

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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IN RE:	)	
	)	
NATIONAL PRESCRIPTION	)	CASE NO. 1:17CV2804
	)	
OPIATE LITIGATION	)	

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TRANSCRIPT OF TELECONFERENCE PROCEEDINGS HAD BEFORE  
THE HONORABLE JUDGE DAN A. POLSTER, JUDGE OF SAID  
COURT, ON MONDAY, SEPTEMBER 16TH, 2019,  
COMMENCING AT 2:30 O'CLOCK P.M.

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PROCEEDINGS

THE COURT: Good afternoon, everyone.

I guess I want to — and we have a court reporter here. I think J & J suggested it. I think it is a good idea, so this will be transcribed. This is obviously the Opiate MDL 2804.

This is a discussion with counsel for the two Plaintiffs in the October trial and the eight Defendants we currently have.

Obviously, there is, at least one of these Defendants, a settlement has been announced. It may very well go through. There may be other settlements, but at the moment, we have eight, and I wanted to discuss a few things.

The trial documents are due September 25th. That's a week from Wednesday. The main thing I am looking for are relatively short trial briefs. I don't need a regurgitation of all the law and everything you had in those summary judgment motions.

I am really doing it to see — get a sense from each side how you are going to prove your case and how you are going to defend your case so I can follow what's going on. So I don't want more than ten pages.

The jury instructions, they are to be agreed

1 upon, and only if there are disagreements, then,  
2 you can highlight where you disagree. But I mean,  
3 RICO is established; Ohio RICO is established; same  
4 with conspiracy, public nuisance, the law should be  
5 clear.

6 Motions in limine are also due. I don't  
7 want hundreds of them. All right. I want — if there  
8 are a few important things that you think the Court  
9 should decide before trial that will streamline things,  
10 fine, but if I get a hundred motions in limine, I am just  
11 going to toss them all. I won't even read them, and my  
12 staff won't read them, so be circumspect about what you  
13 are doing. They should be short and succinct.

14 Someone asked a question about the length of  
15 time for opening statements. I guess I am looking to you  
16 for suggestions. I mean, opening statements are not  
17 closing arguments. They are a road map for your  
18 evidence. There are, you know, eight Defendants.

19 I don't want people repeating the same  
20 thing. Okay? So why don't you all — you can figure  
21 that out and give me some suggestions. If I have to set  
22 elements, I will, but I would rather hear what you say  
23 and suggest. You have got some of the best trial lawyers  
24 in the country.

25 And good lawyers know what to say, and that

1 — unless you are the most spellbinding orator on the  
2 planet, you much past 45 minutes, people are going to go  
3 to sleep. So I don't think they should be longer than  
4 that, and I really think 30 — I really think 30 minutes,  
5 particularly since the Defendants shouldn't be repeating  
6 what each of you are saying.

7           So if you focus on, sort of discuss with  
8 each other, you only need one person to make general  
9 points. You don't need all eight.

10           The main thing I wanted to discuss is public  
11 nuisance. And my objective from the start was to do  
12 everything I could to make the trial fair for all the  
13 parties.

14           And the prerequisite for that, a fair trial  
15 is that it be manageable and intelligible to a jury, and  
16 defense counsel pointed out multiple times that a trial  
17 of 22 Defendants with myriad claims was unworkable,  
18 unmanageable. I agreed.

19           I made it clear to the Plaintiffs that they  
20 had to streamline it. And that has happened. We are  
21 down from 22 Defendants to eight through severance,  
22 bankruptcy, settlements. It wouldn't surprise me if by  
23 the time we reach October 21 we will have fewer than  
24 eight, but eight is manageable.

25           I requested submissions the last week or two

1 on how to handle the public nuisance claims, and I want to  
2 complement everyone. They were short; they were well  
3 written; they were right to the point, and they helped me  
4 crystallize my thinking.

5 There was never a question that we were  
6 going to have a jury to decide federal and state RICO  
7 and conspiracy, and if they find liability on any of  
8 those claims, what damages? There was never any question  
9 about that. The issue was what to do about public  
10 nuisance.

11 This was highlighted in the submissions, but  
12 I want to make sure I am correct about this. It appears  
13 that there will be a very, very substantial overlap in  
14 the evidence that the Plaintiffs are going to introduce,  
15 the lay testimony, the expert testimony, the documents on  
16 the federal RICO, the state RICO, conspiracy and the  
17 public nuisance.

18 Is that correct from the Plaintiffs'  
19 side?

20 MR. WEINBERGER: Your Honor, this is  
21 Pete Weinberger, there is overlap. We agree.

22 THE COURT: All right. And I think  
23 substantial overlap. I don't think we are talking about  
24 two — you know, there is substantial overlap.

25 And second, I think everyone agreed that in

1 the event there is liability for public nuisance, the  
2 question of abatement, monetary, non monetary abatement,  
3 remedy for public nuisance is equitable. It is for the  
4 Court to decide and not a jury.

5 Is there any party that disagrees with  
6 that?

7 MR. PISTILLI: Your Honor, this is Chris  
8 Pistilli for McKesson.

9 I had indicated in our submission, it is our  
10 understanding that true abatement relief is appropriate  
11 for the jury. As we've indicated in prior submissions,  
12 it is not Defendants' position that the relief Plaintiffs  
13 are seeking, which is essentially monetary damages in its  
14 abatement, but we understand your Honor has already ruled  
15 on it.

16 THE COURT: Well, there can be economic and  
17 non economic abatement. Abatement is abatement. It is  
18 not damages for anything in the past.

19 If prospective relief to abate a nuisance  
20 costs something, well, it costs something. It is  
21 directing that things be done, and usually, things cost  
22 something to do.

23 So it is —

24 MR. PISTILLI: We understand your Honor's  
25 ruling on that.

1 THE COURT: Well, I think I've ruled.

2 In other words, it is not for — all right.

3 It seems to me what I am proposing is that a  
4 jury decide whether or not any of the Defendants are  
5 liable for public nuisance. And that's all the jury will  
6 decide with respect to public nuisance. There is not  
7 going to be any evidence or testimony about what any  
8 relief or abatement would be in the event there is  
9 nuisance, how much it would cost, who would do what,  
10 whatever.

11 We are not going to take the time in the  
12 trial for that because the jury isn't going to decide it,  
13 and my concern is, it may confuse them, and they may  
14 jumble things up and conflate that with past damages.

15 And that's for me to decide if and only if  
16 the jury determines that anyone has committed a public  
17 nuisance. And again, I think the Defendants made a good  
18 argument that they are entitled to a jury determination  
19 on the facts, which support a public nuisance claim, an up  
20 or down, and it seems to me in that case the jury should  
21 decide the liability as well. It avoids any possible  
22 inconsistency between what I do and what the jury does.

23 If the jury is finding the facts, the jury  
24 can — you know, the instructions will tell them what the  
25 elements are, and they will decide. And so we will have

1 a jury trial on the state and federal RICO and conspiracy  
2 and public nuisance liability only.

3 And then, at the end of the trial, if there  
4 is — if and only if there is a verdict on public nuisance  
5 against one or more of the Defendants, I will discuss  
6 that with the parties, and we will schedule an  
7 evidentiary proceeding at some point post trial, and I  
8 will determine what the appropriate remedy is, and then,  
9 of course, either side can appeal from that.

10 So I am putting that out there, and I want  
11 to know if anyone has a real problem now, if they want to  
12 — you know, this is discussion. I synthesized this from  
13 what I read, and it seems to me it has the merits of  
14 either — it either shortens the trial or keeps the trial  
15 the same length and let's both sides spend more hours on  
16 the claims you've got, and you don't have to take it up  
17 on putting in a whole lot of evidence about what  
18 abatement would look like.

19 So that's a plus. It avoids — the jury is  
20 just going to be confused. You know, I can instruct them  
21 that's for me, not for them, but that's hard to follow,  
22 and they are going to wonder why they are spending their  
23 time on that.

24 And three, it eliminates the possibility  
25 that somehow that testimony about the future is going to

1 — and how much abating that will be will somehow leak in  
2 or influence their decision on anything else.

3 So I think from where I sit it makes sense  
4 on all three grounds. So does anyone have any thoughts  
5 or reaction to that?

6 MR. PETROCELLI: Your Honor, Dan Petrocelli.  
7 I represent Johnson & Johnson & Jansen.

8 We certainly agree with the Court that the  
9 matter of abatement and all the evidence with respect to  
10 that is not for the jury but for the Court in some  
11 post-trial proceeding if and when liability already were  
12 established.

13 However, as we indicated in our submission,  
14 we also believe that the fact of public nuisance is also  
15 for the Court.

16 THE COURT: I know that, Dan, but you were  
17 in the minority. Okay? I think all the other Defendants  
18 said, at least, the facts are for the jury. And so I'm  
19 concerned about somehow inconsistent verdicts because if  
20 there is a substantial overlap in the testimony and the  
21 jury is deciding the facts and all the other claims that  
22 are clearly legal and then I am sitting there hearing the  
23 same testimony and deciding whether or not there is a  
24 public nuisance, I think that's a problem.

25 So I think it is better if — I think it is

1 better for the jury to decide it. If someone — I mean,  
2 I understand, Dan, I read your brief. I saw that  
3 position, but I think if you are suggesting that somehow  
4 I sit there and I hear the same evidence and regardless  
5 of what the jury does on state and federal RICO and  
6 conspiracy I come to my own conclusion on public nuisance,  
7 you haven't explained why that isn't a problem.

8 MR. PETROCELLI: Well, I think it is  
9 fundamentally an equitable claim, and it is not for the  
10 jury to decide, and I do believe that it will entail  
11 taking additional evidence of beyond the three legal  
12 claims.

13 And I fear that —

14 THE COURT: What is that significant  
15 evidence? I didn't hear that from the Plaintiffs. On  
16 the remedy, absolutely.

17 MR. PETROCELLI: And your Honor, I am afraid  
18 that if the public nuisance is in front of the jury, there  
19 is going to be leakage of abatement-type matters into the  
20 record in front of the jury, which will prejudice the  
21 Defendants.

22 THE COURT: Well, there isn't going to be  
23 any testimony about abatement. That's what I am saying.

24 The parties aren't going to introduce it,  
25 and I will give an instruction similar to the one I give

1 in criminal cases that says, if you find the Defendant is  
2 guilty, the punishment is up to me, and you are not even  
3 to guess or speculate or even consider what that will be,  
4 so I will do the same thing.

5 They are just to find whether or not the  
6 Plaintiff has made out and met every element of the claim  
7 of public nuisance, and they will have to vote on each of  
8 the eight Defendants separately and yes or no.

9 And I will have an instruction that it will  
10 be strictly up to the Court to decide what to do about it  
11 if you find there is public nuisance liability, and that's  
12 that. And there won't be any testimony about injunctive  
13 relief, abatement measures, anything about that at all,  
14 zero. I won't even let anyone talk about it, you know,  
15 what they might do or should do.

16 MR. PETROCELLI: Or how much they are  
17 seeking.

18 THE COURT: Or how much they are seeking.

19 And right, they can talk about how much they  
20 are seeking for past damages, damages on the conspiracy  
21 and the RICO. That's different. They can say the past  
22 eight years we have spent whatever. There is going to be  
23 testimony about that.

24 But I am not going to allow anyone to even  
25 talk about what they might be seeking or wishing for the

1 future in opening statement or anything, zero. You can  
2 use your time on the seven weeks we have on the rest of  
3 the case.

4 So that's my —

5 MR. WEINBERGER: Your Honor, this is Pete —

6 THE COURT: Yes.

7 MR. WEINBERGER: — Weinberger. Can I just  
8 interrupt you for a second?

9 THE COURT: Yeah, you weren't interrupting.  
10 I asked everyone.

11 MR. WEINBERGER: I just want to verify —

12 THE COURT: Yes.

13 MR. WEINBERGER: — I want to be clear that  
14 under the RICO claims and the civil conspiracy claims we  
15 also have claims for future damages, not associated with  
16 abatement, but to the extent the damages continue into  
17 the future, we do have evidence of that, and that is  
18 relevant to those claims.

19 So I didn't — I want to make sure we are  
20 clear on the record with respect to that.

21 THE COURT: Well, how can you seek damages  
22 for the future?

23 MR. WEINBERGER: Well, to the extent that  
24 the damages that we have suffered, that we are proving  
25 are past damages, to the extent that they continue into

1 the future and can be calculated with reasonable  
2 certainty, we are entitled to present those to the jury  
3 under those causes of action.

4 THE COURT: Well —

5 MR. PETROCELLI: Your Honor, this is  
6 Mr. Petrocelli. This is precisely the issue that I was  
7 alluding to because this is an argument for getting  
8 everything in front of the jury contrary to everything  
9 you just got finished saying.

10 THE COURT: Well, I don't think — I mean —  
11 all right.

12 In a personal injury case, if you have  
13 someone who is injured and you are getting past —  
14 compensation for past injury, that could include, if you  
15 can quantify it, things that will have to be done in the  
16 future.

17 For example, a life-care plan, if you have  
18 someone who has been injured, has catastrophic injuries  
19 and needs care for — say their life expectancies is ten  
20 years, they are going to need care for ten years — and  
21 you can quantify it through fact witnesses, experts,  
22 whatever, and say "hey, it is going to cost a hundred  
23 thousand dollars a year for the next 20 years to care for  
24 this person," a jury can find that.

25 Whether or not you have got that kind of

1 proof or whether it is speculative, you know, I don't  
2 know. But again, that's not abatement; that's — you  
3 know, again, I will wait and see what that testimony is.  
4 That's not equitable, and that's not abatement.

5           It has got to be specifically tied to past  
6 harm, and I am not sure exactly, Pete, exactly what you  
7 are seeking. And you know, you will have to spell that  
8 out, and I will have to look at the law, but that's not  
9 — that's not public nuisance; that's — so if you can  
10 prove that and the law permits it, you may be able to get  
11 it, and a jury could consider it.

12           You better put that in your trial briefs  
13 because I am going to have to decide that, and if I — I  
14 will look at that very carefully. That hasn't really  
15 been fronted in all the issues that I've had to decide.  
16 So you better put that in the trial briefs.

17           MR. REED: Your Honor —

18           THE COURT: Yes.

19           MR. REED: — I apologize. I apologize for  
20 interrupting. Steve Reed for Teva.

21           Just to be clear, Teva agrees with the  
22 approach, your Honor, that you've outlined. We don't  
23 agree that the Plaintiffs are entitled to future damages.  
24 We will likely have a dispute or a debate, at least, over  
25 what types of remedies they are entitled to under their

1 public nuisance claim, but that's something that we can  
2 take up if and when it is necessary.

3 THE COURT: Well, that's the whole point.

4 MR. REED: Right. Exactly. I am agreeing  
5 with you, your Honor.

6 I think you've outlined the most efficient,  
7 sensible approach.

8 THE COURT: All right.

9 MR. REED: We are anxious to use the trial  
10 time efficiently.

11 THE COURT: I need to understand from the  
12 Plaintiffs exactly what you are talking about with these  
13 future damages because I am not certain — I am not  
14 certain that you can get them, but I will look, and so  
15 you better get that to me as quickly as possible, and the  
16 Defendants can respond.

17 If they think the Plaintiffs are not  
18 entitled to seek — remember, we don't have individuals,  
19 specific individuals in this case; we have got Government  
20 entities.

21 And I, quite frankly, thought that what you  
22 are seeking in those legal claims are past damages, money  
23 that the cities, counties, states had spent above and  
24 beyond what they otherwise would have spent in law  
25 enforcement, public health treatment, all that, that they

1 are laying out, that they wouldn't have otherwise laid  
2 out or lost opportunity to use that money for something  
3 else. I didn't think you were going to —

4 MR. WEINBERGER: Understood, your Honor.

5 THE COURT: — that you were going to try  
6 and have the jury guess how much you are going to have  
7 to pay in the future. I am not at all sure you can do  
8 that.

9 MR. WEINBERGER: We'll — we will present  
10 that in our trial brief.

11 There is one other issue that I wanted to  
12 address, and again, this is Pete Weinberger. With  
13 respect to the public nuisance claim, one of the elements  
14 is whether the public nuisance is abatable, which  
15 will require testimony if we are going to try that  
16 phase. Before we get to what the abatement remedy is,  
17 it will require testimony about how we would address  
18 that element of the abatement through expert testimony.  
19 So —

20 THE COURT: I don't want any of that stuff.  
21 I mean, whether it is abatable is up to me to decide. It  
22 seems to me that's part of the equitable remedy if and  
23 only if the jury decides any of the Defendants have  
24 created a public nuisance.

25 If they've created it, the remedy is up to

1 me. If I determine that it can't be abated, well, then  
2 there is no remedy. All right. If I determine there is  
3 nothing — that there is nothing anyone can do to make it  
4 better or fix it, well, then, that's the end of it, but  
5 it seems to me that's for me to decide, not the jury.

6 They decide the elements of what public  
7 nuisance is and whether the Plaintiff has proven all those  
8 elements with respect to any of the eight Defendants. I  
9 mean, am I wrong about that? I don't see how an element  
10 of public nuisance is whether or not it is abatable, the  
11 nuisance is causing —

12 MR. REED: We agree with your Honor.

13 THE COURT: All right. So we are not going  
14 to have any testimony about whether a public nuisance is  
15 or isn't abatable or how to abate it. We will put that  
16 off, and if there is liability, I will schedule it with  
17 the parties.

18 MR. SKOLNIK: Judge Polster, this is  
19 Hunter Skolnik. I am sorry to interrupt; just a quick  
20 point: So would this contemplate a post — some type of  
21 post jury verdict proceeding —

22 THE COURT: Yeah.

23 MR. SKOLNIK: On the —

24 THE COURT: That I would do.

25 MR. SKOLNIK: — abatement plan?

1 THE COURT: Yes, Hunter.

2 MR. SKOLNIK: And that would include your  
3 assessment if it is abatable? I'm sorry.

4 THE COURT: If and only if the jury finds  
5 public nuisance liability on at least one Defendant, then  
6 I will have a post-trial proceeding. Whether you call it  
7 a bench trial, an evidentiary hearing, I don't think it  
8 matters, it is the same thing.

9 And I will hear testimony from both sides as  
10 to, A, whether or not it can be abated, and B, if so, how  
11 to do so. And I will make a decision, and obviously, it  
12 will be written, and either side or both sides can appeal  
13 from it.

14 And when I schedule it, I will figure it out  
15 with the parties. I mean, it is not going to be the next  
16 day obviously. It seems to me that's the most efficient  
17 way to do it.

18 MR. SKOLNIK: Understood. Thank you.

19 THE COURT: Obviously, if the Plaintiffs  
20 don't prove public nuisance, we never have it. Which is  
21 another reason to put it off. All right.

22 Well, I think that's what we are — unless  
23 someone — I mean, if someone feels very strongly that  
24 they will be — that they will be prejudiced by this or  
25 that this somehow — I mean, if I am violating

1 established Sixth Circuit law or Supreme Court law by  
2 doing this, I want to know.

3 I don't want to go hell-bended to a  
4 reversible error, but — so if someone thinks there is  
5 established Sixth Circuit or Supreme Court law to the  
6 contrary, I certainly want to know about it, and I will  
7 have to look very carefully because that's not my  
8 intention.

9 Or if someone thinks that they will be very  
10 seriously prejudiced by this approach, I want to know  
11 that because I am certainly not looking to do that. I am  
12 trying to do the opposite, in fact, to be very fair to  
13 both sides. So I would like to know that.

14 And then, very quickly, like I would say no  
15 later than Thursday at noon, if someone thinks I have got  
16 — I mean, there is Sixth Circuit or Supreme Court law  
17 that I am ignoring or that they will be seriously  
18 prejudiced, file something by noon on Thursday. And  
19 then, I am trying to think, the best way to address this  
20 question of future damages, so — well, Judge Ruiz is  
21 suggesting to do it in the motion in limine.

22 MS. HUGHES: If not sooner.

23 THE COURT: Well, I am trying to think.

24 If we do it that way, yeah, why don't we do  
25 that? Why don't we do it this way?

1           Since it has sort of been teed up, each side  
2 — I mean, Plaintiffs can file one motion in limine if  
3 you think you are entitled to future damages on the state  
4 or federal RICO or conspiracy and set out the evidentiary  
5 and legal basis for it.

6           And if the Defendants feel that the  
7 Plaintiffs aren't entitled, you file, and then you can  
8 each respond to each other's. So I get the full picture  
9 according to the schedule we have. And again, I don't  
10 need eight briefs from the Defendants. Okay.

11           If you all have a similar position, I would  
12 appreciate one. And if you need a little longer, if you  
13 are all eight joining in it, that's okay, but we don't  
14 need eight things saying the same thing. I assume  
15 probably all eight are going to agree on it, so we will  
16 just get one, and I will take a look at it, and that's  
17 obviously something I will need to decide before trial  
18 because it affects a lot.

19           MR. REED: Your Honor, Steve Reed again for  
20 Teva.

21           THE COURT: Yeah.

22           MR. REED: There are two issues if I may.  
23 One is on the motion in limine, it is my understanding  
24 that we have aggregate page limits and set for motions  
25 in limine. I am concerned that this new round today

1 will lead into what is already a limited allocation.

2 May we have your permission to —

3 THE COURT: Yeah.

4 MR. REED: — we will keep these short but  
5 whatever pages —

6 THE COURT: Since I decided to add one, what  
7 do we have, and I can add.

8 MS. HUGHES: We have I believe —

9 VOICE: I believe it was 40 pages or so in  
10 the aggregate, something like that. I am sure the  
11 parties know.

12 THE COURT: Does anyone know what the  
13 aggregate page limit for motions in limine are?

14 MS. LUCAS: Your Honor, this is Amy Lucas  
15 for Jansen. It is 44 pages for aggregate each side; 22  
16 pages for the aggregate, distributor, manufacturer,  
17 pharmacy brief, and eight pages per party for individual  
18 issues.

19 THE COURT: It might be more than 44, but I  
20 didn't quite understand that. 44 in the aggregate?

21 MS. LUCAS: We understand that each  
22 Plaintiff and the Defendant each file one joint defense  
23 or joint Plaintiff motion. That's 44 pages. Then, the  
24 manufacturing group can file a manufacturers' specific  
25 motion as 22 pages, and then each individual — Jansen

1 then has eight pages to brief our individual issues.

2 VOICE: There has been some discussion.

3 MS. LUCAS: Right. There has been some  
4 discussion about moving pages around Special Master  
5 Cohen, but that's —

6 THE COURT: I am not aware of any of this.  
7 I haven't seen it, so I don't know. That seems to be a  
8 whole lot of pages, a lot more than I want or need  
9 already. That looks like a hundred pages or more per  
10 side. I mean, I think that's crazy.

11 So I am certainly not going to add to that.  
12 I thought it was something a lot smaller, like maybe 40  
13 pages total. That certainly seems ample to me to what we  
14 are talking about. So I am certainly not going to add to  
15 that. That seems — I got to take a look at that. That  
16 seems way too long.

17 MR. PETROCELLI: Your Honor, Mr. Petrocelli  
18 here.

19 While you are thinking about that —

20 THE COURT: I am not thinking; I am just  
21 saying I thought about it. It is way too long.

22 MR. PETROCELLI: Okay. Well, apparently,  
23 they are reading from some kind of order that was  
24 previously issued.

25 THE COURT: If it has been issued, I am

1 stuck with it.

2 MS. LUCAS: 24 pages.

3 THE COURT: Well —

4 MR. PETROCELLI: Amy, do you have a  
5 correction?

6 MS. LUCAS: It is 24 pages for the industry  
7 group. If you want to look at the order, your Honor,  
8 docket entry 1709 and —

9 THE COURT: All right. Well, it seems —

10 MR. PETROCELLI: Your Honor, but my  
11 question, in addition to this page issue, is this  
12 additional motion in limine that you are allowing each  
13 side to file, is that due on the same day, which I think  
14 is the 25th of September?

15 THE COURT: Right. That should be the same  
16 day so I can address this stuff before trial. That's the  
17 whole idea, and this is an important one because I have  
18 got to — you know, this affects some substantial  
19 testimony possibly.

20 MR. PETROCELLI: Thank you, your Honor.

21 THE COURT: Okay. In fact, that covers what  
22 I had to cover, and again, I appreciate everyone's hard  
23 work. My job is to make this trial, do whatever I can to  
24 make it intelligible to a group of people that we select  
25 as jurors. So that's what I am trying to do. Okay?

1 Thank you, all.

2 MR. PETROCELLI: Your Honor, Mr. Petrocelli  
3 again.

4 THE COURT: Well, all right. Some people  
5 may have gotten off, but go ahead.

6 MR. PETROCELLI: Yeah. About the  
7 prescreening process, we come to learn that juror summons  
8 have gone out.

9 THE COURT: Right.

10 MR. PETROCELLI: And they apparently include  
11 a question about whether the jurors are available for a  
12 trial of approximately 8 weeks.

13 THE COURT: Right.

14 MR. PETROCELLI: And I want to get more  
15 clarity on how that process is being conducted.

16 In other words, what's the question —

17 THE COURT: I don't know exactly. I  
18 stay out of that. The jurors know — I mean, there  
19 is no point bringing people in who say "I can't" — you  
20 know, "I can only stay two or three weeks,"  
21 Mr. Petrocelli.

22 MR. PETROCELLI: Well, your Honor, though, a  
23 lot of people say that when they are just trying to get  
24 out of jury duty.

25 THE COURT: Well, I can't do anything about

1 that. I want people who understand that this is a  
2 lengthy commitment, and if they have personal or  
3 professional obligations that include that, we are not  
4 counting them, and I want to start with people who, at  
5 least, can do that.

6 MS. HUGHES: And I assume that the jury  
7 department is —

8 THE COURT: The jury department knows how to  
9 do that.

10 MS. HUGHES: Right.

11 THE COURT: And they do it when we have long  
12 trials, and I don't get into that. So if someone wants  
13 to call the jury department that he can find out, but I  
14 am not getting involved in that. Our jury department are  
15 professionals, and they know how to do these things.

16 MR. PETROCELLI: Thank you, your Honor.

17 THE COURT: So I just thought it was not  
18 efficient to bring in a bunch of people, and we lose them  
19 all because they say "well, I have got to do this and  
20 that in November, and I am out of here."

21 It is going to be difficult enough, then,  
22 focusing on people who can be fair and impartial. So we  
23 are going to start. The only people we are going to  
24 bring in are people who have said that they are able to  
25 serve on a long trial.

1 MS. HUGHES: And are, in fact, able.

2 THE COURT: Well, I assume they wouldn't say  
3 they are able if they are not. So if they are able and  
4 willing to do it.

5 Okay. Thank you, all.

6 (Teleconference concluded at 3:11 p.m.)

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C E R T I F I C A T E

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I, George J. Staiduhar, Official Court  
Reporter in and for the United States District Court,  
for the Northern District of Ohio, Eastern Division,  
do hereby certify that the foregoing is a true  
and correct transcript of the proceedings herein.

s/George J. Staiduhar  
George J. Staiduhar,  
Official Court Reporter

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