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ALSO PARTICIPATING:

RICHARD J. ARSENAULT, ESQ.
DANIEL E. BECNEL, JR. ESQ.
WALTER C. DUMAS, ESQ.
BARRY HILL, ESQ.
CARROLL H. INGRAM, ESQ.
PATRICK JUNEAU, ESQ.

Official Court Reporter:

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produced by computer.

1 Propulsid 1 and involved in Propulsid 2. We brought to their
2 attention the termination of the tolling agreement and some of
3 the issues associated with Medicare.

4 The enrollment forms, Your Honor, are on the
5 website. We have brought to everyone's attention repeatedly
6 the June 17 deadline. As we speak, we have somewhere north of
7 2,200 enrollment forms that have been filed. We are in
8 constant communication with each and every law firm that's
9 involved with regard to this. We were advised this morning by
10 Special Master Juneau that some of the firms were inquiring as
11 to whether they could go ahead and file claim forms. They want
12 to start working on that. We were advised that he would accept
13 those now, even though at the end of the day essentially what
14 has to happen is we have to meet certain requisite numbers and
15 then there will be new deadlines for the claim forms. The
16 program seems to be working well. We are getting positive
17 feedback. When the lawyers have questions, we are handling
18 those. We are reaching out to them. So we are cautiously
19 optimistic everything is on track.

20 **THE COURT:** Probably you will get some benefit by
21 going and talking with the attorneys involved, answering any of
22 their questions face-to-face. Sometimes that helps.

23 **MR. ARSENAULT:** Yes, Your Honor. That was, in part,
24 why we had the informational meeting in Mississippi. There
25 seemed to be some critical mass there. There's not just about

1 a day that goes by that we are not on the phone, at least, with
2 somebody who has questions or we are inquiring of them with
3 regard to the status of the submissions. Again, we are
4 cautiously optimistic that everything is on track.

5 **THE COURT:** Thanks. The next item is the trust
6 account. Anything on that?

7 **MR. DAVIS:** The joint report sets out what exists
8 with that. The defendants on April 4, 2006, made an additional
9 deposit into the trust account.

10 **THE COURT:** Trial schedule. There's a trial set for
11 June 26 in West Virginia. Is that still on?

12 **MR. CAMPION:** Yes, Your Honor.

13 **THE COURT:** The MDL mediation program. Anything from
14 the special master?

15 **MR. JUNEAU:** Your Honor, Patrick Juneau, special
16 master. I'm going to file with the Court a report setting
17 forth the various statistics regarding the number of claims
18 received in various categories. The critical part, we are
19 actively involved in the medical review panel. There's been 36
20 cases, Your Honor, submitted to the medical review panel.
21 There are five that have been declared eligible, 29 declared
22 not eligible, and two are still in that process.

23 We have a lot of administrative claims that have
24 been submitted for approval. I submit to the Court that should
25 be cleared within the next couple of days. We will be making a

1 significant payment in that regard. We are getting ready to
2 submit a whole bunch of additional administrative claims for
3 checkoff and review by the medical panel. The total claims, as
4 received in the special master's office as of this time, is
5 11,955 cases, Your Honor. I'll file this as Special Master 1,
6 Your Honor.

7 **THE COURT:** Okay. I'll accept Special Master 1. I
8 appreciate your work. I know it has been difficult, but you
9 are putting it together and I appreciate that. Anything on
10 pro se plaintiffs?

11 **MR. IRWIN:** Your Honor, it may be appropriate to
12 report under this category in the joint report that the parties
13 have jointly proposed to the Court the appointment of Bob
14 Johnston, a well-known, very professional New Orleans lawyer to
15 serve as the curator.

16 **THE COURT:** We have talked with Bob Johnston and he
17 has accepted the appointment, so get with him. It's probably
18 appropriate to give him some tutorial and things of that nature
19 to break him into this litigation so he will have enough
20 answers to give to the parties who are seeking answers.

21 **MR. IRWIN:** We are planning on scheduling that,
22 Your Honor. Mr. Davis and I, together with the special master,
23 are setting up an orientation meeting much in the same way that
24 was done with the medical panelists to begin Mr. Johnston's
25 orientation.

1 **THE COURT:** Proposed order to reflect dismissal of
2 tolling agreements, anything there?

3 **MR. DAVIS:** That item has been concluded. We can
4 remove it from the agenda.

5 **THE COURT:** What about approving the wrongful death
6 awards made by the special master?

7 **MR. DAVIS:** We are continuing to discuss that. There
8 will be a few revisions on that, but I expect it will be
9 submitted.

10 **THE COURT:** I understand that the order will be
11 submitted to reflect the privacy of the individuals so that we
12 won't have any complaint from anyone as to specific amounts for
13 cases. We'll be posting that on the website.

14 **MR. IRWIN:** That is correct, Your Honor. We will be
15 submitting the final order to the Court for the Court's review
16 and hopefully approval and to be submitted under seal.

17 **THE COURT:** Okay. There is an emergency motion for
18 distribution of attorney's fees. I understand that that matter
19 is being discussed and that the parties have asked that it be
20 continued until another date.

21 **MR. DAVIS:** Correct, Your Honor. That's with respect
22 to the Becnel matter. That was reset by the Court. Mr. Becnel
23 and our offices have spoken and we agreed that that be
24 continued. In addition to that, there's the Dumas & Associates
25 matter. We have spoken with Mr. Dumas earlier this morning and

1 he is here today. He can address the Court with respect to his
2 motion.

3 **THE COURT:** Mr. Dumas.

4 **MR. DUMAS:** Walter Dumas, Your Honor. I have been
5 advised by Mr. Davis that they would like to have this matter
6 continued. I don't know what date Mr. Becnel's motion is
7 scheduled, but if you want to have all of them on the same
8 date --

9 **THE COURT:** Let's do that, Mr. Dumas.

10 **MR. DAVIS:** We will keep in contact with Mr. Dumas.

11 **THE COURT:** Keep in contact. If we need to do
12 anything with Mr. Becnel's case, we will let you know. If not,
13 we will also let you know.

14 **MR. DAVIS:** We will coordinate those.

15 **THE COURT:** I understand you are in the process of
16 reviewing certain documents and that's an ongoing process at
17 this point.

18 **MR. BECNEL:** Your Honor, Daniel Becnel. I wanted to
19 tell the Court that we have had one or two of our lawyers go
20 through the documents this past week. I've been in touch with
21 Russ two or three times and I think I've been in touch with
22 Arnold concerning a possible payment of the rent that's never
23 been paid.

24 **THE COURT:** Right. I understand. I thought that
25 that was agreed upon.

1 **MR. BECNEL:** I've never received a penny and I would
2 like to get that.

3 **THE COURT:** Let's talk about that. I thought that
4 was off the table. I thought there was some agreement on that.
5 I could be wrong. Arnie, let's get with Danny. Motion to
6 strike class allegations.

7 **MR. DAVIS:** That's been addressed, Your Honor. It
8 can be removed from the agenda.

9 **THE COURT:** There's a new item, Walgreen's motion for
10 reconsideration. I thought I had dealt with that.

11 **MR. IRWIN:** Yes, Your Honor. At the preconference
12 meeting this morning, Your Honor asked that I speak to
13 Mr. Truitt, who is here, and I have spoken to him. He has
14 kindly agreed to put his motion in suspense for the moment, if
15 the Court permits. I am going to furnish him with information
16 about the dismissal that we have in escrow in the case that
17 also protects his client. After he has an opportunity to
18 review that, he will report to us about whether he thinks it's
19 appropriate to withdraw the motion. For the moment, we can
20 remove this from the docket, at least temporarily.

21 **THE COURT:** That's fine. Anything else that we need
22 to talk about?

23 **MR. CAMPION:** Yes, Your Honor. With respect to the
24 resolution we made with Mr. Ingram some time ago, if I may
25 review the facts very briefly?

1 **THE COURT:** Sure.

2 **MR. CAMPION:** In August of last year, you entered an
3 order which effectively said that two prescriptions would
4 qualify for the administrative claim payment of \$250 if
5 accompanied by an affidavit by the plaintiff or the claimant.
6 Thereafter, Mr. Ingram made a motion for reconsideration.
7 While the motion for reconsideration was pending, Mr. Ingram
8 and I came to an agreement that the resolution would be that
9 payments would be made at the rate of \$125 for each claim which
10 met the two-prescription requirement.

11 An order was entered by you approving the
12 stipulation of resolution. Thereafter, we began QC of 225 of
13 these approximately 3,300 claims. We found QC problems with
14 something in the general area of 55 to 60 percent of them and
15 sent a spreadsheet to Mr. Ingram with our points. Our position
16 was that as to those to which there was no problem, payment
17 could be made by the special master. Mr. Ingram disagrees with
18 our evaluation. We have asked him to have people from his
19 office deal with people from our office. We'll do these things
20 one by one if we have to, but our position is and remains the
21 same. They have to be two prescriptions. The way in which
22 they have to be documented may be open to discussion, and we
23 hope that Mr. Ingram and our staff will be able to come to a
24 resolution. If not, we will have to come to the Court for
25 resolution.

1 **THE COURT:** Mr. Ingram.

2 **MR. INGRAM:** If the Court please, the Court indulged
3 us for a long time to come to a conclusion and agreement that
4 we did a couple months ago. Since that time, we have been
5 going through the process that's set out in that stipulation.
6 After the review of some of the claims, we have certainly come
7 to a disagreement as to the filing and certifications of those
8 claims.

9 My staff has taken all of the deficiencies that
10 they have pointed out. In all of the 107 filings, we find that
11 there is only 10 or 12, in that 107 claims that they claim are
12 deficient, that have any reasonable deficiency whatsoever. We
13 think that we certainly have now come to an impasse. We talked
14 to Mr. Campion a few moments ago, and we are going to try to
15 visit with his staff, visit with people he has designated for
16 us to visit with us, and see if we can come to some
17 understanding or some agreement about it. We expect to do that
18 within the next few days and then, depending on the results of
19 that, we would probably have a motion filed for the next status
20 conference sometime.

21 **THE COURT:** All right. Let's do it. I'll resolve it
22 if you all can't. Okay. Thank you. Anything else that we
23 need? Anything from anyone?

24 **MR. HILL:** Barry Hill. On behalf of the Maxine Perry
25 and the Larry Gaston wrongful death awards, we submitted to the

1 Court in advance an affidavit of counsel, a joint petition, a
2 proposed order approving distribution in these two wrongful
3 death awards and, along with that, affidavits of each of the
4 beneficiaries in each case consenting to the proposed
5 distribution among themselves and also with respect to the
6 attorney fee and litigation expenses.

7 As I understand the situation, the Court will
8 approve of the distribution, as proposed and agreed to by the
9 beneficiaries, that each of these cases has a 40 percent
10 attorney contingent fee agreement, that that is approved.
11 However, at this point in time, 32 percent of that will be paid
12 to claimant's counsel, 6 percent of it will be placed into some
13 segregated fund or situation for later distribution by the
14 Court. Is that correct?

15 **THE COURT:** Yes. In other words, I want to keep in
16 abeyance any potential fee that MDL counsel will receive. The
17 issue is whether or not it comes from your portion of the fee
18 or the claimants. I'm not willing to make the amount come from
19 the claimants, so it's going to come from the attorney's fee if
20 it comes at all.

21 **MR. HILL:** If I may ask, are there any other problems
22 that defense sees with these orders? They are now going to
23 contain confidentiality. The attorney fee portion of it will
24 be changed. The rest of them will stay as they are. Do you
25 see any problem with that?

1 **THE COURT:** Do you want to look them over and let me
2 know?

3 **MR. PREUSS:** We will, Your Honor.

4 **THE COURT:** Do that today so that I can take care of
5 it.

6 **MR. PREUSS:** We don't anticipate any problems.

7 **THE COURT:** Let me hear from you sometime today.
8 Thank you very much. Anything else from anybody? The next
9 meeting is June 13 at 1:30. It's the request of the parties
10 that it be done by conference call since we don't have many
11 things to discuss anymore. It looks like we are winding down
12 and we can do most of our work by telephone. We'll meet
13 periodically in person, and I'll give everybody an opportunity
14 to know about that. We'll get a conference call number and
15 anybody who is interested can dial into it. If you need to
16 know the number, contact the liaison counsel for each side.
17 They will put you in touch with the number. Also, I will post
18 it on our web site.

19 Since this may be one of the last times I get to
20 meet with you all personally, I do appreciate the work that you
21 have done. We have been together for a number of years. We
22 have had many experiences, some on a personal level. We have
23 had marriages, unfortunately deaths, childbirths, and all sorts
24 of things happening during this time. Everybody has come
25 together and worked in this case, and I think the litigants

1 have profited from it. I appreciate all of the work that you
2 have done. Court will stand in recess.

3 **THE DEPUTY CLERK:** Everyone rise.

4 * * *

5 **CERTIFICATE**

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

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13
14 s/Toni Doyle Tusa
15 Toni Doyle Tusa, CCR, FCRR
16 Official Court Reporter
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