

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ELIZABETH PLUMMER,)
individually and as Executrix of the)
Estate of EDMOND PLUMMER,)
SR., deceased, and EDMOND)
PLUMMER, JR., JOHN PLUMMER)
and JAMES PLUMMER, as)
surviving children of EDMOND) C.A. No. 08C-08-247-ASB
PLUMMER, SR., deceased,)
) Supreme Court No. 482, 2011
Plaintiffs Below-Appellants,)
)
v.)
)
R.T. VANDERBILT COMPANY,)
INC.,)
)
Defendant Below-Appellee.)

Submitted: February 6, 2012
Decided: February 20, 2012

**UPON SECOND REMAND FROM THE DELAWARE SUPREME
COURT**

This is the Superior Court’s Report to the Supreme Court following its second remand to this Court for the purpose of clarifying the Court’s dismissal procedures in connection with the large volume of cases that comprise its asbestos docket.

Regrettably, this Court must report that plaintiff’s counsel’s representations to the Supreme Court are simply not truthful, and that,

contrary to what was stated in plaintiffs' submissions on appeal, the procedure utilized in this case did not "deviate significantly" from "decades" of prior asbestos litigation practice. Furthermore, Plummers' counsel has been on notice of the Court's current practice regarding dismissals at least since December, 2006, when hearings were held for the express purpose of receiving comments from counsel before the current procedure was formally instituted in January 2007. In fact, contrary to counsel's representations to the Supreme Court, counsel was invited to and participated in hearings conducted by then Commissioner David White regarding the change in procedure before it was adopted over five years ago.

Indeed, the dismissal process purportedly described by Plummers' counsel in his submissions to the Supreme Court has not existed in the Superior Court since January 2007. The replacement procedure was the subject of specific Orders to all plaintiffs' attorneys practicing in the asbestos litigation, one of which was specifically directed to the law offices of Jacobs and Crumplar, signed by Judge Joseph Slights and dated January 25, 2007. (Attached as Exhibit A). That procedure, *not the one described*

by counsel to the Supreme Court, has remained in full force and effect since that date and remains in effect today.¹

A brief history of how this procedure was adopted helps to explain why the process described by Plummers' counsel no longer exists and why counsel's misrepresentations are especially egregious given the amount of thought and effort that went into the 2007 changes in procedure.

In the early years of this litigation the Court would conduct a periodic "Call of the Calendar," whereby a list of cases would be scheduled for dismissal and interested parties would be notified of the date and time to show cause why dismissal would not be appropriate in any particular instance. As the asbestos docket evolved and the volume of cases steadily increased, with hundreds of asbestos cases being filed each year against hundreds of defendants, it became apparent that the Superior Court needed an improved and more efficient process by which it could clear its docket of closed matters. Resolutions through summary judgment practice or by settlement were extremely common but it was also becoming increasingly

¹This procedure has not been challenged by any lawyer for either plaintiff or defendant in any asbestos litigation since January 2007 until very recently when Robert Jacobs, Esquire, wrote a letter to the Prothonotary objecting to the Court's dismissal of certain cases. It is perhaps not a coincidence that the letter is dated December 22, 2011 and was written while this appeal was pending. This letter, in turn, prompted a motion filed by Defense Coordinating Counsel on behalf of all asbestos defense attorneys strongly objecting to any change in the existing procedures as these have worked well for over five years.

difficult to keep track of what was resolved and what was not since individual cases typically had between 10 and 60 defendants.

In late 2006 and early 2007, in an effort to simplify the process of closing these cases, Judge Slights and Commissioner White met with the Prothonotary to devise a new method to dispose of the almost 500 pending cases then facing dismissal. It was decided that a final “Call of the Calendar” would take place on December 28, 2006, and that all plaintiffs’ firms and attorneys, as well as Defense Coordinating Counsel would be notified to appear for this final call, at which time they would also be advised that the antiquated and resource-intensive Call-of-the-Calendar approach would be replaced by a more efficient and effective system of closing old files and cases.

Under the new method, it was decided that if the Court had been advised that a case had settled, approximately 30 days after the date when that case was to proceed to trial, the Prothonotary would issue a letter to counsel advising that an Order dismissing the matter would be entered within 30 days (now 60 days post-trial date) unless any party came forward to show good cause why dismissal would be inappropriate.

On the same date as the final call, December 28, 2006, Commissioner White conducted hearings to advise of the anticipated change of practice and

to receive comments and input from attorneys regarding any concerns or problems. (Transcript attached as Exhibit B).

As a result of the hearings, it was further agreed that once the matter was closed, the Court could reopen the case for only two purposes: either 1) to pursue an application to enforce the settlement agreement; or 2) to pursue state law claims upon the conclusion of any bankruptcy matters.

Not only was Plummers' counsel notified of the December 2006 hearing and summoned to appear, but counsel was present, fully participated in the vetting process, expressed his agreement with the new procedure, and even offered to assist the Court by taking the lead in drafting a form of letter that would henceforth be the triggering document for dismissal.² Specifically, Mr. Crumplar stated:

²*In re: Asbestos Litig.*, C.A. No. 77C-ASB-2, at 34: 2-10. (Del. Super. Dec. 28, 2006) (White, Comm'r) (TRANSCRIPT) ("Hearing Transcript"). Initially Crumplar failed to appear for the hearing, prompting the following exchange:

Mr. Rufo: Your Honor, I note the absence of anyone from the Jacobs & Crumplar firm.

The Court: I was going to ask if you wouldn't mind stepping out into the hallway and calling their office. We'll take a brief recess and see what -- it may be that they don't want to participate, but it would be nice to know that.

Mr. Rufo: I have to borrow a phone because -- Mr. Wilson is giving me his.

Eventually Crumplar did show up for the hearing and apologized to the Court, claiming that the date had not been on his calendar.

Within minutes of his arrival, Crumplar heartily endorsed the Court's desire to treat the asbestos cases like any other civil case whereby the parties have 30 days to submit stipulations and releases or the Court would enter a dismissal:

Mr. Crumplar: I think that what is more appropriate is a simple dismissal -- a notice that when a case has been settled, and the parties have informed the Court, that some kind of administrative order that 30 days or at some particular point the case is dismissed.

The Court: Like we do now with all other civil cases?

It's simply a question of having a customized letter, which is, I think, what Your Honor just said, that we simply -- and I do think a letter is appropriate just to cover those -- just due process, which we'll simply say we understand the case is settled, it will be dismissed in 30 days, and we just have the magic language that if there is -- after it is dismissed, there are still unpaid settlements, the Court will entertain to understand the case can be revived. As long as there is that statement, then I will not send a letter. I can't speak for other people, but I think that takes care of it. The purpose of that letter is to simply -- because there could be a case that is not settled that should go ahead, and I think you need that extra -- I mean, even in those cases—you still could revive it with mistake; but, you know, I do think as long as we're trying to have standard procedure, I'm not asking the Prothonotary to do something that they don't normally do.³

Mr. Crumplar later noted:

If we don't have that magic language in there, you're going to get a response; but as long as we have that, I think that's fine . . . I will try to propose that language, submit it to the plaintiffs, Mr. Rufo and I would think within 30 days we -- you could have a standard form.⁴

Later during the hearing, Commissioner White gave a directive to counsel which Mr. Crumplar willingly embraced:

Mr. Crumplar: Yes. The case is dismissed. There's a provision and, Your Honor, I've discussed this with you in terms of coming up, and I shared it with plaintiffs' counsel and then defense counsel, that if the settlement was not paid, that the Court could revive the case and reopen the matter. I think that is the -- that is what is done in federal court,

The Court: Well, that's something for us to consider. And I know, Mr. Crumplar, you were going to try to take a stab at some language on a letter that would -- standard letter, like the ones we currently send out.

Mr. Crumplar: Your Honor, I will have that at least circulated by the end of today.

³Hearing Transcript at 61: 5-23.

⁴*Id* at 62: 16-63: 1..

The Court: I understand that there is going to be a scheduled plaintiffs' group meeting in early January. I would ask that to the extent that you have any agenda items, that there be not just an agenda item, but you resolve the issue on the content of the letter at that meeting so we will -- "we", meaning the Court, can then start issuing those letters immediately thereafter.

Mr. Crumplar: And I will endeavor to take the lead on that and advise the Court.⁵

After the process was thoroughly discussed and evaluated among the attorneys, and the decision was made to modify the prior procedure, the Court issued a series of six Orders dismissing old cases, including an Order that applied specifically to cases filed by the law firm of Jacobs and Crumplar. (Exhibit B) It should be emphasized that the Orders issued on January 25, 2007 are word-for-word identical to the Order that the Prothonotary has been using ever since, and *identical to the Order that was used in this case*, which was mailed by the Prothonotary to counsel on May 17, 2011.

This file-closing procedure, which has been in effect since January 2007, has worked remarkably well, and has never been challenged until recently when the Jacobs and Crumplar firm wrote a letter objecting to the procedure on December 22, 2011. Hundreds of cases have been successfully and efficiently dismissed and disposed of through this process.

⁵*Id.* at 67: 13-22.

The importance of certainty and clarity with regard to dismissing these cases and of the entry of an express final Order cannot be underestimated. Given the breadth of the Delaware asbestos docket, unimaginable chaos would result if plaintiffs were permitted to keep these cases open until they saw fit to close them, not to mention the potential for the precise difficulties that have arisen in this appeal.

In summary, the Court responds to the Supreme Court's inquiries as follows:

a) Yes, there is a specific procedure in place for the dismissal of multiple defendants and the issuance of final, appealable Orders in asbestos litigation.

b) The procedure was instituted in January 2007 and is as just described.

c) The procedure does not deviate from practice as it has been conducted since January 2007 and the history and reasons for the change are outlined above.

d) The practice employed here has been the same since January 2007 and has not been modified since.

e) Asbestos counsel, including Jacobs and Crumplar, were notified in 2006 of the change, were invited to participate in a hearing before the

change was implemented, participated at the hearing, and have been operating under this procedure for more than five years without objection until the issue of the timeliness of this appeal was presented.⁶

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Clerk of the Supreme Court
All Counsel via File & Serve

⁶What is most frustrating about Plummers' counsel's misrepresentations to the Supreme Court is the undue amount of time that this Court has expended in having to write not one, but two reports, to explain the inaccuracies, time that could and should have been devoted to other more legitimate matters.

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EXHIBIT A



SUPERIOR COURT
OF THE
STATE OF DELAWARE

DAVID A. WHITE
COMMISSIONER

New Castle County Courthouse
500 N. King Street, Suite 10400
Wilmington, DE 19801-3733
(302) 255-0634
(Fax) (302) 255-2257
david.white@state.de.us

December 20, 2006

TO: All Delaware Plaintiffs' Asbestos Counsel

RE: **In Re: Asbestos Litigation**, C.A. No. 77C-ASB-2 - Call of the Delaware Asbestos Calendar

Dear Counsel:

We have now reviewed all of the pending Delaware asbestos cases, those scheduled for trial and those yet to be scheduled. Thank you again for your assistance with respect to the second list. We have compared the lists of scheduled and unscheduled cases with our master list of all pending Delaware asbestos cases and we have now identified **486 cases** we propose to dismiss. Attached is the list of all pending Delaware asbestos cases that are neither scheduled for trial nor to be scheduled for trial, according to the lists you recently provided to us.

We intend to **DISMISS** every case on the attached list unless you appear in open court on **Thursday December 28, 2006 at 9:00 am** and **SHOW CAUSE** why they should not be dismissed.

IT IS SO ORDERED.

/s/ David A. White

Superior Court Commissioner

attachment

**CALL OF THE CALENDAR
PENDING ASBESTOS CASES**

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
78C-10-079	MULHERN	JACOBS
82C-12-102	LOGAN	JACOBS
86C-08-070	LOWE	JACOBS
87C-04-134	NYSTROM	JACOBS
88C-02-001	MERCER	JACOBS
88C-09-116	NORRIS	JACOBS
88C-09-184	ERCOLE	JACOBS
88C-09-199	MUSSER	JACOBS
88C-10-225	BROOKS	JACOBS
88C-10-255	ALEXANDER	JACOBS
88C-11-109	KOWALEWSKI	JACOBS
89C-02-215	BARKER	JACOBS
89C-05-197	MCDOWELL	JACOBS
89C-08-187	WARREN	JACOBS
89C-10-024	HOFFMAN	JACOBS
89C-10-128	WELLS	JACOBS
89C-10-129	BRASURE	JACOBS
89C-10-130	SURRICCHIO	JACOBS
90C-01-159	JACKSON	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
90C-05-037	MCCABE	JACOBS
90C-05-038	WILSON	JACOBS
90C-05-167	ANTHONY	HADLEY
90C-05-191	BIGGS	HADLEY
90C-07-101	WINGATE	JACOBS
90C-07-102	SPICER	JACOBS
90C-07-103	LANE	JACOBS
90C-07-186	RUDD	JACOBS
90C-09-067	MARVEL	JACOBS
90C-09-068	SOMERS	JACOBS
90C-09-112	VINZINSKI	JACOBS
90C-11-221	STEELE	JACOBS
90C-11-222	DAVIDSON	JACOBS
90C-12-039	TURNER	JACOBS
90C-12-040	GARRIS	JACOBS
90C-12-106	MARVEL	JACOBS
90C-12-107	BOWDLE	JACOBS
90C-12-108	SCOTT	JACOBS
90C-12-109	HILL	JACOBS
90C-12-139	TAYLOR	JACOBS
91C-01-153	ENGLISH	JACOBS
91C-03-106	POWELL	HADLEY
91C-03-166	BORRELLI	HADLEY
91C-04-046	EWELL	JACOBS
91C-04-124	WEST	JACOBS
91C-04-125	REED	JACOBS
91C-04-153	HARDING	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
91C-04-301	SPADARO	JACOBS
91C-04-303	FLEETWOOD	JACOBS
91C-06-177	JIMINEZ	HADLEY
91C-07-126	PORTER	JACOBS
91C-07-127	PETERSON	JACOBS
91C-07-251	HASTINGS	JACOBS
91C-07-252	BUTLER	JACOBS
91C-07-259	HILL	JACOBS
91C-07-317	KLINE	JACOBS
91C-08-124	MARRO	HADLEY
91C-08-249	MURPHY	HADLEY
91C-08-265	BRZOZOWSKI	HADLEY
91C-09-123	O'NEAL	JACOBS
91C-09-234	KING	JACOBS
91C-10-121	FRY	HADLEY
91C-12-033	DICKERSON	JACOBS
91C-12-154	VAN VORST	JACOBS
91C-12-156	WIGGINS	JACOBS
92C-01-124	KOWALKO	HADLEY
92C-02-030	DAVIS	HADLEY
92C-02-213	KOLLOCK	HADLEY
92C-03-023	NELSON	HADLEY
92C-03-084	WALLS	HADLEY
92C-03-130	PIZZAIA	JACOBS
92C-03-309	MOORE	JACOBS
92C-03-310	ESKRIDGE	JACOBS
92C-06-097	ADKINS	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
92C-08-057	RODEN	JACOBS
92C-10-006	CIRRIGIONE	HADLEY
92C-10-087	PANKOWSKI	HADLEY
92C-11-065	JERMAN	JACOBS
93C-01-141	MULLETT	HADLEY
93C-02-019	PASSWATERS	JACOBS
93C-02-239	BISHOP	JACOBS
93C-03-048	MERRICK	JACOBS
93C-03-222	POFFENBERGER	HADLEY
93C-07-051	LIEDLICH	HADLEY
93C-07-070	MCDOWELL	JACOBS
93C-07-205	HENDRIX	HADLEY
93C-07-304	BAILEY	JACOBS
93C-08-008	GEANOPULOS	HADLEY
93C-08-013	DANIELS	HADLEY
93C-08-202	LAVELLE	JACOBS
93C-09-160	COCHRAN	HADLEY
93C-09-173	DEMAIO, BEATRICE	HADLEY
93C-09-175	DEMAIO, JAMES	HADLEY
93C-10-096	COMBA	JACOBS
93C-11-010	FOSKEY	JACOBS
93C-11-085	MARINER	JACOBS
93C-11-129	WILSON	JACOBS
93C-11-131	FAIRCHILD	HADLEY
93C-11-166	TOBIN	JACOBS
93C-12-099	MCCLELLAND	HADLEY

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
93C-12-274	FARREN	JACOBS
93C-12-275	ASH	JACOBS
93C-12-276	EDWARDS	JACOBS
94C-01-018	STEWART	JACOBS
94C-01-037	JONES	JACOBS
94C-01-038	PUSEY	JACOBS
94C-01-049	SHOCKLEY	JACOBS
94C-01-121	MOORE	JACOBS
94C-01-122	PIANKA	JACOBS
94C-02-069	MURPHY	JACOBS
94C-02-170	HYNSON	JACOBS
94C-03-011	GEORGE	JACOBS
94C-04-114	AUGUST	JACOBS
94C-07-035	CALVERT	JACOBS
94C-07-115	STEWART	JACOBS
94C-07-162	JOHNSON	JACOBS
94C-07-167	LORD	JACOBS
94C-08-001	HOLLEGER	JACOBS
94C-08-014	WILLLEY	JACOBS
94C-10-164	SHIPE	CRUMPLAR
94C-10-223	CROCKETT	JACOBS
94C-11-110	WHEATLEY	JACOBS
94C-11-226	EMMELL	JACOBS
95C-01-202	MCDOWELL	JACOBS
95C-02-019	BOOZ	JACOBS
95C-03-123	MESSICK	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
95C-04-097	STOOPS	JACOBS
95C-05-064	ROBISON	JACOBS
95C-05-085	DE BONIS	JACOBS
95C-06-174	FORAKER	JACOBS
95C-06-284	WALLACE	JACOBS
95C-06-285	WARDELL	JACOBS
95C-07-058	CAUDILL	JACOBS
95C-07-167	SHEA	JACOBS
95C-08-027	CHOMA	JACOBS
95C-08-185	LINGENFELTER	JACOBS
95C-08-242	FULLER	JACOBS
95C-11-009	LODGE	LEWIS
96C-01-142	STEWARD	CRUMPLAR
96C-01-144	STIGLIANO	JACOBS
96C-02-125	JOSWICK	JACOBS
96C-03-106	RUSSELL	JACOBS
96C-03-181	COLE	JACOBS
96C-03-252	GINN	JACOBS
96C-05-266	FLEETWOOD	JACOBS
96C-06-156	PEDRICK	HADLEY
96C-07-169	GRIFFITH	JACOBS
96C-07-271	REED	JACOBS
96C-10-028	KUBASKO	JACOBS
96C-10-150	MESSICK	JACOBS
96C-10-192	WHEATON	JACOBS
96C-10-222	SQUIER	JACOBS
96C-11-028	SHAW	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
96C-12-165	PITTMAN	JACOBS
97C-01-244	THOMPSON	JACOBS
97C-02-023	CARTER	JACOBS
97C-02-030	COMBS	JACOBS
97C-02-220	GRIFFITH	JACOBS
97C-03-056	WILLEY	LEWIS
97C-03-114	GOLDEN	JACOBS
97C-04-098	BAKER	JACOBS
97C-05-050	ELLIS	JACOBS
97C-05-184	KOWALEWSKI	JACOBS
97C-07-223	SALVERIO	JACOBS
97C-08-064	HILL	JACOBS
97C-08-087	CHANEY	JACOBS
97C-09-135	LYONS	JACOBS
97C-10-112	RUSZKOWSKI	JACOBS
97C-10-153	HITCHENS	JACOBS
97C-10-237	LLOYD	JACOBS
97C-11-011	DONOFRIO	JACOBS
97C-11-127	MARCHESE	JACOBS
97C-11-228	PORTER	CRUMPLAR
97C-12-019	TRUITT	JACOBS
97C-12-101	BUCKLAND	JACOBS
97C-12-183	RICHARDSON	JACOBS
97C-12-229	FERGUSON	JACOBS
98C-01-012	PAOLETTI	JACOBS
98C-01-021	MEGILL	JACOBS
98C-02-124	LITCHKO	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
98C-03-111	SNYDER	JACOBS
98C-03-291	ELLIS	JACOBS
98C-04-123	MILLER	JACOBS
98C-05-047	NACK	JACOBS
98C-05-049	STEGER	JACOBS
98C-05-125	FIDYK	JACOBS
98C-06-043	HILL	JACOBS
98C-06-324	FARRALL	JACOBS
98C-06-325	WALLER	JACOBS
98C-07-021	EMPSON	JACOBS
98C-07-056	WALLS	CRUMPLAR
98C-07-279	WRIGHT	JACOBS
98C-08-043	MARTIN	JACOBS
98C-08-123	PAVLOSKI	JACOBS
98C-09-007	PETERS	JACOBS
98C-09-063	JOHNSON	JACOBS
98C-10-061	BRAND	JACOBS
98C-11-058	WATSON	JACOBS
98C-12-184	COPEs	JACOBS
98C-12-229	TISDEL	CRUMPLAR
98C-12-258	WATERS	HADLEY
99C-01-057	BRADFORD	JACOBS
99C-01-173	MEADOWS	JACOBS
99C-01-174	ZIMMERMAN	JACOBS
99C-01-200	HAYDEN	JACOBS
99C-02-027	WARDELL	JACOBS
99C-02-044	FRANZONE	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
99C-02-085	BEST	JACOBS
99C-02-174	DIMATTEO	JACOBS
99C-02-238	DELCOLLO	HADLEY
99C-02-278	FLEETWOOD	JACOBS
99C-03-034	LISS	JACOBS
99C-03-062	REGINALD	JACOBS
99C-03-113	BEGLEY	JACOBS
99C-03-200	MOROSKI	JACOBS
99C-03-286	JACKSON	JACOBS
99C-04-005	BANNING	JACOBS
99C-04-138	MOYER	HADLEY
99C-04-225	DOODY	JACOBS
99C-04-319	FRIEND	JACOBS
99C-05-053	POYNTER	JACOBS
99C-05-183	CALHOUN	JACOBS
99C-07-070	EWELL	JACOBS
99C-07-304	DAVIS	JACOBS
99C-08-094	BROWN	JACOBS
99C-09-038	EDWARDS	JACOBS
99C-09-074	DONOVAN	JACOBS
99C-09-144	SMITH	JACOBS
99C-09-190	SHOVLIN	JACOBS
99C-09-291	AINNORTH	JACOBS
99C-10-079	LAMBERT	JACOBS
99C-10-207	LAYTON	JACOBS
99C-10-208	HENRY	JACOBS
99C-11-106	SCRUGGS	JACOBS
99c-11-268	DIXON	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
99C-12-003	PENN	HADLEY
99C-12-120	JOYNER	JACOBS
99C-12-130	OPALCZYRSKI	JACOBS
99C-12-194	MUTTER	JACOBS
99C-12-254	STELTZER	JACOBS
00C-03-036	BARBAS	HADLEY
00C-04-106	JERNIGAN	JACOBS
00C-04-162	CASH	JACOBS
00C-04-254	WILFONG	HADLEY
00C-05-024	MILLER	JACOBS
00C-05-030	PARENT	CRUMPLAR
00C-05-045	RIGBY	JACOBS
00C-05-059	HOMA	FORCINA
00C-05-098	MANN	JACOBS
00C-05-099	SMITH	JACOBS
00C-05-127	MALICE	CRUMPLAR
00C-05-128	CONSOLE	FORCINA
00C-05-129	TULL	CRUMPLAR
00C-05-130	WALKER	JACOBS
00C-05-209	MCCLAY	CRUMPLAR
00C-05-210	MEOGROSSI	CRUMPLAR
00C-05-211	HAMMOND	CRUMPLAR
00C-05-212	STAFFORD	CRUMPLAR
00C-05-213	DAWSON	CRUMPLAR
00C-05-267	FREE	JACOBS
00C-05-282	EMMI	CRUMPLAR
00C-06-004	ALLS	HADLEY

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
00C-06-047	WILLIAMS	JACOBS
00C-06-129	WISEMAN	LEWIS
00C-06-149	SUTTON	HADLEY
00C-06-179	NIBLETT	JACOBS
00C-06-180	HARMON	HADLEY
00C-06-210	KOLB	JACOBS
00C-06-260	BARGELSKI .	JACOBS
00C-07-009	PANKIW	CURMPLAR
00C-07-117	WILLIAMS	HADLEY
00C-07-185	BARSKY	CRUMPLAR
00C-08-029	HEADLEY	HADLEY
00C-08-139	ASHCRAFT	JACOBS
00C-08-179	LYNCH	HADLEY
00C-08-209	DESMOND	JACOBS
00C-09-034	FORRESTER	JACOBS
00C-09-088	WALDEN	CRUMPLAR
00C-09-100	SMITH, SANDY	JACOBS
00C-09-141	SMITH, CLAYTON	JACOBS
00C-09-161	MCLAUGHLIN	JACOBS
00C-10-036	ARTHUR	JACOBS
00C-10-050	WALLEY	JACOBS
00C-10-142	PYLE	CRUMPLAR
00C-10-143	COLLINS	LEWIS
00C-11-001	DONAHUE	HADLEY
00C-11-075	STEPPI	HADLEY
00C-11-091	SWANSON	HADLEY
00C-11-159	FASSEL	CURMPLAR
00C-11-261	HENSON	JACOBS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
00C-11-262	HARSHA	CRUMPLAR
00C-12-113	VINCENT	HADLEY
00C-12-177	DAWSON	JACOBS
00C-12-224	WILSON	CURMPLAR
01C-01-021	MAHALEY	JACOBS
01C-01-138	DINEEN	HADLEY
01C-01-158	ALLEN	HADLEY
01C-01-176	NAYLOR	CRUMPLAR
01C-01-178	KOSEK	CRUMPLAR
01C-01-277	JANVIER	HADLEY
01C-02-002	CAIN	JACOBS
01C-02-003	CARR	LEWIS
01C-02-042	CURRINDER	CRUMPLAR
01C-02-043	MCBIRDE	HADLEY
01C-02-200	TUSIO	HADLEY
01C-03-088	HUBER	CRUMPLAR
01C-04-001	GRANT	HADLEY
01C-04-069	VADALA	HADLEY
01C-04-168	NAI	JACOBS
01C-05-037	MEARS	HADLEY
01C-05-038	SHIELDS	HADLEY
01C-05-166	LONG	JACOBS
01C-05-226	WARWARK	HADLEY
01C-05-259	KILOSKI	HADLEY
01C-05-260	MULROONEY	HADLEY
01C-06-039	CARROW	JACOBS
01C-06-078	CONGO	HADLEY

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
01C-06-092	SANBON	JACOBS
01C-06-094	WARWICK	HADLEY
01C-06-111	HICKMAN	HADLEY
01C-06-112	SPIVEY	HADLEY
01C-06-113	PEACE	HADLEY
01C-06-114	HETRICK	HADLEY
01C-06-138	SNAVELY	HADLEY
01C-06-139	DIFRANCESCO	HADLEY
01C-06-140	DEERY	HADLEY
01C-06-141	IRWIN	HADLEY
01C-06-142	KELLER	HADLEY
01C-06-143	NEUTZ	HADLEY
01C-06-153	STEPTOE	HADLEY
01C-06-310	FEDEROWICZ	HADLEY
01C-07-088	SPENCE	HADLEY
01C-07-102	DONAWAY	HADLEY
01C-07-120	DAVIS	HADLEY
01C-07-145	MCMILLAN	JACOBS
01C-08-068	SHUPE	JACOBS
01C-08-114	ACHENBACH	HADLEY
01C-08-124	COLE	JACOBS
01C-08-126	JONES	JACOBS
01C-08-257	STIDHAM	CURMPLAR
01C-08-290	GIESECKE	CURMPLAR
01C-09-123	WYSZYNSKI	CRUMPLAR
01C-10-063	ROCA	HADLEY
01C-10-079	DAWSON	WILSON
01C-10-173	TOWNSEND	HADLEY

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
01C-10-239	PARCHETT	JACOBS
01C-11-061	JOHNSON	JACOBS
01C-11-094	CARROLL	LEWIS
01C-11-099	SMITH	JACOBS
01C-11-131	FORD	JACOBS
01C-11-204	REBURN	JACOBS
01C-11-205	WARNER	CRUMPLAR
01C-11-221	SZCZEPKOWSKI	HADLEY
01C-11-238	SMITH	JACOBS
01C-11-265	SIEBENROCK	GADBOIS
01C-12-061	MILLER	CRUMPLAR
01C-12-155	DIPERSIO	HADLEY
01C-12-192	JACKSON	CRUMPLAR
01C-12-210	DIORIO	JACOBS
02C-01-056	MERGENTHALER	JACOBS
02C-01-203	DAGE	HADLEY
02C-02-013	BARBER	HADLEY
02C-02-051	HERBIN	JACOBS
02C-02-052	DAVIS	JACOBS
02C-02-053	WYKPISZ	JACOBS
02C-02-068	SNIEGOWSKI	JACOBS
02C-02-086	BOMBALA	CRUMPLAR
02C-02-111	TESTERMAN	CRUMPLAR
02C-02-112	HUDSON	CRUMPLAR
02C-02-134	SMOLKA	HADLEY
02C-02-204	BRADY	HADLEY
02C-02-208	DONOVAN	LEWIS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
02C-02-209	WOOTEN	LEWIS
02C-02-210	MURPHY	JACOBS
02C-03-001	MCMULLEN	JACOBS
02C-03-002	WILLIAMS	JACOBS
02C-03-003	FONTO	JACOBS
02C-03-004	MENSINGER	JACOBS
02C-03-043	PUGH	HADLEY
02C-03-142	SHIVELY	HADLEY
02C-03-220	WATTS	CURMPLAR
02C-03-262	BETTS	CURMPLAR
02C-04-005	CIAMARICONE	JACOBS
02C-04-006	BROBST	JACOBS
02C-04-007	WOOSTER	JACOBS
02C-04-030	INSLEY	JACOBS
02C-04-031	CLARK	JACOBS
02C-04-068	HAUCK	JACOBS
02C-04-087	WILSON	CRUMPLAR
02C-04-107	NEDELKA	HADLEY
02C-04-109	HORIEL	JACOBS
02C-04-129	BELL	CRUMPLAR
02C-04-145	EVANS	CRUMPLAR
02C-04-232	ROBINSON	JACOBS
02C-04-269	IRWIN	JACOBS
02C-05-022	RICHARDSON	CRUMPLAR
02C-05-087	CIAFARDO	HADLEY
02C-05-101	DONOVAN	JACOBS
02C-05-102	COULBOURNE	LEWIS
02C-05-103	CLEMENTONI	LEWIS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
02C-05-214	WITT	HADLEY
02C-06-017	GRESMER	CRUMPLAR
02C-06-124	SORENSEN	CRUMPLAR
02C-06-130	WAISHES	CRUMPLAR
02C-06-209	CHASE	HADLEY
02C-06-247	MCVEY	HADLEY
02C-07-006	SIMMONS	JACOBS
02C-07-091	KNOX	HADLEY
02C-07-116	GINOCCHIO	JACOBS
02C-07-251	TRADER	LEWIS
02C-07-252	TRELLA	CRUMPLAR
02C-07-266	DAMIANI	JACOBS
02C-08-001	MITSDARFER	HADLEY
02C-08-015	MILANO	CRUMPLAR
02C-08-043	GUHL	JACOBS
02C-08-066	KOUKEDIS	HADLEY
02C-08-094	NICKLE	HADLEY
02C-08-182	COFRANCESCO	HADLEY
02C-08-183	PEDRICK	HADLEY
02C-08-218	NESMITH	CRUMPLAR
02C-08-268	STEVENSON	HADLEY
02C-08-295	MARCHESE	JACOBS
02C-10-018	VINCENT	JACOBS
02C-10-019	MCLEMORE	LEWIS
02C-10-065	RANDOLPH	LEWIS
02C-10-092	CLAUSEN	LEWIS
02C-10-101	NOWAK	JACOBS
02C-10-184	SAXTON	LEWIS

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
02C-10-220	KLINE	LEWIS
02C-11-001	MECKE	HADLEY
02C-11-053	THOMAS	JACOBS
02C-11-054	RICHARDSON	CRUMPLAR
02C-11-133	OWENS	JACOBS
02C-12-081	BUCKMAN	CRUMPLAR
02C-12-200	REED	LEWIS
02C-12-230	WISEMAN	JACOBS
02C-12-243	SMITH	CRUMPLAR
03C-01-115	CUPETO	JACOBS
03C-01-122	JAMAROWICZ	LEWIS
03C-02-114	PLUMMER	CRUMPLAR
03C-03-045	WINDSOR	LEWIS
03C-03-189	SPENCER	CRUMPLAR
03C-03-261	MCLAUGHLIN	LEWIS
03C-04-237	CARTER	ARNDT
03C-04-238	EDWARDS	ARNDT
03C-04-239	AUGUST	ARNDT
03C-04-240	JACKSON	ARNDT
03C-04-241	WIGGINS	ARNDT
03C-04-242	MORTINER	ARNDT
03C-04-243	VINZINSKI	ARNDT
03C-04-244	BROOKS	ARNDT
03C-04-267	IGBAL	CRUMPLAR
03C-04-307	CLAYVILLE	CRUMPLAR
03C-05-030	BIRCH	HADLEY
03C-05-038	MINUS	CRUMPLAR

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
03C-07-114	HUMPHREY	JACOBS
03C-09-026	FORRESTER	CRUMPLAR
03C-11-077	PETERS	CRUMPLAR
03C-11-117	BUSH	LEWIS
04C-01-070	HIRNEISEN	JACOBS
04C-02-310	MOORE	GADBOIS
04C-03-198	ARMSTRONG	CRUMPLAR
04C-03-199	SPENCER	CRUMPLAR
04C-03-268	WINDSOR	LEWIS
04C-03-269	LAMBERT, BERNICE	CRUMPLAR
04C-06-302	SWEETMAN	HAGER
05C-01-118	QUESADA	HAGER
05C-05-242	PATE	JACOBS
05C-05-246	ABOU	JACOBS
05C-05-270	ROZENBOOM	JACOBS
05C-05-273	JURGENS	JACOBS
05C-05-302	SMITH	BIFFERATO
05C-06-057	JONES	BIFFERATO
05C-06-176	WOOLSTON	BIFFERATO
05C-07-123	MACEMORE	ARNDT
05C-07-135	FAKE	ARNDT
05C-07-176	SANDERS	ARNDT
05C-07-177	CAPRIOTTI	BIFFERATO
05C-07-178	BRESSANI	BIFFERATO
05C-07-247	KOHLER	BIFFERATO

CIVIL ACTION NUMBER	PLAINTIFF	PLAINTIFF'S ATTORNEY
05C-07-257	SINEX	HAGER
05C-07-320	HARMON	ARNDT
05C-08-061	LITTLE	ARNDT
05C-08-071	CLARK	ARNDT
05C-08-219	BARKER	ARNDT
05C-09-033	DAVIS	ARNDT
05C-09-065	PARRIS	ARNDT
05C-09-096	PEREGRINE	ARNDT

EXHIBIT “B-1”

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IN AND FOR NEW CASTLE COUNTY

)	
)	
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Nowak)	02C-10-101
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Kline)	02C-10-220
Thomas)	02C-11-053
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Jamarowicz)	03C-01-122
Plummer)	03C-02-114
Windsor)	03C-03-045
Spencer)	03C-03-189
McLaughlin)	03C-03-261
Carter)	03C-04-237
Edwards)	03C-04-238
August)	03C-04-239
Jackson)	03C-04-240
Wiggins)	03C-04-241
Mortimer)	03C-04-242
Vinzinski)	03C-04-243
Brooks)	03C-04-244
Igbal)	03C-04-267
Clayville)	03C-04-307
Minus)	03C-05-038
Humphrey)	03C-07-114

Forrester)	03C-09-026
Peters)	03C-11-077
Bush)	03C-11-117
Hirneisen)	04C-01-070
Armstrong)	04C-03-198
Spencer)	04C-03-199
Windsor)	04C-03-268
Lambert, Bernice)	04C-03-269

ORDER

WHEREAS, the law offices of Jacobs and Crumplar represents the plaintiffs in the above captioned cases;

WHEREAS, certain defendants in the above cases have not fully paid the agreed upon settlement amounts;

WHEREAS, an issue may arise where settlement monies are not forthcoming as agreed upon between the parties;

WHEREAS, according to correspondence to the Court dated January 4, 2007, some cases noted above involve bankrupt defendants or other bankruptcy related issues which have not been resolved at this moment;

THEREFORE IT IS HEREBY ORDERED, this 25th day of January 2007, the above captioned cases are hereby DISMISSED; however upon motion and upon a showing of good cause, each of the cases may be reopened for the limited purpose of pursuing applications to enforce settlement agreements or pursuing state law claims upon the conclusion of any bankruptcy related matters.



 Judge

FILED
 2007 JAN 25 AM 11:39

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION | 77C-ASB-2

DECEMBER 28, 2006

BEFORE: COMMISSIONER DAVID A. WHITE

TRANSCRIPT OF PROCEEDINGS

PATRICK J. O'HARE
Registered Professional Reporter
SUPERIOR COURT REPORTERS
500 N. KING STREET WILMINGTON, DELAWARE 19801
(302) 255-0572

COPY

PATRICK J. O'HARE, RPR

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December 28, 2006

Courtroom No. 4B

9:00 a.m.

PRESENT:

As noted.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: Good morning, everybody.

We haven't had a call of the calendar for almost two years now. And after reviewing the list that I submitted, it's clear to me that we probably should be doing this more frequently. Not that I enjoy doing it, but it looks like -- it looks like things don't get done until we push things, and that's not such a good thing.

Anyway, I had issued an order on December 20th, with a list of cases that I had indicated we intend to dismiss, unless folks appear today, "folks" meaning plaintiffs' counsel, should appear today and show cause why they should not be dismissed. And my inclination right off the bat is, as I've said repeatedly on the record during the course of this calendar year, that any case filed prior to year 2000 that's not been fully disposed of is going to be dismissed at the end of this year.

And the first thing I'd like to deal with is any case filed before the year 2000. I'd like to hear

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1 APPEARANCES:

2 JACOBS & CRUMPLAR
BY: THOMAS C. CRUMPLAR, ESQ.

3 AND

4 LAW OFFICES OF PETER ANGELOS
BY: RICHARD WILSON, ESQ.
COUNSEL FOR PLAINTIFFS

5 LORETO P. RUFO, ESQ.
6 DEFENSE COORDINATION COUNSEL

7
8 OTHER COUNSEL PRESENT

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PATRICK J. O'HARE, RPR

4

1 why every one of those cases should not be dismissed.

2 That's up through pages 10 on my docket,
3 middle of page 10, on the list that I sent out.

4 So, who wants to talk about any pre-2000
5 case?

6 MR. WILSON: Your Honor.

7 THE COURT: Mr. Wilson.

8 MR. WILSON: Thank you.

9 First of all, did Your Honor get the letter
10 I had hand-delivered?

11 THE COURT: Yes. It's a letter dated
12 yesterday, which was hand-delivered some time within the
13 last 15 minutes.

14 MR. WILSON: It was supposed to get to you
15 yesterday, obviously.

16 Be that as it may, Your Honor, let me just
17 kind of cut to the chase, just present our positions to
18 the Court so you understand what I attempted to do in
19 the letter.

20 In the letter, we tried to delineate cases
21 that we believe should technically --

22 THE COURT: Let's talk about cases before
23 the year 2000, because that what I'm talking about.

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1 MR. WILSON: There are -- I understand what
2 you're saying, Your Honor; but if I may, basically there
3 are cases that we are pursuing bankruptcy claims in, and
4 there are a number of those that fall -- that were
5 obviously filed before 2000. And those are the cases
6 that we would, if the Court would be so indulgent, would
7 be to move to the dormant docket, if that's an option.
8 And they are delineated in the letter, and they are, by
9 and large, mostly --

10 THE COURT: Does Mr. Rufo have a copy of the
11 letter?

12 MR. RUFO: No, Your Honor.
13 (Counsel conferring.)

14 MR. WILSON: That was e-filed yesterday and
15 it was supposed to be faxed to Mr. Rufo. If he didn't
16 get it, I certainly apologize.

17 And, unfortunately, Your Honor, the way we
18 broke them down doesn't meet exactly the question you
19 put to me. But basically what we're trying to do is,
20 there are cases that were filed before 2000, and on the
21 first group, which are the ones we're asking to be moved
22 to the dormant docket for the purposes of continuing to
23 seek bankruptcy claims ends with Penn, first name

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1 on.

2 So, my question again is: I had issued an
3 order and asked all the plaintiffs' firms to submit to
4 me a list of cases -- active cases which are not on a
5 current trial schedule, cases to be put on a trial
6 schedule, and these cases don't appear to be on that
7 list that was submitted to me.

8 MR. WILSON: Those cases -- I have to tell
9 Your Honor, I do not have a direct answer for you, and I
10 apologize for that. I was unaware of that previous
11 list.

12 My understanding is, if they are -- that
13 previous list that they're not on a trial setting, I did
14 not double-check to see if --

15 THE COURT: Who are the defendants that you
16 are saying in this letter are viable with respect to
17 each of these cases?

18 MR. WILSON: There are claims outstanding
19 against --

20 THE COURT: When you say "claims," you mean
21 in this Court claims or Bankruptcy Court claims?

22 MR. WILSON: No. The group -- the second
23 group are cases that there are -- they're not bankruptcy

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1 Charles, 99C --

2 THE COURT: Yes.

3 MR. WILSON: -- 12-003.

4 Our second group of cases, again, they do
5 not necessarily fall within the -- these are all, with
6 the exception of Robert Moyer which is a '99. 1999
7 filings. These cases all fall after 2000, and I would
8 ask that they remain open for the reasons that they do,
9 in fact, have viable defendants, that they will either
10 be settled in the relatively near future or would be
11 placed in a trial setting.

12 THE COURT: Well, I thought I had also
13 required your firm and the other firms to provide me
14 with a list of cases that are not on a trial docket.

15 MR. WILSON: Your Honor, I think that would
16 be the second group of cases that would be those cases.
17 As far as I know, they are not on a trial setting.

18 THE COURT: Well, I have the list that your
19 firm submitted to me. It's a list of 57 cases.

20 For example, the Moyer case, your 1999 case,
21 it's not on that list. The Harmon case, year 2000 case,
22 that's not on the list. The Tusio case, that's not on
23 the list. Warwick, that's not on the list, so on and so

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1 claims. They are direct claims.

2 When we use the term "viable defendant"
3 internally, we mean a defendant that is capable of being
4 sued in Superior Court, and we are pursuing claims
5 against them, such as Georgia Pacific companies, and
6 such.

7 THE COURT: Who are the defendants in these
8 cases?

9 MR. WILSON: Georgia Pacific are the vast
10 majority of those cases and --

11 THE COURT: How come they're not on a trial
12 calendar?

13 MR. WILSON: Well, these cases may, in fact,
14 be on the trial calendar now that Your Honor has
15 indicated that the firm has submitted a list --

16 THE COURT: I just told you, they're not on
17 the list that you submitted to me.

18 MR. WILSON: I'm sorry, Your Honor. I
19 understood that was a list of cases that were not on the
20 trial calendar.

21 THE COURT: Right. How come they're not?

22 MR. WILSON: Mainly -- only because they
23 haven't been placed, for whatever, you know, there's --

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1 if we're talking about the cases after 2000, they just
2 haven't been placed on the trial docket yet as the
3 individual cases. It probably has to do mainly with the
4 array of defendants that were available to us at the
5 time that the cases were filed.

6 THE COURT: I don't understand. The case is
7 either on the trial docket or to be put on a trial
8 docket; and this list of cases was not submitted to me
9 as cases that needed to be put on a trial docket. And I
10 get a letter which, as I said, was hand-delivered to me
11 about 15 minutes ago that says we have viable
12 defendants, and they should remain on the active docket
13 for placement in trial settings. And I don't understand
14 that.

15 Now you're telling me that Georgia Pacific
16 is the only defendant in each of these 17 cases?

17 MR. WILSON: No, Your Honor. I'm not saying
18 that. I'm saying that for the cases -- it is my
19 understanding, except for the cases I believe up to and
20 including William Knox. And I apologize, Your Honor.
21 Obviously, I've come here unprepared because I was
22 unaware of that previous list. My understanding is, I
23 was addressing the Court's question by indicating to the

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1 the office to help us with either of these?

2 MR. WILSON: No.

3 THE COURT: Mr. Rufo.

4 MR. RUFO: Your Honor, maybe I can help a
5 little bit.

6 On Mr. Wilson, what he refers to as his
7 second list, that is the cases that he says have viable
8 defendants. Two of them are, in fact, on the trial
9 schedule.

10 THE COURT: Which ones?

11 MR. RUFO: The Kiloski case, in O1C-05-259,
12 and the Moore case of O4C-02-210. Kiloski is scheduled
13 for trial August 2007, and Moore is scheduled on the
14 trial docket for May 2008.

15 The rest of these, I can tell Your Honor,
16 have, in fact, appeared on the trial schedule in the
17 past. All of these names, with the exception of
18 Mr. Szczepkowski, and I probably didn't say it right --

19 MR. WILSON: That's right.

20 MR. RUFO: -- I know these plaintiffs. I've
21 deposed these plaintiffs. There's been IMEs of these
22 plaintiffs. These plaintiffs have been on the trial
23 schedule and have been removed as time goes on, because

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1 Court which cases we believe should remain on an active
2 docket, which ones can be dismissed, and which ones that
3 we, because of pursuing bankruptcy claims, believe
4 should be placed on the inactive docket.

5 If, in fact, these cases are not -- and I'm
6 talking about my second group of cases, Your Honor --
7 if, in fact, these cases are not in a current trial
8 setting, then these should have been added and should
9 have been included in that other list. If there's -- if
10 they're not, there's been a breakdown, and that can be
11 -- I can't fix it at this very moment for Your Honor,
12 but I can certainly fix it before the end of the day as
13 to those particular cases.

14 THE COURT: Well, Mr. Wilson, this call has
15 been scheduled, and I'm really at a loss to understand
16 how your firm could appear here today and not be
17 prepared to discuss cases which we intend to dismiss
18 with more familiarity than what I'm hearing. I don't
19 understand that. Really, I don't. I don't get it.

20 And "by the end of the day," who's that
21 helping? It doesn't help me.

22 I had a call scheduled for nine o'clock this
23 morning. Is Miss Hadley in the office or Miss Hager in

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1 we were told there was no one left. And I know that to
2 be the case, because a couple of these were just
3 removed. George Townsend was part of the original
4 landowner deal. Kristine Barber was part of that.
5 Anthony Tusio, I clearly remember taking his deposition
6 because he's a funny guy. So, I mean, they were on the
7 schedule and I don't have the historic lists of trial
8 schedules, but if I had access to my hard drive, I could
9 tell you when they were set for trial and when they were
10 removed.

11 So, I don't know why there's a viable
12 defendant now, if there's a viable defendant now,
13 because, as I said, these cases were done.

14 THE COURT: Well, who are the viable
15 defendants?

16 MR. WILSON: Georgia Pacific, Your Honor.

17 Your Honor, let me change my request to the
18 Court. Other than Moore and Kiloski, which remain on
19 the calendar and should remain on the calendar, it would
20 be our position that these cases, if the Court is so
21 indulgent, would be moved to the dormant dockets, and
22 that would be our position on those cases.

23 Obviously, listening to what Mr. Rufo says,

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1 I'm not here to make excuses, but I now understand, I
2 think I understand, just based on what he said has
3 occurred; therefore, I believe that I would ask that
4 those cases be moved to the dormant docket
5 notwithstanding them being filed after 2000.

6 THE COURT: With the exception of the
7 Kiloski case --

8 MR. WILSON: -- Kiloski and Mr. Moore.

9 THE COURT: -- and the Moore case.

10 MR. WILSON: Yes.

11 THE COURT: Miss Agnew, did you see those
12 two cases?

13 THE PROTHONOTARY: Yes.

14 THE COURT: They're already on a -- and
15 that's the other thing that's puzzling me, the list that
16 I gave to folks contained only those cases that were
17 neither on an active trial schedule or were not on the
18 list that you supplied to me. And I don't understand
19 how these two cases show up on your letter, because
20 they're already on an active trial schedule. I don't
21 get it.

22 MR. WILSON: I think, Your Honor, I'll tell
23 you what I think it was. To be perfectly frank with

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1 payouts. You never know. You submit the names as they
2 come up. And the names you could submit -- as an
3 example, one of the first things Barbara Gadbois did
4 when she came to our firm in early 2000 was submit a
5 certain list of names to Delaware Insulation. Those
6 cases still have not been acted on.

7 There's other cases, such as AC&S that went
8 bankrupt in 2004. I know that's not exactly -- doesn't
9 address '90. But the problem is that these cases --
10 often times the bankrupt procedure itself takes five,
11 six years; and then, the claims process as they work
12 through the claims. You can submit a bunch of names,
13 and that's just the beginning.

14 THE COURT: So, are you telling me that as
15 of right now, the Jerome Anthony case, Civil Action
16 Number 90C-05-167, the bankruptcy claim has not been
17 resolved with respect to him?

18 MR. WILSON: Every -- yes. There's still
19 bankruptcy claims that we can pursue, that we are
20 continuing to pursue, or maybe a better word in an older
21 case would be attempting to collect, that is that old.
22 Because you can see, although it is not a lot, you can
23 see that we are -- there are cases that are closed, that

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1 Your Honor, I think there were too many people involved
2 in generating the data. That's -- I mean, that's not an
3 excuse. That's simply what I think happened,
4 Your Honor.

5 THE COURT: Let's talk a little bit,
6 Mr. Wilson, about the dormant docket, generally.
7 If a defendant files a petition for
8 bankruptcy, isn't it your firm's practice to
9 automatically pursue bankruptcy claims against the
10 defendant?

11 MR. WILSON: In general, yes, sir.

12 THE COURT: All right. So, why do I see
13 cases from 1990, '91, '92, '93, '96, '98? How in the
14 world is it possible that bankruptcy claims have not
15 been resolved in cases that are that old?

16 MR. WILSON: OCS is probably a fine example.
17 I think they declared bankruptcy in 1999. Thus, a case
18 where you have cases such as that, we've still made --
19 which if still -- are not -- they have not officially
20 published their submission process. You have ongoing
21 trusts such as DI that -- Delaware Insulation for the
22 record -- where there is no -- and this is not meant as
23 a cut, but there's no real rhyme and reason for the

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1 there are no viable defendants. There's no bankruptcy
2 claim to pursue. Now, I know that's a small number, but
3 you're right, Your Honor. You know, I can't speak for
4 the other -- I can't speak for Jacobs & Crumplar.

5 THE COURT: I'm not asking you to.

6 MR. WILSON: But right, wrong, or
7 indifferent, we pursue claims for as little as, you
8 know, \$58, you know? So, yeah, they are old, and it is
9 my understanding and my representation to the Court
10 that, yes, we still have what we believe are viable
11 bankruptcy claims that we are pursuing on behalf of
12 Mr. Anthony and Mr. Powell.

13 THE COURT: Let me ask you another question.
14 Assuming you pursue the claims and you collect some
15 amount of money in the Bankruptcy Court, you don't then
16 pursue the case again back here in Superior Court, do
17 you?

18 MR. WILSON: No. No. I think I understand
19 what you're asking, Your Honor. Basically -- normally
20 what we do, and this is probably no different from
21 anywhere else, we have Mr. Smith come into the office.
22 We sign him up. We file his case, and we dual-track it.
23 We pursue the bankruptcy claims. We pursue claims here.

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1 And there is probably a breakdown that once we're sort
2 of done with the active defendants, we probably are not
3 making that next step to inform the Court that they're
4 no longer any active defendants, and that's probably --

5 THE COURT: Probably? I mean, I had a call
6 of the calendar in February of '05. And I'm now seeing
7 December of '06. And I will note that your letter is
8 dated December 27, 2003, and I'm not really sure how
9 that happened.

10 MR. WILSON: Slow mail, Your Honor.

11 THE COURT: Really?

12 MR. WILSON: I'm still trying to figure out
13 why you just got it this morning. I don't -- that
14 letter was dictated last week, Your Honor. It's not
15 from 2003.

16 THE COURT: I don't know how anyone could
17 type a letter dated 2003; but I guess the question is:
18 Why are you requesting that we put cases in the dormant
19 docket when they're not going to be coming back here for
20 trial, ever?

21 MR. WILSON: Because it's our position that
22 in many of the bankruptcy trusts, or many bankruptcy
23 claims, we need a case that is there; we need a number.

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1 in general for submitting claims or however they're
2 submitted to the bankrupt defendants.

3 THE COURT: I'm not sure what your
4 responding to at this point, Mr. Wilson.

5 MR. WILSON: You asked me, do we really need
6 them open -- I'm sorry, on a dormant docket.

7 THE COURT: Okay. Why would these cases not
8 have been requested to be put in a dormant docket when I
9 had a call of the calendar in February of 2005?

10 MR. WILSON: Your Honor, I can't -- I'm not
11 going to respond to that, Your Honor, not out of
12 disrespect, but because I don't have an answer for
13 Your Honor, and I'm not going to pretend to have an
14 answer for you.

15 THE COURT: Okay. Miss Agnew, are we okay
16 putting these cases on the dormant docket?

17 THE PROTHONOTARY: Yes, Your Honor, we are.

18 THE COURT: With the exception of those two?

19 THE PROTHONOTARY: We have some questions
20 about those. We have different case numbers. That's
21 why.

22 THE COURT: You do, for Kiloski?

23 THE PROTHONOTARY: Uh-huh. That's why I'm

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1 We need a docket so we can represent to the bankruptcy
2 trust, one, there's a case, here's the case number.
3 Here's the date it's filed. If you really want to go
4 look, you can go check the docket.

5 THE COURT: Is that a requirement that you
6 have a case filed?

7 MR. WILSON: Not in every single-- well, no,
8 not in every single trust. But there are companies that
9 do require proof that you have filed suit. Also, it
10 eliminates many of the arguments over
11 statute-of-limitations issues and things like that. It
12 provides a, you know, representation as to the statute
13 of limitations. And that's why we want them to remain
14 on the dormant docket.

15 Now, is there a way that we -- again, Your
16 Honor, I understand your concern with the call of the
17 calendar and doing them more frequently. Is there a way
18 that we can look at them and figure out if there's one
19 particular trust or so and get rid of it? Yeah. And
20 should we probably do that? Yeah. If it's a concern of
21 the Court's, absolutely. But our understanding is that
22 we want these cases to remain as part of a docket for
23 representations to a bankruptcy trust -- I use that term

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1 checking that one right now to see if there's two cases
2 by the same name.

3 THE COURT: All right. And also Moore?

4 THE PROTHONOTARY: Moore is on the trial
5 calendar -- on the scheduling order. Moore was -- I
6 think it was O4C-O3-310.

7 THE COURT: '03, not '02?

8 THE PROTHONOTARY: Right. I'm checking
9 which number is right. That's why it wasn't picked up.

10 MR. RUFO: I have O3-310 in my list, as
11 well, if that explains how it got on the multiple list.

12 THE PROTHONOTARY: And this one I'm checking
13 now, they have Grant-- and they have O3C-11-1 '01, is
14 what we have here.

15 MR. WILSON: What's your second number?

16 THE PROTHONOTARY: On Grant?

17 MR. WILSON: On Grant, yes, ma'am.

18 THE PROTHONOTARY: O3C-11-101, and you have
19 259, are there two cases?

20 MR. WILSON: Yes. Because I think there
21 might have been -- one is a cancer case.

22 THE PROTHONOTARY: And the scheduling order,
23 one is not --

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1 MR. RUFO: 03C-11-101 is the one on the
2 scheduling order.

3 MR. WILSON: And that's the correct one that
4 should stay on.

5 THE PROTHONOTARY: That's not the one listed
6 in their letter.

7 THE COURT: All right. Well, your letter
8 lists 01C-05. So, why shouldn't that be dismissed?

9 MR. WILSON: It should be dismissed, dismiss
10 the '01 --

11 THE COURT: I'm not sure I understand why
12 that case is pending. Why would you then file a second
13 case while the first case is still pending? Because
14 that's what it sounds like you did.

15 MR. WILSON: One or two things could have
16 happened: One, there were additional defendants and the
17 second step of moving to join the cases never happened.
18 Or there may, in fact, a motion pending to have the
19 cases joined together. When we do that, there's
20 often -- the reason is usually -- we've done that
21 probably in three cases. It's exigent circumstances in
22 trying to get the case filed to make sure that we don't
23 blow the statute of limitations, because there might

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1 MR. WILSON: Well, it doesn't matter now.

2 We're not pursuing it, because both of the defendants
3 that we were pursuing went bankrupt we were waiting for
4 the motion to amend to be ruled on.

5 THE COURT: Well, if the defendant went
6 bankrupt, the case is stayed, isn't it? Isn't a case in
7 this Court stayed if the defendant in that case went
8 bankrupt?

9 MR. WILSON: Yeah, but the stay -- the
10 stay does not -- Your Honor, the stay doesn't work that
11 way. What it does is, it stays the case if the case had
12 already been the case you're pursuing against them. If
13 the case was never amended, then you can't stay a case
14 that wasn't in the proper setting.

15 THE COURT: I feel like you and I are
16 talking at complete different levels all morning so far,
17 Mr. Wilson, and I'm not sure why.

18 Now, let me give you -- on this Kiloski case
19 that you have listed in your letter, 01C-05-259,
20 Miss Agnew just handed me a piece of paper that
21 indicates that your firm filed a suggestion of
22 bankruptcy with this Court on July 7th, 2004, that that
23 was the last pleading filed in that case.

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1 have been, as we interviewed applicants, there might
2 have been defendants we were unaware of at the --

3 THE COURT: So, don't you just file the
4 motion to amend the complaint?

5 MR. WILSON: (Pause.)

6 THE COURT: I'm just unclear --

7 MR. WILSON: If you want an honest answer to
8 that question, I'll give you an honest answer.

9 THE COURT: Let me talk for a second. I
10 don't understand why you don't just move to amend the
11 complaint rather than file a whole separate lawsuit.

12 MR. WILSON: I'll give you an honest answer,
13 Your Honor. Because we have waited five years in the
14 past to have a motion to amend considered by this Court.

15 THE COURT: Not since I've been here you
16 haven't. I'm not sure what you mean by that.

17 MR. WILSON: I'm just telling you we had
18 motions to amend that have pended five years.

19 THE COURT: Can you give me an example of
20 one?

21 MR. WILSON: Kiloski.

22 THE COURT: There's a motion to amend
23 pending at this --

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1 There's a suggestion of bankruptcy. You're
2 telling me to keep that on an active docket when the
3 case indicates there's a bankruptcy filed?

4 MR. WILSON: I'm sorry. Which case are we
5 talking about, the '01 or the '03?

6 THE COURT: '01.

7 So, why shouldn't that case be dismissed?

8 MR. WILSON: I don't see any real reason why
9 that particular Kiloski case should not be dismissed.

10 THE COURT: That's what's going to happen.
11 The Kiloski case will be dismissed.

12 MR. WILSON: As long as the '03 remains
13 open.

14 THE COURT: Is '03 on an active trial
15 docket? I thought it was in August of '07. All right.
16 So, that's a nonissue. So, 01C-05-259 is going to be
17 dismissed.

18 I have very little ability to determine that
19 what's in your letter is accurate, based upon what we
20 talked about, Mr. Wilson. It sounds like, as you said,
21 too many people were involved in the preparation of
22 this. And it's real unclear as to whether the
23 information in this is accurate or not. At least as to

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1 these first two categories of cases and, again, I'm
2 still at a loss as to why cases filed in 1990 and '91,
3 '92, and '93, et cetera, et cetera, are now in December
4 of 2006 being asked to be placed in a dormant docket,
5 when my understanding of our civil rule is that it's
6 your obligation to put a case in the dormant docket when
7 a bankruptcy's filed. It's not our obligation to pursue
8 you to do that. It's your obligation to put cases in
9 the dormant docket when there's a bankruptcy filed. I
10 don't understand it.

11 And what happens? Do they just die in the
12 dormant docket? Do they just fade away? Are you saying
13 that you have not yet pursued claims on any of these?

14 MR. WILSON: No, that's not what I'm saying.

15 THE COURT: All right. Well, if you need
16 these cases in the dormant docket because you need a
17 civil action number to put on a claim form, then why
18 don't these cases just get dismissed once you've
19 prepared the claim and submitted the claim?

20 MR. WILSON: Because --

21 THE COURT: If that's the purpose of it, to
22 pursue a bankruptcy claim, why can't you prepare the
23 claim, get the civil action number for the claim, and

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1 then dismiss the case here? Because you're not
2 coming -- I thought you said you're not coming back here
3 again to pursue a trial of the case.

4 MR. WILSON: Because there's usually not a
5 single -- in each one of these cases, there is going to
6 be more than one bankruptcy claim. In other words,
7 there's not necessarily going to be -- and let's just
8 use Jerome Anthony as an example. And, please, this is
9 not to be taken as a factual representation as to
10 Mr. Anthony. Say, for example, we filed a case on
11 behalf of Mr. Anthony. If we would file that case today
12 and he was, say, an insulator, chances are you would
13 have bankruptcy claims against AC&S, OCF, 48 Insulation,
14 or perhaps Delaware Insulation. So, it's not like you
15 have a case that you have, say, duPont, AC&S, Diamond
16 Shamrock, and you're going forward and all of a sudden,
17 somewhere in the midst of pretrial litigation
18 procedures, AC&S declares bankruptcy, and there's a
19 single snapshot that takes place that we fill out that
20 particular claim, submit it, and then everything's
21 copacetic. If we -- let's say we go ahead, excuse me,
22 against -- settle with Diamond Shamrock and go to trial
23 against duPont, and then the case is, you know, all said

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1 and done, we get the bankruptcy recovery, yeah, that's
2 the case we close. But because these cases involve
3 ongoing trusts that oftentimes require a docket number,
4 that is why we ask that these things be put on a dormant
5 docket. It's not that in each case there's a singular
6 bankruptcy that occurs or that we are pursuing. It's
7 because there's multi bankruptcies all with different
8 rules. And that's the reason we want to have these
9 remain on the dormant docket, so we can give them a
10 docket number. You know, if -- and that's why --

11 THE COURT: Have you looked at every one of
12 these cases that are listed on these first two pages,
13 two-and-a-half pages to determine whether you still have
14 claims that are open or whether those claims have been
15 resolved?

16 MR. WILSON: My staff has indicated to me,
17 and the person who's in charge of keeping track of this
18 stuff, has indicated to me that these cases still have
19 bankruptcy claims that we are, in fact, pursuing on
20 behalf of these folks.

21 THE COURT: So, there's still a claim
22 pending that has not been resolved?

23 MR. WILSON: Correct, Your Honor.

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1 THE COURT: All right. Here's what I'm
2 going to ask you to do with respect to every case that
3 you're requesting to be put on the dormant docket: By
4 noon next Thursday, I want a letter to me with respect
5 to each of these cases. And in that letter, I want you
6 to tell me when the claims were submitted on behalf of
7 each of these plaintiffs, against which claims were they
8 submitted, and what's the status of them.

9 MR. WILSON: Can I read that back to Your
10 Honor, so I understand?

11 THE COURT: Yes.

12 MR. WILSON: You want a letter by next
13 Thursday indicating --

14 THE COURT: Noon, next Thursday.

15 MR. WILSON: Noon, I got that. Thank you,
16 Your Honor. When the claims were -- as to each claim,
17 when it was submitted, the status of that claim, and,
18 obviously, the company it was submitted against.

19 THE COURT: Yeah.

20 MR. WILSON: Your Honor, I will see that
21 that's done.

22 THE COURT: I'm not going to put a case in a
23 dormant docket if claims have been resolved.

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1 MR. WILSON: I understand, Your Honor.
 2 THE COURT: The case is going to be
 3 dismissed. As I said, I'm repeating myself now, but I
 4 think I have to. I have no -- I can't rely on this
 5 information because it doesn't help me at all. Again, I
 6 don't understand how cases from the early '90s still, as
 7 of right now, need to be put in a dormant docket. I
 8 don't understand that.

9 All right. That also applies to that second
 10 category of cases which you had indicated were viable,
 11 but you now want to have moved to the dormant docket.

12 MR. WILSON: Understood.

13 THE COURT: Let's talk about the next
 14 category.

15 MR. WILSON: They're just cases that can be
 16 dismissed, Your Honor. I guess, technically, we have no
 17 objection to them being dismissed.

18 THE COURT: Good. All right.

19 MR. WILSON: Then the next two are Dawson
 20 and Dipersio. Sorry. We withdrew as counsel.

21 THE COURT: When did you withdraw?

22 MR. WILSON: 2004, I believe, on both of
 23 those cases. They kind of blew up at the same time.

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1 Thus, all of the -- all of his care was provided, in
 2 some way or another, through the military. I'm not sure
 3 if you're familiar with it, but there's, like, at least
 4 three different ways that the military can, in essence,
 5 pay for your medical care. One aspect, it happens to be
 6 a military hospital, is attempting to -- has told us
 7 that if we recover anything they have -- well, they
 8 don't even call it a lien, they have the claim against
 9 any recovery for their medical expenses.

10 Mr. Quesada does not -- does not want to
 11 pursue the claim. But, also, at the same time, there is
 12 language contained in the statute that's applicable to
 13 these recoveries and the right of the Army or the Armed
 14 Forces to get reimbursed that indicates such things
 15 because you can't do anything to diminish or prejudice
 16 their rights. And I'm still trying to make sure that
 17 the Army understands that we're not pursuing this.

18 THE COURT: What are you not pursuing?

19 MR. WILSON: We're not pursuing the claim at
 20 all. If it was just --

21 THE COURT: So, why don't you dismiss Case
 22 Number 05C-01-118?

23 MR. WILSON: Because until and unless I get
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1 THE COURT: Have your clients been informed
 2 that you withdrew as counsel?

3 MR. WILSON: Yes. Yes, sir. This was
 4 not -- neither one of these were pretty.

5 THE COURT: All right. Well, they're going
 6 to be dismissed.

7 Miss Agnew, did you get that one, also?
 8 Those two, the Dawson and the Dipersio?

9 THE PROTHONOTARY: Uh-huh.

10 THE COURT: All right. They'll be
 11 dismissed.

12 You have on this last paragraph, you have a
 13 case called Stephen Quesada?

14 MR. WILSON: Quesada, yes, sir.

15 THE COURT: Well, I'm not sure I understood
 16 what you were saying.

17 MR. WILSON: And I had a hard time figuring
 18 out how to explain this.

19 Here's the situation: Mr. Quesada was a
 20 fairly young guy who, actually, as he was getting ready
 21 to get out of the military is when he was diagnosed with
 22 lung cancer. Because he was not -- had not been
 23 discharged, he was still in the care of the military.

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1 something from the Army, I don't want them coming back
 2 and saying that our client, through us, prejudiced the
 3 Army's ability to recover their medical costs. So,
 4 that's -- I just want to complete that loop, so I don't
 5 endanger my client's economic welfare by having the case
 6 dismissed and the Army going, well, you prejudiced our
 7 ability to collect on what they called a claim.

8 THE COURT: Was this case put on a trial
 9 calendar at sometime in the past?

10 MR. WILSON: This was never on a trial
 11 calendar, as far as I know, Your Honor.

12 THE COURT: All right. So your client does
 13 not want to pursue this case?

14 MR. WILSON: Right.

15 THE COURT: If that's the case, then it has
 16 to be dismissed in this court. If your client doesn't
 17 want to pursue a case filed in this court, it has to be
 18 dismissed, or you have to withdraw. So, this case I'm
 19 asking you to submit a dismissal.

20 MR. WILSON: Okay.

21 THE COURT: All right?

22 MR. WILSON: We'll do that.

23 THE COURT: By noon, next Thursday.

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1 MR. WILSON: We'll do that, Your Honor.
 2 In fact, based on what you're saying today,
 3 Your Honor, we can do it here, if that's what you --
 4 THE COURT: All right.
 5 MR. WILSON: If you want to do it orally.
 6 THE COURT: All right. Miss Agnew, that
 7 Stephen Quesada case, that will also be on the list of
 8 cases to be dismissed.
 9 THE PROTHONOTARY: Yes, Your Honor.
 10 THE COURT: Mr. Rufo, comments from your
 11 perspective on any of the Angelos cases that are on the
 12 list?
 13 MR. RUFO: No, Your Honor. I'll wait to see
 14 -- I mean, as I understand it, the last few categories
 15 and Mr. Quesada, are being dismissed. The first two
 16 categories will either be dismissed or moved to the
 17 dormant docket, depending on the results of what
 18 Mr. Wilson submits.
 19 THE COURT: Correct.
 20 MR. RUFO: That's what I'm going to report
 21 first.
 22 THE COURT: Yeah. That's correct. Okay.
 23 MR. WILSON: Thank you, Your Honor.

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1 THE COURT: Sure.
 2 MR. RUFO: Your Honor, I note the absence of
 3 anyone from the Jacobs & Crumplar firm.
 4 THE COURT: I was going to ask if you
 5 wouldn't mind stepping out into the hallway and calling
 6 their office. We'll take a brief recess and see what --
 7 it may be that they don't want to participate, but it
 8 would be nice to know that.
 9 MR. RUFO: I have to borrow a phone
 10 because -- Mr. Wilson is giving me his.
 11 THE COURT: Thanks, Mr. Wilson.
 12 All right. Can we talk about any other
 13 plaintiffs' firms' cases that are on the list that I
 14 submitted?
 15 Mr. DeBruin? Oh, Miss Saville. Good
 16 morning. How are you?
 17 MS. SAVILLE: Good morning, Your Honor.
 18 Nice to see you. Yvonne Saville.
 19 Your Honor, we have eight cases on pages 19
 20 and 20 of your docket. I'm happy to name them for you,
 21 if you'd like. They're under, I think, Mr. Arndt's
 22 name. They're the Billy Fake case.
 23 THE COURT: Hang on one second, please.

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1 MS. SAVILLE: Sure.
 2 THE COURT: Why do I not see them on the
 3 list that I have?
 4 MS. SAVILLE: They're pages 19 and 20. Do
 5 you want me to give you the CA number? Maybe 18 and 19
 6 are the last two pages. Sorry.
 7 MR. RUFO: They're all '05 civil action
 8 numbers.
 9 THE COURT: All right.
 10 MS. SAVILLE: We have Billy Fake, John
 11 Paris, and David Barker.
 12 THE COURT: Hang on one second. You said
 13 Barker?
 14 MS. SAVILLE: Uh-huh. Robert Peregrine,
 15 Richard Davis, if I didn't say that one already, George
 16 Clark, Russell Sanders, Wileen Little, I think that may
 17 be all eight.
 18 These cases were filed by Baron & Budd in
 19 2005. They were scheduled for the August trial docket
 20 just a few months back. All of these cases have
 21 resolved. What we're in the process of doing is
 22 finalizing the settlement. The reason for the delay and
 23 the reason the cases -- we hadn't asked that they be

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1 dismissed yet, this is the first time these releases
 2 have been proposed to these defendants and it's taken a
 3 while to negotiate the language in those releases.
 4 THE COURT: Okay. Status on the release.
 5 MS. SAVILLE: I'm happy to go through,
 6 Your Honor, with each one of those cases. There are two
 7 to nine defendants with each case. And I can give the
 8 status of each defendant for each case, if you'd like.
 9 THE COURT: Well, I guess what I would
 10 really like to know is when do you reasonably anticipate
 11 these cases being dismissed. The cases were on for
 12 August. We're now five months post trial, roughly?
 13 MS. SAVILLE: The releases, unfortunately,
 14 contain language in there that says, until the releases
 15 are signed and returned to the defendants, they get 90
 16 to 120 days to turn over the settlement proceeds.
 17 What I've been asked by Baron & Budd's
 18 request, that the Court today allow 60 days to get any
 19 protections that we need, including any protection
 20 letters or any agreed judgments with the Court to at
 21 least protect the plaintiffs' interests if we haven't
 22 gotten everything finalized by that period of time.
 23 THE COURT: So, what happens on day 61?

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1 MS. SAVILLE: Hopefully, we'll be either --
2 we'd have our protections in place for the plaintiffs
3 that there would be some type of protection letter with
4 them or a judgment between the parties so that --

5 THE COURT: So, the Court would then be able
6 to dismiss the case?

7 MS. SAVILLE: Correct.

8 THE COURT: Miss Agnew, are we able to
9 dismiss a case for statistical purposes or for
10 administrative purposes subject to the plaintiff
11 bringing the case back to have to deal with
12 post-settlement issues like enforcing of the settlement
13 agreement?

14 THE PROTHONOTARY: It would have to be
15 reopened, if that's going to happen.

16 MS. SAVILLE: We just want to make sure the
17 proper protections are in place for the plaintiffs. I
18 mean, the settlements have -- I mean, the cases are
19 done. It's just making sure it gets paid.

20 THE COURT: Yeah, I'm not singling your firm
21 or the Baron & Budd firm out on my comments, but what we
22 need to do as a litigation, as a mass-tort litigation
23 generally, is tighten up considerably the time periods

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1 THE COURT: But is there some unique
2 language in a Delaware asbestos case that is different
3 from language in a case you have pending in any other
4 state?

5 MS. SAVILLE: My understanding, since I
6 wasn't involved in that particular issue, is that with
7 the defendants in this case, they did not allow the use
8 of the form releases that Texas counsel had been using
9 in other states. So, there were changes that were made,
10 I'm not in a position to address what those changes are.

11 THE COURT: All right.

12 THE PROTHONOTARY: Judge, there's a Harmon
13 case on here that is listed as yours.

14 THE COURT: That's listed, I'm sorry?

15 THE PROTHONOTARY: Harmon.

16 THE COURT: Oh, the Harmon case. Is that
17 also one of the Baron & Budd cases?

18 MR. RUFO: No. That Harmon is, in fact, a
19 Jacobs & Crumplar case, but Mr. Macemore, 05C-07-123, is
20 listed.

21 MR. ARNDT: That case, that's a Baron & Budd
22 case.

23 MS. SAVILLE: Unfortunately, that one's not
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1 that have been at least historically used to get cases
2 dismissed where it takes months and months.

3 Now, with respect to -- and you're familiar
4 with this, with respect to a settlement and any other
5 civil case in this Court, the Prothonotary's office
6 issues a 30-day letter that says we've been informed
7 that the case has been dismissed, you have 30 days to
8 get the stipulations and releases in or else we're going
9 to dismiss the case. And I am at a loss as to why we
10 treat asbestos any different from any other civil case.
11 I don't know. And I'm now five months post trial and
12 I'm asked to go two more months, and I don't understand
13 how seven months is reasonable to get things resolved.
14 Not your firm again, I'm talking about all plaintiffs'
15 firms, generally. I don't understand it. And maybe
16 somebody could talk about it, but to me, that doesn't
17 make any sense.

18 MS. SAVILLE: I would anticipate and I would
19 expect that from here on out with regard to the trial
20 dockets, at least with the Baron & Budd cases, now that
21 we've got formal releases with the same general
22 defendants, it's not going to take nearly as much time,
23 but there has been some negotiating at this point.

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1 on my chart. But I would expect --

2 THE COURT: That was on our August trial
3 docket?

4 MR. RUFO: First set of nine, so I knew when
5 Miss Saville said, that's the eight, I knew there was a
6 problem and the ninth one is Mr. -- he should just fall
7 into the same category discussed earlier.

8 THE COURT: Miss Agnew, you see that?

9 THE PROTHONOTARY: The other is the Jacobs
10 cases.

11 MR. RUFO: Yeah, all the other Arndt's are,
12 in fact, Arndt's or Jacobs, whatever name makes you feel
13 good.

14 MS. SAVILLE: I mean, if Your Honor would
15 like, I'll tell you with regard to in general what's
16 going on with several of the defendants, if you want
17 that information.

18 THE COURT: Yeah, just a couple examples,
19 just so I get a feel for it.

20 MS. SAVILLE: With regard to the Crane
21 Company, for instance, for just about -- I think it's
22 six out of the eight defendants, or eight cases, all the
23 releases have been signed and returned to the defendant.

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1 So, we're just waiting for the funds.

2 THE COURT: Okay. For example, do you know
3 when the releases were returned to the defendants?

4 MS. SAVILLE: That information I don't think
5 is on my chart. I would imagine it was probably
6 within -- well, that one I do know was recovered within
7 the last two weeks because I handled that. Some of the
8 releases have been sent to the plaintiffs for their
9 signatures. We're just waiting for it to come back to
10 Texas counsel.

11 THE COURT: See, we have to speed that
12 process up.

13 MS. SAVILLE: Right. Unfortunately, the
14 releases were just reviewed and approved for most of
15 these cases within the last month.

16 THE COURT: Somehow we have to tighten this
17 post-settlement or post-trial process up a lot.

18 Mr. Rufo.

19 MR. RUFO: What might help, Your Honor, this
20 probably isn't the best forum for it, because there
21 aren't a lot of people, but I can tell you that I was
22 one of the individual defense counsel who had to
23 negotiate the settlement releases with the Baron & Budd

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1 firm. And I'm sure my name is not on that chart because
2 I'm all done. But I can tell you that my experience was
3 that they, Baron & Budd, allowed defense counsel to
4 submit whatever forms they wanted, and then reviewed it,
5 suggested some changes. I accepted those changes, and
6 that's probably why I'm done. But the practice was,
7 send us what you want. So, my guess is that they were
8 dealing with 30, 40 different forms.

9 And that leads to where I'm going, and
10 perhaps the Court has a lot of forms and there's a lot
11 of -- there's a standing order with a lot of forms, a
12 lot of rules about forms. And perhaps it's time in this
13 litigation for a standard form of release that's
14 accepted by the Court that's been negotiated by all the
15 parties and says this is it. That will cut major, major
16 time from this process.

17 MS. SAVILLE: I will also submit,
18 Your Honor, that once we received your order on December
19 20, a number of protection letters were sent to local
20 counsel so that we can make the representation, make the
21 request to you that within 60 days, we have to have
22 everything finalized, at least have our protections in
23 place if the Court deems dismissal is appropriate.

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1 MR. CRUMPLAR: Your Honor, please accept my
2 apologies, and I thank you for having Mr. Rufo not on my
3 calendar. I intend to find out how.

4 THE COURT: Are you able to discuss the call
5 of the list of cases on the call of the calendar
6 intelligently this morning?

7 MR. CRUMPLAR: If I can be given the list, I
8 think I can.

9 (Pause.)

10 THE COURT: Miss Agnew, on this list of
11 cases that Miss Saville just mentioned, can we make sure
12 we change the plaintiffs' attorneys name on our list to
13 Miss Saville? That would be good. That will at least
14 help us in that sense.

15 THE PROTHONOTARY: Is the name e-filed?

16 MS. SAVILLE: Yes. It is now.

17 MR. CRUMPLAR: Your Honor, one thing: I
18 just I came in, heard some discussion about a standard
19 form of release. I might just say that I think to have
20 a standard form of release would be creating a
21 nightmare. I mean, we have -- I know Mr. Jacobs is more
22 familiar with it. We probably have 15 different forms
23 of releases. Many defendants insist upon their own

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1 forms of releases. Some defendants insist that they
2 prepare the releases. I mean, for that situation, I
3 think we have to have all of the defendants and -- I
4 mean, it is simply some of the forms of releases that we
5 have prepared were a result of negotiations over really
6 20 years. I think that what is more appropriate is a
7 simple dismissal -- a notice that when a case has been
8 settled, and the parties have informed the Court, that
9 some kind of administrative order that 30 days or at
10 some particular point the case is dismissed.

11 THE COURT: Like we do now with all other
12 civil cases?

13 MR. CRUMPLAR: Yes. The case is dismissed.
14 There's a provision and, Your Honor, I've discussed this
15 with you in terms of coming up, and I shared it with
16 plaintiffs' counsel and then defense counsel, that if
17 the settlement was not paid, that the Court could revive
18 the case and reopen the matter. I think that is the --
19 that is what is done in federal court, but it is
20 simply -- there are some defendants that the terms of
21 the settlement paid in 30 days. Others, it's one year.
22 I mean, it is. And, then, we have defendants even as 30
23 days, as Your Honor is aware, sometimes we have to get

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1 judgments. So, that's simply the payment terms.
2 Release forms vary tremendously. And I know Jacobs &
3 Crumplar have certain particular concerns. Baron & Budd
4 may have those. So, that is something that I think
5 simply the key point is payment.

6 THE COURT: Well, that's something for us to
7 consider. And I know, Mr. Crumplar, you were going to
8 try to take a stab at some language on a letter that
9 would -- standard letter, like the ones we currently
10 send out.

11 MR. CRUMPLAR: Your Honor, I will have that
12 at least circulated by the end of today.

13 THE COURT: All right. So, the question is:
14 Do you get 60 days or do you not get 60 days?

15 MS. SAVILLE: That's the request. We're
16 hoping for the 60 days. We will take the 30, if
17 Your Honor would prefer to do that, but --

18 THE COURT: I'm going to give you 30 days.

19 MS. SAVILLE: Okay. I do want to bring the
20 Court's attention to just one particular defendant in
21 the Sanders case, it's defendant TH Agriculture.

22 The plaintiff has passed away before they
23 received the funds. So, apparently, there's a home

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1 appreciate it.

2 THE COURT: Mr. DeBruin, how are you?

3 MR. DEBRUIN: Good morning, Your Honor. May
4 it please the Court, David DeBruin from Bifferato
5 Gentilotti Biden and Balick.

6 Your Honor, I apologize for not being here
7 at 9 o'clock this morning, as well. Luckily, I was
8 coming for a 10 o'clock, and it's not over, so, the ship
9 has not sailed.

10 Your Honor, I was -- I had the information
11 on the four cases that were identified as Bifferato and
12 Gentilotti by the --

13 THE COURT: I see six on the list.

14 MR. RUFO: There's four more, Your Honor.
15 Name changes.

16 THE COURT: All right.

17 MR. DeBRUIN: Do you have page 18?

18 THE COURT: Yes. Eighteen onto 19. Mine
19 carries over to page 19, also, with one case on the last
20 page, the Kohler case.

21 MR. DeBRUIN: Yeah, there are also -- the
22 four Jacobs -- or identified as Jacobs cases: Pate,
23 Abou, Smith, Rozenboom and Jurgens. Those are actually

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1 probate court that has to approve the settlement. That
2 can't happen until the probate's complete and the
3 daughters can't sign the releases to that particular --
4 I mean, the settlement's in place, it's just there's a
5 lot of other things that are going on so, I may be
6 before the Court on that issue.

7 THE COURT: All right. All right. So, 30
8 days from today would be, what, January 28, 27. I'll
9 essentially give you until, actually, Monday, January
10 29.

11 MS. SAVILLE: In the event --

12 THE COURT: 27th and 28th is a weekend.

13 MS. SAVILLE: In the event that we don't
14 have the protection in place that we need before I
15 appear before Your Honor, I'll request additional time
16 at that point.

17 THE COURT: Yes, I would just say, make sure
18 you're before me Thursday the 25th of January.

19 MS. SAVILLE: Okay. Very good. Thank you,
20 Your Honor.

21 THE COURT: But as of the 29th, I'd like to
22 have these cases dismissed.

23 MS. SAVILLE: Thank you, Your Honor. I

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1 our cases.

2 MR. CRUMPLAR: Which are those? On what
3 page?

4 MR. DeBRUIN: Eighteen.

5 THE COURT: Miss Agnew, did you see those?

6 THE PROTHONOTARY: Yes.

7 THE COURT: Pate, Abou, Rozenboom and
8 Jurgens are also Bifferato cases.

9 MR. CRUMPLAR: Your Honor, I agree those are
10 not Jacobs & Crumplar cases.

11 MR. DeBruin: Right. Unfortunately, I
12 didn't get the information on those cases. I only
13 pulled the ones that were labeled as Bifferato cases,
14 and I asked our co-counsel what the status was as far as
15 the settlement payments.

16 I am in accord with Miss Saville's position
17 in that, basically, Your Honor, we have one defendant in
18 particular, and then there are a couple of others that
19 just haven't made payment. Everything else is done.

20 THE COURT: One defendant which crosses each
21 of these cases?

22 MR. DeBRUIN: Well, there's one, Crown, Cork
23 & Seal, in the Smith, Jones, Capriotti, and Kohler case.

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1 We're still awaiting payment. Foster Wheeler in Smith
2 and Kohler, and Goodyear Tire and Rubber in James Jones.
3 Those are the only outstanding settlements -- payments
4 that we're waiting on.

5 With regard to Your Honor's earlier comment,
6 just a suggestion of a way that I know that they handle
7 it in other jurisdictions, is that they have what's
8 called a special closed docket that once a case gets
9 through the trial date and it's resolved in principal,
10 those cases are put on a special close docket. So, in
11 other words, they mark -- Miss Agnew is giving me a
12 nasty look so, maybe it's a bad idea.

13 THE COURT: Just what we need is one more
14 docket.

15 THE PROTHONOTARY: It's not a trial pending;
16 right?

17 MR. DeBRUIN: Exactly. And that way it just
18 makes it a little easier for the plaintiff in order to
19 enforce the settlement to not have to reopen the case
20 first, and then file the motion to compel.

21 THE COURT: If it's done in the context of
22 the similar -- one motion, as in motion to reopen, and
23 to enforce settlement. So, if you have to file a

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1 cases that are back on the calendar, this same call
2 again today which we were told two years ago they could
3 be dismissed.

4 MR. CRUMPLAR: Your Honor, I guess if I can
5 ask this question: In terms of when a case -- and this
6 is directed to the Prothonotary -- when a case is
7 formally closed, how difficult is it if, let's just say,
8 that we needed to reopen it in order to enforce
9 settlement from a Court's perspective, in terms of
10 information on a case, et cetera? The plaintiffs have
11 that information about the name of the case. I'm just
12 trying to find out. Logistically, from my standpoint,
13 it would seem like we simply file a paper, noting this
14 was the case filed, it was closed at this point, but
15 there were settlements not yet paid. The settlements
16 need to be enforced, and we were simply asking the Court
17 reopen it for the limited purposes of enforcing
18 settlement. I would think that particular filing -- now
19 another suggestion could even be that rather than
20 filing, let's just say, that case was 45 -- you know,
21 2002, 45, that's the number, rather than refiling it
22 under that number, we could simply re-file it under
23 "Master Asbestos," if that's -- I mean, I'm asking in

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1 motion, it's not a whole lot of additional work, I
2 wouldn't think.

3 MR. DeBRUIN: Okay. I don't have a problem.

4 THE COURT: Unless I'm wrong. I mean,
5 doesn't it -- intellectually, doesn't that seem how you
6 would do it? Motion to reopen and to enforce the terms
7 of the settlement agreement.

8 MR. CRUMPLAR: Your Honor, I think that all
9 that is really necessary is when the case is closed, so
10 that on the record it shows that there were these
11 reopened matters. And, then, I think when you reopen
12 it, you can refer to that, I mean, so I think that -- I
13 mean, I would also prefer a second closed docket. But I
14 can understand the Prothonotary would just want one
15 thing, and I have no problem as long as there is -- the
16 Court is aware we're going to have those situations
17 where there will be some that have to be reopened.

18 THE COURT: But the problem we have is
19 highlighted by what we're doing here today. We have
20 old, old, old cases which we can't keep track of because
21 you all are not letting us know what's happening with
22 them until we have these conferences, or these calls.
23 And even when we have calls like we had two years ago,

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1 terms of the --

2 THE COURT: You're saying re-file what?

3 MR. CRUMPLAR: Re-file -- we have a case
4 that has been closed and --

5 THE PROTHONOTARY: Very easy to open legal
6 -- I don't know if you can do that; but computer-wise,
7 in our office we can open it in a heartbeat.

8 MR. CRUMPLAR: I would simply ask that in
9 terms of opening, I would prefer to re-file it under the
10 same -- re-file it, but file the papers under the same
11 civil action number as opposed to under Master Asbestos,
12 but that's another place that we could do it.

13 THE COURT: I would do it under the same
14 civil action number.

15 MR. CRUMPLAR: I think Miss Agnew answered
16 my question. There wouldn't be any problem at all.

17 THE COURT: But, just let's talk again while
18 we are on the topic, why is it that we've been treating
19 the asbestos cases so differently from other civil cases
20 that are filed when we understand there's a settlement?
21 Why have just we let these cases go on, on, on, on when,
22 in every other civil case, a letter goes out that says
23 you have 30 days to close the case out or we'll do it

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1 for you. And that's -- I'm not sure. We have corporate
2 defendants in other civil cases just like we have in
3 these cases. Why have we allowed the asbestos docket to
4 just linger post settlement?

5 MR. CRUMPLAR: Your Honor, one thing I do
6 know, because I do regular civil cases that the delay in
7 settlement is orders of magnitude. I just settled a
8 case, and, you know, I was almost kind of, you know,
9 when can we get the money, thinking the absolutely
10 soonest would be 30 days, they said we'll have it in a
11 week. I mean, that is just the way in terms of the
12 defendant. I much prefer in terms of settlements that
13 we get them in a week rather than --

14 THE COURT: But you get them within a week
15 after the executed releases are submitted to the
16 defendants?

17 MR. CRUMPLAR: No. No. No.

18 THE COURT: Because we have delays on both
19 sides?

20 MR. CRUMPLAR: Absolutely.

21 THE COURT: Just a second. We have delays
22 from the plaintiffs in getting their clients to execute
23 release documents, and we then have delays from the

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1 case, where you're having 20, 40 defendants, that just
2 adds in terms of the delay.

3 I think, from the standpoint of if the Court
4 wishes to clean up the docket and not have this
5 lingering kind of matter, to me, I think the answer is
6 simply that after the plaintiffs have -- and I think
7 it's simply a question of writing a letter to the Court
8 saying we have now settled with all the defendants. At
9 that point, I can even see that the Court or the
10 plaintiffs could even submit to the Court an order
11 closing the matter that simply notes that there are
12 settlements unpaid and a possibility of having to revive
13 the case. But from a plaintiffs' standpoint, as long as
14 we have that protection in terms of reviving the case, I
15 do not see a problem with actually having the case
16 closed within, administratively, within 30 days or a
17 very short time of when the plaintiffs send that letter
18 to Your Honor stating that we have settled with the last
19 defendant.

20 THE COURT: I don't, either.

21 MR. CRUMPLAR: And I might point out, at one
22 point, we were concerned, and I think one of the
23 reasons, to answer your question as to why it's

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1 defendants after receipt of the release documents and
2 preparing the checks and sending them?

3 MR. CRUMPLAR: Your Honor, I absolutely
4 agree; but what I can say? In terms of most of my civil
5 personal-injury cases, when we settle, they say we'll
6 have the check to you. I mean, I agree on a settlement
7 on a Monday, they say we'll have the check to you in 10
8 days. And they say we don't want -- we'll hold the
9 check until you send us the release. But it's not a
10 question of we don't get the check pending the release.
11 The difference, in terms of asbestos, is some defendants
12 will do it that way, but most defendants will say we
13 want to have the release.

14 There is -- Your Honor's quite correct, in
15 terms of the delay, in terms of the release getting out
16 to then, but even when the release gets out, and even if
17 we had the release within, you know, two days of the
18 settlement, I can say because of the nature of the
19 defendants and the practice, it would be far beyond
20 that. I think the best way -- and that has been what
21 has caused this lingering and the other thing that the
22 thing causes, quite frankly, is in the average civil
23 suit you have one or two defendants. And in an asbestos

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1 different in asbestos, that when a number of companies
2 went into bankruptcy, and I remember bankruptcies first
3 started in 1978, early on after I got -- there was the
4 expectation that a number of these companies would
5 actually come back into the litigation. And at first,
6 some of them actually did. So, you didn't want to close
7 any file because after bankruptcy, they could come back,
8 and the whole kind of question of the thing being
9 stayed. So, I think the bankruptcy aspect really kind
10 of trained us to keep the files open as a practical
11 matter. I think now in the bankruptcy -- these
12 companies are not coming back. There will be a
13 distribution or, if there's some kind of dispute,
14 there's an alternative dispute mechanism. So, the fact
15 of having a trial against a bankrupt defendant is, I
16 think, almost totally unlikely. And if that ever comes
17 back, I think you don't create -- you don't keep open a
18 thousand cases just for the chance that there may be one
19 case one time. So, I think that's why we've had this
20 past program.

21 THE COURT: Well, that's why we have the
22 dormant docket, also. They get put in the dormant
23 docket and there are timeframes built in that,

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1 automatically.

2 MS. SAVILLE: Yes, Your Honor.

3 THE COURT: Have you listened to -- have you
4 heard what we were talking about with respect to trying
5 to perhaps administratively close a case subject to
6 reopening it?

7 Any comments about that?

8 MS. SAVILLE: I don't have anything further
9 to add, Your Honor.

10 THE COURT: Does it make sense; is there
11 some merit to considering that from your perspective?

12 MS. SAVILLE: The only concern I have is in
13 the event that the case is closed, and they have to
14 reopen the case, I don't know what kind of problems
15 Lexis Nexis will create for us if the case has been
16 closed. Try to file something with a case that has been
17 dismissed, whether or not we're going to be able to
18 e-file it, Lexis Nexis --

19 THE COURT: That wouldn't be a problem.

20 THE PROTHONOTARY: Lexis Nexis does not let
21 us close cases out.

22 THE COURT: They're there forever.

23 We just want things resolved for statistical

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1 agreements.

2 THE COURT: What I'm trying to get at, and
3 thank you for that. And what I'm trying to get at is
4 treating the asbestos docket no different than any other
5 civil case, so the folks who work in the Prothonotary's
6 office don't have to do things differently. And what I
7 mean is, we send -- we automatically send out letters
8 after we're informed that cases are settled or resolved
9 as a result of trial. I'd like to be able to have that
10 same situation, so the folks in the Prothonotary's
11 office send out a letter that says within x number of
12 days the case will be dismissed.

13 THE PROTHONOTARY: Use the language he was
14 speaking of, create a failure letter.

15 THE COURT: Yeah. And Mr. Crumplar and I
16 talked about this a couple weeks ago, to try to develop
17 some -- it's not magical. It's just --

18 MR. RUFO: One sentence. But, if Miss
19 Agnew's office sends that letter out, I'm going to guess
20 that she's going to get responses from half the people
21 who get the letters saying they'll leave it open, every
22 single time.

23 THE COURT: Well, we're not going to leave

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1 purposes, for docket purposes, and for administrative
2 purposes, so we're able to accurately gauge what's going
3 on, cases coming in versus cases closed. And we have to
4 be able to know that and the incredibly long delays
5 we're having make that almost impossible for us to gauge
6 our dockets statistically.

7 MS. SAVILLE: Assuming that there's no
8 problem with accepting a pleading.

9 THE COURT: Well, yeah. It would be a
10 motion to reopen the case for the limited purposes of
11 enforcing a settlement agreement.

12 MS. SAVILLE: I don't have any problem with
13 that.

14 THE COURT: I don't either.

15 Mr. Rufo, you're standing. Do you see any
16 issue or problem with that?

17 MR. RUFO: No. I see a solution. I think
18 perhaps, every 30 days or so, Your Honor should send a
19 note down to Miss Agnew that says, close the following
20 cases using the standard language. And perhaps the
21 standard language should be something like, dismissed,
22 closed, or whatever the magic words are, subject to
23 reopen to enforce any settlements or settlement

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1 it open. That's the point.

2 MR. RUFO: Well, then, that leads me to why
3 send a letter, why not just dismiss it with this magic
4 language and everybody knows that's going to happen in
5 30 days. Mr. Crumplar, he always has a problem. And
6 when he has a problem, then he can file a motion
7 because, otherwise, as soon as I get that letter, or as
8 soon as he gets that letter, and he's still waiting for
9 some checks, there's going to be a response saying, I'm
10 waiting for some money or I'm waiting for --

11 THE COURT: The letter would -- and maybe
12 I'm not understanding. The letter would be just like
13 every other case that says we understand the case is
14 settled, you have 30 days to dismiss the case or we will
15 do it.

16 MR. RUFO: I think the letter says -- I
17 think it says more than that.

18 THE PROTHONOTARY: They can respond to the
19 letter.

20 MR. RUFO: I think you can respond with a
21 reason why you shouldn't do it. What I'm suggesting is
22 you're going to get a response every time.

23 THE COURT: But I don't want a response.

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1 MR. RUFO: I know. I'm trying to avoid
2 that, too.

3 MR. CRUMPLAR: And, Your Honor, Mr. Rufo, I
4 think, got it wrong in terms of how I would respond.
5 It's simply a question of having a customized letter,
6 which is, I think, what Your Honor just said, that we
7 simply -- and I do think a letter is appropriate just to
8 cover those -- just due process, which we'll simply say
9 we understand the case is settled, it will be dismissed
10 in 30 days, and we just have the magic language that if
11 there is -- after it is dismissed, there are still
12 unpaid settlements, the Court will entertain to
13 understand the case can be revived. As long as there is
14 that statement, then I will not send a letter. I can't
15 speak for other people, but I think that takes care of
16 it. The purpose of that letter is to simply -- because
17 there could be a case that is not settled that should go
18 ahead, and I think you need that extra -- I mean, even
19 in those cases -- you still could revive it with
20 mistake; but, you know, I do think as long as we're
21 trying to have standard procedure, I'm not asking the
22 Prothonotary to do something that they don't normally
23 do. But if the normal kind of course is the Court

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1 understands the case is settled because plaintiffs have
2 said that, and if the --

3 THE COURT: Or I learn it and tell the
4 Prothonotary.

5 MR. CRUMPLAR: Yes. Right.

6 THE COURT: I mean, I don't need to wait for
7 a letter from you to --

8 MR. CRUMPLAR: Absolutely. And that could
9 even be again that -- because I can see many times the
10 plaintiffs might not do that, you want to clear the
11 docket, let's double-check, the Prothonotary says that,
12 we'll then look to make certain, yes, in fact, this case
13 is settled. As long as we do not have to automatically
14 respond -- and that's what Mr. Rufo's referring to.

15 THE COURT: Yeah.

16 MR. CRUMPLAR: If we don't have that magic
17 language in there, you're going to get a response; but
18 as long as we have that, I think that's fine. I think
19 that is a solution. It's simply the language, and I
20 will -- I know I discussed this. I wanted this form to
21 really see that everyone was comfortable. I will try to
22 propose that language, submit it to the plaintiffs,
23 Mr. Rufo, and I would think within 30 days we -- you

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1 could have a standard form.

2 THE COURT: Yeah. I'll hold you to it.

3 Mr. Wilson, Mr. DeBruin, does that
4 make sense; any problem?

5 MR. CRUMPLAR: I have not had a chance to
6 confer with the plaintiffs' counsel on this.

7 MR. DeBRUIN: Right. That's one thing I was
8 going to say, is that I think we are hopefully going to
9 have another plaintiffs' meeting in the next two weeks.
10 That is one thing that we can talk about.

11 Also, I'm not as vehemently opposed, as I
12 think Mr. Crumplar is, to the standard form release.
13 That's not a bad idea. I realize all the defendants
14 have their own thing and this and that but, guess what?
15 If that's what you get in Delaware, that's what you get.

16 MR. CRUMPLAR: Let me just say, please, that
17 it is a nightmare in terms of --

18 THE COURT: But see, from the Court's
19 perspective, we could give a darn about the language of
20 your release. What we care about is closing cases for
21 statistical purposes, resolution of cases. That's all
22 we care about. You guys can have the most intricate
23 detailed language you want in a release or you could

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1 have the simplest of all releases, we don't have a stake
2 in that.

3 MR. CRUMPLAR: And that's why I think we are
4 making a major mistake going to the --

5 THE COURT: I don't know if it's a major
6 mistake. Look, there's some merit to having a rule of
7 order that says in Delaware, here's the release. Who
8 cares. This is the release, if you don't like it, then
9 deal with it in some other way.

10 MR. CRUMPLAR: But, Your Honor, in terms of
11 -- I don't think that there's any need to try to -- even
12 though there's value in terms of simplicity to do that,
13 if it does not resolve the problem with regard to the
14 Court. The problem with regard to the Court is getting
15 these cases quickly dismissed. And that can be done
16 without having to change the release, because let me
17 just say, the release reflects the settlement, and we do
18 not settle our cases all the same way. I mean, there
19 are -- and to have the standard form release, I can
20 guarantee you, then we have motions that we want to bury
21 and I think that creates a bigger problem.

22 THE COURT: Well, you understand our
23 concern. Mr. Wilson?

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1 MR. WILSON: Your Honor, just real quick. I
2 agree with Mr. Crumplar that a standard form is not
3 going to work. It just can't. Baron & Budd and Simmons
4 Cooper do only mesothelioma cases. There's a certain
5 amount of constantness to those. It doesn't apply to
6 asbestos-related lung disease, nonmalignant cases.
7 There's different forms of release that transcend even
8 defendants' language that release language itself, but
9 that's neither here or there.

10 I think Mr. Crumplar is correct and is on
11 the right line that we can address the Court's issues,
12 i.e., not having a docket that appears to be 10,000
13 cases when it's really maybe 500. I think that can be
14 addressed way short of a standardized release.

15 And just -- I don't want to repeat
16 everything Mr. Crumplar says. He's absolutely right,
17 what has happened over the years, the biggest difference
18 is that when you settle your automobile accident case,
19 you would not stand for somebody telling you we'll get
20 you the money in 90 days because there's no excuse for
21 it. The excuse on the defendant's side, and I use
22 "excuse" in a polite sense, is that it's not just you
23 guys, it's you here, and this state, this state, this

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1 you 30 days, which would be January 29, to dismiss those
2 cases or they will be dismissed by the Court. Can you
3 follow that? So, you have until January 29 to get those
4 cases that are listed here dismissed or we will do that.

5 My civil motion calendar before that would
6 be Thursday, the 25th. So, I would recommend that you
7 let me know by that afternoon what's going to be
8 happening to those cases.

9 MR. DeBRUIN: That's fine, Your Honor. If I
10 could, the dismissal, can we try and incorporate that
11 language that --

12 THE COURT: Yeah. I'm hopeful -- and that's
13 the other thing I was going to say. I understand that
14 there is going to be a scheduled plaintiffs' group
15 meeting in early January. I would ask that to the
16 extent that you have any agenda items, that that be not
17 just an agenda item, but you resolve the issue on the
18 content of the letter at that meeting so we will --
19 "we", meaning the Court, can then start issuing those
20 letters immediately thereafter.

21 MR. CRUMPLAR: And I will endeavor to take
22 the lead on that and advise the Court.

23 THE COURT: Yeah. Whatever. I mean, it's a
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1 state, and they seem to want to demand an orderly
2 payment that just simply doesn't exist in other
3 litigation. But, again, with the protection of and
4 indicating that the case is closed administratively with
5 a relatively straightforward process to reopen it to
6 enforce a settlement, I think that pretty much addresses
7 the plaintiffs' concerns as well as trying to get these
8 dockets to at least reflect what's really going on as
9 opposed to reflecting a burden that's not really there
10 for the Court.

11 THE COURT: Yeah. We care about
12 dispositions, and that's the main thing.

13 MR. WILSON: Thank you.

14 THE COURT: Mr. DeBruin, any other comments?

15 MR. DeBRUIN: One last comment. I think
16 part of the delay is, as Mr. Wilson just mentioned, the
17 fact that the defendants have gotten used to kind of a
18 slow pay and probably, in part, because they have such a
19 powerful advocate, Mr. Rufo. They have been able to
20 reach agreements that otherwise just don't exist in
21 regular litigation.

22 THE COURT: Well, for the Bifferato, Simmons
23 Coopers cases, Mr. DeBruin, what I'm going to do is allow

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1 group thing, whoever does it.

2 MR. CRUMPLAR: Administratively, that's all.
3 Okay.

4 THE COURT: Yeah. Okay. Does that sound
5 acceptable to the four plaintiffs' firms who are here
6 today?

7 MR. WILSON: Yes.

8 MS. SAVILLE: Yes, Your Honor.

9 MR. DeBRUIN: Yes, Your Honor.

10 THE COURT: All right. Good. Great. At
11 least we made a little progress on that issue.

12 All right. So, that takes care of the Peter
13 Angelos cases, the Bifferato, Simmons Cooper's cases.
14 Let's talk about some others.

15 Anybody else?

16 MR. RUFO: Just Mr. Crumplar is left,
17 Your Honor.

18 MR. CRUMPLAR: Your Honor, I was aware when
19 the letter came in, went to my partner to ask if he was
20 taking care of it and he told me he was.

21 THE COURT: Great. Well then, it's taken
22 care of.

23 MR. CRUMPLAR: But that's as much,
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1 Your Honor, as I know in terms of that. I want to make
2 it clear on the record I did not have that on my
3 calendar, even this particular meeting. Just in looking
4 over the listing that I just saw, I see only three cases
5 that -- I mean, all -- I see the Opalczyrski case, which
6 is a '99 case that might have been an earlier version of
7 the Opalczyrski matter that we dismissed. I'd have to
8 call my office about that.

9 There's the Hudson --

10 THE COURT: That case is on in January.

11 MR. CRUMPLAR: Yes, but I think that -- I
12 think the January case is a later case.

13 THE COURT: I asked that of Mr. Wilson
14 before you got here. Why in the world do you file a
15 case in 1998 on behalf of a plaintiff and then file a
16 separate case on behalf of that same plaintiff in 2002?

17 MR. CRUMPLAR: I can give you a very easy
18 answer to it, Your Honor, and I believe this is the
19 case: I think that with Mr. Opalczyrski, we filed an
20 action for him based on a nonmalignant matter, and with
21 many of the plaintiffs we have two separate cases. I
22 mean, you have asbestosis; ten years ago, you file that
23 case, you resolve it, and that did it. What happens --

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1 scheduled.

2 So, that's why I said we intend to dismiss
3 all these cases today, unless you tell us why we
4 shouldn't. And I think the list should be accurate. In
5 fact, you'll see the list that I have right here, all
6 these -- see the orange? You can't see specifically the
7 cases, all those cases that are in orange, those were
8 cases that we were told in our February of 2005 call of
9 the calendar were to be dismissed but had not yet been
10 dismissed. So, we really, really mean it now --

11 MR. CRUMPLAR: And I think, Your Honor, I
12 would just ask if I could have one minute to step
13 outside to simply call --

14 THE COURT: Can we keep the doors open so we
15 can hear the conversation?

16 MR. CRUMPLAR: I'll be happy to speak right
17 now on the speakerphone, Your Honor, I just know the
18 Opalczyrski case, the Hudson case, and the Klein case.
19 I just want to make certain it's a different Hudson.

20 THE COURT: You want to just step out -- why
21 don't you step out into the hallway, give him a call.

22 All right. Oh, then before we do that,
23 Mr. Crumplar, I want to let you know that my afternoon

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1 THE COURT: While the case is pending, why
2 in the world do you file a separate lawsuit before the
3 prior case is resolved?

4 MR. CRUMPLAR: Your Honor, the answer is the
5 Opalczyrski case, I believe we dismissed it. My memory
6 with that case is that I believe we found out that it
7 was not an accurate diagnosis.

8 THE COURT: Okay, so, you agree, then, that
9 it doesn't make a whole lot of sense to have two cases
10 pending with the same plaintiff?

11 MR. CRUMPLAR: Absolutely. Absolutely. And
12 I think that was a case that we attempted to dismiss,
13 and I simply would have to call to verify that.

14 THE COURT: If you remember, Mr. Crumplar,
15 again, the list that I generated or that we generated,
16 because Miss Agnew was responsible for it, the list was
17 generated by looking at all cases that are currently
18 scheduled for a trial, and all cases that the
19 plaintiffs' firms submitted to me, which are pending,
20 but not yet put on a trial calendar. So, we looked at
21 those two lists of cases on a calendar, cases to be put
22 on a calendar with our docket, and this came up with
23 everything that's not on currently and not to be

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1 calendar, because there are no contested matters on, I'm
2 not going to go forward with the 2:30 calendar today.
3 It's going to be off. So, I would -- all the
4 plaintiffs' firms are here, I would then ask Mr. Rufo to
5 then circulate that to the defense group when he gets
6 back to his office.

7 The other couple matters, the Hudson case,
8 because of the letter I received from Mr. Goldman, I
9 really can't put the Hudson case on for January if we
10 have a Section 343 issue. So, the Hudson case is going
11 to be moved off of January.

12 MR. CRUMPLAR: Your Honor, there is no 343
13 issue in the Hudson case.

14 THE COURT: This letter indicates that there
15 is.

16 MR. CRUMPLAR: Your Honor, with all due
17 respect --

18 THE COURT: Here's what we're going to do.
19 You call Mr. Jacobs, then we'll talk about it.

20 MR. CRUMPLAR: Okay. Fine. I appreciate
21 it.

22 (Recess held.)

23 THE COURT: Okay. I think we're going to go

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1 back on the record.

2 Before I jump back into the call issues,
3 what I'd like to have, I'd like to work on with Mr. Rufo
4 and Mr. Crumplar are making sure by the end of the today
5 we finalize dates for your July cases, that there's no
6 misunderstanding as to those dates that you've requested
7 be modified. Okay. So, can we work on that this
8 afternoon?

9 Also, with respect to those Cahee cases that
10 we talked about on Thursday, what I'd like to do is have
11 the two of you, and to the extent any other defendants
12 need to be involved, come up with a plan by the end of
13 the day Tuesday so that we can talk about those Cahee
14 cases next Thursday.

15 And you'll remember my comments last week
16 with respect to these motions, current pending motions
17 to expedite summary judgment. I'm not going to be
18 entertaining or having the Court entertain those types
19 of motions if, after discovery, those identical motions
20 are going to be brought back again.

21 So, I'd like for you to come up with a plan
22 that we can talk about Thursday at 2:30, to try to
23 expedite those matters.

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1 I think will take a long -- and especially during the
2 fact of the holidays, that I can not file a -- it would
3 be very difficult for me to file a response next
4 Thursday.

5 THE COURT: All right. So, I'll give you
6 two weeks from today.

7 MR. CRUMPLAR: No.

8 THE COURT: What do you mean "no"?

9 MR. CRUMPLAR: I did not say no.

10 MR. RUFO: He said "No."

11 MR. CRUMPLAR: Fine, Your Honor. Thank you.

12 THE COURT: Let the record note there's a
13 lot of laughter in the courtroom.

14 Two weeks from today.

15 MR. CRUMPLAR: Okay. Thank you.

16 THE COURT: Maybe Mr. Jacobs can jump on
17 that like he did this call of the calendar.

18 MR. CRUMPLAR: Mr. Jacobs is going to
19 Florida.

20 THE COURT: I'm not surprised. Is he taking
21 the winter off again?

22 MR. CRUMPLAR: Yes, he is. That's again --

23 THE COURT: That's a positive from some of
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1 The one case that Mr. Beste had talked about
2 made sense. It looked like a very isolated issue that
3 he said you go forward with. I did see a couple other
4 defendants joined in on that application this week. So,
5 if we could talk about how to handle those. There is
6 some efficiency in it. If we could resolve some of
7 those cases earlier on some legal issues, then it makes
8 sense to do that.

9 MR. CRUMPLAR: That's fine, Your Honor.
10 Just one question with regard to that one case in the
11 Cahee matter.

12 Your Honor had kind of said well, why
13 couldn't I file a response in two weeks. Well, two
14 weeks would be next Thursday -- yes, because it was a
15 week ago Thursday, you said that, and I said I would
16 check. I didn't know I simply had to find out the legal
17 issue. I did check on Friday. They are a little more
18 complex because of the -- actually, I've been informed
19 that in Alabama and Mississippi, you can file a case
20 without a personal representative being appointed.

21 THE COURT: Yeah, but you can't in Delaware.

22 MR. CRUMPLAR: Well, there is a question as
23 to the validity of that. I mean, that is something that

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1 the defense perspective, not necessarily, mine.

2 MR. CRUMPLAR: And not mine, Your Honor,
3 either, but I will have that on Tuesday.

4 THE COURT: Will he be back for the July
5 calendar?

6 MR. CRUMPLAR: He will be, Your Honor. And
7 he will be here for ADR, too, Your Honor.

8 THE COURT: I'm looking forward to that.

9 MR. CRUMPLAR: He's coming back for special
10 events.

11 THE COURT: Good. All right. Now let's
12 talk about the Jacobs & Crumplar cases.

13 Did you want to talk about something else,
14 Mr. Rufo?

15 MR. RUFO: No, Your Honor.

16 THE COURT: All right. On the call of the
17 calendar, with respect to the Jacobs & Crumplar cases,
18 I'm going to do like I did with Mr. Wilson. I'm going
19 to note that the -- all of the cases listed on the call
20 will be dismissed, and I'll give Mr. Crumplar until noon
21 on Thursday to send to me a letter indicating for what
22 reason -- a detailed letter, with respect to any case
23 that he's saying should not be dismissed. "Detailed"

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1 meaning dates, times, and when events took place.
 2 Because I don't want a beg letter that just says we want
 3 the following cases to be put on the dormant docket. I
 4 need to know why. If you want a case in the dormant
 5 docket because a the bankruptcy, I'm asking you to do
 6 what I did with Mr. Wilson. Include in that letter when
 7 a claim was submitted to the bankrupt defendant or the
 8 trust, which claims or what claims were submitted on
 9 behalf of that client to which trusts, and what is the
 10 status of the claim that was submitted to that trust,
 11 because I don't like putting in a dormant docket at the
 12 end of 2006 or early 2007 a case where claims were
 13 submitted three, four, five, or six years ago. It just
 14 doesn't make sense to me. So, I need to know what
 15 actions you've undertaken with respect to those
 16 bankruptcy claims because I want to have some options.

17 MR. CRUMPLAR: Your Honor, just so that I
 18 can understand because I wasn't here and, again, my
 19 apologies. I can understand that we are to identify
 20 which cases we feel should not be outright dismissed.

21 THE COURT: Yeah.

22 MR. CRUMPLAR: That Your Honor is saying
 23 that these cases are not moved to a dormant docket, just

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1 THE COURT: I don't want to put you on the
 2 spot, but those ones would be really bad to see on a
 3 list.

4 MR. CRUMPLAR: Those are the ones, the
 5 orange ones, I think you said.

6 THE COURT: You see the list in orange here
 7 I'm holding up? Those, as I said, were the ones. And
 8 just, again, remember this list was generated out of --
 9 as a result of cases that you submitted to us which were
 10 to be added to a trial calendar which are active, and
 11 that's the other reason why I'm reluctant and will be
 12 very disappointed if I see a long list of cases that
 13 should remain active, because you've already told us two
 14 weeks ago what cases need to be put on a trial calendar.
 15 And we're already aware of cases that are on the
 16 existing trial calendar. So, it would be really not so
 17 good if we get a long list of cases that now should be
 18 back on a trial calendar. But that's just my cautionary
 19 words.

20 So, by noon next Thursday I want that.

21 MR. CRUMPLAR: I understand, Your Honor.

22 THE COURT: Okay. Can Mr. Jacobs do that
 23 from Florida?

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1 simply dismissed, that if we wish something to be moved
 2 to a dormant docket, we would have to advise Your Honor,
 3 in detail as to the status of the bankruptcy claims.

4 THE COURT: Yeah. And I'm going to tell you
 5 and maybe you can talk to Miss Agnew and maybe she can
 6 provide you with a color-coded list. On this call,
 7 every single one of the cases that is in orange is a
 8 case that we talked about with your firm in February of
 9 2005. And at that point, you told us that these cases
 10 would be dismissed and they have not been. So, I
 11 really, really don't want to see any of those cases in a
 12 letter next Thursday that says they should not be
 13 dismissed. That would be bad if that happens.

14 MR. CRUMPLAR: I would like to then have
 15 that color copy to make certain --

16 THE COURT: Is that something you can
 17 provide to Mr. Crumplar, Miss Agnew?

18 MR. CRUMPLAR: Yes. Not this very minute,
 19 though.

20 THE COURT: No, I know. I mean, before he
 21 leaves the courthouse, maybe you could walk down to your
 22 office with him or something?

23 THE PROTHONOTARY: Yes.

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1 MR. CRUMPLAR: Mr. Jacobs will be here next
 2 week.

3 THE COURT: Okay. Does he have e-mail
 4 access in Florida?

5 MR. CRUMPLAR: He does, Your Honor.

6 THE COURT: That's good news.

7 There are a couple cases that have
 8 Mr. Forcina's name next to them.

9 THE PROTHONOTARY: Two of them.

10 THE COURT: Yeah. Two cases that have
 11 Anthony Forcina's name on them, and I know at least
 12 several years ago, Mr. Crumplar, your firm went to trial
 13 on some cases with him.

14 THE PROTHONOTARY: Page ten.

15 MR. CRUMPLAR: Your Honor, I see those. I
 16 happen to know coincidentally, the Homa case, the
 17 Console case is a familiar name to me. I believe that
 18 all of the Forcina cases that we took over, you know,
 19 there could be an exception, but basically when he
 20 stopped the practice, he sent us a number of cases.

21 THE COURT: Yeah.

22 MR. CRUMPLAR: And, so, I will take a look
 23 at that. I think those are probably Jacobs & Crumplar

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1 cases, but I simply don't know.
2 THE COURT: All right. Thank you.
3 MR. RUFO: I think Homa on that list is
4 Choma, C-h-o-m-a.
5 THE COURT: Is that on a trial calendar?
6 MR. RUFO: Yeah. I think we just took it
7 off the trial calendar. I think it's to be closed.
8 MR. CRUMPLAR: Choma, if I am aware of Choma
9 being an older case, that's correct.
10 MR. RUFO: It was an open case; it was on
11 the trial calendar. It's appropriately on this list.
12 THE COURT: Good. All right. And Console,
13 does that sound familiar?
14 MR. RUFO: I agree with Mr. Crumplar, it
15 sounds familiar and it sounds familiar as associated
16 with him.
17 THE COURT: We used to have a trial group
18 called the Console Trial Group, I thought.
19 MR. CRUMPLAR: Sounds familiar.
20 THE COURT: Other issues that we can talk
21 about, because it appears that we have gone through this
22 list as best we can at this point.
23 MR. CRUMPLAR: I think that the -- I think
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1 this takes care of this list, Your Honor. There was,
2 right before I took a break a question on the Hudson
3 case and --
4 THE COURT: Well, we'll deal with that on
5 Tuesday or by the end of the day Tuesday.
6 MR. RUFO: Your Honor, just to clear up on
7 the Cahee matter: Mr. Crumplar's going to respond two
8 weeks from today in the Hayes case.
9 THE COURT: In the Hayes case.
10 MR. RUFO: I will, today or tomorrow, and
11 it's not going to change what Mr. Crumplar does. I
12 filed an adoption of Mr. Beste's motion to expedite this
13 thing. I have to adopt the underlying motion, so that
14 he only has to answer it one time and it will be for
15 everyone.
16 THE COURT: Yeah. Make sense?
17 MR. CRUMPLAR: Yes.
18 MR. RUFO: And I will advise defense counsel
19 that this afternoon's docket, therefore, is not going to
20 be this afternoon.
21 THE COURT: Thank you, sir.
22 Mr. Kaplan.
23 MR. KAPLAN: Belated note, just January
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1 trials, just a matter of personal scheduling, is jury
2 selection still beginning January 3rd?
3 THE COURT: Yes, Wednesday, January 3 is
4 jury selection.
5 MR. KAPLAN: Okay.
6 THE COURT: And I won't need counsel here
7 until 11 o'clock.
8 MR. KAPLAN: Okay.
9 THE COURT: Okay. All right. Thanks for
10 your time. Appreciate it.
11 Have a good New Year, everybody.
12 (Proceedings adjourned.)
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CERTIFICATE OF COURT STENOGRAPHER

I, Patrick J. O'Hare, RPR, CSR, Assistant
Chief Court Stenographer of the Superior Court, State of
Delaware, do hereby certify that the foregoing is an
accurate transcript of the proceedings had, as reported
by me, in the Superior Court of the State of Delaware,
in and for New Castle County, in the case herein stated,
as the same remains of record in the Office of the
Prothonotary at Wilmington, Delaware. This
certification shall be considered null and void if this
transcript is disassembled in any manner by any party
without authorization of the signatory below.

WITNESS my hand this 15th day of
February, 2012.

/s/ Patrick J. O'Hare, RPR, CSR

Official Court Stenographer
Delaware CSR No. 158-PS

PATRICK J. O'HARE, RPR