

IN RE: PROPULSID PRODUCTS * Docket 00-MDL-1355-L
 LIABILITY LITIGATION *
 * March 24, 2005, 9:00 a.m.
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APPEARANCES :

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Also Participating: RICHARD J. ARSENAULT, ESQ.
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PROCEEDINGS

(March 24, 2005)

THE DEPUTY CLERK: Everyone rise.

THE COURT: Be seated, please. Good morning, Ladies and Gentlemen. Call the case.

THE DEPUTY CLERK: MDL 1355, In Re: Propulsid.

THE COURT: Counsel make their appearances for the record.

MR. HERMAN: Good morning, Judge Fallon. Russ Herman with Herman Mathis for the plaintiffs.

MR. IRWIN: Jim Irwin for the defendants.

THE COURT: We are here today in connection with our monthly status conference. It's been noticed and we have, in addition to people in the courtroom, some folks on the telephone. Who do I have on the line?

MR. JORDAN: Dudley Jordan from Campbell, Cherry, Harrison, Davis & Dove for plaintiffs.

MR. McAFEE: Carl McAfee, attorney for various plaintiffs.

THE COURT: The first item on the agenda is the state liaison counsel. The last meeting that I had, I directed the defendants to begin formulating some discussion with state liaison. What's been happening?

MR. ARSENAULT: Your Honor, for the last several months, we were trying to get our arms around the inventory of

1 cases out there. We are currently in a dialogue with
2 approximately 51 law firms to get some sense of the number of
3 cases they have, the number of plaintiffs in those cases, and
4 the types of cases.

5 THE COURT: Get closer to the mic.

6 MS. ARSENAULT: They come from about 12 different
7 states: Pennsylvania; Alabama; Mississippi; Arkansas;
8 Washington, D.C.; Indiana; Florida; Oklahoma; Texas; New York;
9 Missouri; and Minnesota. Currently, we are aware of
10 approximately 196 cases. That doesn't tell us much about the
11 number of plaintiffs, so we are trying to contact each of those
12 people individually to get some sense of how many plaintiffs
13 are in those cases. Some have as many as 50 or 60 plaintiffs
14 in each case. If Your Honor doesn't mind, Dawn Barrios can
15 address the Court with regard to communications we have had
16 with them.

17 MS. BARRIOS: Good morning. Dawn Barrios for the
18 state liaison committee. In addition to Mr. Arsenault's
19 remarks, I would like to add something to them about the
20 inventory that we would have and what we have affectionately
21 referred to as "Propulsid 2." We are aware there are numerous
22 enrollees who are not actually eligible for the settlement. We
23 have been in contact with Mr. Preuss, and he has promised that
24 after Propulsid 2 gets up and off the ground he will provide us
25 with a list of additional people we could put in Propulsid 2.

1 In addition to the state court plaintiffs, we think we will
2 have a nice size inventory for that settlement.

3 After the last status conference, Your Honor, I
4 sent a memo out advising all the attorneys of three very
5 important pieces of business that occurred at the last status
6 conference. The first was that the PSC's work product would be
7 ready for any state attorney who wanted to try his or her own
8 case. I advised them of that. Secondly, I advised them of the
9 Court's remarks on the remand motions, that at some time
10 shortly you would be ready to deal with the remands, and I
11 advised them of the Weitz & Luxenberg issues. Third, we talked
12 about the possibility of Propulsid 2. Every attorney in the
13 country who has a Propulsid case has been fully informed with
14 regard to both litigation, the potential for litigation, and
15 Propulsid 2.

16 THE COURT: I would like to see state liaison
17 counsel, defense counsel, and plaintiff liaison counsel after
18 this meeting in the conference room. Anything further on that?
19 Trust account is the next item on the agenda.

20 MR. IRWIN: We have the service list, which is the
21 same. I do have a couple of comments I could pass on to the
22 Court about the pro se plaintiffs. Even though it's a little
23 bit down on the agenda, it may be appropriate to address it at
24 this point.

25 THE COURT: Okay.

1 MR. IRWIN: We don't have a list with us today, and
2 the reason we don't is because so many pro se plaintiffs came
3 in within the last couple days. I think the Court has seen the
4 flood of motions, which has been good to get this thing wrapped
5 up here, but we need a couple more days to finalize the list of
6 pro se plaintiffs. I am to understand we can have that
7 completed by Monday and will give a copy to the Court, to the
8 state liaison committee, and to the plaintiff liaison
9 committee.

10 THE COURT: Give that to me by Tuesday and I'll take
11 a look at it. What we need to do is find out the numbers and
12 location of them and then the Court will consider how to deal
13 with the pro se plaintiffs. Those who want to handle their
14 case by themselves, we'll set them for trial. Those who want
15 an attorney, I'll consider appointing somebody to represent
16 them. Those that we don't hear from, I'll appoint an attorney
17 for service of process and give the attorney an opportunity to
18 contact the individuals. If we hear nothing from them, then I
19 would entertain a motion to dismiss for lack of prosecution and
20 take it from there. That was the second item. The next item
21 now is the trust account. Anything on the trust account?

22 MR. HERMAN: May it please the Court. Your Honor,
23 there's been no activity since the last status conference.

24 THE COURT: How about trial schedules, which is the
25 next item?

1 MR. IRWIN: No new scheduling issues since the last
2 report.

3 THE COURT: The next item is the pharmacy indemnity
4 agreements.

5 MR. IRWIN: No new developments there either,
6 Your Honor.

7 THE COURT: The next item is the MDL mediation and
8 resolution program.

9 MR. HERMAN: Mr. Campion will report on that and I
10 will follow up.

11 MR. CAMPION: Your Honor, it is my understanding that
12 a representative of the office of Morris Bart is in court
13 today.

14 THE COURT: Let me interrupt you, then. Anyone here
15 from Morris Bart's office?

16 MS. MILLER: Yes, sir.

17 THE COURT: Come forward and give us a report on your
18 cases.

19 MS. MILLER: Good morning. Stacie Miller for Morris
20 Bart. We had ten outstanding issues. Those have all been
21 resolved. Six we have filed stipulations for dismissal and
22 have enrolled those clients and four we have withdrawn from. I
23 believe one of those is waiting for your signature.

24 THE COURT: You are reporting to the Court that you
25 have personally looked at all the cases, all of the files, and

1 you indicate to this Court that all of those cases have been
2 resolved in one way or another?

3 MS. MILLER: Yes, sir, Your Honor.

4 THE COURT: Mr. Campion, are you satisfied with that?

5 MR. CAMPION: Yes, Your Honor. We will, obviously,
6 look at the paper in case there's a particular problem, but we
7 accept their representation.

8 THE COURT: I will let you go forward. Thank you
9 very much.

10 MR. CAMPION: The remarks made by counsel for the
11 Bart office bring to a close the open issues that existed
12 respecting enrollments, and we are authorized by our client
13 today to speak to that issue. As Your Honor knows, Mr. Preuss
14 has been leading the effort in this part of the litigation for
15 some time. It is only because of a trial commitment in another
16 place he is not here, so I, Mr. Irwin, and Ms. Garsaud all
17 speak as his surrogates.

18 We are happy to report that the enrollment
19 levels have been reached and that the Court should be at
20 liberty to announce today that the enrollment period has
21 concluded and the activity for claim form administration has
22 begun. That means, under the term sheet which was incorporated
23 in your consent order, that the defendant has 30 days from
24 today in which to make the initial fund deposit. That's
25 \$69.5 million. We are reviewing with the PSC the additional

1 enrollees who came in in the last week or so to see if that
2 would require a supplement under the conditions of the term
3 sheet.

4 Second, that means that for a period for six
5 months from today the enrollment in the MDL program remains
6 open to those who are eligible to enroll. Next, it means that
7 within 120 days, unless Mr. Juneau gives some extension, the
8 claim forms of all enrollees are to be submitted to the office
9 of Mr. Juneau here in New Orleans.

10 It also means that we are now to fund the
11 balance of the administrative fund. Your Honor may recall that
12 the administrative fund was \$15 million. We were not obligated
13 to fund it to the extent of a penny until the enrollments had
14 been met, but the company concluded -- wisely, it appears --
15 that an advance on those funds would be in order so
16 Mr. Juneau's office could get up and running and hire competent
17 staff. The company has spent over \$200,000 to date towards the
18 administrative fund, and it is clearly money well spent. I
19 expect over the next several months there's going to be an
20 immense amount of activity in this litigation. There will be
21 activity in Mr. Juneau's office and less in this Court.

22 We expect some accommodations will have to be
23 made to speed up one aspect of the process, which is the
24 processing of \$250 payments to those who meet the requirements
25 for the \$250 payment under the term sheet, but otherwise not

1 eligible to receive a payment or receive consideration by
2 Mr. Juneau on the merits or by the medical panel. There are a
3 few odds and ends on the medical panel that remain to be
4 resolved between the PSC and the defendants. It may be that
5 one or more of us have lost a position from those we originally
6 designated. We have sent a protocol to the PSC for their
7 consideration that may be used by the members of the medical
8 panel, and we have yet to reach an agreement on what the
9 compensation arrangements will be. I have every expectation
10 agreement will be reached on all of those.

11 In short, Your Honor, the program that was
12 agreed to by the parties in February of last year has now borne
13 fruit and, if it all goes well, those entitled to compensation
14 will begin to receive compensation this year. Those who are
15 entitled to receive a smaller payment, in connection with the
16 medical record review aspect of the program, will receive their
17 payments. It is a rather unique program that was put into
18 place and it is well to note that it has worked. Thank you
19 very much, Judge.

20 THE COURT: The reason it has worked, obviously, is
21 because of the hard work of counsel and the understanding of
22 the litigants, and so I do compliment counsel. As I have said
23 often, one of the advantages of a case of this sort is that the
24 attorneys who participate in matters of this suit are extremely
25 competent on both sides and know what they are doing and know

1 how to do it. Their clients are represented properly and
2 matters oftentimes are resolved, and it is through the course
3 of their efforts that it is accomplished. Do you agree with
4 what Mr. Campion said?

5 MR. HERMAN: Oh, I absolutely agree. This program is
6 in place, Your Honor. I do have a couple of comments. First
7 of all, as Mr. Campion has remarked before, the Court has been
8 very patient with us. It's a unique resolution. I think we
9 both understand from other cases that are going on in the
10 country that there are other folks that are now looking at this
11 as a template for resolving other cases. Attorneys sometimes
12 get too much credit for the Court's overseeing this process. I
13 do want to, on behalf of the PSC, thank defense counsel for a
14 very hard-fought negotiation and process. We have made certain
15 commitments through defense counsel to their client, which I
16 would like to state on the record in the form of a stipulation.

17 The plaintiffs steering committee, rather than
18 taking no notes or just notes, at each one of its meetings had
19 an official court reporter record, under work product and
20 attorney-client privilege, the proceedings of the PSC and the
21 votes on fundamental issues. The resolution program, before it
22 was ever announced to anyone and in place, was brought to the
23 PSC for consideration and approval. The minutes will reflect
24 that there was universal understanding and approval of this
25 resolution program, and we so advised the Court and we advised

1 defense counsel.

2 As part of that resolution program, the
3 plaintiffs steering committee agreed that wherever their cases
4 were reposed, in whatever venue or jurisdiction, every one of
5 their cases would have to enter into this program. We have
6 committed and so stipulate to the defendants if there has been
7 some clerical error or omission by a member of the PSC in terms
8 of enrollment, the defendants are safeguarded and it is a PSC
9 problem the PSC will resolve. In that regard, we represent to
10 the Court, as officers of the Court, to the best of our
11 knowledge and review, every member of the PSC has submitted 100
12 percent of their cases.

13 Further, Your Honor, if for some unknown reason
14 there is a claimant somewhere under any circumstances which
15 ought to have enrolled or which has enrolled and seeks to
16 withdraw, that will not be a defense problem, it will be a PSC
17 problem to resolve. We do not anticipate that issue, but we
18 want to make clear to the defendants and their counsel that
19 they are safeguarded in that regard.

20 I would also like to acknowledge Heather
21 Laborde, a paralegal with our firm, and Jennifer Green, an
22 attorney with Arnold Levin's firm, who have worked with
23 Lenny Davis of our firm, my partner, to get this enrollment
24 done, and it has not been an easy job. If Jennifer and Heather
25 would stand up, I would like to just give them the

1 acknowledgment they deserve. Sometimes the lawyers get credit
2 when they are out front for what's happening in the back.

3 THE COURT: I'm aware of that, too. That's always
4 the case. You need to know that. I am aware of the work you
5 have been doing and appreciate the work you have been doing.
6 You have not only helped your colleagues, but you have helped
7 the Court, and you need to know that the Court appreciates
8 that.

9 MR. HERMAN: My last comment is hopefully the
10 enrollment will reach such a level that we will be entitled to
11 an incremental increase in the dollar amount of the settlement
12 fund. That's yet to be determined, but there is an indication
13 that that fortuitous event may occur. That's all the report
14 that I have to make with regard to the MDL mediation and
15 resolution program.

16 THE COURT: Anything further on the resolution
17 program?

18 MR. HERMAN: Excuse me. I apologize. The special
19 master has conducted virtually weekly telephone conferences.
20 Mr. Juneau is a joint selection and recommendation to this
21 Court as special master. A great deal should be said about his
22 activities in making sure that this process was complete.
23 Without his participation and the imprimatur of the Court, we
24 would not be here today able to make this announcement. I know
25 defense counsel joins me and the PSC in that recognition.

1 THE COURT: I do recognize that. Mr. Juneau has been
2 in for some time. He was appointed initially to look at the
3 individual cases that were subjected to scrutiny under an
4 earlier resolution plan, and then when this program was devised
5 he moved into the area that he is in now. I've known him for
6 many years and know that he is very qualified, very talented,
7 and particularly has been effective in this case. Mr. Juneau,
8 do you have anything that you want to mention?

9 MR. JUNEAU: No, Your Honor. The actual work now
10 commences. I do want to make one comment. I would be remiss
11 if I did not. I've been in a lot of these major pieces of
12 litigation, and the overall thread I found that makes things
13 work is cooperation and level of talent. I want to commend the
14 entire plaintiffs committee, including the state committee, and
15 the entirety of the defense. They have extremely, extremely
16 high caliber talent involved. Their cooperative level made
17 this matter successful with the guidance of the Court. There's
18 been an enormous amount of effort that's been expended,
19 especially in the past two months, to get where we are today.
20 I know that they appreciate everything that you have done. The
21 one benefactor has probably been South Central Bell over the
22 past two months. It may exceed the fund, Mr. Herman. The work
23 now commences. I want to give the Court assurance that we are
24 prepared to now commence actual work and expeditiously dispense
25 the appropriate amount of proceeds that should be dispensed in

1 this matter.

2 THE COURT: Keep me advised of it, Mr. Juneau. Also,
3 I need you to begin meeting with the government to tie up the
4 loose ends.

5 MR. JUNEAU: Yes, sir. I know that's a very, very
6 critical part of this case.

7 THE COURT: We have tried to get them earlier. They
8 have been very cooperative, and I appreciate that cooperation.
9 I'm interested in trying to deal with this hopefully in some
10 in globo manner or some manner that can be expedited.

11 MR. JUNEAU: That aspect of the case has not left the
12 radar.

13 THE COURT: Anything further?

14 MR. CAMPION: I understand Mr. Jordan and Mr. McAfee
15 are present. It is my understanding they have completed their
16 enrollment issues, but it may well be that the two of them have
17 something they want to say to the Court.

18 THE COURT: Let me hear from counsel on the phone.

19 MR. JORDAN: Yes, Your Honor. Dudley Jordan. To my
20 knowledge, I have either enrolled all my inventory or they are
21 covered by a motion to withdraw except for one. I would like
22 to bring this up. I noticed it last night as I was reviewing
23 the defendants' list. It's, by their count, count 231,
24 Wilbur Preston Thomas. I will be filing a motion to withdraw
25 to cover him as soon as I can. With the exception of

1 Mr. Thomas, all my inventory is either enrolled or I have
2 withdrawn or filed a motion to withdraw from the
3 representation.

4 THE COURT: File your motion today and I'll take care
5 of it. Fax it to me.

6 MR. JORDAN: I will.

7 THE COURT: Anything further? Next counsel.

8 MR. McAFEE: Carl McAfee. I don't think I have much
9 to add. I'm a country lawyer up here in southwest Virginia,
10 and I really would have loved to come to New Orleans.
11 Unfortunately, I couldn't get arrangements to do that. I don't
12 really have a whole lot to add to anything, Judge. I'm just
13 pleased it has gone as well as it has. I have to tell you that
14 I consider Mr. Champion a superb negotiator in this matter, and
15 I can only commend him for his work in this matter. I consider
16 it a pleasure to have dealt with him. I wish I could have gone
17 to New Orleans just for the heck of it.

18 THE COURT: We'll get you here one day. Thank you
19 very much. Anybody else on the phone? Let's go to the next
20 item on the agenda, global application of Daubert.

21 MR. HERMAN: Ben Franklin said that a city lawyer
22 between two country lawyers was like a fish between two hungry
23 cats. The country lawyer is welcome to come down. We have
24 Jazz Fest on the 27th, 28th, and 29th.

25 MR. McAFEE: To New Orleans, I would just like to

1 come.

2 MR. HERMAN: It's a good time to come. Your Honor,
3 under No. 7, global application of Daubert, we are still
4 against it.

5 THE COURT: That's still on hold. Motions for
6 summary judgment. I have one motion for the defendant
7 Dr. Harold Wheeler, and I mentioned that to counsel for the
8 defendant. Any word on that case?

9 MR. IRWIN: Judge, that does ring a bell. Has that
10 been filed for a while or something that was recently filed?
11 Do you know?

12 THE COURT: March 18.

13 MR. HERMAN: I know what that is. I'm sorry. Wait.
14 The motion for summary judgment that I'm acquainted with was a
15 motion for summary judgment dealing with Johnson & Johnson and
16 Janssen's --

17 THE COURT: Actually, this is a 12(b)(6) motion filed
18 somewhere.

19 MR. IRWIN: Judge, I do remember the name now, and I
20 will go back and look at it, Mr. Davis and I will talk about
21 it, and I'll report to your law clerk early next week with
22 respect to our position on that. Right now I just can't call
23 it up.

24 THE COURT: The motions for summary judgment. These
25 motions should be filed by either defendants or plaintiffs. I

1 need those motions. Any motions filed for summary judgment
2 should be filed within 30 days. I'll give respondents 30 days
3 to respond. I'll set them for hearing and we will deal with
4 them.

5 MR. HERMAN: Your Honor, we have one pending motion
6 for summary judgment regarding what I will call an alter ego
7 issue. We have deferred that issue now for about eight months.
8 We would like to be relieved of having to bring that matter to
9 Court or briefing it, in light of the enrollment numbers being
10 reached, but we still -- I don't know how to say this -- need
11 to keep it alive in order to give notice to anyone who is not
12 in the enrollment that we plan to dismiss -- we have been
13 holding the motion in abeyance.

14 THE COURT: Has the motion been filed yet?

15 MR. HERMAN: No, but we intend not to bring it as a
16 result of the enrollment program, but we need to give notice to
17 those people who have not enrolled.

18 THE COURT: All right. I don't have any motion
19 before me.

20 MR. HERMAN: No, you do not, sir, but the 30-day
21 period we would like, as far as that motion is concerned,
22 suspended until we can give notice to those who haven't
23 enrolled.

24 THE COURT: Pro se plaintiffs is next.

25 MR. IRWIN: Your Honor, I believe we have reported on

1 that. We will get that list to the Court on Tuesday.

2 THE COURT: Verilaw/Lexis. Verilaw has been taken
3 over by Lexis. As I understand it, there have been some
4 meetings between Lexis and the plaintiffs and defendants and
5 they have talked about migrating some of the material over from
6 Verilaw to Lexis.

7 MR. HERMAN: There have been several meetings,
8 Your Honor, and within 30 days the migration will be initiated
9 and hopefully completed in a reasonable period of time.

10 THE COURT: The next item is correspondence from
11 counsel for Walgreen. Anything on that?

12 MR. IRWIN: Your Honor, I believe that is a moot
13 question now in light of the fact that those particular
14 plaintiffs have enrolled in the settlement claims, the Beo
15 case.

16 THE COURT: Right. We will deny that as moot.
17 Motion for remand. Last meeting, I talked with counsel for the
18 plaintiff who had filed three motions for plaintiff. Is either
19 plaintiff on the line or present?

20 MS. MANIATIS: Yes, Your Honor, I am.

21 THE COURT: Are you waiting for a briefing schedule?

22 MS. MANIATIS: Yes, Your Honor. That's what was
23 discussed at the last conference. My name is Victoria Maniatis
24 from Weitz & Luxenberg on behalf of the three, Masluk, Bucaria,
25 and Ridgeway, which have filed the remand motions in December

1 of last year. We are hopeful those three cases could be heard
2 as quickly as possible as they have been briefed and the
3 defendants have previously stipulated that remand would be
4 appropriate for the plaintiffs to go back to two of the states
5 of their residency.

6 In the Masluk and Bucaria cases, that would be
7 for New York, and for Ridgeway that would be in Arizona.
8 Particularly for Mrs. Bucaria, she would like immediate
9 resolution. She has, at the age of 72, just entered the
10 workforce and has, unfortunately, been pushed into bankruptcy
11 due to her husband's sudden death and her unfortunate
12 situation. Ms. Masluk is alive and is, unfortunately, unable
13 to continue working because of the injuries she has sustained
14 and, therefore, would like to have her matter have the
15 opportunity to reach resolution in a remand court as quickly as
16 possible. For the Ridgeway family, they have lost their
17 husband and father, Mr. Ridgeway. They are residents of
18 Arizona and would like the opportunity for their case to be
19 remanded to New Jersey, where it was filed, but then
20 transferred to Arizona, where Mrs. Ridgeway currently resides.

21 THE COURT: Are these in state court?

22 MS. MANIATIS: These are all before Your Honor. They
23 were originally filed, each one, in New Jersey state court,
24 where they were handled for approximately three years, went
25 through mediation and resolution was not able to be met,

1 therefore, we engaged in the process with the MDL. They have
2 been here about the last year.

3 THE COURT: I will give the defendants 30 days to
4 respond to your motions to remand. I will set it for hearing
5 on April 27. If anybody wants oral argument, ask for it. If
6 either of you asks for it, I will give you oral argument. I
7 will take it up that date.

8 MS. MANIATIS: Thank you very much, Your Honor.

9 MR. CAMPION: We will comply. We have raised in the
10 same paragraph some issues regarding the remaining cases. I
11 think it's appropriate to bring this to your attention.
12 Obviously, thousands and thousands of plaintiffs have come into
13 the litigation here at the MDL. To the best of our knowledge,
14 the only group of attorneys not participating in the settlement
15 process are the Weitz & Luxenberg program, and that is
16 obviously their right and we do not challenge the exercise of
17 that right. Nonetheless, it is one of the markings of this
18 particular litigation that there has been precious little
19 case-specific discovery, plaintiff-specific discovery, since
20 the case came here beyond the completion of the PPF and the
21 collection of what medical records could readily be identified.
22 The defendant believes it would be appropriate and of benefit
23 to district courts, should the Weitz firm decide they want to
24 have the remaining cases become subjects of motions to remand,
25 that case-specific discovery be completed before that takes

1 place.

2 In connection with that and on the summary
3 judgment motion ruling that you made a moment ago, we would ask
4 that it be modified to the following degree. We have
5 sufficient discovery in a few of those cases that we can make
6 motions to dismiss, and we have some exemplars that would be
7 ready to go within the 30-day period. We would ask the
8 opportunity to file summary judgment motions on the remaining
9 48, 49 cases be deferred until you have had a chance to resolve
10 those, because the resolution of an exemplar motion will affect
11 whatever the plaintiff or defendant does with respect to the
12 remaining. That is our request.

13 THE COURT: Give me a list of the cases that you are
14 ready to go on and I will set it on those cases and the other
15 ones I will defer.

16 MR. CAMPION: All right. Might we then resume
17 plaintiff-specific discovery?

18 THE COURT: Yes. I think you need to do that because
19 I want to look at those cases, so let's get that done. What's
20 a reasonable time for that? Can the plaintiffs give me some
21 input on that time-wise? I would suggest to counsel that you
22 see if you can group the other cases. Sit with each other and
23 see if you can group them into various groups, then pick
24 several cases so that I can take a look at those cases and see
25 whether or not we can get an exemplar ruling. You'll know at

1 least my feeling on those particular cases so you don't have to
2 do the whole 40.

3 MS. MANIATIS: With the three cases we already filed
4 for remand, those are set. Those are done. I certainly could
5 be able to group the remainders as appropriately as possible
6 and have that for you by the next conference.

7 MR. CAMPION: I think a conversation between the two
8 of us at the end of the hearing --

9 MS. MANIATIS: That will be fine. We can start it
10 that way.

11 THE COURT: My thinking is that you group them, then
12 begin your discovery on those, then bring me one or more from
13 each of the groups on the summary judgment, let me take a look
14 at them, and I will give you the benefit --

15 MS. MANIATIS: I'll be anxious to see what their
16 groupings and listings are and I can handle it.

17 THE COURT: If we have a problem with the grouping,
18 get it to me and I will group them. Any new item on the
19 agenda?

20 MR. IRWIN: Your Honor, the new item on the agenda
21 has to do with the preparation of the master remand order that
22 is recommended by the *Manual for Complex Litigation*. We are
23 using models from such MDLs as Fen-Phen and others. The manual
24 recommends that the Court prepare a master remand order to
25 accompany the transfer of the files which would chronicle the

1 rulings in this MDL, which would enable the transferor court to
2 have the benefit of those rulings and not have to reinvent the
3 wheel. We are working now to submit a draft to the plaintiffs
4 liaison counsel for their review and input. It is not an
5 insubstantial attempt to try to reconstruct all of this, and
6 the next step would then be to submit something to Your Honor
7 for consideration.

8 THE COURT: One of the things we have tried to do
9 from the outset, in anticipation of this, is to put everything
10 I can on the web site. We have all of the transcripts on the
11 web site, all of the Court orders, so hopefully that can be a
12 resource to you in developing the information that you need.

13 MR. IRWIN: It has been. We have used the web site
14 to start to assemble this history. We have also used the court
15 reporters' transcripts in some cases. Those have aided in
16 preparation of this draft. In any event, that collection and
17 information is what forms the body of this draft.

18 THE COURT: I think a lot of attention needs to be
19 given to that because that's key to people who will be
20 receiving this case and looking at it for the first time. You
21 need to have people read that material who are not as familiar
22 as you folks are because you fill in the blanks with
23 information you know. Occasionally, you need somebody who is
24 not totally up to speed on the case, that is looking at it with
25 fresh eyes, to be able to understand it. The fact that you

1 understand it is not going to be enough because you know the
2 case so well. You have been with it all the time. Get some
3 people in it who are looking at it for the first time.

4 MR. IRWIN: Thank you.

5 MR. HERMAN: Your Honor, the PSC will review it. I'm
6 going to ask, also, that Mr. Arsenault, as a representative of
7 the federal/state liaison committee, take a look at it, also.

8 THE COURT: I think you need to have some input on
9 this because your people are going to be the beneficiaries of
10 this to a great extent, also.

11 MR. ARSENAULT: Yes, sir.

12 THE COURT: Anything further?

13 MR. HERMAN: Your Honor, we need to pick a date. I
14 have been reminded that the MDL 1657 conference I believe is
15 scheduled for the 28th. I'm wondering if the 27th is available
16 for the next Propulsid conference?

17 MR. IRWIN: I'm unavailable for the 27th. I will be
18 out of town.

19 THE COURT: Is the 26th okay? The 26th will be the
20 next meeting.

21 MR. IRWIN: Could we also do the motions for remand
22 on the 26th rather than the 27th?

23 THE COURT: I don't have any problem with it. Okay.
24 Anything further on this? Anything from anyone else?

25 MR. BECNEL: Judge, I can remember when the first

1 motion was filed for your MDL. Mr. Campion really didn't want
2 to come to New Orleans. I've heard from Mr. Campion since that
3 not only does this entire committee feel, but the entire
4 defense feel that without your assistance in this case -- and
5 the Court very seldom takes credit. I can remember you
6 following Judge Rubin in the Ferry FROSTA case, and I think all
7 of the lawyers now follow you. I'm beginning to believe that
8 most of the federal judges are starting to follow some of the
9 innovations you are doing, and I want to say thank you.

10 It's, indeed, a pleasure for me to tell
11 Mr. Campion he was wrong to not want to come to New Orleans.
12 For Jim, it enabled him to start a new law firm. One of the
13 arguments I think that won the day in the MDL, I told the MDL
14 panel, "There's a lot of good reasons to come to New Orleans.
15 Mr. Campion has a daughter who is in medical school in
16 New Orleans, and wouldn't you want to send this case to
17 New Orleans to allow him over the next few years to have a
18 relationship with his daughter?"

19 THE COURT: Thank you, again. I appreciate the
20 comment, but I've walked in the shoes of a lawyer for longer
21 than I have walked in the shoes of a judge, and I know from
22 personal experience that the lawyers really drive the case.
23 Lawyers know more about the case than the judge knows about the
24 case, and to the extent that it's successful it is the work of
25 the lawyer and not the judge in a case. In this particular

1 case and also throughout the MDL, it has been my experience
2 that the lawyers who handle these cases are exceptionally
3 talented. To the extent the MDL works, it's largely because of
4 their efforts.

5 THE DEPUTY CLERK: Everyone rise.

6 (WHEREUPON, the Court was in recess.)

7 * * *

8 CERTIFICATE

9 I, Toni Doyle Tusa, CCR, Official Court Reporter,
10 United States District Court, Eastern District of Louisiana, do
11 hereby certify that the foregoing is a true and correct
12 transcript, to the best of my ability and understanding, from
13 the record of the proceedings in the above-entitled and
14 numbered matter.

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Toni Doyle Tusa, CCR
Official Court Reporter