

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOE 1, et al., : 19-CV-07675 (GBD)
Plaintiffs, :
v. :
JEFFREY EPSTEIN, et al., : 500 Pearl Street
Defendants. : New York, New York
November 21, 2019
-----X

VE, :
Plaintiff, : 19-CV-07625 (AJN)
v. :
NINE EAST 71st STREET, et al., :
Defendants. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE DEBRA C. FREEMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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[Appearances continue next page.]

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transcript produced by transcription service

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MARIANN WANG, ESQ.
DANIEL MULLKOFF, ESQ.

1 THE COURT: Good morning.

2 MALE SPEAKER: Good morning.

3 FEMALE SPEAKER: Good morning, Your Honor.

4 THE COURT: Ordinarily we'd start by calling the
5 case but we have a number of cases here and rather than do
6 this in a tedious way, we've asked everyone to sign in on an
7 appearance sheet. And I just want to make sure I know who
8 everyone is. So first, on plaintiff's side in these various
9 cases, these are cases, just for the record, these are cases
10 that are brought by various plaintiffs against for shorthand
11 the Estate of Jeffrey Epstein.

12 Can I know who Brad Edwards and Brittany Henderson
13 are?

14 MR. EDWARDS: Yes, Your Honor. Brad Edwards.

15 MS. HENDERSON: Brittany Henderson.

16 THE COURT: Okay. Arick Fudali?

17 MR. FUDALI: Good morning, Your Honor. Arick
18 Fudali.

19 THE COURT: Good morning. Roberta Kaplan?

20 MS. KAPLAN: Good morning, Your Honor.

21 THE COURT: And Kate Donneger [Ph.]?

22 MS. DONNEGER: Good morning, Your Honor.

23 THE COURT: Good morning. David Brody, Laura Star,
24 Alan Goldfarb and Andrew Posen [Ph.].

25 MR. BRODY: Good morning, Your Honor. David Brody.

1 MS. STAR: Laura Star.

2 MR. POSEN: Andrew Posen [Ph.].

3 MR. GOLDFARB: Alan Goldfarb.

4 THE COURT: Got it. Then I have David Boies, Sigrid
5 McCawley, Josh Schiller.

6 MR. BOIES: Good morning, Your Honor. David Boies.

7 MR. SCHILLER: Josh Schiller. Good morning.

8 MS. McCAWLEY: Sigrid McCawley.

9 THE COURT: Got it. Marion Wang and David Mullkoff.

10 MS. WANG: Mariann Wang. Daniel Mullkoff will join
11 me later.

12 THE COURT: Okay.

13 MS. WANG: Good morning.

14 THE COURT: Good morning. And on defendant's side,
15 well, you have a fewer number of people so why don't you just
16 introduce yourselves?

17 MR. MOSKOWITZ: Good morning, Your Honor. Bennet
18 Moskowitz; Troutman Sanders, here with my colleague Charles
19 Glover, and we represent the co-executors of the Estate of
20 Jeffrey E. Epstein as well as with certain exceptions various
21 other defendants in the actions for which we're here today.
22 To explain that a little further --

23 THE COURT: That's all right.

24 MR. MOSKOWITZ: That's fine.

25 THE COURT: For the time being, that's fine.

1 MR. MOSKOWITZ: Thank you.

2 THE COURT: All right. So the first thing I want to
3 do is just explain what my role is in these cases and perhaps
4 what my role isn't in these cases. First of all, I don't know
5 how much you all know about the inner workings of the court
6 but when a civil case comes into this court it is assigned to
7 a district judge and it is designated to a magistrate judge.
8 Or a magistrate judge is designated on the case. Having a
9 magistrate judge such as myself designated on a case does not
10 mean that I do anything on the case. It usually doesn't even
11 mean I know that the case is in front of me at all. And
12 certainly, it doesn't give me authority to act. The authority
13 to act comes from an order of reference by the district judge
14 on that case. There is a difference between a designation and
15 a reference. When a district judge refers a case to a
16 magistrate judge, the docket for that case will have an entry
17 that says order of reference. The order of reference will
18 specify what it's for. In these cases, a number of the
19 district judges have referred the cases to me for what's
20 called general pretrial supervision. General pretrial
21 supervision includes supervising the discovery process,
22 certain motions that are not dispositive motions, seeing if I
23 can assist with settlement, scheduling matters. It does not
24 include dispositive motions, making reports and
25 recommendations on dispositive motions unless the order of

1 reference says that. And an order of reference can be
2 anything as narrow as can you work on one very particular
3 thing or can you assist with settlement? To as broad as on
4 the parties' consent it's before you for all purposes.

5 The decision was made, as I understand it, that as
6 an institutional matter all these cases were not going to be
7 placed before a single district judge. But it was also
8 decided that they would be designated to a single magistrate
9 judge so that if the district judges wanted to refer for, for
10 example, discovery supervision or to aid in settlement, that
11 would be before a single magistrate judge, and I am that lucky
12 magistrate judge. But not all of the cases that we've seen
13 come into the court have been referred to me at this time. So
14 you have to look at the dockets in your cases, and new ones as
15 they come in because I'm sure some new ones will come in, and
16 see if there is actually an order of reference. Now, you may
17 see a different magistrate judge designated and it may have
18 slipped through the cracks. A lot of these are just -- they
19 come out of the wheel and it's random. There's one I know
20 that's still showing a designation to Judge Fox. I think it
21 will be re-designated to me. If you're noticing that and
22 you're not noticing a re-designation to me, you can just give
23 our chambers a call and bring it to our attention and we can
24 look into that.

25 But even if they are all designated to me, which I

1 think is the plan, again, they may or may not all be referred
2 to me. Right now there are orders of reference in, for
3 general pretrial supervision, in one, two, three, four, five,
4 six, seven, eight, and I believe there will be nine because
5 Judge Gardephe just signed one, nine of the cases out of 14.
6 Judge Buchwald has one case that is 19-CV-10474. I do not
7 believe she is going to refer. I think she prefers to
8 supervise the case herself. And there are a couple where I
9 just don't know yet. And of course I think there's one that
10 may not even be assigned to a district judge yet. And again,
11 they're still coming in. So just be aware of that because
12 there's a good chance that I'm going to be supervising your
13 case for discovery and for non-dispositive disputes for
14 scheduling, for seeing if I can assist with settlement. But
15 there is also a chance that I will not be. All right? And in
16 particular right now I know that Judge Buchwald does not wish
17 me to supervise hers.

18 In addition, Judge Schofield has two cases right
19 now. They are 19-CV-10475 and 19-CV-10577. I believe she
20 scheduled her own conference a little farther down the road.
21 I think she still wants to go forward with that but I
22 anticipate that at some point either before then or after then
23 she is likely to refer to me as well, but she wants to get a
24 handle on it herself.

25 So district judges are individuals. They handle

1 things in individual ways sometimes. And just be aware
2 dispositive motions will go in front of them unless they are
3 specifically referred to me. And if any order of reference is
4 narrow, you have to look at it, see what it says, and
5 understand that's the particular reason it's before me. All
6 right?

7 So with that said, I nonetheless wanted to give
8 notice to anyone who's on these cases that I was having this
9 conference so that you could be informed, so that you could be
10 present if you have an interest, and you could hear what's
11 said. So that's number one.

12 Number two, I have seen in the press and in some of
13 the correspondence that was put in front of the Court in one
14 of the cases that there's some talk about the estate working
15 toward coming up with a settlement idea, concept, a plan for
16 trying to create a fund or do something. I've also seen some
17 murmurings, I don't know if they're true or not, that not all
18 of the plaintiffs' attorneys might be fully on board with the
19 process that's being set up which may not have been involving
20 them.

21 So I'd like to understand what is going on on that
22 front. And if it is possible to have these cases put on a
23 settlement track, I'd like to make sure that everyone's on
24 board with the process of developing a plan for that and to
25 get a feel for what it's going to entail, potential time line

1 issues that are involved so that we can first see before we
2 get into discovery issues other kinds of squabbles, see if in
3 fact settlement is possible and we can move toward that.

4 So let me start on defendant's side since rumor has
5 it, and see what you have to say on that.

6 MR. MOSKOWITZ: Good morning, Your Honor. Would you
7 like me to stand or --

8 THE COURT: It's okay.

9 MR. MOSKOWITZ: I'm happy to. I'm glad you raised
10 this because one of the things I wanted to bring to Your
11 Honor's attention is that having assumed, although I don't
12 like assumptions, that you may have seen in the press that
13 there is some kind of a claims program, I wanted to actually
14 take the opportunity today to explain to you briefly what is
15 going on. And since you asked specifically, I'll start there.

16
17 So there is what I feel confident in calling an
18 extraordinary opportunity that has already started that can
19 lead to an alternative to all this litigation. A lot of
20 people here as you can see. And this would be an
21 extraordinary opportunity also to conserve party and judicial
22 resources. And what happened is almost a week ago exactly the
23 co-executors, and this is probably some of the stories you
24 have seen, filed through counsel, not us, through estate
25 counsel in US Virgin Islands where the will is being probated,

1 an application for expedited approval of a claims
2 administration process. So if I can just briefly explain what
3 that action means and what was actually filed because with
4 respect to everyone in the room, I don't know that every story
5 was as accurate as each other. So the filing was for approval
6 to have the process go forward. I fully expect it will be
7 approved. I'm not the Court, obviously. But I have every
8 reason to believe it will be promptly approved. What it is
9 not is actually the nuts and bolts of how the program will
10 work. What it does is it says the executors have selected
11 very esteemed people, Kenneth Feinberg who many view, I
12 believe rightfully so, is the nation's leading claims
13 administration expert. Jordana Feldman, who is also a leading
14 expert. She actually just very recently left her position as
15 deputy special master of the September 11th victim compensation
16 fund. And she has demonstrated through that profound empathy
17 for victims, deep commitment to fairness of process, fairness
18 of outcome. And also Camille Viras [Ph.] who has worked with
19 Mr. Feinberg over many years and is also a leading expert. I
20 selected those three people to design, and then Ms. Feldman to
21 administer the program. However, what's happening now is now
22 that the filing has been made, and this is all in the filing
23 and for any details I don't have I would encourage anyone who
24 has questions on the plaintiff's side to reach out to the
25 program administrators and designers for whom I don't speak

1 because they're fully independent. But what the application
2 laid out is basically the overview of what the program is and
3 is not leaving open what will be the protocol for the design
4 of how the program works on a finer basis to be designed now
5 with input invited from every plaintiff's attorney sitting
6 here today, their clients, and anyone else who's out there
7 that is contemplating bringing a claim against the estate
8 related to, you know, these general sexual abuse allegations.
9 So everyone is invited to provide input.

10 Ms. Feldman will have complete autonomy. She has
11 completed autonomy as to decision-making authority over the
12 program operations and to claim determinations. The estate
13 has no authority, will have no authority to modify or reject
14 Ms. Feldman's decisions on any basis or as to any claim. The
15 claimants will retain their rights unless and until they
16 actually accept a determination. So in other words, this
17 again, all through the filing and what's been reported in the
18 press, everyone in this room, their clients can, it's
19 voluntary, but again, extraordinary opportunity, they can
20 through the entire process of the claims program, find out if
21 they're eligible to receive a claim determination, receive a
22 claim determination, and then decide do they want to accept it
23 or not. Unless they accept it and sign a release, all their
24 legal rights in terms of these lawsuits are preserved. So I
25 will say right now, and it's probably not necessarily a

1 discussion for today, but it's directly relevant to what
2 you've asked me about, we of course on the co-executors side
3 are more than willing to work with plaintiffs to stay actions,
4 toll claims, whatever they need to preserve their claims so
5 they have no prejudice if they also then go forward to see if
6 the claims process can resolve their claim in a much more, you
7 know, general I shall say, more efficient than most civil
8 litigation works in this country, and confidentially which I
9 should point out means that it's a confidential process and
10 the estate itself is bound by certain confidentiality. But
11 the claimants are more than free absent, you know, certain
12 things and we worked on the protocol, to go out and tell their
13 stories if they still want to. So that's what I mean when I
14 say confidential. I know there have been a lot of concerns
15 about people wanting to proceed anonymously so that the claims
16 process is great for that concern too.

17 There is no cap as I understand it on the claims
18 determinations meaning whatever the claims administrators
19 decide in their expert judgment should be awarded to someone
20 there's not going to be an arbitrating limit in any way on
21 what that is. Again, encourage anyone with specific questions
22 in that regard to weigh in on the protocol and to ask the
23 administrators themselves. And I would just like to say that,
24 you know, because of this extraordinary opportunity, I think
25 it would be a bad outcome for the Court, a bad outcome for all

1 the parties in here on both sides for these cases to move full
2 steam ahead while this opportunity is now live. I mean the
3 approval says the timing will be prompt. The claims
4 administrators expect that within 90 days or so of the Court's
5 approval of the filing they'll start receiving claims. This
6 is not going to be a long drawn out thing. And I see no
7 benefit to in the meantime having people, you know, clutter
8 these dockets with things that could probably, we hope, and I
9 expect and hope, will ultimately be avoided forever.

10 THE COURT: All right. One thing I forgot to say up
11 front is you don't see a court reporter sitting here. We do
12 have electronic recording equipment which means that if all
13 goes well there should be a recording of this conference. And
14 so if anyone wants to have a transcript made, that's possible.
15 And this is an on-the-record conference. If you're not
16 familiar with how to go about obtaining a transcript, I think
17 most people are, but if you're not, you can order it through
18 the court's website. The website was just redesigned so the
19 instructions I used to give people about this are now a little
20 different. But I believe that up at the top of the website
21 you'll see a few horizontal lines that suggest maybe there's a
22 drop down menu there. And if you click on it, you should find
23 something about courtroom technology. And if you follow
24 through and scroll down on that page you should find something
25 about what's called electronic court reportings or ECR which

1 will tell you how to go about ordering a transcript.

2 Because we do not have a court reporter and because
3 any record will be through somebody typing up what they are
4 hearing on a recording, I'm going to ask anyone who speaks to
5 introduce yourself each time before you speak so that there's
6 no confusion as to who's speaking. That was Mr. Moskowitz
7 speaking, correct?

8 MR. MOSKOWITZ: Correct, Your Honor. Thank you.

9 THE COURT: Correct. Okay. So if anyone else wants
10 to speak on this subject, just please identify who you are
11 again because there are a lot of you on plaintiff's side.
12 Anyone on plaintiff's side want to say something on the
13 subject?

14 MS. KAPLAN: Your Honor, Roberta Kaplan. I'm
15 counsel for the pseudonymous plaintiff in the case pending
16 before Judge Failla.

17 You heard I think a number of times Mr. Moskowitz
18 use the word extraordinary. And on that word and perhaps that
19 word only I'm in full agreement with Mr. Moskowitz. I have
20 been -- I and many of my counsel here have been litigating in
21 this courthouse for combined decades and we are approached the
22 other side as a group many weeks ago to try to talk about,
23 negotiate, and be involved in a settlement process that would
24 be set up to administer claims for 14, 15, 16-year-old
25 children who were criminally abused, sexually abused by Mr.

1 Epstein. There was radio silence, complete radio silence on
2 their end for week after week despite repeated entreaties from
3 myself and others for us to have involvement in who was
4 selected and who would be in charge of this. These are women
5 who want agency over their lives, number one? Two, what the
6 procedure would be. And three, Your Honor, perhaps most
7 importantly, how much money would be set aside? We have
8 basically no information about what's in the estate, what
9 assets are in the estate, what assets are not in the estate,
10 who is the beneficiary of the estate. We are told it's Mr.
11 Epstein's brother but we have no due diligence on that. And
12 we said to the other side that before this process was created
13 we thought we were entitled to some due diligence about what
14 assets are being put on the table to settle claims and what
15 assets are going to go to Mr. Epstein's brother. We've had
16 zero disclosure about that. We've had zero discussions about
17 who the person would be and how to set it up. I'm always,
18 Your Honor, and I think I speak for everyone here, we are
19 always willing to keep an open mind about settlement. But
20 given the way that this has been created, the secret
21 unilateral way that this has been created that frankly was
22 incredibly disrespectful to these women who have already
23 suffered criminal horrible abuse, we have serious doubts. And
24 the idea that we would stay any of these matters in favor of
25 the process that he described I think would be irrational for

1 many of us. I don't know if Your Honor has any questions but
2 at least in my case I think that's our reaction.

3 THE COURT: I'll hear from anyone else who wants to
4 be heard on this topic.

5 MR. EDWARDS: Sure. Your Honor, Brad Edwards. I'm
6 here on behalf of VE, Catlin [Ph.] Doe, Priscilla Doe, and
7 Lisa Doe for plaintiffs proceeding under pseudonyms.

8 I agree with most of what Ms. Kaplan said. I will
9 say that it seems to me that this slow developing vague
10 settlement concept, once it gets set up it might be okay or it
11 might be good for some people. It doesn't make any sense at
12 all that is an all or nothing thing meaning we have said we're
13 willing to talk settlement as per our Rule 26 obligations with
14 any of the individual plaintiffs. And what I understand is
15 we're not going to do that. It is either you're going to be a
16 part of this process like it or not, and you may like it, you
17 may not, you don't know much about it, we can't tell you much
18 about it, but we hope that you'll just stay your actions while
19 we try to develop what it is or is not. That doesn't seem
20 like it's a very responsible way to approach this. There
21 could also be some discussion on individual claims along the
22 way especially lawsuits that have already proceeded. I'm just
23 going to just give you an example. I filed the case on behalf
24 of VE more than 60 days ago. We've already had our Rule 26
25 conference. I have an initial pretrial conference still set

1 for December 6. I would say that trial could be had by July.
2 These are very simple cases. Why in the world would we be
3 made to stay this case basically for at least 90 more days for
4 this thing to get set up and time to then go through the
5 process. We could have had a trial by the time that we even
6 learn what this process is, so that I could educate my clients
7 on whether or not this might or might not be a good deal. So
8 I think it only makes sense --

9 THE COURT: Which case are you talking about again?

10 MR. EDWARDS: VE. It is --

11 THE COURT: Before Judge Nathan?

12 MR. EDWARDS: Yes.

13 THE COURT: So she has a conference on which day?

14 MR. EDWARDS: December 6. And we held our Rule 26
15 conference November 15th.

16 THE COURT: And do you think this case can go to
17 trial that fast?

18 MR. EDWARDS: Yes, Your Honor. I'm very familiar
19 with these cases in that I litigated when Mr. Epstein was
20 alive these same types of cases for over ten years. So I'm
21 intimately familiar with the facts. They are very simple
22 cases to try. I think that by next summer they could be ready
23 for trial. But certainly, we are ready to propound discovery.
24 We have less than five depositions to take in the case and
25 we're ready to go. I don't want that to be delayed because

1 we're trying to set up what is, as you can tell, very slow
2 developing vague concept that might be acceptable or might
3 not. So I just don't want for the plaintiffs who are already
4 pursuing these actions to be prejudiced waiting for something
5 that's being unilaterally created. And we don't have great
6 confidence that many plaintiffs are going to opt in but we
7 have an open mind and are willing once it's set up to engage.
8 That's just not the time right now. So that's our position as
9 it stands.

10 THE COURT: Anyone else?

11 MS. McCAWLEY: This is Sigrid McCawley and myself
12 along with David Boies and Josh Schiller, we represent five of
13 the victims who filed suit to date.

14 I echo Ms. Kaplan's concerns. We have been part of
15 this dialogue with the reach out to help craft something that
16 would be responsible and reasonable for the victims who are at
17 issue here and the fact that the defendants unilaterally
18 selected a group without that input I think is inappropriate.
19 We are learning more about it today obviously so we'll reserve
20 final judgment on that. We are of course open, and our
21 clients are open, to discussing the possibility of settlement
22 but I do have significant concerns about what they filed in
23 the USVI.

24 THE COURT: Anyone else? All right. For cases to
25 settle, I'm going to direct this to defendants, for cases to

1 settle there has to be not just interest on both sides but
2 there has to be seats at the table on both sides. There has
3 to be willingness to participate from both sides. Settlement
4 is uniquely non-unilateral. And if the defendants are really
5 interested in trying to get these cases resolved outside of
6 the litigation context, then you have to do more than just say
7 they're invited to the table and some window of time. There
8 has to be a real concerted effort to get people talking to
9 each other and to get plaintiffs' counsel on board with what
10 you're trying to do. And they may or may not be so readily on
11 board. And you have to, on defendant's side, be willing to
12 have an open mind, you know, and have people who are willing
13 to talk and maybe bend and maybe rethink if plaintiffs have a
14 different idea and the different idea's a good one. So this
15 being presented to them as well this is what it's going to be
16 and you can have some input after we've already figured out
17 some basics may not be sitting real well.

18 MR. FUDALI: May I address that, Your Honor?

19 THE COURT: Sure.

20 MR. MOSKOWITZ: I don't think that that's how we
21 view this. Defendants' counsel are correct. Many of them
22 reached out to us and said they would welcome a claims
23 administration program. It is true that the co-executors
24 vetted and carefully selected Ken Feinberg, Jordana Feldman,
25 and Camille Viras, like I said, unquestionably the leading

1 people in the field, to be independent claims administrators.

2 So this is not a situation where we've set up a --

3 THE COURT: Right. But they were -- but these
4 independent claims administrators were selected by one side
5 and not agreed upon by both.

6 MR. MOSKOWITZ: Absolutely. And I think Mr.
7 Feinberg's 98 percent or so participation rate in the 9/11
8 fund speaks for itself as well as his experience with the
9 church sexual abuse system, claims process in the BP oil
10 spill. All of these situations, I don't believe that
11 claimants went out and hired Mr. Feinberg yet they were very
12 successful programs. And here nothing's been fully baked.
13 All that was in the public filing, the very public filing that
14 I guess I heard some people aren't aware of the details and I
15 absolutely encourage them to read it, is that the program is
16 now going to be set up. The protocol is everything for how
17 the program works is my understanding.

18 THE COURT: Well, are the names of --

19 MR. MOSKOWITZ: And that is when the sides should
20 come together and the administrators I fully expect and
21 understand will be in communication if they aren't already. I
22 don't know.

23 THE COURT: Let me interrupt you for a second.

24 MR. MOSKOWITZ: Sure.

25 THE COURT: Are the names of the administrators, the

1 choice of the administrators, is that fully baked? Or is
2 there a possibility to add someone to that group for example?

3 MR. MOSKOWITZ: I don't know about the latter, but
4 yes, they have been selected as the administrators. I mean
5 another thing I point out is that -- another thing that's
6 unusual in this situation is that the estate is subject to the
7 probate court. So what was presented to them was a very good
8 faith above and beyond effort to. I can assure you, though I
9 don't speak for the estate counsel and I don't speak for the
10 administrators that the co-executors are hiring Ken Feinberg,
11 Jordana Feldman, Camille Viras, have a very sincere desire to
12 have a successful program that can resolve in a much more
13 efficient resolution of claims in a non-adversarial fashion.
14 I mean a lot of careful vetting and due diligence went in on
15 their end and I do understand that some of the plaintiffs'
16 lawyers maybe had different picks of who they wanted to be.
17 Some of them I should say as well were rather inflexible in
18 that regard. And it is correct we didn't choose necessarily
19 who their top people are. But this notion that we've gone out
20 and we're imposing this vague thing on them I don't think it's
21 fair. And again, they're right, it's voluntary. I would hope
22 that they appreciate, like I said, that this is a significant
23 opportunity to resolve claims that will not result in any
24 detriment.

25 I also want to just quickly touch upon Mr. Edwards

1 raised the timing. He did litigate cases not in this court.
2 I think that's a very aggressive view of timing on his end.
3 We haven't even answered the complaint and the action which we
4 have this quote/unquote Rule 26 conference during which we
5 really didn't have much to talk about because we haven't even
6 answered the complaint. I view that as maybe that perhaps
7 fell through on the court's side, not Your Honor, on whether
8 that should occur then. So we had it out of caution. But
9 this notion that we're months away from significant things
10 happening in these cases, I don't know what the basis for that
11 is.

12 THE COURT: So some of the questions that have been
13 raised over here about the size of the fund, what assets are
14 in the estate, what assets are not in the estate, you said
15 that claims would not be capped. But is the fund a certain
16 amount?

17 MR. MOSKOWITZ: I don't have the answer to that
18 question. Certainly that's an issue that should be discussed
19 at this time along with any other issue that plaintiffs want
20 to raise. They should call Ms. Feldman, call Mr. Feinberg,
21 set up times to meet with them. Again, I don't speak for
22 them. But my understanding is they want to hear from all
23 interested parties. They finally made that clear.

24 THE COURT: Well, you're counsel in this case. So
25 if cases settle --

1 MR. MOSKOWITZ: Sure.

2 THE COURT: -- in this Court, I would think you
3 would need to be involved as well in this process and not
4 just, you know, refer them to somebody else who's not
5 representing a party. So I think you need to be more
6 personally involved, you or your firm or one of the firms
7 involved representing defendants, and try to ensure that there
8 is good dialogue, that there is good communication, and that
9 what plaintiffs' counsel has to say is not falling on deaf
10 ears, is not, you know, not being responded to.

11 MR. MOSKOWITZ: Agree 100 percent and that's fully
12 our intent. This was just filed a week ago. And also, we
13 will be fully involved; however, not at the expense of
14 inserting ourselves into anything that the administrators view
15 as solely within their domain as independent claims
16 administrators. So there's a little question there that yes,
17 we will communicate with them. We encourage plaintiffs'
18 counsel to do the same. We will stay fully involved to find
19 out what's going on.

20 THE COURT: Will you have authority to settle any
21 individual case outside of this framework that you're
22 discussing?

23 MR. MOSKOWITZ: Settlement discussions are always
24 welcome. I don't have any specific authority in that regard
25 but no door is closed.

1 THE COURT: All right. What I'd like to do with
2 respect to settlement is have an update after there's been a
3 period of time when everyone has been conferring and
4 plaintiffs have been at the table through their counsel to
5 give me just a status report on how that's going and whether
6 it's looking promising or whether it's not from anyone's point
7 of view. And that doesn't mean other things can't be handled
8 on a parallel track. But I think that settlement is an
9 important track. Plaintiffs are clearly interested.
10 Defendants are clearly interested. And when everyone's
11 interested in settlement, seems to me that's the first thing
12 you want to all try to do. But it's got to really be a
13 process where everyone really has seats at the table, it's not
14 just lip service to seats at the table, okay, to discuss any
15 and everything that seems important to that process including,
16 you know, how much is in a fund and including, you know, what
17 is in this estate and not, so that plaintiffs understand, it's
18 almost like early disclosure of an insurance policy in a case.
19 Well, what is there? Right. That's one thing that's under
20 Rule 26(a), a part of it, is to understand on plaintiff's side
21 what resources are there that are available towards
22 settlement. That's one reason why that information becomes
23 important.

24 All right. I'm going to move on from that and we'll
25 talk about timing at the end with respect to anything and

1 everything. I know that in some cases defendants haven't even
2 been served much less answered and there may also be motions.
3 There may also be motions to dismiss. I know there is at
4 least a potential statute of limitations issue that's out
5 there that defendants may wish to litigate, may not wish to
6 litigate. Don't know. Can you tell me on defendant's side
7 whether there are any motions planned?

8 MR. MOSKOWITZ: Yes, there are motions planned, Your
9 Honor, and the statute of limitations are certainly relevant
10 to some of those motions. I don't have all the bases for the
11 motions that we'll begin filing I believe starting next week.
12 And actually, I have a quick question if I can get back to
13 that on the timing. Among other things, every plaintiff has
14 asked for punitive damages but those are expressly barred by
15 New York statute and other jurisdictions that they may argue
16 are relevant. So we will be moving to dismiss claims for
17 punitive damages as well. And again, we are developing other
18 bases for motions.

19 THE COURT: Right. As I said, as far as I know I
20 don't have any of these cases for dispositive motions to issue
21 reports and recommendations on dispositive motions. So any
22 such motions remain before the district judge. I can probably
23 with respect to most -- different judges are different, but
24 with respect to most of them, I can probably set a schedule
25 for the motions, but I'm not going to be the one who decides

1 the motions. With respect to scheduling, on any motion of any
2 kind I always appreciate if lawyers talk to one another and
3 propose briefing schedules because, you know, I'm assuming
4 you'll be reasonable. If it looks unreasonable to me like
5 we'll brief this motion in three months and do an opposition
6 three months later I will say no, you're not going to do that.
7 But most times lawyers can propose sensible schedules and,
8 like I said, always appreciate it if you talk to one another.
9 With respect to discovery, if there are dispositive motions,
10 that does not necessarily stay discovery. The default in this
11 Court is it does not stay discovery. There has to be an order
12 from the Court saying discovery is stayed. But it may make
13 sense if there is a dispositive motion to stay discovery in
14 whole or in part, very often what I do in cases is I try to
15 get a feel for what should be done soon, it's not overly
16 burdensome, and where there some reason to do it sooner, what
17 should be put off until later because maybe you save the money
18 on it and maybe it's less important at that initial juncture.
19 And I try to do something that is sensible that allows the
20 case to move in a sensible way with an understanding that
21 motions are pending. So when you confer about discovery when
22 we get there, think about that as well. Don't simply argue to
23 me if there's a motion that it should be all or nothing. You
24 can argue that, but also talk about whether there's some
25 compromise approach that makes sense for the particular needs

1 of the particular case.

2 With respect to settlement, keep one eye on that
3 even if you're engaged in discovery because I'm a firm
4 believer that there are windows where cases are capable of
5 being settled. And sometimes it needs a certain something in
6 discovery to aid that. Now, maybe as part of a claims
7 administration process documentation would be submitted or
8 would be discussed in that separate process anyway, but it may
9 be that you need discovery in the litigation to have in hand
10 certain discovery before you can figure out the right
11 settlement for a particular case. So that might be a higher
12 priority item because if you want to go toward an early
13 settlement there may be certain things in discovery that are
14 particularly important to learn or understand before you are
15 in a position to accept or reject a proposed settlement or to
16 make a proposed settlement.

17 It seems a little bit premature, even though I
18 wanted to get a jump on these cases, to be setting discovery
19 schedules especially in cases where there's not been an
20 answer, certainly in cases where there's not even been
21 service. And especially in cases where there may be a motion
22 in lieu of an answer. But I do want everyone to confer about
23 discovery and I want everyone to submit proposals. The more
24 joint they are, the better. The more you have really
25 conferred the better. When I talk about good faith

1 conference, I don't mean I sent an email and I didn't get a
2 response yet. When I talk about good faith conference I mean
3 you picked up the phone, you spoke to each other, you talked
4 through issues, you tried to work out issues and only if you
5 can't then you bring them to my attention. That goes for
6 discovery along the way. I will not even entertain a
7 discovery dispute if it doesn't appear to me that you fully
8 conferred in good faith.

9 Pet peeve, we're not there yet, pet peeve I get a
10 discovery motion, I get an opposition that says we'll do
11 certain things, I get a reply that says never mind, I have
12 wasted my time reading it. All it tells me is you've had a
13 failure of good faith conference. You should have been able
14 to figure that out through talking to each other rather than
15 spending money on briefing.

16 I'll also note, by the way, that Ms. Kaplan, you
17 sent me, I think you're the one who sent me three binders of
18 courtesy copies of things, yes? Those are your binders?

19 MS. KAPLAN: I believe so. So Your Honor, two
20 issues. One, we have an issue about spoliation that we hope
21 to be decided today. And two, Judge Failla called us
22 yesterday and told us that she wanted you to decide the
23 pseudonymous --

24 THE COURT: That's fine.

25 MS. KAPLAN: -- motion in our case. So that's what

1 we sent you, Your Honor.

2 THE COURT: That's fine. You don't have to spend
3 your time and money putting together beautiful binders for me.
4 I mean it's very nice, but I have three binders which I've
5 combined into one. I mean I have three binders combined in
6 one. One had, I don't know, maybe four, three documents and I
7 said oops, there's one missing. So instead of sending the one
8 that was missing you sent an entire new binder that had four
9 instead of three. And then there was another one with
10 separate tabs and separate letters and separate cover pages
11 and I just took it all apart and put it all in one and I
12 really didn't even need it at all. But thank you. And then
13 in the binders I did get, with respect to the Jane Doe issue,
14 the one thing that I actually wanted to see which was the two
15 competing proposed orders, one of those was missing from the
16 binder. Defendant's was not in there. So come on, if you're
17 going to give me binders and you're going to give me courtesy
18 copies, at least give me the things that I'm most going to
19 want to see. But save your time, save your energy, save your
20 money. If it's something lengthy that has a lot of exhibits
21 I'm not going to want to print out, yes, courtesy copies are
22 really appreciated. But you can just stick a courtesy copy in
23 an envelope and say here's a courtesy copy. I don't need
24 things so pretty. It's nice but it's not actually necessary
25 especially if you ask for fees later and complaining that you

1 spent money on this sort of thing.

2 MS. KAPLAN: I apologize, Your Honor.

3 THE COURT: That's okay.

4 MS. KAPLAN: I think from our perspective there was
5 some lack of understanding as to --

6 THE COURT: Don't apologize for trying to be
7 organized and have a nice presentation. I appreciate it. I'm
8 not trying to be critical. I'm just saying it's really not
9 necessary. On the John Doe -- John Doe? Jane Doe, Jane Doe
10 issues, I have no problem signing an order. The only question
11 is what form of order. And because there are several cases
12 with Jane Does or somebody Doe, and because many of those, if
13 not all, most, are going to be referred to me for general
14 pretrial supervision which will include decisions like that,
15 it would be nice to have some uniformity. So I know that
16 Judge Castel has already issued a couple of orders.

17 MR. MOSKOWITZ: Your Honor, I have an update. I
18 apologize to interrupt. I do have an update about this issue.

19 THE COURT: You've requested that Judge Castel do
20 something different?

21 MR. MOSKOWITZ: No. Mr. Edwards and I, recognizing
22 that uniformity makes sense and recognizing that it would be a
23 shame to burden the Court with motion, continued motion
24 practice about this because as we've clarified in our
25 responses that Your Honor may or may not have seen --

1 THE COURT: You're going along with the form of
2 order that Judge Castel issued?

3 MR. MOSKOWITZ: Right. We don't object to anonymity
4 from the general public. We just want to make sure it doesn't
5 come at the expense of our ability to defend the actions. And
6 Mr. Edwards and I agreed yesterday in principle to a form
7 order that I'm going to promptly send him. I'll try to do it
8 today. This was just late afternoon yesterday. And I
9 respectfully submit that it makes sense to have that order
10 entered in each action. It strikes the right balance between
11 protecting the plaintiffs' anonymity from the general public
12 and also making sure we are free to defend the case by using
13 that information without otherwise exposing it to people that
14 it shouldn't go to.

15 THE COURT: Well, I must say I don't envy you both
16 because you're before a lot of different district judges who
17 are individuals and will handle cases differently. Also, you
18 have a lot of different plaintiffs' lawyers who are different
19 and may want to handle cases differently. On plaintiff's
20 side, you know, if you had been, whoever it was -- I'm not
21 sure who it was who wanted to have the cases all put before
22 one judge, whether it was defendant's side that wanted to do
23 that or plaintiffs' side.

24 MS. KAPLAN: I'm the guilty party, Your Honor.

25 THE COURT: Okay. If you had been successful in

1 having the cases before one judge, you would have had to have
2 coordinated among plaintiffs' counsel either to figure out
3 who'd be lead counsel or at least who would take the lead on
4 something like proposing the terms of an order like this. So
5 I'm hoping that even though you're spread out among different
6 judges, plaintiffs' counsel can coordinate and can have one
7 voice for negotiating something like that and have one order,
8 one form of order that can govern in all of these cases for
9 anyone who wants to proceed under a pseudonym. And it may be
10 because Judge Castel has already entered orders, that's fine,
11 but I'm sure he would be fine with my modifying an order to
12 make it consistent with orders in other cases if that makes
13 more sense. Right? So I understand defendant's view, I
14 understand the views that have been articulated by Ms. Kaplan
15 in her correspondence. There ought to be a happy medium that
16 protects anonymity and it still doesn't prejudice defendants.
17 You may have gone a little overboard in the protections you
18 were seeking. They can be addressed as we go to some extent.
19 See if you can work it out. Possible to work it out? I'm
20 hoping.

21 MR. MOSKOWITZ: Will do, Your Honor.

22 MS. KAPLAN: We will try, Your Honor.

23 THE COURT: Okay. You can do it. I'm quite
24 confident you can manage to come up with a proposed order for
25 anonymity that will make sense and not prejudice anyone's

1 rights.

2 With respect to spoliation, it's raised in one case,
3 the Judge Failla case, which is 8673. I have a simple
4 response to this. Counsel should know what their obligations
5 are and those obligations are pretty clear under the law and
6 counsel should take them seriously. If you do not preserve
7 evidence that should be preserved that you had a reason to
8 believe was relevant to claims or defenses in the case and
9 that you didn't take steps to preserve, there can be negative
10 consequences down the road. In order to be confident about
11 what evidence it is that you better take steps to preserve, it
12 can't hurt to be asking plaintiff's counsel to summarize for
13 you those things that you think are important if they're
14 potentially going to make something of this. That's just for
15 your information. But ultimately it is defendant's obligation
16 to preserve. I don't think I should have to tell them that.
17 And I don't plan at this point to issue an order with respect
18 to preservation unless and until I see something where it
19 seems fairly clear that there has been, you know, a lack of
20 preservation or there's been that conduct. The one thing that
21 was brought out by Ms. Kaplan with respect to the need for
22 spoliation was a story that was reported somewhere in the
23 press where defendants have said no, you misunderstood what
24 happened. At this point I have no reason to doubt what
25 defendants' counsel are saying about what happened, so

1 therefore, I have no reason to believe there is bad faith or
2 bad conduct. And so therefore, I'm going to deny the request
3 to order preservation. I'm only going to remind everyone of
4 their obligations as counsel to preserve evidence which should
5 go without saying.

6 MS. KAPLAN: The only thing I would add to that,
7 Your Honor, we're fine with that, is that Mr. Epstein, as Your
8 Honor surely knows, has multiple residences in multiple
9 countries across the world. And we just want to make sure
10 that those same efforts are ongoing with respect to every --
11 the Virgin Islands, Paris, New Mexico, New York, Florida, and
12 we haven't gotten that assurance.

13 THE COURT: So counsel, you heard it here. Make
14 sure your efforts are broad enough. And this motion is an
15 example to me of the good faith conference point. You know,
16 it seemed to me that further conference about what had
17 happened with respect to the incident, it seems you did have
18 some back and forth about this. But I mean a preservation
19 order from the Court is fairly significant. There has to be
20 something that really spurs it. And I think on plaintiffs'
21 side hearing that the story in the press was -- that some bag
22 had been removed from somewhere which was really not
23 documents, I gather was some clothing --

24 MR. MOSKOWITZ: It was clothing for the decedent to
25 be laid to rest in, Your Honor.

1 THE COURT: Yes. I mean if there's a reason to
2 doubt that, there's a reason to doubt that. You'll tell the
3 Court. If there isn't, then we don't have something
4 extraordinary. All right? But we do have a decedent who had
5 a lot of property, had a lot of locations where he could be
6 found at various points in time and the preservation
7 obligation is going to be fairly broad, still tailored to
8 what's relevant to this case but still fairly broad. And some
9 of these allegations do go back in time which makes the time
10 frame for preservation that much more challenging.

11 All right. Any other particular issues that anyone
12 wants to raise? Pseudonymous, spoliation, anything else?
13 Okay.

14 So what I'd like you to do is confer among the
15 plaintiffs' counsel -- by the way, do you know, do you
16 anticipate more cases being filed and if so, how many more?
17 Can you give me a clue? Do you know if there are more
18 plaintiffs' counsel out there who are likely to be
19 representing parties?

20 MR. FUDALI: Arick Fudali, Your Honor, the Bloom
21 Firm. I can tell the Court that we do anticipate filing more
22 lawsuits in this case. I can't say if there's other plaintiff
23 attorneys involved. But from our perspective, I believe at
24 least at this point there is a plan to file more lawsuits.

25 THE COURT: Can you give me an approximate number?

1 I won't hold you to it.

2 MR. FUDALI: I can say less than five probably.

3 THE COURT: Okay.

4 MR. FUDALI: But please don't hold me to that.

5 THE COURT: I won't. I just wanted to get a feel.

6 MR. FUDALI: The other issue is, Your Honor, and
7 perhaps you were about to address this, but I think to echo
8 what some of my colleagues said earlier is about clarity. I
9 think the problem is that a lot of the plaintiffs are having,
10 plaintiffs' attorneys, we're all in the dark and we're all
11 waiting and that's not something plaintiffs or plaintiffs'
12 attorneys like to do. So I don't know if Your Honor is
13 willing to --

14 THE COURT: In the dark and waiting for what?

15 MR. FUDALI: I'm sorry, details of the settlement
16 program.

17 THE COURT: Okay.

18 MR. FUDALI: And I wonder if Your Honor is willing
19 to set some sort of deadline --

20 THE COURT: Yes. I'm going to do that.

21 MR. FUDALI: -- that defendants could give us some
22 details, that we have something to bring back to our clients.

23 THE COURT: Well, I'm going to set a deadline for
24 reporting back to me on the status of the settlement process
25 and by that deadline there will have had to have been

1 discussions because I do not want a status report that says we
2 know nothing, we haven't been talking, we are in the dark.

3 MR. FUDALI: Okay. Yes.

4 THE COURT: Because that would be pointless for a
5 status report.

6 MR. FUDALI: I think just, yeah, we all just want
7 more detail so our clients can make an informed decision
8 immediately or at least in the near future so we're not just
9 waiting, you know, with deciding.

10 THE COURT: Okay.

11 MR. FUDALI: Thank you, Your Honor.

12 MS. WANG: Good morning. Marion Wang. I just
13 wanted to inform Your Honor that we filed another case this
14 morning, so we have a total of three cases.

15 THE COURT: I think we saw that one. We've been
16 checking.

17 THE CLERK: [Inaudible].

18 THE COURT: We didn't see that one? We saw another
19 one?

20 THE CLERK: [Inaudible].

21 THE COURT: Oh, we saw one from yesterday.

22 MS. WANG: We filed one yesterday and we filed one
23 this morning.

24 THE COURT: Okay.

25 MS. WANG: So we have three total. Two are on your

1 appearance list, and so there's a third one.

2 THE COURT: Do you have the docket number on that
3 one, the case number on that one?

4 MS. WANG: Yes, we do. My colleague does.

5 THE COURT: It's 19-CV something.

6 MS. WANG: Yes. It is 10788.

7 THE COURT: Okay. Can anyone else give me any ideas
8 to roughly how many more may be coming down the pike?

9 MR. EDWARDS: Your Honor, Brad Edwards. Potentially
10 dozens more cases could be filed. I'm just not sure whether
11 they're going to be filed here or potentially in the Virgin
12 Islands or Florida. So it's tough to --

13 THE COURT: Through your firm?

14 MR. EDWARDS: Through our firm.

15 THE COURT: Okay. I would just urge that if you're
16 anticipating filing more cases, you try to get on with it and
17 not have this continuing sort of trickle of cases because
18 especially if we start setting schedules for things, I'm
19 trying to have some consistency on how cases are handled. If
20 one comes in a month down the road, another one comes in two
21 months down the road, another one comes in three months down
22 the road, you're not going to be on the same schedule.

23 MR. EDWARDS: Your Honor, I'll tell you that Mr.
24 Moskowitz and I have been conferring pretty thoroughly on
25 issues including the anonymity issue. And one thing that we

1 have discussed, we filed four cases immediately and since that
2 time our back and forths have led me to believe that by this
3 point we would have something more substantive with respect to
4 this proposal of settlement plan. And so that's what we've
5 been waiting for. To some extent at Mr. Moskowitz's urging,
6 and I don't really hold him --

7 THE COURT: You mean before filing more cases?

8 MR. EDWARDS: Right, before filing. So that's
9 what -- we don't want to cloud the Court with a bunch of cases
10 that ultimately turn out to be unnecessary because they
11 decided to put the entire estate into this plan and it's going
12 to be a good thing. So we're kind of in this limbo not
13 knowing enough information which piggybacks what counsel said
14 a minute ago. I think once we get clarity, we'll be able to
15 know are there going to be dozens of other cases that need to
16 be filed or are we going to get somewhere with this
17 resolution.

18 MS. KAPLAN: Your Honor, I would only add to that we
19 will seek to file anything promptly but as Your Honor may
20 imagine given the circumstances of this case there are women,
21 now grown women, who were victimized by Mr. Epstein who for
22 years and years have kept it hidden living in fear,
23 traumatized by it. And my law firm, and I'm sure this is true
24 for the other firms, literally get a half dozen calls a day
25 from new women who are reading about this and who say oh my

1 God, you know, maybe --

2 THE COURT: I see.

3 MS. KAPLAN: And so we can't control that. I can
4 promise you that as soon as we learn of people who we think
5 have claims we will do everything we can to file as
6 expeditiously as possible.

7 THE COURT: You know, there's some tension obviously
8 between any attorney in an existing case that says we want to
9 move this case and we want to move this case quickly toward
10 trial. And you know, some desire to have cases handled in
11 some kind of way that's consistent and not know how many more
12 cases are coming or when they're coming in. They don't have
13 to all be handled the same way. They don't all have to be on
14 the same schedule. It can be sort of a basic concept and then
15 as new cases come in the same sort of concept applies. But it
16 may be efficient that if someone is deposed, for example, like
17 an executor or someone else on the defendant's side that the
18 person is not deposed repeatedly. So you may be able to come
19 up with an agreement that a deposition in one case can be used
20 in another case. But what if it's by one counsel and you
21 didn't have your seat at the table because, you know, you're a
22 new attorney coming in and you didn't have a chance to be
23 there? So when you're thinking about discovery, think about
24 things like that. It may make sense to start thinking about
25 proceeding with certain types of document discovery, holding

1 off on some depositions certainly on defendants' side because
2 those may be the same or very similar in a lot of respects.
3 Obviously, there are going to be individual stories, but some
4 of the kinds of questions that I imagine plaintiffs are going
5 to want to be asking are going to be the same in all the
6 cases. So use some thought.

7 I'm sending you back with things to think about and
8 things to report back to me on. I'm not setting any discovery
9 schedules right now. That doesn't mean I want the cases to
10 just linger and have nothing happen. But I think it's a
11 little bit premature. I think that it would be -- I just want
12 to pull up a calendar here because I forgot to bring my
13 calendar. We have holidays coming. We have obviously
14 Thanksgiving around the corner and then we're going to hit
15 December, January time frame. So my computer doesn't want to
16 bring me a calendar year. I mean ordinarily I'd say 30 days
17 and get back to me on what's going on with settlement but
18 that's going to run into holiday time. So I mean if you can
19 get back to me with a report before the Christmas holidays
20 hit, that would be great but that may be tight to really have
21 everybody involved at the table and have some discussion going
22 on. And my erstwhile deputy has brought me my calendar.

23 By the way, this person sitting at the table is
24 Hannah Martin. She's one of my law clerks. If you want to
25 call my chambers about something, she's a good contact person.

1 I'm sure she's thrilled to hear me say that. If you happen to
2 be a member of the press, are any members of the press here?
3 Look at all these members of the press. Welcome to my
4 courtroom. If you have inquiries, please do not call Hannah.
5 Please call the district executive's office because if you
6 call us, other than telling you yes it's true, we have a
7 conference today at 10 o'clock, or something like that, we're
8 going to steer you to the district executive's office for
9 press inquiries. So please just do that in the first
10 instance. And they'll contact us if they need information
11 from us to pass along to you. But for litigants -- all right,
12 so let me look at this calendar.

13 It is now November 21. Well, what do you think on
14 both sides would be rational for reporting back with respect
15 to status of getting some input on plaintiff's side, getting
16 information from defendants, all that?

17 MR. MOSKOWITZ: So on defendants' side, two things I
18 think are relevant to that, Your Honor, recognizing that we
19 can't keep, you know, letting things linger because of new
20 cases coming in as you were alluding to. Currently with
21 respect to cases for which response deadlines to complaints
22 are already set, I believe the last of those response
23 deadlines runs December 20 or something. So I think it would
24 make sense for getting back to the Court to be sometime after
25 that, not too long. And obviously, there's the holidays so

1 maybe a couple of weeks after that would make sense. Also, in
2 terms of timing generally, this will come as no surprise I
3 think to Your Honor, we will, we have and we will continue on
4 my end to work as diligently as possible to promptly provide
5 information that we agree should be provided. Things do take
6 a little longer given that it's not just an estate but perhaps
7 the most complex estate that I'm aware of in existence right
8 now. So to get answers to questions that may in some cases be
9 simple take a little longer in my situation.

10 THE COURT: I don't need a status report that says
11 we've worked it all out.

12 MR. MOSKOWITZ: Right.

13 THE COURT: I need a status report that says here's
14 the progress that has been made on both sides with attorneys
15 on both sides confident that there is in fact progress, that
16 there is in fact a flow of information, that they're in fact
17 sitting down and talking about things and that they're
18 learning and that they're engaged and that they have some
19 hope. Okay? That's what I want to hear. That's your
20 mission. All right? And on defendants' side, it is very much
21 in your interest to help facilitate this and try to make sure
22 this happens efficiently because to the extent anyone is
23 holding off on filing new cases to see if in fact there's a
24 workable plan for settlement that will avoid the need for
25 litigation, the longer it goes where they have doubts that

1 that is in fact a workable plan, the more likely they are,
2 especially after what I said about trying to coordinate cases,
3 to just start filing these cases. I certainly don't mind -- I
4 can't speak to statute of limitation issues and whether this
5 period of time would matter or not on those issues, but I
6 don't mind if you hold off on filing cases if you think that's
7 fast because you're optimistic about a settlement fund. Use
8 your judgment about when you file cases. I'm not going to
9 direct you when to file them. But you've got a lot of
10 different balls in the air. You've got when cases are going
11 to be filed, how many there are, if discovery should move or
12 should not move, whether they should be coordinated in some
13 way or not, whether certain discovery should go first and
14 other discovery later, whether there are going to be
15 dispositive motions, how that affects whether there should be
16 discovery. And all of this with this backdrop of talking
17 about settlement. So I'm thinking maybe we'll just do one
18 overall status report in all these separate cases before
19 separate judges. That may be difficult. Maybe I can at least
20 get for each cluster of plaintiff's' lawyers the same letter
21 filed in each of the cases that you have. If you can all
22 coordinate, so much the better. If you can't, you'll have to
23 put them on the docket separately. But anyway, status reports
24 on everything, meaning discussions on settlement. Needless to
25 say, don't put confidential details about settlement on ECF.

1 Settlement is the one time I'll hear from you ex parte about
2 things if we really get there. If you really want to give me
3 details like that, send me something ex parte solely on
4 settlement. But what I'm looking for at this point is
5 something more general that you think can be on the public
6 docket. So if you can, please put things on the public
7 docket. There's press interest in this case. Let's try to
8 have as much on the public docket as we can. Okay? But a
9 single report that talks (A) about progress of settlement
10 talks and (B) about a plan for moving forward with the cases.
11 And if they have to be case specific, they're case specific.
12 Do what you think you have to do saving money to the extent
13 you can, breaking it out if necessary. Use judgment.
14 Understand that I'd rather have three letters than 53 letters
15 but, you know, I'll read what I have to read. Okay? And how
16 about January 10? That takes you a couple of weeks past New
17 Year's. Everybody okay with that?

18 MR. MOSKOWITZ: Works for defendants, Your Honor.

19 THE COURT: All right. Look, if anyone has an
20 immediate need that comes up between now and then, I'm not
21 going anywhere including through the holidays. I'll be
22 around. You can contact my chambers. Put a letter on ECF.
23 Yes.

24 MR. GOLDFARB: Thank you, Judge. Thank you for
25 allowing us to appear from Miami. Alan Goldfarb for Jane Doe

1 17.

2 One suggestion I might offer, Your Honor, is for the
3 next significant hearing I'd like to hear from whoever the
4 claims administrator would be and have some answers here in
5 court so they can participate in explaining this process as to
6 how they see it instead of hunting back and forth as I think
7 might happen. So I actually was hoping you would have had a
8 pre-Christmas status on that issue alone so we can get some
9 indication, which is almost 30 days from now, Judge, on how
10 that process would work here from the horse's mouth, and we
11 all hear it at once. We're told how this would work, we
12 understand it, and we go back and decide if we accept that or
13 not. You know, January 10th feels a little long for me for the
14 process. You're talking about 90 days. And I don't mind
15 coming back up here to your wonderful city again
16 Christmastime.

17 THE COURT: I didn't know you were coming but you're
18 welcome.

19 MR. GOLDFARB: Thank you.

20 THE COURT: Basically what we did is we put a notice
21 on the docket on the first group of cases that we were having
22 a conference and then we started reaching out to counsel in
23 later filed cases who seemed to already know that there was a
24 conference. So we just figured people would show up. But we
25 didn't reach out to anyone in Florida.

1 January 10, I'm basically thinking kicking it more
2 than 30 days because of the holidays. That's why January 10.
3 But what I'm thinking ought to happen between now and then, I
4 give it to you for serious consideration, is you folks ought
5 to schedule a meeting without me. You ought to schedule a
6 meeting with the claims administrators and with counsel in
7 these cases on both sides. And you ought to sit around a
8 table and you ought to talk about all the questions and get as
9 many answers as you can get and try to gain some confidence
10 that you are all participating and your views are being taken
11 seriously and valued. And that's what I think you ought to do
12 because in settlement discussions that's what happens. People
13 talk outside of the court about things and try to advance the
14 ball. And you do have a lot of people. And if you talk one
15 on one, then you have another one on one with a different
16 lawyer and the message is heard differently or different
17 questions are asked and answered, you know, you're going to
18 have some confusion reigning. So I would strongly recommend
19 we not use the courtroom for that meeting at this stage but
20 that you see if you can set one up and literally bring people
21 to the table as a settlement discussion. And then when you
22 report back, you'll have something to report back on. Yes?

23 MR. BOIES: Your Honor, David Boies. I agree
24 completely with the Court we need to meet among ourselves.
25 You got good counsel on both sides here. I think that we can

1 make progress. However, my consistent experience over, as Ms.
2 Kaplan was saying, over a considerable number of years is that
3 counsel, even with a best faith world, tend to work harder
4 when they've got a appearance before the Court in order to
5 respond to where they are. And I think that if -- I would I
6 think echo what Mr. Goldfarb said which is that if the Court
7 were to set a conference on December 20th just to sort of
8 report on where we were in terms of the settlement process and
9 the administrators, I think that would spur us over the next
10 30 days to maybe work harder and more effectively than if we
11 didn't have that date.

12 THE COURT: Are there any attorneys here in the
13 courtroom who do not have your personal calendars with you
14 because they were confiscated at the door? Do you all have
15 your calendars?

16 MALE SPEAKER: Yes, Your Honor.

17 FEMALE SPEAKER: Sure.

18 MR. MOSKOWITZ: And Your Honor, I mean going back to
19 exactly what you said about just being practical with the
20 holidays, I'm out of state that week, December 20th.

21 THE COURT: All right. I'm not scheduling any
22 conference December 20. But what I suggest is when I step
23 down from the bench I suggest that the attorneys stick around
24 for a minute, compare notes on their availability, see if you
25 can at least tentatively come up with a couple of dates that

1 might work for a meeting among you. You're going to have to
2 get in touch with the administrators to see if they're
3 available which is why more than one date would be useful.
4 See if you can get something on the calendar that's a firm
5 date to start having real meetings to be able to discuss
6 things with everybody who wants to be involved involved, and
7 everyone could hear everyone else's questions. I just don't
8 think I should be using the courtroom for that at this time.

9 MS. KAPLAN: Thank you, Your Honor. We will. I
10 think what you're hearing, if I could speak from the
11 plaintiffs' side, is we've been asking for exactly that
12 meeting now for many weeks, so --

13 THE COURT: Okay. So let's --

14 MS. KAPLAN: -- that's why you're hearing the
15 consternation on our side.

16 THE COURT: All right. Well, we don't want
17 consternation. We don't want anybody feeling frustrated. We
18 want everybody feeling encouraged that there is responsiveness
19 and that this is going to move forward on a track that
20 everybody's going to be optimistic about. That's the goal.
21 All right? You are all good counsel and you all understand
22 the need to work together. And settlement doesn't happen
23 unless people work together. So let's start making that
24 happen. Try to schedule, you know -- I mean look, you can
25 provide information, you can provide some information in

1 writing perhaps. Whatever. You can start doing that pretty
2 promptly. But try to schedule a meeting where you start
3 talking about this so that by January 10 it's not just you met
4 on January 9. You know, you had a meeting, you started
5 talking, you had some further dialog, you have some progress
6 to report. That's the goal to have progress to report. And I
7 fully agree that having the Court keep tabs makes things
8 happen that doesn't otherwise happen which is why even at this
9 ridiculously early stage for many of these cases you are all
10 here today because the goal is to take stock of this and to
11 try to oversee this and to try to make these cases move in an
12 appropriate way instead of just having lots of separate
13 squabbles going on, lots of separate issues floating around,
14 different sorts of letters expressing different sorts of
15 frustration. Right? We're going to try to have this as
16 frustration free as possible. These are serious claims.
17 Defense counsel recognizes that. There are a lot of them.
18 There are more to come. Let's see if we can get them on a
19 settlement track that everybody is comfortable with. And
20 January 10, one letter, 30 letters, whatever it is, try to
21 report back on settlement, on motion practice if there's going
22 to be motion practice, on discovery proposals if you think
23 discovery is in order and you know, with lots of thought. And
24 to the extent you differ, I'll see how you differ. To the
25 extent you can be of one mind as to how things should proceed,

1 great. All right?

2 MS. KAPLAN: Thank you, Your Honor.

3 MR. FUDALI: Thank you, Your Honor.

4 THE COURT: It's a goal.

5 MR. MOSKOWITZ: Thank you, Your Honor.

6 THE COURT: Go forth. Go forth and do.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 Mary Greco

6 Mary Greco

7 Dated: November 25, 2019
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