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1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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3 IN RE: PROPULSID PRODUCT MDL 1355
LIABILITY LITIGATION SECTION "L"
4 NEW ORLEANS, LOUISIANA
FRIDAY, AUGUST 6, 2004
5 9:00 A.M.

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

8

APPEARANCES:

9 LIAISON COUNSEL FOR
PLAINTIFF:

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NEBLETT, BEARD & ARSENAULT
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HARTLEY, O'BRIEN, PARSONS,
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LEE & ASSOCIATES
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FOR DEFENDANTS:

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MOORE, L.L.C.
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1 APPEARANCES CONTINUED:

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DRINKER, BIDDLE & SHANLEY
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PREUSS, SHANAGHER, ZVOLEFF & ZIMMER
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9 FOR FORSHAG'S DRUGSTORE:

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17 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 (STATUS CONFERENCE)

3 (FRIDAY, AUGUST 6, 2004)

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5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. CALL

6 THE CASE, PLEASE.

7 THE DEPUTY CLERK: MDL-1355, IN RE: PROPULSID.

8 THE COURT: COUNSEL, MAKE THEIR APPEARANCE FOR THE

9 RECORD, PLEASE.

10 MR. WRIGHT: YOUR HONOR, MY NAME IS BOB WRIGHT. RUSS

11 HERMAN HAS TO ATTEND A FUNERAL, SO WITH YOUR PERMISSION I WOULD

12 LIKE TO TAKE HIS PLACE ON BEHALF OF THE PFC.

13 THE COURT: CERTAINLY.

14 MR. IRWIN: GOOD MORNING, YOUR HONOR, JIM IRWIN FOR THE

15 DEFENDANTS.

16 THE COURT: OKAY. FINE, WE'RE HERE TODAY FOR OUR

17 MONTHLY MEETING OF THE COMMITTEES. I HAVE BEFORE ME THE

18 AGENDA. THE FIRST ITEM IS THE ROLLING DOCUMENT PRODUCTION AND

19 ELECTRONIC DOCUMENT PRODUCTION. A REPORT ON THAT?

20 MR. IRWIN: I THINK AS WE'VE DISCUSSED BEFORE, YOUR

21 HONOR, THE OFFICIAL PRODUCTION WAS CONCLUDED. WE'RE CURRENTLY

22 DISCUSSING THE SUBMISSION AND ORDER PROVIDING FOR THE

23 SUSPENSION IN PART OF SOME OF ASPECTS OF ELECTRONIC

24 PRESERVATION. WE FEEL THAT IS MOVING ALONG APPROPRIATELY AND

25 HOPE TO HAVE IT RESOLVED AND PRESENTED TO YOU BY NEXT MONTH.

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1 THE COURT: STATE LIAISON COUNSEL, ANY REPORT FROM THE
2 STATE LIAISON?

3 MR. ARSENAULT: GOOD MORNING, YOUR HONOR, RICHARD
4 ARSENAULT. NO SPECIFIC REPORT, BUT AT THE MARCH 11TH
5 CONFERENCE YOU MENTIONED THAT OBVIOUSLY AT THAT TIME THE FOCUS
6 WAS GOING TO BE TRYING TO WRAP UP THE FEDERAL SETTLEMENT AND AT
7 SOME POINT THERE MIGHT BE AN OPPORTUNITY FOR CORRESPONDING WRAP
8 UP OF STATE SETTLEMENTS AND THE STATE LIAISON COMMITTEE MIGHT
9 BE EMPLOYED IN SOME CAPACITY WITH REGARD TO THAT. WE STAND
10 WILLING AND READY AND ABLE TO ASSIST THE COURT AND THE
11 LITIGANTS IN ANY WAY WITH REGARD TO THOSE EFFORTS.

12 THE COURT: I AM ANXIOUS TO DO THAT. I THINK TIMING IS
13 AN IMPORTANT PART, BUT I THINK THAT THERE IS A SIGNIFICANT ROLE
14 THAT YOU CAN PLAY ON THAT ASPECT OF THE CASE.

15 LET ME HEAR ANY REPORT FROM ANY DEFENDANT AS TO
16 ANY THOUGHT, ANY CONCEPT, ANY OBSERVATION.

17 MR. CAMPION: YES, YOUR HONOR, OUR PRESENT THOUGHT IS
18 AS FOLLOWS. THE CONCEPT OF A SECOND PROGRAM IS BEING
19 ENTERTAINED BY THE DEFENDANT. THE DEFENDANT, HOWEVER, IS NOT
20 PREPARED TO MOVE AHEAD WITH A FORMAL PROPOSAL UNTIL WE SEE HOW
21 THE FIRST PROGRAM GOES; BOTH WITH RESPECT TO THE RAPIDITY OF
22 ENROLLMENTS, THE EFFICIENCY IN WHICH THE MEDICAL PANELS WORK.

23 WE REALIZE, HOWEVER, THAT IF WHAT WE FIND IN THIS
24 FIRST EFFORT IS SUCCESSFUL, WE WILL BE LOOKING WITH FAVOR ON
25 THE SECOND EFFORT; AND WE REALIZE AT THAT TIME THOSE PEOPLE

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1 WITH WHOM WE MUST NEGOTIATE ARE NOT ONLY PFC BUT STATE LIAISON
2 COUNSEL.
3 THE COURT: AND I THINK IT'S IMPORTANT FROM THE STATE
4 LIAISON THAT YOU KEEP IN TOUCH WITH WHAT'S GOING ON IN THE
5 FEDERAL CASE SO THAT YOU'LL HAVE THE ADVANTAGE OF SEEING THE
6 PITFALLS, PROBLEMS, DIFFICULTIES AND HAVE ACCESS TO CERTAIN
7 FORMS, HOPEFULLY, THAT WILL BE ABLE TO BE ADAPTED AND UTILIZED
8 BY YOU IN SOME WAY AND FASHION, YOU CAN PROFIT FROM THAT
9 EXPERIENCE.
10 MR. CAPRETZ: YOUR HONOR, JIM CAPRETZ FROM CALIFORNIA.
11 I JUST WANT TO ACKNOWLEDGE TO THE COURT, WE HAVE BEEN INVOLVED
12 IN MANY MDL PROCEEDINGS AND THIS COURT HAS BEEN MORE ATTENTIVE
13 AND MORE CONCERNED ABOUT THE STATE CASES THAN I'VE EVER
14 EXPERIENCED; SO I WANT TO APPLAUD THE COURT FOR THOSE EFFORTS
15 IN THAT REGARD BECAUSE WE CERTAINLY DO APPRECIATE AND RECOGNIZE
16 YOUR EFFORTS.
17 THE COURT: WE MAY HAVE TO BE A LITTLE CREATIVE IN
18 KEEPING THE COURT INVOLVED IN THE STATE ASPECT OF IT, BUT THAT
19 HOPEFULLY CAN BE DONE TO THE ADVANTAGE OF EVERYBODY, BOTH
20 PLAINTIFFS AND DEFENDANTS IN THAT REGARD.
21 MS. BARRIOS: YOUR HONOR, DAWN BARRIOS FOR THE STATE
22 LIAISON COMMITTEE. AS WELL, I ECHO MR. CAPRETZ'S SENTIMENTS
23 BECAUSE I SAT ON THE STATE LIAISON COMMITTEE IN ANOTHER
24 NATIONAL MDL. THE JUDGE THERE WAS JUST NOT AS ATTUNED TO THE
25 DIFFICULTIES AND PROBLEMS OF THE STATE ATTORNEYS AS YOU ARE.

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1 IN THE SAME VEIN OF YOUR COMMENTS TO
2 MR. ARSENAULT, THE STATE LIAISON COMMITTEE STANDS READY,
3 WILLING AND ABLE TO HELP MR. HERMAN'S TEAM IN EDUCATING THE
4 LAWYERS AROUND THE COUNTRY. I KNOW THAT LAST TIME WE WERE HERE
5 WE SPOKE ABOUT MAYBE THREE OR FOUR DAYS IN WHICH THERE WOULD BE
6 SEMINARS, AND WE WANT TO PARTICIPATE IN THOSE SEMINARS TO NOT
7 ONLY ASSIST MR. HERMAN AND GIVE US THE INSIGHT OF THE INNER
8 WORKS.

9 THE COURT: I THINK THAT WOULD BE HELPFUL AND I WOULD
10 URGE THE COMMITTEE, THE PFC TO BE RESPONSIVE TO THAT.

11 WITH REGARD TO THE COURT'S PARTICIPATION, IT'S
12 REALLY THE ATTORNEYS WHO DRIVE THIS, AND YOU FOLKS HAVE BEEN
13 ATTENTIVE, YOU HAVE BEEN PRESENT, YOU HAVE BEEN INTERESTED, AND
14 THAT REALLY HAS MADE THE DIFFERENCE IN THE CASE, AND I HAVE
15 JUST SIMPLY BEEN RESPONSIVE TO YOUR INTERESTS MORE THAN
16 ANYTHING.

17 LET'S SEE. THE THIRD IS THE PATIENT PROFILE
18 FORMS, ARE WE STILL REPORTING ON THAT ONE?

19 MR. IRWIN: YES, YOUR HONOR. THE JOINT REPORT
20 SPECIFIES THE STATUS OF THE NUMBERS, BOTH SIDES AGREE THAT ANY
21 FURTHER MOTIONS DIRECTED TOWARD THOSE OVERDUE PATIENT PROFILE
22 FORMS SHOULD BE HELD IN SUSPENSE PENDING THE SETTLEMENT
23 PROGRAM.

24 THE COURT: OKAY. WHAT ABOUT THE SERVICE LIST?

25 MR. IRWIN: WE HAVE THE CURRENT LIST. I DON'T THINK

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1 THERE HAS BEEN ANY CHANGES, BUT I DISTRIBUTE THE LIST TO
2 MS. LAMBERT AND MR. DAVIS AND TO THE STATE LIAISON COMMITTEE.
3 THE COURT: THANK YOU. MOTION FOR CLASS CERTIFICATION,
4 IS THAT STILL ON HOLD?
5 MR. WRIGHT: YES, YOUR HONOR.
6 MR. IRWIN: YES, YOUR HONOR.
7 THE COURT: TRUST ACCOUNTS, ANYTHING TO REPORT ON THAT?
8 MR. IRWIN: THERE IS NOTHING TO REPORT ON THE TRUST
9 ACCOUNT, YOUR HONOR.
10 THE COURT: ONE PART OF THE TRUST ACCOUNT THAT WE HAVE
11 TALKED ABOUT IS WHEN THE MONEY IS PLACED IN THE TRUST ACCOUNT A
12 CERTAIN INTEREST IS OR MAY BE EARNED FROM THE MONEY. PERHAPS I
13 CAN CHECK TO SEE WHETHER OR NOT THE COURT'S ACCOUNT NUMBER CAN
14 BE USED SO NOBODY'S GETTING TAXED FOR THAT INTEREST. I DON'T
15 KNOW HOW WE DEAL WITH THAT ASPECT OF THE CASE AT THIS POINT.
16 BUT I'LL CHECK ON IT AND SEE HOW TO DEAL WITH THAT.
17 MR. IRWIN: YOUR HONOR, I GUESS I WOULD ONLY REFLECT
18 WITH THE COMMENT THAT THE INTEREST WITH RESPECT TO THESE FUNDS
19 WOULD GO TO THE PROGRAM.
20 THE COURT: RIGHT.
21 MR. IRWIN: AND NOT TO THE INDIVIDUAL.
22 THE COURT: ALL RIGHT. THE MEDIATION.
23 MR. IRWIN: THERE HAVE BEEN NO MEDIATIONS, YOUR HONOR.
24 THE COURT: TRIAL SCHEDULE, ANYTHING ON THE STATE
25 LEVEL?

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1 MR. IRWIN: NO, YOUR HONOR.

2 THE COURT: NO TRIALS. AND THE INDEMNITY AGREEMENT IS

3 NO. 9, PHARMACY INDEMNITY AGREEMENT.

4 MR. IRWIN: I DO NOT THINK WE HAVE ANY FURTHER REQUESTS

5 SINCE OUR LAST MEETING.

6 THE COURT: WHAT ABOUT THE MEDIATION AND RESOLUTION

7 PROGRAM, ANYTHING BEEN DONE WITH THAT ON THE INFRASTRUCTURE, SO

8 TO SPEAK?

9 MR. IRWIN: YES, YOUR HONOR.

10 MR. CAMPION: OBVIOUSLY WE HAVE THE ENROLLMENT

11 SITUATION TO BE FOLLOWED BY THE CLAIMS SITUATION. WE

12 UNDERSTAND THAT THE COMPLETION OF THE CLAIM FORMS IS SOMETHING

13 THAT SHOULD REMAIN ENTIRELY BETWEEN PLAINTIFFS AND THEIR

14 ATTORNEYS. THE ENROLLMENT IS A DIFFERENT MATTER. THE LEVELS

15 THAT MUST BE REACHED BY OCTOBER 29 ARE FAIRLY HIGH, BUT THEY

16 ARE ACHIEVABLE.

17 WHAT WE HAVE DONE ON THE DEFENSE SIDE IS TO BEGIN

18 TO PREPARE ENROLLMENT FORMS WHICH WOULD COVER THE ENTIRE

19 DATABASE OF A PARTICULAR ATTORNEY, WHETHER IT BE EIGHT

20 PLAINTIFFS, MDL CLAIMS OR TOTAL AGREEMENT CLAIMANTS, AND WE

21 HAVE BEGUN TO DISTRIBUTE THEM TO AREA PLAINTIFF COUNSELS. THE

22 MOST COMPLETE ONE WE SUBMITTED TO THE HERMAN MATHIS FIRM AND

23 RECEIVED IMMEDIATE ATTENTION FROM THEM TO OUR PROPOSED FORM.

24 WE HAVE MAINTAINED A DATABASE IN THE COURSE OF

25 THIS LITIGATION THAT IS PRETTY ACCURATE AND PRETTY COMPLETE.

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1 OBVIOUSLY WE ARE THE ONLY SOURCE FOR THE DATABASE OF THE TOTAL
2 AGREEMENT CLAIMANTS, NOBODY ELSE HAS THAT BUT US. MANY, MANY
3 OF THE COMPLAINTS HAD SEVERAL LAW FIRMS LISTED AS COUNSEL OF
4 RECORD OR LEAD COUNSEL AND MANY TIMES WE WOULD HAVE TO MAKE A
5 JUDGMENT AS TO WHO TO PUT AS LEAD COUNSEL.

6 WHAT WE PROPOSED TO DO IS BEGIN TO PREPARE MORE
7 ENROLLMENT FORMS, WHICH WE WILL MAKE AVAILABLE TO THE
8 PLAINTIFFS ATTORNEYS, SO THEY CAN DECIDE WHETHER THEY WANT TO
9 SIGN THEM OR NOT. WE ARE ANXIOUS TO GET TO THE 85 AND 75
10 PERCENT LEVELS AS QUICKLY AS POSSIBLE SO THE PROGRAM CAN THEN
11 GO INTO EFFECT. WE HAVE BEGUN TO RECEIVE SOME CLAIM FORMS.
12 OBVIOUSLY THEY ARE NOT ACTIONABLE UNTIL WE HAVE THE ENROLLMENT
13 LEVELS.

14 BUT WE UNDERSTAND THAT THE PLAINTIFFS STEERING
15 COMMITTEE IS GOING TO HAVE SOME TRAINING SESSIONS FOR THE
16 COMPLETION OF THE CLAIM FORMS, WE APPLAUD THEM ON THAT. BUT WE
17 STAND READY, WILLING AND ABLE TO WORK WITH ANY ATTORNEY WHO HAS
18 ANYBODY WHO IS AVAILABLE TO ENROLL IN THIS PROGRAM TO PREPARE
19 THE ENROLLMENT FORMS FOR THEM AND WORK WITH THEM IF THEY HAVE
20 ANY QUESTIONS ABOUT WHETHER THEY ARE COMPLETE OR NOT.
21 THE COURT: THAT'S SOMETHING THAT THE STATE LIAISON CAN
22 PARTICIPATE IN AND LET'S SEE IF WE CAN DO SOMETHING WITH THAT.

23 WHAT ABOUT THE FUNDING OF THE CLAIMS, PROCESSING
24 INFRASTRUCTURE?
25 MR. CAMPION: WHILE THE DEFENDANTS DO NOT HAVE ANY

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1 OBLIGATION TO FUND ANY ASPECT OF THE ADMINISTRATIVE FUND UNTIL
2 THE ENROLLMENT LEVELS HAVE BEEN REACHED, THE DEFENDANTS HAVE
3 DECIDED THAT THEY WOULD BEGIN TO ADVANCE PAYMENTS IN THAT
4 RESPECT. WE ARE SENDING LETTERS TODAY TO TWO PERSPECTIVE
5 EMPLOYEES WHO WILL HELP ADMINISTER THE FUND, AND THEIR SALARIES
6 ARE GOING TO HAVE TO BE PAID AND BENEFITS PAID AND WE ARE GOING
7 TO DO THAT. WE RUN SOMETHING OF A RISK IF THE ENROLLMENT
8 LEVELS ARE NOT REACHED, BUT DEFENSE COUNSEL IS CONFIDENT IN THE
9 PLAINTIFFS COMMITTEE TO REACH THE ENROLLMENT LEVEL.

10 AN AGREEMENT HAS BEEN REACHED AS TO THE SPACE
11 WHERE THE MEDICAL RECORDS WILL BE STORED, GOING TO BE PAYING
12 THE RENT ON THAT. AND WE PRESUME THAT ARE GOING TO HAVE
13 INCIDENTAL EXPENSES AS WELL. SO WE ARE STARTING TO WRITE
14 CHECKS.

15 THE COURT: GOOD. I THINK THAT'S IMPORTANT TO DO
16 BECAUSE I DO THINK IF YOU GET THE MOMENTUM MOVING ON THIS THAT
17 WILL BE VERY HELPFUL.

18 HOW ABOUT THE STAFFING OF THE OFFICE? YOU HAVE
19 NOW MR. JUNEAU WHO IS OVER ALL. ANYBODY ELSE?

20 MR. CAMPION: YES, WE HAVE TWO ADDITIONAL PEOPLE THAT I
21 PREFER MR. IRWIN OR DAVIS SPEAK TO THAT.

22 MR. IRWIN: YOUR HONOR, WE HAVE INTERVIEWED A NUMBER OF
23 PEOPLE, MOST OF THEM VERY QUALIFIED. WE ARE SENDING OUT
24 LETTERS TODAY TO GERRY VADELL WHO HAS WORKED FOR FRANK
25 DUDENHEFER WHO HAS A LOT OF EXPERIENCE IN THIS AREA; AND ALSO

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1 ANGELA PATERNASTRO WHO HAS WORKED IN THE CLAIMS INDUSTRY BEFORE
2 AND HAS A LOT OF EXPERIENCE WITH MEDICAL RECORDS AND HANDLING
3 MEDICAL CLAIMS. THEY BOTH WILL BE THE PRIMARY ADMINISTRATIVE
4 PERSONNEL AT THE FACILITY WHO WILL REPORT TO PAT JUNEAU, AND WE
5 ARE VERY OPTIMISTIC THAT THEY WILL ACCEPT THE OFFER. THE
6 TIMING IS EXPECTED THAT THEY WILL START WORK PROBABLY SOMETIME
7 AFTER LABOR DAY.
8 THE COURT: AND WHERE ARE THEY GOING TO START THE WORK,
9 WHERE IS THE FACILITY?
10 MR. IRWIN: THE LOCATION IS ROUGHLY 4,000 SQUARE FEET
11 ON THE 28TH FLOOR OF THE TEXACO CENTER.
12 MR. DAVIS: I AGREE WITH WHAT JIM SAYS AND THERE ARE A
13 FEW OTHER THINGS THAT WE HAVE DONE. WE'VE ALSO COMMUNICATED
14 AMONGST OURSELVES AND REACHED AGREEMENT WITH RESPECT TO THE
15 DOCTOR PANEL, AND THAT WILL GO FORWARD WITH TWO DOCTORS
16 SELECTED FROM EACH SIDE.
17 THE COURT: SO YOU NEED ANOTHER DOCTOR FROM EACH SIDE?
18 MR. DAVIS: AT THE PRESENT TIME WE'VE AGREED TO GO
19 FORWARD JUST WITH TWO.
20 THE COURT: OKAY.
21 MR. DAVIS: EVERYBODY BELIEVES WE SHOULD START THAT WAY
22 TO GET THIS PROCESS ROLLING.
23 THE COURT: GOOD.
24 MR. DAVIS: IN ADDITION TO THAT WE ARE IN THE PROCESS
25 OF SCHEDULING AN ADMINISTRATIVE MEETING WITH MR. JUNEAU,

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1 MR. CLAVIER AND OTHERS, RIGHT AFTER LABOR DAY WE HOPE TO HAVE
2 THAT.

3 WE ALSO HAVE AGREED AMONGST OURSELVES THAT IT
4 WOULD BE HELPFUL TO POST, WHETHER IT BE ON THE COURT'S WEB SITE
5 OR THROUGH OUR E-MAIL SYSTEM, A LISTING OF DATES WITH CERTAIN
6 DEADLINES WITH RESPECT TO THIS PROGRAM SO THAT THERE WILL NOT
7 BE AS MANY QUESTIONS, HOPEFULLY, AND PEOPLE WILL UNDERSTAND
8 WHAT THE DEADLINE DATES ARE.

9 WE'VE ALSO DISCUSSED PREPARING AN ORDER AND A
10 MOTION TO APPOINT MR. CLAVIER TO LAYOUT HIS DUTIES. ALL OF
11 THAT IS IN THE WORKS AND THINGS WITH RESPECT TO THIS PROGRAM
12 ARE MOVING FORWARD.

13 THE COURT: GIVE ME THE DATES, I'LL POST THEM ON THE
14 COURT'S WEB SITE BECAUSE IT'S VERY IMPORTANT. I TRIED OVER A
15 PERIOD OF TIME TO KEEP AN OPEN BOOK FOR EVERYBODY TO LOOK AT
16 AND I POSTED EVERYTHING ON THE WEB SITE, SO I'D LIKE TO
17 CONTINUE TO DO THAT.

18 THE GLOBAL APPLICATION OF DAUBERT, ANY DISCUSSION
19 ON THAT ONE?

20 MR. IRWIN: YOUR HONOR, WE DO THINK THAT THE COURT'S
21 WEB SITE WOULD BE THE BEST PLACE FOR THOSE DATES.

22 THE COURT: OKAY.

23 MR. IRWIN: WE ARE IN AGREEMENT TO SUSPEND THE MOTION
24 PENDING THE DISCUSSION ABOUT THE DEVELOPMENT OF THE PROGRAM.

25 THE COURT: PRETRIAL ORDER PROVIDING FOR THE USE OF

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1 TRIAL DEPOSITIONS.

2 MR. IRWIN: WE ARE CLOSE TO AN AGREEMENT ON THAT,
3 JUDGE, AND EXPECT TO HAVE IT RESOLVED BY THE TIME WE MEET NEXT
4 MONTH.

5 THE COURT: THAT'S SOMETHING THAT THE STATE LIAISON
6 COMMITTEE OUGHT TO TAKE A LOOK AT, THAT'S IMPORTANT THAT YOU
7 GET THAT IN THE FORM AND FASHION THAT YOU CAN LIVE WITH.

8 CIS-NED-32 DEPOSITIONS.

9 MR. IRWIN: AS INDICATED IN THE REPORT, YOUR HONOR,
10 THAT HAS BEEN CANCELED AND CAN BE RESCHEDULED TO A LATER DATE.
11 I THINK WE CAN PROBABLY TAKE IT OFF OF THE AGENDA, HOWEVER, WE
12 DON'T NEED TO REPORT ON IT UNTIL SUCH TIME, IF EVER, IT COMES
13 UP AGAIN.

14 THE COURT: I'LL DO THAT. AND WITH REGARD TO THE
15 STIPULATION AND PRETRIAL ORDER PROVIDING FOR THE USE AT TRIAL
16 OF DEPOSITIONS IN STATE AND FEDERAL COURTS, LET'S GET SOME
17 INPUT FROM THE STATES WHEN YOU ALL DO THAT, GET THE LIAISON
18 INVOLVED.

19 MR. IRWIN: WE WILL DO THAT, YOUR HONOR.

20 THE COURT: STIPULATION AND ORDER APPOINTING JUNEAU
21 SPECIAL MASTER, THAT'S BEEN DONE, HASN'T IT?

22 MR. IRWIN: YES, YOUR HONOR. AND NO. 14?

23 THE COURT: 15.

24 MR. IRWIN: I'M SORRY, DID WE SKIP NO. 14?

25 THE COURT: MOTION FOR SUMMARY JUDGMENT.

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1 MR. WRIGHT: THAT IS JUST ON HOLD.
2 MR. IRWIN: THAT IS ON HOLD, YES, YOUR HONOR.
3 THE COURT: 15.
4 MR. IRWIN: YES, AND THE ORDER PROVIDING FOR THE
5 APPOINTMENT OF MR. JUNEAU I BELIEVE HAS BEEN SIGNED BY THE
6 COURT; SO, THEREFORE, I WOULD ASSUME THAT WE CAN REMOVE THIS
7 ITEM FROM THE AGENDA FOR THE NEXT MONTH.
8 THE COURT: YES. AND THE WALGREEN'S MOTION FOR SUMMARY
9 JUDGMENT.
10 MR. IRWIN: YES. AS WE DESCRIBED LAST TIME, YOUR
11 HONOR, THAT IS BEING DEFERRED PENDING THE ENROLLMENT.
12 THE COURT: AND THE MOTION FOR DR. TRAMILL.
13 MR. IRWIN: YES, WE HAVE BEEN INFORMED --
14 THE COURT: WHAT IS THAT ONE ABOUT, WHAT'S THE LATEST
15 ON THAT? I VISITED IT ONCE BEFORE.
16 MR. IRWIN: MY IMPRESSION IS THAT DR. TRAMILL WAS
17 ATTEMPTING TO SECURE DISMISSAL BY WAY OF AGREEMENT BY WAY OF
18 PLAINTIFF COUNSEL. THAT HAS NOT YET BEEN ACCOMPLISHED. IN THE
19 EVENT THEY CANNOT AGREE ON THAT, DR. TRAMILL MAY WANT TO
20 RE-URGE THAT MOTION.
21 AND WE WILL WORK WITH DR. TRAMILL'S LAWYER BECAUSE
22 OUR CONCERN HAD TO DO WITH THE FACT THAT THERE WERE SOME
23 STATEMENTS IN THE UNDISPUTED STATEMENT OF FACTS THAT WE THOUGHT
24 WERE INACCURATE.
25 THE COURT: YES, I REMEMBER THAT. THE PRETRIAL ORDER

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1 LISTING MDL PLAINTIFFS.
2 MR. IRWIN: YES, YOUR HONOR, THAT HAS BEEN FILED. I
3 THINK BOTH SIDES AGREE IT WILL BE HELPFUL TO TRY TO IDENTIFY
4 THE POPULATION OF PEOPLE SUBJECT TO THE ENROLLMENT QUOTAS. WE
5 ARE DISCUSSING SUBMITTING A PROPOSED ORDER TO YOUR HONOR TO
6 MAKE IT CLEAR THAT THE ENTRY OF SUCH AN ORDER IN THIS REGARD
7 WOULD NOT BE WITH PREJUDICE TO ANYONE'S CLAIM. IN THE EVENT
8 THAT SOMEONE WAS INADVERTENTLY LEFT OFF THE LIST, THAT PERSON
9 COULD COME FORWARD AND PRESENT THE APPROPRIATE MOTION AND HAVE
10 THE LIST CLARIFIED.
11 THE COURT: OKAY.
12 MR. IRWIN: WE SHOULD HAVE THAT SUBMITTED TO YOUR BY
13 NEXT MONTH.
14 THE COURT: I DO THINK IT'S IMPORTANT THAT WE HAVE SOME
15 LIST, BECAUSE IT'S 85 PERCENT OF SOMETHING, SO WE HAVE TO HAVE
16 THAT SOMETHING DEFINED. IT CAN BE PUT IN PENCIL FORM AS
17 OPPOSED TO STONE FORM, BUT WE OUGHT TO HAVE AT LEAST SOMETHING
18 SO THAT YOU HAVE SOME MEETING OF THE MINDS OF WHAT THE 85
19 PERCENT AND 75 PERCENT "OF" IS.
20 MR. IRWIN: AND THAT IS THE PURPOSE OF THAT MOTION.
21 THE COURT: YES.
22 MR. IRWIN: AND IN THAT CONTEXT, JUDGE, AS INDICATED
23 EARLIER THIS MORNING, WE INTEND TO INCLUDE IN FUTURE JOINT
24 REPORTS A PROVISION REPORTING TO THE COURT ON THE PROGRESS OF
25 THE ENROLLMENTS.

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1 THE COURT: I THINK THAT'S GOING TO BE IMPORTANT
2 BECAUSE UNTIL WE GET IT MOVING, IT'S ALWAYS GOING TO BE
3 PRECARIOUSLY PERCHED; AND SO WE HAVE TO KEEP THE MOMENTUM GOING
4 AND WE HAVE TO LEARN FROM THE EARLY EXPERIENCES AND YOU HAVE TO
5 BE FLEXIBLE, BOTH OF YOU, AS YOU GET INTO IT BECAUSE THERE ARE
6 SITUATIONS WHERE YOU'RE GOING MAKE SOME MISTAKES OR YOU'RE
7 GOING TO HAVE SOME PROBLEMS THAT CROP UP AND YOU HAVE TO BE
8 ATTENTIVE TO DEALING WITH THOSE PARTICULAR PROBLEMS AND KEEP
9 REFINING THE PROCESS AS WE GO ALONG. ANYTHING FURTHER?
10 MR. WRIGHT: YOUR HONOR, YES. I THINK YOU'RE AWARE OF
11 IT, BUT FOR THE RECORD THE DEPOSITORY HAS BEEN CHANGED FROM
12 LAPLACE TO PLACE ST. CHARLES, PUTTING HERMAN STILL IN CHARGE.
13 THE COURT: THAT'S FOR ALL OF THE DOCUMENTS FOR THE
14 PLAINTIFFS COMMITTEE?
15 MR. HERMAN: YES.
16 THE COURT: ANYTHING FURTHER?
17 MR. IRWIN: YES, YOUR HONOR. MR. PREUSS WOULD LIKE TO
18 ADDRESS THE COURT MOMENTARILY ABOUT THE LIEN QUESTION.
19 THE COURT: GOOD.
20 MR. PREUSS: YOUR HONOR, ONE OF THE IMPORTANT
21 INGREDIENTS OF RESOLVING THIS MATTER IS TO TAKE CARE OF THE
22 MEDICARE LIENS, AND FOLLOWING THE INTRODUCTION TO MR. WATSON WE
23 HAVE PREPARED A LETTER AND ARE ANXIOUS TO MEET WITH HIM TO TRY
24 TO BRING THAT TO RESOLUTION AS SOON AS POSSIBLE.
25 THE COURT: I THINK THAT'S IMPORTANT. I'D LIKE THEM

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1 ABOARD. I'VE TALKED TO THEM PERIODICALLY ON IT, AND THAT'S
2 SOMETHING THAT'S GOING TO BE PRESENT IN THE STATE SITUATION,
3 TOO, AND WE'VE GOT SOME INTEREST NOW BOTH AT THE LOCAL LEVEL AS
4 WELL AS WASHINGTON, AND WE'RE TRYING TO WORK OUT SOME
5 ARRANGEMENT SO THAT IT IS LUMP SUMMED OR DEALT WITH IN SOME
6 FASHION SO IT DOES NOT DELAY THE CLAIMANT'S RECEIPT OF THE
7 FUNDS.
8 MR. PREUSS: THANK YOU, YOUR HONOR.
9 THE COURT: THANK YOU VERY MUCH. WHAT'S OUR NEXT DATE?
10 EITHER THE 10TH OR THE 24TH. ARE WE STILL DOING FRIDAY, IS
11 THAT'S WHAT WE'VE CHANGED IT TO? 10TH OR THE 24TH, WHAT'S BEST
12 FOR EVERYBODY ON SEPTEMBER?
13 MR. IRWIN: YOUR HONOR, I'M OUT OF TOWN ON THE 10TH.
14 THE COURT: 24TH, IS THAT DOABLE?
15 MR. WRIGHT: YES, YOUR HONOR.
16 MS. BARRIOS: YOUR HONOR, I BELIEVE THAT THE 24TH IS
17 YOM KIPPUR.
18 MR. DAVIS: I THINK IT STARTS THAT EVENING. I DON'T
19 KNOW IF THAT'S A PROBLEM TRAVELING WITH PEOPLE COMING IN IF
20 THEY CAN GET HOME IN TIME, BUT SERVICES I BELIEVE ARE THAT
21 EVENING.
22 THE COURT: THAT COULD BE A PROBLEM.
23 MR. DAVIS: WHAT ABOUT THE DAY PRIOR, THE 23RD?
24 THE COURT: THE 23RD.
25 MR. IRWIN: OKAY FOR US, JUDGE.

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1 THE COURT: MR. WATSON IS HERE. IF YOU COULD MEET WITH
2 HIM IN A MOMENT, HE WILL MEET WITH YOU. MR. WATSON IS THE U.S.
3 ATTORNEY WHO IS ASSIGNED TO THIS PARTICULAR AREA.

4 OKAY. ANYTHING FURTHER? ALL RIGHT. FOLKS, THANK
5 YOU VERY.

6 MR. IRWIN: THANK YOU, JUDGE.

7 MR. DAVIS: THANK YOU.

8 MS. BARRIOS: THANK YOU, YOUR HONOR.

9 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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13 REPORTER'S CERTIFICATE

14

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

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KAREN A. IBOS, CCR, RPR
OFFICIAL COURT REPORTER

