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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE:	*	Civil Action
	*	No. MD 00-1355
	*	
PROPULSID PRODUCTS LIABILITY	*	Section "L"
LITIGATION	*	
	*	New Orleans, Louisiana
	*	January 11, 2002
* * * * *	*	

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

APPEARANCES:

For the Plaintiffs' Legal Committee,	Herman, Mathis By: RUSS M. HERMAN, ESQ. 820 O'Keefe Avenue New Orleans, Louisiana 70113
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For the State Liaison Counsel,	Neblett, Beard & Arsenault By: RICHARD ARSENAULT, ESQ. 2220 Bonaventure Court Alexandria, Louisiana 71309
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For the Defendants,	Irwin, Fritchie, Urquhart & Moore By: JAMES B. IRWIN, V, ESQ. Texaco Center 400 Poydras Street, Suite 2700 New Orleans, Louisiana 70130
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	Drinker, Biddle & Shanley By: THOMAS F. CAMPION, ESQ. 500 Campus Drive Florham Park, New Jersey 07932
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1 APPEARANCES CONT'D.

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P R O C E E D I N G S

(Friday, January 11, 2002)

(Call to Order of the Court)

THE COURT: Be seated, please. Good morning, ladies and gentlemen.

Call the case, please.

THE CLERK: In Re: MDL Number 1355, Propulsid Products Liability Litigation.

THE COURT: Can Counsel make their appearance for the record.

MR. IRWIN: Good morning, Your Honor. Jim Irwin for Defendants.

MR. HERMAN: May it please the Court, Judge Fallon, Russ Herman for the Plaintiffs.

THE COURT: We're here today for our monthly status report. The parties have given to me a joint report. Plaintiff and Defendant Liaison Counsel will go down the list. First, the update of rolling document production and electronic document production.

MR. HERMAN: Your Honor, the document production has proceeded in regular course including we now have approximately 300,000 documents scheduled for later this month. I believe it's next week. And most of these are foreign documents from Beerse.

In connection with the last report, the Defendants

1 have now produced the Navigator database and the ARIS  
2 database. There are other databases outstanding and we're  
3 waiting to resolve any technical issues with those. In the  
4 event we can't resolve them, we'll report to you at the  
5 February meeting.

6 In addition, there are a number of videotapes that  
7 we're awaiting to receive, and we understand in conference  
8 with Defense Counsel that we should be getting those before  
9 the next time that we meet.

10 THE COURT: How is that working with the states, the  
11 state cases? Do they have access to that if they need it?

12 MR. HERMAN: They have access to the depository, and  
13 CD's are sent by the Defendants directly to the state  
14 attorneys that request them. So, they have a double  
15 opportunity to access those materials.

16 THE COURT: From State Liaison Counsel, is that  
17 procedure working as best you can tell?

18 MR. ARSENAULT: It seems to be working, Judge.

19 MR. HERMAN: All right. In addition to that, we want  
20 to thank the State Liaison Counsel who have actively  
21 participated in the MDL in working with class reps., in  
22 document review, and in the science and expert field, and I'd  
23 like the record to reflect that recently Ms. Barrios, and  
24 Mr. Barry Hill, and Mr. Sam Davis have spent an awful lot of  
25 time assisting in the work of the MDL.

1 THE COURT: Thank you.

2 MR. HERMAN: That's not to the exclusion of others  
3 who also participated.

4 THE COURT: Anything from the Defendants? What's  
5 your ball park estimate as to how many documents you have now  
6 delivered?

7 MR. IRWIN: Your Honor, I don't remember what the  
8 number was domestically. I think it was in the three million  
9 pages plus number. The number of Beerse documents that have  
10 now been produced total 1,040,000 pages with this January 15  
11 production. We expect that the Beerse production will be  
12 complete by our best estimates on April 15.

13 I agree with the remaining remarks that Mr. Herman  
14 made with respect to the document production.

15 THE COURT: State Liaison Counsel is the next item.

16 MR. HERMAN: Yes. I suppose I anticipated this, but  
17 members of the State Liaison Committee, which you appointed,  
18 have participated in expert issues regarding class  
19 certification, in regard to the developing science in terms of  
20 Propulsid and its relationship to QT prolongation have spent  
21 time in the depository reviewing documents and assembling,  
22 have had regular communication with state lawyers, have  
23 assisted in the coordination agreement which was reached to  
24 coordinate discovery.

25 We'll be meeting with the PSC immediately following

1 this court conference today to discuss follow-up on a census  
2 of outstanding cases, as well as their participation in  
3 helping to prepare and assist in depositions.

4 We've also participated in a number of the briefing  
5 issues that have gone forward and we certainly appreciate  
6 those activities. I think, Your Honor, -- as Your Honor  
7 knows, we have submitted under seal time and expense records  
8 and those include time and expenses for members of the  
9 committee. And without going into any detail, I think that  
10 when we -- in April when we give Your Honor a complete  
11 summary, Your Honor will be pleased to see the resources and  
12 time that the State Liaison folks have entertained in this --  
13 in this litigation.

14 THE COURT: I appreciate your efforts, because  
15 historically that's always been a problem both in major class  
16 actions in this country, as well as in MDL cases. Problems of  
17 federalism and problems of conflict, and things of that sort  
18 come up. I do believe it's to the benefit of everyone to work  
19 together to see if we can resolve some of these common  
20 problems for the benefit of all of the litigants.

21 We'll be moving into the settlement aspect of the  
22 case in the immediate future. In fact, we are beginning to  
23 scratch the surface on that. At the appropriate time I also  
24 hope that you will participate actively in that aspect of the  
25 case.

1           The next item is the patient profile form and  
2 authorization.

3           MR. IRWIN: Your Honor, as of January 8, we have  
4 received 1,251 patient profile forms, 60 are currently  
5 overdue, and 12 will become due within 30 days. I think these  
6 numbers reflect that we are reaching closure, happily, with  
7 respect to most of these issues. Those dismissals that we  
8 have argued and presented to Your Honor in the past, we will  
9 probably in a couple of months be suggesting to the Court and  
10 presenting to the Court a Rule 54(b) motion with respect to  
11 all of those, which we would suggest would be an appropriate  
12 way to deal with that efficiently.

13           THE COURT: Yes, I do think we ought to move those  
14 cases, because as we move into the next phase of this  
15 litigation, we have to get rid of the cases that are not part  
16 of the process so that they don't resurrect, or somehow or  
17 another slow down the active participants in the litigation,  
18 or at least distract the Court, or distract Counsel. So,  
19 let's consider moving on that when you can.

20           MR. IRWIN: Your Honor, I brought with me this  
21 morning the judgments that Your Honor had requested that we  
22 submit to the Court going back a couple of monthly status  
23 conferences. My office has been in touch with your law clerk,  
24 who knows that these are going to be presented to the Court  
25 this morning. I'm going to give them to your clerk and also

1 to Mr. Herman.

2 MR. HERMAN: Your Honor, while Mr. Irwin is doing  
3 that, of course, we make our usual objection to dismissals  
4 with prejudice and the reasons therefore are reflected in the  
5 previous transcripts.

6 THE COURT: And the record should reflect that the  
7 Liaison Counsel and the representatives of the multi-district  
8 litigation together with State Liaison Counsel have vigorously  
9 opposed the dismissal of the cases. Nevertheless, it is the  
10 Court's view that we should give litigants an opportunity to  
11 proceed and we should give them adequate notice of impending  
12 deadlines. We should do everything we possibly can to reach  
13 them through their attorneys and do whatever is necessary to  
14 bring their attention and focus their attention on these  
15 matters. But, after doing that a number of times, we have to  
16 move on with it, and that's what I've tried to do.

17 MR. IRWIN: Your Honor, I'm going to give Mr. Herman  
18 these proposed judgments, and an original and a copy for you  
19 and your law clerk.

20 THE COURT: Subpoena to the FDA is our next --

21 MR. IRWIN: Your Honor -- excuse me, Your Honor --

22 THE COURT: Excuse me.

23 MR. IRWIN: -- there are a couple of other matters --

24 THE COURT: All right.

25 MR. IRWIN: -- on this agenda item.



1 THE COURT: Let's move on.

2 MR. HERMAN: Your Honor, in connection with these  
3 dismissals with prejudice, your appointed Plaintiffs'  
4 Committee as officers of the court need to also represent on  
5 the record that as we are advised that the profile forms are  
6 due and have not been completed and sent to Defense Counsel,  
7 we independently have undertaken to notify Counsel for those  
8 individuals, so that we submit that, Your Honor, we've used  
9 our best efforts in terms of notice.

10 MR. IRWIN: And next, Your Honor, we have presented  
11 to the Court a Motion to Compel with respect to Plaintiffs who  
12 have furnished PPF's, but who did not furnish for whatever  
13 reason, oversight or otherwise, I'm not sure, did not furnish  
14 signed medical authorizations. Those motions had attached to  
15 them the appropriate letters demonstrating our efforts to  
16 collect the signed medical authorizations.

17 There have been in response to those motions a number  
18 of efforts by opposing Counsel to comply, and as a result we  
19 have withdrawn a number of those motions. And I will recite  
20 for the record this morning those motions which we have  
21 withdrawn because they have given to us the signed medical  
22 authorizations.

23 We are withdrawing the motion of Takala Freeman, of  
24 Theresa Ziegler, of Stephanie Baumwell, of John Weaver, Billy  
25 Endicott and Maudie Sparks. I have a list here, which I'll

1 give to your Minute Clerk.

2 We are asking the Court with respect to the remaining  
3 Plaintiffs subject to this motion that they be given a  
4 deadline to furnish to us the signed medical authorizations.  
5 We are not asking for a dismissal at this moment, because  
6 we're trying to put some proportion on these various motions.  
7 The other motions, of course, where we ask for dismissals,  
8 there was no response at all with respect to those Plaintiffs.  
9 These Plaintiffs have responded in some measure. They have  
10 not furnished a very important thing, however, and that is the  
11 medical authorization. Therefore, we ask that the Court  
12 impose a deadline.

13 We would suggest a deadline of March 1 -- pardon me,  
14 of February 1. Excuse me, Your Honor. Obviously, it's up to  
15 the Court to impose whatever deadline the Court feels is  
16 appropriate. And then in the event these parties do not  
17 comply with whatever deadline the Court might impose for the  
18 delivery of these medical authorizations, we would then like  
19 the Court to enter a judgment of dismissal upon us proving to  
20 the Court that no such delivery has been made.

21 That is with respect to the following individuals,  
22 and I'll recite their names for the record: Marlene Hartman;  
23 Barbara Ray; Irene Guitroz; Dorothy Jordon; Jeremy Chesteen;  
24 Temple Clark; Robert Ketchum; Gregory Batiste; Terri  
25 Terrebonne; Adrienne Schneider; Vickey Maples; Linda Shields;

1 and Early Washington. And I'm going to give this list to  
2 Ms. Lambert, Your Honor.

3 MR. HERMAN: Your Honor, following the hearing today  
4 we will obtain a copy of that list from the Court. There has  
5 been some controversy among many lawyers as to the actual  
6 wording and breath of -- I didn't pronounce that right, not  
7 breath, breadth of the authorization and we need to undertake  
8 as a PSC to give these folks some additional notification.

9 We do not object to the imposition of a deadline,  
10 but --

11 THE COURT: Let's advise them that if they don't have  
12 it by our February meeting, those cases will be dismissed.

13 Our next meeting is in March or February?

14 MR. IRWIN: I think, Your Honor, because of Mardi  
15 Gras we had selected March 8.

16 THE COURT: Yes. Let's do it the middle of February,  
17 February 15th.

18 MR. IRWIN: Your Honor, the only other issue under  
19 this agenda item is -- and Mr. Herman may have alluded to it a  
20 little bit in his remarks -- is with respect to the execution  
21 of a restricted or blanket authorization. I think this is an  
22 issue that we have communicated to the Court in the past. Our  
23 sides are still discussing this issue. If we cannot resolve  
24 it, we think it would be an appropriate management question to  
25 submit to Your Honor on March 8.

1 THE COURT: The way that can be resolved is to  
2 restrict its use to this litigation. It cannot be used in  
3 another litigation. Consider putting some wording on the  
4 release that will give you the benefit of the material, but  
5 give the Plaintiffs some comfort in the fact that the material  
6 will not be broadcast and used in other litigation matters  
7 that they have which is not related in any way to this case.

8 But, give some thought to getting together on it. If  
9 not, then I'll get involved with it.

10 MR. HERMAN: I think it's fair to say, Your Honor,  
11 that we discuss this particular issue a couple of times a  
12 week. In some instances, individual instances, we've been  
13 able to work it out, but not in a blanket form principally  
14 because, for example, the primary stumbling block would be the  
15 request for psychiatric or psychological records where there's  
16 no claim being made by an individual for any emotional damage.  
17 And the lawyers and their clients have strenuous objections in  
18 that regard, not just a question of whether it can be used in  
19 any other litigation. I don't think we need to discuss that  
20 further, but I do want to alert the Court as to what the  
21 controversy is.

22 Also, I want to indicate to the Court that,  
23 obviously, there are a large number of cases on tolling  
24 agreements and otherwise in which there are not patient  
25 profile forms, and we would anticipate two developments: One,

1 that between now and June there will be a large number of  
2 cases either entered into on tolling agreements or filed; and,  
3 secondly, and more importantly, that we will of course  
4 endeavor where cases are selected for settlement discussion  
5 where a patient profile form has not been filled out, that it  
6 be submitted with whatever other records are submitted to the  
7 Defendants.

8 THE COURT: What are we talking about ball park wise  
9 on tolling agreements? How many do we have out there that  
10 haven't been filed? Do you have any idea, Mr. Campion?

11 MR. HERMAN: Well --

12 MR. CAMPION: Your Honor, at the present inclusive of  
13 the Achord case which is before you, we're about the 20,000  
14 number.

15 MR. HERMAN: I would anticipate that perhaps another  
16 20 percent of that figure more would either be put on tolling  
17 agreements by agreement or filed in some venue somewhere  
18 between now and June, coinciding with the date at which there  
19 was a voluntary withdrawal -- two years from the date of a  
20 voluntary withdrawal of Propulsid from the market.

21 THE COURT: Anything else on this item?

22 MR. IRWIN: No, Your Honor.

23 THE COURT: Let's go to the next one, subpoena to the  
24 FDA. Is that material forthcoming?

25 MR. HERMAN: The FDA material is forthcoming. We've

1 received the additional documents. There may be another set  
2 of documents the FDA has, but I do not want to make that  
3 representation to the Court at this time until we have  
4 undertaken our burden to satisfactorily investigate that  
5 issue. But as of right now, we do not have an outstanding  
6 issue with the FDA.

7 THE COURT: I do appreciate the FDA's cooperation in  
8 this matter. I know we got off to a slow start, but it seems  
9 like that through their efforts we've been able to get the  
10 material that's needed and I do appreciate that.

11 Service list of attorneys.

12 MR. IRWIN: Your Honor, we have the most current  
13 service list. I have a copy here for Mr. Herman and for  
14 Ms. Lambert, and for the State Liaison Committee.

15 THE COURT: Is that still a moving target?

16 MR. IRWIN: Less so, Your Honor. We think it's -- I  
17 haven't compared this month's and last month's, but my  
18 impression was that it was much easier to prepare it this  
19 time. So, I would conclude it's getting -- I would sense that  
20 it's getting much better.

21 THE COURT: The next item is ongoing studies/subpoena  
22 to BevGlen.

23 MR. HERMAN: It's really a double issue, and that is  
24 whether the Plaintiffs have received all of the BevGlen  
25 material, because we have just learned that there's some other

1 material outstanding. We're going to attempt to resolve that  
2 face to face.

3 The other issue is the supplement by Plaintiffs of  
4 Interrogatories and Requests for Production on ongoing  
5 studies. I received that additional information yesterday in  
6 my office. I've communicated that to Mr. Irwin. I've  
7 indicated to Mr. Irwin that hopefully this afternoon we'll  
8 supplement, if not, he'll have it on his desk by Monday  
9 morning.

10 In addition, there's an outstanding matter that  
11 relates to the Morgan Roth study in which Dr. Shell  
12 participated as to the names of individuals in that study. We  
13 plan to discuss that with Mr. Campion and see if there's a way  
14 to mutually resolve it.

15 MR. IRWIN: We agree with those remarks, Your Honor.

16 THE COURT: Third party subpoena duces tecum.

17 MR. HERMAN: We're still missing some certifications  
18 and the -- I don't think there's anything at this point that  
19 we would ask the Court to do. It's the type of certification  
20 that's been given. We're still not satisfied with that. In  
21 the event that we can't resolve it by the March meeting, there  
22 will be a motion presented in -- and notice so that it can be  
23 heard at the March meeting.

24 THE COURT: With the motion, detail certain people.  
25 Names of individuals and addresses would be helpful, too.

1 MR. HERMAN: We shall do that, Your Honor.

2 THE COURT: The next item, Motion to Enter Scheduling  
3 Order.

4 MR. HERMAN: We've met with Defense Counsel and been  
5 advised of the Court's schedule. And as Your Honor knows, we  
6 had an interim meeting as to revisions of Pre-Trial Order  
7 Number 15. April 10th now stands as the rescheduled class  
8 hearing date.

9 In our last conference I indicated that Mr. Levin of  
10 the Plaintiffs' Steering Committee had a prior compulsory  
11 commitment not of a social nature in London for April 10th,  
12 11th, and 12th. We are trying to do something about that,  
13 because we would really like the opportunity for the Court to  
14 hear Mr. Levin at class cert. and I'm going to be discussing  
15 that -- I've discussed it with Mr. Levin this morning in the  
16 courtroom. I haven't had an opportunity to discuss it with  
17 Counsel or the Court yet.

18 THE COURT: Mr. Levin, we were conscious of your  
19 problem and we made every effort to get around that particular  
20 problem, because I do profit, as I have for many years, from  
21 your remarks. So, I do want to hear them. I think they'd be  
22 helpful. If there's anything the Court can do to help work  
23 out a date for you, I'd like to know and I'll try to do it.

24 MR. LEVIN: Thank you, Your Honor.

25 MR. HERMAN: And I apologize to Counsel for not



1 discussing it -- the issue further with them. It wasn't until  
2 I met with Arnold when we came into the courtroom that I had a  
3 full understanding of what that commitment was.

4 In addition to that, my colleague, Mr. Murray, will  
5 have a substantial role in that cert. hearing and it would  
6 pose some problems for us if Mr. Levin can't be present.

7 THE COURT: Maybe we could bring you in by video  
8 conferencing. We have those facilities. If you can do that,  
9 we'll split screen it and you can participate that way if any  
10 other scheduling problem presents itself.

11 MR. HERMAN: The depositions of class representatives  
12 have been taken. And the Plaintiffs' experts are scheduled  
13 and are being scheduled. The discovery -- what I'll call the  
14 discovery depositions of individuals related in some way to  
15 the Defendant corporations has proceeded with State Counsel.  
16 We appreciate Mr. Campion and Mr. Irwin's assistance in  
17 getting us names and dates. And we expect to have that  
18 resolved and a full schedule agreed upon within the next  
19 couple of days.

20 THE COURT: Do we have a feeling yet as to the  
21 structure of the class certification hearing? Do you  
22 anticipate one day, one hour, several days, or do you know  
23 that yet?

24 MR. HERMAN: Your Honor, I think from the Plaintiffs'  
25 point of view that it would be well to schedule a day. I

1 think at this point Plaintiffs and Defendants in our last  
2 conference have agreed that in lieu of live testimony, the  
3 testimony would be by deposition or affidavit. That may  
4 change, but it hasn't changed yet. I can't anticipate that  
5 it's going to change.

6 MR. IRWIN: We think that's right, Your Honor. I  
7 think it's foreseeable that the day could be similar to our  
8 presentations at the injunction hearing. We may well want to  
9 plan to come in a little bit earlier that morning as we did  
10 for the injunction hearing. We do have a preliminary  
11 conference before Your Honor on April 3 to plan all of that.

12 THE COURT: The next item is Plaintiffs' and  
13 Defendants' respective requests for production of documents.

14 MR. HERMAN: I'm sorry, Your Honor.

15 THE COURT: Nine.

16 MR. HERMAN: Could I go back to seven in that  
17 connection?

18 THE COURT: All right.

19 MR. HERMAN: Covance, C-O-V-A-N-C-E, has not produced  
20 its documents and we will definitely be bringing a motion at  
21 the next hearing with regard to them.

22 THE COURT: Where are they?

23 MR. CAMPION: New Jersey.

24 THE COURT: New Jersey?

25 MR. HERMAN: Yes.

1           The Tennessee issues have been discussed with Defense  
2 Counsel and there has been a conference to address the  
3 Tennessee discovery. And we're awaiting a response on that to  
4 communicate to Tennessee. And Defendants have served their  
5 second request some time ago awaiting our response, which has  
6 been delayed but we're in the process of assembling. And,  
7 certainly, we'll have that before we meet again.

8           THE COURT: Anything further on Requests for  
9 Production?

10           MR. IRWIN: Your Honor, I think maybe Mr. Herman  
11 might have misspoken. We have not yet had the Rule 37.1  
12 conference on the Tennessee discovery. It is -- I'm  
13 understanding that Mr. Davis will be scheduling it very  
14 shortly.

15           And then with respect to the second Request for  
16 Production of Documents, I would only inform the Court that  
17 the last sentence there says, "Defendants are waiting for a  
18 response." When Mr. Davis and I worked on the preparation of  
19 this joint report this last week, I included the words,  
20 "Defendants are still ever so patiently waiting for a  
21 response," just to see if Mr. Davis would read what I wrote.  
22 And he did and he said he'd be happy to keep it in there  
23 because he's such a professional. But, we took it out.

24           MR. HERMAN: I need to ask a question. That  
25 conference we had about this Tennessee matter is not a 37.1

1 conference or did you create a new number?

2 I believe we did have a conference. It did not  
3 include the lawyer from Tennessee. And I think that's what  
4 we're trying to do is to get him on the phone or in person so  
5 that those issues can be worked out.

6 THE COURT: What are the issues that we're dealing  
7 with in Tennessee that present a problem? Mr. Campion, can  
8 you --

9 MR. IRWIN: I do not know, Your Honor.

10 THE COURT: Anyone else? Anybody?

11 MR. HERMAN: Generally, this is -- historically, the  
12 process was that the Tennessee firms agreed to state  
13 coordination on the basis that their interrogatories and  
14 productions request would be specifically answered  
15 irrespective of the coordination issues and that then they  
16 would be -- they would move forward with coordination. And  
17 they said they agree to coordination based upon that  
18 understanding.

19 THE COURT: Well, did they had some prior agreements  
20 before the agreement to coordinate --

21 MR. HERMAN: Correct.

22 THE COURT: -- and they assumed that the coordination  
23 picked up that prior agreement.

24 MR. HERMAN: Right. Correct. And the Defendants  
25 have responded, but the Tennessee folks say, "Wait a minute.

1 We're entitled to more specific and complete responses than we  
2 have." So, the PSC has -- we've discussed that with Mr. Irwin  
3 twice now, and the difficulty we have is we don't -- we feel  
4 it would be better for the Tennessee folks to communicate  
5 directly item by item as to what they're dissatisfied with  
6 rather than us acting as a conduit.

7 THE COURT: Right. When the Tennessee attorney was  
8 here, I didn't know about any prior agreement, so I did not  
9 understand that his willingness to participate in the overall  
10 agreement would obliterate any prior agreements. I didn't  
11 even know about them, so I wasn't assuming that he was giving  
12 up anything. I would hope that that would be taken into  
13 consideration. Any prior agreements that have been entered  
14 into with Tennessee before they agreed to cooperate in the  
15 general litigation of the MDL ought not to be overlooked.

16 MR. IRWIN: May it please the Court, I don't think it  
17 should be either and I don't think it has. I think we're at  
18 the juncture where our side needs to know what the particular  
19 concerns they have with the response is. A response was  
20 prepared and submitted to Tennessee Counsel, and I think it's  
21 appropriate now for that type of particularized discussion to  
22 take place in a 37.1 conference.

23 THE COURT: The next item was PSC's petition for an  
24 order securing an equitable allocation. Have we touched on  
25 that?

1 MR. IRWIN: Forgive me, Your Honor. I had missed an  
2 item on the agenda, Number 3, with respect to the PPF's that  
3 was pointed out to me.

4 THE COURT: All right.

5 MR. IRWIN: I have submitted to Your Honor this  
6 morning and to Mr. Herman a proposed judgment in the Manasco  
7 case. The Court may recall that Betty Manasco was the elderly  
8 individual who was described in court papers as being confused  
9 and had some difficulty in understanding the PPF.

10 We reserved -- deferred rather the submission of the  
11 motion. We discussed deferring it in December and I think  
12 that's a matter of record. We still have not gotten any  
13 response since the December 5 hearing, and that is why I  
14 included the Manasco judgment with that package that I handed  
15 up to Your Honor.

16 MR. HERMAN: With regard to Item Number 10, Your  
17 Honor, as Your Honor is aware, there was no objection filed or  
18 stated in the noticed motion regarding equitable allocation of  
19 Counsel fees and costs. Your Honor signed the order. The  
20 order was served, placed on Verilaw and since that time we  
21 still have not received any objection, dispute, or opposition  
22 of any kind.

23 THE COURT: Anything further on the agenda?

24 MR. IRWIN: No, Your Honor.

25 MR. HERMAN: No, Your Honor.

1 THE COURT: Any new items that we want to talk about?  
2 What's the current status of the cases filed? Did we go into  
3 that enough?

4 MR. IRWIN: Your Honor, I think the only other item  
5 that we should discuss for the purposes of the record is a  
6 Item 1 under the new items part of the agenda. Two  
7 suggestions for remand have been filed in this court in the  
8 Jackson case from Tennessee and the Helberg case. I do not  
9 remember what state that is from right now. But, we have  
10 discussed that with Your Honor's staff, and I believe  
11 presented -- brought it to Your Honor's attention at a meeting  
12 we had earlier this week. Obviously, we've been discussing it  
13 among one another. And if we cannot agree on resolving it or  
14 how it should be presented, then it may be appropriate for it  
15 to be presented to the Court at March 8. This is something  
16 that is on our radar screen and something that we will be  
17 addressing in one form or another at March 8. Either we'll  
18 resolve it or present it.

19 THE COURT: As Counsel know, I have received in the  
20 past several weeks several motions pro se, and also through  
21 Counsel, that haven't been submitted through Liaison Counsel.  
22 So, when I do receive such pleadings, I touch base with  
23 Liaison Counsel and give them the opportunity to give me their  
24 input on it. And so we have received several of those  
25 motions.

1 Anything further?

2 MR. HERMAN: Only a concluding remark in light of my  
3 esteemed colleague's patience, I note that at the Snug Harbor  
4 jazz club, there's written on the wall some graffiti that says  
5 -- and this is for the benefit of New Jersey Counsel, "New  
6 Orleans has two speeds, slow and mildew."

7 That concludes my remarks, Your Honor.

8 THE COURT: Before we leave, -- you see where he  
9 hangs out.

10 Before we leave the area, give me some feeling on the  
11 status of settlement discussions. Where are you with that? I  
12 know you've been dealing with that and I'd like to hear some  
13 update.

14 MR. HERMAN: Let me try to cover it in its various  
15 aspects, Your Honor.

16 With Mr. Hill's permission, he had a very serious  
17 case -- has a very serious case that has been completely  
18 brochured and tendered to the Defendants as a, for lack of a  
19 better term, stalking horse. We're in the process --  
20 secondly, we're in the process of selecting only in the  
21 categories that the Defendants have specified to us, which are  
22 generally death and torsade cases, along with -- included  
23 within that are the what I'll term are the SIDS, S-I-D-S  
24 cases -- to submit -- to have those brochured and submitted to  
25 the Defendants and we hope to have those submitted as examples



1 by the early part of February.

2 The State Liaison group will meet with the PSC  
3 immediately following this conference, and they will be  
4 assigned the task of following up to create the most accurate  
5 census we can create of filed and unfiled cases in each of six  
6 categories. After the Defendants have received the brochures  
7 in the areas that they're interested in and they are ready to  
8 meet, then Mr. Murray, and Mr. Levin, and Mr. Davis will meet  
9 with their counterparts and see what common ground there is.

10 At the same time, we will be preparing brochures,  
11 exemplum brochures in cases to submit in categories we're  
12 interested in that the Defendants may not be interested in, so  
13 that at least those can be previewed.

14 At such time as it is clear that we will either not  
15 be engaging in any conflicts among settlement discussions in  
16 various types of cases, and I'm particularly concerned about  
17 state cases as distinguished from MDL cases, members of the  
18 State Liaison Committee will be appointed to participate in  
19 the settlement discussions that involve the state cases.

20 At the present time based upon the work that they've  
21 done, those appointments would include Mr. Hill, Ms. Barrios,  
22 and Mr. Arsenault based on the work that they've done and  
23 their familiarity with the case, rather than any particular  
24 relationships they have either with state lawyers or MDL  
25 lawyers.

1           From the Plaintiffs' perspective, we would hope that  
2 this process, and we expect this process certainly to be  
3 complete, that is, the census, the exemplum brochures both on  
4 the categories the Defendants want and we want submitted, and  
5 discussions to begin taking place in early April. And I think  
6 once we have some parameters of what the Defendants are  
7 willing to discuss and where there may be some -- where there  
8 are areas of disagreement or potential resolution, then we can  
9 report to the Court in camera. And it may be the Court at  
10 that time will determine that it wants to set up a formal  
11 mechanism or appoint a special master, or magistrate, or  
12 whatever Your Honor desires. But, we're looking initially at  
13 a -- right now at a two and a half month to three month  
14 process to get there.

15           THE COURT: And when you get the lay of the land of  
16 the whole topography of the litigation, I think it's important  
17 to share that with the Defendant. You're not going to be able  
18 to fill in all the details, but it's going to be helpful to  
19 the Defendant to know the full extent of their potential  
20 exposure.

21           MR. HERMAN: Defense Counsel have indicated that its  
22 census would indicate approximately 20,000 cases. If we can  
23 get a significant number of returns from attorneys who are  
24 willing to cooperate on the Plaintiff's side just with census  
25 figures, both Defense Counsel and Plaintiff Counsel should be

1 able to interpret without regard to liability or causation  
2 issues what the maximum/minimum exposure are so that both  
3 sides can have some comfort level in moving the case along.

4 THE COURT: Anything else while we're here?

5 MR. IRWIN: No, thank you.

6 THE COURT: Anything from Liaison Counsel State?

7 MR. ARSENAULT: No, Your Honor.

8 THE COURT: Our next meeting then will be March the  
9 8th.

10 Thank you. Court stands in recess.

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12 (Whereupon, the hearing was concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

*Dorothy M. Bourgeois*  
\_\_\_\_\_  
Dorothy M. Bourgeois

1/17/02  
Date