

MINUTE ENTRY
FALLON, J.
May 17, 2001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

	:	MDL NO. 1355
IN RE: PROPULSID	:	
PRODUCTS LIABILITY LITIGATION	:	SECTION "L"
	:	
	:	JUDGE FALLON
.....	:	JUDGE AFRICK

THIS DOCUMENT RELATES TO ALL CASES:

A pretrial status conference was held May 17, 2001 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Richard J. Arsenault, Dawn Barrios, Daniel E. Becnel, James Capretz, Leonard Davis, Walter Dumas, Russ M. Herman, Rick Kuykendall, Arnold Levin, Stephen B. Murray, Larry Morris, Carlos Prietto, Chris Seeger, Paul D. Walther, and James Watts. In attendance for Defendants were Thomas F. Champion, Gwen Hebert, James B. Irwin, Kim Moore, and Marshall Redmond. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 7 of Plaintiffs' and Defendants' Liaison Counsel.

1. Virtual Document Depository

Counsel for Plaintiffs and Defendants continue to discuss issues regarding the creation of a virtual document depository. Considering that the documents are being conveniently produced in CD-ROM form, the parties explained that a virtual document depository may not be necessary.

2. Master Complaint/Answer

Plaintiffs explained that the PLC delivered to the DLC a draft of the Plaintiffs' Position Paper Regarding the filing of a Master Complaint and Answer on March 22, 2001. The DLC advised the Court that Defendants filed a response to the position paper with Plaintiffs on May 15, 2001 which is under review.

3. Update to Rolling Document Production and Electronic Document Production

Counsel advised the Court that Defendants produced 700,000 pages of documents on CD-ROM during the week of May 14, 2001. Counsel indicated that another 800,000 pages documents are planned for production by the end of June which will raise the total number of pages of domestic documents produced to 3 million pages.

Following domestic document production, the parties will commence with electronic and foreign document discovery. Counsel also continue to discuss the production of electronic data and allocation of associated costs as well as a nominee for Special Master as required by Section H(3) of Pretrial Order No. 10. Finally, counsel will file the appropriate motion to provide for attachments to Pretrial Order No. 10.

4. Electronic Service/Verilaw

Counsel explained that they are discussing the issue of filing and serving documents under seal with Verilaw. The Court recommended that the parties consider the use of a "privilege log" to provide limited information on documents under seal. Counsel will report to the Court at the June pretrial status conference concerning what additional measures, if any, are necessary to provide appropriate security for documents listed with Verilaw and served electronically that are filed under seal or otherwise subject to the provisions of the Confidentiality Order.

5. State Liaison Counsel

Counsel stated that State Liaison Counsel have participated in the coordination of telephone calls, depositions, and document review. State Liaison Counsel also reported that they have monitored depositions using the internet.

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

Counsel indicated that a 30(b)(6) deposition of the Beerse operation will take place in Belgium on June 5, 2001. Derk Reyn will be designated as the corporate representative to respond to the notice. The parties stipulate that there is no need to issue a subpoena or otherwise conduct discovery pursuant to the Hague Convention and that the deposition will be conducted in Belgium as if it were taken in the United States at a mutually agreeable time and place.

7. Plaintiff Profile Forms and Authorizations

Defendants stated that they had received 202 Patient Profile Forms (PPFs) as of May 11, 2001. Overdue PPFs total 194, and 35 PPFs will become due in thirty (30) days or fewer. Defendants indicated that they will deliver each Friday to the PLC a status report and list of PPFs that are currently overdue. Each week in response to this list, the PLC will send out a letter directly to the plaintiff attorneys whose PPFs are overdue. DLC also indicated that he has sent 22 letters to attorneys representing plaintiffs whose PPFs are more than thirty (30) days overdue.

The Court explained that when appropriate it will issue an order for plaintiffs who fail to return their PPFs to show cause why their claims should not be dismissed.

8. Depositions in State Matters that have been Cross Noticed

Counsel explained that the deposition of Gary Pruden, Janssen Director of Marketing, was taken in state court litigation on April 25-27, 2001 with representatives of the PSC in attendance. The deposition of Stephen Spielberg, M.D., Janssen Vice President of Pediatric Drug Development, occurred on May 10-11, 2001, and representatives of the PSC were also present for that deposition. All of these depositions were cross noticed subject to the MDL's reservation of rights to retake these depositions.

9. Subpoena to FDA

Liaison counsel explained that the Associate Chief Counsel of the FDA requested a specific authorization from Defendants with respect to Plaintiffs' subpoena and the release of FDA files, and Defendants indicated that they will provide the authorization. The PLC and DLC explained that they are attempting to respond to logistical issues raised by the FDA.

Counsel also reported that the FDA will produce approximately 4,600 pages initially followed by another 11 cartons following the FDA's review. Counsel for both sides indicate that the FDA is presently cooperating with their discovery requests. Plaintiffs indicated that they are continuing to negotiate with the FDA about their document request and will report to the Court on the status of these negotiations at the next monthly status conference.

10. Plaintiffs' Time and Billing Matters

The PLC updated the Court regarding Plaintiffs' counsel's time and billing expense matters.

11. Service List of Attorneys

Counsel indicated that they are preparing a service list to be updated monthly. Counsel will deliver to the Court the most current and complete service list at the next pretrial status conference.

Upon the appearance of counsel for newly transferred cases to the MDL, the PLC stated that a letter will be sent to each new plaintiff counsel noting: (1) the Court's Propulsid website; (2) the necessity to submit a Verilaw questionnaire; and (3) the deadline for furnishing Patient Profile Forms. The DLC will send a letter to newly enrolled defense counsel informing them of the Court's Propulsid website as well as the pretrial orders and other documents posted on it.

12. Defendants Liaison and Lead Counsel

DLC reported that he would bring to the Court's attention any need to discuss the responsibilities of additional counsel in MDL 1355.

13. Ongoing Studies

The parties reported that they continue to discuss the development of a protocol for the production of ongoing studies and that defendants have already produced some materials concerning ongoing studies.

14. Third Party Subpoena Duces Tecum Issued by PSC

Counsel explained that third party subpoenas were issued to advertisers and marketers.

15. Scheduling Presentation of Class Certification Motion

Counsel indicated that the issues concerning class certification will be refined and a hearing will be scheduled if necessary.

16. Tolling Agreements

Counsel agreed to work together to reach agreement on this issue.

17. Scheduling of May Pretrial Status Conference

The next pretrial status conference will be held on Thursday, June 21, 2001 at 9:00 a.m.