

1 respond by the end of the month, and we are sharing that
2 information as soon as we receive that with the defendants.
3 Primarily, we see our task at this point as to try to get our
4 arms around the inventory of cases around the country. We are
5 continuing to participate in the process and have regular
6 communications with everyone that's involved in this program.

7 THE COURT: I think you have to really focus on that
8 because a census is essential to the situation. We have
9 learned that from the MDL Propulsid part. Oftentimes what
10 people think they have they don't have, names are different. I
11 think you are going to have to have some face-to-face with the
12 defendants on that. Arrange a conference with them and go over
13 those names. Once you do that, I think everything will fall in
14 place, frankly. I think the thrust of it ought to be the
15 process. If we just cookie-cut the process of the MDL into the
16 state, it should work. It's just a question of getting the
17 census and stepping into it. It's my impression that the
18 defendants are interested in proceeding in that manner. It's
19 just that they need a census that is consistent with their
20 information.

21 MR. ARSENAULT: Yes, Your Honor.

22 THE COURT: Anything from the defendants on that?

23 MR. PREUSS: No, Your Honor.

24 THE COURT: Do you have any ideas how we can get this
25 census faster?

1 MR. PREUSS: Chuck Preuss for the defendants,
2 Your Honor. Ms. Barrios and I have been sharing information.
3 In fact, we just talked this morning. The idea is to try to
4 get the list coordinated so we know where we are at and then we
5 can deal with the agreement. We want to make sure that we have
6 the first MDL taken care of before we launch into the second.
7 We are proceeding along in that direction.

8 THE COURT: I think we are moving in the MDL. A
9 little bit further on this morning I will call upon the
10 Special Master to give us a report. Thank you. Service list.

11 MR. IRWIN: We are still providing them, Judge. They
12 are not changing, but it gives me something to do every month.

13 THE COURT: We have to keep you busy and keep you out
14 of trouble. Anything on trust accounts?

15 MR. HERMAN: No, Your Honor.

16 THE COURT: What do we have with the trial schedule?
17 Any cases throughout the country on this?

18 MR. CAMPION: No, Your Honor. The only case is
19 Bucaria, which is before you in February. There is a case in a
20 state court in West Virginia for June. Those are the only
21 cases.

22 THE COURT: The one before me, I will be meeting with
23 trial counsel on that, both plaintiff and defendant, and will
24 talk about the trial plan. I will deal with that shortly.

25 MR. CAMPION: I'm pleased to report that the order

1 that you set for discovery is being met and there are no
2 hitches in this case.

3 MR. HERMAN: Your Honor, I have a personal privilege
4 regarding the schedule. Your Honor has been with this case
5 since inception and seen it through delivery. We have had
6 several births of grandchildren and several marriages, and I
7 want to congratulate my colleague, Jim Irwin, whose son Chris
8 was married this past weekend.

9 THE COURT: There's been some interesting family
10 developments in this case. We have had births and everything.
11 Congratulations.

12 MR. IRWIN: Thank you, Judge. Thank you, Russ.

13 THE COURT: Pharmacy indemnity agreements, anything
14 on that?

15 MR. IRWIN: No change on that, Your Honor.

16 THE COURT: Mediation and resolution program. Let me
17 hear from the Special Master on that.

18 THE SPECIAL MASTER: Your Honor, I was interested in
19 your comment about the lasting nature of what occurs in these
20 cases. I don't want it to turn into a NOTX case. We have been
21 through two judges who have died in that case.

22 THE COURT: Let's hope that doesn't happen.

23 THE SPECIAL MASTER: Your Honor, we have received
24 approximately 2,800 short forms, which was approved by the
25 Court. That's from approximately six different law firms. We

1 have processed 1,800 of those claims. Of that 1,800, they have
2 been through the full process of the review and the doctors
3 that check off on these claims. Actually, 84 have been paid.
4 There's been 475 that are totally clear in our office. We have
5 sent that to Mr. Preuss' office. We expect any day -- like
6 today or tomorrow, because there's a certain time approval at
7 the bank -- we will have authorizations. Those will, in fact,
8 be paid. We have already received another approximate 300 that
9 are being reviewed at this time and we are going to have those
10 shortly through the entire process. So that process is working
11 very well, but we are really activated and put the push on to
12 get those claims out.

13 Secondly and as equally important, we have
14 received several tier 1, 2, and 3 claim forms from about 35 law
15 firms. A lot of these have just been received within the past,
16 I would say, seven to ten days. We have approximately 75
17 tier 1 death claims in our office now, we have approximately
18 152 tier 2 claims, and approximately 500 tier 3 claims. We are
19 reviewing those to make sure we don't have any deficiencies in
20 the submissions so we can start the process. Immediately after
21 that is done, we will report to the respective parties and the
22 attorneys and clear the duplications, et cetera, with the
23 defendants, and then we are ready to activate the process
24 that's been established in this procedure to get that to the
25 medical panels.

1 Speaking about the medical panels, Your Honor,
2 that's worked very well. The doctors have been extremely
3 cooperative. We have got odd hours and times and places.
4 Bourgeois Bennett afforded us their office on the weekends
5 because they have staff, personnel, and equipment in the
6 office. We have used that office. We have used the office
7 here. We have been able to maintain the integrity of keeping
8 all the files within two places and not ship them all over the
9 place. That has been an administrative benefit to us.

10 THE COURT: I also have had an opportunity, as you
11 all know, to meet with the medical panel. I had them in court,
12 the entire medical panel, and had an opportunity to discuss
13 with them the importance of their role, the importance of their
14 moving this case and, also, not getting bogged down with
15 questions of liability. We are really beyond that. We are
16 into distribution at this point. I wanted to make sure that we
17 focused them on that aspect of the case. I had a good feeling
18 about them. I thought they were industrious people, willing to
19 work, and I don't think that will be a problem at all.

20 THE SPECIAL MASTER: We thought it may have been for
21 a while, but it's turning out not to be, Your Honor. The
22 bottom line is we are dual tracking now the administrative
23 plan, which we want to continue to process. As a matter of
24 fact, we will deal with some of those today. Simultaneously,
25 we are focusing our attention on the more serious claims, to

1 get them into the pipeline and running through the system. So
2 I think the system is working, at least at this stage, very
3 well, sir. Thank you, Your Honor.

4 THE COURT: Don't hesitate to tweak it and change it
5 when you get comfortable with it because there are certain
6 shortcuts that don't appear to you now, but might appear to you
7 later. If so, you ought to be able to pick that up and move it
8 along.

9 THE SPECIAL MASTER: Thank you, Your Honor.

10 THE COURT: The next item is the Daubert motions.
11 Let me hear from the defendants on that.

12 MR. CAMPION: We have filed motions in three actions,
13 Your Honor, and respectfully asked that they be set for
14 argument on the 28th. The time for the plaintiffs to respond
15 has not yet arrived. The motions, while they are in three
16 separate cases, make exactly the same argument in each motion.

17 THE COURT: As I understand it, there's no evidence
18 necessary on this. We will do it by paper and argument.

19 MR. CAMPION: On paper, Judge.

20 THE COURT: That's consistent with the plaintiffs'
21 view, too?

22 MR. CAMPION: We do not know the plaintiffs' view.
23 We have not yet heard. We don't need any on the defense side.

24 THE COURT: I'll set it up at that time and give them
25 an opportunity to tell me what they need. It's my

1 understanding that these motions will be with regard to these
2 several cases and not be looked upon globally.

3 MR. CAMPION: It is not intended to be a global
4 Daubert motion, Your Honor.

5 THE COURT: All right. Anything on pro se?

6 MR. HERMAN: Your Honor, the defendants have provided
7 us with a motion and a short brief. Basically, it relates to
8 notice to pro se plaintiffs and under what conditions a
9 dismissal would be rendered. We have looked at that. We have
10 a reply to the defendants that will go out we expect within the
11 next two weeks. There will be presented to you a proposed
12 order in that connection.

13 THE COURT: What about Verilaw/Lexis? We had a
14 meeting or two with those folks. Is that clarified in any way?

15 MR. HERMAN: It doesn't seem to be a problem,
16 Your Honor.

17 THE COURT: Good. Remand motions. No motions to
18 remand? What about the proposed remand order?

19 MR. CAMPION: We will have in the hands of the PSC
20 before the next meeting a proposed master remand order.

21 THE COURT: How does that look for you, Mr. Campion?
22 What are we looking at?

23 MR. CAMPION: It's not going to be that complex,
24 Your Honor. The current draft we are working with in our own
25 office is about 10 pages. We are going to try to clean up the

1 class action issues, address the in limine rulings that you
2 made, certainly set forth all the depositions that have been
3 taken, the discovery that's been done, but we will have it in
4 their hands for their comments and additions and subtractions.

5 MR. HERMAN: If you would, please send directly to
6 Mr. Levin and Mr. Murray copies of that order because I'm going
7 to want their comments, particularly as it relates to class
8 actions. Thank you.

9 THE COURT: The next item is presentation of
10 electronic data.

11 MR. HERMAN: We are going to take the service list
12 and we are going to notify the entire service list of the
13 defendants' proposed order. We'll do that within the next two
14 weeks. Then we will be prepared to have Mr. Irwin submit to
15 Your Honor a joint order regarding preservation.

16 THE COURT: The motion to amend the 28th order
17 regarding the Special Master, anything on that? I thought that
18 was done.

19 MR. HERMAN: Yes.

20 MR. IRWIN: Your Honor, that has been done.

21 THE COURT: The Lomax cases, anything on that?

22 MR. HERMAN: We have nothing at this time. On
23 another issue, we have asked Mr. Ingram to file a motion and
24 brief with regard to Your Honor's order regarding the
25 submission of nonqualified documents.

1 THE COURT: Is Mr. Ingram here? Mr. Ingram, let me
2 at least give you my initial thought on it so you can address
3 it in your motion. The issue, as I saw it, was what was
4 necessary for the \$250 payment. As I understand it, you have
5 about 9,000 cases that fall into that category. This is the
6 language in the term sheet that I was focused on. It says, "It
7 is understood that the only medical records required to be
8 submitted for the \$250 reimbursement is a single medical or
9 pharmacy prescription record indicating Propulsid's use and a
10 medical condition or injury which the claimant has attributed
11 to Propulsid." Now, as an exemplar, you submitted a pharmacy
12 document showing a drug or a person who had some difficulty and
13 was taking a drug for a sinus condition or thereabouts. I felt
14 that that qualified. It was a prescription. It was indicating
15 that he took a drug for a sinus condition.

16 The rule says, also, a "record indicating
17 Propulsid use." Now, I wanted to make sure that that
18 prescription was for him, it wasn't for his wife or someone
19 else. You've got that taken care of. It's a prescription for
20 the individual. It shows a prescription drug for a sinus
21 condition. The term sheet says "and a medical condition or
22 injury which the claimant has attributed to Propulsid." Now, I
23 focused on that aspect of it and I said that the way you can
24 satisfy that is to have an affidavit from the claimant saying,
25 "I attribute my sinus condition to Propulsid" or "I took this

1 drug for a sinus condition which was prescribed by Dr. X on
2 such-and-such a date. I attribute that sinus condition to
3 Propulsid." That's why I suggested to you that I needed an
4 affidavit from a client, as well as the prescription record
5 from the pharmacy.

6 I understand that you are having some difficulty
7 with the affidavit. The prescription itself shows that the
8 person was prescribed a drug and one use of that drug is a
9 sinus condition, but there are other drugs on that prescription
10 record, for example, for a rash or sunburn and whatever else it
11 might be. I don't know which one he attributes to the use of
12 Propulsid. If he feels that it's the sunburn or he feels that
13 it's the rash, then he has to tell me. That was the reason I
14 needed an affidavit.

15 MR. INGRAM: If the Court please, I thought about
16 that. Our position about that was the short form itself gives
17 the attribution of the claimant and that that met the terms of
18 the agreement. That was our thought about that.

19 THE COURT: Sure.

20 MR. INGRAM: We will file the motion and we will
21 submit to Your Honor a brief for your consideration.

22 THE COURT: Okay. Thank you. Tolling agreements was
23 a new item on the agenda. Anything on that, dismissal of
24 certain tolling agreement claimants?

25 MR. CAMPION: There will be a formal order we will

1 submit to you. It's still in the drafting stage.

2 THE COURT: Do we have a feel for how many cases are
3 going back to the states?

4 MR. CAMPION: I don't think there are going to be
5 that many that are going to be subject to remand orders to
6 other district courts, sir. I think probably less than a
7 hundred. I will have to check that number, but I think it's in
8 that area.

9 THE COURT: Anything else from anybody? Any comments
10 from anybody? The next meeting will be Tuesday, October 18,
11 9:00. I will meet with the committees at 8:30 as I usually do.
12 Thank you. Court will stand in recess.

13 THE DEPUTY CLERK: Everyone rise.

14 (WHEREUPON, the Court was in recess.)

15 * * *

16 CERTIFICATE

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

23

24

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Toni Doyle Tusa, CCR
Official Court Reporter