

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
2 TYLER DIVISION

3
OWENS-ILLINOIS, INC. * Civil Docket No.

4 * 2-99-CV-117

VS. * Tyler, Texas

5 * July 14, 2000

T&N, LTD, Et Al * 9:30 a.m.

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7 TELEPHONE CONFERENCE HEARING
BEFORE THE HONORABLE T. JOHN WARD
8 UNITED STATES DISTRICT JUDGE

9 APPEARANCES:

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7 903/590-1187

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(Proceedings recorded by mechanical stenography,

11 transcript produced on CAT system.)

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1 P R O C E E D I N G S

2 A.T.& T. OPERATOR: Ladies and Gentlemen, this

3 is Tim with A.T.& T. Teleconference Center, I am going to

4 do a quick roll call. If you would please acknowledge

5 yourself as I call your name.

6 Mr. Gary Elliston.

7 MR. ELLISTON: Yes.

8 A.T.& T. OPERATOR: Mr. Shepard Hoffman.

9 MR. HOFFMAN: Here.

10 A.T.& T. OPERATOR: Mr. Matt Fischer.

11 MR. FISCHER: Here.

12 A.T.& T. OPERATOR: And Mr. Paul Sadler.

13 MR. SADLER: Here.

14 A.T.& T. OPERATOR: And Mr. Kip Glasscock.

15 MR. GLASSCOCK: Here.

16 A.T.& T. OPERATOR: Okay. And Mr. Mark Lanier.

17 MR. LANIER: I am here and also on this phone

18 with me is Paul Hanly.

19 A.T.& T. OPERATOR: Okay. Is there anyone on

20 line that I did not call their name? Thank you, sir, and

21 you have a great day.

22 THE COURT: All right. We have a court

23 reporter present and we're considering this on expedited

24 basis, Owens-Illinois' Motion to Compel and we received

25 the response of T&N. So, we'll just take it paragraph by

4

1 paragraph. I understand that the response is that as of

2 now the -- this key-word index has now been furnished?

3 MR. LANIER: Your Honor, Mark Lanier here.

4 Yes, Your Honor, we have furnished the key-word index
5 that we have. It's my understanding from Mr. Sadler this
6 morning that O-I's position is that they have no similar
7 index to provide us, and we did give them our key-word
8 index. I think it was given to them in the response,
9 Your Honor.

10 MR. SADLER: Your Honor, I do not have the
11 response in front of me. It was faxed apparently to my
12 office without -- the cover letter was faxed, but not the
13 response, but I think it has now been faxed to my office,
14 but I'm in Dallas. I don't know the form of the key-word
15 index. Is it -- is it a computer index, Mark, or is it
16 --

17 MR. LANIER: Paul, what it is -- is -- let me
18 look at it to make sure I can give you the best
19 description. It's a listing of the various words that
20 can be plugged in and asked for. It also gives you the
21 data base paragraphs of what the long labels are and the
22 short labels are, and the description so you understand
23 what the abbreviations are.

24 MR. SADLER: All right. So, how do we utilize
25 it, do we contact -- who do we contact to utilize it?
5

1 MR. LANIER: All you need to do is give me,
2 say, "Lanier, would you please run for me the following
3 key-words, 'boom, boom, boom,'" It will spit out bar
4 code numbers and those bar code numbers will access those
5 documents and -- and they're yours.

6 MR. SADLER: Very good. Judge, I do not -- in
7 reference to what Mr. Lanier said about Owens-Illinois, I
8 have asked specifically if there is a computer-generated
9 data base, I have been told there is not. So, I don't --
10 there is not that type of an index available to O-I
11 documents.

12 THE COURT: Well, what type of index is there

13 available to O-I documents?

14 MR. SADLER: I am not aware of any index other
15 than a listing of some documents, which I discussed with
16 them when they were in Toledo, and I told them at that
17 point that I would have it copied and furnished with the
18 document, the document they're having copied -- they're
19 having all the documents copied that it relates to.

20 MR. LANIER: So, we'll get that index at some
21 point?

22 MR. SADLER: It -- whenever -- with the copies
23 that are coming from O-I, it will be included.

24 THE COURT: Well --

25 MR. SADLER: It's the same -- it relates to
6

1 those documents that you had copied, and it's just a
2 print-out of it. It's just a listing of them.

3 MR. LANIER: Great, that'll be a good help to
4 us, thank you.

5 THE COURT: All right. I want to call your
6 attention, Mr. Hanly and Mr. Lanier, to local Rule 26(4),
7 parenthetical 4, expressly provides that it's not an
8 excuse to refuse to produce documents in this district
9 because you say somebody else is not doing what they
10 agreed to, and that's basically what you're response was
11 to this Motion to Compel. And so, I want you to know
12 that this Court is not going to tolerate your ignoring
13 what the local rule provides, and I am not going to
14 tolerate your refusing to comply with what -- an
15 expressed representation of what you would do six weeks
16 ago. So, I want you to know that that is not going to be
17 tolerated. Is there any question about my ruling on
18 that?

19 MR. LANIER: No, Your Honor. Mark Lanier here,
20 for the record's sake, my apologies to the Court. I did
21 not mean to convey that as an excuse, and I would not use

22 that before, Your Honor, as an excuse. I merely thought
23 that Paul and I had agreed to exchange those at some
24 point, and -- and that is a breakdown in our
25 communication, and it's not an excuse for not having done
7

1 it. He and I just haven't sat down and exchanged those,
2 and I've sent him mine anyway, and I do not use that as
3 an excuse. I've reread through the local rules, Your
4 Honor, and I apologize to you if I have not adequately
5 expressed to you what I meant to convey. That was just
6 -- I think there was a communication breakdown with me
7 having spent two weeks in Guatemala on a family reunion
8 vacation, and I didn't get those exchanged properly, and
9 I apologize.

10 THE COURT: Well, I want y'all to know that,
11 you know, the first hearing we had on this matter on the
12 telephone when this case was assigned to me, everybody
13 assured me that both sides wanted this case to go to
14 trial as expeditiously as possible, and you assured me of
15 that same thing in an informal conference following our
16 meeting in Marshall back in May. Now then, this Court
17 has moved a lot of cases, probably thirty different
18 cases, around to accommodate this case. So, I am going
19 to be very short tempered, no question about it, I want
20 you to know it. I've worked hard to accommodate your
21 request for an expeditious trial for a very lengthy trial
22 for both parties, and I am not going to tolerate y'all's
23 failure to comply with the local rules and to get the
24 same thing out of both parties that the Court has given
25 you through its staff and making sure that you get your
8

1 trial expeditiously. Now, do y'all understand that?

2 Any question about that?

3 Mr. LANIER: No question, Your Honor, from Mark
4 Lanier and my team.

5 MR. SADLER: Nor from us, Your Honor.

6 THE COURT: Well, I mean, we're working hard to
7 try to accommodate you, and then when I get a motion like
8 this, it just -- and I know what was told to me six weeks
9 ago, it is very disturbing to me. So, I want you to know
10 that I'm just not going to put up with it.
11 Now then, if Owens-Illinois -- Mr. Sadler,
12 there is a draft of a Motion to Compel here; it has not
13 been filed. So, I don't know what the status is, but you
14 know -- are there documents that y'all are claiming,
15 quote, that the phrase "relate to" or "refer to" is too
16 broad? I mean, is that really an objection at this
17 point?

18 MR. SADLER: No.

19 MR. LANIER: Well, it's a written objection
20 that's -- that's on file, Judge. I haven't been able to
21 get it removed.

22 MR. SADLER: Your Honor, I went to Toledo, Mr.
23 Lanier, Mr. Hoffman, and five or six other people. I
24 produced for them every document that Owens-Illinois has
25 that relates Kaylo or that may relate to any form of that
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1 production, I produced at that time. At the same time,
2 they indicated there were other things that they would
3 like to see, like planning committee minutes. I've had
4 those copied also, and they're being furnished. We are
5 waiting for -- they wanted full-page print color photos
6 of advertising of Kaylo products. Those are at the
7 reproducer's office, they've been promised to us next
8 week. Everything else has been copied, everything else
9 that's to be furnished. I think it fully complies with
10 -- with what they're us asking for.

11 THE COURT: Okay.

12 MR. SADLER: Now, the problem is -- the problem
13 I'm facing is this: We have for Kaylo and

14 Owens-Illinois, you're talking about basically a
15 ten-to-fifteen year period; for Turner & Newell you're
16 talking about almost a century of documents, and we have
17 -- we have tried to work out some kind of arrangement to
18 copy over there, but what I'm told is that Turner &
19 Newell will not allow any documents off premises.

20 THE COURT: Okay. We're going to take care of
21 that objection in just a minute. My question was --
22 MR. SADLER: That's what is causing from our
23 side that delay.

24 THE COURT: All right. That's -- we're going
25 to get to that part of the -- my question was whether or
10

1 not Owens-Illinois was standing on any objection about
2 this -- this phraseology of "refer to" or "relate to" as
3 being too broad for a basis of not producing any
4 documents.

5 MR. SADLER: No, no, the answer is no.

6 THE COURT: Okay.

7 MR. SADLER: I withdraw that if it's in that
8 written matter.

9 THE COURT: Okay.

10 MR. SADLER: And I have -- we've produced -- we
11 have produced under the understanding that we would not
12 object to it on that ground.

13 THE COURT: All right. I'm taking you in good
14 faith that that's what -- but for the record, that
15 objection is overruled. So, there won't -- it's --
16 withdrawn or not, I just want everybody to understand
17 that -- you know, that's -- that's not a good objection.
18 If it bears significantly upon a claim or defense that's
19 going to be produced voluntarily, unless it's privileged.

20 MR. SADLER: Yes, Your Honor.

21 THE COURT: I thought I made myself -- I reread
22 the transcript. I thought I made myself abundantly clear

23 about my attitude about discovery. If it's not
24 privileged, then get it produced. Does -- does anybody
25 need further explanation on what I mean by that?

11

1 MR. LANIER: No, Your Honor.

2 MR. SADLER: I understand.

3 THE COURT: Okay. Now then, let's see: Have
4 you or have you not got this worked out about the number
5 of hours the repository is going to be open?

6 MR. SADLER: It stayed open till five o'clock
7 last night.

8 THE COURT: Well, I expect it to be open from
9 nine o'clock to five o'clock every day, I expect
10 Owens-Illinois' personnel to be there and ready to start.

11 MR. SADLER: I don't know of any day that we've
12 been late.

13 THE COURT: Well, there's an affidavit here;
14 you haven't seen in the response. It says y'all didn't
15 even show up some days. So, I don't know about it, but
16 I'm just --

17 MR. SADLER: If that's true, then I don't
18 believe -- Matt Fischer's on the phone with us. Matt's
19 been there every day except this week. Matt, has there
20 been a day we didn't show up?

21 MR. FISCHER: No, absolutely not; we were there
22 every day.

23 THE COURT: Well, you know, I'm not going --
24 I'm just gonna tell you that I expect it to be open from
25 nine to five, and I expect Owens-Illinois' people to be
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1 there promptly to work. Now then --

2 MR. SADLER: We're spending a whole lot of
3 money, Judge, to be there, and I can assure you we've not
4 been dilatory in that regard.

5 THE COURT: Okay. Now, I do not understand why

6 it is -- or, Mr. Lanier, is this correct, their
7 allegation, true or false, that it's Turner & Newell's
8 position that these documents are not going to be handed
9 over to Owens-Illinois until they have been copied by one
10 single person using one copier, then shipped to your
11 office in Houston for you to Bate stamp or your office?

12 MR. LANIER: That is not totally accurate, Your
13 Honor.

14 THE COURT: Well, what's inaccurate about it?

15 MR. LANIER: We have two people doing the
16 copying right now, we are trying to access more copy
17 machines, to bring them in for the copying. The Bate
18 stamping in my office, that was my understanding with Mr.
19 Sadler, and I didn't think he was upset with it. They
20 don't have the ability to Bate stamp over there; so, they
21 would be sent to my office, Bate stamped, and turned
22 around because in Houston, unlike Manchester, we have
23 litigation support centers. I mean, I can get them
24 turned around in twenty-four hours and they'll be in his
25 hands once they're here. The first load is supposed to
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1 be here by next Tuesday; so, it should be in his hands by
2 Wednesday. But we have two people copying, we are trying
3 to access additional machines over there, and have them
4 brought in so that the turn-around can be much quicker.

5 THE COURT: Well, how quick is it going to be
6 in the future?

7 MR. LANIER: Your Honor, I hope it's going to
8 be substantially quicker. It ought to be at least three
9 times as fast, because we -- we can get three machines, I
10 hope, going, and if we need more, we'll get more. I do
11 know that most of the documents -- I can't confirm all,
12 but most of the documents that O-I has requested be
13 copied, have already been provided to O-I on microfilm in
14 this case as part of our initial disclosure. For

15 example, O-I has requested that we Xerox seven thousand
16 pages of Walker Shepard's (phonetic spelling) trip report
17 that spanned a thirty-year time period. I came in this
18 morning to look through the microfilm because I thought I
19 remembered seeing those, and all of those have already
20 been produced to O-I on the microfilm, and O-I has it.
21 If O-I would allow me to -- to -- I mean, if -- if they
22 would look at the microfilm that -- that we've already
23 produced to them, they'd see I think, if not all, almost
24 all of the documents. We're still happy to make them
25 additional copies, and -- and I'll do it as expeditiously
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1 as possible. I do want the Court to know that I asked --
2 and -- and by the way, the microfilm was produced to them
3 in January, I'm not sure that I told you that just now.
4 But I've asked over there, and -- and I made a trip
5 myself to England to try and find a place like a Kinko's
6 or an Icon or somebody that does copying. In Manchester
7 there is one facility that does what I would consider to
8 be large-scale copying, and I took it to my clients and
9 discussed whether or not we could use them as a copy
10 source. My client has expressed frustration because --
11 over doing this because not being as litigious a place,
12 Manchester, this -- this outfit, they used them once
13 before in -- in a case, and these documents are sixty,
14 seventy, eighty years old, they're very fragile. A
15 number were destroyed, a number were lost. The misfiling
16 of the documents afterwards shut down the repository for
17 six months. I know as a plaintiff's attorney generally
18 in PI litigation the Keasby & Mattison minutes were lost,
19 and -- and -- and the copy service found them six months
20 later, but to a plaintiff's attorney that was a tragic
21 loss almost, because those minutes are extremely
22 important in our underlying PI cases against T&N. So,
23 they've had such a bad experience with that one company

24 that they have said they want to do it internally. I
25 have told them -- in fact, I told them before I left for
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1 Guatemala two weeks ago, they've got to get more machines
2 in there because we gotta get the copies not only to O-I,
3 but to me, to our experts, and I'll represent to the
4 Court I'm supposed to get my first load in, I haven't
5 gotten any in yet, my first load come in on Tuesday, but
6 there are the microfilm that they've had since January
7 that I think has almost all of these copies on it if they
8 want to look through it.

9 MR. SADLER: Judge, the microfilm we have, some
10 of the documents we can read, some of them we can't. The
11 difficulty is that there's not always a correlation
12 between the docket -- the numbers that are on the
13 microfilm and what we're finding in the repository.
14 There's a separate bar code system, and we have no way to
15 manage the two, particularly without any kind of index
16 between the two, and so, all we're relegated to do is, as
17 we get a box brought in to us, is identifying those that
18 we need copying and try to get a copy, but if we're going
19 to be four weeks down the road, there's no way. We're
20 probably -- Matt, best estimate, a tenth of the way
21 through the repository, maybe a quarter?

22 MR. FISCHER: Yeah, Paul, with the work that's
23 been done this week, I think it's probably closer to a
24 quarter.

25 MR. SADLER: There is no way that we're gonna
16
1 be able to meet August expert reports if we're not even
2 going to get the documents beginning until next week, and
3 that's kind of been our frustration with it. I did call
4 this week, I talked to Ms. Hegar, in Mr. Lanier's office,
5 I asked her again to check on it, and she told me that --
6 she was the one that told me that Turner & Newell's

7 response was they would not allow the documents off the
8 premises. I said, "Can I arrange for more machines, can
9 I do that?" She said, "I don't know; I'll get back with
10 you." The problem is time is ticking away on us, and we
11 just have to have this -- this problem resolved or -- or
12 it's gonna throw tremendous delays and problems between
13 now and December trying to get experts done and get the
14 documents film, et cetera.

15 MR. LANIER: Your Honor, Mark Lanier. If I
16 could make one additional thought here. I'm trying to
17 work through this with what you're saying, Paul. I see
18 two issues here. One issue is y'all have only made it
19 through a quarter of the repository in four weeks --

20 MR. SADLER: Three weeks actually there.

21 MR. LANIER: Okay.

22 MR. SADLER: You closed it the week of July
23 4th.

24 MR. LANIER: All right. So, that would be
25 three weeks. You know, based on that pace, I guess
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1 you've got nine more weeks before you've made it through,
2 and it looks like we're on a three-week lag time
3 producing the documents. Your Honor, I'll represent to
4 you that -- that there's no reason that the documents,
5 whatever is being copied, shouldn't be sent to me at
6 least weekly and turned around immediately within
7 twenty-four hours and given to Mr. Sadler, and -- and I
8 will make that change.

9 I will also represent to the Court that I will
10 try and determine how many copies -- I -- I tried to get
11 a status -- getting in late last night, I've done the
12 best I could in this short a time, but I've tried to get
13 a status of what is the backlog? How many machines do we
14 need? What do we need to do to get this done? And I
15 don't have that status for the Court right now, I wish

16 that I did, but I will tell you that I will get that
17 status and put it in a letter to Your Honor with a copy
18 to all counsel, and that I will try and get the machines
19 there so that we don't have more than a week in -- in lag
20 time between what they want and what we get. I trust
21 that Paul's being diligent trying to get me the copies
22 that we sought when we were up there, and -- and I -- I
23 know he is, and I just want the Court to know that I'm
24 trying to be diligent, get him the copies that he seeks,
25 as well. And that I'll have the first load to him by
18

1 Wednesday or Thursday, and I'll have a complete status of
2 where we are on that and how many machines we can get,
3 and I -- I -- that's all the information I've got, Judge.

4 THE COURT: Well, there's no reason that they
5 can't ship documents via Federal Express from -- from
6 England twice a week. So, it -- you know, this business
7 of waiting to gather them up for a week, that's -- that's
8 not gonna work.

9 MR. LANIER: Okay. Twice a week, Your Honor,
10 we'll do it.

11 THE COURT: You know, I represented British
12 Petroleum for a number of years in major litigation and,
13 you know, we got things out of England just like we did
14 everywhere else. So, this business that you can't get it
15 done in England just doesn't wash with me. It can be
16 done over there just like it can here, and so, you just
17 -- let's just -- that's not -- that -- that answer is not
18 acceptable. I want them shipped over twice a week, and
19 they ought to be turned around from the time you receive
20 them out -- back out your door within forty-eight hours
21 Bate stamped, whatever Bate stamping you want to do.
22 There's a program that runs Bate stamp on a -- on a -- on
23 a PC. You know, looks like to me you could get a PC over
24 there and you could Bate stamp them, have them copied at

25 the same time, but you say you can't. That -- that

19

1 doesn't make sense to me.

2 MR. LANIER: Okay. I don't know about that

3 program, Judge. If something like that's available, I'll

4 sure try and find it and try to get it over there,

5 because that'll save us some time, and I love to save

6 time.

7 MR. GLASSCOCK: Your Honor, this is Kip

8 Glasscock. Can I be excused now?

9 THE COURT: Yes, sir.

10 MR. GLASSCOCK: Thank you.

11 MR. SADLER: The final issue that we have, Your

12 Honor, relates to -- relates to the physical facility

13 over there. There's one great big room where all the

14 documents are kept, it's row after row of file cabinets.

15 Okay. What we have tried to do -- we have one paper

16 index right now that I received back in 1992. It is not

17 inclusive of everything that's in that room. Most of

18 everything that's in that room, we think, but it's

19 described as whoever put that together. We have asked

20 for access into the room to try to organize the files, so

21 that we'll know what they look like to speed up this

22 process. We have tried to -- with cooperation with Mr.

23 Lanier's office, we've been talking about this for two or

24 three weeks. Turner & Newell take the position that's

25 their workroom and that we should only be allowed in

20

1 there thirty minutes a day, and then we go to another

2 room and have to request the drawers we want, and that

3 has just reached a point where I think it's so cumbersome

4 where we can't organize the repository itself because of

5 the lack of a massive index that is organized, we think.

6 And we're trying to find somewhere where we can spend

7 more time in the actual room where the repository is

8 rather than sitting blind in a room with a big index, and
9 say, "Okay, bring us drawer number 258," or just start at
10 number one and bring them one right after another. It's
11 just not a very efficient way to do things, and yet,
12 we've been -- we've been told repeatedly you get thirty
13 minutes and that's it. We've -- we've had a legal
14 assistant sitting outside the door the last couple of
15 days trying to make an index. If they'd just bring us
16 drawer after drawer so we can start making an index that
17 way; but we have to sit outside the room. And I
18 understand their need to want to use the repository, but
19 I don't think those are mutually exclusive events.
20 THE COURT: What's your response to that, Mr.
21 Lanier?

22 MR. LANIER: Judge Ward, this is a working
23 repository, and by that I mean that there are tens of
24 thousands of cases ongoing that T&N has lawyers in there
25 putting together their documents, trying to put together
21

1 -- heavens, I've got them putting together documents for
2 this case, and what we have done instead of just taking
3 out a few file cabinets and putting them in a room, and
4 then when they're through taking them new file cabinets,
5 instead of doing that type of thing, we have said, "Look,
6 here's the room where all of the documents are. Now,
7 don't go in this room here, because these are the ones
8 that are set aside and privileged," but -- but these
9 documents, you've got a four hundred and twenty-three
10 page index that gives you every drawer, every label,
11 exactly what's in them.

12 MR. SADLER: That's not true, Mark; it's not
13 every drawer, every label, and everything that's in them.

14 MR. LANIER: Paul, please let me finish.

15 MR. SADLER: All right.

16 MR. LANIER: And -- and we give them that, and

17 then when I went over there personally and opened it up
18 to them, I showed them eight drawers that are not
19 included in that index; out of the three hundred drawers,
20 eight are not. Almost all of those are minutes,
21 corporate minutes, and things like that. There are those
22 eight drawers that aren't included, but they've got a
23 four hundred and twenty-three page index, and what I did
24 is I said, "Look, I've shut down the repository for today
25 so that y'all can go through unfettered, and you can look
22

1 through all three hundred drawers and decide what order
2 you want, how you want them brought to you. Here's a
3 room over here." It was an acceptable room to them when
4 I was over there with tables and chairs, and all you've
5 got to do is tell us which file drawers you want brought
6 in here, and we'll bring them in. Do you want -- you
7 know, five, six, eight, however many people you've got,
8 however many file drawers you need, we'll bring them to
9 you, but we need to keep the working repository open for
10 the lawyers in there to be working. In the process of me
11 telling them that -- oh, I might also add there's --
12 there's some -- Paul's writing me notes here. There is
13 ongoing British litigation that requires that repository
14 being used also for the attorneys over there. In the
15 process of me trying to work this out, Mr. Sadler told me
16 that, you know, actually it would be a whole lot quicker
17 for them if they could spend a little bit of time each
18 day looking in the file drawers and deciding by looking
19 at the file drawers what they wanted instead of by
20 looking at the index or instead of having the drawers
21 brought to them file cabinet at a time. So, I said, "All
22 right. How about if I shut down the repository for
23 thirty minutes each morning so that y'all can come in
24 here and for the next thirty minutes have your five
25 people sweep through a few of these drawers and say,

23

1 `Hey, these are useful and these aren't,'" and so I've --
2 I've offered them that, as well. I will say that I don't
3 think there is a hold-up in getting them the drawers, I
4 don't think they have down-time. It's my understanding
5 that we've had more drawers in there, in their private
6 room, than they've had time to look at, and it's actually
7 taken them a few days to process some of the drawers that
8 we've given them, but if there seems to be some down-time
9 where they're twiddling their fingers waiting for
10 drawers, I'll hire another contract laborer to carry the
11 drawers down the hall so that they've -- they've got more
12 drawers in there. I don't think there's that down-time
13 though; I think just physically they're -- they're in a
14 separate room in the repository. I do not want them to
15 -- Mr. Sadler used the word "organize the repository."
16 It is very important to my client that the repository not
17 be changed in its order and that the file drawers
18 continue to contain the files that have been indexed and
19 that have been relied upon in -- in defending this
20 litigation throughout the country, and so that's --
21 that's an issue, as well.

22 MR. SADLER: I'm not suggesting that by any --
23 by any stretch of the imagination.

24 MR. LANIER: Okay. I didn't know that you
25 were; you used the phrase, "Organize the repository." I

24

1 didn't think --

2 MR. SADLER: For our purposes, for our
3 purposes.

4 MR. LANIER: Yeah. Judge, that's my response.
5 That's trying to give you the information I've got on it.

6 THE COURT: Well, I -- I hear both parties; I
7 don't hear anybody coming up with a solution to the
8 problem. I didn't even hear a suggestion, Mr. Sadler.

9 What is it you're requesting?

10 MR. SADLER: We would like to be able to -- we
11 were given one day when we got there. Now, there are
12 over three hundred drawers in there in one room. It is
13 impossible even in one day, from nine to four, to try to
14 go through and get any sense of -- of what you want to
15 look at and when you want to look at it. To suggest that
16 this repository is even remotely organized is -- it's
17 incredible. You'll find documents of various years in
18 folders that do not even relate by subject matter. And
19 so, what we've tried to do is say if we could have a
20 little -- and we tried to work with the thirty minutes a
21 day now for three weeks, but if we could have more time
22 during the day, even if it's a couple of hours every day,
23 we can go in and get some sense of row by row of what's
24 in there by looking at the drawers, and then we can come
25 back and make a more intelligent choice of what we want
25

1 to select and look at. It's just a matter of efficiency
2 in trying to utilize the time we have in the -- in the --
3 in the best way we can; that's all we're asking. I
4 haven't seen a trail of lawyers -- and, Matt, if I'm --
5 tell me if I'm wrong about this. We haven't seen a trail
6 of lawyers from America or from Britain or anywhere else
7 going and looking at documents here. All we've seen are
8 Mr. Hanly's lawyers sitting in there in a little private
9 room, and then, every once in a while, when I was there,
10 I saw them out among the drawers. But to suggest this is
11 working repository, it's working for T&N, but we think we
12 ought to be able to have more access than thirty minutes
13 a day to be able to look at what's in there.

14 MR. LANIER: Your Honor, Mark Lanier. I do
15 want the Court to understand -- and, Paul, for your
16 benefit, as well, I shut down the working repository, I
17 told them they weren't allowed to be out there while

18 y'all were out there looking through the documents, and
19 that's been the same each morning.

20 MR. SADLER: Well, we didn't ask for that.

21 MR. LANIER: That's why you haven't seen the --

22 well, they -- they -- they can't practically stand around

23 and talk about, "Hey, this is useful in this case, this

24 is useful in that case," or "Did you find this" or "Did

25 you find that," while your people are there.

26

1 THE COURT: Okay.

2 MR. LANIER: But there are two or three lawyers

3 there that have been working through there nonstop on

4 various litigation matters. It's just when y'all are in

5 the room, they're not, they can't be, and so, they wait

6 in the little anteroom until y'all are through, and then

7 they go out and they start looking through for their

8 documents.

9 THE COURT: All right. Here's what you'll --

10 here, this is it. You're going start opening up the

11 repository rather than nine to five, you're gonna open it

12 from eight to five, starting Monday, and from eight to

13 nine-thirty O-I has access to the repository, and that --

14 that gives them an extra hour a day instead of the thirty

15 minutes. Any problem with that, Mr. Lanier?

16 MR. LANIER: No problem at all, Your Honor.

17 It'll be done starting Monday or my name is Bad Mud.

18 THE COURT: Okay. Anything else now?

19 MR. ELLISTON: Judge, this is Gary Elliston.

20 THE COURT: Hi, Gary.

21 MR. ELLISTON: How you doing?

22 THE COURT: Good.

23 MR. ELLISTON: I have filed an answer on behalf

24 of Federal-Mogul in this case. They were added to the

25 case, and I filed an answer in early July, and in fair

27

1 disclosure, especially in light of your comments earlier
2 in the hearing, I wanted to let you know, if you have not
3 seen the letter that I have sent to the District Clerk,
4 that I have filed a tag-along notice for this case, to
5 move this case to the MDL on behalf of Federal Mogul, and
6 I filed that tag-along notice Monday, I believe, of this
7 week, and -- just like I say, in light of your comments
8 earlier, I wanted to make sure that you were aware of
9 that so that you wouldn't be sandbagged or blindsided by
10 that if, in fact, the MDL panel does, in fact, take the
11 case.

12 THE COURT: How soon do you think we could get
13 them to do that, Mr. Elliston? How could I assist you?

14 MR. ELLISTON: It's my understanding, Judge,
15 that a conditional order will be entered within the first
16 thirty days, and then there will be objections, if they
17 choose to object, filed, and then the panel will make
18 that determination sometime shortly thereafter. So, I
19 anticipate a conditional order transferring the case
20 within thirty days of the tag-along notice, and, as I
21 say, I think it went out Monday; it may have been the end
22 of last week.

23 MR. SADLER: Your Honor, we have already by
24 letter objected and will be objecting vigorously. We do
25 not believe it is a tag-along, and does not come within
28

1 the purview of that MDL panel. The question arises
2 though, do we just all freeze and quit, or do we keep
3 working, and --

4 THE COURT: I guess it depends on what order
5 the MDL sends out.

6 MR. ELLISTON: Your Honor, let me comment on
7 that. It's my understanding under the law that the
8 District Court maintains jurisdiction of the case until
9 the conditional order is entered and maybe beyond, but I

10 know certainly at this point in time, you still have
11 jurisdiction. It is my belief on behalf of Federal-Mogul
12 that the discovery should be stayed, and I do intend to
13 file a motion to stay discovery pending a final
14 determination by the MDL panel. I do not raise that for
15 your consideration at this point simply because I have
16 not had a certificate of conference with Paul on that
17 issue, and I -- but again, in the interest of fair
18 disclosure to you, I want you to know that a Motion to
19 Stay Discovery will be forthcoming from Federal-Mogul.

20 THE COURT: Now, the -- you talking about the
21 MDL case that's up in --

22 MR. ELLISTON: Philadelphia, yes, sir.

23 THE COURT: Where all the personal injury cases
24 are transferred?

25 MR. ELLISTON: Yes, sir.

29

1 MR. LANIER: Your Honor, Mark Lanier here. I
2 know it's also got like the Baron and Budd case, the one
3 that's against Baron and Budd, where Raymark sued them.
4 I think it's got. I think it's got more than just PI,
5 but it's mainly the PI stuff up in front of Judge Weiner.

6 THE COURT: I'm familiar with that case, but I
7 haven't looked at the tag-along or -- Okay. That's just
8 something we'll take up at the --

9 MR. SADLER: Judge, while we have you on the
10 phone, can I ask another question?

11 THE COURT: Yeah -- well, go ahead. I've got a
12 -- I've got a list of things I was going to tell you, but
13 I'd like to -- let me -- let me comment -- well, tell
14 you, tell all of you. I'd like to get this MDL as
15 quickly as -- you know, I'm going to resolve that pretty
16 quick. If we're going to stay discovery, then I need to
17 start rescheduling my docket to -- to take care of what
18 we've done in order to meet this -- meet y'all's request

19 that we try this case expeditiously. T&N didn't see this
20 as a tag-along case, is that it, Mr. Lanier?
21 MR. LANIER: Your Honor, it probably is a
22 tag-along case. I'm not sure that I was smart enough to
23 see it at the inception, but realistically the discovery
24 dispute and all these documents, these are the same
25 discovery disputes and documents that I have had with T&N
30

1 in the past in my PI cases, and the -- the question of
2 what they knew and when they knew it, and who they told
3 about the hazards of asbestos, the witnesses that have
4 been designated by the people are the same witnesses that
5 are designated in all the PI cases. The experts that Mr.
6 Sadler sent out on his disclosure are the same experts as
7 the PI cases.

8 MR. SADLER: I haven't -- I haven't disclosed
9 any experts yet.

10 MR. LANIER: I thought you had Tweedale listed,
11 and he's -- he's not --

12 MR. SADLER: No, that's a person with
13 knowledge.

14 MR. LANIER: Oh, well, he's -- okay. He wrote
15 a history of T&N, he's not an employee or anything. He's
16 typically an expert in these cases, but --

17 MR. SADLER: And he's your consulting expert.

18 MR. LANIER: That's true. And -- so, anyway,
19 Your Honor, realistically it probably is properly tagged
20 along, if the MDL wants to do that.

21 MR. SADLER: And I vigorously disagree, for
22 what it's worth, Your Honor.

23 THE COURT: Well, I was just wondering why,
24 you know, as I understood T&N -- is T&N a wholly owned
25 subsidiary of Federal-Mogul?

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1 MR. LANIER: Yes, it is, Your Honor.

2 THE COURT: It just sort of seems unusual that
3 it took the parent here some year after this litigation
4 was filed to determine that this was tag-along, but we'll
5 just have to deal with that as it -- as it comes up.
6 All right. Any -- All right. Mr. Sadler, you
7 -- you had something else?
8 MR. SADLER: There are questions that are going
9 to come up, Your Honor. There are a couple of issues
10 that -- I -- I know Mark has requested a couple of -- a
11 set of documents from O-I that involved an arbitration
12 between Owens Corning Fiberglas and Owens-Illinois that
13 there are court orders in place that prohibit me from
14 producing, that I know that eventually he's gonna want to
15 bring to the Court's attention. Likewise, there's a --
16 they have filed a privilege log with this Court that is
17 approximately two thousand pages, my guess is it has over
18 fifteen thousand documents on it. It is my belief, and
19 I'm not certain of this, but it is my belief it is
20 virtually the same privilege log that was filed in Chase,
21 and the Chase case has already been through months and
22 months of hearings up there. At some point in time, I
23 think those are issues that we are going to have to have
24 the Court rule on, and I didn't know if it was
25 appropriate for us to go ahead and try to schedule some
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1 of those matters or if you want us to file motions with
2 you or how you wanted to do it?

3 THE COURT: Well, I --

4 MR. SADLER: I think the parties can identify
5 the discovery dispute; it's just a matter of how you want
6 it presented to you.

7 THE COURT: Well, the only way I know to do it
8 is to file a Motion to -- to Compel their Production.

9 MR. SADLER: Okay.

10 THE COURT: And let them respond. But it

11 sounds less and less likely that this case is -- in spite
12 of what we thought we were doing, that this case can go
13 to trial in December.

14 MR. SADLER: Well, we're very much committed to
15 that, Your Honor, but a lot of it is -- just frankly,
16 it's going to depend on our ability to get the documents
17 turned around, and get them in the hands of our experts,
18 and, of course, we don't know what the MDL procedure is
19 going -- going to bring about.

20 MR. ELLISTON: Paul, this is Gary. I know
21 you're in Dallas away from your office. When you get an
22 opportunity, would you please call me today so that we
23 can discuss this stay of discovery.

24 MR. SADLER: I'll be happy to, Gary. I'll call
25 you in a few minutes.

33

1 MR. ELLISTON: Thank you.

2 MR. LANIER: Judge, Mark Lanier here. I'll be
3 glad to do the Motion to Compel. I do think what will be
4 useful is for Paul Sadler and I, with me being back in
5 the country now, is to sit down either face to face or
6 over the phone and -- and try and make it as clear as we
7 can with -- with as little fluff and fussiness over
8 little details, and try to set down before you (a) here
9 are my five complaints of -- on a compel, here are his
10 three or five or whatever complaints, and -- that we
11 can't work out, and would you give us a chance to -- to
12 hear them before you if we're going to continue in this
13 forum, just give us a chance, and I -- I very much
14 appreciate your letting us do this by telephone, but
15 don't hesitate to -- I know you wouldn't, knowing you,
16 but -- but don't hesitate to tell me to get my butt up to
17 Marshall, because I'll be there in a heartbeat if you
18 want me to do it live and in person.

19 THE COURT: Okay. I had set on my calendar --

20 I was just going over to look at my computer, I had
21 tentatively set something for -- I believe in this case,
22 for September 1 of -- I'm going to set it -- well, let's
23 start a hearing on privileged documents on -- on August
24 31st at 9:00 a.m., and that hearing -- that'll be a
25 two-day hearing. So, get your -- whatever motions you
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1 want and -- that'll be in Tyler, that's assuming that we
2 haven't been stayed by the MDL panel. What are the
3 ethics of me calling the MDL panel and soliciting them to
4 take this case? It doesn't sound right; I guess I'd
5 better not do it.

6 MR. SADLER: You're on the record though now,
7 Judge.

8 THE COURT: Yeah, I know it; that's the way I
9 feel about it.

10 MR. LANIER: Your Honor --

11 THE COURT: The black hole of Philadelphia.

12 MR. LANIER: Your Honor, Mark Lanier here. I
13 appreciate your tolerance with me, Your Honor, and -- and
14 I will do everything you have said to the letter.

15 THE COURT: All right. Well, now, we got some
16 other things that I had planned to discuss on that date,
17 on the 1st. I sent you an order -- I don't know if y'all
18 have gotten it yet, about unsealing these documents. I
19 basically said the documents that -- effective thirty
20 days from some date -- have we got a copy of that order
21 that I signed, Chad? We're gonna -- I thought maybe that
22 if you knew what I was gonna do about the documents, if
23 there was any possibility of this case settling, I
24 thought maybe the unsealing of this record might inhibit
25 any ability to settle. So, basically I was giving you an
35

1 additional thirty days to talk about settling this case,
2 because the positions that both of you are in is rather

3 unusual to me. Your third-party complaint in T&N, I've
4 allowed that to be filed. I must say that for a
5 sophisticated company to suggest that, well, we didn't
6 respond appropriately in discovery because these other
7 lawyers from these other companies convinced us that we
8 shouldn't. You know, I can't but help but think about
9 the comedian that I used to enjoy so many years ago, Flip
10 Wilson, you know "The devil made me do it?"

11 MR. LANIER: Geraldine, that's right.

12 THE COURT: I really don't think that -- I
13 really don't think that that "The devil made me do it"
14 defense is going to do much. It looks like to me that both
15 parties have opened themselves up. I mean, I just think
16 about if I were a judge where I knew what I know now, and
17 a lot of cases have been disposed of in front of me with
18 admissions that "Well, we didn't produce everything we
19 were supposed to because so-and-so over here convinced us
20 not to." Then that means so-and-so didn't produce them
21 either. I don't know if any of those settlements are
22 good.

23 MR. HOFFMAN: Your Honor, this is Mr. Hoffman.

24 I just wanted to make sure I understood. Are you
25 referring to Owens-Illinois' allegations that it was the
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1 devil, Turner & Newell, that made them do what they did
2 or that it was --

3 THE COURT: I'm talking about the third-party
4 action.

5 MR. HOFFMAN: Oh, okay. Because our view is
6 that -- and I liked that same comedian, and -- and that's
7 exactly what I thought about when I first saw the
8 original complaint in the case.

9 THE COURT: Well, I think both of you got a
10 problem. That is what I was just trying to communicate
11 to you, that I think that both of you are creating a

12 significant problem for yourselves, and I -- but, you
13 know, you're -- these are sophisticated companies that
14 have been in lot of litigation.

15 MR. LANIER: I will say -- Your Honor, Mark
16 Lanier here, that Shep and Paul and I have had a private
17 chuckle that the plaintiff's bar may be the main
18 beneficiary of this lawsuit in some ways.

19 THE COURT: Yeah, I think that's -- I don't
20 think there's any question about that ultimately, but --
21 did you get a copy of that order? Okay. What did it
22 say, thirty --

23 MR. EVERINGHAM: It said, the order, the entire
24 file will be unsealed except for those documents which
25 are specifically listed in the statement and those --
37

1 THE COURT: That's right, okay.

2 MR. SADLER: Your Honor, if I may follow in
3 your thought --

4 THE COURT: Well, I was just gonna -- what the
5 order says that has been signed, y'all should have it by
6 now, thirty days from yesterday or day before yesterday.
7 I'm ordering this file unsealed except for those specific
8 documents that you listed, Mr. Sadler, and then I'm gonna
9 give -- I had set in that order a hearing for September
10 the 1st at 9:00 a.m. in Tyler to show cause to try to let
11 you -- give everybody their last chance to convince me
12 what I should or shouldn't do with respect to that group
13 of documents. That is sort of, I guess, in light of the
14 "Do you Want to be A Millionaire," is that gonna be your
15 final -- that's gonna be your final answer, that day.
16 So, to the extent, unless you can get the Fifth Circuit
17 to -- to stay whatever I decide to do about it, but so,
18 now -- I -- okay.

19 MR. HOFFMAN: Your Honor, this is Mr. Hoffman
20 again. All right. Out of an abundance of caution, I

21 would like to ask if the Court has any objection to my
 22 circulating within the plaintiffs bar the -- that order,
 23 because I can tell you there are hundreds of law firms
 24 around this country that unanimously will support and
 25 many will want to send counsel to argue on September 1
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1 that the entirety of the records should be unsealed, and
 2 Turner & Newell's position is that it should be unsealed,
 3 but the -- the -- I don't want to circulate that if Your
 4 Honor would feel that to -- to be inappropriate.

5 MR. SADLER: Your Honor, the amazing thing
 6 about that to me is that that third-party complaint hurts
 7 Turner & Newell more than it hurts anyone.

8 THE COURT: Well, Mr. Sadler, you know, I am
 9 reminded -- you know, I know I speak in sort of
 10 colloquial terms and maybe some folks on this phone call
 11 won't understand, but I am reminded that you should never
 12 build a glass house on the edge of a cliff, but if you
 13 do, the last thing you want to do is get into a rock
 14 fight with your neighbor.

15 MR. SADLER: That's true.

16 THE COURT: And it -- I have -- I see two
 17 rather sophisticated parties that have built glass houses
 18 on the edge of a cliff, and now they're gonna -- they're
 19 starting to throw rocks at each other.

20 MR. LANIER: Your Honor, Mark Lanier here. I
 21 have chuckled with Mr. Sadler in -- in the candor of our
 22 conversation here, with Mr. Sadler and Mr. Hoffman about,
 23 you know, what -- what -- what has happened here is
 24 tantamount -- I don't have the glass house illustration,
 25 but mine would -- with the cold war, would mutually
 39

1 assure destruction, and it's just like everybody saying,
 2 "Hey, we're launching all of our nuclears. If we're
 3 going out of business, we're going to take the world out

4 with us," and it's -- it's a pity that it's evolved into
5 this, but -- but, you know, I think your illustration is
6 appropriate, it's dead on.

7 THE COURT: Well, I just wanted y'all to know
8 the purpose of my timing of that order was to give you an
9 opportunity to resolve it. It sounds to me like maybe
10 that just was a wasted thought on my part.

11 MR. SADLER: Well, you have to have both
12 parties willing to sit down, Judge.

13 THE COURT: Yeah. So, I'm not -- well, I'm not
14 -- you know, I'm not ordering anybody to do anything. If
15 that's what -- if that's the way everybody is going to
16 proceed, then, you know, I -- I don't have any control
17 over it; I'll just be the one that signs the final order
18 on something. Perhaps, unless it goes up MDL, and I get
19 lucky.

20 MR. LANIER: And then it may never be a final
21 order.

22 THE COURT: Well, that -- yeah, but this --
23 there may not be a -- ever be a final order, but there
24 will be an order on unsealing of documents.

25 MR. LANIER: Oh, that's true, Your Honor. No,
40

1 that's dead right.

2 THE COURT: You know, that -- and that looks to
3 me like that's about all it's gonna take. You know,
4 that's just -- you know, a country judge used to be a
5 country lawyer, that's just my observation.
6 Now, in addition on the -- this two-day
7 hearing, of course, we'll start off the hearing on the
8 31st on privileged documents, but at some point we'll
9 take up a status conference, and these are some of the
10 things I want y'all to know that we're gonna talk about.
11 We need to be talking about, at that point, the number of
12 experts that are going to be allowed to testify, and

13 assuming that we do go to trial, we're gonna be talking
14 about the number of hours that each party will be allowed
15 to be -- to use to be -- to present testimony, and in a
16 case of this nature, I think it would be helpful if we
17 would set a time for either party to use up to -- like up
18 to fifteen minutes at a time interim statements; so,
19 we'll talk about that. Now then, we'll also need to talk
20 about establishing a procedure where we can have hearings
21 ahead of the trial date on -- on exhibits that you want
22 -- you got actual objections you to go to the mat on,
23 because I want to have the objections to about
24 ninety-nine percent of the exhibits ruled on before
25 trial, so that we know what the exhibits are gonna be.

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1 And we'll discuss with you, since we're gonna be talking
2 about expert testimony, I'll give you some -- make sure
3 that -- it's on my list, but should I forget it, somebody
4 call to my attention, I'll want to give you my views on
5 presentation of expert testimony, and what I will and
6 will not permit experts to do. And just keep in mind
7 that the general rule is they do not take over my
8 courtroom, so -- by the way, with respect to that order,
9 Mr. Hoffman, it's ordered sealed, also; so, do not
10 distribute it.

11 MR. HOFFMAN: So, do not distribute the order?

12 THE COURT: That's right, it's -- I've just got
13 a copy of it. I want to make sure of it; it's sealed,
14 also.

15 MR. HOFFMAN: Is it inappropriate for me to
16 advise the bar that the matter will be brought on for
17 hearing on September 1, so that people who have an
18 interest in the matter can attend. Again, I don't want
19 to end-run the order, the spirit of the order, by giving
20 out information to people. So, if what Your Honor is
21 saying is that not only is the document itself sealed,

22 but -- but we do not want to disseminate, publicize, or
23 be condoning the fact that the matter is coming on here;
24 then I will act not only on the letter of the order, but
25 the spirit of it, as well, if that's what you -- Your
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1 Honor tells me ought to be done.

2 THE COURT: Well, I -- I think it's going to
3 inhibit the parties' ability to present the case, if the
4 hearing is open to start with. I mean, I want to hear
5 their candid views as to why they think I ought to keep
6 it sealed, and so, I guess, I'm telling you that -- that
7 I'm probably gonna seal -- I'm gonna let the arguments be
8 done without anybody hearing them other than me.

9 MR. HOFFMAN: Well, then -- then what I will
10 simply do is refrain from publicizing this, and at the
11 time of the argument what I will probably do is ask Your
12 Honor to consider that when either Mr. Lanier or I speak
13 that we also can, I think without fear of contradiction
14 represent that we speak on -- not only the behalf of
15 Turner & Newell, but on behalf of persons who would
16 otherwise move to intervene or have a say. Thank you.

17 THE COURT: Well, you know, I anticipate -- if
18 I do keep something sealed, I anticipate some people will
19 be asking for that to be changed. I don't know whether I
20 will keep it sealed or not, but I'll tell Owens-Illinois
21 you've got a heck of a burden to convince me that this
22 matter should remain sealed.

23 MR. SADLER: I'm aware of that, Your Honor.

24 THE COURT: You know, I mean --

25 MR. SADLER: I know your philosophy well.

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1 THE COURT: You know, so I don't think Mr.
2 Hoffman, unless somebody's got some really stinging
3 argument, that probably all this is going to become mute
4 as to whether they need to be here, but I've got an open

5 mind to the extent it can be open after all these years,

6 Mr. Sadler.

7 MR. SADLER: I understand.

8 THE COURT: Okay.

9 MR. HOFFMAN: Thank you, Your Honor.

10 THE COURT: Now, then the other thing that we

11 need to address at that hearing -- it's not a hearing,

12 this part of it wouldn't be, just what you -- what the

13 parties anticipate in the way of, I guess, the technology

14 issues of how this -- how they're gonna cooperate. So,

15 I'd -- and we have limited facilities in Marshall, and I

16 would assume that this is a case that's going to have a

17 lot of whistles and bells from a technological standpoint

18 as far as how the matters are presented to the jury.

19 Because of the limited space available, it requires a

20 great deal of cooperation between the people who operate

21 your machines, for lack of a better word, and it will

22 require some agreements, you know, that we're all gonna

23 use the same "ELMO," for instance, or that type of

24 equipment, and just a lot of things that have to be

25 addressed, and if you wait till late, you just can't get

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1 it done. So, that's something I'd like the parties to

2 talk about, be thinking about, trying to get whoever

3 their consultants are, get them together and see if they

4 can't come up with a proposal that y'all can live with as

5 to how you're going to present your evidence and exhibit

6 it to the jury, because we are very limited over there,

7 and I don't know -- I guess the last case I lost over

8 there as a lawyer was a patent case involving Texas

9 Instruments and Hyundai, and so, I've -- I've got a

10 little experience from a lawyer's standpoint that absence

11 a lot of cooperation it can get to be rather sticky. So,

12 the way we worked it out was getting the consultants

13 together, and I think that made it a lot easier. So, I'm

14 recommending that to you.

15 Is there anything else that y'all want to put

16 on the docket?

17 MR. SADLER: Not at this time, Your Honor, for

18 me.

19 MR. LANIER: Not at this time for me, Your

20 Honor.

21 THE COURT: Well, we've got here, we've got

22 this wanting to shorten the time for response to

23 Federal-Mogul to respond to O-I's first request for

24 admissions. Have you seen that, Mr. Elliston?

25 MR. ELLISTON: I have seen it.

45

1 THE COURT: Well, I don't know -- how long do

2 you -- when can you get them your responses to the

3 admissions?

4 MR. ELLISTON: Oh, Judge, I can probably get

5 them to them in another seven days.

6 THE COURT: Okay. All right.

7 MR. SADLER: That is more than fine, Gary.

8 THE COURT: All right. So, that'll get you --

9 well, it'll give them -- okay. That's -- that's the time

10 they asked you for, I think, the 21st. Seven days from

11 today, that'd be the 21st?

12 MR. ELLISTON: Sure, Judge.

13 THE COURT: Yeah, okay. That's satisfactory

14 with you, Mr. Sadler?

15 MR. SADLER: Absolutely.

16 THE COURT: Okay.

17 MR. SADLER: Gary, if -- if you need a day or

18 so, just call me, okay?

19 MR. ELLISTON: I'll do it.

20 THE COURT: Now, I want y'all to know, you

21 know, discovery disputes, those that know me best, know

22 that they upset me, because I do not think they're

23 necessary most of the time, and this one is not any
24 exception. Mr. Everingham worked for me as a lawyer for
25 a number of years, and he has heard this statement as a
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1 lawyer, and so, I'm just gonna share it with you, because
2 I don't have any different view as a judge. There's a
3 couple of ways you can lose a lawsuit in this district.
4 Naturally, you can always lose it on the merits, but you
5 can darn sure lose a lot of your rights for discovery
6 abuse, and I have warned you -- I'm warning you on the
7 record. I considered just sanctioning both of you today,
8 just saying you're sanctioned, but I won't do that today,
9 but I'm telling you that I have a very low tolerance for
10 discovery disputes that do -- that are arguing about
11 things other than privileged documents. And so, I hope
12 that you'll keep that in mind as you go forward, because
13 the last thing I want to do is to take away somebody's
14 ability to make a full presentation of their claim or
15 defense before the jury that is selected to try this
16 case. On the other hand, given the way our rules are
17 written, it is not fair unless everybody plays by those
18 rules, and so, I hope I'm making myself real clear, I'm
19 trying to, that I am encouraging you and telling you that
20 I'm not gonna tolerate a bunch of frivolous fights about
21 discovery. If you want anything further from me, you
22 need -- further explanation, you need to ask me now,
23 because I'll be happy to give it to you.

24 MR. LANIER: Mark Lanier here, message
25 received, Your Honor.

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1 THE COURT: Mr. Sadler?

2 MR. SADLER: Yes, sir.

3 THE COURT: Mr. Elliston, I know you heard it.

4 MR. ELLISTON: I already knew it, you bet.

5 THE COURT: You already knew it, okay.

6 Well, I said when Mr. Elliston got in the case,
7 you didn't -- all you done once again is demonstrate my
8 age. I remember when he started, like I do most of you.
9 Anything further that the Court could be of assistance at
10 this time?

11 MR. HANLY: Judge, if I may -- this is Paul

12 Hanly, I'm national counsel for T&N.

13 THE COURT: Yes, sir.

14 MR. HANLY: With respect to the hours beginning

15 on Monday, could I ask -- because I'm just noting, Judge,

16 that at the moment it's 4:30 already in -- in England.

17 THE COURT: Start Tuesday.

18 MR. HANLY: Thank you, Your Honor. Just in

19 terms of the -- of starting at eight o'clock, I just

20 don't know if I can get somebody there --

21 THE COURT: I understand. That's -- that's

22 legitimate. You understand, Mr. Sadler?

23 MR. SADLER: I do.

24 THE COURT: Okay. We'll start -- y'all start

25 doing that on Tuesday, not on Monday.

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1 MR. HANLY: Yes, sir. And -- and on -- on

2 Monday, we can give them the hour and a half if we could

3 just begin at nine.

4 MR. SADLER: That'll be fine.

5 THE COURT: Okay.

6 MR. SADLER: That'll be fine.

7 THE COURT: All right. You give them the hour

8 and a half, but then move -- move it back on -- starting

9 Tuesday.

10 MR. HANLY: Yes, sir.

11 THE COURT: Anything -- anything further?

12 MR. SADLER: That's all, Your Honor.

13 MR. LANIER: That's all, Judge.

14 THE COURT: All right. Y'all have a nice

15 weekend. Thank you.

16 (Hearing concluded at 10:30 a.m.)

17 * * * * *

18 CERTIFICATION

19 I HEREBY CERTIFY that the foregoing is a

20 correct transcript from the stenographic notes of the

21 proceedings in the above-entitled matter to the best of

22 my ability.

23 _____

SUSAN SIMMONS, CSR Date

24 Official Court Reporter

State of Texas No.: 267

25