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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: RED DUST CLAIMS,) MASTER CASE NO.
_____) SX-15-CV-620

Thursday, January 24, 2019
Kingshill, St. Croix

The above-entitled action came on for HEARING before the Honorable ROBERT A. MOLLOY, Judge, in Courtroom Number 203.

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Certificate of Reporter

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PROCEEDINGS AT 2:20 PM

THE COURT: Good afternoon.

THE CLERK: In regards to the red dust claims, master case SX-15-CV-620.

THE COURT: Appearances, please, Counsel.

MS. ROHN: Good afternoon. Lee Rohn and Jennifer Koockogey for the plaintiffs.

MR. SIMPSON: Good afternoon, Your Honor. Andrew Simpson on behalf of Alcoa and St. Croix Alumina.

MR. HUNTER: Good afternoon, Your Honor. Richard Hunter, Hunter & Cole, on behalf of Glencore, Ltd.

MR. HYMES: James Hymes for Century Aluminum.

MR. HARTMANN: Carl Hartmann for St. Croix Renaissance Group.

THE COURT: Okay. Good afternoon, everyone.

First issue, correct me if I'm wrong, Attorney Rohn, but plaintiffs moved to voluntarily dismiss Century Aluminum Company in this case?

MS. ROHN: I think I did --

THE COURT: Yeah. The --

MS. ROHN: -- but let me just make sure.

1 THE COURT: Yeah, the problem -- go ahead,
2 double-check that.

3 MS. ROHN: Do you know when I did that,
4 Your Honor?

5 MR. HYMES: February 28th, 2018.

6 MS. ROHN: Wait a minute. Yep, we did.

7 THE COURT: Okay. The problem there, you
8 filed the motion in the master case. Technically,
9 the master case has no complaint. Technically, you
10 were supposed to file 1,376 motions for voluntary
11 dismissal, in each case.

12 MS. ROHN: Which is all the more reason
13 there ought to be individual pro hac vices. Oh, was
14 that on another subject?

15 THE COURT: Yeah, that's a separate issue.
16 That's a separate issue.

17 So if that's the case, so, Attorney Hymes,
18 why are you here?

19 MR. HYMES: Because the motion hasn't been
20 granted yet.

21 THE COURT: I see.

22 And, Attorney Rohn --

23 MR. HYMES: This is the first opportunity
24 we've had to be before the Court since this was
25 filed.

1 THE COURT: Okay. Any objection?

2 MR. HYMES: Not from me. I filed a
3 written position of no opposition.

4 THE COURT: Attorney Simpson, any
5 objection?

6 MR. SIMPSON: No, Your Honor.

7 THE COURT: Attorney Hunter, any
8 objection?

9 MR. HUNTER: None, Your Honor.

10 THE COURT: Attorney Hartmann, any
11 objection?

12 MR. HARTMANN: No, Your Honor.

13 THE COURT: Okay.

14 MS. ROHN: I'll file it in each case.

15 THE COURT: I'm sorry?

16 MS. ROHN: I'll file it in each individual
17 case.

18 THE COURT: In each individual case.

19 Okay. I'm going -- in filing in each individual
20 case, just note that on January 24th none of the
21 defendants raised an object -- indicated they have
22 no objection. I think that's -- that was on the
23 record. And it will be in compliance with Rule
24 41(b). Otherwise, the alternative is you can get a
25 stipulation from all of them, but that's not -- I

1 don't think that's necessary. Okay.

2 Attorney Hymes?

3 MR. HYMES: Yes, Your Honor.

4 THE COURT: You're excused, if you so
5 choose.

6 MR. HYMES: I'll just stick around for a
7 few minutes.

8 THE COURT: Okay.

9 MR. HYMES: Thank you. Thank you, Your
10 Honor.

11 THE COURT: Okay. You're welcome. Okay.

12 Attorney Rohn, where are we in these
13 cases?

14 MS. ROHN: We -- the parties got together
15 and had our ninety -- Rule 93(c)(2) -- or (2)(c)
16 with the trying to come up with a discovery plan.
17 That was filed in -- well, and Judge Brady still had
18 the case, back in January -- February 2018 by the
19 defendants. The plaintiffs raised their objections
20 to it. There were some things we agreed to, some
21 things we didn't agree to. And that has sat there
22 for a year.

23 THE COURT: Okay.

24 MS. ROHN: Close to a year. And we filed
25 our objections in opposition on February 14, 2018.

1 There had been an agreement before Judge
2 Brady that the -- that we would get questionnaires
3 way back a year ago to look at to -- proposed
4 questionnaires to look at to agree to or to point
5 out things we didn't agree to. And to date, we've
6 never gotten those. Because there is an agreement
7 that as to some of this, it can be handled by
8 questionnaires.

9 And one of the things that we discussed
10 was included in the questionnaires would be some of
11 the Rule 26 disclosure information: what persons
12 have knowledge of your claim --

13 THE COURT: Say -- say -- restate that.

14 MS. ROHN: What persons have knowledge of
15 your claim and what do you think they know, that
16 kind of thing, instead of having to do all the
17 hundred-and-something filings of Rule 26 discovery.

18 But Attorney Tatro sent me a --

19 THE COURT: Oh, I'm sorry. There's
20 something I need for us to discuss before we
21 proceed.

22 I previously clerked for Judge Finch from
23 2005 to 2007. I served as his law clerk. These
24 claims were before him with a lot of these same
25 plaintiffs, and I was assigned to that case. During

1 that group.

2 MS. ROHN: Yes.

3 THE COURT: Yes.

4 MS. ROHN: And then what happened was --
5 so those would have been the representatives of the
6 class.

7 THE COURT: Okay.

8 MS. ROHN: Then Judge Bartle was appointed
9 to the case. Judge Bartle decertified the class --

10 THE COURT: Right.

11 MS. ROHN: -- found that those people --
12 those plaintiffs that would have been the
13 representatives in the other case, dismissed some of
14 their cases, left them with property damage claims.
15 Those property damage claims were settled and they
16 are no longer in this case.

17 THE COURT: Okay. So you're --

18 MS. ROHN: All -- none of the original
19 plaintiffs are in this case.

20 THE COURT: Okay. And then so,
21 therefore, I'm assuming --

22 MS. ROHN: Well, the original plaintiffs
23 or representatives of the class that was a class for
24 a period of time and then was decertified as a
25 class.

1 THE COURT: Yeah, I don't believe that I
2 was -- that while the case was pending before Judge
3 Finch when I was there it was certified as a class
4 yet.

5 MS. ROHN: It was -- you were not the law
6 clerk when it finally was certified as a class.

7 THE COURT: Right.

8 MS. ROHN: And then it went up to the
9 Third Circuit for a period of time and languished
10 there and you -- and then came back.

11 THE COURT: Right.

12 MS. ROHN: The Third Circuit upheld the
13 class until Judge Bartle got in. He did away with
14 the class and left it to those people. So anybody
15 that would have been before Judge Finch as a
16 representative of the class is no longer in this
17 case.

18 THE COURT: Okay. So I'm assuming you
19 have no objection?

20 MS. ROHN: No, I have none.

21 THE COURT: Okay. Attorney Simpson?

22 MR. SIMPSON: No objection.

23 THE COURT: Attorney Hunter?

24 MR. HUNTER: No objection.

25 THE COURT: Attorney Hartmann?

1 MR. HARTMANN: No objection, Your Honor.

2 THE COURT: Okay. Attorney Hymes, I --

3 MR. HYMES: Well, I will indicate to that
4 no objection --

5 THE COURT: You're not --

6 MR. HYMES: -- retroactive to our previous
7 discussion.

8 THE COURT: Okay. Okay. Great. Thank
9 you.

10 MR. HYMES: But I'll stay.

11 THE COURT: Well, technically, you're
12 still part of the case until I sign the order so
13 you --

14 MR. HYMES: I'll stay.

15 THE COURT: Okay. Thank you for no
16 objection.

17 Okay. So what I'm going to do, I'm going
18 to orally vacate my recusal, I'm going to reduce it
19 to writing, so you can proceed.

20 Okay. You may finish.

21 MS. ROHN: So as to the -- so what
22 happened with the questionnaires is then he sent me
23 like four or five questionnaires and said, these are
24 samples, see if you have any objections. And my
25 position was, oh, I'm not going to go through four

1 or five questionnaires, just send me what it is that
2 you want to ask in this case and I'll look at it.
3 And then he disagreed with my opinion and never sent
4 me the questionnaire. So today we still don't have
5 one.

6 THE COURT: Okay. Approximately how many
7 plaintiffs do you represent? What; 1,300,
8 approximately?

9 MS. ROHN: I think it's about 1,300, Your
10 Honor.

11 THE COURT: Okay. Okay.

12 MS. ROHN: So -- and then you have before
13 you, if you want to have discussion on it, the
14 defendants' proposed discovery plan and the
15 plaintiffs' objections.

16 THE COURT: Is there anything that you
17 would particularly like to be heard on that?

18 MS. ROHN: Yes.

19 THE COURT: Okay. Proceed.

20 MS. ROHN: So because this case is 19
21 years old, many -- and many of the -- well, because
22 this is -- involves the aluminum refinery, so
23 needless to say most of the people who lived around
24 the aluminum refinery were not people of means.
25 Many of them don't speak English. Many of them

1 moved because they were renting places and the
2 nature of that.

3 So we did, for the purposes of refileing
4 the claims, locate people. We have told them that
5 they need to keep in touch with us. But many of
6 them have left and gone to the States. Many of them
7 have returned to the -- a couple of them -- I'd say
8 about seven percent have returned to their country
9 of origin, where they came from.

10 So there is a clause in the first one on
11 completing the questionnaires, that if they don't
12 respond to the questionnaires within 200 days
13 there'd be a motion to show cause why their case
14 should not be dismissed. We will endeavor to get
15 the answers to the questionnaires, once we get them,
16 promptly. But it seems to me that that's a little
17 stringent for people who have been trying to be in
18 this case for 19 years to then dismiss their case if
19 they don't get their questionnaires in by an
20 arbitrary deadline. So I'm opposed to that.

21 THE COURT: What is the more reasonable
22 time?

23 MS. ROHN: Well, I don't have -- I
24 actually think that the two -- that there ought to
25 be something less onerous than to show cause why

1 their case shouldn't be dismissed. It seems to me
2 that at that point the plaintiff is required to file
3 a motion for extension of time stating a good cause
4 reason why they've been unable to complete the
5 questionnaire.

6 THE COURT: Let me ask everyone this. Why
7 can't we just do the Bellwether approach?

8 MS. ROHN: That's what we have.

9 THE COURT: And then that way we won't let
10 a couple plaintiffs stymie the entire process.

11 MS. ROHN: It is the plaintiffs' position
12 that we ought to take -- do exactly that. To -- we
13 ought to take a representative sampling of the
14 plaintiffs, and we don't think it needs to be 150
15 plaintiffs either, and take a sampling of the
16 different varieties of plaintiffs, like a
17 Bellwether, do the questionnaires as to those
18 plaintiffs, do the one-hour deposition they want,
19 and then get those cases ready. To the extent that
20 we can't settle this case, try those cases, get an
21 idea what the jury's verdict value is, and then try
22 to settle the others.

23 It seems -- and because all of the issues
24 would be the same, the issues of liability would be
25 established and the rest of those would only be

1 damages.

2 That's always been the plaintiffs'
3 position in this case.

4 So I'll let --

5 THE COURT: It's the same --

6 MS. ROHN: -- the defendants speak to --

7 THE COURT: -- cause of action against the
8 same defendants with regards to all of the
9 plaintiffs.

10 MS. ROHN: Correct. And the same facts
11 and the same witnesses.

12 THE COURT: Right.

13 MS. ROHN: And the -- so --

14 THE COURT: But the facts are somewhat
15 different based on each nuance of each plaintiff --

16 MS. ROHN: As to damages.

17 THE COURT: -- as to damages and where
18 they reside and so forth.

19 MS. ROHN: But as to the issue, though,
20 whether there was a failure to control the
21 substance, there's already been a decision in the
22 individual plaintiff cases that this was a dangerous
23 nuisance. And that decision, if you'd like us to
24 brief that, but we believe that that finding applies
25 to this case, involved all the same defendants.

1 THE COURT: That finding was made by whom?

2 MS. ROHN: Judge Bartle.

3 THE COURT: Okay. In District Court?

4 MS. ROHN: Yes, sir.

5 THE COURT: Okay.

6 MS. ROHN: So there's a finding as to
7 dangerous nuisance. But --

8 THE COURT: We had this situation come up
9 in one of your cases, the Green versus WAPA case.

10 MS. ROHN: Yes, sir.

11 THE COURT: But this one seems that it
12 involves the law of the case doctrine where the case
13 was originally in District Court, the District Court
14 made certain findings. In the Green case, the
15 District Court made certain findings on summary
16 judgment on facts, and then the case was later
17 removed -- no. It wasn't removed. It was
18 dismissed --

19 MS. ROHN: Dismissed --

20 THE COURT: -- and then refiled.

21 MS. ROHN: -- for the -- for the local
22 issues.

23 THE COURT: For the local causes of
24 action. And I ruled that the finding of summary
25 judgment on certain facts that was presented,

1 especially when those facts were not presented in
2 this case, the law -- that did not constitute the
3 law of the case doctrine because there are different
4 facts. Matter of fact, I don't think your client
5 responded to the factual allegations.

6 MS. ROHN: No. We moved that there -- it
7 was out of time and then never responded. And then
8 the Supreme Court said, if you didn't respond,
9 that's your bad because you -- even though you
10 thought it was out of time, you should have
11 responded anyway.

12 THE COURT: Yes. So --

13 MS. ROHN: Now, there's --

14 THE COURT: The law of the case doctrine
15 is a recognized common law doctrine in the Virgin
16 Islands.

17 MS. ROHN: That's true.

18 THE COURT: And I think another issue in
19 that case is whether the District Court would have
20 been considered a sister court to the Superior Court
21 for purposes of the law of the case doctrine.

22 MS. ROHN: There is a little nuance here
23 because --

24 THE COURT: Okay.

25 MS. ROHN: -- the plaintiffs in this case

1 are not the same plaintiffs in that case. But the
2 defendants are all the same defendants and the
3 issues as to those defendants are all the same.

4 THE COURT: Okay. But then the law of the
5 case would not apply --

6 MS. ROHN: That's right.

7 THE COURT: -- because it's not the same
8 parties.

9 MS. ROHN: So -- I just thought about
10 that. That's the --

11 THE COURT: Okay.

12 MS. ROHN: -- difference.

13 THE COURT: Okay.

14 MS. ROHN: So we can't do that.

15 THE COURT: So then that wouldn't be
16 necessarily binding. That would be persuasive.

17 MS. ROHN: Persuasive argument.

18 THE COURT: Okay. Okay.

19 MS. ROHN: So one of -- so that's -- my
20 idea is that you should indeed do Bellwether. I
21 don't think 100 or 150 plaintiffs is necessary. I
22 think it needs to be --

23 THE COURT: Well, remember, under
24 Bellwether all cases are proceeding but some are
25 proceeding faster than others.

1 MS. ROHN: Right.

2 THE COURT: There's going to be --

3 MS. ROHN: But I don't --

4 THE COURT: -- perhaps three --

5 MS. ROHN: -- think that --

6 THE COURT: Under Bellwether, there are
7 about three -- I usually do three groups, a Group A,
8 a Group B, and a Group C. Group A would be maybe
9 between ten to 12 plaintiffs proceeding on a faster
10 track; a faster discovery track, a faster expert
11 track, a faster dispositive track. And then you
12 still have a Group B, which is another set, and then
13 a Group C.

14 MS. ROHN: They're all coming up --

15 THE COURT: They all get their different
16 trial dates; but the Group A, which is the
17 representative sample, moves a little faster than
18 the others.

19 MS. ROHN: Right. So that's an issue.
20 That's what the plaintiff would like to have happen.

21 THE COURT: Okay.

22 MS. ROHN: The other -- there is one other
23 issue. This is a con -- we filed today -- there is
24 an issue in this case. It is the defendants'
25 position that the plaintiff must have expert

1 testimony connecting the injuries to the discharge.

2 THE COURT: To the what?

3 MS. ROHN: To the -- the injuries to the
4 discharge.

5 THE COURT: To the discharge. What do you
6 mean?

7 MS. ROHN: The letting loose of the
8 bauxite and the red dust, to prove that what
9 injuries they suffered were related to that.

10 THE COURT: Okay. Causation.

11 MS. ROHN: Right. But we have filed a
12 motion, and we believe that this is a threshold
13 motion, that in this case this is not true because
14 in this particular case the defendants Alcoa and
15 St. Croix Alumina created -- and Glencore created
16 their own -- which was Century, who is gone,
17 sorry -- created their own MSDS sheets that list the
18 problems, the causations, and the likely symptoms as
19 a result of this.

20 And this is not the type of thing that is
21 so complicated that an expert is needed. They were
22 fine. They had no problems. The red dust inundated
23 their house. They immediately got itchy eyes,
24 watery eyes, itchy skin, a rash. And every time
25 they got near it, they got the same symptoms. And,

1 therefore, this is not the kind of case that
2 needs -- that's something that a jury is capable of
3 doing, of putting together, and that the
4 defendants --

5 THE COURT: You're saying it's a threshold
6 issue because if I do find that an expert is needed
7 that you can't produce an expert to prove that
8 connection --

9 MS. ROHN: Well --

10 THE COURT: -- and that would prevent the
11 case from even going to trial because you can't
12 prove one element of the case?

13 MS. ROHN: We would be able to find a
14 general causation expert. We had one in the other
15 case. But there's two causations: general
16 causation and specific causation. We probably could
17 find a specific causation. But it's a great deal of
18 expense with 13,000 (sic) plaintiffs and we don't
19 believe that the law requires that.

20 So it seems that that is a threshold issue
21 that needs to be determined because it's our
22 position that we don't need experts and this case
23 could be very quickly ready for trial.

24 THE COURT: Do I have enough facts -- are
25 there enough facts in the record for me to reach a

1 ruling on that?

2 MS. ROHN: Yes, you do.

3 THE COURT: Okay.

4 MS. ROHN: Because -- well, and then
5 there's another threshold issue, which is all --
6 there were extensive depositions taken in the
7 underlying original case.

8 THE COURT: In District Court?

9 MS. ROHN: In District Court.

10 THE COURT: Okay.

11 MS. ROHN: All the employees of St. Croix
12 Alumina, the people in Alcoa. The only depositions
13 that haven't been done for this case are SRG's
14 depositions and --

15 THE COURT: Are you talking about 30(b)(6)
16 witnesses?

17 MS. ROHN: Huh?

18 THE COURT: Are you talking about 30(b)(6)
19 witnesses?

20 MS. ROHN: Yeah, and whoever they named in
21 the Rule 26 disclosures.

22 THE COURT: Okay.

23 MS. ROHN: Okay. So -- and we have SRG's
24 Rule 26 disclosures.

25 So we believe that since it was the same

1 issues that the defendants can't object to those
2 depositions. And the plaintiffs are willing to have
3 those depositions, even though there are other
4 plaintiffs, apply to this case because after 19
5 years many of the people who were deposed, nobody
6 knows where they are. And at the time the people
7 who came in and cleaned up their homes were deposed,
8 the people who worked for St. Croix Alumina who went
9 around talking to people were deposed, various
10 people from the neighborhood who heard the
11 statements that they made were deposed. So --

12 THE COURT: Isn't there a rule on that?

13 MS. ROHN: Yes, there is.

14 THE COURT: You can --

15 MS. ROHN: If it's the same party and they
16 attended the depositions and they had ability to
17 cross-examine, then it's admissible to be used
18 again.

19 THE COURT: Except it's not the same
20 parties.

21 MS. ROHN: No. If the party is the same
22 party in this case. If the party previously deposed
23 is the same party in this case, they were
24 represented by counsel, they had an opportunity to
25 cross-examine, then the evidence is admissible

1 against --

2 THE COURT: Even if the plaintiff was
3 different?

4 MS. ROHN: Yeah. And -- and we've used --
5 and the reason that comes up is that we have used
6 depositions of Hovensa, for instance, in other
7 Hovensa cases where they have made admissions that
8 also applied to my case. And that's how that law
9 was established.

10 THE COURT: Okay.

11 MS. ROHN: So that's a threshold issue.

12 And so -- so those -- let me see. That
13 is -- that's kind of our -- if we're going to do a
14 Bellwether, then -- then a lot of this has to be
15 changed.

16 THE COURT: Yeah, but also under
17 Bellwether, the defendants would be given an
18 opportunity, after conducting discovery and doing
19 IMEs on each party, to determine from their pick --
20 for instance, in the Group A, let's say of the 1,300
21 plaintiffs, I say there are 12 -- there are going to
22 be 12 in Group A. Plaintiffs pick four, defendants
23 pick four, and then the Court is going to pick four
24 at random. And if the defendants truly are going to
25 pick their four, I'm assuming they're going to pick

1 their four best cases for them, they're going to
2 need to know something about all 1,300 of the
3 part -- of the plaintiffs.

4 MS. ROHN: Well, let me -- can I just
5 interrupt here?

6 THE COURT: Yes.

7 MS. ROHN: Because that happens normally
8 in a case where you're -- you're -- and I'm not
9 talking about the selection, but the issue of IMEs.
10 Usually, in those cases, this is an ongoing problem,
11 an ongoing claim for future damages. In our
12 particular case, we're not claiming future damages.
13 We're claiming acute exposures and acute damages
14 that resolved at the end of the exposure. So I see
15 absolutely no reason at 19 years later to do an IME.
16 We're not -- this is not the same case that was
17 brought earlier where we claimed chromium six and
18 they might have cancer.

19 We have looked at this case and we
20 agree -- when we took a look at it, we talked to our
21 plaintiffs about their conditions, we agree that
22 this is a number of acute exposures with acute
23 symptoms that go directly to what would be expected
24 to be experienced by that exposure and that when the
25 exposure ceased, the symptoms ceased.

1 So it's a pretty simple case. You know, I
2 guess the devil is in how many plaintiffs there are.
3 But the cases themselves, other than punitive damage
4 claims for the actions of the defendant, are pretty
5 finite. Thus, my belief that I do not need expert
6 opinions because I am not giving -- there are no
7 opinions as to future problems or future medical
8 bills or future likelihood of --

9 THE COURT: Are you claiming mental
10 anguish?

11 MS. ROHN: Well, mental anguish ended when
12 they cleaned up their house and they stopped itching
13 and their eyes weren't scratchy and itchy anymore.

14 THE COURT: Let me ask: For each of your
15 plaintiffs, do -- obviously you have a beginning
16 date. Do you have an end date?

17 MS. ROHN: Well, there are -- the reason
18 SRG is in this case is there was the initial
19 exposure and, yes, we have a beginning and end date
20 that is a little different for everybody but in no
21 account for more than six months. And then when SRG
22 bought the refinery from St. Croix Alumina, they
23 went in and took the crust off the red dust and did
24 move the red dust and then the red dust went back
25 into my clients' homes when the heavy winds blew.

1 And there are some acute exposures to my clients who
2 still lived in the area for that -- those acute
3 experiences. And, again, it's the same itchy eyes,
4 skin, having to clean their house. Some of their
5 plants died because they got the red dust on them
6 and didn't do photosynthesis. But, again, acute.
7 When the problem was cleaned up, they got their
8 cisterns cleaned up, those ended. So this isn't a
9 tobacco case. These are a number of acute and
10 finite exposures with minimum acute finite symptoms
11 that are exactly the symptoms that the MSDS sheet
12 says you will get if you're exposed.

13 THE COURT: Okay. Attorney Rohn, I'm
14 looking at Rule 32(a)(8) --

15 MS. ROHN: Of the --

16 THE COURT: Civil rules.

17 MS. ROHN: -- VI?

18 THE COURT: Rules of Civil Procedure,
19 which talks about depositions taken in an earlier
20 action. And it reads: "The deposition lawfully
21 taken and, if required, filed in any federal or
22 Virgin Islands court action may be used in a later
23 action involving the same subject matter between the
24 same parties, or their representatives or successor
25 interest, to the same extent as if taken in the

1 later action."

2 MS. ROHN: Right. But my plaintiffs would
3 be the ones able to object to the use of the
4 depositions because they weren't a party in that
5 action.

6 THE COURT: No, but the -- the rule says
7 same parties.

8 MS. ROHN: Well, Your Honor, that would
9 make this case impossible because it's 19 years old
10 and all -- I mean there are literally hundreds of
11 depositions in this case.

12 THE COURT: I understand. But I can't
13 change the rule. Is there another rule that you
14 would rely on?

15 MS. ROHN: Can I do some research on this?

16 THE COURT: Okay.

17 MS. ROHN: May we brief this issue?

18 THE COURT: Okay. It hasn't been briefed
19 already?

20 MS. ROHN: No.

21 THE COURT: All right.

22 MS. ROHN: Not to my knowledge.

23 THE COURT: Yeah, I would require the
24 parties to brief it anyway. Okay.

25 Okay. Anything else?

1 MS. ROHN: Those are the major issues that
2 need to be resolved because once we determine if
3 we're going to do a Bellwether case, then we could
4 probably come up with a different scheduling
5 order -- proposed scheduling order in that regard,
6 or the Court can.

7 THE COURT: Okay. Defendants, who would
8 like to go first?

9 MR. SIMPSON: Good afternoon, Your Honor.
10 Andrew Simpson for St. Croix Alumina and Alcoa. I
11 believe, for the most part, I'm also speaking for
12 the other defendants, but they may want a chop at
13 it, but we've discussed this in advance. I guess
14 there's a whole bunch of issues here to touch upon.

15 First of all, I want to point out that the
16 plaintiff did indeed agree to the questionnaires.
17 There's a submission to the Court on February 5th,
18 2018, a joint report of the parties where all
19 parties signed and represented to the Court that we
20 had agreed upon the questionnaire, and what we
21 agreed upon was the last version that Attorney Rohn
22 had submitted to us and we said we'll go with that
23 version, we're happy with that.

24 And we were under the belief that these
25 questionnaires were being filled out and that -- and

1 we hoped in August we would get -- start at least --
2 we were also told at the September -- or excuse
3 me -- January 18, 2018 hearing that they would not
4 all be held to the 200th day, that they would be
5 presented in a rolling fashion as they were received
6 by the plaintiffs' counsel.

7 Unfortunately, there was never any order
8 issued after the January 18, 2018 hearing to
9 actually establish a start date for the 200 days.

10 So in August, when we started looking at
11 this, we realized we had a problem there and things
12 were being rolled into the complex litigation side.
13 Unfortunately, now we're a year behind where we
14 could have been.

15 But there is an agreement in place on
16 significant portions of the plan for discovery in
17 this case. It involves questionnaires. It is a
18 lone pine type of agreement. There are
19 disagreements too.

20 And I think, just to go over them, first
21 of all, we agreed upon the questionnaire. We agreed
22 upon the precise language in the questionnaire.

23 THE COURT: Okay. But what I'm hearing
24 from Attorney Rohn is she's not agreeing. We have a
25 situation where you can't find -- she can't find her

1 client and the number of days before essentially the
2 case is to be dismissed.

3 MR. SIMPSON: What we had agreed to
4 disagree on a year ago was how that gets handled.
5 She wanted us to file a motion to compel. We said
6 that is kind of meaningless for us to have to go
7 through the -- in 430 cases with 1,300 plaintiffs
8 filing a motion to compel saying we didn't get
9 anything. We said the initial burden should be on
10 the plaintiff to say -- to come forward and show
11 cause why the case should not be dismissed or
12 whatever other relief the Court might order. And so
13 come forward and say, I haven't been able to find
14 plaintiff John Doe, we've made good efforts, we
15 think we've located him, we need another hundred
16 days, and the Court deals with that. Another one is
17 the plaintiff has passed away, we need time to open
18 up an estate or whatever.

19 THE COURT: We don't -- we don't follow
20 that procedure anymore.

21 MR. SIMPSON: Okay. Well, I'm trying to
22 give you samples of -- not just an out-and-out
23 dismissal but --

24 THE COURT: Right.

25 MR. SIMPSON: -- the plaintiff coming

1 forward to show cause why they haven't gone forward
2 and to -- for the Court then to decide what the next
3 step is for that particular plaintiff.

4 THE COURT: Well, even if I were to do --
5 to issue a ruling on the order to show cause, I
6 would still have to go through the six-factor
7 analysis for a motion to dismiss for failure to
8 prosecute, and that would need to be briefed.

9 MR. SIMPSON: Correct.

10 THE COURT: Yes.

11 MR. SIMPSON: But it doesn't make a lot of
12 sense to have us having to file a motion to compel
13 either.

14 THE COURT: I agree. And sometimes in
15 these types of cases, I relax some of the discovery
16 rules because we're dealing with so many parties and
17 sometimes discovery can slow down the process
18 tremendously. So sometimes I'll be lax about the
19 discovery rules.

20 MR. SIMPSON: Understood. And we were
21 not -- we were not saying this had to be --

22 THE COURT: Right.

23 MR. SIMPSON: -- hard and fast 200 days
24 you get dismissed. Just come and tell us why we
25 don't have it --

1 THE COURT: Right.

2 MR. SIMPSON: -- or, you know, however
3 many plaintiffs have not responded at that time.

4 THE COURT: Right.

5 MR. SIMPSON: So that was the disagreement
6 which is post questionnaire. We had agreed on the
7 questionnaire.

8 THE COURT: Okay. Attorney Rohn, do you
9 agree to the substance of the questionnaire?

10 MS. ROHN: You know, I don't -- I don't
11 have a copy of the questionnaire in my file. So I
12 assume that we never agreed on it because when I
13 went through my file, I couldn't find one. So if I
14 could just take a look at it, I might be able to
15 short circuit this.

16 THE COURT: From what Attorney Simpson
17 says, he has written documentation from you agreeing
18 to the substantive --

19 MS. ROHN: I don't recall that, but if
20 he's -- it's -- I mean it's a year and something
21 ago.

22 THE COURT: I understand.

23 MS. ROHN: I've had a few cases in
24 between. So if he says -- let me just take a look
25 at it and if it looks -- rings a bell to me --

1 THE COURT: Okay.

2 MS. ROHN: -- I will withdraw that we
3 don't have an agreement.

4 MR. HUNTER: Your Honor, it was attached
5 to defendants' report to Court dated January 16,
6 2018, served on --

7 MS. ROHN: I can't hear you while I'm
8 looking.

9 THE COURT: Okay. Attorney Hunter, come
10 to the podium.

11 MR. HUNTER: Yes. Yeah, Your Honor, the
12 document they're referring to is the attachment to
13 defendants' report to Court dated January 16, 2018.
14 And it was also --

15 THE COURT: What exhibit?

16 MR. HUNTER: It's the only exhibit. It's
17 the attachment to defendants' report to the Court.

18 THE COURT: Oh, okay.

19 MR. HUNTER: It's proposed discovery
20 order. Hold on.

21 THE COURT: Are you talking about the
22 actual discovery order or the documentation that
23 Attorney Rohn agreed to that questionnaire?

24 MR. HUNTER: What I'm referring to is
25 Exhibit A to defendants' report to Court.

1 THE COURT: Okay. Yes, I have that. But
2 where is it --

3 MR. SIMPSON: That was our proposal.
4 Subsequent to that -- that was filed on January 16th
5 as Exhibit A to our report on January 16th.

6 THE COURT: Yes. Okay.

7 MR. SIMPSON: Subsequent to that, we
8 received from Attorney Rohn a proposal, which I have
9 just given -- I've given her the copy we received
10 from her.

11 THE COURT: Okay.

12 MR. SIMPSON: And we responded to her that
13 we agree to that.

14 On February 5th, we submitted a report to
15 the Court signed by all parties saying that the
16 parties had agreed upon and still agree upon a form
17 questionnaire to be filled out by each plaintiff.
18 That was February 5th.

19 MS. ROHN: Your Honor, I did agree that
20 there would be a form questionnaire. But I know I
21 never agreed to this form because I would never
22 agree to have you ever, including times not related
23 to this case, ever, ever, ever in your however old
24 you are file workman's comp without any time
25 periods. So this would go back for -- some of my

1 clients, they're 80 years old. It would go back 60,
2 70 years. So I did agree a questionnaire to be
3 agreed on, but I do not remember agreeing to this
4 particular questionnaire in the file.

5 MR. SIMPSON: I will be happy to present
6 to the Court --

7 MS. ROHN: If you send me an email, I'll
8 change my mind, but I don't recall agreeing to have
9 you ever in your entire life had an accident, have
10 you ever in your entire life ever filed a workman's
11 comp. I don't think -- I don't believe I agreed to
12 that.

13 MR. SIMPSON: I will be happy to present
14 the Court and Counsel with the cover letter or
15 email, I can't remember which, from Attorney Rohn
16 with her proposed report and our response saying we
17 accepted it. There is an agreement on a
18 questionnaire.

19 MS. ROHN: I'll stand corrected then. But
20 I don't recall agreeing to a particular
21 questionnaire.

22 And if I had -- and the reason, Your
23 Honor, is if I had, I would have sent it out to the
24 clients because there's no reason for me to delay.

25 THE COURT: Even if the party agreed to

1 it, unless it's presented as a stipulation for the
2 Court to approve, that's not something that's
3 ordinarily in the discovery rules. Meaning, you
4 guys have an agreement on that, the way to handle
5 discovery is not something that I can enforce.

6 MR. SIMPSON: No, Your Honor. I wasn't
7 asking you to. I said --

8 THE COURT: Okay.

9 MR. SIMPSON: -- when the 200 days rolled
10 around and we looked at it, we said, we have never
11 received an order from Judge Brady so --

12 THE COURT: Okay.

13 MR. SIMPSON: But I wanted to make sure
14 the Court was aware that we do have an agreement on
15 a questionnaire, on a number of points in a
16 discovery plan.

17 THE COURT: Okay.

18 MR. SIMPSON: And it is not a Bellwether
19 type of plan. And this was raised with Judge Brady
20 as well, and we explained. We've already tried the
21 Bellwether approach. We have 17 representative
22 plaintiffs in the Henry case who supposedly were
23 representative of the class, and not a single one
24 could prove any medical damages whatsoever, acute or
25 prolonged.

1 And so we've already tried that approach
2 and it did not work. We're still presented with
3 1,300 acute claims. And if someone comes in and
4 says, I have this, it doesn't mean that the other
5 1,300 do.

6 And there are way too many variables in
7 this case to -- to -- for a Bellwether approach to
8 work, and that's why it didn't work in the Henry
9 case.

10 THE COURT: Well, that was submitted as a
11 proposed class action.

12 MR. SIMPSON: Yes, but they -- supposedly
13 these were 17 people who represented the class.
14 They should have been outstanding representatives of
15 what these -- the class was supposed to present.
16 And if they did, that means those other 1,300 didn't
17 have any claims.

18 MS. ROHN: Your Honor, he threw out their
19 claims. They never had a trial on their claims.
20 Judge Bartle struck all their witnesses, all their
21 experts, and threw out their PI claims, and the only
22 thing they had left were property damage. So you
23 can't say we've had trials on this case. We
24 haven't.

25 MR. SIMPSON: I wasn't suggesting we had

1 trials.

2 THE COURT: I don't think that's what he
3 said. He said that the 13 (sic) individuals that
4 were supposed to represent the class couldn't prove
5 medical damages.

6 MS. ROHN: Because they were claiming
7 permanent injuries, totally different injuries that
8 are being claimed in this case. They were claiming
9 permanent injuries, exposure to sodium --

10 THE COURT: And wait a minute. They were
11 different plaintiffs.

12 MS. ROHN: They were totally different
13 plaintiffs.

14 THE COURT: So we're not talking about
15 the same people.

16 MR. SIMPSON: There were 17 plaintiffs,
17 Joseph Ed Henry and others, who supposedly were
18 representative of a class of everyone who lived in
19 three neighborhoods near the alumina plant at the
20 time of Hurricane George. They were supposed to be
21 the representative. They are your textbook -- class
22 representatives should be your textbook Bellwether
23 plaintiffs.

24 THE COURT: Were they the same cause of
25 action as in this case?

1 MR. SIMPSON: They included acute as well
2 as chronic injury, and they could not prove any. So
3 that's one problem with the Bellwether approach.

4 Another problem is, which we didn't have
5 in that other case which we have in this one, is
6 allegations of asbestos exposure.

7 THE COURT: In which case?

8 MR. SIMPSON: This case, the master
9 docket. Every single one of the 434 complaints
10 contains numerous allegations of asbestos exposure
11 that were not present at all in the prior case.
12 So --

13 THE COURT: Okay. But what's the
14 significance of that?

15 MR. SIMPSON: Every -- asbestos is --
16 asbestosis, a long-term exposure to asbestos, is
17 a -- the latency for that disease is a very long
18 time. Different people are going to have different
19 reactions to it. You're going to have different
20 injury from that. So I mean -- and we don't know
21 what their exposure is.

22 THE COURT: I understand. But I mean you
23 bring that up to say what? That that's why
24 Bellwether wouldn't work?

25 MR. SIMPSON: Well, I'm explaining one

1 reason why that case is different from -- this case
2 is different from the last case.

3 THE COURT: No, you don't need to
4 distinguish -- you don't need to distinguish it.

5 MR. SIMPSON: Okay.

6 THE COURT: Yeah, I don't see any
7 relevance to distinguishing what we have here than
8 what was mediated in District Court.

9 MR. SIMPSON: You had a simpler case in
10 District Court. You didn't have any allegations of
11 asbestosis expo -- asbestos exposure. It was a
12 simpler case. And the Bellwether plaintiffs in that
13 case could not prove any of the claims.

14 THE COURT: Okay. And how do you suggest
15 the Court proceeds in this case?

16 MR. SIMPSON: Okay. As -- as laid out in
17 the discovery order as agreed by all the parties
18 with areas of disagreements, we propose the
19 questionnaires get completed; and then, at that
20 time, a number of plaintiffs are randomly selected.
21 We cannot agree whether -- the plaintiffs wanted
22 100. We proposed 130. We could not agree to meet
23 in the middle. We left it at that to present to the
24 Court. And 130 from the defendants' perspective,
25 100 from plaintiff's perspective to be deposed for

1 one hour each. So rapid-fire deposition so we could
2 get a good understanding of the nature of a
3 significant 10 percent of the claims. I said 130.
4 As we pointed out in --

5 THE COURT: What happens to the other
6 1,200?

7 MR. SIMPSON: Nothing has happened yet.

8 THE COURT: So the case is essentially
9 stayed with those other 1,200?

10 MR. SIMPSON: Correct.

11 THE COURT: Okay.

12 MR. SIMPSON: We pointed out in one of our
13 discovery memorandum that basically that would give
14 us a confidence interval of about 95 percent, using
15 a representative class of 100 or representative
16 plaintiffs for deposition of 130. That's
17 statistically only if there's one variable in place,
18 one difference, one variable between the 130
19 plaintiffs. We have multiple variables here, which
20 is why we say 100 is way too low. One hundred with
21 one variable, that drops to the confidence interval
22 level down to 85 percent. But we've got people from
23 different neighborhoods. We've got different
24 exposures during remediation. We've got other
25 exposures. Some might have been exposed to

1 asbestos, some might not. We've got people who
2 weren't there --

3 THE COURT: Asbestos would have come from
4 the red mud?

5 MR. SIMPSON: It suppos -- the allegation
6 is it came from the refinery and that we're
7 responsible for it. We haven't even gotten into
8 discovery to find out where they say it came from
9 and how it migrated to the neighborhoods. We don't
10 even know that. None of the depositions taken in
11 the other case got into that because that wasn't an
12 issue. We have people --

13 THE COURT: Hold on. Hold on. Hold on.

14 Attorney Rohn, how many instances was
15 the -- besides the hurricane -- I think it was what,
16 Hurricane Marilyn, right?

17 MR. SIMPSON: George.

18 THE COURT: Hurricane George. I'm sorry.
19 Besides Hurricane George, when was the other
20 incident that caused the red mud to disperse in the
21 neighborhoods?

22 MS. ROHN: There was the discharge in
23 Hurricane George. Then there was a second discharge
24 not long after when they tried to clean up the red
25 dust and respread the red dust through the

1 neighborhood. And then I can't give you the dates
2 off the top of my head but there was -- there were
3 two or three discharge -- distinct discharges when
4 Alcoa -- St. Croix Alumina went in and resurfaced
5 the red dust and spread it back over the
6 neighborhoods.

7 THE COURT: Is that bauxite?

8 MS. ROHN: It's -- it's -- it's red dust.
9 It's a product of bau -- the combi -- in the
10 hurricane, there was a shed that they knew had no
11 roof on it that contained the bauxite.

12 THE COURT: Yes.

13 MS. ROHN: And then there were these huge,
14 tall piles of red dust. In the hurricane, the
15 bauxite blew out of the shed into the neighborhoods,
16 and the strength of the wind took the top of the red
17 dust piles and put it in the neighborhoods.

18 The rest of the exposures are all solely
19 red dust because the bauxite problem, as far as we
20 could tell, from depositions, was remedied. So what
21 this was was if there was a resurfacing of where
22 they took the crust off the top, then the -- and
23 there was a storm, then there would be red dust back
24 in the neighborhood.

25 THE COURT: Okay.

1 MS. ROHN: And then as to SRG, there was a
2 distinct time after SRG bought the refinery when
3 they took the crust off of the red mud and tried --
4 red mud piles and tried to reconfigure them. And
5 there's a claim for that.

6 And the asbestos claim is so -- is --
7 really comes from SRG because they went into their
8 plant and tried to dismantle the plant and, in doing
9 so, discovered friable asbestos but did not properly
10 encapsulate it and remove it. But none of my
11 clients -- my clients have acknowledged that they
12 were exposed to asbestos, but no one -- none of them
13 have an asbestos-related disease. And the time
14 period would be insufficient for them to have gotten
15 an asbestos-related disease at this point.

16 THE COURT: Attorney Simpson?

17 MR. SIMPSON: That's not what the
18 complaint says so that's part of the difficulty of
19 dealing with this.

20 THE COURT: Well, you have Attorney Rohn
21 stating it on the record so --

22 MR. SIMPSON: Yes. And, you know, it's
23 nice to hear that it's main -- the asbestos is
24 mainly SCRG, but she's not said it's exclusively
25 SCRG so --

1 THE COURT: Well, she said none of her
2 clients have any asbestos-related diseases.

3 MR. SIMPSON: Yes, but somehow she feels
4 asbestos is significant to this lawsuit. It's
5 named -- it's -- and she hasn't amended her
6 complaint to remove all the allegations but --

7 MS. ROHN: Because you get mental anguish
8 from the exposure even if you don't have the
9 disease. But the exposure is from --

10 THE COURT: St. Croix Renaissance Group.

11 MS. ROHN: Exactly. We have no knowledge
12 that there was any friable asbestos in all the
13 depositions we took and all the site visits we took
14 from Alcoa or St. Croix Alumina. The only one we
15 know about is SRG.

16 THE COURT: Okay.

17 MR. SIMPSON: So getting on to the number
18 of different variables, we have people who are
19 homeowners, we have people who are renters, and we
20 people who are neither. They're inhabitants at
21 homes that other people rent. That gets to the
22 trespass claims and, you know, what kind of property
23 damage claims they can assert. So there are --
24 every plaintiff in this case has different possible
25 damages. There is not uniformity in --

1 THE COURT: Well, that's why it's not a
2 class action.

3 MR. SIMPSON: And that's why a Bellwether
4 approach doesn't work. That's why we need to get
5 deeper into it with what we've proposed and, as I
6 said, what we agreed upon, which is between 100 and
7 130 one-hour depositions. And then what we proposed
8 was that at that point we have a follow-up
9 conference to reach the next step. And maybe at
10 that point you proceed with Bellwether. Presumably,
11 at that point, there's going to be a lot that we
12 have been able to identify for settlement and some
13 that we cannot. So we think we're whittling it down
14 to make the case more manageable by that point.

15 THE COURT: Yes, but the concern I have
16 there is that you're going to have a thousand-plus
17 cases where there's going to be zero activity until
18 these first group are resolved.

19 MR. SIMPSON: You know --

20 THE COURT: That's not fair to the others.

21 MR. SIMPSON: We had proposed ordinary
22 discovery as an alternative, but we recognize --

23 THE COURT: That would not --

24 MR. SIMPSON: -- that that is also not --

25 THE COURT: That's impractical.

1 MR. SIMPSON: Right. So I mean if -- I
2 suppose we could do it this way and not stay the
3 others and have them --

4 THE COURT: Would you be willing to do
5 your approach if the plaintiffs choose the 130?

6 MR. SIMPSON: I think -- what we propose
7 was randomly choosing so --

8 THE COURT: I understand.

9 MR. SIMPSON: No, I don't think -- I'd
10 have to consult with my client about that, but I
11 don't think they'd agree with that.

12 I had an experience trying an exposure
13 case with a hundred-and-some plaintiffs in the
14 Yellow Cedar neighborhood. That was coming from the
15 Port Authority expansion of the runways. And we
16 tried to do a Bellwether approach in that, and it
17 just didn't work because the exposures were so
18 different. We ended up -- after initially trying
19 that, we ended up deposing every single one of the
20 plaintiffs.

21 We're trying to come up with a way that
22 makes this manageable for everyone. You know, this
23 is not -- deposing all 1,300 really is not a good
24 solution. Doing a Bellwether of 12 really isn't a
25 good solution either. This is kind of a

1 modification because what we're talking about --

2 THE COURT: What I've done in another case
3 that worked -- and this was a case involving 500
4 plaintiffs. It was asbestos, silica and catalyst at
5 the refinery. After -- well, it was -- it wasn't
6 500 at the time. It was 175, 190, something around
7 there, where those individuals went and got IMEs.
8 They all lined up between three days. The
9 defendants, you know, had -- they -- they choose
10 their doctor and all those individuals were sent for
11 examinations.

12 And after that -- of course, all the
13 reports were shared with all the parties. And based
14 on that, we had a Group A where plaintiffs choose
15 their best -- well, they choose four, the defendants
16 choose four, and the Court chose four. And those
17 cases proceeded, and right now they're in
18 settlement. They -- for all intents and purposes,
19 that case settled. They settled 500 based on
20 looking at those initial 12. Well, no, they had
21 IMEs from all. But based on the litigation, up to
22 eve of trial on those 12. The parties were able to
23 know their strengths, their weaknesses, and their
24 exposure for each of those as a representative
25 sample. And under that approach, all -- every case

1 was moving, some faster than others, and, you know,
2 every plaintiff, you know, when we had court, they
3 had the opportunity to come to court, and they --
4 each plaintiff felt that their case was being
5 treated fairly.

6 Now, I know that you guys are looking at
7 this from the perspective of your clients and as
8 attorneys, but I have to also look at it from the
9 institution of justice. And if you have 13
10 individuals who file claims and then we're going to
11 randomly say, hey, you -- we're going to hold your
12 claim for years while we proceed with these others,
13 how does that instill confidence in the institution?

14 MR. SIMPSON: So if I'm understanding you,
15 what you had was an IME of every plaintiff?

16 THE COURT: Correct.

17 MR. SIMPSON: Okay. Well, I mean I would
18 submit to you that what we're proposing with
19 one-hour depositions is not unlike -- I mean we
20 have --

21 THE COURT: No. And you do the IME before
22 we get to the depos.

23 MS. ROHN: My clients have no injuries at
24 this time. What are you going to IME them for?

25 THE COURT: No, I was just telling

1 you what --

2 MS. ROHN: There's no --

3 THE COURT: Okay.

4 MS. ROHN: -- reason for --

5 THE COURT: Okay.

6 MS. ROHN: -- an IME in this case. We're
7 not claiming ongoing injuries.

8 THE COURT: Okay.

9 MS. ROHN: We're claiming acute injuries
10 for which they have now resolved.

11 THE COURT: Correct. I'm trying to see if
12 we can resolve the issue of those plaintiffs who you
13 are not able to get in contact with at the moment
14 but yet still have these cases move along.

15 MS. ROHN: Right. I mean some of my
16 clients -- I can get ahold of my clients. Some of
17 them are in Mexico.

18 THE COURT: Of the 1,300-plus.

19 MS. ROHN: Believe me, all of my clients,
20 Your Honor, paid their filing fee.

21 THE COURT: Okay.

22 MS. ROHN: And my claims are by families,
23 which is also how we ought to look at this --

24 THE COURT: Right.

25 MS. ROHN: -- is because there's no sense

1 in trying one member of the family when there --

2 THE COURT: And that brings up another
3 issue. Even though there are 1,300 cases, some
4 cases have multiple plaintiffs.

5 MS. ROHN: Correct, because they're family
6 members. We did ours by homes.

7 THE COURT: Right.

8 MR. SIMPSON: There's 434 cases. There's
9 1,300 plaintiffs.

10 THE COURT: Okay. Okay.

11 MS. ROHN: So we did our by homes.

12 MR. SIMPSON: I think it's 434.

13 MS. ROHN: 438, I think, actually.

14 But -- so -- and, really and truly, except
15 for the issue of punitive damages, this is a case
16 where the damages in the -- in their cases range
17 somewhere between \$35,000 and \$75,000 less punitive
18 damages. They're acute exposures and they resolved
19 so --

20 THE COURT: Well, can't we Bellwether this
21 based on the threshold issues?

22 MR. SIMPSON: Again, what I was trying to
23 get to was I didn't think IMEs made sense in this,
24 but I --

25 THE COURT: Right.

1 MR. SIMPSON: -- do think hour-long depos
2 do because we have a lot of issues here on the
3 statute of limitations with individual plaintiffs.

4 THE COURT: But -- but -- but -- Attorney
5 Rohn, he's entitled to depose. That's not an issue.

6 MS. ROHN: I understand that but not --

7 THE COURT: He's entitled to depose.

8 MS. ROHN: -- 1,300 at the same time. I
9 can't close down every other case I have. They've
10 got tons of lawyers. They're going to have people
11 come in pro hac vice. I've got a small firm. Now,
12 I do have a firm that I'm trying to get to come in
13 with me on this, but I haven't got an agreement yet.
14 So you can't tell me, we want to go back to back and
15 do 1,300 depositions --

16 THE COURT: But you --

17 MS. ROHN: -- and do it --

18 THE COURT: -- did accept the
19 representation.

20 MS. ROHN: I understand that. But there's
21 no reason that -- you can do depositions by
22 agreement and availability. You can't tell me, shut
23 your office down for six months while we do
24 depositions.

25 THE COURT: No, but -- and I think this

1 issue happened with Attorney Beckstedt --

2 MS. ROHN: But I --

3 THE COURT: -- but --

4 MS. ROHN: -- but -- but I do think if we
5 pick out the case, get that case ready, have the
6 questionnaires answered, then later set a next set
7 of depositions, and then set a next set of
8 depositions. And then I do think that it would be
9 in the interest of the defendants' clients to adopt
10 the prior deposition testimony rather than spend the
11 thousands and thousands of dollars to redepose those
12 people in which I'm going to hand their deposition
13 to them and say, "Sir, do you recall giving this
14 deposition, is everything you said in this
15 deposition true?" Really, what's the sense of that?

16 THE COURT: I -- I can think of --

17 MS. ROHN: So I'm just --

18 THE COURT: -- a whole host of issues with
19 that so --

20 MS. ROHN: -- asking the defendants to
21 look at whether or not they really want to travel
22 all over the world, because these people are all
23 over the world, to do this.

24 THE COURT: Let's do this. Let's go
25 off -- we're off the record.

1 (Discussion held off the record from 3:18 p.m.
2 to 3:46 p.m.)

3 THE COURT: There's something I needed to
4 bring up.

5 Attorney Rohn, isn't -- what about
6 Glencore International, AG? They're named as a
7 defendant, but I don't see that they've been served
8 or that there's an answer.

9 MS. ROHN: Glencore became Cent -- did
10 Glencore become Century? No, Glencore is not in
11 here.

12 THE COURT: Glencore International, AG.
13 Glencore Limited is Attorney Hunter.

14 MS. ROHN: Right, but Glencore AG is not.

15 THE COURT: Okay. Are you withdrawing
16 them from the case, dismissing them from the case?

17 MS. ROHN: I have to check it because
18 you're giving me this cold, but I believe so.

19 THE COURT: Okay. They've never been
20 served and they haven't answered.

21 MS. ROHN: Right.

22 MR. SIMPSON: There was an order to show
23 cause --

24 MS. ROHN: Right. And I --

25 MR. SIMPSON: -- to serve last year.

1 MS. ROHN: And I think I said, no, we've
2 never served them, but the order never --

3 THE COURT: Okay.

4 MS. ROHN: But I just want to make sure
5 and check my file before I just say that on behalf
6 of my plaintiffs.

7 THE COURT: Okay.

8 MS. ROHN: It's Glencore AG, right?

9 THE COURT: Glencore International, AG.

10 MS. ROHN: Okay.

11 THE COURT: Okay. I'm going to need all
12 parties to meet and confer and submit a proposed
13 scheduling order within 20 days. And in that order,
14 you're going to have a plan, submit a plan as to how
15 the parties -- to recommend how the parties are
16 going to handle discovery. And it needs to -- that
17 plan needs to include -- all of these cases are
18 going to be moving at the same time but not at the
19 same rate, okay? I'm not going to approve any plan
20 that puts a stay on any of these cases.

21 Attorney Rohn, you're going to -- I think
22 you said you needed 20 days to file --

23 MS. ROHN: On the depositions.

24 THE COURT: -- on the Rule 32(a)(8) issue.

25 MS. ROHN: And we can meet and see if we

1 can resolve that.

2 THE COURT: Yes. Okay. Yes.

3 MS. ROHN: And I can give -- we'll file,
4 but I'll also give a list of the proposed
5 depositions --

6 THE COURT: Okay.

7 MS. ROHN: -- to the defendants.

8 THE COURT: And in the interim, everyone
9 will read Attorney Rohn's motion with regards to
10 whether an expert is needed to prove causation.

11 Okay. Everyone -- everyone -- all
12 defendants who's left in this case --

13 MS. ROHN: Can --

14 THE COURT: -- have all filed answers.

15 MS. ROHN: -- they read it and also
16 respond to it?

17 THE COURT: They can respond if they so
18 choose. If they don't, they waive their right to
19 make any arguments.

20 MS. ROHN: Okay.

21 THE COURT: Okay. Once I receive the
22 parties recommendation, I will issue an order so we
23 can get this case moving. In the interim, the
24 parties have Rule 26 obligations. As I said --

25 MS. ROHN: No. We're using the

1 questionnaire --

2 THE COURT: Okay.

3 MS. ROHN: -- in lieu --

4 THE COURT: Okay.

5 MS. ROHN: -- thereof as to the
6 plaintiffs. But the defendants still have their
7 Rule 26 obligations.

8 MR. SIMPSON: This has been briefed in the
9 discovery memos, Your Honor. We've maintained
10 everybody does the Rule 26 disclosures or I think we
11 proposed once we have 50 to 60 percent of their
12 disclosures -- of their questionnaires, that we
13 provide ours.

14 THE COURT: And I said earlier, I'm
15 willing to relax the discovery rules as they apply
16 to everyone.

17 MS. ROHN: Your Honor, there's 1,300
18 plaintiffs. There's five defendants. So we agreed
19 that they could put all the Rule 26 requests in the
20 questionnaires and we would answer those at the same
21 time we're answering the questionnaires. But you
22 can't tell me that I get no information as to who
23 they think the witnesses are or what documents you
24 think are relevant to this case for months and
25 months and months and months.

1 MR. SIMPSON: This is after we were told
2 it's all been done in the last case and --

3 MS. ROHN: But you don't --

4 MR. SIMPSON: -- ready to go to the trial.

5 MS. ROHN: But they won't adopt the last
6 case.

7 So you can't have it both ways. You can't
8 say, oh, you already know what it is in the last
9 case but you can't use the last case.

10 MR. SIMPSON: I'm not asserting that it's
11 all the same case. That's the assertion that has
12 been made by plaintiffs' counsel. But all
13 we're suggest -- all we suggested before was that at
14 a point when we have, I think we said 50 to 60
15 percent of the questionnaires, that --

16 THE COURT: Why do you need the
17 plaintiffs' information for you to do your initial
18 disclosures?

19 MR. SIMPSON: Because a lot of the
20 information depends upon what we receive from the
21 plaintiffs.

22 THE COURT: No, no, no, Attorney Simpson.

23 MR. SIMPSON: Not all of it.

24 THE COURT: It's Rule 26. You're
25 anticipating your defense. You kind of know who

1 your --

2 MR. SIMPSON: We know some of that, but we
3 don't know a lot of it.

4 THE COURT: Okay.

5 MS. ROHN: Well, they certainly know all
6 their liability people and who they're going to set
7 for liability. They certainly know the documents
8 that they think are going to prove they weren't
9 liable. You know, the idea that you have to ask --
10 know whether or not my client was in the Army or the
11 Navy or -- just tell me your issues on liability.

12 MR. HUNTER: Your Honor, perhaps if I may
13 address the issue.

14 THE COURT: Yes.

15 MR. HUNTER: Perhaps both sides should be
16 ordered to give the plaintiff the general Rule 26.
17 I'm sure she has a pretty good idea of how she's
18 going to present her case for all her clients rather
19 than specific to one, specific to one information in
20 the questionnaire. So maybe that should be
21 disclosed at the same time that we disclose our
22 Rule 26.

23 MR. SIMPSON: That makes sense.

24 THE COURT: Say that again.

25 MR. HUNTER: Plaintiffs, I'm sure, have a

1 pretty good idea of --

2 THE COURT: Okay.

3 MR. HUNTER: -- how they expect to prove
4 their case generally rather than specific damage
5 claims plaintiff by plaintiff. The questionnaires
6 will get into the specific plaintiff by plaintiff
7 information. So all parties should make their
8 Rule 26 disclosures at the same time with respect to
9 those general matters.

10 MS. ROHN: You know what, Your Honor?
11 This is why we need to adopt them. Because you know
12 what that's going to result in? Me producing all of
13 the depositions of all the people that have been
14 deposed, all the documents that were produced in the
15 prior case when we should just be adopting these
16 things. And I'll just get all the interrogatory
17 answers from the defendants before we submit
18 admissions against interest and all the documents
19 and I'll go give them two bankers or three bankers
20 boxes full of documents that we ought to be all
21 agreeing are part of this case.

22 THE COURT: Yeah, but that can only happen
23 if there's a rule that allows that.

24 MS. ROHN: Okay. Well, why don't we
25 finish briefing the issue --

1 THE COURT: Okay.

2 MS. ROHN: -- and then we'll decide on
3 this Rule 26.

4 THE COURT: Okay. So I'm going to suspend
5 Rule 26 for everyone.

6 MS. ROHN: Until there's a ruling on the
7 briefing.

8 THE COURT: Okay. The -- Attorney Rohn,
9 any of your clients, is English their second
10 language?

11 MS. ROHN: Many.

12 THE COURT: Are accommodations going to be
13 made in the questionnaire that the questionnaire be
14 translated in Spanish?

15 MS. ROHN: It will need to be in Spanish.
16 They'll -- I'll need to have English and Spanish.

17 THE COURT: Okay.

18 MR. SIMPSON: That's not a problem.

19 THE COURT: That's not a problem. Okay.
20 Great.

21 All right. Anything else, Attorney Rohn?

22 MS. ROHN: Not for the plaintiffs, Your
23 Honor.

24 THE COURT: Anything else, Attorney
25 Simpson?

1 MR. SIMPSON: No, Your Honor.

2 THE COURT: Attorney Hunter?

3 MR. HUNTER: No, Your Honor.

4 THE COURT: Attorney Hartmann?

5 MR. HARTMANN: I take it Your Honor
6 doesn't want to hear about the consolidation issues?

7 THE COURT: No.

8 MR. HARTMANN: Nothing further, Your
9 Honor. Thank you.

10 (Proceedings adjourned at 3:54 p.m.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the hearing in the case of *In Re: Red Dust*
7 *Claims, Master Case No. SX-15-CV-620*, in said Court, on
8 the 24th day of January, 2019.

9 I FURTHER CERTIFY that the foregoing 63 pages are a
10 true and accurate computer-aided transcription of my
11 stenotype notes of said proceedings.

12 I HAVE HEREUNTO subscribed my name, this 30th
13 day of January, 2019.



14
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16 CAROL GRECO, RPR
17 REGISTERED PROFESSIONAL REPORTER
18 Official Court Reporter
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