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Also Participating:

- Richard J. Arsenault, Esq.
- Dawn M. Barrios, Esq.
- Daniel E. Becnel Jr., Esq.
- Thomas Campion, Esq.
- Leonard A. Davis, Esq.
- Monique M. Garsaud, Esq.
- Barry M. Hill, Esq.
- Robert Johnston, Esq.
- Patrick A. Juneau, Esq.
- Donald R. Klotz Jr. Esq.
- Arnold Levin, Esq.
- Tracie Militano, Esq.
- Charles F. Preuss, Esq.
- Kim West, Esq.
- Bob F. Wright, Esq.

1 the agenda. The first item on the agenda is state liaison
2 counsel. Ms. Barrios, do you want to talk about that?
3 Anything on that?

4 **MR. ARSENAULT:** Judge, this is Richard Arsenault.
5 The settlement requires 90 percent of the wrongful death
6 plaintiffs to enroll. As of yesterday, we had 81.45 percent
7 enrolled. The settlement also requires 95 percent of the
8 personal injury plaintiffs to enroll. As of yesterday, we had
9 just shy of 87 percent. It requires 100 percent of the Achord
10 plaintiffs to enroll. We have met that and have 100 percent
11 participation.

12 The only challenging part has been the
13 requirement that we have all 5,000 of the tolling agreement
14 plaintiffs enroll. What's a little dicey there, Your Honor, is
15 in some instances the plaintiff's counsel have withdrawn, but
16 we are beginning to get our arms around that. We sent out a
17 comprehensive newsletter on August 1, based on the information
18 that the defendants had with regard to who were the last people
19 representing these individuals, and we are beginning to get our
20 arms around that. We are cautiously optimistic that we'll be
21 able to meet all the applicable deadlines and enrollment
22 requirements.

23 **THE COURT:** Okay. Anything from the defendant on
24 that?

25 **MR. IRWIN:** No, Your Honor.

1 **THE COURT:** Trust accounts is the second item.
2 Anything on that?

3 **MR. DAVIS:** Nothing.

4 **THE COURT:** Trial schedule. We had a trial in
5 Gellner v. Johnson & Johnson.

6 **MR. CAMPION:** Off, Judge. No new date.

7 **THE COURT:** The fourth item is MDL mediation and
8 resolution program.

9 **MR. DAVIS:** Your Honor, what we have done, we have
10 met with the special master by phone on a weekly basis, all
11 parties. We have ongoing discussions that are very helpful. I
12 don't know if the special master is on the call.

13 **MR. JUNEAU:** I am.

14 **MR. DAVIS:** Mr. Juneau reports weekly and gets input
15 from each side as to what's happening and we have been
16 monitoring the progress. In addition, we have had further
17 discussions since our last meeting with the special master and
18 Your Honor that occurred on August 15, and we are having
19 further discussions on that issue on an ongoing basis.

20 We do know that meetings took place in the past
21 week between representatives of the plaintiffs and
22 representatives of the defendants, and further discussions have
23 taken place since then, and we'll report back to the Court at a
24 later date.

25 **THE COURT:** Okay. All right. Pro se plaintiffs.

1 Anything?

2 **MR. JOHNSTON:** Judge, Bob Johnston and Don Klotz.
3 Pat Juneau and I talked yesterday. We are set up and ready to
4 go. I told Pat that we are simply waiting for the letter to be
5 approved by both sides so that we can commence sending out the
6 certified letters. We have got files for the 450 or so pro se
7 plaintiffs, so we are ready to go when we get the approved
8 letter, which I understand is in process.

9 **THE COURT:** Bob, I appreciate your help on that one.
10 This is one of the aspects of the case that we do need some
11 help on.

12 **MR. JOHNSTON:** Pat and I talked briefly. There was
13 some discussion that I had with Monique Garsaud -- I think it
14 was like the first week of July -- in which the discussion was
15 about the possibility of having that San Francisco firm send a
16 letter out because it had the names and last known addresses of
17 the pro se plaintiffs. Lenny Davis and I had a conversation,
18 and it was my understanding that that was not something that
19 was acceptable. I told him and the Court and everybody that we
20 are set up to, as the curator, send out the correspondence. So
21 I don't know whether anybody has any information to give back
22 to us as to the timetable for when this is likely to be put
23 together and then sent to us for distribution.

24 **MS. BARRIOS:** Mr. Johnston, this is Dawn Barrios. I
25 worked on Propulsid-2. We have been getting lots of

1 information about firms withdrawing from representation of the
2 clients. If you and I can visit sooner rather than later on
3 what information you need, so that we don't have to reinvent
4 the wheel when we end Propulsid-2, but pull you in on the loop
5 early on --

6 **MR. JOHNSTON:** That would be helpful. I guess that
7 means that the numbers are going up as far as we are concerned.
8 I guess what I was asking about is does anybody have any
9 information for us as to where the putting together of the
10 letter approved by both sides is, insofar as that situation,
11 because we can't do anything until we get the letter that has
12 been approved by both sides.

13 **THE COURT:** How about that? Anything from the
14 defendants?

15 **MR. PREUSS:** Yes. This is Chuck Preuss. I think we
16 are ready to go. The issue that was holding it up was whether
17 or not there was going to be a requirement that we hire an
18 investigator to try to search down everybody. We think that is
19 going to take a long time and be unduly expensive because we
20 are dealing with 422, approximate, pro se's, and that list will
21 clearly go up in connection with MDL-2. 22 of those we don't
22 have any forwarding address, and we don't have identifying
23 information on many of those. So people looking for a "Barbara
24 White," for example, could be an endless search. We feel that
25 the publication should satisfy due process, but we need

1 people's concurrence on that.

2 **MR. JOHNSTON:** One of the things at the meeting I
3 went to at Jim Irwin's office -- and, Lenny, you were there and
4 Russ was there -- was that we had a discussion about the
5 reality that there would be some number of pro se plaintiffs
6 with no known address. I said that it seemed to me that on the
7 Internet, the major newspaper, and last known at least
8 geographic area where that plaintiff was, you can certainly put
9 a notice in there; once again, a notice that would have a prior
10 approval by both sides. We can go ahead and do that if at
11 least we had a last known city or town, or what have you, where
12 that individual was. Now, as to what would happen if there's
13 some pro se plaintiff that has no location or no last known
14 location, Judge, I don't know what we would do in a situation
15 like that.

16 **MR. BECNEL:** This is Danny Becnel. Bob, there's a
17 computer program we use all the time called "PeopleFind."

18 **MR. JOHNSTON:** Right.

19 **MR. BECNEL:** You can use PeopleFind to pretty well
20 narrow it down. If you have a "John Smith," you might have a
21 hundred of them, but you can kind of use that to narrow it
22 down, I believe.

23 **MR. JOHNSTON:** I think we can handle that part of it,
24 especially as long as we have some direct communications with
25 both sides on any particular individual plaintiff that we are

1 having real problems with. That's just something that we want
2 to bring to your attention so that we can get directions that
3 are approved by both sides.

4 **MR. HERMAN:** Bob, this is Russ Herman. I know that
5 publication three times in the newspaper of a last known
6 address has passed due process.

7 **MR. JOHNSTON:** I think you said that when we had
8 that -- one time we were all together, so cross your fingers
9 and hope that we have -- there probably should be a last known
10 address for everybody. If there is, then we would then put the
11 notice in the paper approved by both sides. I don't know what
12 more we could do, Judge, than that.

13 **THE COURT:** Let me weigh in on this. In the first
14 place, I don't think we should spend money hiring an
15 investigator. That just is not fair to anyone. Secondly, we
16 have got to do the best we can on it. The best we can is to
17 try to get the last known address and communicate with the last
18 known address and, if we can't, then put something in the paper
19 around the last known address vicinity. If we do that, that's
20 it. Pro se plaintiffs have some responsibility, too. They
21 can't just tune out the world. I put this material on the web
22 site. I can also put their name on the web site and say: If
23 anybody knows so-and-so, contact such-and-such. We do the best
24 we can with it. I'm mainly concerned with due process. Once
25 we pass that, then we are finished with it.

1 **MR. JUNEAU:** Judge, this is Pat Juneau. I talked to
2 Bob as recently as yesterday. I know he is set up to do it. I
3 think it would help everybody if we can just internally -- is
4 it possible to get that letter to him if it's approved by both
5 sides?

6 **THE COURT:** Let's get a date on that. Can you all do
7 that within five days?

8 **MR. PREUSS:** Yes. That's not going to be a problem.
9 It was really hiring the investigator that was slowing us up.

10 **THE COURT:** No, let's not do that. Let's just get
11 the letter within five days. Bob, call in when you get the
12 letter. If you don't get it, let me know and I'll get
13 everybody on the line again.

14 **MR. JOHNSTON:** I'll put it on the calendar, Judge,
15 and we're done. Thank you.

16 **MR. DAVIS:** Chuck, this is Lenny. Could you send us
17 the most recent draft of that letter, please, if you have it?

18 **MR. PREUSS:** Yes. We'll take a look. I'm not sure
19 exactly which letter you're talking about. We have all the
20 notice provisions that we intended to send out.

21 **MR. DAVIS:** I'm under the impression that we are
22 talking about the letter that Bob Johnston would be sending
23 out.

24 **UNIDENTIFIED SPEAKER:** I think that's right. I think
25 that's what Bob is talking about.

1 **MR. DAVIS:** Right. Chuck, if you have that most
2 recent version -- and maybe you don't. Maybe Bob is the one --

3 **MR. PREUSS:** We'll get it, Lenny.

4 **MR. DAVIS:** Thank you.

5 **MR. HERMAN:** Chuck, this is Russ. We can turn it
6 around within a day.

7 **MR. PREUSS:** No, I know. I say it shouldn't be a
8 problem.

9 **THE COURT:** Okay.

10 **MR. JOHNSTON:** This is Bob. When the letter comes to
11 my office, what I want is a communication from one or both
12 sides that states that this is the letter for us to send out,
13 that it has been approved by both sides. Once I've got that in
14 a master file, we'll set up the process of sending out the
15 certified letters and then be able to report to you, Judge, as
16 to how many we get return receipts on, how many we get calls
17 on, weed out those we don't get return receipts, and those that
18 may be on the list, it has a last known address, and then we
19 will be setting up the process to get the newspaper locations
20 and go from there.

21 **THE COURT:** That sounds fine. Emergency motion for
22 distribution of attorneys' fees. I have that, and I understand
23 it's been continued. We'll be looking at that. Medical panel
24 presentations is the next one.

25 **MR. DAVIS:** Nothing to report.

1 **THE COURT:** New items. I understand there's the
2 Blue Cross. I've got your comments. Presently we have got
3 some other matters to deal with. I ask you to just monitor the
4 situation. I'm sure that, at the appropriate time, people will
5 be contacting you. Some discussions will be forthcoming.

6 **MS. WEST:** Thank you, Your Honor.

7 **THE COURT:** Anything further?

8 **MR. HILL:** Chuck, this is Barry. Do we want to
9 report on our conversation?

10 **THE COURT:** Probably we'll do that at another time.
11 Let me get a date for the next meeting.

12 **MR. DAVIS:** Russ, can I call you back after this?

13 **MR. HERMAN:** Yes. I had trouble getting on the line.
14 They wouldn't put me through. Please call me right back.

15 **MR. DAVIS:** Okay.

16 **THE COURT:** Do we want to do this on the telephone
17 again? We can do it on October 11 at about 1:30. I'm in
18 trial. Is that okay with everybody? All right, folks. We'll
19 do the same call and we'll get back to you the way we did this
20 time. I appreciate your participation.

21 **MR. JOHNSTON:** This is Bob Johnston. Do we call on
22 the same 800-number?

23 **THE COURT:** We are going to put something in, Bob, to
24 get everybody on the same page.

25 (WHEREUPON, the Court was in recess.)

CERTIFICATE

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

s/Toni Doyle Tusa
Toni Doyle Tusa, CCR, FCRR
Official Court Reporter