

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 09-50026-mg
	.	
MOTORS LIQUIDATION COMPANY,	.	Chapter 11
et al., f/k/a GENERAL	.	
MOTORS CORP., et al,	.	(Jointly administered)
	.	
Debtors.	.	
.....	.	
MOTORS LIQUIDATION COMPANY	.	Adv. Proc. No. 09-00504-mg
AVOIDANCE ACTION TRUST, by and	.	
through the Wilmington Trust	.	
Company, solely in its capacity	.	
as Trust Administrator and	.	
Trustee,	.	
	.	
Plaintiff,	.	
v.	.	
	.	
JPMORGAN CHASE BANK, N.A.,	.	
individually and as	.	
Administrative Agent for	.	
Various lenders party to the	.	One Bowling Green
Term Loan Agreement described	.	New York, NY 10004
herein, et al.,	.	
	.	Tuesday, December 20, 2016
Defendants.	.	2:00 p.m.
.....	.	

TRANSCRIPT OF ADVERSARY PROCEEDING: 09-00504-mg  
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST V.  
JPMORGAN CHASE BANK, N.A. ET AL, STATUS CONFERENCE  
**BEFORE THE HONORABLE MARTIN GLENN**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES CONTINUED

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1 (Proceedings commence at 10:18 a.m.)

2 THE COURT: All right. Please be seated. We're here  
3 in Motors Liquidation Company Avoidance Action Trust v.  
4 JPMorgan Chase Bank, N.A., et al. It's adversary proceeding  
5 number 09-00504. I have the list of appearances in front of  
6 me. First, I apologize to everybody for being late. I had a  
7 meeting outside the court this morning.

8 Mr. Fisher.

9 MR. FISHER: Good morning, Your Honor. Eric Fisher  
10 from Binder & Schwartz. I'm here today with my colleagues,  
11 Neil Binder and Lindsay Bush, on behalf of the avoidance action  
12 trust.

13 While we do have a dispute to bring to the Court's  
14 attention, it is also a status conference --

15 THE COURT: Yes.

16 MR. FISHER: -- and so I thought I might begin by  
17 providing a short update on the case. And it's always good, I  
18 suppose, to start with the good news. So if you recall, the  
19 last time we were before the Court last week, there was a  
20 dispute about the period fo time for which Mr. Gosling, our  
21 fixture and evaluation expert, would be deposed. I believe  
22 we've been able to work that one out, and it's been agreed that  
23 Mr. Gosling will be made available for one day of evaluation  
24 deposition and two days of deposition related to fixtures,  
25 subject to defendant's right to either try to work it out with



1 us or come to the Court if they find that that's not enough  
2 time.

3 THE COURT: Any agree on when the deposition is going  
4 to occur?

5 MR. FISHER: We have not -- we don't have the --

6 THE COURT: All right.

7 MR. FISHER: -- deposition scheduled yet, Your Honor.

8 THE COURT: Okay. I generally -- I'm quite  
9 optimistic that if there are any disagreements, you'll work  
10 them out. What I would ask is when the deposition dates are  
11 set, advise one of my law clerks. I -- if I'm here, I will  
12 generally be available by telephone to resolve any disputes  
13 during the deposition so that it moves forward as expeditiously  
14 as possible. I anticipate -- because you've been quite  
15 successful in working out everything else, I think that -- I'm  
16 confident you'll be able to do it here with respect to this --  
17 the Gosling deposition, but if you're not, contact chambers and  
18 I'll try and make myself available.

19 MR. FISHER: Thank you, Your Honor. And just moving  
20 on then to the next issue, last week, JPMorgan raised the issue  
21 of being allowed leave to serve a subpoena on New GM to seek  
22 discovery related to the limited issue of construction work in  
23 progress, based on the rationale that they believe that some  
24 limited discovery on that issue might lead to evidence -- or  
25 might lead to information that would make for a more



1 constructive settlement process after the 40 assets trial  
2 concludes, and I believe that we've been able to work that one  
3 out, as well. We also had information that we think would help  
4 contribute to a constructive settlement process, and in  
5 particular, we'd like clarity about the extent of JPMorgan's  
6 financial interest in the term loan, the aggregate amount of  
7 transfers that they've received, and I believe that we've  
8 reached an agreement to take very focused discovery in the form  
9 of just an interrogatory or request for admission, and JPMorgan  
10 has agreed to, in response, provide us with that information in  
11 advance of the 40 assets trial, Your Honor.

12 THE COURT: All right, good.

13 MR. FISHER: Then, this past Friday, we received the  
14 last five of the JPMorgan and defense group fixture reports, so  
15 in total now, we have received 11 opening expert reports from  
16 JPMorgan and the defendants and --

17 THE COURT: How do you have 11 when I think they had  
18 six witnesses?

19 MR. FISHER: I'm sorry, Your Honor?

20 THE COURT: How are there 11 reports when I thought  
21 there were six witnesses?

22 MR. FISHER: So in total, there are 11 reports.  
23 There are six fixture reports, one from each witness, and then  
24 there are five reports on valuation and related issues.

25 THE COURT: Okay.



1 MR. FISHER: And then -- and we've served our two  
2 reports. Tomorrow is the deadline under the case management  
3 order for the exchange of rebuttal reports, and we have all  
4 agreed to exchange all rebuttal reports except for rebuttal  
5 reports that relate to the issue of fixtures, which is where we  
6 have a dispute that we described only in the most general terms  
7 in a joint letter that Mr. Wolinsky sent to Your Honor last  
8 week.

9 So I suppose that brings me to the bad news portion  
10 of the case status, which is that this is not an issue that we  
11 have been able to work out. As we understand it, JPMorgan  
12 needs -- and the defendants need until December 30th to  
13 complete rebuttal reports in response to Mr. Gosling's fixture  
14 report, which was served on them on November 23rd, pursuant to  
15 the case management order. And we told them that we were fine  
16 with that, but that December 30th was not nearly enough time  
17 for Mr. Gosling to be able to prepare his rebuttal report in  
18 response to the six fixture reports, five of which we only  
19 received this past Friday, and we asked for them to consent to  
20 allow Mr. Gosling to have until January 13th for his rebuttal  
21 report in response to those six fixture reports.

22 So what I'd like to do is just very briefly explain  
23 why we think that's necessary and also reasonable under the  
24 circumstances, and then perhaps cede the podium to JPMorgan so  
25 that you can hear their side of this.



1 It took JPMorgan and the defendants approximately ten  
2 days to get us new reports from the time that they said they  
3 would. That suggests to us that this was actually something  
4 more than just cutting up reports into six pieces. But in any  
5 event --

6 THE COURT: May I ask you this? Do the opinions  
7 expressed in the six reports differ from the opinions expressed  
8 in the single report?

9 MR. FISHER: The opinions don't -- I don't -- Your  
10 Honor, needless to say, I haven't had the opportunity to  
11 carefully review all the reports yet, but they are, in some  
12 instances, for example, attributed to different witnesses, and  
13 still some -- and as laws are concerned, all six of the reports  
14 reference the same stack of documents. So each report is not  
15 really tied to whatever information it is that that particular  
16 expert relied on in reaching that particular expert's opinions.  
17 In other words, the information relied on is just disclosed  
18 without identifying which opinion or which expert that  
19 information relates to.

20 THE COURT: I guess the question that arises in my  
21 mind is if the opinions remain the same, the opinions in the  
22 six reports the same as in the single report, and the reliance  
23 materials remain the same, it's unclear to me, and I think you  
24 need to address, why more time is required or why until January  
25 13th, it's required to prepare a rebuttal report. I understand



1 that it's hopefully clearer to you now which witness is going  
2 to express which opinions, but if the opinions haven't changed  
3 and the reliance materials haven't changed, it's not clear to  
4 me why a rebuttal report is any -- is going to be any different  
5 now than if I had permitted or if not -- and really, what I did  
6 was take the defendants up on the offer they made. It was  
7 unnecessary for me to rule whether one report was not a  
8 permissible expert report. They offered and I took them up on  
9 that because I thought it would be clearer for the Court and  
10 for you if there were separate reports. But if the opinions  
11 haven't changed, if the reliance materials haven't changed, why  
12 does your expert need more time to do a rebuttal report?

13 MR. FISHER: Your Honor, a few reasons. I think  
14 that, of course, once we received their joint fixture report,  
15 we started to think about and work with our expert to outline a  
16 response, but I think that it's a far cry from being able to  
17 write a response in response to the final version of the  
18 opening report, which we didn't get until December 16th. So  
19 there's a certain amount of thinking and research and kind of  
20 back work that can be done, but the process of drafting itself  
21 takes a very long time. And I don't think we reasonably could  
22 have been drafting in response to a report that wasn't yet in  
23 its final form.

24 THE COURT: May I ask this? Do you anticipate -- are  
25 you going to do six separate rebuttal reports?





1 MR. FISHER: I don't think so, Your Honor. I think  
2 we're going to do one report.

3 THE COURT: And do you anticipate that your rebuttal  
4 reports will challenge the qualifications of the six proposed  
5 testifying experts, the subjects or issues about each -- about  
6 each will testify?

7 MR. FISHER: I don't know, Your Honor, that that will  
8 so much be the focus of the rebuttal report. I think it's  
9 likely more the focus of depositions and then -- yes.

10 THE COURT: All right.

11 MR. FISHER: Then, Your Honor, I mean, the way that  
12 this entire schedule was designed was we were supposed to  
13 conclude rebuttal reports by December 21st and then all  
14 collapse for a week so that people could make Christmas and New  
15 Year's plans, and then start driving one another crazy  
16 beginning in January. Our expert's office is closed the week  
17 of Christmas. It's really not very much of an offer at all for  
18 them to tell us that they'll let us have until December 30th  
19 when, in fact, they also need that extra week. So just from a  
20 fairness point of view, they are getting five weeks to work on  
21 their rebuttal to our fixture report. We're asking for less  
22 than that, particularly when you consider the Christmas week.  
23 And so we think just from a fairness point of view, and also  
24 recognizing the work that they have to do to respond to our  
25 single fixture report, I think it is an indication to the Court



1 of how labor intensive a project it is.

2 I also think that if Your Honor allows us until  
3 January 13th to provide the fixture rebuttal report, there are  
4 ways to work together to make sure that everyone has the  
5 opportunity to take the expert depositions that need to be  
6 taken without, in any way, jeopardizing the April 24th trial  
7 date. We all know that there is -- that that date is not  
8 moving and that we have to do whatever we can to get whatever  
9 needs to be done in advance of that date. So the early part of  
10 January is not going to be idle just because they're waiting  
11 for a fixture rebuttal report from Mr. Gosling.

12 THE COURT: Did you promise that your associates  
13 won't have to work during Christmas week if I agree to extend  
14 the deadline for the rebuttal report?

15 MR. FISHER: I would say, Your Honor, it's an  
16 implicit promise.

17 THE COURT: They probably want something firmer than  
18 that, but I'm glad you're solicitous of your experts, but I try  
19 to -- you know, when the schedule was prepared, I was very  
20 mindful of who's in the trenches doing the work.

21 MR. FISHER: As usual, Your Honor, you're doing a  
22 very good job of drawing me beyond maybe where I was  
23 comfortable going earlier.

24 I think also that the way the schedule is designed,  
25 we -- our -- January is supposed to be devoted to expert



1 depositions and also the term lender defendants wrapping up  
2 whatever UCC-3 discovery they want to take. So February -- and  
3 we should not use the safety valve or we shouldn't depend on  
4 the safety valve, but pretrial briefs are due March 1, so  
5 there's a little bit of room for error. And if we work  
6 together and agree, we can take up about a week or so of  
7 February with depositions, again without jeopardizing the  
8 overall schedule. So I think under all the circumstances, our  
9 request to have until January 13th is a reasonable one and that  
10 there are ways to manage the schedule that won't in any way  
11 jeopardize the overall schedule that the Court has in mind.

12 THE COURT: Okay. Thank you very much, Mr. Fisher.  
13 Mr. Wolinsky.

14 MR. WOLINSKY: Yes. Good morning, Your Honor. Well,  
15 I think it boils down to two questions, need and prejudice, so  
16 let me just focus on those two questions.

17 Need. We had a pie. We cut the pie into six pieces.  
18 I wouldn't recommend that you take the time --

19 THE COURT: I'm mindful of that, Mr. Wolinsky.

20 MR. WOLINSKY: So --

21 THE COURT: That's why I asked my questions about  
22 whether -- I take it -- let me ask you the questions. Did the  
23 opinions expressed in any of the six separate reports differ  
24 from the opinions that were expressed in the joint report?

25 MR. WOLINSKY: One expert added five new paragraphs.



1 That's it.

2 THE COURT: And did the reliance materials for any of  
3 the opinions that were expressed change between the one report  
4 and the six?

5 MR. WOLINSKY: No. No, Your Honor. And just to  
6 clarify that -- this is Mr. Steven's report. If you go back in  
7 Mr. Steven's report, he has appendix five or citations. So he  
8 does pinpoint each asset, the document or picture he relied  
9 upon for each asset. There's a -- so materials he relied upon  
10 are very pinpointed to each asset. Things that he considered,  
11 there's a mass of documents that frankly a large group of  
12 people considered, so I think that's a non-issue.

13 So, look, we agreed -- we were prepared to serve all  
14 the reports on the 21st. They threw out they wanted more time.  
15 We agreed. Okay, if you want more time on fixtures, we'll take  
16 more time on fixtures because we didn't want to be in a  
17 position where we were putting in our report before theirs,  
18 then the next thing you know, you know, they're getting an  
19 advantage that -- over us. So our position is that the reports  
20 have to go in lockstep. And we think December 30th is a  
21 reasonable period. The fact that we cut the pie into six  
22 pieces really doesn't provide a justification.

23 The flip side is prejudice, and it's prejudice more  
24 to the Court than anybody else.

25 THE COURT: No, I'm not touching these reports until



1 after the holidays, so it's not prejudicing me.

2 MR. WOLINSKY: No, no. The prejudice is to what  
3 happens to the schedule.

4 THE COURT: Yeah, I'm --

5 MR. WOLINSKY: Because if we -- if the expert -- the  
6 fixture reports come in on January 13th, we have to digest  
7 what's in them. Say, it takes a week, ten days to digest  
8 what's in them, and then we launch into depositions. It pushes  
9 the depositions of the fixture issue into February, well into  
10 February. So, say, you're finishing them February 15th or 20th  
11 with pretrial briefs due March 1st, motions in limine due March  
12 8th. It cuts into trial preparation time. It cuts into -- and  
13 then, well, then the next thing you know, we're pushing the  
14 briefing, and then that's cutting into your time. So really --

15 THE COURT: No, that's not happening.

16 MR. WOLINSKY: That's really --

17 THE COURT: Let me be clear.

18 MR. WOLINSKY: -- that's really the consideration.  
19 So the way the schedule with December 30th works is we get the  
20 reports in December 30th. In the real world, the first week  
21 after New Year's, no one's sitting for depositions, but we can  
22 use that week to prepare for depositions that start the second  
23 week of January. We have the balance of January to finish all  
24 the depositions, and the schedule is preserved. That's why we  
25 agreed to December 30th, and that's why we're opposed to



1 January 13th.

2 THE COURT: Mr. Wolinsky, pure speculation on my  
3 part. Sometime between now and April 24th, despite -- I'm  
4 saying this somewhat mystery, but there's a legion of lawyers  
5 on one side and one firm on the plaintiff's side. Sometime  
6 between now and the trial, it seems reasonably likely that  
7 you're going to come to me and ask to move some date because  
8 there are a lot of moving pieces here, difficulty scheduling  
9 depositions, and you know, when you try to work it out with Mr.  
10 Fisher, if I don't necessarily agree to January 13th, but I  
11 move it up a little shorter than that, but try to preserve the  
12 holidays, you'll be able to say, you owe me one.

13 And this trial is going ahead on April 24th. I've  
14 said that over and over and over and over. And I don't look  
15 forward to having a pile of motions in limine that I'm going to  
16 have to deal with before trial, and somehow frequently when I  
17 move schedules, I wind up on the short end. And I'm not --  
18 that's not what I, you know, I want to happen.

19 I'm very sensitive to not only Mr. Fisher's  
20 associates, but yours and the other defendants' counsel  
21 associates, and the experts and their staffs. And I really --  
22 you know, if I stick with the December 30th schedule, I screw  
23 up a lot of people's observance of Christmas or Hanukkah, and  
24 that's not something that I really want to do if it can be  
25 avoided. There obviously -- so I don't -- you know, it may not



1 give Mr. Fisher what he wants, but I'm going to set five o'  
2 clock, Monday, January 9th as the deadline.

3           It does seem to me, and it's the reason that I asked  
4 my questions of Mr. Fisher at the start, you indicate that one  
5 of the experts has added a couple paragraphs to his or her  
6 opinion. The opinions -- and I had the sense when we went  
7 through this exercise last time about six separate reports  
8 rather than one that, you know, I didn't envision that there  
9 were -- the opinions were going to change dramatically or the  
10 reliance materials were going to change dramatically. I think  
11 Gosling has had an opportunity to spend his time and time of  
12 his staff reviewing that initial joint report and pretty well  
13 knows what the rebuttal report is going to look like and isn't  
14 going to be altered at all or not substantially altered by the  
15 fact that now there's six rather than one.

16           So I'm going to set 5 p.m. on Monday, January 9th.  
17 It does give somebody some time after -- not a great deal of  
18 time. New Year's is, I guess -- Court's closed January 2 and  
19 so are many businesses, but it does give some time after the  
20 New Year's holiday to complete the expert report.

21           You know, I'm sure -- you've shown great cooperation  
22 throughout, and I've said before I appreciate that. There's  
23 been very few disputes that you've brought to the Court, and  
24 usually you resolve them. Mr. Fisher reported on the couple  
25 open issues after our last hearing. I'm glad you were able to



1 work those out. It's going to require maximum cooperation to  
2 try and keep this case on track and on schedule. But I'm going  
3 to agree to extend the plaintiff's time to report the rebuttal  
4 report of Gosling until five o' clock, Monday, January 9th. To  
5 the extent that that requires any adjustments in deposition  
6 scheduling, I'll leave it to you in the first instance to try  
7 and work that out. Okay?

8 Consider it a holiday gift, Mr. Fisher. And if I  
9 find out that you kept your associates working throughout the  
10 Christmas holiday, I'll be very unhappy.

11 MR. WOLINSKY: So, Your Honor, on that --

12 THE COURT: I think somebody wants --

13 MR. WOLINSKY: Yeah, yeah. Just two things. First,  
14 right now, we have an expert deposition cutoff of January 27th.  
15 I think, as a practical matter, the parties are going to have  
16 to work to go past that. With Professor Fishell, an old friend  
17 of mine, we've already agreed to go past it, but we're going to  
18 have to go past it.

19 And the other thing is, you know, Mr. Callier  
20 (phonetic) rose to raise the point whether the exchange of  
21 fixture rebuttal should be simultaneous. I really don't see  
22 the fairness in our -- showing our hands. We --

23 THE COURT: I agree.

24 MR. WOLINSKY: Okay.

25 THE COURT: I agree. The fixture -- the rebuttal





1 reports should be simultaneous. I agree with that, Mr.  
2 Wolinsky. Work together. I'm assuming you'll work out the  
3 deposition scheduling issues. I can remember, as a practicing  
4 lawyer, people having difficulty getting Mr. Fishell's schedule  
5 pinned down for a deposition, and --

6 MR. WOLINSKY: We'll pry him loose from six other  
7 cases and get him in here.

8 THE COURT: I'm sure. Make sure he doesn't confuse  
9 his opinions in those cases with this one, so --

10 MR. WOLINSKY: Your Honor, I think that's it. I did  
11 want to mention two other things that have come up, you know,  
12 that have been on our minds since we last spoke --

13 THE COURT: Sure.

14 MR. WOLINSKY: -- in a pretrial conference setting.  
15 Site visits. When you take a look at the pictures, you know, I  
16 think we've -- we've gone -- done -- worked really hard to make  
17 the pictures understandable and clear and provide a narrative.  
18 Having been to the plants, they make -- the pictures make more  
19 sense to me than I think they will make to you. We had  
20 informally discussed with GM whether they're amenable to site  
21 visits, and formally, they are. I think it would -- if you're  
22 willing to do it, the way it would work is you would fly out to  
23 Detroit on a morning, visit the Warren plant that afternoon.  
24 Eleven of the 40 assets are in Warren. The evening would be  
25 free. Lansing Delta Township is a 90-mile drive from Detroit.



1 There are 21 assets at Lansing Delta Town --

2 THE COURT: How many at Warren, did you say?

3 MR. WOLINSKY: Eleven at Warren, 21 at Lansing Delta  
4 Township. So you would get 32 of the 40 in basically two plant  
5 visits.

6 THE COURT: Have you spoken with Mr. Fisher further  
7 about it?

8 MR. WOLINSKY: Yes, we -- you know, I think his  
9 position is the same, but he'll speak to it.

10 THE COURT: Let him remind me of his position.

11 MR. FISHER: I think -- our position, Your Honor, is  
12 that we don't think anyone is advantaged or disadvantaged, and  
13 we don't think the Court is particularly advantaged or  
14 disadvantaged by making the site visit. We -- if the Court is  
15 inclined to visit the plants because it's helpful, of course,  
16 we are supportive of that. What we have not discussed, though,  
17 is which plants, and we also were not aware about informal  
18 discussions with GM about arranging these site visits.

19 THE COURT: Don't worry, I'm not making any decision  
20 today. What I'm going to require -- I'm not foreclosing -- I  
21 certainly earlier -- when the request was made about a site  
22 visit, I was not prepared to indicate one way or the other  
23 whether I was going to do it. I'm open to doing it, but not  
24 terribly excited about it.

25 I think that, Mr. Wolinsky, you and Mr. Fisher or any



1 other counsel who are involved in it need to discuss it further  
2 and work out the precise parameters.

3           Actually, when the issue was first raised with me, I  
4 asked my colleagues. No one here had ever gone on a site  
5 visit. I certainly know some other judges, state or federal  
6 court judges, who rarely have done it, but have done it. And  
7 I'm sure it would be fascinating to do. I've never seen an  
8 auto assembly plant. It's okay with me if I never see an auto  
9 assembly plant. But -- so I'm open to do it. What I would ask  
10 is that you need to confer -- so you ought to confer with the  
11 assumption that the Court is open to doing so, provided that  
12 the logistics are worked out about which plants, which assets,  
13 who would lead the tours, what, if anything, could be said  
14 during the tours. And you know, to make a tour meaningful,  
15 somebody has to explain what it is I'm looking at, and it seems  
16 to me there needs to be a voice recording made of whatever is  
17 said or explained. And if what I'm being asked to look at is  
18 in any way different from any of the photographs that are  
19 included in the expert reports, I -- my initial reaction, but  
20 I'm not ruling on it, is that photographs of that ought to be  
21 taken, as well, so that there could be no later dispute about  
22 what the Court was shown or what was said to the Court during  
23 the visits.

24           I don't know when you would contemplate the visit  
25 being made. I think it would probably be most meaningful if it



1 was after the experts were deposed so that you've got that  
2 record set at that point. Strikes me as January and February  
3 are terrible times to visit Detroit.

4 MR. WOLINSKY: Absolutely. I think just before --

5 THE COURT: Detroit may be very lovely in January and  
6 February, but --

7 MR. WOLINSKY: It would be before the trial --

8 THE COURT: Okay.

9 MR. WOLINSKY: -- so April would make the most sense.  
10 And everything Your Honor's set out makes sense, and I think  
11 everything is manageable, and we'll confer with the other side.

12 THE COURT: Because I've never done a site visit, I  
13 don't know what ground rules other judges have established when  
14 agreeing to do so. But you need to have a full discussion  
15 about it. And I still might decide, after seeing the photos  
16 and the experts' reports, I don't think I need to see it, so  
17 I'm not -- you shouldn't assume absolutely that I'm agreeing to  
18 it, but you ought to -- on the assumption that I'm going to be  
19 agreeable, all the ground rules need to be established in  
20 advance. I assume you'll be able to do that. Okay.

21 MR. WOLINSKY: Very good. We'll do that.

22 THE COURT: Anything else for today?

23 MR. WOLINSKY: Just one other thing I would flag.

24 THE COURT: Sure.

25 MR. WOLINSKY: Two conferences ago, I threw out the



1 idea of oral testimony from the fixture experts and -- as  
2 opposed to just going in on direct, going right to cross.  
3 Having spent some time with the fixture reports and actually  
4 discussing it with Mr. Fisher, my thought now is that the  
5 fixture experts should put in a written direct, but have an  
6 oral presentation walking Your Honor through the written direct  
7 rather than just go right to cross. I think that's the most  
8 efficient way. Just to throw in a bunch of pictures and  
9 narrative won't be very helpful, so -- but I think the volume  
10 of material is so great, without a written presentation before,  
11 we would get bogged down and waste a lot of time.

12 THE COURT: And I take it that you contemplate that  
13 the oral presentation, other than perhaps on responding to  
14 questions that are asked, would not go beyond the -- no expert  
15 is going to be permitted to state opinions that have not been  
16 set forth in a written report.

17 Let me ask. Mr. Fisher, what -- have you and Mr.  
18 Wolinsky discussed this issue of -- obviously, it works both  
19 ways. Your -- whatever I agree to, they got more experts, but  
20 --

21 MR. FISHER: Yes, Your Honor. And we --

22 THE COURT: -- I'm sure yours is going to be very  
23 persuasive.

24 MR. FISHER: -- we are in agreement on this with the  
25 caveat that Your Honor just identified, which is that all of



1 the opinions need to be reflected in the written direct.

2 THE COURT: I assume that's --

3 MR. WOLINSKY: Yes. Yeah. Yes.

4 THE COURT: You know, where this comes into play is  
5 the length of the trial, and I'm certainly -- yes, I would  
6 probably benefit from hearing sort of the live walk-through of  
7 what's in the reports, and as long as the opinions didn't go  
8 beyond what's in the report. I've been known to ask questions  
9 sometimes because I think they're -- so everybody should be  
10 aware of that. There may be things I will have read the  
11 reports before somebody testifies about it, and I may have  
12 questions I ask that you may think are not clearly set forth in  
13 the report, but that would happen -- I'd ask those -- it may be  
14 that there wouldn't be live direct, but would start with cross-  
15 examination, but I don't shy away from asking questions that I  
16 have. I don't take over the examination of a witness, but I do  
17 ask questions, so --

18 MR. FISHER: Understood.

19 THE COURT: All right. So just be mindful of, you  
20 know, the use of trial time for it, but I'm certainly open to  
21 doing that.

22 MR. WOLINSKY: Good. Thank you, Your Honor.

23 THE COURT: Anything else, Mr. Fisher, that you have?

24 MR. FISHER: Nothing from the plaintiff, Your Honor.

25 THE COURT: Any of the other defendants' counsel have



1 anything they want to raise? All right. Thank you very much.

2 MR. FISHER: Okay. Thank you.

3 THE COURT: Okay. We're adjourned.

4 (Proceedings concluded at 10:51 a.m.)

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C E R T I F I C A T I O N

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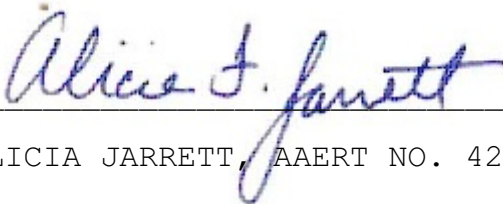
16 I, Alicia Jarrett, court-approved transcriber, hereby  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

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ALICIA JARRETT, AAERT NO. 428 DATE: December 22, 2016

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