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1  
2 IN THE CIRCUIT COURT OF HARRISON COUNTY  
3 WEST VIRGINIA  
4  
5 LENORA PERRINE, CAROLYN HOLBERT,  
6 WAUNONA MESSENGER, REBECCA MORLOCK,  
7 ANTHONY BEEZEL, MARY ELLEN MONTGOMERY,  
8 MARY LUZADER, TRUMAN R. DESIST, LARRY  
9 BEEZEL, and JOSEPH BRADSHAW, individuals  
10 residing in West Virginia, on behalf of  
11 themselves and all others similarly  
12 situated,  
13 Plaintiffs,  
14 vs. CIVIL ACTION  
15 NO. 04-C-296-2  
16  
17 E.I. DU PONT DE NEMOURS AND COMPANY, a  
18 Delaware corporation doing business in  
19 West Virginia, etal,  
20 Defendants.  
21  
22 POST-TRIAL HEARING  
23 JANUARY 15, 2008  
24 HARRISON COUNTY COURTHOUSE

Page 2

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6  
7 Proceedings had in the above-entitled  
8 action before the Honorable Thomas S. Bedell, in the  
9 Harrison County Courthouse, Clarksburg, West  
10 Virginia, on the 15th day of October, 2008.  
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13  
14  
15  
16  
17  
18  
19 REALTIME REPORTERS, LLC  
20 TERESA S. EVANS, RMR, CRR  
21 108 Cedar Ridge  
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1 EXAMINATION INDEX  
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3 PLAINTIFFS' WITNESS DIRECT CROSS REDIRECT RECROSS  
4 Charles Wernitz 8 24 35 41  
5 Anthony Sciarra 44 54 63  
6 Michael Brookshire 66 112  
7 Ed Gentile 185  
8 Barry Hill 200  
9  
10 DEFENDANT'S WITNESS  
11 Todd Menenberg 120 166 180  
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1 these issues, to make sure the record's full and  
 2 complete. I'm not sure that it would change my  
 3 initial reaction that there isn't relevance,  
 4 standing, on DuPont at this point.  
 5 Whether it becomes -- whether we create  
 6 this contingent interest in the fund or --  
 7 MR. HALL: I wanted to make sure our  
 8 objections were on the record and relevance or  
 9 standing is a small --  
 10 THE COURT: Yes.  
 11 MR. HALL: But how Todd proceeds, my main  
 12 concern is to have the Court aware -- and the record  
 13 reflect -- our relevance or -- our objection to the  
 14 relevance or standing ruling, if that were to be  
 15 the --  
 16 THE COURT: But certainly if you have the  
 17 -- have someone that can testify today as to the  
 18 patrolling factor, I don't mind receiving that and  
 19 getting it into the record, but you know, I'll look  
 20 to you all whether you want -- whether DuPont wants  
 21 to go to that extra step at this point.  
 22 MR. HALL: Well, I guess if the record were  
 23 such that if -- on the first scenario, that is, with  
 24 respect to a request for fee shifting to DuPont,

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1 which we do feel like Mr. Taylor's position we  
 2 articulate and I put on the record, DuPont would  
 3 have the opportunity if that would arise to contest  
 4 the fee, I do feel protected there.  
 5 Second, if the contingency would arise, to  
 6 challenge the fee. It may not arise if the Court --  
 7 a pay as you go or if Mr. Gentle accepts it, I don't  
 8 think that would arise. But if we were protected so  
 9 we could have a full and fair opportunity to  
 10 challenge it if it arose, I would feel come for  
 11 table with that.  
 12 THE COURT: Mr. Taylor?  
 13 MR. TAYLOR: Well, I assume what Mr. Hall  
 14 is saying is that under the -- if we agree that you  
 15 have a de novo right to challenge any fee shifting  
 16 from DuPont and that we pursue a lodestar, then  
 17 you're comfortable with -- with withholding any  
 18 cross examination and presentation of any evidence,  
 19 and that's fine.  
 20 MR. HALL: Well, that was part of it.  
 21 THE COURT: That's the first half, as I  
 22 understand.  
 23 MR. HALL: Yes, sir.  
 24 THE COURT: And the second half, as I would

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1 articulate -- not as well as Mr. Hall -- would be  
 2 that I presume then he would almost want to note his  
 3 objections and then reserve his right again at some  
 4 future time, upon the -- having further final order  
 5 being entered by the Court that could create those  
 6 contingencies, those conditions, to challenge it at  
 7 that time.  
 8 Is that a fair statement?  
 9 MR. HALL: Yes, sir.  
 10 THE COURT: I don't have any difficulty  
 11 with that -- with anything you do -- if I don't have  
 12 to make a decision, I can't be wrong, so -- and if  
 13 you want to -- we lawyers being procrastinators by  
 14 training, you want to put it off, that's fine with  
 15 me as well.  
 16 MR. HALL: I guess this is putting off  
 17 something which potentially would never arise.  
 18 THE COURT: Sure. I think I understand  
 19 your respective positions, and I'm comfortable with  
 20 both positions. Even though DuPont may not take a  
 21 -- an active participation today on that issue,  
 22 they're not waiving anything --  
 23 MR. TAYLOR: Yes.  
 24 THE COURT: -- in the future, either if

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1 some contingent interest is raised or something in  
 2 the future which was -- some other alternative as  
 3 far as implementing the jury's verdict would take  
 4 place. I don't have any difficulty with that. Both  
 5 counsel can, at the appropriate time, raise it if we  
 6 need to address it.  
 7 MR. TAYLOR: Thank you.  
 8 MR. HALL: Thank you, your Honor.  
 9 (Counsel returned to counsel table and the  
 10 proceedings continued in the presence and hearing of  
 11 the audience as follows:)  
 12 THE COURT: Ms. Buchanan?  
 13 MS. BUCHANAN: Yes, your Honor, we would  
 14 like to call Mr. Barry Hill.  
 15 THE COURT: If you'll raise your right  
 16 hand, please, sir.  
 17 (The witness was sworn.)  
 18 MS. BUCHANAN: May he proceed, your Honor?  
 19 THE COURT: Yes, thank you.  
 20 B A R R Y H I L L  
 21 was called as a witness by the Plaintiffs, and  
 22 having been first duly sworn, testified as follows:  
 23 DIRECT EXAMINATION  
 24 BY MS. BUCHANAN:

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1 Q. Mr. Hill, would you tell the Court your  
2 full name and your professional address?  
3 A. Barry Hill, 89 12th Street, Wheeling, West  
4 Virginia.  
5 Q. What is your occupation, Mr. Hill?  
6 A. I sue people.  
7 Q. Okay. You do primarily plaintiffs'  
8 litigation as an attorney in West Virginia and  
9 outside of West Virginia as well?  
10 A. Yes.  
11 Q. Were you asked by me and members of my firm  
12 to serve as a fee consultant in this case to attempt  
13 to render an opinion about what you believe to be a  
14 reasonable fee for the work and the time and cost  
15 expended on behalf of the class?  
16 A. Yes.  
17 Q. Can you tell the Court your background,  
18 your education, training and experience,  
19 particularly as it might relate to rendering  
20 opinions in this case about the reasonableness of  
21 the fee that we've asked for?  
22 A. Well, I tried to highlight that in the  
23 affidavit, and I wouldn't want to bore the judge by  
24 going through everything that's in there, because

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1 certainly it's available, but I've spent 30 years as  
2 a contingent fee lawyer representing almost  
3 exclusively plaintiffs. That has been mostly  
4 personal injury; there have been some other things  
5 mixed in with it from time to time.  
6 I'm a past president of the West Virginia  
7 Trial Lawyers Association, but they get a new one of  
8 those every year, so there's probably about 30 of  
9 them running around the state right now.  
10 I'm board certified by the American Board  
11 of Professional Liability Attorneys as a medical  
12 malpractice trial specialist since about 1994. I  
13 think I was the first person or the second who was  
14 certified by the National Board of Trial Advocacy as  
15 a civil trial specialist from West Virginia.  
16 Q. What about your experience, Mr. Hill, with  
17 respect to mass type claims, those that involve  
18 either large numbers of plaintiffs or complex issues  
19 related to medical causation or defective products  
20 or, as in this case, where we're alleging that there  
21 is a contaminant that has caused harm to the class  
22 members?  
23 A. Well, the medical malpractice field became  
24 less attractive to me somewhere about in the late

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1 '90s, both because I could see tort reform coming  
2 that was going to affect it and was going to be more  
3 difficult to have economically feasible cases, and  
4 because my wife started to practice medicine as a  
5 family practice physician, and everybody I sued got  
6 her in trouble, so I looked for a field that would  
7 have some -- where I could apply some transferable  
8 skills.  
9 Prescription drugs and medical devices were  
10 two of those that I identified, and I have been  
11 involved primarily with those two things since the  
12 late '90s, with the exception I did try one of my  
13 last malpractice cases and spent a week down here  
14 with you in a losing effort.  
15 But in any event, I've been enrolled at a  
16 high level with the Propulsid MDL in New Orleans.  
17 I've probably been there to the Eastern District of  
18 Louisiana with Judge Fallon 40 to 45 times over the  
19 past seven years on the Propulsid, which was a  
20 gastroesophageal reflux drug taken off the market in  
21 March 2000, and that litigation is not over.  
22 It has an award program with a special  
23 master in charge, so while it is different, in many  
24 ways, there are -- from this litigation, there is an

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1 analogy, and one thing I have learned from that is  
2 when you think it should be over, that doesn't  
3 necessarily mean it is, and you might end up working  
4 for years longer than you ever dreamed was possible  
5 with no hope of ever getting paid any more money  
6 than you've already been paid because you assumed an  
7 obligation to do certain things, and the fact that  
8 it's seven years later and -- doesn't change the  
9 fact that you're committed to doing what you  
10 promised the Court you would do.  
11 Also Medtronic MDL in Minnesota, the  
12 Guidant MDL in Minnesota, those both involve  
13 implanted cardiac devices, pacemakers,  
14 defibrillators, and a combination called a CRTD, and  
15 I have 130 clients in the Medtronic MDL with devices  
16 that were defective and were explanted and replaced,  
17 and I have 230 injury clients in the Guidant MDL  
18 also in federal court in Minnesota.  
19 Vioxx is another large one. We have 325  
20 arjack (Phonetic) stroke cases. Those are -- some  
21 30 of them are in the federal MDL in New Orleans;  
22 the others are in consolidated Vioxx litigation in  
23 Atlantic City, New Jersey.  
24 We have right now a current interest in the

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1 gadolinium cases. This is the radio luminescent  
 2 component of the injection used for enhanced MRIs  
 3 and MRAs, and it is a signature disease, there's a  
 4 nephrogenic systemic fibrosis which can be caused by  
 5 gadolinium. That is in its organizational phases  
 6 right now.

7 The judicial panel on multidistrict  
 8 litigation is going to hear arguments on where to  
 9 send that January 30th in Phoenix. We expect it to  
 10 be sent to Ohio, and I expect to be one of the  
 11 people in the leadership of that MDL. There's  
 12 probably some other stuff.

13 Q. With your past experiences in individual  
 14 cases in West Virginia as well as your -- your mass  
 15 type cases with hundreds of clients, have you had  
 16 experience with the types of contentious issues that  
 17 can arise in that type of litigation and dealt with  
 18 nationally recognized defense law firms who were  
 19 brought in to defend those cases?

20 A. Yes.

21 Q. Did you receive a package from me of  
 22 various materials from this case, from the Perrine  
 23 versus DuPont, et al case, outlining the pleadings  
 24 and the various things that happened for class

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1 certification, the appellate history, expert matters  
 2 and verdict forms as well as a number of other  
 3 things?

4 A. Yes.

5 Q. Are you generally familiar with the  
 6 pleading docket, the procedural history and the  
 7 verdicts that were rendered based upon your review  
 8 of those materials and your discussions with me?

9 A. Yes.

10 Q. Based upon your education, training and  
 11 experience as a lawyer, as a West Virginia trial  
 12 lawyer, and as a mass tort mass litigation lawyer,  
 13 do you have an opinion about whether the one-third  
 14 fee that plaintiffs' counsel have sought in this  
 15 case is fair and reasonable under the circumstances  
 16 of this case?

17 A. Yes.

18 Q. And what is that opinion?

19 A. It is.

20 PLAINIFF'S EXHIBIT NO. 6  
 21 (Affidavit of Barry Hill was marked for  
 22 identification as Plaintiff's Exhibit No. 6.)

23 Q. Let me ask --

24 MS. BUCHANAN: If I may approach, your

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1 Honor.

2 THE COURT: Yes, you may.

3 Q. -- if the document I've marked as  
 4 Plaintiff's Exhibit 6 is a duplicate of the  
 5 affidavit that you've previously signed relating --

6 A. You didn't slip anything in here, did you?

7 Q. No, I'm not that clever.

8 A. Yes.

9 Q. And this affidavit corroborates what you  
 10 just testified to about the -- your opinions about  
 11 the reasonableness of the fee --

12 A. Yes.

13 Q. -- sought?

14 A. Yes, gives reasons.

15 Q. And could you just generally explain some  
 16 of the factors that you took into account in  
 17 formulating your opinions about the recovery of fees  
 18 the plaintiffs seek in this case?

19 A. On its -- reduced to the simplest terms, it  
 20 was a really hard case; it was a very high risk  
 21 case; it was a very expensive case; it was fought  
 22 hard by the defendants in all ways, all phases;  
 23 there was nothing easy about it.

24 Very few firms would have taken this on. I

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1 can't imagine anyone willing to take this case on as  
 2 an arms-length transaction who would have done it  
 3 for less than a 40 percent contract. I don't know  
 4 that anybody would have asked for more than 40  
 5 either, but that is the customary fee for complex  
 6 product liability -- product liability and medical  
 7 malpractice cases in West Virginia.

8 Cases of lesser difficulty -- automobile  
 9 cases and so forth -- those are generally a third.  
 10 There are other cases lawyers will do on 25 percent,  
 11 but cases -- in just one individual case with the  
 12 complexity and the risk of this case would almost  
 13 always be a 40 percent contract because: One, high  
 14 level of risk of no return; two, the amount of  
 15 investment and time and money.

16 All of that was multiplied by the fact that  
 17 you have both known and unknown clients here,  
 18 individuals who you do know who they are and they  
 19 want to talk to you and you want to talk to them,  
 20 and you want to let them know you are their lawyer,  
 21 and you also have this unknown group of people out  
 22 there you don't know who they are, but you have a  
 23 legal obligation to them, so it's a heavy burden.  
 24 It's high risk. It's expensive. And there was

1 nothing easy about it.

2 Q. Mr. Hill, with respect to the payment of

3 fees when there is a medical monitoring fund with an

4 amount allocated and if there is an amount actually

5 used that is less than the amount allocated, are you

6 familiar with the U.S. Supreme Court's pronouncement

7 on how the fee is calculated in that instance?

8 A. You know, I've read that Bowen case, and I

9 understand what they did, but I also think that

10 equates to practical common knowledge, which is what

11 the lawyers can do is: They can produce an amount

12 -- the plaintiffs' lawyers, is produce an amount of

13 money that's to cover everybody in the class. What

14 the lawyers can't do is be sure that everybody who

15 qualifies to be a member of that class is gonna come

16 forward and say, "I'd like to have mine."

17 You can't force a person to take money; you

18 can't force a person to take the benefit of money

19 that's available. So it's almost inevitable, there

20 is going to be money that isn't used or isn't

21 claimed. That doesn't have anything to do with the

22 value of the work product that was done by the

23 lawyers.

24 If you did it a different way -- this is in

1 the case, but it's also practical. The judgment in

2 this case is not a deposit that's being put down by

3 the defense that it gets back what isn't spent.

4 It's a judgment. And if people don't use everything

5 that's there -- there's no coming back -- there

6 might -- conceivably -- I'm not going to begin to

7 guess the law, that if there are unclaimed funds of

8 some sort, the company some day, somewhere, might be

9 able to say, "Well, nobody ever used this, it's been

10 a long time, why don't you let me have that money

11 back," maybe that will happen, and I'm expressing no

12 opinion on that.

13 The thing is, the lawyers have done the

14 work, and they're not in this for the next 20 to 30

15 years to get paid over some period depending on how

16 things go. The logic of that Supreme Court case was

17 -- probably that would have been a harder case for a

18 judge than this one. Because there, these were --

19 as long as nobody asked me what a convertible

20 debenture is, because whatever that is, that's what

21 the company issued, and then they called them in and

22 then the case came down to failure to give adequate

23 notice to the people who had them to turn them in.

24 They made all kinds of effort to find all

1 these people -- efforts to find all these people

2 after the verdict had been rendered in the case, and

3 they never found more than about 70 percent of them,

4 even though they went back and checked through the

5 registered security dealers that had been selling

6 them, they just couldn't get all these people to

7 come forward.

8 And that -- there they knew how many

9 people, they knew how many debentures. Here it's

10 more difficult. Some aspects of this, it looks

11 like, will go on for a long time. The work to

12 produce the money has been done, it's over.

13 So other than whatever happens on appeal --

14 once again, that's another aspect of this case

15 that's yet to unfold, what will happen with whatever

16 issues, if any, the defense chooses to appeal.

17 So yes, the Bowen case supports the logic

18 that once you've done the work, you should get paid

19 for it, not be tied to litigation forever. I've had

20 in my contracts for at least 20 years -- and I know

21 other lawyers who have the same, because I didn't

22 invent this; I took this from somebody else a long

23 time ago -- that and that is if you have a

24 structured payment where the money is going to be

1 paid out over a number of years, ordinarily there's

2 a front money component and then there's a periodic

3 payment over a number of years.

4 The contract says that the lawyer's fee

5 comes out of the front money. I don't want to be

6 put in a position -- nor do I want to put a client

7 in a position -- of funds from settlements we have

8 had run out 20 or 25 years.

9 Ultimately, the present value of the

10 benefit you obtained for the client is ascertainable

11 at the time of that payment. There is no good

12 reason to have the lawyer and the client -- whether

13 it's one client or 5000 clients -- tied to each

14 other indefinitely.

15 MS. BUCHANAN: I have no further questions,

16 Judge.

17 THE COURT: Mr. Hill?

18 MR. HALL: Your Honor, in light of our

19 discussion before Mr. Hill took the stand and also

20 in light of the Court's rulings concerning discovery

21 of attorneys fees, we won't have any questions today

22 for Mr. Hill.

23 THE COURT: Thank you.

24 THE WITNESS: Not even from Mr. Goodwin and

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1 Mr. Arnold out there?  
2 THE COURT: Counsel, may this witness be  
3 excused?  
4 Ms. Buchanan?  
5 MS. BUCHANAN: Yes, your Honor, if I may  
6 approach just briefly.  
7 THE COURT: Yes, please.  
8 (Counsel approached the bench and the  
9 following proceedings were had out of the hearing of  
10 the audience:)  
11 MS. BUCHANAN: Your Honor, we filed  
12 affidavits from the other fee experts that we'd like  
13 to go ahead and file in support of our claim, and we  
14 filed a petition for reimbursement or payment  
15 stipends to expert representatives, so trying to  
16 gauge what we need to formally put in the record on  
17 that matter.  
18 It may be appropriate if your Honor  
19 believes so for me to inquire about the fee, if any  
20 objections are present, and if not, then I'd simply  
21 like to file those things.  
22 If there are objections, then that may make  
23 a difference on what we submit or don't submit and  
24 whether I actually call the class representatives to

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1 testify in support of the stipend.  
2 THE COURT: Any objection to that process,  
3 without waiving previously preserved objections?  
4 MR. HALL: No.  
5 THE COURT: Let me make that inquiry then.  
6 (Counsel returned to counsel table and the  
7 proceedings continued in the presence and hearing of  
8 the jury as follows:)  
9 THE COURT: Let's go back on the record.  
10 Let me ask for those individuals sitting in the  
11 spectator section, is there anyone present that  
12 wishes to address the Court by way of objection to  
13 the attorneys fees and the cost issue?  
14 The Court would note that after such  
15 inquiry was made by the Court that no individual  
16 answered in the affirmative.  
17 Ms. Buchanan?  
18 MS. BUCHANAN: Yes, your Honor, and  
19 similarly, if we could have an inquiry about any  
20 objections for requests for payment of stipends to  
21 class representatives.  
22 THE COURT: Let me do that at this time.  
23 Is there anyone present in the spectator section of  
24 the courtroom that would like to address the Court

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1 with regard to any objections as to the additional  
2 payment or the stipends requested by the ten named  
3 plaintiffs to this matter?  
4 Any -- again, the record may reflect that  
5 no response -- no affirmative response, no response  
6 period -- was received by the Court on the said  
7 inquiry.  
8 MR. BAAK: Could we approach on that item,  
9 your Honor?  
10 THE COURT: Yes, please.  
11 (Counsel approached the bench and the  
12 following proceedings were had out of the hearing of  
13 the audience:)  
14 MR. BAAK: Your Honor, in DuPont's response  
15 to the plaintiffs' motion for incentive payment, we  
16 didn't object to that and that's still our position  
17 today. I did want to note our continuing objection  
18 to the notice that was provided to the absent class  
19 members with regard to both the attorneys fees  
20 proceedings and the incentive payments proceedings,  
21 with regard to this proceeding and the one that was  
22 scheduled previously.  
23 THE COURT: And that objection will be  
24 noted and a continuing exception to the Court's

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1 rulings may be preserved for all purposes.  
2 MR. BAAK: Thank you, your Honor.  
3 THE COURT: Thank you.  
4 (Counsel returned to counsel table and the  
5 proceedings continued in the presence and hearing of  
6 the jury as follows:)  
7 THE COURT: Ms. Buchanan?  
8 MS. BUCHANAN: Yes, Judge. In further  
9 support of the petition for reimbursement of costs  
10 and payment of fees, we would like to formally move  
11 into the record the affidavits of Mr. Arnold Levin,  
12 Mr. Ron Jones and Mr. Richard Lewis which have been  
13 previously filed with the Court.  
14 THE COURT: And let me note -- well,  
15 Mr. Hall?  
16 MR. HALL: I've got, I guess, two things,  
17 your Honor. First, in light of our discussion  
18 before Mr. Hill took the stand and in light of the  
19 Court's ruling on discovery of attorneys fees, we --  
20 we would simply stand on our prior objection to  
21 affidavits, without saying further -- more on that  
22 today.  
23 THE COURT: Okay. That may be so noted.  
24 MR. HALL: Thank you.

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1 THE COURT: And they may be admitted and  
2 made a part of the record of these proceedings.  
3 Counsel, let me just as a housekeeping matter -- I  
4 believe formally only one of the exhibits -- and the  
5 record will reflect -- of both Plaintiffs' and  
6 Defendant's Exhibits that were discussed this  
7 morning have been moved, but let me, hearing no  
8 objection from either side, admit and make part of  
9 the record each and all of those exhibits from what  
10 was submitted this morning by both the plaintiffs  
11 and the defendants, just as a matter of  
12 recordkeeping.  
13 Ms. Buchanan?  
14 MS. BUCHANAN: And if I could add to your  
15 chores, your Honor, if I could also move into the  
16 record the actual formal signed original affidavits  
17 from Mr. Jones and Mr. Lewis. I think we had only  
18 filed photocopies in the past, and just for  
19 recordkeeping --  
20 THE COURT: Do we need to -- let me just  
21 ask -- do we need to burn the record -- if the  
22 copies are there, those are sufficient in the  
23 Court's opinion for all purposes.  
24 MS. BUCHANAN: Oh, okay.

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1 THE COURT: I don't know that we need to --  
2 of the tens and thousands of pieces of papers that  
3 Mr. Kopp has processed, that he needs to do  
4 something more than once.  
5 MS. BUCHANAN: If it's not required, Judge,  
6 we have filed full copies with the record already.  
7 THE COURT: Mr. Hall, anything on that  
8 issue, sir?  
9 MR. HALL: No, sir.  
10 THE COURT: And again, they have -- to the  
11 Court's belief, they have been filed and made a part  
12 of the record of this proceeding, and the copies  
13 will suffice. Counsel, anything further at this  
14 point?  
15 MS. BUCHANAN: No, your Honor.  
16 MR. HALL: Your Honor, we have nothing  
17 further with respect to the presentation of  
18 evidence. Was the Court intending to hear some  
19 argument today concerning any issues?  
20 THE COURT: If you care to make it, I'll be  
21 glad to receive it, or if counsel's preference would  
22 be to -- to make written summations, you're welcome  
23 to do that, or both.  
24 I suspect -- but I'll defer to whatever

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1 counsel's pleasure is.  
2 MR. HALL: Your Honor, I guess our proposal  
3 would be if we could submit written proposals at a  
4 date set by the Court and then have a short argument  
5 after the Court has a chance to review those.  
6 THE COURT: Ms. Buchanan, any objection as  
7 to that process?  
8 MS. BUCHANAN: No, your Honor. I would  
9 suggest that if your Honor receives the written  
10 materials and believes that argument is appropriate  
11 that we be able to submit that quickly, you know,  
12 have a phone hearing or something and try to  
13 accommodate, and if no hearing is required, then  
14 maybe that would facilitate things if we're -- if  
15 we've adequately covered in our submissions and what  
16 we've offered today.  
17 THE COURT: Counsel, my gut reaction is to  
18 certainly set, at counsel's earliest convenience, a  
19 time for submission of written arguments or findings  
20 of fact or conclusions of law.  
21 While everybody's together, I'd almost  
22 further like to set a -- an argument date for that,  
23 but reserve the right if the Court can rule upon the  
24 written record to do that as it's done throughout

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1 these proceedings.  
2 I've not been bashful when I needed help or  
3 didn't understand things, I've asked for counsel's  
4 assistance, and when I didn't need it and I felt  
5 that the written record was sufficient, I've gone  
6 ahead and ruled, at least in some measure.  
7 But counsel, what is a reasonable time  
8 frame? I'd like to get the matter to more of a  
9 conclusion than we already have as quickly as we  
10 can, but --  
11 Ms. Buchanan?  
12 MS. BUCHANAN: Your Honor, I would suggest  
13 ten days.  
14 THE COURT: And I know we always have this  
15 -- this discourse, but ten days for simultaneous  
16 submissions by both plaintiff and defendant?  
17 MS. BUCHANAN: Yes, sir.  
18 THE COURT: Counsel, you --  
19 MR. HALL: I'm looking to the brief writer,  
20 your Honor.  
21 THE COURT: Okay.  
22 MR. HALL: Ten days is fine.  
23 MR. BAAK: Ten business days?  
24 MR. HALL: Ten business days?

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1 MS. BUCHANAN: Or ten days from today,  
 2 that's fine.  
 3 THE COURT: I'd like a date certain, and I  
 4 haven't -- counting on toes and fingers -- noted  
 5 what ten business days are. I'll note that, again,  
 6 there are 31 days in January, so by the 1st of  
 7 February, is that reasonable for counsel to  
 8 accomplish?  
 9 MR. HALL: Yes.  
 10 MS. BUCHANAN: Yes.  
 11 THE COURT: Why don't we set an objective  
 12 time for the final written submissions to be filed  
 13 with the Court no later than February 1st. Counsel,  
 14 let me work with you and pick a date perhaps within  
 15 a couple weeks of that date for counsel just to have  
 16 marked off on their calendar in the event the Court  
 17 does desire further argument from counsel.  
 18 Counsel, just as a starting point, without  
 19 any magic, what's counsel's availability Friday the  
 20 15th of February?  
 21 MS. BUCHANAN: That works for the  
 22 plaintiffs, Judge.  
 23 MR. THOMAS: Is the Court -- Friday's the  
 24 best time for the Court?

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1 THE COURT: I'll make myself available.  
 2 I'm one of many schedules that need to be  
 3 accommodated. As long as it's not -- being a  
 4 hopeless romantic, as long as it's not on  
 5 Valentine's Day.  
 6 MR. THOMAS: As long as I get to choose,  
 7 how about 11 or 12 or 18 or 19?  
 8 THE COURT: The 18th is the holiday. I'm  
 9 more than -- that's a state holiday, so that's  
 10 probably why you have it clear on your calendar, but  
 11 I'm more than willing to do that. But --  
 12 Ms. Buchanan, any preference from the plaintiffs? I  
 13 don't --  
 14 MS. BUCHANAN: Judge, we could do it the  
 15 11th or the 12th or the 18th.  
 16 THE COURT: Well, the -- would counsel want  
 17 to work on the 18th? I'm -- again, that's the  
 18 holiday we were discussing.  
 19 MR. THOMAS: Right. As I realized and have  
 20 people traveling from out west, perhaps the 19th.  
 21 THE COURT: 19th works for me. At, say,  
 22 11:00 o'clock?  
 23 MR. THOMAS: Great.  
 24 THE COURT: Hopefully as quickly after

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1 February 1, I can advise counsel how much time we  
 2 need or we can adjust it accordingly.  
 3 Mr. Thomas, since everyone was looking at  
 4 you on a scheduling issue, would you be so kind as  
 5 to prepare a terse, concise order from today's  
 6 proceedings and if nothing else, set forth those  
 7 time frames?  
 8 MR. THOMAS: I will, your Honor.  
 9 THE COURT: Thank you. Now, whether you  
 10 can or not is another issue, whether it can be  
 11 short, pithy and concise. I have every confidence  
 12 that you're able to --  
 13 MR. THOMAS: Thank you, your Honor.  
 14 THE COURT: -- at least for the first time  
 15 in these proceedings.  
 16 But counsel, thank you very much for your  
 17 time and help not just today but over the last few  
 18 weeks and months. Hearing nothing further, we'll  
 19 stand in recess. Thank you all.  
 20  
 21 ---oOo---  
 22  
 23  
 24

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1 STATE OF WEST VIRGINIA,  
 2 COUNTY OF HARRISON, to wit:  
 3 I, Teresa Evans, Registered Merit Reporter  
 4 and a Notary Public within and for the County and  
 5 State aforesaid, duly commissioned and qualified, do  
 6 hereby certify that the foregoing proceedings were  
 7 duly taken by me and before me at the time and place  
 8 and for the purpose specified in the caption hereof.  
 9 I do further certify that the said  
 10 proceedings were correctly taken by me in shorthand  
 11 notes, and that the same were accurately written out  
 12 in full and reduced to typewriting by means of  
 13 computer-aided transcription.  
 14 Given under my hand this 16th day of  
 15 January, 2008.  
 16  
 17  
 18 \_\_\_\_\_  
 19 TERESA EVANS, RMR, CRR  
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 21  
 22  
 23  
 24