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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 In re Approximately \$3.5 Billion  
4 of Assets on Deposit at the Federal  
5 Reserve Bank of New York in the  
6 Name of Da Afghanistan Bank

22 Civ. 3228 (GBD) (SN)

Conference

New York, N.Y.  
April 26, 2022  
11:00 a.m.

7  
8 Before:

9 HON. GEORGE B. DANIELS,

District Judge

10  
11 -and-

12 HON. SARAH NETBURN,

U.S. Magistrate Judge

13  
14  
15  
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1 (Case called)

2 JUDGE DANIELS: All right.

3 Ladies and gentlemen, first, the purpose of this  
4 proceeding is so that everyone can get a clear understanding,  
5 from your perspective and from our perspective, of how we're  
6 proceeding with regard to these funds. My intent is to resolve  
7 whatever issues need to be resolved in the current turnover  
8 proceedings. Anyone who believes they have any interest, who  
9 are a part of the MDL or not part of the MDL, in these funds,  
10 if they're not already here in this proceeding, should seek to  
11 intervene, because this is where we're going to decide this  
12 issue.

13 I've spoken with Judge Caproni. We are in agreement  
14 that we will be moving forward, and it is not likely that any  
15 other proceeding will interfere or address the issues that we  
16 intend to address in the turnover proceedings prior to our  
17 moving forward.

18 We have a schedule. The most recent letters asked  
19 about adjusting the schedule. I'll let Judge Netburn address  
20 those issues, but I want to make something really clear. There  
21 is no other proceeding that anyone in this room can initiate  
22 that will be appropriate to address the issues that we're going  
23 to address in the turnover proceeding.

24 I'll be more direct about this. The filing that was  
25 made before Judge Caproni of a separate complaint by plaintiffs

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1 who are already plaintiffs within another case in which they're  
2 seeking to obtain funds in support of judgments here is wholly  
3 inappropriate. We can address that further, but I do not  
4 intend to spend any more of the Court's time or the lawyers'  
5 time addressing those issues. As far as I'm concerned, that  
6 case will not interfere.

7 I will give the lawyers in that case an opportunity to  
8 consider immediately whether they wish to, within the next 24  
9 hours, move to dismiss that case without prejudice. If that is  
10 not done, if that's not a decision that is made by the lawyers  
11 in that case, then I will act independently on that case and  
12 dismiss that case on its merits. I'll give you 24 hours to  
13 decide what to do. It is inappropriate to file a duplicative  
14 case that seeks to enforce the same rights based on the same  
15 set of facts and to enforce a judgment in a litigation in which  
16 the parties have been engaged for years. It is clearly not  
17 appropriate for a class action, a putative class action.

18 The fact is that's one of the reasons why we're all  
19 here in an MDL, because presumptively, this is not appropriate  
20 for a class action. These are individual claims, and I do not  
21 intend to prejudice any party. In the turnover proceeding, we  
22 intend to resolve certain specific issues. And I can tell  
23 you -- I have my notes here -- one, we're going to first  
24 resolve whether or not these subject funds are available to  
25 satisfy judgments against the Taliban. That's the first

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1 question to be resolved.

2 Second, which plaintiffs may recover and obtain money  
3 from those funds if those funds are, in fact, legally available  
4 to satisfy judgments?

5 And then discuss and determine what is an equitable  
6 distribution of those funds given the number of plaintiffs that  
7 are outstanding.

8 I can tell you right now my inclination is not that an  
9 equitable distribution is first come first served. My  
10 understanding is it will be resolved one of three ways. If the  
11 plaintiffs cannot agree, this Court will independently  
12 determine whether these funds are available and what is the  
13 appropriate distribution of those funds.

14 If there is a suggestion by the parties, that the  
15 parties agree upon -- and my understanding is that pretty much  
16 everyone has agreed to some form of distribution, other than  
17 the Ashton plaintiffs -- and again, my reaction to the filing  
18 of a separate case before another judge to try to obtain those  
19 funds is inappropriate not only because there's a case already  
20 pending here -- and that's filed to be related to a case that  
21 isn't even part of the MDL and isn't even a 9/11 case -- but  
22 also, as a class, the relief that the parties sought in that  
23 case advantages no one but themselves. So to say that there is  
24 somehow a reasonable representative plaintiff for all the other  
25 plaintiffs, quite frankly, from what I've read, I don't know

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1 any other plaintiff in this room who agrees with it.

2 This was what I consider to be a totally inappropriate  
3 attempt to simply advantage one set of plaintiffs. There's no  
4 legal basis to do so. There's no legal basis to file a  
5 separate complaint, given there's already litigation here, and  
6 there's no legal basis to attempt to make that into a class  
7 action to represent a class of plaintiffs. We have  
8 approximately 10,000 plaintiffs here, and I see no advantage to  
9 any of the particularly 9,000 of these plaintiffs who already  
10 have judgments or are in the process of obtaining judgments.

11 Now, I've spoken with Judge Caproni. We all know what  
12 the status is of the case that's before her.

13 One, it is not a 9/11 case.

14 Two, the plaintiffs don't have a judgment.

15 Three, the plaintiffs haven't even served in that  
16 case.

17 So that case is not likely to advance in any way that  
18 would interfere with the schedule that we anticipate in  
19 efficiently and effectively moving forward with to resolve the  
20 turnover proceeding.

21 Judge Caproni and I have been in contact, and we're  
22 going to keep in contact with an understanding that if some  
23 action needs to be taken in that case that might influence  
24 what's going on here, we will discuss it before it happens.  
25 But it is not likely that even in a general scenario -- there's

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1 no need for any further orders to prevent that from happening.  
2 That case not only is not ripe for this determination of the  
3 issues that the second case was attempting to join, there are  
4 even questions about whether or not that in and of itself is a  
5 viable case.

6 So everybody should understand that we will be  
7 proceeding as we intended to proceed. We will decide those  
8 issues in this litigation. I do not anticipate that it will be  
9 decided anywhere else, and I am going to indicate right now  
10 that no further filings of new complaints in any other court  
11 that address the claims raised in this case and before this  
12 Court are to be filed without leave of this Court. All right?

13 I want to make that clear to everybody. Most of the  
14 concerns that the parties have raised in their letters and in  
15 their actions are concerns that both Magistrate Judge Netburn  
16 and I have already discussed, have already factored in, have  
17 already considered, and we intend to move forward in order to  
18 make a determination as to if and how these funds are to be  
19 distributed.

20 As I say, my intent is to concentrate, to the extent  
21 possible, on what would be an equitable distribution of those  
22 funds if those funds are available. It is not, as I say, first  
23 come first served. If the parties have a suggestion, which is  
24 unanimous or which is the majority of the parties, the vast  
25 majority, we are willing to consider that.

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1           I don't want to go too far ahead of myself, but I'm  
2 even willing to consider, if it's appropriate, appointing a  
3 special master to help the parties agree on a proposal that we  
4 can consider and determine whether or not it's a reasonable  
5 distribution of those funds if those funds are legally  
6 appropriate to disburse to the plaintiffs in this case.

7           So I want to make it real clear there should be no  
8 more strategic filings in order to advantage any particular  
9 plaintiff. Quite frankly, if I have to make an equitable  
10 determination about who gets what, one of the things I may end  
11 up factoring in is which parties have been obstructionist with  
12 regard to the process and whether or not they should be treated  
13 on the same footing with the other plaintiffs.

14           Let me be blunt about it. The lawyers here are not  
15 crabs in a barrel. All right? You're all plaintiffs with the  
16 same type of claim and similar interests, but the determination  
17 of who is to recover, how much is to be recovered, and where  
18 that recovery should come from are individual decisions, for  
19 the most part, that have to be made. And we are in the  
20 process. We would be probably a good 25 hours ahead of where  
21 we are today if we didn't have to deal with this kind of issue  
22 in this case and we could continue to concentrate on moving  
23 along with the determination of damage awards and final  
24 judgments for the parties.

25           That's my initial statement.



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1           If someone wants to be heard, if you have any  
2 questions about that, let me hear it now, because this isn't  
3 rocket science that we're dealing with. We're moving forward  
4 efficiently, and to the extent that you have a concern that  
5 your interests are not being adequately considered, you can let  
6 me know.

7           Yes, Ms. Benett.

8           MS. BENETT: Megan Benett on behalf of the Ashton  
9 plaintiffs and the Wodenshek plaintiffs.

10           First, I'd like to thank the Court for having us  
11 appear in person for this conference and for stating your  
12 concerns as to equitable treatment and not sort of having this  
13 as a first-come-first-served process.

14           I do want to be clear we are the people who filed the  
15 class complaint. I understand the Court's frustration. I hear  
16 what the Court is saying about that. I want to clarify a  
17 couple of points.

18           First of all, the Ashton plaintiffs are not a small  
19 minority. We represent 800-some families, 25 percent of the  
20 victims killed in the 9/11 attacks. The reason that you see  
21 that we haven't joined into what has been described as the  
22 framework agreement is that because it is our understanding  
23 that that framework agreement would put the families of the  
24 Havlish plaintiffs in a position of receiving somewhere north  
25 of 80 percent of their judgments, the value of their judgments;

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1 the insurance companies receiving less than 20 percent of the  
2 value of their judgments; and the rest of the 2,900-some  
3 families receiving something on the order of 1 or maybe 2  
4 percent of the value of their judgments.

5 JUDGE DANIELS: Well, since it has not been laid out  
6 for me or Judge Netburn exactly what that agreement entails, I  
7 have not factored any of that in a determination at this point  
8 as to whether these funds are available for recovery and how  
9 these funds should be distributed.

10 MS. BENETT: I understand, and that obviously, both in  
11 this case and the Owens case, is the major threshold question.  
12 And when we had the initial conference in February, I think we  
13 had expected that the order, the decision-making would take  
14 those dispositive threshold questions first and then the  
15 thornier distribution questions as sort of a second-order  
16 problem. It appeared to us, based on the schedule in the  
17 turnover proceedings, that there was going to be a  
18 determination regarding distribution perhaps simultaneous with  
19 the question of whether those assets would be available at all.

20 To be clear, the 23(b)(1)(B) complaint would not  
21 advantage the Ashton plaintiffs over anybody else. In fact,  
22 the class definition was defined specifically in a way to  
23 include everybody who has a claim against those assets and  
24 would allow for transparent -- because to the Court's comment  
25 about the terms of this framework agreement, we haven't been

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1 presented with a formal term sheet at all either. So my  
2 description to the Court is driven, in part, by the fact that  
3 this is somewhat opaque and that the 23(b)(1)(B) class  
4 complaint seemed to us the most transparent, equitable and  
5 judicially overseen vehicle to consider the distribution,  
6 should the Court get to the distribution stage.

7 It also, and I understand that the Court -- I  
8 understand the hostility to the vehicle, but it did, to our  
9 mind, also provide the Court with a way to take jurisdiction  
10 over the entirety of those \$3.5 billion in assets. And I hear  
11 the Court's representation regarding the Owens case. The fact  
12 is that the April 11 decision from Judge Caproni granted an  
13 order of attachment and stated that the Owens plaintiffs would  
14 have priority.

15 It may well be that that is not ultimately the case,  
16 but given that posture, I think we were not unreasonable to be  
17 concerned that there was an ongoing race to the bank. The  
18 23(b)(1)(B) complaint is not unusual as a sort of settlement  
19 vehicle. It is specifically designed when there is a limited  
20 fund. It is not a question about determination of liability on  
21 an individual basis, but it's basically an equitable vehicle  
22 that is similar to a bankruptcy proceeding or reverse  
23 interpleader. And so the point about filing was simply to  
24 provide a vehicle that would treat all of the victims of  
25 Taliban-sponsored terrorism in the fairest, most equitable and

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1 most transparent basis.

2 It was not meant to advantage one family. It was not  
3 meant to advantage one law firm. To the contrary; we have  
4 consistently, throughout this process, been voicing our  
5 concerns about any distribution proceeding that would treat one  
6 family who suffered similar, if not identical, losses  
7 differently from another family who suffered those same losses.

8 I believe that everybody, all of the 9/11 families  
9 feel that way. I know that in statements to the press, that  
10 the lawyers for the Havlish group and Ms. Havlish herself  
11 stated that they care about fair treatment here. The  
12 23(b)(1)(B) limited class fund, to our mind, given the  
13 competing claims in the Owens case -- and to be clear, the  
14 Owens plaintiffs would also be able to participate in a limited  
15 class fund. This was not meant to exclude the non-9/11  
16 community. It was meant to be as welcoming as possible to  
17 everybody who can establish that they have liability claims  
18 against the Taliban and that they've suffered injuries  
19 proximately caused by the Taliban's support of mass terrorist  
20 attacks.

21 I don't know if the Court wants to hear anything more  
22 about that.

23 JUDGE DANIELS: No, I don't, because I understand your  
24 position and I understand what you attempted to do, but I think  
25 it's totally inappropriate in this case.

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1 I'll just give you one example. There's absolutely no  
2 reason why that complaint should have been filed before Judge  
3 Caproni rather than filed here, and I don't know that there's  
4 any party here who is going to say that your filing that,  
5 particularly as a class action, somehow advantaged them. It  
6 was an attempt to advantage you and disadvantage everyone else.  
7 As I say, unless the parties want to spend some more time  
8 briefing it and litigating it, I have determined that it is  
9 inappropriate and it is appropriate for dismissal. It does not  
10 add anything to this litigation, and it does not address any  
11 issues that are not being addressed in this litigation. That  
12 should settle the issue.

13 I will give you 24 hours to decide whether or not you  
14 want to move to dismiss this case, without prejudice, and if  
15 you make such an application within the next 24 hours, I will  
16 grant that application. If you do not make such an  
17 application, I will move forward to dismiss the case on its  
18 merits, because it has no utility. It has absolutely no  
19 utility.

20 Now, if it was motivated out of fear, I understand  
21 that; that's what you're basically saying to me. But I can  
22 assure you that the process we have in place, the  
23 communications that are almost daily at this point that  
24 Magistrate Judge Netburn and I have on this issue and the  
25 communications that I am now having directly with Judge

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1 Caproni, having the same conversations we're having here about  
2 what's going on over there and what's going on over here and  
3 whether or not cases belong over here and whether or not  
4 anybody can pick and choose and judge shop where they want to  
5 file their next claim, that clearly is to be resolved in this  
6 MDL litigation.

7 So the fact is you should let me know whether you want  
8 to step aside and focus on the turnover proceeding. If the  
9 Owens plaintiffs want to come in and they think they've got an  
10 interest and they want to participate in the turnover  
11 proceeding, they can. But we intend to move forward and  
12 resolve this issues expeditiously, step by step, giving  
13 everyone an opportunity to be heard. There's no reason to  
14 believe that there's any concern that these issues are going to  
15 be resolved somewhere else before they're resolved here.

16 You made your calculation that this was the way that  
17 you wanted to proceed, by filing a separate lawsuit related to  
18 Owens. But I want to make clear to you and to everybody else  
19 who might want to consider doing the same thing, it's not going  
20 to happen. What you will do is not put yourself at the front  
21 of the line; you will end up putting yourself at the back of  
22 the line by taking those kind of actions.

23 You know we have a forum to resolve these issues.  
24 That is the only forum that exists to resolve these issues  
25 currently. If that changes, then we can address it. But I

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1 don't anticipate it's going to change, and I don't anticipate  
2 that Judge Caproni is going to take any action in that infant  
3 case to interfere with a determination that all of you are  
4 going to have an opportunity to participate in and will be  
5 resolved here and resolved with the availability and the  
6 distribution of those funds, if those funds are available to  
7 distribute to the parties.

8 I don't want to spend a whole lot more time on this,  
9 unless you want to spend a lot more of your time on this.

10 MS. BENETT: No. I just want to correct a couple of  
11 things.

12 First of all, to be clear, the class complaint -- and  
13 I hear the Court on that, but I want to make clear it would not  
14 have advantaged the Ashton plaintiffs. We would not have been  
15 driving the process the way the Havlish attorneys suggested in  
16 their filing yesterday. It would have been a judicially  
17 overseen process.

18 JUDGE DANIELS: Well, who would it have advantaged  
19 then?

20 MS. BENETT: All of the families who are victims.

21 JUDGE DANIELS: Why? They're perfectly satisfied to  
22 have this issue resolved in a turnover proceeding.

23 MS. BENETT: No, no. That's not true. It's not all  
24 of the 9/11 families who are perfectly happy to have it  
25 satisfied in the turnover proceeding, and it's and it's not all

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1 of the victims of Taliban-sponsored terrorism.

2 JUDGE DANIELS: Who else are you referring to other  
3 than yourself?

4 MS. BENETT: All of the embassy bombing victims, and  
5 to be clear --

6 JUDGE DANIELS: Who else are you referring to, other  
7 than your client?

8 MS. BENETT: The 25 percent of the 9/11 families that  
9 we represent.

10 JUDGE DANIELS: I'm sorry. I have not received any  
11 communication from any other lawyers saying that they are in  
12 agreement with what you did.

13 MS. BENETT: They aren't. They made a different,  
14 tactical decision. They wanted to enter into an agreement to  
15 hedge their bets and guarantee some modest economic recovery  
16 for their clients at a grossly disproportionate value vis-à-vis  
17 the insurance companies and the families of a smaller number of  
18 victims. That was a different decision.

19 We made a decision to file this because we thought it  
20 wasn't right to disadvantage 2,900 --

21 JUDGE DANIELS: It should have been filed here.  
22 That's my first point. It should have been filed here. You  
23 don't get to file it in Wyoming.

24 MS. BENETT: I hear you.

25 JUDGE DANIELS: We're in the middle of an MDL that's



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1 been going on for years and involves thousands, as you say, of  
2 plaintiffs who have a similar interest in these funds. That is  
3 not the appropriate way to proceed. It's not even the  
4 efficient way to proceed. It's the inefficient way to proceed,  
5 given the fact we are engaged in turnover proceedings.

6 MS. BENETT: I hear you on that point, and I know the  
7 Court recognizes this, but I do want to just state on the  
8 record we filed with -- in connection with marking it related  
9 to Owens for one reason, which is that that was the only case  
10 that had a judicial restraint on the funds. It's an *in rem*  
11 proceeding against \$3.5 billion. We sent a copy. As the Court  
12 knows, we sent a copy of our filings. We filed them the same  
13 time in the MDL, and I recognize that this was not how the  
14 Court would have --

15 JUDGE DANIELS: Well, look --

16 MS. BENETT: But we did not try to hide it. We  
17 provided and we trusted --

18 JUDGE DANIELS: If you don't want to participate here  
19 and you want to go sit over there, maybe I'll consider that.  
20 But you know that's not what you want to do.

21 MS. BENETT: We want all of the claims to the \$3.5  
22 billion to be consolidated in front of a single court.

23 JUDGE DANIELS: And that's this Court.

24 MS. BENETT: And that's fine.

25 JUDGE DANIELS: There's no reason to believe that

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1 that's supposed to be Judge Caproni.

2 MS. BENETT: But we only believed that because Judge  
3 Caproni had issued the April 11 order restraining the assets  
4 and because in connection with the previous effort to have the  
5 Owens case brought into the MDL, both courts rejected that. So  
6 we gave both courts the complaint. Certainly, in retrospect, I  
7 wish that we had marked it as related to both. I'm not sure if  
8 that's even an option on the form, now that I'm thinking about  
9 it.

10 JUDGE DANIELS: No, it's not. It would have been an  
11 inappropriate option.

12 MS. BENETT: We gave both courts, we intended to give  
13 both courts notice and trust the courts to decide which venue  
14 was proper. But the point was always that the 3.5 billion  
15 should be adjudicated by a single court, including all those  
16 threshold questions that are going to be dispositive of whether  
17 this money is available to satisfy any judgments in the first  
18 place.

19 So the filing of the class complaint was meant to, A,  
20 have all the adjudications regarding those assets from a single  
21 court; and two, as I said, and I -- you know, I hear the  
22 Court's response to this. But it was truly because we were  
23 concerned about a process that was going to so grossly  
24 disproportionately treat 9/11 family members in a way that  
25 our -- and I speak to our clients all the time. I know the

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1 same is true even for clients represented by firms that reached  
2 a different decision, that the distribution as proposed in the,  
3 initially in the turnover proceedings was so deeply troubling  
4 to our family members that we did not believe that we could  
5 participate in the framework agreement that would have put, you  
6 know, treated one person's life as worth 2 percent of the  
7 others'.

8 JUDGE DANIELS: As I usually say, that was a hallway  
9 debate that you had with the others. That was not an issue  
10 that this Court raised. That is not an issue that this Court  
11 adopted. This Court isn't even aware of what the agreement is.  
12 The appropriate place to resolve those issues and understand  
13 how we were ultimately going to proceed is in this forum, in  
14 this courtroom.

15 MS. BENETT: And I think that that's -- and to the  
16 extent that we can do so with judicial oversight and in a  
17 transparent manner, that will provide real comfort to the  
18 family members. Before the Court's order on Thursday, we had  
19 intended to file something noting that we were -- you know,  
20 given that the framework agreement had been discussed in papers  
21 but without terms, we did intend, before our attention turned  
22 to the hearing this morning, to ask the Court to perhaps  
23 explore what the terms of that framework agreement looked like,  
24 because like I said, our position has been all along that every  
25 single family member, all 2,977 families, should be treated

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1 fairly and equitably; that the agreement, as we understood it,  
2 would not only fail to do so but would fail to do so in a very  
3 dramatic fashion; that the 23(b)(1)(B) class complaint was a  
4 vehicle that could take into consideration certain concerns  
5 that parties have raised previously of those who have not  
6 participated in the USVSST fund, which has made, to be clear,  
7 very modest payments to some of the 9/11 family members, that  
8 their decision not to participate in that fund could be taken  
9 into consideration when fashioning any distribution should the  
10 assets be available through the class complaint -- through the  
11 limited class fund, rather.

12 JUDGE DANIELS: And you all have the opportunity to  
13 raise those issues before this Court.

14 JUDGE NETBURN: Right. I think the thing that's most  
15 frustrating here is you could say a lot about this MDL, but you  
16 could not say that we haven't given everybody an opportunity to  
17 be heard. We allow everybody to speak up. We want every  
18 family to participate, and filing this class action before  
19 Judge Caproni feels like an end run around that process. And  
20 that feels inappropriate. I understand that you represent a  
21 quarter of the families, but the vehicle that you chose to do  
22 this feels completely like you're trying to slot out everybody  
23 else when you have never been denied an opportunity to be  
24 heard.

25 I think there's lots of questions about your class

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1 complaint, as evidenced by this conference, as to whether or  
2 not you would be adequate counsel, given the opposition so many  
3 people have; whether or not your claims are typical; whether or  
4 not you can prove that class is a superior method over the MDL.  
5 All of those things are very serious questions in my mind and  
6 point to a not-well-thought-out choice. And as a result, we  
7 have all spent, as Judge Daniels said, dozens and dozens of  
8 hours focusing on this charade instead of focusing on the real  
9 issue.

10 So if you want to be heard on what you think is an  
11 appropriate distribution, should the Court determine that those  
12 funds are available, you will have that opportunity to be  
13 heard. But going about it this way leaves a very off taste in  
14 our mouths, and it doesn't feel like it's being done in the  
15 interest of the class. It feels like it's being done in the  
16 interest of your clients because your clients feel like they're  
17 not going to get what you think is appropriate. And I'd like  
18 to hear about this, but not through this vehicle.

19 MS. BENETT: Understood.

20 Just to be clear, Judge, at the February 22  
21 conference, there was the *sua sponte* questions about how  
22 anybody without a liquidated damages judgment would have  
23 standing to participate in a turnover proceeding as a sort of  
24 the threshold matter, and it was at that point that we became  
25 concerned. And I hear what the Court is saying about the time

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1 and effort spent thinking about an equitable process here. And  
2 again, it's obviously very reassuring to the family members;  
3 I'm sure all of them, not just those we represent. But we did  
4 have concerns that there would be -- we didn't know how it was  
5 going to unfold.

6 The class complaint was -- and I, again, hear the  
7 Court. I can say it was not meant to be an end run at all. To  
8 the contrary, and it's not meant to be outside of the MDL. It  
9 is a limited class fund that could be available for purposes of  
10 resolving claims to the DAB assets within the MDL. It's not --  
11 there are no sort of -- there are no liability questions. I  
12 mean depending on how -- and again, the way the class was  
13 crafted was meant to be as fair and reasonable as possible  
14 given the nature of the claims already asserted by various  
15 parties against the Taliban and against the DAB assets.

16 I don't know that it's worth answering the Court's  
17 questions or addressing the Courts' complaints. I will say  
18 it's certainly not meant to be a charade. It was meant to be a  
19 vehicle that would -- you know, we thought that the Court might  
20 welcome as a method for this distribution, given also what the  
21 Court said at the February 22 conference about being sort of  
22 bound by New York State priority rules and the same -- Judge  
23 Caproni echoing the same at the March conference of the Owens  
24 hearing.

25 And the fact is that the Rule 23(b)(1)(B) limited

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1 class fund would actually take jurisdiction over all of the  
2 assets and would provide a way for the Court to not have to  
3 worry about the built-in inequity of the priority rules in a  
4 case like this, where you have a mass terror attack or several  
5 terrorist attacks with sort of predetermined damages, judgments  
6 issued against the co-joint tortfeasor, would allow the Court a  
7 means by which to address this equitably without having to be  
8 concerned with the New York State priority rules, which I think  
9 it's fair to say certainly didn't contemplate this particular  
10 situation but also don't seem to have fair application in an  
11 MDL, where the use of those priority rules would sort of force  
12 the Court into the position of choosing, you know, one person,  
13 one identically situated person over another.

14 I don't know if it's --

15 JUDGE DANIELS: Those are tough choices, but this  
16 Court is prepared to make those choices. OK? And it's not up  
17 to you to make those choices, to reframe it to your advantage.  
18 Those issues will have to be addressed. We will address every  
19 one of those issues after giving everyone a full opportunity to  
20 give their input. Neither you nor any individual lawyer in  
21 this room has the ability or the right to define that for this  
22 Court or for the rest of these plaintiffs.

23 All of these plaintiffs have the same interest that  
24 you have in making sure that their clients get as much  
25 satisfaction of their outstanding damages as you do. That's to

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1 be decided in the same room at the same time for all of the  
2 plaintiffs, not to be decided in a separate courtroom, in a  
3 separate litigation, while we're trying to figure out what  
4 you're doing across the hall.

5 MS. BENETT: I hear you, and I know I've said this  
6 already. I just want to be clear. The proposal that we put  
7 forward -- first of all, this Court could oversee a limited  
8 fund.

9 JUDGE DANIELS: You didn't bring it to this Court.  
10 You didn't give us any indication --

11 MS. BENETT: I understand.

12 JUDGE DANIELS: -- that that was the case. You gave  
13 us the opposite indication.

14 MS. BENETT: My point is that this Court, of course,  
15 could take jurisdiction over that if it chose to, but I just  
16 want to clarify that it would not advantage the family members  
17 we represent over somebody else. To the contrary, it is  
18 currently the only, the only vehicle, procedural vehicle we see  
19 that would not do that.

20 JUDGE DANIELS: Thank you.

21 MS. BENETT: I'm sorry. I just wanted to clarify that  
22 the proposed limited class fund would not, in fact,  
23 advantage -- well, that's not -- it would advantage -- it would  
24 be more advantageous to the 2,930 non-Havlish family members  
25 than strict application of New York priority rules, but it



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1 would not be more advantageous to the family members we  
2 represent vis-à-vis all of the other family members of those  
3 killed and injured in Taliban-sponsored terrorist attacks.

4 I understand, and I've heard both of the judges  
5 express your displeasure and believe that this was  
6 gamesmanship. I want to be clear. We filed this in order to  
7 treat every family that was a victim of a Taliban-sponsored  
8 terrorist attack on an equal and fair basis, not to advantage  
9 our clients, not to advantage certain family members over  
10 others and not to advantage us. In fact, a limited class fund  
11 would be overseen by the Court. It would not be overseen by  
12 the lawyers.

13 This was not a question about class counsel fees.  
14 This was about making sure there was a vehicle, given what we  
15 had heard at the two prior hearings, in the Owens case and this  
16 case, about the Court's feeling bound by New York State  
17 priority rules and given what the contours of this framework  
18 agreement, which I understand neither I nor the Court know the  
19 specifics of, but I am fairly confident would not have treated  
20 family members on a fair and equitable basis.

21 JUDGE NETBURN: I think Judge Daniels and I both don't  
22 want to get too far along on the merits of this class  
23 complaint, but to the extent what I'm hearing is that you think  
24 filing a class action would obviate the need or the obligation  
25 of the Court to consider New York priority rules, why do you

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1 think that? Wouldn't there still be an application of priority  
2 at least within the class complaint, or you think that just  
3 disappears then and there wouldn't be subclasses, for instance?

4 MS. BENETT: Do you mind if I -- my cocounsel, Ms.  
5 Trzaskoma, who has more familiarity with this process, can tell  
6 you why. But there could be an equitable way to treat people  
7 based on, for example, what category you fall into. But I do  
8 not believe that New York State priority rules would have any  
9 application in the -- that basically the \$3.5 billion goes into  
10 a judicially supervised equitable trust, and then it is for the  
11 Court to decide without application.

12 The only reason New York State priority rules are at  
13 issue here is because of Federal Rule of Civil Procedure 69,  
14 which says that in the execution of judgments, the Court should  
15 look to the law of the state where it's situated. Under a Rule  
16 23(b)(1)(B) limited class complaint posture, however, you're  
17 not looking at the execution of judgments. You're looking at  
18 the people who have claims. However the Court would define the  
19 class, you're looking at people who fall into that class who  
20 have claims against that fund. That's why it's an *in rem*  
21 proceeding.

22 I think in the letter last night, one of the parties  
23 had said they don't even know who the defendants are, but  
24 that's because it's an *in rem* proceeding against these assets  
25 themselves, and so New York State priority rules don't come

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1 into play because you're not looking at execution of judgments.

2 JUDGE DANIELS: All right. Did you want to be heard  
3 further on that?

4 I don't want to spend a lot of time debating  
5 backwards. I understand your position. After we have this  
6 discussion, as far as I'm concerned, as I always say, we start  
7 this litigation anew. I'm not holding this against the parties  
8 at this point, but I expect you to conform your conduct in the  
9 future consistent with the way this MDL is established and the  
10 issues that are supposed to be decided in this MDL. That  
11 filing before Judge Caproni is inconsistent with that for a  
12 number of reasons that we just discussed.

13 So as long as you understand and everyone else  
14 understands -- this is not just for you; it's for anyone else's  
15 benefit who thinks, OK, this is a way that I'm supposed to  
16 change the issues that are before the Court and have them  
17 decided in the way you want them decided. That is not the way  
18 we're going to proceed. Due warning to everyone is that you  
19 will do nothing but disadvantage your clients by this kind of  
20 conduct in the future rather than advancing the possibility of  
21 an equitable distribution of these funds if these funds are, in  
22 fact, available.

23 Yes.

24 MS. TRZASKOMA: Yes, your Honor.

25 JUDGE NETBURN: Could you just state your appearance

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1 for the court reporter.

2 MS. TRZASKOMA: Yes. Apologies.

3 Theresa Trzaskoma from Sher Tremonte on behalf of the  
4 Ashton plaintiffs and the class plaintiffs.

5 I don't want to tread on ground that Ms. Benett  
6 already covered, but I do want to explain what the relief was,  
7 is, that we are seeking in the 23(b)(1)(B) class.

8 This is with the reverse interpleader. It doesn't  
9 advantage anyone to be the class plaintiffs. It is seeking an  
10 equitable distribution of all the assets, including those that  
11 are subject to the attachment order that Judge Caproni issued  
12 in Owens.

13 Prior to our filing of that class action, it  
14 appeared -- perhaps we were reading tea leaves, but there were  
15 comments on the record in both this MDL and by Judge Caproni  
16 that strict priority rules were going to apply, and that is not  
17 appropriate in these circumstances.

18 A Rule 23(b)(1)(B) class action cuts through all of  
19 that. It allows the Court to do equity, which is what I hear  
20 the Court wants to do. It allows a single court, currently  
21 this MDL Court, to take control and jurisdiction over the \$3.5  
22 billion and then to determine what is an equitable distribution  
23 based on whatever factors all of the individual plaintiffs'  
24 lawyers want to make arguments to the Court. It is not  
25 controlled by class plaintiffs. It is solely in the Court's

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1 discretion.

2           And that's the vehicle we brought to -- I realize we  
3 brought it to Judge Caproni, which you've made clear was the  
4 wrong court. But it was not intended to circumvent anything.  
5 It was intended to provide a mechanism for, a procedural  
6 mechanism for dealing with New York priority rules, which were  
7 never intended to meet this extraordinary circumstance.

8           Rule 23 makes the New York priority rules irrelevant.  
9 It takes us into an equitable process, where New York priority  
10 rules don't even have to be considered. It preempts New York  
11 priority rules.

12           So it can argue the right mechanism for this very  
13 extraordinary situation.

14           JUDGE DANIELS: All right.

15           Before I turn to Magistrate Judge Netburn with regard  
16 to -- I know there were some questions and requests about the  
17 process and the dates of what things are due -- did anyone else  
18 want to be heard before we moved into that?

19           MR. KREINDLER: Good morning, your Honor.

20           Very quickly -- jim Kreindler -- and I'm not saying  
21 anything about the class action or the specifics, but I did  
22 want to just make one comment, your Honor, because we have been  
23 together wrestling with this case for 15 years. And even  
24 before that, it's a long history, starting with the 1996  
25 effective death penalty and Antiterrorism Act that was

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1 spearheaded by then Senator Biden and Senator Kennedy. And  
2 from that time on, when it comes to the states who are sponsors  
3 or involved with terror, whether it's Libya or Saudi Arabia or  
4 Iran, speaking personally, I have one principle in mind. And  
5 that is everyone -- every victim -- should be treated equally.  
6 And as your Honors both know, while it took 20 years,  
7 ultimately, we got \$10 million per death for 270 people from  
8 Libya in the Pan Am 103 bombing. And that's been my approach,  
9 and from the day or two after 9/11, it's something I've  
10 expressed to the clients.

11 And your Honor is quite right when you identified the  
12 fear we have that this approach, equal treatment for everyone,  
13 which has been something important to me for these 25, 30  
14 years, might be jeopardized by this, you know, race to file  
15 first or obtain writs or judgments first. And while I know  
16 it's taken a lot of time, speaking personally, I'm glad we're  
17 together, because at least personally, I feel that this  
18 commitment that I think we all share is a common theme, and we  
19 can achieve it not just with this fund but when we reach the  
20 promised land at the end of the case.

21 So I just wanted to thank your Honors for your time  
22 and, at least speaking personally, I am reassured that whatever  
23 misconceptions were there we've taken care of, and we're on  
24 track to do something good and right.

25 So thank you.

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1 JUDGE DANIELS: Thank you, Mr. Kreindler.

2 Does anyone else want to be heard?

3 MR. CARTER: Your Honor, very briefly. Sean Carter  
4 from Cozen O'Connor, your Honor.

5 There's been a fair amount of discussion today about  
6 the framework agreement, and I just want to provide a brief  
7 perspective on that for the Court.

8 There are many of us who recognized that there was a  
9 pool of funds here that was unprotected and subject to  
10 potential attack from parties outside of the MDL. And at the  
11 same time, we recognized the complexity of the issues facing  
12 this Court in trying to deal with the turnover issues,  
13 including because the procedural posture of claims on behalf of  
14 the various plaintiffs, differed wildly, from people who had  
15 actual judgments, who had moved for monetary judgments years,  
16 ago to people who had only recently filed claims the.

17 Within all of those issues, many of us sought to reach  
18 a range of compromises in that achieving a good result --  
19 perhaps not a perfect result, but a good result -- would also  
20 have streamlined this entire process for the Court. So when  
21 there's conversations here about what equity demands, what is  
22 equitable and what's fair, I think part of the consideration  
23 for the rest of us was achieving a good result that simplified  
24 issues for the MDL Court and allowing the entire case to go  
25 forward.

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1           That's all, your Honor.

2           JUDGE DANIELS: Yes.

3           MR. BAUMEISTER: Good morning. I'll be brief also.

4           JUDGE DANIELS: Put your appearance on the record.

5           MR. BAUMEISTER: Mich Baumeister, representing the  
6 Bauer plaintiffs.

7           I certainly am responding to Mr. Carter, and while he  
8 talks about this was an efficient way, I can tell the Court  
9 that my clients -- some of them are listening on the phone  
10 today -- were told by other clients that the Havlish plaintiffs  
11 would get 1.7 billion, his client would get 500 million. They  
12 were the deal people that would take it, and if you didn't  
13 agree to sign on, even though you didn't know what you would  
14 get as a client, even though you didn't know if there would be  
15 money, especially even Owens, if you didn't do it, at the end  
16 of the day you would get zero.

17           Some of my clients have been threatened. I received a  
18 letter threatening me, Do the deal. It wasn't about  
19 efficiency. It was about lining their pockets and  
20 disadvantaging the families.

21           So that's all I wanted to say.

22           JUDGE DANIELS: Well, the question of what is an  
23 equitable distribution, if that question is to be answered,  
24 will be answered by this Court. If all of the plaintiffs have  
25 a suggestion or some of the plaintiffs have a suggestion or



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1 some third party has a suggestion for the plaintiffs, the  
2 ultimate decision lies with the Court. So I urge you to agree,  
3 to the extent that you can agree, on what is, if you can, a  
4 joint position. If you cannot, those issues, the disputes  
5 between the parties with regard to what is an appropriate  
6 recovery for each plaintiff is an individual decision that has  
7 to be made by this Court. All right?

8 Anyone else?

9 Yes, sir.

10 MR. SCHUTTY: Thank you, your Honor. John Schutty. I  
11 represent a subset of the Ashton plaintiffs.

12 Your Honor, I want to thank you for your reassuring  
13 words. I can advise you that my clients have lived in fear  
14 since February 22 when the New York State priority rules were  
15 emphasized at that conference, and it was a growing fear among  
16 the 9/11 families that the Havlish plaintiffs at that time  
17 would take the lion's share of the \$3-1/2 billion. So I want  
18 to thank your Honor for clarifying that the Court's intent is  
19 to make an equitable distribution.

20 As you may know, I filed a letter, a motion requesting  
21 permission to contest the judgment that was entered in favor of  
22 the Havlish plaintiffs because that judgment was entered in  
23 2012 based on common law, and under the common law of the state  
24 of New York, for example, many of those plaintiffs would not  
25 recover money. Many of them would not get solatium damages.

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1 So I'd like the opportunity to address that issue with the  
2 Court.

3 And in addition, I just want to tell your Honor that I  
4 think the suggestion that a special master here would help to  
5 get together with the plaintiffs' attorneys to ensure an  
6 equitable distribution is something that should be thoroughly  
7 considered. Both judges sitting on the bench today worked so  
8 hard for us, and this issue seems to be a subset of what's  
9 going on overall in the litigation. So I just would like you  
10 to consider fairness and equity and remove some of the fear of  
11 some of the family members.

12 Thank you.

13 JUDGE NETBURN: I'll just note that I've received your  
14 letter application. I haven't acted on it. We will shortly.

15 Anyone else want to be heard?

16 JUDGE DANIELS: Ms. Benett.

17 MS. BENETT: Just briefly.

18 JUDGE NETBURN: Sure.

19 MS. BENETT: Sorry. One final suggestion from us.

20 I heard Judge Daniels on the 24 hours with respect to  
21 our pending class complaint. I'd ask if the Court might let us  
22 provide a short letter explanation of how that particular  
23 vehicle could work in a proceeding like this, specifically  
24 thinking of this now in light of Mr. Schutty's concerns raised  
25 in his letter and in his statements, that there is --

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1 JUDGE DANIELS: I have no interest in pursuing that  
2 option.

3 MS. BENETT: OK. I was going to offer the opportunity  
4 to explain a little bit of the procedural aspects of it.

5 JUDGE DANIELS: There's nothing that you can say that  
6 would convince me that rather than proceed in this MDL under  
7 this turnover order, that the alternative would be that we  
8 adopt the complaint that you have filed.

9 MS. BENETT: I hear you, Judge. Thank you.

10 JUDGE NETBURN: All right. I'm going to turn down the  
11 heat a little bit and talk about briefing schedules.

12 I understand that there's an issue related to the  
13 various amici that have filed briefs. I'm going to set a  
14 deadline of this Friday, which is April 29, for any other amici  
15 who wishes to be heard to file their leave application. I  
16 think at this point we have about five, and we will be generous  
17 in allowing appropriate amici to be heard if they wish.

18 So April 29 will be the deadline for any potential  
19 other amici, who might be listening in or here in the  
20 courtroom, to file any leave application. And I know that the  
21 Havlish creditors had proposed a more extensive briefing  
22 schedule. The Court really wants to move on this, as I imagine  
23 everybody else does. So my proposal is that any opposition  
24 that the Havlish and Doe creditors wish to file or a response  
25 be set at May 13.

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1 Any objection to that schedule?

2 All right. Hearing none, the deadline -- we'll issue  
3 an order today. Just to put it out on the record, the deadline  
4 for any amici who wish to file an amicus brief will be April  
5 29, and anyone who wishes to respond to those amicus, the  
6 merits of their briefs, will be due May 13.

7 All right. Anything further from anyone?

8 JUDGE DANIELS: All right. We're working hard. We  
9 encourage your assistance and your input. It makes a big  
10 difference, particularly -- and it's interesting that by the  
11 time we read the letters that you've sent us, we've already  
12 discussed half the issues that are in your letters, so it gives  
13 me some comfort that we're approaching this in the appropriate  
14 way and we'll be able to expeditiously make some decisions  
15 about this.

16 Obviously, the Court is not in a position to give any  
17 plaintiff a guarantee that they will recover these funds or any  
18 funds and the extent to which they will recover. But I  
19 guarantee you that our main goal is to make sure that all  
20 plaintiffs can recover as much of the available funds as  
21 possible in an equitable way.

22 Now, whether or not we face other legal hurdles with  
23 regard to priority or with regard to other issues that might  
24 affect that, we will confront them and we will address them.  
25 But it is our intent, to the extent, consistent with the law as

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1 we can apply it, to make sure that all plaintiffs get some  
2 degree of satisfaction. Obviously, no plaintiff in any case  
3 can be made whole. Nobody can bring back a deceased relative.  
4 Nobody can undo the damage that has been done, but we are  
5 focused on figuring out, and we continue to focus on figuring  
6 out, what actual funds might be available, what actual funds  
7 could be distributed, and what is a reasonable and equitable  
8 way to distribute those funds.

9 We still seek your guidance on that. We'll give  
10 further consideration as we go through the turnover proceedings  
11 as to whether or not we should initiate at this point a  
12 process, if the parties agree they would like a special master  
13 to look at those issues, but I can guarantee you that we will  
14 give you a full opportunity to be heard, as we have given you a  
15 full opportunity to be heard, on these issues -- the issues of  
16 the availability of funds and the issue of who is entitled to  
17 some of those funds and what would be the appropriate way to  
18 distribute available funds, not just the funds at issue here  
19 but any funds.

20 We know we're setting a framework for any other funds  
21 that might be available in the future and the parties will seek  
22 a distribution of those funds. So be assured that any concerns  
23 that you have about certain issues, the appropriate way to  
24 address them is to bring them to the attention of this Court  
25 and to have the other side -- anyone who disagrees with your

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1 position -- be able to weigh in in this proceeding, in this MDL  
2 proceeding. And we will fairly and, hopefully, efficiently  
3 move forward and give you some assurance that although we give  
4 no one any guarantees that you will be satisfied with the  
5 ultimate result, we can give you assurance that you will all be  
6 heard. Your positions will be considered, and we will make the  
7 best decision that we can.

8 My position is always this -- that the best decisions  
9 aren't made by smart people. They're made by informed people.  
10 Give us the information that you think is compelling, and we  
11 will factor it in. When we make mistakes, we usually say, Oh,  
12 if I'd only known X. Right?

13 So keep us informed. To the extent that you genuinely  
14 want to assist us, we encourage you to do so. To the extent  
15 that you just want to simply advantage your own client, we are  
16 deciding these cases on their merits, not on any other basis.  
17 So keep that in mind.

18 I think it was important for us to meet here. If  
19 there are other issues that this raises or that come up, bring  
20 them to our attention right away. As I say, despite everything  
21 else that we're doing, literally we're in contact almost on a  
22 daily basis at this point with regard to these issues so we can  
23 move forward efficiently and give you a result that maybe not  
24 everyone will be total satisfied with, but hopefully a result  
25 that you can understand, that is a reasoned judgment,

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1 consistent with the law, as to how you should participate in  
2 distribution of funds and what the relationship is between the  
3 plaintiffs.

4 My final reminder is you are all plaintiffs. Your  
5 clients are all victims. OK? That's what should be driving  
6 everyone here. That's what drives us as we're addressing these  
7 issues. Right now, everyone before this Court is on an equal  
8 footing, and everyone should consider when you make your  
9 arguments whether those arguments support everyone's position  
10 or whether those arguments simply support your position or  
11 whether those arguments disadvantage some at the expense of  
12 others, because that's the first evaluation that I'll have with  
13 regard to your conduct, your applications, and your filings.

14 Remember, this is the forum that we're going to  
15 resolve these issues. That's the bottom line of this  
16 proceeding. We're going to resolve it here, not before Judge  
17 Caproni, not before some other judge in this court, not in some  
18 other duplicative proceeding that is to address the same issues  
19 that we are already addressing here. Regardless of what any  
20 party believes, it is a more efficient, effective and  
21 advantageous way for us to proceed.

22 We've laid out the process and we're going to stick  
23 with that process, and as far as I'm concerned, that process is  
24 working. It will hopefully, and I'm confident it will, give us  
25 the best result that we could possibly reach on behalf of the

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1 plaintiffs and victims that have the true interest in this  
2 litigation.

3 Thank you very much.

4 Let's move forward, and we will proceed efficiently.  
5 If there are any other issues that need to be addressed with  
6 regard to any of these claims -- of liability or damages --  
7 obviously, my position is they should be raised with this Court  
8 on notice to all the other parties, either jointly or having an  
9 opportunity to disagree.

10 Thank you all very much. And we will continue.

11 (Adjourned)

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