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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH TURNER, ET AL * Docket 05-CV-4206-L
* and Consolidated Cases
versus *
* April 6, 2006, 9:00 a.m.
MURPHY OIL USA, INC. *
* * * * * * * * * * * * * * * * * * New Orleans, Louisiana

STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Law Offices of Sidney D. Torres III
BY: SIDNEY D. TORRES III, ESQ.
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For the Defendant: Frilot Partridge Kohnke & Clements
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

PROCEEDINGS

(April 6, 2006)

1
2
3 **THE DEPUTY CLERK:** Everyone rise.

4 **THE COURT:** Be seated. Call the case.

5 **THE DEPUTY CLERK:** 05-4206, Patrick Joseph Turner,
6 et al versus Murphy Oil USA.

7 **THE COURT:** Counsel, make your appearance for the
8 record.

9 **MR. TORRES:** Your Honor, Sidney Torres on behalf of
10 the plaintiffs.

11 **MR. KROUSE:** A.J. Krouse and Danny Dysart. I believe
12 Kerry Miller and George Frilot, on behalf of Murphy Oil, will
13 be here shortly.

14 **THE COURT:** We are here in the monthly status
15 conference. I met a moment ago with liaison counsel and
16 members of the committees to discuss the agenda. They have
17 given me an agenda. I will take it in order. First we'll hear
18 from the plaintiffs, No. 6, revisit the common benefit
19 set-aside issue in light of Murphy's expanded settlement
20 program.

21 **MR. TORRES:** Your Honor, when the common benefit plan
22 was set in place, it was always envisioned that what we were
23 talking about is covering the individuals in the Murphy
24 footprint settlement area, people that would have made
25 settlements regardless of the class certification. What we

1 have now is Murphy is going beyond that footprint and settling
2 with people who are within the Court-certified area, but
3 outside of that footprint and in the future may be settling
4 with people even beyond the Court-certified area.

5 It is our position that at certification the
6 defendants took a very strong position that the Murphy
7 footprint was it. They not only had done the primary testing
8 in that area, the vast majority of the testing in that area,
9 but they also had hydrologists and experts who spoke about
10 topography and hydrology and why it couldn't go beyond this
11 area, the water wasn't high enough, there were barriers,
12 et cetera. We feel that now we are talking about a different
13 category. As we pointed out to Your Honor this morning, we
14 will bring before the Court a motion to expand Your Honor's
15 ruling.

16 **THE COURT:** Let's not do that. This is your motion.
17 I'll hear your argument. Let me hear from the defendant.
18 What's your position on this motion to modify?

19 **MR. MILLER:** Your Honor, this would be the motion to
20 modify the set-aside ruling or the class certification?

21 **THE COURT:** Modify the set-aside ruling.

22 **MR. MILLER:** Yes, Your Honor. We would certainly
23 oppose that. We are abiding by Your Honor's previous ruling
24 such that when any claimant comes in and settles with Murphy
25 and has a relationship with an attorney, we have created

1 procedures whereby the appropriate 10 and 2 percent set-aside
2 are being created and set forth in a separate fund. What
3 Mr. Torres is talking about are settlements that Murphy is
4 undertaking with people who are not represented by attorneys.
5 We think that is something that plaintiffs don't have a right
6 to, any type of set-aside common benefit from that type of
7 activity. These people are opting out. By opting out, they
8 are opting out of the class action and they are pursuing a
9 settlement on their own behalf.

10 Now, the area in which Murphy has expanded is a
11 very small area, Your Honor. Murphy's original settlement area
12 covered around 3,000 houses. The Court's area is around 6,000
13 houses. What Murphy has done is it is agreeing to settle with
14 people who are within the EPA area that was not within
15 Murphy's. We spent a lot of time at the class certification
16 hearing -- and I think Your Honor's ruling on class
17 certification reflects that the EPA area and the Murphy area
18 are very similar. The EPA area only contains an additional 600
19 houses that are not in the Murphy area. Of these 600,
20 approximately 100 had already tested positive and settled to
21 begin with. So you are only left with a population of about
22 500 people who Murphy is expanding an offer of settlement to
23 regardless of whether they test positive.

24 I think we explained in great detail in our
25 papers and at the hearing that Murphy's position has always

1 been you can qualify for a settlement if you are beyond the
2 Murphy settlement area, but if you test positive. That is
3 still Murphy's position with one small caveat; that is, if you
4 are within EPA, but not within Murphy, then you can qualify.
5 We know that only pertains to about 500 residences. That's
6 being done because of the EPA criteria and not because of
7 anything that has been done by the plaintiff lawyers.

8 **THE COURT:** Do you want to respond?

9 **MR. TORRES:** Yes, Your Honor. If I may, if
10 Your Honor does expand the common benefit, I would like to ask
11 the opportunity to address the amount, Your Honor, because it's
12 a little different category. When we were within their
13 footprint, we were envisioning that if people did it on their
14 own there would be no charge for attorney's fees or costs, and
15 if they had an attorney the 10 percent envisioned that would be
16 because they had an attorney. As we go outside of that area,
17 we have to bring up the fact we are now talking about what
18 would be the fair assessment of an attorney's fee because we
19 are talking about an area representing the class. It's not
20 just the 10 percent and the 2 percent set-aside. We would like
21 the opportunity to address what we feel would be the
22 appropriate attorney's fees and costs to assess outside of the
23 area that previously the set-aside had encompassed.

24 **THE COURT:** I have before me a motion to modify the
25 set-aside. The Court has ruled on the set-aside. The purpose

1 of the set-aside is to ensure that work is being done for the
2 parties and also that the people who are within a certain area
3 and profit from the work pay for the work at an appropriate
4 amount.

5 When I looked at this initially, I felt that the
6 people within the area that the Court had set encompassed not
7 only the Murphy area, but also the EPA area. My feeling was
8 that the people within the area Murphy had indicated from the
9 outset that they were willing to settle with ought not to pay a
10 tariff. Even before any claims were filed, Murphy was there
11 indicating that they were interested in resolving the matter
12 and offering some plan that people could partake of. It was my
13 understanding that Murphy was limiting their approach to that
14 particular area. It seemed to me it was appropriate not to
15 impose a tariff on those individuals. I did not perceive of
16 the people who were outside of that initial area as covered by
17 it, so I do feel that modification is in order.

18 I don't need any assistance on the amounts. I
19 think that they ought to pay a tariff for attorney's fees and
20 also costs. If they don't have a lawyer, then that might well
21 be reflected on a lower amount because they're going to have to
22 pay as opposed to paying counsel. I do think it's
23 inappropriate for people who are outside of Murphy's footprint
24 to pay something because they have gotten some benefit.

25 Murphy now has expanded their footprint.

1 Whether they did it because of the EPA or because of the class
2 certification hearing, I feel that it's because of the class
3 certification hearing. The EPA preceded the class
4 certification hearing. I will issue a modification order in
5 that regard.

6 **MR. MILLER:** Your Honor, may I ask you to certify
7 that ruling under 1292(b)? These people specifically are
8 opting out not to have counsel, yet they are being forced to
9 pay counsel fees for counsel they don't want to have in the
10 first place.

11 **THE COURT:** Okay. I'll consider that.

12 **MR. MILLER:** Thank you, Your Honor.

13 **THE COURT:** Let's go to the next area.

14 **MR. TORRES:** Your Honor, on the discovery problems, I
15 think we discussed that there's a time next week which we will
16 report back to the Court.

17 **THE COURT:** Okay. Let's put that on the record.
18 What's the discovery problem?

19 **MR. TORRES:** Mr. Bruno, Your Honor, will address
20 that.

21 **MR. BRUNO:** Your Honor, there are just two issues,
22 first with regard to delay by which the defendants will respond
23 to our previously submitted discovery requests, and the second
24 regards subject matters which they believe are not discoverable
25 at this time. We served a 30(b)(6) some weeks ago. They have

1 indicated to us we will not see any production until the 17th
2 of April. I think we have agreed that on Monday defense
3 counsel and plaintiff counsel will meet first to go through the
4 entire request to ascertain if there are areas which are vague.
5 We will certainly define and narrow to the extent that we can.
6 The defendants will produce documents that they have on a
7 rolling basis once they get them. Finally, anything that we
8 can't resolve on Monday will be the subject of a motion to
9 compel, which I'm loathe to do, but if that's what we need to
10 do I'll do it.

11 **THE COURT:** Both sides need to recognize that from
12 the defendant's standpoint they can't be asked to produce the
13 world. It's just impossible for them. From your standpoint, I
14 understand when you get into the case you don't know exactly
15 the specifics, so you make it broader, but you all are now into
16 the case. You have got to be able to talk and tell defense
17 counsel, "Look, this is the limited area that I see that's
18 important." If you need another area, then ask for another
19 area later on. If you ask for the world in the beginning, you
20 are going to get nothing. At this point, you have got to be a
21 little more specific. From the defense counsel standpoint,
22 they are going to give it to you on a rolling basis, but you
23 have to understand that they are going to give you what they
24 have got. They may get something later on and they will give
25 you that. It's not that they are withholding; it's just that

1 they don't have it yet. Both sides have to understand the
2 situation.

3 **MR. KROUSE:** Your Honor, I just want to address the
4 issue. A.J. Krouse. I want the record to reflect that Murphy
5 did receive a draft of a 30(b)(6) notice. As I explained to
6 the Court, that notice contains 50 requests for production of
7 documents. Some of the documents have been produced during the
8 course of the class certification hearing to date. One of our
9 tasks, as Joe has asked us to do, is literally pigeonhole the
10 documents that have been produced by Bates number and/or
11 exhibit number into the request for production of documents.
12 It's time-consuming.

13 **THE COURT:** Sure.

14 **MR. KROUSE:** We are endeavoring to do that. I will
15 move up the date. I can meet with Joe this morning, after this
16 hearing, or any time this afternoon before 3:00.

17 **THE COURT:** My instinct on this one is that you just
18 need to communicate. I don't see this as a problem. I just
19 see it as a communication situation. Let's take the
20 opportunity to communicate and, rather than file a bunch of
21 papers, just talk to each other. Then if you have a problem,
22 get to me and I'll resolve it. What's next?

23 **MR. TORRES:** Item 2, distribution of property test
24 results to class members. We had discussed that with
25 Your Honor. It's my understanding that the defendants will

1 provide that information to us and we will distribute it to the
2 class members.

3 **THE COURT:** Yes. The defendants have made a bargain,
4 so to speak, with the class members saying, "If you allow us to
5 come on your premises and test your premises, you're going to
6 get the results." I think the homeowners are interested in
7 getting the results. From the standpoint of Murphy, that's
8 what they said they would do. So the individual homeowners
9 need to get that material. On the other hand, we have these
10 individuals who are represented until they opt out -- if they
11 ever opt out -- so the Court is concerned about who sends it.
12 The way to do it is to get the material from Murphy to the
13 plaintiff class counsel and the class counsel will forward it
14 to the individual homeowners.

15 **MR. MILLER:** Your Honor, I think time is of the
16 essence on this issue. These people are entitled to the test
17 results. These are all tests that were ordered before the
18 class was certified, so we are talking about January 30. What
19 I would like to do today, if we could, is resolve the manner in
20 which these results are going to be disseminated.

21 I presented a form letter to you and to
22 Mr. Torres in chambers before the hearing. If Your Honor or
23 Mr. Torres wants any revisions, please let me know. We are
24 happy to make the revisions, send them to Mr. Torres in
25 whatever fashion he wants, put them in envelopes, put stamps on

1 them, put the envelopes on the outside, whatever it takes to go
2 ahead and get these results out quickly.

3 **THE COURT:** You and Mr. Torres talk. Let me hear
4 from you today as to whether or not you can agree. If you
5 can't, then I will draft the letter.

6 **MR. TORRES:** Your Honor, Mr. Lambert actually has
7 some comments at this time. Would you like us to reserve until
8 we look at the letter?

9 **THE COURT:** Let's get in on this discussion, then
10 draft a letter or whatever you need. If you can't agree, give
11 it to me and I'll draft the letter.

12 **MR. LAMBERT:** Comments?

13 **THE COURT:** Sure.

14 **MR. LAMBERT:** With regard to the testing, as we
15 briefly discussed, we believe that scrape sampling bias,
16 meaning looking for the oil, is appropriate as reflected in the
17 EPA sampling guidelines. The defendants have a company which
18 is using the composite sampling technique, which we think
19 greatly dilutes the sample. We think that those sample
20 results, they are not just a number, there's an explanation
21 that needs to go along with them, and that's what we will be
22 discussing. Thank you, Your Honor.

23 **THE COURT:** Okay.

24 **MR. TORRES:** Item 3, ensuring that the written notice
25 is sent to people who request hard copies of notice from

1 Murphy, Mr. Miller has confirmed he spoke to Jay Andry and that
2 is being done.

3 **MR. MILLER:** Your Honor, on the issue of notice of
4 the letter that was sent by plaintiffs' counsel preceding the
5 notice to all members of the class explaining the
6 "Disadvantages If You Opt Out," I would like to make a motion
7 at this point for contempt against the proponents of this
8 particular notice and go ahead and argue that motion if the
9 Court will allow.

10 **THE COURT:** Sure.

11 **MR. MILLER:** Your Honor, the Court certified a class
12 on January 30, 2006. Right after that, we all recognized the
13 first order of business was to create a notice that will be
14 promulgated to the members of the class. In early February,
15 the parties submitted respective notice drafts to the Court. I
16 believe on February 4 the Court issued an order drafting and
17 containing a class notice preceded by six or seven pages of
18 ruling on the notice. So there was a written notice that was
19 to go out. It explained rights and other things about the case
20 and also how class members could go about opting out.

21 Now, in connection with the text of the notice,
22 there was also I think a joint submission on the notice plan.
23 Item 1 on the notice plan was that notice would be sent by mail
24 to all 6,000 residences in the class certification areas. What
25 we have found out, Your Honor, is despite the fact that that

1 was done in early February -- we are now April 6 -- the Court
2 notice has not gone out. We have all spoken about the sanctity
3 of the Court notice. The Court has asked both sides not to
4 comment on it or editorialize it, just present it as is. What
5 we found out is that the official Court notice has not gone out
6 by mail to the 6,000 residences, but the plaintiffs have seen
7 fit to send out to the 6,000 residences this one-page document
8 saying "Disadvantages If You Opt Out." I will read certain
9 portions in the letter:

10 "The settlements Murphy is offering are unfair
11 and do not account for loss of property value, mental distress,
12 or possible long and short-term health effects from exposure to
13 the pollution. Do not let Murphy divide the citizens of
14 St. Bernard whose lives have been devastated by the oil spill.
15 If you are a member of the class, you will remain a member
16 unless you opt out. We urge you to remain a member, protect
17 your rights, and help rebuild St. Bernard."

18 This is what went out before the official Court
19 notice. It has the effect of chilling the notice, negating the
20 effect of the notice. A layman gets this one-page document
21 last week and reads it and then two weeks later he gets a
22 four-page document, official Court notice. He is going to say,
23 "I have already read about this. I shouldn't opt out. I've
24 been advised not to opt out." So it's negated the whole effect
25 of the notice.

1 In fact, the main problem with the notice, if
2 Your Honor will recall, the plaintiffs' initial proposal was to
3 only do notice by mail. So the whole mail-out notice has been
4 negated, Your Honor, and we think that's unfair and in contempt
5 of this Court's notice ruling and subsequent comments about the
6 sanctity of the notice, which Murphy has respected, Your Honor.

7 **MR. TORRES:** Your Honor, first, let me say that we
8 represent the class, and Your Honor has recognized the fact
9 that we have the right to communicate with the class. I would
10 like to discuss a little bit of the history here because when
11 we are talking about a mail-out in this case, we are talking
12 about a challenge because people are all over the place.
13 First, I would like to say that there are poster boards that
14 have been placed in public places. There's been the
15 advertisement in the newspaper. In addition to the 2,000
16 people who have settled, there's been 1,000 people who have
17 opted out.

18 We thought in the beginning that we could use
19 the list that Murphy had in order for the mail-out to get out
20 quickly. It turned out that list was extremely deficient in
21 number. Mr. Jay Andry had worked on that with Kerry Miller.
22 We talked to the experts that we had in the case who were
23 helping us to make sure that we were meeting the requirements
24 of due process. It turned out that we couldn't get from the
25 defendants -- we thought they had the tax roll list. They may

1 or may not have that, but for whatever reason they couldn't
2 share it with us. So we had to go to Baton Rouge and we got
3 the tax roll list, which encompasses approximately 6,000
4 people, which we all agree is approximately the number of
5 people in that area. We had been working on that diligently,
6 trying to get that in a format where we could have the
7 mail-out.

8 Your Honor, the defendants have spent millions
9 and millions of dollars in their settlement program encouraging
10 people to opt out. I have to tell you, it's like if you test
11 positive, go see Murphy, you are going to get money in the
12 case, and the settlement program has been hugely successful.
13 We, as class counsel for these folks, have not only the right,
14 but the duty to start educating them on what their rights are
15 to opting out.

16 I suggest, when we talk about the sanctity of
17 the notice, the defendants at first -- when calls were going
18 into them, that since we represented these folks they should no
19 longer be in a position to say, "Well, look, there's an opt-out
20 notice. This is what you need to do." As it turns out and as
21 I pointed out to Your Honor, many of these opt-out notices are
22 coming in on a form. There's a printed form saying, "In order
23 to avoid any appearance of impropriety." It turns out that's a
24 form that was drafted by Murphy and that they're handing out at
25 their settlement trailer. When people go in, I don't know what

1 communication, if any, they are having there, but people are
2 coming in and signing those and sending them to us.

3 I think the most important thing here,
4 Your Honor, is the fact that we have diligently worked on
5 getting this notice out. Obviously, the method that we have
6 right now is working quite well because people are finding out
7 about it. The other opt-out notice I think is definitely going
8 out this week, so it hasn't been purposely delayed. The letter
9 itself is something that we have the perfect right to do, to
10 explain to people what we think their rights are, and if they
11 choose to opt out that's their decision. When we were
12 appointed class counsel, I think Your Honor acknowledged that
13 we had the right to communicate with these folks.

14 **MR. ANDRY:** Gerald Andry Jr. on behalf of the
15 plaintiffs, Your Honor. A couple of points. One of the things
16 that we originally agreed to with the defendants was that we
17 were going to follow a specific pattern of attempting to find
18 out the exact addresses of the people before we sent out the
19 notice. That process includes sending all the addresses
20 through the National Change of Address Database and also doing
21 some individual research through the Parish of St. Bernard's
22 website.

23 When we mailed out our letters to the clients
24 that we could mail them out to -- that letter went out just a
25 matter of two days ago -- we did not go through all those

1 procedures. We did a mass "hope" mailing to see if it will get
2 to some people, but we don't know who it was going to get to.
3 The purpose of the notice that the Court prepared was to get it
4 to everyone in the class and to do it as completely and as
5 diligently as possible. We were two days behind our letter
6 running the process through the National Change of Address
7 Database, checking as many of the addresses we could. The
8 mailing went out Wednesday, which was yesterday, and we think
9 that we have a complete mailing. We also have a procedure on
10 what happens if any of those letters come back as to diligently
11 get them the opt-out mailing.

12 The information that we got from the defendants,
13 when they are talking about in February, about mailing out to
14 everybody, out of the 3,000 plus names that they gave us that
15 had not opted out or had not settled, only 1,300 of those had
16 addresses. I called Mr. Miller and I asked him specifically,
17 "Is it only 1,300 that you really have addresses for," and then
18 we had to start from square one. I then asked him for all the
19 information on all 6,000 people. He wasn't able to give me
20 that or didn't give me that. I never got a response. So we
21 went and got the information ourselves and started the process
22 over in order to follow the plan that we had put with the Court
23 through Mr. Hilsee, and that's our position.

24 **MR. MILLER:** Just briefly, I would like to introduce
25 into evidence in support of my motion the "Disadvantages If You

1 Opt Out" letter that was sent to Mr. Danny Dysart, who lives
2 within the Court-certified area. Exhibit 1 will be
3 "Disadvantages If You Opt Out." Exhibit 2 will be the envelope
4 that the letter came in. I want to note for the Court's
5 reference that the envelope is addressed to "Daniel L. Dysart,
6 513 South Dilton Street, New Orleans, Louisiana." That
7 obviously was not his address in the affected area. That was
8 3512 Shilona.

9 What Mr. Andry was talking about -- and it's
10 really here nor there. You have two things in order to send
11 out a notice. You have the notice document itself and you have
12 a list of addresses. The fact is they have the list of
13 addresses. They got some from me, some from the U.S. Postal
14 Service, some from the tax rolls. They have that list. They
15 have the notice. The notice has been in effect since
16 February 4. They chose to send this letter out first when they
17 could have easily sent the notice out first. In fact, we all
18 know the notice was prepared before this letter was prepared,
19 so it was intentional. It was done to chill the effect of the
20 official Court notice.

21 **THE COURT:** Anything further?

22 **MR. TORRES:** May I have further comment?

23 **THE COURT:** Yes.

24 **MR. TORRES:** First of all, as Your Honor is well
25 aware, this was sprung on us this morning. If necessary, we

1 would like for the opportunity at least to brief our obligation
2 to communicate with our clients as class members. I would just
3 like to say, also, Your Honor, in this case, as we go forward,
4 the communication with our clients is extremely important, not
5 so they understand their rights just to what compensation they
6 may be entitled to or not entitled to, but as this Court is
7 aware our position is very strong that a large part of this
8 settlement program is for Murphy to get off the hook on a
9 cleanup. We feel that it's extremely important for the
10 community to understand, when they go in to receive money from
11 Murphy, that what we have turned up, as their attorneys in this
12 case, is that there's a strong, very big issue as to how that's
13 being done at the end of the day, when we're standing down in
14 that community a year from now, as to whether or not it's been
15 cleaned up proper. So we feel we have every right to
16 communicate with the clients.

17 As I said, Your Honor, the discussion we had
18 about the mailings with Your Honor, we have certainly made
19 every attempt to respect that. It was not in the form of a
20 Court order. Anything Your Honor says, whether it be in
21 chambers or out here, we treat it as it is a Court order. I
22 think actually for a contempt order to issue there would need
23 to be a violation of a specific order of the Court.

24 **THE COURT:** I understand the issue. I have before me
25 a motion for contempt of Court. There's two issues here, the

1 legal position and the professional position. After the class
2 certification and after class counsel was designated as
3 representing the individuals, it was my understanding that both
4 sides understood that the first order of business would be to
5 notify these individuals that they were within a class and what
6 their rights were. After that notice was gone over, then the
7 parties could discuss the notice because I anticipated
8 individuals would be calling their class counsel and saying,
9 "What's the situation," or calling other attorneys and saying,
10 "What are my rights?" That's what we told them to do.

11 The proper approach, in my opinion, would have
12 been for the notice to go out first and then for the attorneys
13 to explain the significance of the notice. I can understand
14 the defendant's position and their disappointment to see
15 potential class members receive a letter speaking about a
16 notice that the individuals haven't received yet. I join in
17 their disappointment. On the other hand, technically, the
18 plaintiffs are right. They represent the individuals as the
19 representing attorney and they have a right to communicate with
20 the individuals.

21 I also understand that notices have been posted
22 on the courthouse door or have been posted in public areas. I
23 also have seen in the newspaper on a Sunday for two or three
24 weeks a full page ad with the entire Court notice. I also am
25 aware that Murphy long before this litigation came into being

1 was communicating -- as was their right, nothing improper about
2 it, but the fact of the matter is that they were communicating
3 with the individuals within what they felt was the footprint.

4 The Court doesn't write on a clean slate here.
5 There's a lot of issues. I'm denying the motion for contempt,
6 but I tell the plaintiff attorneys that I'm disappointed that a
7 letter would go out before the Court's notice went out. That's
8 not my understanding of what was going to happen. The reason I
9 have told both sides to feel they have easy access to me is so
10 that I can deal with these problems before they come up. If
11 you are going to take some position, run it past me first and
12 I'll give you my read on it. I don't want to see these things
13 come up after the fact because it's hard for me to unring that
14 bell. Technically, you're not in violation of a Court order.
15 Technically, it's not contempt because they're your clients and
16 communicating with your clients is your right, but I'm
17 disappointed that you would write them first before they got a
18 notice. Let's go to the next item.

19 **MR. TORRES:** Your Honor, may we clear one other thing
20 up on that issue that was just brought up this morning? The
21 fact that Murphy at their settlement trailer would be giving
22 out a form that allows people to opt out, I just question if
23 there's any communication going on at that point for people to
24 receive that document.

25 **THE COURT:** I don't want any communication being

1 made. The only people that can communicate with these people
2 now are the attorneys. If people have any questions, they
3 direct them to the class counsel. It's my understanding that's
4 what Murphy is doing.

5 **MR. MILLER:** That's been Murphy's position,
6 Your Honor. We do not speak with people until they opt out.

7 **THE COURT:** What's the next item on the agenda? I
8 think maybe we have covered all the plaintiffs'.

9 **MR. TORRES:** Mr. Bruno, when he was discussing the
10 ongoing run of discovery, not waiting until everything is
11 concluded, we had discussed receiving on a very timely basis
12 the test results from Murphy, as well as updated information on
13 the settlement program. We discussed that, Your Honor, in the
14 context of asking the Court and determining the proper method
15 to go forward to expand the class. I would like to ask if we
16 could do that to the extent that Mr. Miller can, on a weekly
17 basis, keep us advised of the test results and the settlement
18 information. That would be helpful so we can report to
19 Your Honor.

20 **THE COURT:** I think that's reasonable.

21 **MR. MILLER:** We have been doing that and will
22 continue to report that information.

23 **THE COURT:** Let me return to an item that was covered
24 before that you folks are going to talk about and that is
25 getting the test results to the class people and also a comment

1 on the test results. If there's a disagreement on the comment
2 situation, it may well have to be in two letters so that it
3 doesn't send the results and then say, "What we are sending you
4 is bad." If you can't agree on a letter, have two letters.
5 "You have received such-and-such. This is what our complaints
6 are," whatever it is, as opposed to one letter. That's an
7 option.

8 **MR. MILLER:** Your Honor, I'm going to hand to you now
9 the draft of the Murphy letter. They can look at it and get
10 back with me this afternoon so we can report to the Court.

11 **THE COURT:** From the defendant's standpoint, do you
12 need to cover anything we haven't covered?

13 **MR. MILLER:** Your Honor, I think the things that
14 remain on the defendant's side were covered in chambers. An
15 agreement was reached. We were just noting to the Court the
16 LDEQ's intervention regarding groundwater contamination. I had
17 been called by an attorney from the state attorney general's
18 office to waive service and I agreed to do that. That's what
19 prompted me to put it on the agenda.

20 The last item on the defendant's items is the
21 production of data from the public domain. We have a discovery
22 plan in place. It has some protocols for production of
23 documents. There is not a specific protocol on production of
24 documents from the public domain, but given the circumstances
25 that we are under there is a tremendous amount of documentation

1 that the government is producing that is publicly available.
2 We would like, given the time frames that we are operating
3 under, to be able to produce that without having to wait on
4 responses before they request to go ahead and do a formal
5 production. It's going to be considered authentic by the Court
6 and by the other side.

7 **THE COURT:** That's important to work out. I don't
8 really want any 901 problems with authenticity if it's a public
9 domain thing. We have to shortcut it.

10 **MR. TORRES:** Yes, Your Honor. Finally, on the LDEQ,
11 I want to note that there are representatives of the LDEQ here
12 today that participated in the conference.

13 **THE COURT:** Let me hear from those representatives,
14 please, Counsel. Tell us what the situation is. Would you
15 approach the podium, please, sir. For the record, tell us who
16 you are and what your intentions are.

17 **MR. ROBINSON:** Good morning, Your Honor. Herman
18 Robinson, the executive counsel with the Louisiana Department
19 of Environmental Quality. We also have three attorneys from
20 the attorney general's office and another attorney from the
21 Louisiana Department of Environmental Quality.

22 Your Honor, we were served with the notice of
23 potential groundwater contamination at the site. Under
24 Louisiana Revised Statute 30:2015, it provides that the state
25 can intervene to protect the public interest, so we have the

1 attorney general representing us on that matter. Basically,
2 Your Honor, today I came here on behalf of my department head.
3 We are concerned about the area getting cleaned up, of course,
4 and so anything that DEQ can do to help facilitate that, we are
5 at the Court's disposal.

6 **THE COURT:** Who would we talk to? Who would be the
7 contact? Would you handle that?

8 **MR. ROBINSON:** Yes, and also the other attorney here,
9 Donald Trahan, he will also be a point of contact.

10 **THE COURT:** We should have your telephone numbers and
11 your addresses so we can deal with it.

12 **MR. ROBINSON:** Yes, Your Honor.

13 **THE COURT:** Have you gotten the material that you
14 need so far? Have you gotten any discovery or any pleadings or
15 anything of that sort?

16 **MR. ROBINSON:** We are just getting involved,
17 Your Honor. As a matter of fact, I just remarked to someone
18 this morning it's kind of like dropping into a parachute zone,
19 and we are still trying to get our bearings and everything. We
20 are just getting involved, Your Honor.

21 **THE COURT:** Well, get to the liaison counsel. I have
22 a website in this case. You can click on the website and see
23 information. I put everything on the website. If you need any
24 additional material, the names and addresses of liaison counsel
25 are on the website. You can contact them and get the material

1 that you need. You don't need to plow fields that have already
2 been plowed.

3 **MR. ROBINSON:** Thank you, Your Honor.

4 **THE COURT:** If you need any information, those are
5 the two people you would contact, plaintiff liaison counsel and
6 defense liaison counsel.

7 **MR. ROBINSON:** Thank you, Your Honor.

8 **THE COURT:** Anyone else? Thank you. Anything
9 further that we haven't covered? Anything new? Anything that
10 anybody from the audience has that we haven't touched on? The
11 next meeting in this matter will be May 16. I'll meet with
12 liaison counsel at 8:30 and the regular meeting will begin at
13 9:00. Thank you very much. I appreciate your work.

14 **THE DEPUTY CLERK:** All rise.

15 (WHEREUPON, the Court was in recess.)

16 * * *

17 **CERTIFICATE**

18 I, Toni Doyle Tusa, CCR, Official Court Reporter,
19 United States District Court, Eastern District of Louisiana, do
20 hereby certify that the foregoing is a true and correct
21 transcript, to the best of my ability and understanding, from
22 the record of the proceedings in the above-entitled and
23 numbered matter.

24
25

Toni Doyle Tusa, CCR
Official Court Reporter