

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

	:	MDL NO. 1355
	:	
IN RE: PROPULSID	:	SECTION: L
PRODUCTS LIABILITY LITIGATION	:	
	:	JUDGE FALLON
	:	MAG. JUDGE AFRICK
THIS DOCUMENT RELATES TO ALL CASES	:	
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**JOINT REPORT NO. 4 OF  
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 4.

**I. Virtual Document Depository - (Minute Entry, November 16, 2000)**

The parties are continuing discussions with respect to the virtual document depository. Security issues are of paramount concern and the parties have continued to address this issue with the vendors. Additionally, the plaintiffs have spoken with one additional vendor and a consultant regarding security issues. The parties will be prepared to discuss these issues at the February 20, 2001 conference.

**II. Plaintiff Profile Forms/Authorizations - (PTO 2 - X(E))**

On January 31, 2001 the Court entered Pretrial Order No. 9 providing for Plaintiff Profile Forms and the Execution of Authorizations.

**III. Master Complaint/Answer - (PTO 2 - VI(B))**

Discussions regarding the master complaint/answer are ongoing. The parties will be prepared to discuss during the March status conference.

**IV. Update of Rolling Document Production - (PTO 2 - IX)**

The defendants have advised that additional documents consisting of approximately 240,000 pages from the departments of 1) medical services; 2) drug safety/epidemiology; and 3) medical affairs will be produced on February 15, 2001. PLC and representatives of the Plaintiffs' Steering Committee met and conferred extensively with DLC on February 5, 2001 with respect to the document production, its time table, and defendants' responses and objections to the plaintiffs' Master Document Request. The parties are endeavoring to accelerate the document production. Before the February 20, 2001 Monthly Status Conference, defendants will supplement their written responses.

**V. Electronic Service/Verilaw - (PTO 2- IV(C)(C))**

On February 6, 2001 the Court entered Supplemental Pretrial Order No. 4 (Electronic Service) requiring that all counsel of record obtain a valid e-mail address in order to facilitate electronic service. Additionally correspondence from Verilaw explaining the electronic service procedures is being sent to all counsel.

**VI. State Liaison Counsel** - (Minute Entry, November 16, 2000)

Meetings and discussions with representatives from various state cases took place during the week of February 12, 2001. At the status conference a status report on coordination with state cases will be provided by PLC.

**VII. Cross-Noticed MIS Depositions**

In the Propulsid litigation pending in the Superior Court of New Jersey, depositions of MIS representatives, corporate representatives of defendants were noticed to take place commencing the week of January 23, 2001. These were all cross noticed in MDL-1355. The deposition of the following individuals were taken:

Charlene Balfour - taken 1/23/01

Lori Green - taken 1/24/01

Thomas Jastrebski - Volume 1 taken 1/3/01 and Volume 2 taken 1/25/01

Mark Klausner, M. D. - taken 1/31/01

Carmen Rotella - taken 1/24/01 & 1/25/01

Additionally, the deposition of Mark A. Klausner, M. D. was noticed in a Texas case. This deposition was also cross noticed in MDL-1355. The deposition was taken on January 31, 2001 and February 1, 2001 and all rights of the MDL were reserved to continue the depositions and resume same at a later date.

**VIII. Electronic Document Production Motion/Briefing/Hearing Status**

A hearing on the Motion for an Order Establishing an Electronic Document Production Protocol filed by plaintiffs regarding electronic data production had been set for the next status conference, February 20, 2001. On February 7, 2001 DLC, PLC, attorneys for plaintiffs and defendants and experts retained by plaintiffs and defendants met to discuss an electronic data

production protocol and the pending Motion relating to electronic evidence. Efforts were made at that meeting to fashion agreements on elements of a draft protocol and identify areas for further discussion. Substantial progress was made in reaching understandings concerning certain elements. PLC has requested that defendants and each of its respective officers, agents, servants, employees, subsidiaries and attorneys preserve all tangible things and documents containing information potentially relevant to the subject matter of this litigation pending submission of these matters to the court in the event the parties are unable to come up with a resolution. PLC and DLC are conferring and evaluating the implementation of additional preservation measures. In order to facilitate further discussions, it was agreed that defendants' experts and their involved attorneys would meet with defendants' personnel in New Jersey during the week of February 19, 2001. Thereafter, the involved plaintiffs' and defendants' counsel together with their experts will resume joint discussions in Dallas on February 28 and March 1. The hearing on the pending Motion was continued until the status conference on February 20, 2001, at which time the parties will report to the Court on these matters.

**IX. 30(b)(6) Deposition Regarding Corporate Organization**

PLC has transmitted to DLC corporate 30(b)(6) deposition notices regarding corporate organization. Plaintiffs desire to schedule the deposition(s) to take place the week of March 5, 2001. The parties are in agreement that the deposition(s) will take place prior to the March, 2001 status conference. Defendants have advised that they may cross notice these in some of the state pending matters.

**X. Status of Response/Objections to Document Request to Defendants**

A meet and confer was held on February 5, 2001. In attendance at the meeting for the PLC was Russ Herman, Chris Seeger, Jerry McKernan, Daniel Becnel and David Walker and in attendance for the defendants, was DLC, Jim Irwin. Defendants have agreed to cross reference documents responsive to numbered boxes of documents and provide an estimated roll out projection relating to production of documents by February 20, 2001. Plaintiffs desire that the roll out projection be responsive to all document requests. Defendants have agreed to produce approximately 250,000 pages of marketing documents in two productions on March 15 and April 1, 2001. No agreement has been reached on foreign production and PLC and DLC are continuing discussions on this issue. The timing of foreign discovery needs further discussion.

**XI. Proposed Agenda - (PTO 2 - XV)**

A proposed Agenda for the February 20, 2001 Status Conference is attached hereto and identified as Exhibit "A."

Respectfully submitted,

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**PLAINTIFFS' STEERING COMMITTEE**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Joint Report 4 of Plaintiffs' and Defendants' Liaison Counsel was served on all parties by placing same in the United States Mail, first class postage prepaid, addressed to Liaison Counsel, and by e-mailing same to Liaison Counsel, on this 15<sup>th</sup> day of February, 2001.

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