

1 THE COURT: AND DISTRIBUTE ANY NET
 2 NUMBERS.
 3 MR. APTON: TO CY PRES, WHICH IS LIKELY
 4 NOT GOING TO BE THE PHILADELPHIA BAR FOUNDATION.
 5 THE COURT: BUT IT'S ALSO GOING TO BE --
 6 BUT YOU ARE ALSO GOING TO HAVE THE OBLIGATION THEN IN
 7 THAT INTERIM. I GUESS THE COSTS ARE BUILT IN. WHEN DO
 8 YOU GET PAID?
 9 MR. APTON: HOPEFULLY WE DO GET PAID, AND
 10 IT WOULD BE AT YOUR HONOR'S DISCRETION.
 11 THE COURT: WE TYPICALLY DON'T PAY THE
 12 ATTORNEYS UNTIL PROBABLY THAT SORT OF SECOND MOTION,
 13 WHEN I KNOW WHAT IS IN THE DOOR. I HAVE SEEN SOME
 14 SETTLEMENTS THAT ALLOW YOU TO GET PAID 33 DAYS AFTER THE
 15 FINAL APPROVAL ORDER. THAT WON'T BE HERE, ONLY BECAUSE
 16 -- UNLESS WE GET EVERYTHING WRAPPED UP WITH IT. BUT
 17 THAT IS NOT LIKELY. SO I WANT TO BE ABLE TO MAKE SURE
 18 THAT WE GET AS MANY PEOPLE PAID. IN OTHER WORDS, YOU
 19 SHOULD GET PAID WHEN THEY GET PAID. WHEN YOUR PRINCIPAL
 20 GETS PAID, THE AGENT SHOULD BE PAID. THAT IS THE WAY WE
 21 ARE GOING TO DO IT. I DON'T KNOW IF THAT IS THE WAY IT
 22 IS NOW. IS THAT THE WAY IT IS NOW?
 23 MR. APTON: NO, IT'S NOT, YOUR HONOR.
 24 RIGHT NOW IT IS AFTER YOUR HONOR GRANTS FINAL APPROVAL.
 25 THE COURT: 33 DAYS AFTER.

1 MR. APTON: I UNDERSTAND THE PROCESS YOUR
 2 HONOR IS OUTLINING, PERHAPS WE CAN DISCUSS THIS LATER,
 3 MAYBE THERE IS SOME PROVISION WHEREBY AT LEAST MY FIRM
 4 GETS EXPENSES REIMBURSED, AND THEN THE ULTIMATE ATTORNEY
 5 FEE AWARD IF ONE IS GRANTED AT THE END OF THE DAY.
 6 THE COURT: AGAIN, THIS IS NOT A
 7 DETRIMENT TO THE CLASS. SO IT'S NOT -- I'M NOT TAKING
 8 SOMETHING AWAY FROM THEM. THIS IS SOMETHING WE WILL
 9 DEAL WITH UPON REVIEW OF THE REASONABLENESS OF THE FEES
 10 AND COSTS. I'M TELLING YOU AHEAD OF TIME, THE FEE
 11 CERTAINLY WILL BE PAID WHEN THE CHECKS ARE CUT TO THE
 12 MEMBERS OF THE CLASS.
 13 MR. APTON: SURE.
 14 THE COURT: JUST HELP ME, LAST QUESTION.
 15 THE WAY YOU DO THIS IS THAT WHEN THE -- SO I HAVE
 16 APPROVAL. THEN I COME BACK A COUPLE OF WEEKS AND HAVE A
 17 BAR DATE, 20 DAYS LATER OR SOMETHING. THE CLOCK RUNS ON
 18 APPEAL. AND THEN, IS THAT SORT OF THE DATE THAT IT IS
 19 DISTRIBUTED THEREAFTER?
 20 MR. APTON: YES.
 21 THE COURT: AND WHO GETS THE CHECK? WHO
 22 STARTS GETTING CHECKS ON THE 40TH DAY AFTER THE FINAL
 23 APPROVAL?
 24 MR. APTON: WELL SO, YOUR HONOR, THE
 25 CHECKS WOULD GO DIRECTLY FROM THE CLAIMS ADMIN TO THE

1 CLASS MEMBERS.
 2 THE COURT: TO THE CLASS MEMBERS
 3 DIRECTLY.
 4 MR. APTON: YEAH.
 5 THE COURT: IS THAT SORT OF ON A ROLLING
 6 BASIS BECAUSE YOU HAVE VETTED THE ONES THAT DON'T HAVE
 7 ANY PROBLEMS? OR HOW DOES THAT WORK?
 8 MR. APTON: NO. ONCE EVERYTHING IS
 9 VETTED, ONCE THE MATH IS DONE, EVERYONE'S PROPORTIONATE
 10 LIST IS DONE, OUR MOTION FOR DISTRIBUTION WILL CONTAIN
 11 MAYBE THREE EXHIBITS. ONE WILL BE A LIST OF ALL THE
 12 APPROVED CLAIMS THAT ARE TIMELY AND GETTING PAID, NOT
 13 NAMES BUT CLAIM NUMBERS. AND THEN WITH YOUR HONOR'S
 14 APPROVAL, CHECKS WILL ALL GO OUT AT ONE TIME. THEY WILL
 15 HAVE TYPICALLY 180 DAYS TO CASH THE CHECKS. ANY CHECKS
 16 THAT ARE NOT CASHED, OUR CLAIMS ADMINISTRATOR WILL MAKE
 17 REASONABLE EFFORTS TO GET THEM NEGOTIATED. AND THEN
 18 WITH THE MONEY THAT IS LEFT OVER IN THE FUND --
 19 THE COURT: COME BACK FOR FINAL
 20 DISTRIBUTION.
 21 MR. APTON: RIGHT, YOUR HONOR.
 22 THE COURT: ALL RIGHT.
 23 MR. APTON: YOUR HONOR, SORRY. I THINK
 24 YOUR HONOR SAID "FINAL DISTRIBUTION." IF THE AMOUNT
 25 LEFT IN THE SETTLEMENT FUND IS NOT -- IS TOO LOW TO

1 FEASIBLY MAKE A SECOND DISTRIBUTION, AT THAT TIME WE
 2 WOULD ASK FOR THE CY PRES AND JUST CLOSE THE SETTLEMENT
 3 FUND.
 4 THE COURT: OKAY.
 5 I'M GOING TO LET YOU PRESENT THE ARGUMENT
 6 THAT YOU RAISED, IF YOU WISH TO, UNDER HEFLER, THIS IDEA
 7 THAT YOU CAN SEAL THE SUPPLEMENTAL AGREEMENT. I DON'T
 8 HAVE A SUPPLEMENTAL AGREEMENT YET, RIGHT?
 9 MR. APTON: NO, YOUR HONOR DOES NOT.
 10 THE COURT: THAT WOULD BE SOMETHING THAT
 11 IS DONE WHEN? WHEN WOULD I NEED TO REVIEW THAT? IN
 12 OTHER WORDS, ARE YOU DESCRIBING THAT IN YOUR NOTICE?
 13 MR. APTON: YOUR HONOR, WE I BELIEVE
 14 REFERENCED THAT A SUPPLEMENTAL AGREEMENT HAS BEEN
 15 ENTERED INTO. THE TERMS OF THAT AGREEMENT -- WELL,
 16 FIRST OF ALL, THE AGREEMENT IS NOT FILED WITH THE COURT,
 17 RIGHT NOW AT LEAST. AND WE DO NOT DISCLOSE THE TERMS OF
 18 THAT AGREEMENT, SPECIFICALLY THE ONE PROVISION IN THERE
 19 THAT IS CRITICAL TO THIS WHOLE TERMINATION EVENT.
 20 YOUR HONOR, THE REASON WHY IT'S TYPICALLY
 21 KEPT UNDER SEAL IS TO AVOID PEOPLE FROM THREATENING
 22 OBJECTIONS, THREATENING TO, QUOTE UNQUOTE, "BLOW UP THE
 23 SETTLEMENT" IF THEY DON'T GET SPECIAL CONSIDERATION. SO
 24 THAT IS TYPICALLY WHY WE KEEP IT TO OURSELVES.
 25 FOR EXAMPLE, THE WAY THESE AGREEMENTS

1 WORK IS THERE IS USUALLY A THRESHOLD THAT IS SET,
 2 WHETHER IT BE -- IF THERE IS A 2 PERCENT OF THE DAMAGED
 3 SHARES THAT EXCLUDE THEMSELVES FROM THE SETTLEMENT OR
 4 WHETHER IT IS 10 PERCENT, THAT PERCENT IS A MEANINGFUL
 5 NUMBER FOR DEFENDANTS. IT REPRESENTS A NUMBER THAT
 6 PRESENTS TO DEFENDANTS SOME RISK OF ADDITIONAL
 7 LITIGATION, AND IT THREATENS THE WHOLE CONCEPT OF BUY-IN
 8 GLOBAL EASIER. ASSUMING 10 PERCENT IN THIS CASE, IF
 9 OUTSIDERS KNOW THAT THAT IS THE LEVEL THEY NEED TO HIT
 10 IN ORDER TO REALLY HAVE LEVERAGE, THEY MAY ASSEMBLE A
 11 GROUP OF SHAREHOLDERS CAPABLE OF CONSTITUTING 10 PERCENT
 12 OF THE DAMAGED SHARES, AND THEN WRITE LETTERS TO US
 13 SAYING, YOU KNOW, WE DON'T REALLY AGREE WITH THE TERMS
 14 OF YOUR SETTLEMENT. WE MAKE THE FOLLOWING DEMANDS. LET
 15 US KNOW WHAT YOU WANT TO DO. SO WE DON'T -- WE KEEP
 16 THESE THRESHOLDS PRIVATE IN ORDER TO AVOID BAITING
 17 PEOPLE WHO MIGHT SEE THIS IS AS SOME SORT OF MEANS TO A
 18 WINDFALL OF SOME SORT.
 19 THE COURT: BUT IN SOME SENSE THESE CASES
 20 ARE BEFORE THE AMENDMENTS, WHICH REALLY REQUIRES THE
 21 COURT TO SPEND A LOT OF TIME LOOKING AT GREENMAIL,
 22 LOOKING AT THE PAYOFFS OF OBJECTORS TO GET A SETTLEMENT,
 23 PEOPLE GETTING MORE MONEY -- PEOPLE GETTING MORE MONEY
 24 TO OBJECT THAN THEY WOULD IF THEY WERE IN A CLASS.
 25 THE REVISED RULE 23 BRINGS THE COURT

1 RIGHT IN THE MIDDLE OF THAT, AS YOU KNOW, MIDDLE OF THAT
 2 PROCESS. I DON'T KNOW IF THE SAME CONCERNS ARE NOW
 3 APPLICABLE. I THINK IF THEY WANT TO GET PAID OFF AND
 4 YOU SAID NO, RIGHT, WE ARE NOT PAYING YOU OFF, THAT
 5 WOULD BE -- IN SOME SENSE LAND ON MY DESK. IF YOU DID
 6 PAY THEM OFF, THAT MAY LAND ON MY DESK TOO.
 7 MR. APTON: I THINK THAT WOULD BE MORE
 8 LIKELY TO LAND ON YOUR DESK.
 9 THE COURT: THAT'S RIGHT. SO I DON'T
 10 KNOW HOW I CAN KEEP -- IN THIS CURRENT AGE, KEEP
 11 THE ABILITY OF THAT AWAY FROM THE PUBLIC. I APPRECIATE
 12 YOU ARE SAYING YOU MAY BE BAITING THEM. BUT THIS IS NOT
 13 A 41-PERSON CLASS. IT'S GOING TO TAKE A SIZABLE GROUP
 14 OF PEOPLE OR SHARES TO TRIGGER THE DEFENDANT'S ABILITY
 15 OR OPTION.
 16 MR. APTON: TRUE, YOUR HONOR.
 17 THE COURT: SO LET ME DO THIS. WHAT IS
 18 THE PRESENT STATUS OF DISCLOSING THAT PROVISION TO THE
 19 CLASS? I WAS TRYING TO GO THROUGH THIS. HOW WOULD IT
 20 BE DISCLOSED?
 21 MR. APTON: IT WOULD NOT BE DISCLOSED
 22 RIGHT NOW.
 23 THE COURT: NOT AT ALL. IF I ORDER IT TO
 24 BE DISCLOSED, HOW WOULD IT BE DISCLOSED? IN A NOTICE?
 25 MR. APTON: I SUPPOSE I WOULD HAVE TO

1 SPEAK WITH DEFENSE BUT...
 2 THE COURT: LET ME ASK YOU THIS. WHAT
 3 I'M LOOKING FOR IS THIS. ALL I CAN DO, CANDIDLY, IS
 4 PROTECT THE RECORD IN COURT, WHAT I'M REVIEWING. I
 5 CAN'T SEAL SOMETHING. I CANNOT IN MY VIEW SEAL THIS.
 6 IT IS NOT IN MY CONSIDERATION. I DON'T CARE WHAT YOU
 7 SAY IN THE NOTICE. THE QUESTION IS, IS ANY DOCUMENT
 8 PRESENTLY FILED IN COURT HAVE THAT AGREEMENT? THE
 9 ANSWER IS NO.
 10 MR. APTON: THE PROVISION OF IT, NO. THE
 11 AGREEMENT, NO. THE PROVISION, THE PERCENTAGE, THE BLOW
 12 PROVISION, AS WE CALL IT, NO. THERE IS NOTHING. THERE
 13 IS REFERENCE TO IT, THOUGH.
 14 THE COURT: THAT IS HOW I FOUND OUT ABOUT
 15 IT. SO I GUESS THE QUESTION IS -- I THINK WHAT YOU ARE
 16 ESSENTIALLY DOING IS, IF I TELL YOU TO SUPPLEMENT YOUR
 17 PRESENT MOTION BY DESCRIBING IT AS PART OF THE THING, I
 18 THINK YOU MAY DRAW ATTENTION TO IT, BUT MAYBE NOT.
 19 MAYBE I JUST SAY, YOU SHALL FILE A REVISED MOTION AND
 20 TELL ME THE WHOLE THING. MAYBE YOU GUYS COME UP WITH A
 21 NEW CY PRES, AND JUST REVISE IT AND PUT IT IN THERE. MY
 22 POINT IS, IF THIS IS GOING TO BE ON -- IT'S GOING TO BE
 23 SOMETHING I MAY NEED TO CONSIDER LATER AND I DON'T WANT
 24 THE PUBLIC NOT TO KNOW THAT I LOOKED AT IT UNDER
 25 AVANDIA. THAT IS MY TEST. I'M NOT NECESSARILY SAYING

1 THAT -- SINCE YOU ARE DIRECTING EVERYBODY, THERE IS A
 2 WEBSITE HERE OR --
 3 MR. APTON: THERE WILL BE, YOUR HONOR.
 4 THE COURT: THAT'S GOING TO PUT THE
 5 AGREEMENT ON IT?
 6 MR. APTON: THE SUPPLEMENTAL AGREEMENT?
 7 THE COURT: WELL, IT'S GOING TO PUT THE
 8 MOTION ON IT?
 9 MR. APTON: ALL DOCUMENTS RELATED TO THE
 10 SETTLEMENT WILL BE ON THAT WEBSITE, EXCEPT THE
 11 SUPPLEMENTAL AGREEMENT, AS IT STANDS RIGHT NOW.
 12 THE COURT: DEFENSE, THIS IS YOUR
 13 POSITION? DO YOU WANT SOME PART OF THE AGREEMENT UNDER
 14 SEAL?
 15 MR. SOLUM: YOUR HONOR, I THINK TYPICALLY
 16 PARTIES AGREE. I THINK WE CAN GO BACK AND FORTH ON
 17 WHETHER IT HELPS US OR THEM. I THINK IT MAY BE VIEWED
 18 AS A LITTLE BIT OF A POTENTIAL KIND OF STICKUP FOR THE
 19 PLAINTIFFS BECAUSE THEN YOU HAVE OTHER PLAINTIFFS'
 20 LAWYERS COME IN AND SAY GOSH, I HAVE COLLECTED. IN THE
 21 EXAMPLE THAT PLAINTIFF'S COUNSEL PROVIDED 10 PERCENT OF
 22 THE SHAREHOLDERS AND SO WE WANT KIND OF A PIECE OF THE
 23 SETTLEMENT. I DO THINK IT CAN BE CONSTRUCTIVE TO NOT
 24 DISCLOSE IT. I THINK TO THE EXTENT IF YOUR HONOR IS
 25 THINKING ABOUT MAKING SURE THE COURT IS AWARE OF THE

1 PROVISIONS AND IT'S NOT UNDER SEAL, MAYBE THERE IS A WAY
 2 TO DO THIS. CURRENTLY IS IT CONTEMPLATED THE WEBSITE IS
 3 GOING TO POST THE MOTION FOR PRELIMINARY APPROVAL?
 4 MR. APTON: YES.
 5 MR. SOLUM: MAYBE IF THERE WAS A
 6 SUPPLEMENTAL BRIEF, WE CAN JUST PUT IT IN THE PUBLIC,
 7 BUT MAYBE NOT GET POSTED ON THE CY PRES ISSUE, THIS
 8 ISSUE. MAYBE THAT IS A WAY TO DO IT, YOUR HONOR.
 9 THE COURT: WELL, WHAT I'M SUGGESTING IS
 10 MAYBE A LITTLE BETTER WAY, IS JUST TO REVISE THE MOTION,
 11 THE SUPPLEMENTAL MOTION, AND JUST PUT THE SAME MOTION
 12 IN, RIGHT, AND JUST PUT IT IN HERE SOMEWHERE. IN OTHER
 13 WORDS, SOMEWHERE THAT I LATER ON IN THE FINAL FAIRNESS
 14 HEARING, I SAY, OH, YES, AT THE PRELIMINARY APPROVAL
 15 STAGE AT PAGE 23 OF THE MOTION I LEARNED ABOUT A
 16 SUPPLEMENTAL AGREEMENT THAT IS GOING TO SAY X. SO NO
 17 ONE CAN EVER SAY, HOW DID THE JUDGE EVEN KNOW THAT? AM
 18 I RIGHT? THAT IS WHAT I'M GETTING AT. AND THEN YOU
 19 POST THIS ON THE WEB. IF SOMEBODY FINDS IT, THEY FIND
 20 IT, THAT'S APPROPRIATE. BUT OTHERWISE, I'M NOT GOING TO
 21 LET YOU HAVE A SUPPLEMENTAL AGREEMENT THAT COULD BLOW UP
 22 A DEAL AND NOT HAVE IT ON THE RECORD TODAY OR TOMORROW
 23 OR WHENEVER YOU FILE THIS REVISED MOTION. I DON'T CARE
 24 IF YOU MAKE IT JUST A SUPPLEMENT. I DON'T. BUT THAT
 25 MAY DRAW MORE ATTENTION TO IT THAN JUST FILING A REVISED

1 MOTION.
 2 MR. SOLUM: UNDERSTOOD, YOUR HONOR.
 3 THE COURT: YOU UNDERSTAND WHAT I'M
 4 SAYING?
 5 MR. SOLUM: YES.
 6 THE COURT: SO AGAIN, YOU DON'T NEED -- A
 7 STIPULATION OF SETTLEMENT DOES NOT TO BE NECESSARILY
 8 ADDRESSED. IT'S THE MOTION THAT DESCRIBES TO ME WHAT
 9 MAY HAPPEN UNDER ITS CONDITIONS, AS IT GOES FORWARD.
 10 YOU ARE GOING TO SAY THERE IS A SUPPLEMENTAL AGREEMENT.
 11 THE PARTIES HAVE REACHED A SUPPLEMENTAL AGREEMENT SAYING
 12 X. OTHERWISE I'M GOING TO HAVE A REAL PROBLEM FOR BOTH
 13 OF YOUR SIDES IF THERE IS A CHALLENGE TO IT AND I DON'T
 14 HAVE IT ON THE PUBLIC RECORD.
 15 MR. SOLUM: UNDERSTOOD, YOUR HONOR.
 16 THE COURT: SO HOWEVER YOU WANT TO DO
 17 THAT. I'M GLAD TO DO IT WHATEVER WAY. BUT I JUST HAVE
 18 TO HAVE IT SOMEWHERE THAT COME MID JANUARY WE DON'T HAVE
 19 SOMEBODY SAYING WHERE DID IT COME FROM?
 20 MR. APTON: YOUR HONOR, WE CAN FILE AN
 21 AMENDED BRIEF IN SUPPORT OF THE MOTION AND WE CAN MAKE
 22 THAT DISCLOSURE IN THERE. MY THINKING RIGHT NOW IS JUST
 23 TO LIST THE THRESHOLD AT WHICH THE SETTLEMENT OR THE
 24 DEFENSE HAVE A RIGHT TO TERMINATE THE SETTLEMENT. THERE
 25 ARE SOME OTHER TERMS IN THERE, BUT THAT IS THE MEAT AND

1 POTATOES OF THE AGREEMENT.
 2 THE COURT: LET'S NOT SPI TE OURSELVES
 3 BEGINNING IN JANUARY.
 4 IS THERE ANYTHING ELSE IN THERE THAT IS
 5 MATERIAL IN YOUR VIEW IF YOU WERE AN OBJECTOR'S COUNSEL?
 6 MR. APTON: NO. THERE IS ONE PARAGRAPH
 7 THAT I'M THINKING OF WHICH SPECIFIES THE THRESHOLD AS
 8 WELL AS HOW MANY SHARES OR WHAT THE SHARES HAVE TO BE TO
 9 QUALIFY FOR THAT THRESHOLD. EVERYTHING ELSE IS --
 10 THE COURT: WELL, LOOK, HERE IS THE
 11 ISSUE. OKAY. IF I DON'T HAVE IT IN HERE -- I'M ASKING
 12 YOU TO BE AS SMART AND -- AS YOU NEED TO BE, BECAUSE IF
 13 SOMETHING WERE TO HAPPEN -- I'M NOT GOING TO SEAL IT.
 14 SO IF SOMETHING WERE TO HAPPEN AND I DON'T HAVE IT ON
 15 THE PUBLIC RECORD, YOU ARE GOING TO GET TO MID JANUARY
 16 AND I'M GOING TO SAY SORRY, GUYS, NOW I NEED TO DO THE
 17 WHOLE THING OVER AGAIN. SO DISCLOSE WHAT YOU THINK YOU
 18 NEED TO DISCLOSE AS FULLY AS POSSIBLE AS TO ANYTHING
 19 THAT COULD BE -- THAT YOU THINK IS GOING TO COME BACK.
 20 I'M NOT REQUIRING YOU TO FILE THE AGREEMENT.
 21 MR. APTON: UNDERSTOOD.
 22 THE COURT: I'M JUST ASKING YOU TO
 23 DESCRIBE THE AGREEMENT IN SUFFICIENT TERMS THAT THE
 24 READER OF THE AGREEMENT WOULD UNDERSTAND WHAT'S
 25 HAPPENING.

1 MR. APTON: WE WILL DO THAT, YOUR HONOR.
 2 THE COURT: THAT WAY IT CAN BE APPROVED.
 3 FRANKLY, FOR EVERYBODY'S BENEFIT HERE -- I KNOW YOU HAVE
 4 TO GET BACK TO YOUR OFFICES, THE EARLIER THE BETTER SO
 5 THAT WE CAN GET THIS TRAIN MOVING OUT OF THE STATION FOR
 6 YOUR CLAIMS ADMINISTRATORS, NOTICES, ALL THAT KIND OF
 7 STUFF, SO WE CAN GET A SETTLEMENT GOING RATHER THAN
 8 WAITING MUCH LONGER IF WE HAVE TO. SO TO THE EXTENT YOU
 9 CAN --
 10 OR WE CAN DO THIS. WERE YOU INTENDING
 11 THE TRANSCRIPT OF TODAY'S HEARING TO GO ON THAT WEBSITE?
 12 MR. APTON: I WAS NOT, YOUR HONOR.
 13 THE COURT: IS THERE ANY OBJECTION TO
 14 DOING THAT?
 15 MR. APTON: I DO NOT HAVE AN OBJECTION,
 16 YOUR HONOR.
 17 THE COURT: COUNSEL?
 18 MR. SOLUM: NO OBJECTION, YOUR HONOR.
 19 THE COURT: ALL RIGHT. THEN I WILL
 20 DIRECT THAT YOU GET THE TRANSCRIPT, PLACE THE TRANSCRIPT
 21 ON THERE. NOW JUST DESCRIBE TO ME VERY BRIEFLY WHAT THE
 22 THRESHOLD IS.
 23 MR. APTON: 5 PERCENT OF DAMAGED SHARES,
 24 AND DAMAGED SHARES BEING THOSE THAT WERE PURCHASED
 25 DURING THE CLASS PERIOD AND HELD OVER THE LAST DAY OF

1 THE CLASS PERIOD, I.E. THE DROP THAT OCCURRED ON
 2 AUGUST 20TH.
 3 THE COURT: AND SHOULD THAT THRESHOLD BE
 4 TRIGGERED, WHAT COULD HAPPEN?
 5 MR. APTON: DEFENDANTS HAVE THE OPTION TO
 6 TERMINATE THE SETTLEMENT. ALL PARTIES REVERT TO THEIR
 7 POSITIONS I THINK THE DAY OF OR THE DAY BEFORE THE
 8 STIPULATION WAS ENTERED INTO. THEN THE LITIGATION
 9 PROCEEDS. I BELIEVE THAT PLAINTIFFS HAVE AN OPPORTUNITY
 10 TO TRY TO CONVINCING DEFENDANTS NOT TO TERMINATE, BUT IT
 11 IS DEFENDANT'S RIGHT TO TERMINATE.
 12 THE COURT: DEFENDANTS, DO YOU HAVE ANY
 13 OBJECTION TO THE REPRESENTATION JUST MADE ON THE RECORD
 14 HERE TODAY?
 15 MR. SOLUM: NO, YOUR HONOR.
 16 THE COURT: SO WHAT WE ARE GOING TO DO,
 17 I'M GOING TO -- THE ONLY THING WE'RE GOING TO DO THEN IS
 18 PLACE THIS -- I'M GOING TO REFERENCE IN MY ORDER ALONG
 19 WITH REPRESENTATIONS MADE IN OPEN COURT TODAY, IS
 20 APPROVED, BUT THEN THAT TRANSCRIPT IS GOING TO GO ON THE
 21 WEBSITE. OKAY?
 22 MR. APTON: UNDERSTOOD, YOUR HONOR. WE
 23 WILL PUT IT UP ON THE WEBSITE.
 24 THE COURT: THAT WAY -- WHEN IS THE
 25 WEBSITE GOING UP?

1 MR. APTON: I DON'T HAVE A PARTICULAR
 2 DATE THAT IT WOULD BE LIVE, YOUR HONOR, BUT IT USUALLY
 3 COINCIDES WITH WHEN THE NOTICES GO OUT, SO 14 DAYS IF
 4 THAT IS WHAT YOUR HONOR --
 5 THE COURT: AT OR AROUND THE TIME THAT IT
 6 STARTS GOING OUT.
 7 MR. APTON: RIGHT.
 8 THE COURT: IT DOES NOT REALLY MATTER
 9 UNTIL THEN. BUT ONCE IT'S IN THE MAIL, THEY WILL BE
 10 ABLE TO GO TO THE WEBSITE.
 11 MR. APTON: SURE. ABSOLUTELY.
 12 THE COURT: PUBLICATION, WHEN DOES THAT
 13 GO UP?
 14 MR. APTON: PUBLICATION I THINK IS THE
 15 SAME TIME, YOUR HONOR, MAYBE SHORTLY AFTER.
 16 THE COURT: I THOUGHT IT WAS
 17 CONTEMPORANEOUS WITH THE MAILING BUT --
 18 MR. APTON: I THINK IT IS, YOUR HONOR.
 19 NO. THERE IS A SEPARATE PROVISION FOR YOUR HONOR TO SET
 20 A TIME.
 21 THE COURT: WELL, I'M GOING TO MAKE IT --
 22 IT WILL BE AT THE SAME TIME. SO ALL RIGHT.
 23 SO THAT WAY ANYBODY THAT GETS IT IN THE
 24 MAIL OR SEES IT ON THE BUSINESS WIRE, WILL KNOW THAT --
 25 THE ORDER, I'M SURE, OF MY PRELIMINARY APPROVAL, IS ON

1 THE WEBSITE.
 2 MR. APTON: IT WOULD BE, YES.
 3 THE COURT: BECAUSE IT WILL SAY AND FOR
 4 REPRESENTATIONS MADE IN COURT AND FOR REASONS -- SO THE
 5 WORLD WILL BE ON NOTICE THAT -- THE WORLD WHO WANTS TO
 6 LOOK AT IT WILL BE ON NOTICE AND THE TRANSCRIPT AS WELL
 7 WILL BE PLACED ON THE -- YOU ORDERING IT, WILL BE PLACED
 8 ON THE DOCKET.

9 MR. APTON: YES, YOUR HONOR, ALL THE
 10 STIPULATIONS OF SETTLEMENT, THE EXHIBITS, THE BRIEF IN
 11 SUPPORT OF PRELIMINARY APPROVAL, THIS ORDER TODAY, THE
 12 TRANSCRIPT FROM TODAY AND ALL MOTIONS OR PAPERS GOING
 13 FORWARD IN CONNECTION WITH THE SETTLEMENT WILL BE.

14 THE COURT: ANYTHING FURTHER THAT I
 15 SHOULD CONSIDER, PLAINTIFF? ANY OTHER CONCERNS YOU HAVE
 16 BEFORE I SEE YOU AGAIN IN MID OR LATE JANUARY?

17 MR. APTON: NO, I DO NOT HAVE ANY FURTHER
 18 CONCERNS, YOUR HONOR. THE ONE THING THAT WE DID NOT
 19 SPEAK ABOUT, WHICH I JUST WANT TO MAKE SURE IS ON THE
 20 RECORD, IS THE PROVISIONAL CERTIFICATION OF THE CLASS.

21 THE COURT: IT WAS NOT OBJECTED TO,
 22 CORRECT, FROM THE DEFENSE?

23 MR. SOLUM: NO, YOUR HONOR, THOUGH I JUST
 24 WOULD ADD, GIVEN THE COLLOQUY AT THE BEGINNING OF THE
 25 HEARING IN TERMS OF WHO IS BOUND BY A SETTLEMENT,

1 WHETHER PEOPLE ARE GOING TO BE GIVEN CONSIDERATION AND
 2 HOW IT IS. I JUST OBSERVE, YOUR HONOR, THAT DEFENDANTS
 3 MAKE A JUDGMENT IN DECIDING TO MOVE FORWARD WITH THE
 4 SETTLEMENT, THEY ARE GOING TO GET A PIECE IN EXCHANGE
 5 FOR PAYMENT.

6 AS AN ALTERNATIVE, PARTICULARLY IN THIS
 7 CASE, THE DEFENDANTS COULD GO AHEAD BY CLASS CERT,
 8 POTENTIALLY LOSE, CLASS CERTIFICATION IS OFTEN GRANTED
 9 IN SECURITIES CASES, AND THEN MOVE FORWARD WITH SUMMARY
 10 JUDGMENT. AND I THINK DEFENSE COUNSEL FELT STRONGLY
 11 THAT SUMMARY JUDGMENT COULD WELL BE ENTERED. I DON'T
 12 MEAN TO SPEAK FOR THE COURT, OF COURSE, OR BE
 13 PRESUMPTUOUS. BUT DEFENSE COUNSEL MAKES A JUDGMENT IN
 14 THAT REGARD ABOUT WHETHER TO SETTLE OR MOVE FORWARD WITH
 15 THAT PROCESS.

16 I'D ALSO OBSERVE THAT IF WE MOVE FORWARD
 17 WITH THE SUMMARY JUDGMENT PROCESS AND IF CLASS CERT WAS
 18 GRANTED AND SUMMARY JUDGMENT WAS GRANTED, THE FULL CLASS
 19 WOULD BE BOUND BY AN ADVERSE JUDGMENT AND THEIR CLAIMS
 20 WOULD GO AWAY WITH NO ACTION BY THEM. AND SO AS AN
 21 ALTERNATIVE TO THAT, DEFENSE COUNSEL THOUGHT LET'S MOVE
 22 FORWARD WITH THE SETTLEMENT ON THIS BASIS, PROVIDE THE
 23 CLASS AN OPPORTUNITY TO RECEIVE SOME CONSIDERATION. I
 24 SUPPOSE, YOUR HONOR, WE CAN GO BACK AND FORTH WHETHER
 25 THE OPTION TO GET THAT CONSIDERATION SHOULD ONE FILL OUT

1 A PIECE OF PAPER IS IN FACT A SELF CONSIDERATION FOR THE
 2 PURPOSES OF CONTRACT LAW. BUT I ACTUALLY THINK THE LENS
 3 IS JUST FRCP 23. WHAT DID THE SUPREME COURT DO WHEN IT
 4 ENACTED THAT RULE TO ALLOW US TO MOVE FORWARD WITH CLASS
 5 ACTIONS INCLUDING OPT-OUT CLASS ACTIONS AND SETTLEMENTS
 6 PURSUING THAT.

7 SO WITH THAT, YOUR HONOR, NO OBJECTION TO
 8 THE PROPOSAL.

9 THE COURT: I APPRECIATE YOU MAKING THAT
 10 ARGUMENT. THAT IS A FAIR POINT CONCERNING WHAT WOULD
 11 HAPPEN ON SUMMARY JUDGMENT. YOU ARE RIGHT. IF WE MOVE
 12 FORWARD WITH THE SUMMARY JUDGMENT PROCESS AND IF CLASS
 13 CERT WAS GRANTED AND SUMMARY JUDGMENT WAS GRANTED, THE
 14 FULL CLASS WOULD BE BOUND BY AN ADVERSE JUDGMENT AND
 15 THEIR CLAIMS WOULD GO AWAY WITH NO ACTION BY THEM. THAT
 16 IS A FAIR POINT.

17 AS FAR AS THE ELEMENTS FOR CLASS
 18 SETTLEMENT, NUMEROSITY, TYPICALITY, COMMONALITY,
 19 ADEQUACY, THOSE TYPES OF THINGS, I DON'T SEE ANY
 20 OBJECTION. I THINK AT THE BEGINNING OF TODAY'S
 21 DISCUSSION MY CONCERN WAS MAKING SURE CLASS COUNSEL
 22 BEFORE I APPOINTED THEM IS AWARE OF THE ISSUE THAT
 23 HAPPENS IN THESE CLAIMS SETTLEMENT PROCESSES. AND I
 24 THINK YOU DEMONSTRATED TO ME THAT YOU UNDERSTAND THE
 25 CONCERN THAT THE COURT HAS. I'M GOING TO BE LOOKING AT

1 FINAL APPROVAL, BUT YOU UNDERSTAND THE ISSUE. SO THAT
 2 IS WHAT I REALLY NEED TO KNOW. IF YOU DID NOT
 3 UNDERSTAND THE ISSUE, THEN I WOULD BE CONCERNED ABOUT
 4 YOUR ABILITY TO PROCEED. NOTWITHSTANDING YOUR
 5 EXPERIENCE IS EXTRAORDINARY, I WOULD BE CONCERNED THAT
 6 YOU DON'T APPRECIATE MY CONCERN IN JANUARY. SO AS LONG
 7 AS YOU UNDERSTAND MY CONCERN AND I THINK YOU DO, YOU
 8 ADDRESSED IT, I'M COMFORTABLE WITH YOUR ABILITY TO MOVE
 9 FORWARD.

10 WE HAVE ALREADY REVIEWED THE NAMED
 11 PLAINTIFFS' ABILITY TO PROCEED. ALL OF THOSE ISSUES
 12 CONCERNING COMPENSATION, BOTH AS TO A SERVICE FEE AND AS
 13 TO A PAYMENT TO YOU, WILL BE ADDRESSED IN A HEARING.

14 ONE SORT OF TIP IS THAT, PLEASE BE
 15 MINDFUL THAT I CAREFULLY REVIEW THE AFFIDAVITS ON A
 16 THIRD CIRCUIT BASIS WHICH SUPPORTS YOUR FEE. I'M GOING
 17 TO LIKELY DO A LODESTAR ANALYSIS COMPARING -- I KNOW YOU
 18 ARE LOOKING FOR A PERCENTAGE, BUT I'M GOING TO DO THAT.
 19 SO, YOU KNOW, TO THE EXTENT YOU WANT TO HAVE THAT, MAKE
 20 SURE YOU HAVE YOUR AFFIDAVITS. YOU GUYS DO THIS ALL THE
 21 TIME, BUT MAKE SURE YOU HAVE YOUR AFFIDAVITS. SOMETIMES
 22 I SEE, IT MAY NOT BE A BAD IDEA IF YOU THINK THERE IS
 23 GOING TO BE A CHALLENGE, PARTICULARLY IF THERE IS AN
 24 OBJECTION COMING OUT, THEN PARAGRAPH, THE AFFIDAVIT TO
 25 THE EXTENT THAT SOMEBODY IS GOING TO CHALLENGE THE

1 LODESTAR NUMBER. I HAVE NO IDEA. I KNOW YOU HAVE DONE
 2 A LOT OF WORK. SO I'M NOT QUESTIONING THE AMOUNT OF
 3 HOURS. I'M TALKING MORE ABOUT THE FEES. THAT HAS TO BE
 4 A LODESTAR COMPARISON.
 5 SO I HAVE DONE SO MANY CLASS ACTIONS,
 6 IT'S REALLY KIND OF FUNNY. MANY CLASS ACTIONS I GET TO
 7 THE END OF IT AND THE ATTORNEYS' FEES, AS THEY SHOULD,
 8 ARE THE TAIL, AND THEN THE LAWYERS SAYS OH, YES, I WANT
 9 X AMOUNT OF DOLLARS AND THEY FORGET TO GIVE ME ANY PROOF
 10 OF THAT. SO BE CAREFUL WHEN YOU COME IN. YOU KNOW HOW
 11 TO DO IT. GIVE ME THE AFFIDAVITS, GIVE ME YOUR BILLS,
 12 ALL THAT KIND OF STUFF, SO I CAN COMPARE AND PARAGRAPH
 13 THE AFFIDAVIT.

14 MR. APTON: WHEN YOU SAY, "THE BILLS,"
 15 WHAT DO YOU MEAN?

16 THE COURT: NOT BILLS, YOUR RECORD OF
 17 TIME.

18 MR. APTON: SURE.

19 THE COURT: YOUR TIME RECORDS. TELL ME
 20 THAT YOU DID THE WORK. YOU SAY YOU DID 500 HOURS, SHOW
 21 ME THE 500 HOURS.

22 MR. APTON: SURE.

23 THE COURT: I'M NOT ASKING FOR -- I'M
 24 JUST ASKING TO COMPARE IT. IF YOU WANT ME TO -- I NEED
 25 A LODESTAR ANALYSIS. AND TO COMPARE, I NEED TO KNOW

1 THERE ARE REAL HOURS. THAT IS ALL.

2 MR. APTON: IS YOUR HONOR CONTEMPLATING
 3 RECEIVING OUR BILLING RECORDS OR JUST A DESCRIPTION OF
 4 THE WORK WE DID?

5 THE COURT: I CONTEMPLATE SEEING YOUR
 6 BILLING RECORDS. I CONTEMPLATE, TO THE EXTENT THAT YOU
 7 CAN REDACT -- I MEAN THERE IS VERY LITTLE
 8 ATTORNEY/CLIENT IN THE THIRD CIRCUIT IN BILLS. SO YOUR
 9 BILLING RECORDS. SO I'M LOOKING TO SEE THAT. I'M NOT
 10 INTERESTED IN WRITING AN OPINION THAT CRITICIZES YOU FOR
 11 OVERBILLING OR FRANKLY -- I DON'T KNOW IF THEY ARE,
 12 OFTENTIMES MISS-BILLING. SOME THINGS END UP IN THIS
 13 BILL THAT BELONG IN ANOTHER CASE. I'M NOT INTERESTED IN
 14 DOING THAT. WHAT I AM INTERESTED THOUGH IS MAKING SURE
 15 THE AMOUNT OF HOURS THAT YOU SAY IS A LODESTAR
 16 COMPARISON IS ACTUALLY JUSTIFIED. I CAN'T REALLY DO
 17 THAT BY A NARRATIVE AFFIDAVIT.

18 MR. APTON: YOUR HONOR, WHAT WE HAVE DONE
 19 IN THE PAST, WHICH SOME JUDGES HAVE APPRECIATED, MAYBE
 20 YOUR HONOR WOULD LIKE THIS, IS WE ACTUALLY BREAK UP OUR
 21 TIME AMONG SEVERAL CATEGORIES, INVESTIGATION --

22 THE COURT: WHO DID THE WORK, RIGHT?

23 MR. APTON: I'M SORRY?

24 THE COURT: WHO DID THE WORK?

25 MR. APTON: YES, AND WHICH ATTORNEYS HAVE

1 DONE THE WORK, AND HOW MANY HOURS ARE SPENT IN EACH
 2 CATEGORY, AND SOMETIMES IT'S -- JUDGES PREFER THAT
 3 ACTUALLY OVER SEEING BILLING RECORDS.

4 THE COURT: I'M GOING TO BE -- GO BACK TO
 5 MY MAGIC PARTNER DAYS AND I'M GOING TO ASK THAT YOU GIVE
 6 ME BILLING RECORDS. IT'S EASIER FOR YOU IN SOME SENSE.
 7 IT IS ALSO EASIER FOR ME TO ACTUALLY SEE -- BECAUSE THE
 8 BILLING RECORD AT THE END IS GOING TO TELL ME YOUR NAME
 9 AND HOW MANY HOURS YOU WORK. AND I CAN LOOK THROUGH AND
 10 SEE WHAT YOU ACTUALLY DID. I THINK IT'S MORE FAIR TO
 11 THE CLASS TO KNOW EXACTLY WHAT WENT ON IN A DAY-TO-DAY
 12 BASIS THAN TRY TO HAVE YOU SUMMARIZE IT. IF YOU WISH TO
 13 SUMMARIZE IT AS AN ANCILLARY MATTER, YOU WANT TO SPEND
 14 THAT TIME, PLEASE DO. I'M NOT GOING TO -- I'M GOING TO
 15 REQUIRE YOU TO GIVE ME BILLING RECORDS.

16 MR. APTON: YES.

17 THE COURT: IF YOU COULD WORK OUT -- IF
 18 THERE'S GOING TO BE REDACTION CONCERNS, LET ME KNOW,
 19 UNDER AVANDIA. TYPICALLY THERE IS NOT AT THAT STAGE.
 20 LET ME KNOW IF THERE IS.

21 MR. APTON: OKAY, YOUR HONOR.

22 THE COURT: ANYTHING ELSE I CAN ANSWER
 23 FOR YOU, SIR?

24 MR. APTON: NO, THANK YOU.

25 THE COURT: I APPRECIATE YOU BOTH BEING

1 SO WELL PREPARED. I DID NOT MEAN TO COME OUT ON A CASE
 2 THAT DID NOT HAVE THE BIGGEST MONEY VALUE AND THROW YOU
 3 INTO THE UNITED STATES HISTORY OF CONSTITUTIONAL DUE
 4 PROCESS CONCERN ON CLAIMS SETTLEMENT PROCESSES, BUT ONE
 5 OF THESE CASES IS GOING TO BE THE ONE.

6 I DON'T THINK IT'S THIS ONE. YOU GUYS
 7 ARE TELLING ME THAT AT LEAST NOT NOW, SHOWING ME WHY,
 8 BUT THAT SORT OF 500 PERSON CASE, THAT IS GOING TO BE
 9 THE SWEET SPOT, RIGHT, WHERE SOMEBODY IS GOING TO SAY
 10 WAIT A SECOND, WHY ARE WE DOING THIS? WHY AREN'T ALL
 11 500 PEOPLE GETTING \$30 OR \$10, WHATEVER THE MEDIAN IS.
 12 IN THIS CASE I DON'T SEE IT, BUT I WANTED THE RECORD TO
 13 BE CLEAR. THE RECORD WILL BE CLEAR AS THE TRANSCRIPT
 14 WILL BE PLACED ON THE DOCKET.

15 COUNSEL, I WISH YOU WELL FOR THE WEEKEND.
 16 THANK YOU VERY MUCH.

17 ALL COUNSEL: THANK YOU, YOUR HONOR.
 18 (HEARING CONCLUDED.)

19 I CERTIFY THAT THE FOREGOING IS A CORRECT
 20 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
 21 ABOVE-ENTITLED MATTER.

22 DATE OFFICIAL COURT REPORTER

23 SUZANNE R. WHITE

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