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1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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IN RE: PROPULSID PRODUCTS DOCKET NO. MDL 1355
5 LIABILITY LITIGATION NEW ORLEANS, LOUISIANA
FRIDAY, FEBRUARY 25, 2005

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TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
9 HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

12

FOR THE PLAINTIFFS: HERMAN, MATHIS, CASEY, KITCHENS &
GEREL

13

14

BY: RUSS M. HERMAN, ESQ.
LEONARD A. DAVIS, ESQ.
820 O'KEEFE AVENUE, SUITE 100
NEW ORLEANS, LA 70113

15

16

17

BARRIOS, KINGSDORF & CASTEIX
BY: DAWN BARRIOS, ESQ.
701 POYDRAS STREET, SUITE 3650
NEW ORLEANS, LA 70119

18

19

20

NEBLETT, BEARD & ARSENAULT
BY: RICHARD J. ARSENAULT, ESQ.
2220 BONAVENTURE COURT
NEWPORT BEACH, CA 92660

21

22

23

HARTLEY, O'BRIEN, PARSONS,
THOMPSON & HILL
BY: BARRY HILL, ESQ.

24

1325 NATIONAL ROAD
WHEELING, WV 26003

25

00002

1 APPEARANCES CONTINUED:

2

3

GAUTHIER, DOWNING, LABARRE,
DEAN & SULZER, L.L.P.
BY: JAMES R. DUGAN, ESQ.
3500 N. HULLEN STREET
METAIRIE, LA 70002

4

5

6

CAPRETZ & ASSOCIATES
BY: JAMES CAPRETZ, ESQ.
5000 BIRCH STREET, SUITE 2500
NEWPORT BEACH, CA 92660

7

8

9

LEVIN, FISHBEIN, DEDRAN & BERMAN
BY: ARNOLD LEVIN, ESQ.
510 WALNUT STREET, SUITE 500
PHILADELPHIA, PA 19106-3697

10

11

12

LEVIN, PAPANTONIO, THOMAS, MITCHELL,
ECHSNER & PROCTOR
BY: R. LARRY MORRIS, ESQ.
316 S. BAYLEN STREET, SUITE 600
PENSACOLA, FL 32501

13

14

15

16

HARTLEY, O'BRIEN, PARSONS,
THOMPSON & HILL
BY: BARRY HILL, ESQ.
2001 MAIN STREET, SUITE 600
WHEELING, WV 26003

17

18

19

BECNEL, LANDRY & BECNEL
BY: DANIEL BECNEL, ESQ.
MATT MORELAND, ESQ.
106 WEST SEVENTH STREET
RESERVE, LA 70084-0508

20

21

22

ROBERT M. BECNEL, ESQ.
425 W. AIRLINE HIGHWAY, SUITE B
LAPLACE, LA 70068

23

24

25

00003

1 APPEARANCES CONTINUED:

2

KINGSMILL RIESS, L.L.C.

3

BY: CHARLES COLVIN, ESQ.

201 ST. CHARLES AVENUE, SUITE 3300

4

NEW ORLEANS, LA 70170

5

ANDRUS, BOUDREAUX, LEMOINE & TONORE

6

BY: VANCE ANDRUS, ESQ.

416 WEST MAIN STREET

7

LAFAYETTE, LA 70502-3347

8

INGRAM & ASSOCIATES

9

BY: CARROLL H. INGRAM, ESQ.

P.O. BOX 15039

10

HATTIESBURG, MS 39404

11

DOMENGEAUZ, WRIGHT, MOROUX & ROY

12

BY: BOB F. WRIGHT, ESQ.

556 JEFFERSON STREET, SUITE 500

13

LAFAYETTE, LA 70502-3668

14

FAYARD & HONEYCUTT

15

BY: PRICE MOUNGER, ESQ.

506 FLORIDA AVENUE SOUTHWEST

16

DENHAM SPRINGS, LA 70726

17

SEEGER WEISS, L.L.P.

18

BY: CHRISTOPHER A. SEEGER, ESQ.

ONE WILLIAM STREET

19

NEW YORK, NY 10004

20

MCKERNAN LAW FIRM

21

BY: SCOTT BRADY, ESQ.

8710 JEFFERSON HIGHWAY

22

BATON ROUGE, LA 70809

23

KOEDERITZ & WILKINS

24

BY: PAUL WILKINS, ESQ.

8702 JEFFERSON HIGHWAY, SUITE A

25

BATON ROUGE, LA 70809

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1 APPEARANCES CONTINUED:

2

MURRAY LAW FIRM
BY: STEPHEN MURRAY, ESQ.
909 POYDRAS STREET, SUITE 2250
NEW ORLEANS, LA 70112

4

5

IEYOUB & WYBLE
BY: CAPRICE IEYOUB, ESQ.
8280 YMCA PLAZA, SUITE 10A
BATON ROUGE, LA 70810

6

7

8

DUMAS & ASSOCIATES
BY: WALTER C. DUMAS, ESQ.
1261 GOVERNMENT STREET
BATON ROUGE, LA 70821

9

10

11

BEST KOEPPPEL
BY: LYNN H. FRANK, ESQ.
2030 ST. CHARLES AVENUE
NEW ORLEANS, LA 70130

12

13

WEITZ & LUXENBERG
BY: MICHAEL E. PEDERSON, ESQ.
180 MAIDEN LANE, 17TH FLOOR
NEW YORK, NY 10038-4925
(BY PHONE)

16

17

FOR THE DEFENDANTS:

IRWIN, FRITCHIE, URQUHART & MOORE
BY: JAMES B. IRWIN, ESQ.
MONIQUE GARSAUD, ESQ.
400 POYDRAS STREET, SUITE 2700
NEW ORLEANS, LA 70130

18

19

20

21

DRINKER, BIDDLE & SHANLEY
BY: THOMAS F. CAMPION, ESQ.
500 CAMPUS DRIVE
FLORHAM PARK, NJ 07932-1047

22

23

24

25

00005

1 APPEARANCES CONTINUED:

2

PREUSS, SHANAGHER, ZVOLEFF & ZIMMER
BY: CHARLES F. PREUSS, ESQ.
225 BUSH STREET, 15TH FLOOR
SAN FRANCISCO, CA 94104-4207

3

4

5

SPECIAL MASTER:

JUNEAU LAW FIRM
BY: PATRICK A. JUNEAU, ESQ.
1018 HARDING STREET, SUITE 202
LAFAYETTE, LA 70503

6

7

8

9 FOR THE GOVERNMENT:

DEPARTMENT OF JUSTICE
BY: RUTH HARVEY, ESQ.
1100 L STREET, NW
WASHINGTON, D.C. 20530

10

11

(BY PHONE)

12

13

14

15

16

OFFICIAL COURT REPORTER:

KAREN A. IBOS, CCR, RPR
500 POYDRAS STREET, ROOM HB-406
NEW ORLEANS, LOUISIANA 70130
(504) 589-7776

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19

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED
BY COMPUTER.

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1 P R O C E E D I N G S

2 (FEBRUARY 25, 2005)

3 (FEBRUARY MONTHLY STATUS CONFERENCE)

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6 THE COURT: BE SEATED, PLEASE. GOOD MORNING, EVERYONE.

7 THIS IS OUR MONTHLY STATUS MEETING. CALL THE CASE, PLEASE.

8 THE DEPUTY CLERK: MDL 1355, IN RE: PROPULSID.

9 THE COURT: COUNSEL, MAKE YOUR APPEARANCES FOR THE RECORD.

10 MR. HERMAN: YES, YOUR HONOR. MAY IT PLEASE THE COURT,

11 RUSS HERMAN FOR THE PSC.

12 MR. IRWIN: GOOD MORNING, JUDGE, JIM IRWIN FOR DEFENDANTS.

13 THE COURT: IT HAS BEEN OUR PRACTICE TO HAVE MONTHLY

14 MEETINGS AT WHICH TIME THE PARTIES ARE GIVEN AN OPPORTUNITY TO

15 ACQUAINT THE COURT AS TO WHAT'S BEEN HAPPENING AND ALSO THE COURT IS

16 OPEN DURING THAT TIME FOR ANYONE TO BE PRESENT WHO WISHES TO BE

17 PRESENT. THE FIRST ITEM ON THE AGENDA IS UPDATE OF ROLLING DOCUMENT

18 PRODUCTION, ELECTRONIC DOCUMENT PRODUCTION.

19 MR. HERMAN: MAY IT PLEASE THE COURT, GOOD MORNING.

20 JUDGE, THERE IS NO MORE SCHEDULED DOCUMENT PRODUCTION. I AM PLEASED

21 TO ADVISE THE COURT THAT AS OF YESTERDAY THE TRIAL PACKAGE FOR FOLKS

22 NOT ENROLLING HAS BEEN COMPLETED. WE'VE TECHNICALLY TRANSFERRED IT

23 AND WITHIN TWO WEEKS TO AN ELECTRONIC CONSISTENT FORMAT AND WILL

24 THEN BE AVAILABLE.

25 THE COURT: ALL RIGHT. FINE. WE CAN TAKE THIS OFF THE

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1 AGENDA THEN?

2 MR. HERMAN: YES, YOUR HONOR.

3 THE COURT: LET'S TAKE THIS OFF THE AGENDA.

4 MR. IRWIN: YOUR HONOR, THE ONE ITEM WE DO WANT TO TAKE

5 UP. WHEN THE SETTLEMENT BECOMES FINALIZED, KNOCK ON WOOD, IS THE

6 DISCUSSION ABOUT THE SUSPENSION OF THE ELECTRONIC PRESERVATION.

7 THE COURT: ALL RIGHT. PRESENT THAT AT THE APPROPRIATE

8 TIME BECAUSE I HAVE FROZEN EVERYTHING, SO IT'S TIME, PERHAPS, TO LET

9 SOME OF THAT THAW, MAYBE NOT ALL OF IT BUT SOME OF IT, I CAN SEE

10 THAT.

11 STATE LIAISON COMMITTEE. OUR LAST MEETING I DIRECTED THE

12 DEFENDANTS TO COMMENCE DISCUSSIONS WITH THE STATE LIAISON TO SEE

13 WHETHER WE COULD NOW MOVE INTO PHASE 2 OF THIS. MS. BARRIOS OR

14 MR. ARSENAULT.

15 MR. ARSENAULT: YES, YOUR HONOR, WE'VE HAD SEVERAL

16 MEETINGS, YOUR HONOR, WITH DEFENSE COUNSEL AND THE PLAINTIFF LIAISON

17 COMMITTEE. WE MET AT THE ATLA LITIGATION GROUP BOTH BEFORE AND

18 AFTER THE ATLA MEETING IN PALM SPRINGS, THE PROPULSID LITIGATION

19 GROUP, WE HAD AN OPPORTUNITY TO MEET WITH DEFENSE COUNSEL TO EXPLORE

20 THE OPPORTUNITY HERE, THE PROPULSID 2 OPPORTUNITY AND WE'VE DONE

21 THAT. BARRY HILL WAS INSTRUMENTAL IN GIVING INVITATIONS TO ANYONE

22 WE THOUGHT WHO MIGHT HAVE CASES TO ATTEND THE MEETING IN PALM

23 SPRINGS, THAT TOOK PLACE.

24 WE ALSO DID A NEWSLETTER ON FEBRUARY 3RD TO EVERYONE THAT

25 THE DEFENDANTS HAVE ADVISED US HAVE CASES, SO THAT TOOK PLACE. WE

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1 HAVE A GRID, YOUR HONOR, OF ABOUT 44 LAWYERS THAT WE KNOW HAVE
2 CASES, AND ESSENTIALLY WHAT WE'RE TRYING TO DO IS DETERMINE HOW MANY
3 CASES ARE OUT THERE, WHAT TYPES OF CASE ARE THERE, AND WHETHER THEY
4 HAVE ANY INTEREST AND/OR SUGGESTING DIFFERENT THINGS WITH REGARD TO
5 AN EXIT STRATEGY.

6 THUS FAR I THINK WE HAVE BEEN IN COMMUNICATION WITH I
7 THINK ABOUT 80 PERCENT OF THOSE LAWYERS AND I THINK THERE SEEMS TO
8 BE A SIGNIFICANT AMOUNT OF SUPPORT FOR THIS PROCESS.

9 THE COURT: IF THE WEB SITE, THE COURT'S WEB SITE CAN BE
10 OF ANY SERVICE OR HELP, JUST LET ME KNOW IF YOU NEED TO PUT ANY
11 PARTICULAR MATERIAL ON THE WEB SITE, I'LL PUT IT ON THE WEB SITE AND
12 WE WILL FLAG IT FOR THE STATE INTERESTS SO THAT THEY WILL HAVE THAT
13 AVAILABLE TO THEM, THAT INFORMATION.

14 I REALLY THINK THE FIRST STEP IS GOING TO BE PREPARING A
15 SENSUS, WE NEED TO KNOW WHAT'S OUT THERE FIRST, AND THEN FROM THAT
16 STANDPOINT I THINK WE CAN MOVE INTO IT.

17 MR. ARSENAULT: THE DEFENDANTS HAVE BEEN VERY HELPFUL IN
18 PROVIDING US THE NAMES AND WE ARE IN COMMUNICATION WITH EACH AND
19 EVERY ONE OF THOSE PEOPLE TO TRY TO ASCERTAIN WHAT THEIR INVENTORY
20 IS AND DETAILS WITH REGARD TO THE INVENTORY.

21 THE COURT: THE FIRST STEP REALLY FOR THE DEFENDANTS IS TO
22 PROVIDE WHATEVER NAMES YOU HAVE TO THE STATE LIAISON; THAT'S WHERE
23 IT'S GOT TO COME FROM.

24 MR. ARSENAULT: AND THEY HAVE DONE THAT, YOUR HONOR.

25 MS. BARRIOS: EXCUSE ME, YOUR HONOR, DAWN BARRIOS. WE HAD

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1 ALSO REQUESTED THAT PLAINTIFFS AND DEFENDANTS, THAT THEY PROVIDE TO
2 US A LIST OF THE CLAIMANTS WHO WERE NOT ENTITLED TO ENROLL IN
3 PROPULSID 1 IF THEY HAD A TOLLING AGREEMENT OR HAD THEIR CASE
4 TRANSFERRED OVER TO THE MDL AFTER FEBRUARY 2004. WE BELIEVE THAT
5 WILL CREATE ANOTHER POCKET OF POSSIBLE CLAIMANTS FOR PROPULSID 2,
6 AND THEY'VE AGREED TO DO THAT WITHIN THE NEXT 30 DAYS, HOPEFULLY
7 BEFORE THE NEXT STATUS CONFERENCE.

8 MR. ARSENAULT: IT'S ABOUT 45 LAWYERS WE ARE IN
9 COMMUNICATION WITH.

10 THE COURT: DO WE HAVE ANY LAP OVER BETWEEN THE PEOPLE
11 WE'RE HANDLING OR IS THIS NEW COUNSEL ESSENTIALLY, 44 NEW LAWYERS?

12 MR. ARSENAULT: I THINK THEY'VE BEEN ON THE RADAR SCREEN
13 SINCE THE INCEPTION.

14 MS. BARRIOS: WE HAD ONE LAWYER WHO CONTACTED MR. HERMAN
15 AND HE REFERRED THE GENTLEMAN TO ME AND HE WAS A PERSON WHO HAD
16 NEVER HAD ANY OTHER PROPULSID CASE. SO SOME OF THEM ARE NEW, YOUR
17 HONOR.

18 THE COURT: THANK YOU. NEXT ITEM IS A SERVICE LIST. DO
19 WE HAVE AN UPDATE?

20 MR. IRWIN: YES. WE HAVE A SERVICE LIST HERE FOR THE PSC
21 AND STATE LIAISON COMMITTEE AND FOR YOUR CLERK MS. LAMBERT. IT DOES
22 REFLECT THE TRANSITION OF SOME CLAIMANTS TO PRO SE, TO THE BEST OF
23 OUR ABILITY.

24 THE COURT: THE MOTION FOR CLASS CERTIFICATION, THAT'S
25 STILL ON HOLD?

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1 MR. HERMAN: YES. BUT, YOUR HONOR, I THINK IT'S SAFE TO
2 SAY THAT THE PSC WILL MEET AND AGREE TO WITHDRAW THAT MOTION AT SUCH
3 TIME AS THE SETTLEMENT PROGRAM IS CONFIRMED.

4 THE COURT: THE TRUST ACCOUNT.

5 MR. HERMAN: YOUR HONOR, IN ACCORDANCE WITH YOUR ORDER,
6 THAT MATTER HAS BEEN ACCOMPLISHED.

7 THE COURT: WHAT ABOUT THE TRIAL SCHEDULE, ARE THERE ANY
8 CASES SET FOR TRIAL THROUGHOUT THE COUNTRY?

9 MR. CAMPION: YES, YOUR HONOR, THERE IS A CASE FOR TRIAL
10 IN WEST VIRGINIA IN APRIL.

11 THE COURT: PHARMACY INDEMNITY AGREEMENTS.

12 MR. IRWIN: NO CHANGE ON THAT, YOUR HONOR, NO REQUESTS
13 SINCE THE LAST REPORT.

14 THE COURT: OKAY. LET'S HAVE A REPORT ON THE MEDIATION
15 AND RESOLUTION PROGRAM, ANY REPORT ON THAT FROM THE DEFENDANTS OR
16 PLAINTIFFS?

17 MR. HERMAN: YOUR HONOR, APPROXIMATELY -- WELL, 28,368
18 POTENTIAL CLAIMANTS SERVED ENROLLMENT FORMS. OF THAT NUMBER 22,000
19 PLUS ARE ENROLLED. OTHERS DID NOT COMPLY WITH THE ENROLLMENT TERMS
20 FOR ONE REASON OR ANOTHER. MR. PREUSS HAS BEEN IN CHARGE OF THESE
21 NUMBERS AND HE IS READY TO REPORT TO YOUR HONOR.

22 I WANT TO THANK MR. PREUSS AND HIS OFFICE AND MR. DAVIS
23 AND THE SPECIAL MASTER'S OFFICE FOR ACCOMPLISHING A GREAT DEAL IN
24 THE LAST THREE WEEKS.

25 THE COURT: LET ME HEAR FROM MR. PREUSS.

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1 MR. PREUSS: THANK YOU, YOUR HONOR. THE WRONGFUL DEATH
2 NUMBERS ARE 242.
3 THE COURT: HOW MANY DID YOU NEED?
4 MR. PREUSS: 241, YOUR HONOR. SO WE'VE MET THE MINIMUM ON
5 THAT. AND ON PI, 2,906 HAVE QUALIFIED, WE NEEDED I THINK 1,757, IN
6 THAT NEIGHBORHOOD. AND ON ACHORD WE HAVE EVERYBODY SIGNED UP WITH
7 THE EXCEPTION OF 454 THAT STILL HAVE NOT ENROLLED.
8 THE COURT: IS THAT WITH ONE COUNSEL OR MORE?
9 MR. PREUSS: 12 FIRMS, YOUR HONOR. AND THEN ON THE
10 PERSONAL INJURY, THOSE PEOPLE THAT HAVE NOT FILED, SOME, BUT NOT ALL
11 OF THEM, WE NEED TO GET THOSE OTHERS IN AND THAT INVOLVES 19 FIRMS
12 AND 397 PLAINTIFFS. AND THEN WE HAVE THE CLAIMANTS, WE HAVEN'T
13 QUALIFIED EVERYBODY IN THAT BUT THAT WE DON'T SEE AS A PROBLEM,
14 THAT'S ABOUT 20,000 PEOPLE. SO THOSE ARE THE NUMBERS.
15 THE COURT: HOW DOES THE SPECIAL MASTER SEE IT, DO YOU
16 WANT TO REPORT?
17 MR. JUNEAU: WE DO, YOUR HONOR. WE WENT EXTENSIVELY OVER
18 ALL OF THAT YESTERDAY TO CONFIRM THAT AND THOSE DO, IN FACT, REFLECT
19 THE INFORMATION WE HAVE.
20 THE COURT: DO YOU SEE THIS AS BEING A GLOBAL SETTLEMENT
21 AND THE DETAILS NEED TO BE WORKED OUT, OR HOW DO YOU SEE IT?
22 MR. JUNEAU: YES, SIR, I TRULY BELIEVE THAT. IT LOOKS
23 LIKE WHAT I CALL THE CRITICAL NUMBERS HAVE BEEN MET. I THINK A LOT
24 OF THESE ARE ADMINISTRATIVE MATTERS PRIMARILY THAT HAVE TO BE
25 ADDRESSED, MAYBE SOME DILATORY AND I'M NOT SURE ABOUT THAT. BUT I

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1 THINK WE ARE RAPIDLY AT THE POINT WHERE WE'RE GETTING READY FOR
2 CLOSURE, AND WITH THE COURT'S ASSISTANCE I THINK WE CAN DO THAT IN
3 SHORT ORDER.

4 THE COURT: I THINK THE LABORING OAR NOW IS GOING TO BE
5 WITH YOU AND YOUR STAFF, MR. JUNEAU, AT THIS POINT IN GETTING THOSE
6 DETAILS WORKED OUT. AND IF YOU NEED ANY HELP EITHER FROM THE COURT
7 OR COUNSEL, YOU NEED TO LET ME KNOW SO I CAN GET INVOLVED.

8 MR. JUNEAU: I WILL CERTAINLY DO THAT.

9 THE COURT: ONE ASPECT OF THE CASE IS THE ACHORD MATTER.
10 THIS IS A CASE THAT FOR CONVENIENCE OF COUNSEL AND THE LITIGANTS I
11 ALLOWED A JOINDER TO BE UTILIZED, A JOINDER PROCEEDING TO BE
12 UTILIZED RATHER THAN PUT EXCEPTIONAL EXPENSES ON EACH OF THE
13 PARTIES, EACH OF THE LITIGANTS HAVING TO FILE A SEPARATE SUIT. SO
14 ONE SUIT WAS FILED AND EVERYBODY JOINED IN AND THIS BECAME KNOWN AS
15 THE ACHORD MATTER AND IT WAS PART OF THE SETTLEMENT, AS I UNDERSTAND
16 IT WAS A NECESSARY PART OF THE SETTLEMENT.

17 I HAD NOT RECEIVED RESPONSES FROM A NUMBER OF THE
18 ATTORNEYS REGARDING THEIR PARTICIPATION IN IT. THEY'RE ALL
19 LOUISIANA COUNSEL SO I HAD THEM COME OR I HAVE THEM COME TO THE
20 COURT AT THIS TIME TO RESPOND AND TELL THE COURT WHAT THE PROBLEM
21 IS, IF THERE BE ANY PARTICULAR PROBLEM. DO WE NEED TO TAKE THAT UP
22 AT THIS POINT?

23 MR. HERMAN: MAY IT PLEASE THE COURT. MR. DAVIS HAS A
24 DETAILED RECORD, AND WITH YOUR HONOR'S PERMISSION I WILL LET HIM
25 GIVE THE NAMES OF THOSE INDIVIDUALS WHO ARE HERE.

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1 I DO WANT TO SAY THAT BOTH THE ACHORD LAWYERS AND THE
2 LAWYERS REPRESENTING THOSE NOT YET COMPLETELY ENROLLED HAVE BEEN
3 VERY COOPERATIVE. WHAT PROBLEMS HAVE BEEN HAVE BEEN THROUGH A
4 MISUNDERSTANDING OF THE TERMS OF THE AGREEMENT. AND IN ORDER TO
5 FACILITATE THIS MATTER, THE PSC AND THE DEFENSE COUNSEL HAVE AGREED,
6 HAVE SPOKEN WITH SPECIAL MASTER JUNEAU ABOUT A PROPOSED ORDER THAT
7 WE THINK WILL HELP, AND WE INTEND TO HAVE THE PSC MEET WITH EACH
8 MEMBER FIRM AFTER TODAY IN ORDER TO SEE THAT THE JOB IS COMPLETE.
9 MR. DAVIS.

10 MR. DAVIS: YOUR HONOR, PURSUANT TO YOUR MINUTE ENTRY ON
11 FEBRUARY 11, 2005, WE FORWARDED A LETTER TO ALL OF THE ATTORNEYS WHO
12 HAD ACHORD CLAIMANTS WHO HAD NOT FULLY ENROLLED. SOME OF THOSE
13 ATTORNEYS WE'VE HEARD FROM, WE EITHER HAD ORAL COMMUNICATION WITH OR
14 GOTTEN SOME WRITTEN COMMUNICATION. A NUMBER OF THEM ARE HERE IN THE
15 COURTROOM AND I WILL GO THROUGH EACH ONE OF THOSE INDIVIDUALLY,
16 ASSUMING THAT'S WHAT YOUR HONOR WANTS, AND TELL YOU WHAT WE KNOW
17 ABOUT EACH ONE AND THEN EACH LAWYER, OBVIOUSLY, COULD SPEAK FOR
18 THEIR OWN.

19 THE FIRST ONE IS THE ANDRUS, BOUDREAUX, LEMOINE & TONORE
20 FIRM, THEY HAD QUITE A NUMBER OF CLAIMANTS. MR. ANDRUS I KNOW IS
21 HERE TODAY AND I BELIEVE THAT HE HAS SATISFIED COMPLIANCE BY
22 DISMISSING HIS CASES.

23 THE COURT: IS THAT MR. ANDRUS, YOU CAN COME FORWARD AND
24 TELL THE COURT.

25 MR. ANDRUS: YOUR HONOR, IF IT PLEASE THE COURT, VANCE

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1 ANDRUS WITH ANDRUS, BOUDREAUX, LEMOINE & TONORE. FIRST WE APOLOGIZE
2 FOR ANY INCONVENIENCE TO THE COURT. WE LISTED A SUBSTANTIAL NUMBER,
3 I THINK 137 CLAIMANTS, IN THE ACHORD SUIT. WE SUBSEQUENTLY WITHDREW
4 FROM REPRESENTATION OF THOSE CLAIMANTS AND NOTIFIED COUNSEL FOR
5 PLAINTIFF AND COUNSEL FOR DEFENDANT IN OCTOBER OF 2004 THAT WE HAD
6 SO WITHDRAWN.

7 WE APPRECIATED THAT THE PLEADINGS HAD BEEN SIGNED BY SOME
8 PSC ENTITY AND THAT WE WERE NOT TECHNICALLY COUNSEL OF RECORD. I
9 HAVE PREPARED AND SUBMITTED BOTH TO THE PLAINTIFFS AND THE DEFENSE
10 COUNSEL TODAY AND WILL SUBMIT TO THE COURT PURSUANT TO MR. DAVIS, TO
11 LENNY'S SUGGESTIONS AND TO THE COURT'S DESIRES A MOTION TO WITHDRAW
12 AS COUNSEL OF RECORD ON BEHALF OF THOSE CERTAIN PLAINTIFFS.

13 AND I ATTEST TO THE COURT THAT MORE THAN TWO YEARS AGO WE
14 DISMISSED THOSE CLIENTS AS CLIENTS AND WITHDREW AND GAVE THEM
15 WRITTEN NOTICE THAT WE WERE WITHDRAWING OUR REPRESENTATION OF THEM.
16 THE COURT: OKAY. FINE, THANK YOU, MR. ANDRUS, I
17 APPRECIATE YOU BEING HERE.

18 MR. DAVIS: AND I THINK THAT'S WHAT YOU'LL FIND COMMON
19 THROUGHOUT A NUMBER OF THESE, THERE IS CONFUSION WITH THAT
20 ESPECIALLY WITH RESPECT TO COUNSEL OF RECORD AND WE HAVE ADVISED THE
21 INDIVIDUALS THEY ARE COUNSEL OF RECORD AND THEY NEED TO FILE
22 DISMISSALS IN ORDER TO HAVE THE CASES DISMISSED.

23 THE COURT: OKAY.

24 MR. DAVIS: WITH RESPECT TO RICHARD ARSENAULT'S CLAIMANTS,
25 WE HAVE HAD ONGOING DISCUSSIONS WITH INDIVIDUALS IN HIS OFFICE AND I

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1 BELIEVE THAT RICHARD HAS TAKEN CARE OF HIS MATTERS.
2 MR. ARSENAULT: YOUR HONOR, WE HAVE 65 CLIENTS, 58 OF THEM
3 ENROLLED, AND WE HAD SEVEN THAT CHOSE NOT TO FOLLOW OUR
4 RECOMMENDATION IN WRITING WITH RETURN RECEIPT MAIL, WE NOTIFIED THEM
5 THAT THEY NEEDED TO GET OTHER COUNSEL AND/OR OTHERWISE MAKE OTHER
6 ARRANGEMENTS, AND WE HAVE A MOTION PREPARED HERE TO WITHDRAW FOR THE
7 REPRESENTATION OF THOSE SEVEN INDIVIDUALS, WE RELAYED THAT
8 INFORMATION TO MR. DAVIS.
9 MR. DAVIS: WITH RESPECT TO JACK BALDWIN, I HAVE HAD
10 RECENT COMMUNICATION WITH MR. BALDWIN AND HIS OFFICE, AND I BELIEVE
11 YOUR HONOR HAS GOTTEN A COPY OF MY LETTER OF FEBRUARY 23RD.
12 MR. BALDWIN IS ONE OF THE ATTORNEYS WHO UNDERSTOOD THAT HIS LETTER
13 WOULD BE SUFFICIENT FOR A DISMISSAL. I'VE ADVISED HIM THAT, IN
14 FACT, HE NEEDS A MOTION FOR DISMISSAL. DEFENSE COUNSEL HAS AGREED
15 TO WORK WITH HIM ON THAT.
16 AND MY APPRECIATION IS THAT MR. BALDWIN IS GOING TO BE
17 DISMISSING THOSE CASES AND THAT'S HIS DESIRE. I DON'T KNOW WHETHER
18 OR NOT HE IS PARTICIPATING TODAY.
19 THE COURT: MR. BALDWIN, ARE YOU THERE? THAT'S RIGHT, WE
20 GOT WORD THAT MR. BALDWIN IS PRESENTLY IN THAILAND AND COULDN'T BE
21 HERE. SO HE CALLED AND CHECKED IN WITH US AND SAID EXACTLY WHAT YOU
22 JUST SAID.
23 MR. DAVIS: AND I BELIEVE DEFENSE COUNSEL HAS ALSO SPOKEN
24 TO MR. BALDWIN'S OFFICE.
25 MR. IRWIN: OUR OFFICES HAVE COMMUNICATED, JUDGE. AND BY

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1 THE WAY, WE DO HAVE PREPARED MOTIONS TO DISMISS HERE IN THE EVENT
2 ANY OF THE ACHORD ATTORNEYS HAVE COME WITH THE INTENTION TO DISMISS.
3 WE DIDN'T HAVE ONE FOR MR. BALDWIN IN LIGHT OF WHERE HE IS. WE DO
4 NOT HAVE MOTIONS TO WITHDRAW FOR, FOR EXAMPLE, MR. ARSENAULT SAID HE
5 WAS GOING TO WITHDRAW HIS SEVEN CLAIMANTS SO THAT WILL SATISFY THE
6 SITUATION. EITHER A DISMISSAL OR WITHDRAWAL. WE DO HAVE DISMISSAL
7 MOTIONS WITH US THOUGH.
8 THE COURT: OKAY. ANYBODY THAT NEEDS A MOTION, SEE THE
9 DEFENSE COUNSEL AND WE CAN TAKE CARE OF IT WHILE YOU'RE HERE. ANY
10 OTHERS?
11 MR. DAVIS: WITH RESPECT TO DAWN BARRIOS, WE'VE HAD
12 COMMUNICATION WITH MS. BARRIOS, AND I UNDERSTAND THAT SHE ALSO HAS
13 HAD A NUMBER OF THE DISCUSSIONS WITH SEVERAL OF THE OTHER ATTORNEYS
14 WHO HAVE THESE SAME ISSUES, AND SHE IS HERE TO SPEAK.
15 MS. BARRIOS: YES, YOUR HONOR, I HAVE ENROLLED
16 APPROXIMATELY 60 OF MY CLIENTS INTO THE SETTLEMENT. THERE WERE 46
17 WHO WERE ON THE LIST THAT YOUR HONOR HAD ATTACHED TO THE MINUTE
18 ENTRY. OF THOSE 46 I HAD 30, WHO WERE JUST DERIVATIVE CLAIMANTS WHO
19 I PUT THEIR NAMES, THE CHILDREN'S NAMES OR THE SPOUSE'S NAMES, ON
20 THE ACHORD ATTACHMENT. THERE IS NO PROVISION OF PAYMENT FOR ANY
21 DERIVATIVE CLIENT ON THE PROPULSID 1, SO THESE CLIENTS HAVE BEEN
22 DISMISSED.
23 13 OF THE CLAIMS THAT I PUT ON ACHORD WERE DONE AS AN
24 ACCOMMODATION AS A STATE LIAISON COUNSEL MEMBER. PEOPLE WOULD
25 CONTACT ME AND I WOULD HELP THEM PUT THEIR NAME ON THE LIST AND MY

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1 NAME GOT LISTED AS THE ATTORNEY OF RECORD AND I REALLY WASN'T.
2 THE FOUR REMAINING CLAIMANTS ON THE LIST HAVE DECIDED NOT
3 TO TAKE MY ADVICE AND GO INTO THE SETTLEMENT AND THEY HAVE ASKED ME
4 TO WITHDRAW AS THEIR COUNSEL OF RECORD. SO THAT WOULD CLEAN UP MY
5 ENTIRE 46.

6 THE COURT: OKAY. THANK YOU.

7 MR. DAVIS: WITH RESPECT TO DANIEL BECNEL. WE HAVE BEEN
8 IN COMMUNICATION WITH MATT MORELAND FROM HIS OFFICE AND MR. BECNEL
9 IS HERE.

10 MR. BECNEL: YOUR HONOR, I WILL LET MATT DO IT, HE HAS
11 BEEN DOING IT DAY TO DAY.

12 MR. MORELAND: WE HAVE, I BELIEVE, 23 PERSONS WHO ARE,
13 DESPITE OUR VIGOROUS SUGGESTION TO PARTICIPATE IN THE SETTLEMENT
14 PROGRAM, HAVE DECIDED NOT TO PARTICIPATE. WE WILL BE FILING A
15 MOTION TO WITHDRAW AS COUNSEL OF RECORD AND GET THOSE TO THE COURT
16 WITHIN THE WEEK. OUR TOTAL END I BELIEVE, YOUR HONOR, IS A LITTLE
17 OVER 700 REMAINING IN.

18 MR. DAVIS: THE NEXT ONE, YOUR HONOR, IS CHUCK COLVIN OF
19 THE KINGSMILL RIESS FIRM. I BELIEVE THAT YOUR HONOR RECEIVED
20 CORRESPONDENCE FROM MR. COLVIN DATED FEBRUARY 23RD, 2005, AND HE HAS
21 SPECIFIC ISSUES WITH RESPECT TO THAT CLAIMANT. I DON'T KNOW --
22 EXCUSE ME.

23 MR. COLVIN: GOOD MORNING, YOUR HONOR.

24 THE COURT: GOOD MORNING.

25 MR. COLVIN: IT'S MY UNDERSTANDING THAT THERE ARE NO LOSS

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1 OF CONSORTIUM CLAIMS ALLOWED IN THE SETTLEMENT, SO THE MOTION OF
2 DISMISSAL IS APPROPRIATE, THAT'S PROBABLY WHAT SHOULD HAPPEN. I AM
3 RELUCTANT TO DO ANYTHING BECAUSE IF LATER SOMETHING GETS DEVELOPED
4 LIKE IN THE CHALMETTE CASE AND PROBABLY EITHER SHOULD COME THROUGH
5 THE BECNELS OR HER PRESENT ATTORNEY. SO I WILL TRY TO CLARIFY WHO
6 IS PRESENTING HER AND WHO NEEDS TO DO THE MOTION TO DISMISS FOR HER.
7 THE COURT: I'D LIKE TO BE KEPT IN THAT LOOP, MR. COLVIN,
8 IF YOU CAN FIND THAT OUT AND REPORT TO ME, WHAT'S THAT SITUATION.
9 MR. HERMAN: COULD I SPEAK WITH DEFENSE COUNSEL ONE
10 MINUTE? I AM BOTHERED BY SOMETHING.

11 (WHEREUPON, A DISCUSSION WAS WELD OFF THE RECORD.)

12 MR. HERMAN: YOUR HONOR, MAY IT PLEASE THE COURT, MAY I
13 ADDRESS THE COURT?

14 THE COURT: YES.

15 MR. HERMAN: LOSS OF CONSORTIUM SUCH AS IN LOUISIANA WOULD
16 BE LOSS OF LOVE AND AFFECTION, ENJOYMENT OF LIFE ARE ELEMENTS TO BE
17 CONSIDERED IF THEY PASS THROUGH AND QUALIFY BY THE SPECIAL MASTER IN
18 DETERMINING. THE ENROLLEE, THE AWARD WOULD BE MADE TO THE ENROLLEE,
19 BUT THE TRADITIONAL LOSS OF CONSORTIUM DAMAGES WOULD BE INCLUDED AS,
20 IN WHATEVER PROPORTION, AMOUNTS THAT THE SPECIAL MASTER DEEMS
21 APPROPRIATE. SO I WANT TO CLEAR THE RECORD ON THE CONSORTIUM
22 ISSUES.

23 THE COURT: SO THOSE ELEMENTS ARE RECOVERABLE AND TO BE
24 FACTORED INTO THE SPECIAL MASTER'S AWARD.

25 MR. HERMAN: RIGHT. AND LET'S ASSUME THE ENROLLEE IS A

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1 HUSBAND, THE WIFE HAS A LOSS OF CONSORTIUM, THE AWARD WOULD BE MADE
2 TO THE HUSBAND WITH A PROVISION THAT THE SPECIAL MASTER HAS INCLUDED
3 IN THE AWARD A CONSIDERATION OF, FOR EXAMPLE, LOSS OF LOVE AND
4 AFFECTION.
5 MR. IRWIN: YOUR HONOR, THAT IS CORRECT. AND
6 CONCOMITANTLY, THIS IS A DISMISSAL WITH PREJUDICE OF THE SPOUSE'S
7 CLAIM. SO IF THE SPECIAL MASTER AWARDS LOSS OF LOVE AND AFFECTION
8 IN CONNECTION WITH THAT, A CONSORTIUM CLAIM, THAT'S APPROPRIATE. IF
9 THE SPECIAL MASTER FINDS IF IT IS. AND THE DISMISSAL WITH PREJUDICE
10 OF THAT CLAIM ACCOMPANIES THAT RULING.
11 THE COURT: ALL RIGHT.
12 MR. COLVIN: YOUR HONOR, THERE SEEMS TO BE SOME QUESTION
13 WHETHER SHE DOES OR DOES NOT HAVE A CLAIM. SO I AM GOING TO DO THE
14 SAFE THING AND FILE A MOTION TO WITHDRAW FOR HER. AND IF SOMEBODY
15 WANTS TO PICK UP HER CLAIM I WILL ADVISE THE PARTIES THEY CAN DO
16 THAT.
17 MR. HERMAN: I BELIEVE IF MR. BECNEL IS HANDLING THOSE
18 CLAIMS FOR YOU, IF YOU WOULD JUST MEET WITH MR. BECNEL WE CAN
19 PRESERVE THE SPOUSE'S CLAIM WITHOUT A PROBLEM AND YOU CAN CLEAR UP
20 THE ISSUE.
21 THE COURT: ALL RIGHT. LET'S DO THAT AND THEN NOTIFY ME
22 WITHIN FIVE DAYS OF WHAT THE SITUATION IS, COPIES TO THE DEFENDANTS
23 AND PLAINTIFF COMMITTEE.
24 MR. COLVIN: THANK YOU, YOUR HONOR.
25 MR. DAVIS: FAYARD & HONEYCUTT, WE HAD A NUMBER OF

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1 COMMUNICATIONS WITH THAT FIRM. AND MY APPRECIATION IS THAT ON
2 FEBRUARY 21 THERE WAS AN ENROLLMENT FORM FOR KATHERINE FAYARD THAT
3 WAS MADE AND I THINK THAT'S BEEN DEALT WITH.
4 MR. IRWIN: THAT'S CORRECT.
5 MR. DAVIS: THE NEXT ONE IS RICHARD FERNANDEZ. WE
6 UNDERSTOOD THAT THEY HAD ONE CLIENT AND THEY WERE GOING TO ENROLL,
7 AND I HAVE NOT HEARD ANYTHING FURTHER FROM RICHARD FERNANDEZ.
8 THE COURT: I'LL NEED HIS ADDRESS AND MAKE SURE THAT I
9 HAVE IT AND THEN I'LL SEND A NOTICE TO SHOW CAUSE WHY THAT CASE
10 SHOULD NOT BE DISMISSED FRO FAILURE TO PROSECUTE THE CLAIM.
11 MR. DUGAN: JAMES DUGAN, I'VE SPOKEN WITH MR. FERNANDEZ,
12 HE TOLD ME THAT THE CASE WILL BE PARTICIPATING IN THE SETTLEMENT AND
13 I WILL FOLLOW-UP.
14 THE COURT: FOLLOW-UP THEN AND LET ME KNOW IN FIVE DAYS
15 WHETHER HE IS OR IS NOT IN.
16 MR. DUGAN: YES.
17 MR. DAVIS: MR. FERNANDEZ'S ADDRESS IS 3900 NORTH CAUSEWAY
18 BOULEVARD, SUITE 605, METAIRIE, LOUISIANA 70002.
19 THE NEXT IS GAUTHIER DOWNING FIRM AND MR. DUGAN IS HERE TO
20 DISCUSS THOSE, WE HAVE HAD DISCUSSION WITH THAT FIRM.
21 MR. DUGAN: GOOD MORNING, YOUR HONOR, MAY IT PLEASE THE
22 COURT. JAMES DUGAN, WITH THE GAUTHIER FIRM, HAVE ENROLLED 105
23 INDIVIDUALS IN THE SETTLEMENT. WE HAD 114 INDIVIDUALS WHO WE
24 DISCHARGED IN OCTOBER OF 2000, OF WHICH WE WILL BE FILING MOTIONS TO
25 WITHDRAW ON BEHALF OF THOSE INDIVIDUALS. THERE WERE FOUR CLAIMANTS

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1 WHO WE WERE FORCED TO WITHDRAW BECAUSE THEY WANTED TO OPT OUT OF THE
2 SETTLEMENT AND NOT PARTICIPATE IN IT. AND THEN GOING THROUGH FOUR
3 OTHER NAMES WE DID A DILIGENT EFFORT THROUGH OUR OFFICE AND WE HAVE
4 NO RECORD OF THOSE INDIVIDUALS.
5 THE COURT: HOW DO WE DEAL WITH THAT, ANY DISCUSSIONS FROM
6 THE DEFENDANTS? THE LATTER PART, THE LAST PART IS WHAT I AM
7 CONCERNED WITH.
8 MR. IRWIN: YOUR HONOR, WE HAVE BEEN TALKING ABOUT THAT,
9 WE THINK IT WOULD HAVE TO BE IN THE NATURE OF AN ORDER TO SHOW
10 CAUSE. I THINK THE QUESTION WOULD BE NOTICE, IF WE DON'T HAVE AN
11 ADDRESS WE WOULD HAVE TO MAKE SOME RECOMMENDATIONS TO THE COURT WITH
12 RESPECT TO NOTICE. BUT A RULE TO SHOW CAUSE IN ONE FORM OR ANOTHER
13 WOULD BE APPROPRIATE.
14 THE COURT: THE WAY THAT THE NOTICE CAN BE WORKED OUT IS
15 FOR YOU TO LET ME KNOW THE NAME AND LAST KNOWN ADDRESS, AND I WILL
16 APPOINT AN ATTORNEY TO BE SERVED WITH THE PARTICULAR PLEADINGS, WITH
17 INSTRUCTIONS THAT THE ATTORNEY HAS TO REACH OUT AND FIND THEM OR
18 ATTEMPT TO FIND THEM. IF THEY CAN'T, THEY WILL MAKE A RECORD AND
19 THEN I WILL DEAL WITH IT. IT WILL HAVE TO BE AN ATTORNEY OUTSIDE OF
20 THIS LITIGATION SO THERE IS NO CONFLICT OF INTEREST.
21 MR. IRWIN: THANK YOU, YOUR HONOR.
22 MR. DUGAN: YOUR HONOR, WE WILL COORDINATE WITH THEM.
23 MR. DAVIS: YOUR HONOR, THAT SITUATION EXISTS WITH SEVERAL
24 OF THE PRO SE CLAIMANTS AND I WILL ADDRESS THAT LATER ON ALSO.
25 THE NEXT ONES ARE THE HERMAN MATHIS CLAIMANTS, WHICH ARE

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1 RUSS AND MY FIRM. THERE ARE 16 INDIVIDUALS WHO THERE WAS SOME
2 CONFUSION WITH RESPECT TO WHETHER OR NOT THEY WERE ENROLLED. I KNOW
3 THAT'S BEEN CLEARED UP WITH THE DEFENDANTS, AND, IN FACT, THEY ARE
4 ENROLLED. THERE ARE SEVEN CLAIMANTS WHO WERE LISTED INADVERTENTLY,
5 THEY WERE GANO LEMOINE CLAIMANTS AND THAT'S BEEN ADDRESSED.

6 THERE ARE ALSO 11 CLAIMANTS THAT ARE HERMAN MATHIS THAT
7 OUR FIRM HAS REJECTED AND WE WILL BE WITHDRAWING AS COUNSEL OF
8 RECORD OR DISMISSING THOSE CASES. THERE IS ONE INDIVIDUAL THAT
9 WE'VE BEEN IN COMMUNICATION WITH THE DEFENDANTS AND WE ARE CLEARING
10 THAT UP TRYING TO GET A LITTLE BETTER HANDLE ON THAT. I EXPECT THAT
11 THAT'LL BE DONE VERY, VERY QUICKLY.

12 AND THEN THERE IS ONE ON THERE WHO IS NOT A HERMAN MATHIS
13 CLAIMANT AND WE ARE ADDRESSING THAT WITH THE DEFENDANTS. BUT I'VE
14 SPOKEN TO MR. PREUSS THIS MORNING, AND I DON'T REALLY SEE ANY
15 PROBLEM WITH THE HERMAN MATHIS CLAIMANTS.

16 THE COURT: THAT ACCURATE, MR. PREUSS?

17 MR. PREUSS: YES, YOUR HONOR.

18 MR. DAVIS: THE NEXT ARE THE IEYOUB CLAIMANTS. I HAVE
19 BEEN IN COMMUNICATION WITH CAPRICE IEYOUB, AND MY APPRECIATION IS
20 THAT THEY ARE ADDRESSING THEIRS OR HAVE ADDRESSED THEIRS.

21 THE COURT: IS MS. IEYOUB IN? COME FORWARD AND TELL US
22 ABOUT IT.

23 MS. IEYOUB: GOOD MORNING. WE HAVE OBTAINED THE CONSENT
24 OF ALL OF OUR PLAINTIFFS TO PARTICIPATE, AND THERE'S APPARENTLY SOME
25 CLERICAL ERROR THAT WE ARE TRYING TO ADDRESS OR GET IDENTIFIED.

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1 THE COURT: HOW LONG WILL IT TAKE YOU TO FINISH THAT UP?
2 MS. IEYOUB: WE HAVE BEEN TRYING TO DO IT FOR SEVERAL
3 MONTHS, I THINK WE HAVE SUBMITTED EVERYTHING THAT'S BEEN REQUIRED.
4 THE COURT: WHAT ELSE DOES SHE NEED?
5 MR. PREUSS: I THINK SHE IS OKAY. SHE IS NOT ON MY FINAL
6 LIST THAT I PRINTED UP YESTERDAY. IF THERE IS, I WILL GET IN TOUCH.
7 THE COURT: OKAY. THANK YOU.
8 MR. DAVIS: THE KAHN GAUTHIER FIRM AND I BELIEVE THOSE
9 HAVE BEEN ADDRESSED BY JULIE JACOBS OF THE MURRAY LAW FIRM. I DON'T
10 SEE JULIE.
11 THE COURT: ANY REPORT ON THAT?
12 MR. MURRAY: STEPHEN MURRAY OF THE MURRAY LAW FIRM. I AM
13 NOT IN THE LOOP, I AM NOT AWARE OF A PROBLEM, BUT I WILL FOLLOW-UP
14 ON THAT.
15 THE COURT: LET'S FOLLOW-UP AND TAKE CARE OF THAT, LET ME
16 KNOW WITHIN FIVE DAYS.
17 MR. MURRAY: YES, YOUR HONOR.
18 MR. DAVIS: THE LETTER THAT I HAVE FROM JULIE JACOBS OF
19 FEBRUARY 16TH I CAN PROVIDE TO THE COURT, THAT WAS GIVEN TO
20 MR. CAMPION, IT'S ABOUT AN INDIVIDUAL CLAIM AND THEY WERE UNDER THE
21 IMPRESSION THAT IT WAS ENROLLED JUST FOR SOME FURTHER CLARIFICATION.
22 THE COURT: OKAY.
23 MR. DAVIS: THE LEBLANC --
24 MR. IRWIN: EXCUSE ME, I WILL JUST TRY TO STATE THIS. I
25 THINK THE KAHN GAUTHIER CASE INVOLVES A SINGLE CLAIMANT BY THE NAME

00024

1 OF CAROLE LAMARTINA.
2 MR. DAVIS: THAT'S CORRECT. DO YOU HAVE A DISMISSAL?
3 MR. PREUSS: I THINK SHE ENROLLED, MY NOTE IS THAT SHE
4 ENROLLED JUST IN THE LAST FEW DAYS.
5 THE COURT: OKAY. WHAT'S THE NEXT ONE?
6 MR. DAVIS: THE NEXT IS LEBLANC WADDELL, AND I HAVE HAD AN
7 E-MAIL FROM THEM EARLY ON, BUT I DON'T KNOW THE STATUS OF THAT AT
8 THIS POINT.
9 MR. WILKINS: GOOD MORNING, YOUR HONOR, PAUL WILKINS. TWO
10 OF THE FOUR NAMES ON THE LIST ARE ENROLLED, THEY ARE ON MY LIST OF
11 ENROLLEES, MABLE SMITH AND VALERIE TURNER. IRA LAMP IS ANOTHER AND
12 SHE HAS ASKED THAT HER CLAIM BE DISMISSED, AND I WILL AVAIL MYSELF
13 AT ONE OF MR. IRWIN'S DISMISSALS TO ACCOMPLISH THAT TODAY.
14 MR. WILSON HAS TERMINATED HIS REPRESENTATION BY LEBLANC WADDELL AND
15 IS NOW REPRESENTED BY OTHER COUNSEL.
16 THE COURT: DO YOU KNOW WHO THE OTHER COUNSEL IS?
17 MR. WILKINS: GERALD MAPLES' OFFICE. SO I CAN WITHDRAW OR
18 WE CAN DO A SUBSTITUTION TO ACCOMPLISH THAT.
19 MR. DAVIS: WE WILL ASSIST, IF COUNSEL NEEDS, FOR
20 SUBSTITUTION. IF THERE'S ANYTHING THAT WE CAN DO AS LIAISON
21 COUNSEL, WE ARE HAPPY TO ASSIST.
22 THE COURT: THANK YOU, MR. WILKINS.
23 MR. PREUSS: THERE ARE TWO THAT HE SAID HE DOESN'T
24 REPRESENT, WE HAVE HIM ON THE LIST FOR HIS FIRM, WE ARE GOING TO
25 HAVE TO CHECK THAT OUT ON THOSE TWO.

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1 THE COURT: LET'S GET WITH HIM TO MAKE SURE.
2 MR. DAVIS: THE NEXT IS KENNETH MOLL, WE'VE BEEN IN
3 COMMUNICATION WITH MR. MOLL'S OFFICE. WE UNDERSTAND THAT MR. MOLL
4 DESIRES TO WITHDRAW AS COUNSEL OF RECORD.
5 THE COURT: I GOT IT AND I SIGNED IT ALREADY.
6 MR. DAVIS: THE NEXT IS THE MURRAY LAW FIRM --
7 MR. HERMAN: EXCUSE ME, LENNY. YOUR HONOR, MIGHT I
8 APPROACH WITH MR. IRWIN?
9 THE COURT: SURE.
10 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)
11 THE COURT: I UNDERSTAND FROM THE BENCH CONFERENCE THAT WE
12 WILL NEED TO APPOINT A CURATOR FOR THIS ATTORNEY.
13 MR. DAVIS: I THINK THAT'S CORRECT, YOUR HONOR. WITH
14 RESPECT TO THE MURRAY LAW FIRM, MY APPRECIATION IS THAT THAT HAS
15 BEEN HANDLED.
16 THE CALUDA & REBENNACK FIRM, WE HAVE NOT HEARD FROM THEM
17 SINCE OUR LETTER. I DON'T KNOW WHO IS HERE FROM THE CALUDA &
18 REBENNACK FIRM.
19 THE COURT: ANYONE HERE FROM CALUDA & REBENNACK?
20 MR. BECNEL: YOUR HONOR, I WILL CONTACT MR. CALUDA, I
21 USUALLY DO A LOT OF HIS THINGS FOR HIM, AND I WILL FIND OUT WHAT THE
22 PROBLEM IS. I DID NOT KNOW THAT HE HAD A PROBLEM.
23 THE COURT: OKAY. CHECK WITH THEM. IF I DON'T HEAR FROM
24 YOU IN FIVE DAYS WHAT I WILL DO IS ISSUE AN ORDER TO SHOW CAUSE WHY
25 THE CASES SHOULD NOT BE DISMISSED FOR LACK OF PROSECUTION. SO GIVE

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1 ME A LIST OF THE CASES WE'RE DEALING WITH FOR THE CALUDA & REBENNACK
2 FIRM AND I WILL GIVE MR. BECNEL AN OPPORTUNITY TO TALK WITH THEM.
3 MR. BECNEL: IT'S GOING TO BE A.J. REBENNACK.
4 MR. DAVIS: MR. PREUSS HAS GIVEN THE NAMES OF THE TWO
5 INDIVIDUALS THAT ARE AT ISSUE WITH THE CALUDA & REBENNACK FIRM TO
6 MR. BECNEL.
7 THE LAST ONE IS BOB WRIGHT'S FIRM. MR. WRIGHT IS HERE.
8 WE HAVE BEEN IN COMMUNICATION WITH MR. WRIGHT'S FIRM AND I BELIEVE
9 THAT THEY HAVE CLEARED UP THE CONFUSION. I KNOW THERE WERE A NUMBER
10 OF ISSUES THERE, AND MR. WRIGHT CAN SPEAK TO IT, BUT I BELIEVE
11 THAT'S BEEN HANDLED.
12 MR. WRIGHT: THAT'S CORRECT. I THINK MR. PREUSS WILL
13 CONFIRM, YOUR HONOR, THAT ALL OF THE CLAIMANTS REPRESENTED BY OUR
14 FIRM HAVE ENROLLED, WITH THE EXCEPTION OF APPROXIMATELY SIX. I'VE
15 JUST HANDED THEM OUR MOTION TO WITHDRAW IN THOSE CASES.
16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ANY FURTHER
17 REPORT ON THIS ASPECT OF THE MATTER?
18 MR. DAVIS: YOUR HONOR, I'VE BEEN ADVISED THAT ONE OF THE
19 INDIVIDUALS FROM THE MCKERNAN FIRM IS HERE.
20 MR. BRADY: SCOTT BRADY ON BEHALF OF STEVEN BALSAMO. IT
21 WAS OUR INTENTION TO ENROLL HIM. THE DOCUMENTS WERE SENT BACK
22 SAYING THAT WE NEEDED TO STRIKE HIM FROM THE LIST. I THINK THAT
23 MATTER HAS BEEN RESOLVED.
24 THE COURT: ALL RIGHT. IS THAT YOUR UNDERSTANDING,
25 MR. PREUSS? HE SAID HE WANTS TO ENROLL.

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1 MR. BRADY: IT IS A CONSORTIUM CLAIM, I DON'T KNOW THE
2 PROCEDURE IF IT NEEDS TO BE STRICKEN OR ENROLLED.

3 MR. PREUSS: YOUR HONOR, LET ME TALK TO HIM AFTERWARDS AND
4 GET IT WORKED OUT.

5 THE COURT: ALL RIGHT.

6 MR. DAVIS: YOUR HONOR, THAT'S THE TOTAL. I'VE SPOKEN TO
7 MR. PREUSS AND DEFENDANTS ARE OF THE OPINION THAT MOST OF THIS, IF
8 NOT ALL OF IT, SHOULD BE CLEARED UP WITHIN TEN DAYS. WE WILL BE
9 HOPEFUL THAT IT GETS ACCOMPLISHED AND CLEARED UP.

10 THE COURT: OKAY. FINE. THANK YOU VERY MUCH.

11 ONE ASPECT OF THIS WHOLE PICTURE INVOLVES THE GOVERNMENT'S
12 POTENTIAL CLAIMS, AND I'VE ASKED THE GOVERNMENT TO PARTICIPATE.
13 I'VE MET WITH THEM IN THE STATUS CONFERENCE THIS MORNING, OR THEIR
14 REPRESENTATIVES, BUT I UNDERSTAND THAT SOMEONE IS COMING IN FROM
15 WASHINGTON TO SPEAK AT THIS PARTICULAR POINT. THE GOVERNMENT
16 ATTORNEY FROM WASHINGTON?

17 MS. HARVEY: YOUR HONOR, RUTH HARVEY FOR THE UNITED
18 STATES.

19 THE COURT: CAN YOU GIVE US A REPORT?

20 MS. HARVEY: WELL, SINCE OUR LAST STATUS CONFERENCE WE
21 HAVE WORKED WITH THE INFORMATION THAT IS IN THE GUIDELINES FOR THE
22 PEOPLE WHO WILL PARTICIPATE IN THE SETTLEMENT AND HAVE BEGUN TO
23 DEVELOP MODELS OF CARE AND ALSO TO DEVELOP PAYMENT ESTIMATES FOR
24 THOSE MODELS OF CARE. THE NEXT STEP IN THE PROCESS IS GOING TO BE
25 TO RECEIVE INFORMATION REGARDING SPECIFIC INDIVIDUALS WHO WILL BE

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1 QUALIFIED TO RECEIVE PAYMENT. AND WE HAD SENT THE DEFENDANT I GUESS
2 IN OCTOBER SOME INFORMATION REGARDING THE FLOW NET IN WHICH THAT
3 MATERIAL WOULD COME, AND I GUESS THE NEXT STEP WOULD BE TO WORK WITH
4 THEM TO ACTUALLY REVIEW THAT INFORMATION.
5 THE COURT: ONE THING I DO WANT TO SAY, AND I MENTIONED IT
6 TO YOUR COLLEAGUES THIS MORNING, THAT I NEED TO SUGGEST IS THAT YOU
7 TAKE A LOOK AT THIS MATTER AND SEEK A GLOBAL SOLUTION. YOU CAN GET
8 LOST IN DETAIL WITH IT AND IT CAN JUST SINK BY VIRTUE OF NITPICKING
9 EACH INDIVIDUAL CLAIM. I AM NOT SUGGESTING YOU'RE DOING THAT OR
10 THAT YOUR STAFF WOULD DO THAT. BUT YOU HAVE TO RESIST THAT URGE.
11 THIS IS THE KIND OF CASE THAT IF A PERSON HAS DIED, THEY
12 HAVE DIED INSTANTLY. IF THEY HAVEN'T, THERE'S A LIMITED AMOUNT OF
13 EXPOSURE THAT YOU WOULD BE DEALING WITH. AND THE ONES THAT HAVE
14 GREATER EXPOSURE THAT YOU COULD FOCUS IN ON, YOU COULD ISOLATE THOSE
15 AND SCRUTINIZE THEM WITH GREAT CARE. BUT THE OTHERS YOU MIGHT NOT
16 NEED TO PUT THE MICROSCOPE ON EACH OF THOSE PARTICULAR CASES BECAUSE
17 THERE IS NOTHING THERE. MA'AM, WHEN YOU DETECT THAT, IT MIGHT BE
18 HELPFUL TO MOVE ON TO ONES THAT NEED TO BE SCRUTINIZED AND NEED YOUR
19 EXQUISITE ANALYSIS.
20 WHAT I AM SAYING IS, I THINK SOME BIG PICTURE ANALYSIS
21 WOULD BE VERY HELPFUL IN THIS CASE AND IT WOULD BE TO YOUR BENEFIT
22 AS WELL AS TO THE LITIGANTS' BENEFIT. I DO WANT TO SEE IF WE CAN
23 GET THE MONEY TO THESE INDIVIDUALS AS QUICKLY AS POSSIBLE AND NOT
24 HAVE IT DELAYED. HAVING SAID THAT, YOU NEED TO KNOW THAT THE COURT
25 APPRECIATES THE WORK THAT THE GOVERNMENT HAS BEEN DOING ON THIS

00029

1 MATTER.

2 AND I ALSO APPRECIATE THE FACT THAT YOU'VE BEEN IN THE
3 MATTER FOR A RELATIVELY LONG PERIOD. I DID NOT WANT TO WAIT UNTIL
4 THE 11TH HOUR TO GET YOU IN, BECAUSE IT'S NOT FAIR TO YOU AND OF
5 COURSE IT'S NOT FAIR TO THE LITIGANTS. SO I'VE GOTTEN YOU IN EARLY
6 AND I APPRECIATE THE WORK AND THE ATTENTION THAT YOU AND YOUR STAFF
7 HAVE BEEN GIVING TO THIS.

8 MS. HARVEY: THANK YOU, YOUR HONOR, AND I APOLOGIZE FOR
9 NOT BEING PRESENT.

10 THE COURT: THAT'S ALL RIGHT. I UNDERSTAND.

11 MR. IRWIN: YOUR HONOR, MAY I TURN THE PAGE BACK A MOMENT
12 TO THE ACHORD DISCUSSION?

13 THE COURT: YES, SIR.

14 MR. IRWIN: I THINK THAT MR. DAVIS' PRESENTATION SHOWS
15 THAT THE DEVIL IS IN THE DETAILS. WE APPRECIATE THE COURT'S ORDER
16 INVOKING DISCUSSION TODAY, WE WELCOME AND APPRECIATE THE ATTORNEYS
17 WHO HAVE COME AND MADE THEIR PRESENTATIONS. IT HAS BEEN OUR CLEAR
18 IMPRESSION THAT THE INABILITY TO GATHER THIS ALTOGETHER HAS BEEN NOT
19 ONE WITH CONTEMN BUT REALLY ONE OF CONFUSION MORE THAN ANYTHING
20 ELSE.

21 WHAT I REALLY WANTED TO CONVEY TO THE COURT IS MY
22 APPRECIATION TO MR. DAVIS AND MR. PREUSS WHO HAVE LABORED SO, SO,
23 AND I AM SURE THAT MR. HERMAN JOINS ME IN THIS, THEY HAVE LABORED IN
24 THE DETAILS OF THIS, AS I'M SURE YOUR HONOR CAN TELL HAS NOT BEEN
25 EASY. AND I THINK WE REALLY NEED TO FOCUS ON THE NEXT TEN DAYS TO

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1 GET THIS FINISHED BECAUSE IT IS GOING TO TAKE A LOT MORE DETAIL
2 WORK. BUT MR. PREUSS AND MR. DAVIS HAVE WORKED BEHIND THE SCENES A
3 GREAT DEAL ON THIS, JUDGE.
4 THE COURT: I'VE BEEN AWARE OF THAT AND THE COURT
5 APPRECIATES THEIR WORK, TOO. EVERYBODY HAS DONE A GREAT JOB IN THIS
6 MATTER. BUT IN THIS PARTICULAR ASPECT OF THE CASE, BOTH OF THOSE
7 GENTLEMEN HAVE HAD THE LABORING OAR AND HANDLED IT WELL, AND I AM
8 PROUD OF THEM AND APPRECIATE THE WORK THAT THEY'VE BEEN DOING.
9 MR. DAVIS: THANK YOU, YOUR HONOR. AND WE WILL CONTINUE
10 TO COMMUNICATE OVER THE NEXT FEW DAYS AND CONTINUE TO ADVISE THE
11 SPECIAL MASTER, AS WE GET ALONG, AS WE HAVE, AND GET THIS CONCLUDED
12 HOPEFULLY. I HAVE MORE TO REPORT TO YOUR HONOR ON THE PRO SES WHEN
13 WE GET TO THAT.
14 THE COURT: OKAY. THE NEXT IS THE GLOBAL APPLICATION OF
15 THE DAUBERT.
16 MR. HERMAN: THE PLAINTIFFS COMMITTEE IN THE WORDS OF AN
17 OLD IRISH FOLKS SONG SAY "NO NEVER NO MORE." WE STRONGLY OBJECT TO
18 A GLOBAL APPLICATION OF DAUBERT. THE DEFENDANTS WISH TO HAVE
19 DAUBERT APPLIED GLOBALLY. WE JOINTLY REQUEST THAT THAT MATTER BE
20 DEFERRED PENDING THE OUTCOME OF THE SETTLEMENT PROGRAM.
21 THE COURT: THAT'S WISE. LET'S SEE HOW MANY WE HAVE TO
22 DEAL WITH FIRST.
23 MOTION FOR SUMMARY JUDGMENT IS THE NEXT ITEM.
24 MR. HERMAN: YOUR HONOR, PLAINTIFFS DO NOT AT THIS TIME
25 WANT TO PURSUE THAT MATTER. WE'D LIKE TO KEEP IT ALIVE THOUGH

00031

1 PENDING THE INITIALIZATION OF THE SETTLEMENT PROGRAM.
2 THE COURT: OKAY. THE PRO SE PLAINTIFFS. WITH REGARD TO
3 THE MOTION FOR SUMMARY JUDGMENT, MAYBE THE BEST WAY OF HANDLING THIS
4 IS TO REMOVE IT FROM THE AGENDA OR DENY IT AS PREMATURE RESERVING
5 EVERYBODY'S RIGHTS TO REURGE IT AT THE APPROPRIATE TIME.
6 MR. HERMAN: YOUR HONOR, I DON'T THINK IT'S BEEN FILED.
7 THE COURT: OKAY. FINE. POTENTIAL MOTION FOR SUMMARY
8 JUDGMENT.
9 MR. HERMAN: I GUESS WE DIDN'T WORD THAT ACCURATELY, BUT
10 WE COULD REMOVE IT FROM ANY FURTHER REPORT.
11 THE COURT: IT DOESN'T MATTER, BUT I UNDERSTAND THAT CAN
12 AND MAY BE FILED IN THE FUTURE.
13 THE PRO SE PLAINTIFFS IS THE NEXT ITEM ON THE AGENDA.
14 ANYTHING FURTHER ON THAT?
15 MR. IRWIN: I DON'T THINK THERE'S ANYTHING TO ADD TO THAT.
16 WE HAVE BEEN UPGRADING THE SERVICE LIST TO REFLECT THOSE
17 TRANSITIONS.
18 I WILL POINT OUT THAT ITEM 8 OF THE AGENDA THAT THE
19 QUALIFIED SETTLEMENT FUND ORDER HAS BEEN AGREED UPON AND WE WILL BE
20 SUBMITTING IT TO YOUR HONOR EARLY NEXT WEEK.
21 MR. DAVIS: YOUR HONOR, I DO HAVE A SHORT REPORT TO GIVE
22 YOU WITH RESPECT TO THE PRO SE, AND I THINK I CAN CLEAR UP ONE OF
23 THE ITEMS LATER ON IN THE AGENDA. PURSUANT TO YOUR HONOR'S
24 DIRECTIVE AT THE LAST STATUS CONFERENCE ON JANUARY 17, 2005, WE
25 DIRECTED LETTERS TO EACH OF THE PRO SE CLAIMANTS AND CARRIED OUT

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1 YOUR INSTRUCTION TO FIND OUT INFORMATION SUCH AS WHETHER OR NOT THEY
2 PRESENTLY HAD COUNSEL REPRESENTING THEM IN THE MATTER, IF THEY
3 DIDN'T HAVE COUNSEL DID THEY WANT COUNSEL TO REPRESENT THEM, WILL
4 THEY GET THEIR OWN COUNSEL, AND DID THEY WANT THE COURT TO APPOINT
5 SOMEONE FOR THEM.

6 I HAVE A COMPREHENSIVE LIST THAT I CAN FURNISH TO THE
7 COURT WITH RESPECT TO THE RESPONSES WE'VE GOTTEN. THERE ARE QUITE A
8 NUMBER OF THOSE CLAIMANTS WHO HAVE EITHER ADVISED THAT THEY WISH THE
9 COURT TO APPOINT COUNSEL OR THEY WANT TO WITHDRAW FROM THE MATTER,
10 OR THE LETTERS CAME BACK UNDELIVERABLE. AND I WILL GET THAT TO YOUR
11 HONOR.

12 I SPECIFICALLY WANT TO POINT OUT, AND THIS IS ON ITEM NO.
13 12 OF THE NEW ITEMS, MICHAEL ALLEN IS ONE OF THE CLAIMANTS AND YOUR
14 HONOR WAS PROVIDED COPY OF CORRESPONDENCE THAT WENT TO MR. ALLEN.
15 MR. ALLEN WAS ADVISED THAT THERE WAS A STRONG LIKELIHOOD THAT HIS
16 CASE WOULD BE DISMISSED TODAY IF HE DIDN'T WANT TO PROCEED, AND HE,
17 IN FACT, ADVISED MR. HERMAN THAT HE DID NOT WANT TO GO FORWARD. AND
18 I CONFIRMED THAT IN THE LETTER. SO I DO POINT THAT OUT BECAUSE IT
19 IS AN ITEM, IT'S LATER ON THE AGENDA.

20 I ONLY POINT THAT OUT BECAUSE IT IS AN EXAMPLE OF THE TYPE
21 OF ISSUE THAT WE ARE FACING. BUT THERE ARE QUITE A NUMBER OF THESE
22 CLAIMANTS WHO WE COULD NOT COMMUNICATE WITH FOR WHATEVER REASON,
23 WHETHER IT BE THEY HAD A BAD ADDRESS, THE LETTERS CAME BACK
24 UNDELIVERABLE. BUT WE NEED TO ADDRESS HOW TO DEAL WITH PRO SE
25 CLAIMANTS GOING FORWARD.

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1 THE COURT: WHAT WE WILL DO IS PROVIDE THAT THEY FALL INTO
2 TWO CATEGORIES, ONES WHO ARE NOT INTERESTED IN PURSUING THEIR
3 CLAIMS, I WILL DEAL WITH THAT IN A MOTION TO SHOW CAUSE WHY THEY
4 SHOULD NOT BE DISMISSED.

5 WITH REGARD TO THE INDIVIDUALS WHO DO WANT TO PROCEED OR
6 WANT THE COURT TO APPOINT COUNSEL, I WILL APPOINT AN OMNIBUS COUNSEL
7 TO REPRESENT THESE INDIVIDUALS OUTSIDE OF THE SCOPE OF THIS
8 PROCEEDING, OF COURSE, SO HE OR SHE HAS NO CONTACT WITH THIS
9 PARTICULAR CASE. THE INDIVIDUAL THEN WILL BE SERVED WITH PAPERS.
10 HE OR SHE CAN CONTACT THOSE PEOPLE WHO THEY CAN REACH. THOSE PEOPLE
11 THAT CANNOT BE REACHED, I'LL DISMISS FOR FAILURE TO PROSECUTE.

12 THOSE PEOPLE THAT THEY CAN BE REACH, I'LL DEAL WITH THOSE
13 CASES ON A CASE-BY-CASE BASIS. THEY'LL EITHER BE RESOLVED OR THEY
14 WILL BE TRIED OR THEY WILL BE DISMISSED, BUT WE WILL GO FORWARD WITH
15 IT IN THAT FASHION.

16 MR. DAVIS: YOUR HONOR, I WILL GET YOU A COMPILATION AND I
17 WILL PROVIDE DEFENDANTS THAT SAME COMPILATION OF WHAT WE HAVE
18 LEARNED FROM OUR LETTERS, AND I WILL GET THAT TO YOU WITHIN THE NEXT
19 DAY OR TWO.

20 THE COURT: ALL RIGHT. THANK YOU. THE NEXT ITEM IS ITEM
21 12 PLAINTIFFS' CORRESPONDENCE TO COURT.

22 MR. HERMAN: YES, YOUR HONOR. IT'S IN THE RECORD. THERE
23 IS NO NEED TO REALLY REVIEW IT IN ANY DETAIL.

24 THE COURT: THE NEXT ITEM IS VERILAW/LEXIS PROPULSID
25 LITIGATION MIGRATION.

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1 MR. HERMAN: WE ARE GOING TO ARRANGE TO HAVE VERILAW COME
2 IN AND MEET WITH YOU AS YOUR SCHEDULE PERMITS. WE WILL NOTIFY
3 DEFENSE COUNSEL. WE HAVE RECENTLY BEEN ADVISED THAT VERILAW HAS
4 BEEN PURCHASED BY LEXISNEXIS.

5 THE COURT: OKAY. AND I'LL ARRANGE TO MEET WITH THEM NEXT
6 WEEK AND WE WILL DEAL WITH THAT WITH ANY DIFFICULTIES OR PROBLEMS
7 THAT THE PARTIES ARE HAVING, THAT VERILAW IS HAVING.

8 THE NEXT ITEM IS CORRESPONDENCE FROM COUNSEL FROM
9 WALGREENS, THAT'S 14 ON THE AGENDA.

10 MR. IRWIN: YES, YOUR HONOR, I DO NOT KNOW IF WALGREENS'
11 COUNSEL IS HERE.

12 THE COURT: ANYONE FROM WALGREENS HERE, ANYONE ON THE
13 PHONE FOR WALGREENS?

14 I'LL HEAR FROM YOU, COUNSEL.

15 MR. IRWIN: YOUR HONOR, WE HAVE TOUCHED UPON THIS ONCE
16 BEFORE, AT LEAST THE MOST RECENTLY AT THE JUNE 25TH STATUS
17 CONFERENCE, WHERE WE REQUESTED THAT THE COURT DEFER CONSIDERATION OF
18 THIS MOTION WITH RESPECT TO A CROSS-CLAIM INDEMNITY ISSUE PENDING
19 ENROLLMENT IN THE PROGRAM, THE COURT DID THAT ON THE 25TH. WE WOULD
20 REQUEST THE SAME ACTION ON THIS AT THE PRESENT TIME, AND WE WOULD
21 ALSO POINT OUT THAT IT IS OUR IMPRESSION THAT THIS CASE HAS ALREADY
22 ENROLLED ANYWAY.

23 THE COURT: IF IT IS ENROLLED ANYWAY IT MAKES THE MOTION
24 MOOT.

25 MR. IRWIN: THAT IS CORRECT.

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1 THE COURT: LET'S CHECK IT OUT, I WILL DEFER IT UNTIL NEXT
2 TIME, BUT GIVE ME A REPORT NEXT TIME SO WE CAN EITHER MAKE IT MOOT
3 OR DEAL WITH THE MOTION.
4 MR. IRWIN: WE WILL, YOUR HONOR.
5 THE COURT: AND THE NEXT ITEM IS THE REMAND MOTIONS,
6 NO. 15, THE REMAND MOTIONS. I HAVE COUNSEL ON THE PHONE WHO WANTS
7 TO DISCUSS THE REMAND OF SEVERAL CASES. THE WEITZ LUXENBERG FIRM.
8 MR. PEDERSON: MICHAEL PEDERSON FOR WEITZ LUXENBERG.
9 THE COURT: BEFORE YOU START, I DO THANK YOU FOR YOUR
10 PATIENCE IN WAITING. YOU WERE THE LAST PARTY ON THE AGENDA. I
11 COULD HAVE GOTTEN TO YOU EARLY ON. FOR THAT I APOLOGIZE.
12 MR. PEDERSON: THAT IS ALL RIGHT. I WANTED TO BE HERE BUT
13 I HAVE A BIG SNOWSTORM IN NEW YORK SO I WAS NOT ABLE TO ATTEND.
14 THE COURT: ALL RIGHT.
15 MR. PEDERSON: WHAT WE WERE REQUESTING IS AN OPPORTUNITY
16 TO BE HEARD, AND WE HAVE THREE CASES THAT WE REQUESTED REMAND ON
17 BACK IN DECEMBER, EARLY DECEMBER OF LAST YEAR, AND WE UNDERSTAND
18 THAT THE COURT HAS DEFERRED MAKING A DECISION ON THOSE PARTICULAR
19 CASES AND WE WANTED TO HAVE AN OPPORTUNITY TO REQUEST THE COURT TO
20 ADDRESS THESE ISSUES.
21 I HAVE THREE CLIENTS, TWO OF THEM ARE DECEASED, ONE IS
22 PERMANENTLY DISABLED, AND I HAVE SOME FAMILIES THAT ARE VERY ANXIOUS
23 TO GET THESE CASES RESOLVED. THEY WERE ORIGINALLY FILED IN NEW
24 JERSEY STATE COURT AND WE HAVE PROCEEDED THROUGH CASE SPECIFIC
25 DISCOVERY AND NARROW DISCOVERY, INCLUDING EXCHANGE OF EXPERT

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1 REPORTS, AND WE PROGRESSED TO THE STAGE WHERE THE DEFENDANTS WERE
2 RELUCTANT TO GO FORWARD AND CONDUCT THE DEPOSITIONS OF TREATING
3 DOCTORS, BUT ALL OTHER DISCOVERY WAS COMPLETED.

4 AT THAT POINT BASICALLY THE ELEVENTH HOUR MOTIONS WERE
5 MADE AND JUDGE CORODEMUS, WHO IS OVERSEEING THOSE MOTIONS, BASICALLY
6 DECIDED THAT, ALL RIGHT. THAT'S IT. LET'S SEND THEM BACK TO THEIR
7 LOCAL JURISDICTION. SO THE PARTIES, BOTH SIDES AGREED TO REFILE
8 THESE CASES IN FEDERAL COURT WITH THE UNDERSTANDING THAT THEY WOULD
9 BE REMANDED BACK TO THEIR LOCAL JURISDICTIONS FOR TRIAL. AND THAT'S
10 BASICALLY WHAT WE'VE DONE.

11 AND THESE ARE VERY SIGNIFICANT CASES. I'VE GOT ONE WOMAN
12 WHO HER SPOUSE DIED AND SHE WAS FORCED INTO BANKRUPTCY AS A RESULT
13 OF THIS. I HAVE SEVERAL OTHERS THAT -- ONE WOMAN IS PERMANENTLY
14 DISABLED, NOT ABLE TO WORK ANYMORE, AND THESE ARE VERY SIGNIFICANT
15 CASES AND I JUST NEED TO KNOW WHERE THE COURT IS THINKING OF GOING.
16 I AM GETTING CONSTANT PHONE CALLS FROM THE CLIENTS WHERE IS MY CASE
17 GOING.

18 THE COURT: SURE. I HEAR YOU AND I UNDERSTAND THE
19 SITUATION. WE'VE ALL BEEN THERE AND I DO APPRECIATE YOUR STICKING
20 WITH YOUR CLIENTS AND PUSHING ON THIS MATTER. IT'S IMPORTANT THAT
21 THEIR CASES BE CONCLUDED. I'LL HEAR FROM THE DEFENDANTS IN RESPONSE
22 AT THIS POINT.

23 MR. CAMPION: THANK YOU, YOUR HONOR. MR. PEDERSON'S
24 INFORMATION IN SOME RESPECTS IS INACCURATE. DISCOVERY IS NOT DONE.
25 THE CASES PROCEEDED, THREE CASES PROCEEDED IN NEW JERSEY SUPERIOR

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1 COURT. I THINK A REASONABLE PERSON WOULD CONCLUDE THAT THE
2 PLAINTIFFS DECIDED TO DISMISS THOSE CASES BECAUSE THEY DIDN'T LIKE
3 THE WAY JUDGE CORODEMUS WAS MANAGING THEM. IT WAS NO AGREEMENT THAT
4 THE CASES WITH JUDGE CORODEMUS, THAT THE CASES WOULD BE SENT TO SOME
5 OTHER JURISDICTION. IT WAS AN AGREEMENT REACHED WITH US THAT WE
6 WOULD NOT OPPOSE A DISMISSAL OF THE CASES WITHOUT PREJUDICE AND A
7 REFILE IN THE U.S. DISTRICT COURT.

8 AT THAT POINT OUR THOUGHT WAS THAT THEY PROBABLY HAD IT IN
9 MIND TO PARTICIPATE TO ONE DEGREE OR ANOTHER IN THE SETTLEMENT
10 PROGRAM WHICH WAS THEN UNDER DISCUSSION. AS IT TURNS OUT THAT IS
11 NOT THEIR POINT OF VIEW.

12 NOW, SO WE HAVE THREE CASES AND WE HAVE 22, 24,000 PEOPLE
13 WHO HAVE ENROLLED IN THIS PROGRAM. IT WOULD BE NICE IF I HAD HAD
14 THE OPPORTUNITY OVER THE LAST MONTH TO STUDY THESE THREE CASES IN
15 DETAIL TO SEE IF THEY WOULD BENEFIT FROM WHAT IS PERMITTED UNDER THE
16 MDL RULES AND WHAT JUDGE KAPLAN IS DOING BROADLY IN THE REZULIN
17 LITIGATION, WHICH IS TO MAKE CASE SPECIFIC MOTIONS IN THE PARTICULAR
18 CASES BEFORE ANY REMAND ISSUE IS ADDRESSED.

19 WE WOULD LIKE THE OPPORTUNITY TO STUDY THOSE THREE CASES
20 OVER THE NEXT MONTH WITH THAT VIEW IN MIND AND THEN WE CAN ANNOUNCE
21 AT THE NEXT HEARING WHETHER THEY HAVE ANY SUCH MOTIONS TO BE FILED.
22 I CAN'T TELL YOU AT THIS MOMENT AND I ASK THE COURT'S BENEFIT ON
23 THAT ONE. IF IT COMES TO PASS THAT WE HAVE NO CASE SPECIFIC
24 MOTIONS, THEN WE ARE PREPARED TO DISCUSS WITH YOUR HONOR WHATEVER
25 BRIEFING SCHEDULE YOU HAVE IN MIND.

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1 I WOULD LIKE TO REMIND MR. PEDERSON, WHO DOES NOT HAVE THE
2 BENEFIT OF THE TRANSCRIPT, A HEARING OR TWO AGO YOU INDICATED YOUR
3 VIEW AT THAT POINT WAS TO HOLD ALL REMAND MOTIONS TO A FUTURE DATE
4 TO DECIDE THEM IN GLOBO. I DON'T KNOW WHETHER WE ARE GOING TO SEE
5 OTHER REMAND MOTIONS. IT DOES LOOK AS IF MOST PEOPLE ARE INTENDING
6 TO ENROLL IN THE PROGRAM. AND IT'S OBVIOUS TO ME IN MY DEALINGS
7 WITH THE STAY LIAISON COUNSEL THEY ARE CONFIDENT THAT MOST OF THE
8 STATE CASES WILL ENROLL. I DON'T THINK IT'S APPROPRIATE AT THIS
9 TIME SPENDING A GREAT DEAL OF EFFORT TO HAVE THE TAIL OF THREE CASES
10 WAG THE TAIL OF 30,000 PLAINTIFFS.

11 THE COURT: WAIT. LET ME HEAR FROM PLAINTIFF'S LIAISON
12 AND THEN I WILL GIVE YOU AN OPPORTUNITY TO SPEAK.

13 MR. HERMAN: MAY IT PLEASE THE COURT, IN ONE SENSE THE PSC
14 HAS NO CORN TO POP ON THIS CONTROVERSY. BUT IN ANOTHER SENSE IT HAS
15 BEEN THE STATED POSITION THAT LAWYERS OUGHT TO HAVE AN OPPORTUNITY
16 TO TRY THEIR CASES, AND WE URGE THE COURT TO CONSIDER SOME FUTURE
17 DATE WHEN THIS REMAND, WHEN THESE REMAND MOTIONS MAY BE HEARD.

18 THE COURT: OKAY. I THINK THAT'S RIGHT, WE'VE GOT TO MOVE
19 ON THE REMAND MOTION. I THINK COUNSEL HAS A RIGHT TO HAVE HIS CASES
20 TRIED IF HE WISHES TO HAVE HIS CASES TRIED OR AT LEAST FOCUSED ON
21 THAT ASPECT OF IT. THEY CAN EITHER BE TRIED HERE OR THEY CAN BE
22 TRIED SOME OTHER PLACE, EITHER WITH OR WITHOUT THIS COURT.

23 WHAT I WILL DO, HOWEVER, IS I WILL PASS THIS FOR 30 DAYS.
24 AT THE END OF 30 DAYS, THE NEXT STATUS CONFERENCE I WILL SET FORTH A
25 BRIEFING SCHEDULE, QUICK BRIEFING SCHEDULE BECAUSE HOPEFULLY BY THEN

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1 EVERYBODY WILL KNOW THE PROBLEM AND I WILL DECIDE ON HOW WE DEAL
2 WITH THESE CASES.

3 IN CLOSING ON THIS ISSUE, I AGAIN APPRECIATE THE
4 INDULGENCE OF PLAINTIFF COUNSEL IN THIS MATTER AND WE WILL MOVE THE
5 CASES, YOU SHOULD TELL YOUR CLIENTS THAT THE CASES WILL BE MOVED ONE
6 WAY OR THE OTHER.

7 MR. PEDERSON: OKAY. THANK YOU, YOUR HONOR. SHOULD WE
8 PARTICIPATE IN THIS CONFERENCE?

9 THE COURT: YOU CAN. I WOULD APPRECIATE YOUR COMING IN,
10 EITHER IN PERSON OR BY PHONE. WE CAN DEAL WITH IT EITHER WAY.

11 MR. PEDERSON: OKAY. THANK YOU, YOUR HONOR. WHEN WOULD
12 THAT BE?

13 THE COURT: THE NEXT CONFERENCE IS WHEN, MARCH 24TH ON A
14 THURSDAY AT NINE O'CLOCK.

15 MR. PEDERSON: ALL RIGHT. YOUR HONOR. WE WILL EITHER BE
16 THERE OR BE ON THE PHONE.

17 THE COURT: GOOD. THANK YOU VERY MUCH.

18 MR. PEDERSON: THANK YOU, YOUR HONOR.

19 THE COURT: ANYTHING FURTHER, MR. ARSENAULT?

20 MR. ARSENAULT: MR. PENNOCK OF WEITZ AND LUXENBERG HAD
21 CONTACTED US IN FEBRUARY 2ND AND WE HELPED MAKE THE ARRANGEMENTS SO
22 HE COULD PARTICIPATE BY PHONE. HE WAS VERY APPRECIATIVE OF THAT AND
23 WE WILL BRING TO HIS ATTENTION THIS NEW DATE AND MAKE SURE THAT
24 EITHER HE OR HIS ASSOCIATE PARTICIPATE AT THE NEXT STATUS
25 CONFERENCE.

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1 THE COURT: FINE. THANK YOU VERY MUCH. ANYTHING FURTHER?
2 MR. HERMAN: NO, YOUR HONOR.
3 THE COURT: I UNDERSTAND WE HAVE VISITORS?
4 MR. HERMAN: YES, WE DO. MR. DAVIS' CHILDREN ARE HERE.
5 THE COURT: GOOD, WE SHOULD RECOGNIZE THEM. ASK THEM TO
6 STAND, PLEASE. WHO IS HERE? TELL US YOUR NAMES.
7 MR. EDWARD DAVIS: EDWARD.
8 THE COURT: WHY DON'T YOU COME UP HERE, EDWARD AND SISSY.
9 LENNY, INTRODUCE THEM TO ME, PLEASE.
10 MR. DAVIS: THIS IS SISSY JACOBS, MY GIRLFRIEND'S
11 YOUNGEST, SHE IS 11 YEARS OLD; AND EDWARD DAVIS, WHO IS ALSO 11
12 YEARS OLD, AND THEY ARE IN SCHOOL TOGETHER AT NEWMAN.
13 THE COURT: I APPRECIATE YOU ALL BOTH BEING HERE. I'VE
14 KNOWN YOUR DAD FOR AWHILE. IN THIS LITIGATION HE'S DONE A GREAT JOB
15 AND YOU SHOULD BE VERY PROUD OF HIM. THE COURT IS AND YOU NEED TO
16 KNOW THAT. HOPEFULLY ONE DAY YOU'LL STAND UP AND TALK TO THE COURT
17 AS ATTORNEYS. I APPRECIATE BOTH OF YOU BEING HERE, AND HOPEFULLY
18 YOU'VE ENJOYED THE PROCEEDING. I'LL SEE YOU IN A MOMENT. THE COURT
19 WILL STAND IN RECESS.
20 THE DEPUTY CLERK: EVERYONE RISE.
21 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
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23 * * * * *
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REPORTER'S CERTIFICATE

I, KAREN A. IBOS, CCR, OFFICIAL COURT REPORTER, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT, TO THE BEST OF MY ABILITY AND UNDERSTANDING, FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED AND NUMBERED MATTER.

KAREN A. IBOS, CCR, RPR
OFFICIAL COURT REPORTER

