

MINUTE ENTRY
FALLON, J.
November 4, 2003

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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

THIS DOCUMENT RELATES TO ALL CASES

A pretrial status conference was held Thursday, October 23, 2003 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Charles Zimmerman, Bob Wright, Fred S. Longer, Rebecca Cunard, A. Renee Preston, Daniel E. Becnel, Jr., Stephen B. Murray, Julio Diaz (participating by telephone), and Heather Laborde. In attendance for the Defendants were James Irwin, Thomas Campion, Charles Preuss, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 26 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

DLC advised the Court that there is no further scheduled document production. PLC reported that some issues remain regarding certain CDs produced during discovery. DLC stated that corrected CDs would be produced forthwith.

2. State Liaison Counsel

There was not a representative from SLC in attendance.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of October 27, 2003, 2,426 PPFs have been received, 31 are overdue, and 576 will become due in thirty days. The defendants have filed a Motion to Dismiss with Prejudice multiple plaintiffs whom they allege failed to furnish PPFs in violation of Pre-trial Order No. 9. The defendants submitted the attached list to the Court as to plaintiffs for whom they withdraw their motion to dismiss.

Accordingly, as to the plaintiffs contained on the attached list, entitled Plaintiffs who have Complied with PTO No. 9–Motion to be Withdrawn, the defendants' motion to dismiss with prejudice is hereby DENIED AS MOOT.

The defendants also submitted the attached list, entitled, Plaintiffs to be Dismissed for Violating PTO No. 9, as to plaintiffs for whom they do not withdraw the motion and who should be dismissed. As to these plaintiffs, the Court hereby GRANTS defendants' motion and the claims of these plaintiffs are hereby DISMISSED WITH PREJUDICE.

4. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

5. Third Party Subpoena Duces Tecum

Pursuant to this Court's Order and Reasons dated September 10, 2003, PLC remitted to Leon Taranto, counsel for the Degge Group, a check in the amount of \$1,283.77 representing full payment.

The parties indicated that no issues remain concerning this matter.

6. Motion for Class Certification

The parties reported that they have discussed establishing a procedure for disposing of the remaining class certification issues. The parties stated that a motion for class certification should be filed with the Court within 60 days from the status conference. The Court indicated that it will meet with liaison counsel concerning this issue after receiving the proposed procedure from the parties.

7. Plaintiffs' and Defendants' Respective Requests for Production of Documents

PLC and DLC advised they were working together to resolve any outstanding issues. The Court advised parties to work together on stipulations for depositions and documents and to bring any matters requiring a ruling to the Court's attention.

8. Trust Account

The parties advised that no issues remain concerning the trust account. The Court advised that defendants should deposit settlement funds into the registry of the Court as soon as settlement is negotiated. The Court further advised that the funds would not be dispersed until the parties are satisfied that all logistical and procedural issues have been resolved.

9. Declassified Documents

The parties advised that they had nothing new to report on this issue.

10. Mediation

The parties advised that no additional mediations have occurred since the last status conference.

11. Trial of Louisiana Cases

The parties reported that, pursuant to the Court's Order of October 22, 2003, the following four plaintiffs have been selected for trial beginning on April 19, 2004: Dorita Black (00-2497); Cecilia Bell Overton (00-2497); Kemper Darnell, Sr. (01-0773); Melissa Nettles (02-1866). DLC stated that it would submit a proposed trial schedule to the Court on or before November 7, 2003.

The Court advised that the remaining Louisiana cases need to be resolved and that the Court would meet with all attorneys involved in these cases to discuss the matter.

12. Pharmacy Indemnity Agreements

DLC advised that it continues to produce copies of all pharmacy indemnity agreements to the PLC.

13. End Game Planning Committee

The End Game Planning Committee indicated that it was meeting and would continue to update the Court on the progress of its discussions.

14. Motions to Enforce Subpoenas

The parties advised that the Motions to Enforce Subpoenas regarding the Social Security Administration relating to claimants Mitchell Williams and Joseph Cangelosi are all moot. Further, the Motion to Enforce Subpoenas against Rite Aid regarding Elman Palao and Mitchell Williams are moot. Accordingly, the parties informed the Court that these matters can be removed from the agenda.

15. Global Application of Daubert

DLC indicated that it had been discussing a process with the PLC for implementation of this Court's *Daubert* ruling in the *Brock* case in other MDL cases. The PLC indicated that it would object to any global application of *Daubert* rulings.

NEW ITEMS

16. Motions to Withdraw

PLC advised the Court that it does not wish to pursue this matter a this time.

17. Stipulation and Pre-trial Order Providing for Use at Trial of Depositions in State or Federal Courts

Parties advised the Court that they have been in communication regarding the prepartin of a stipulation for use of depositions in MDL matters fo ruse at trial in both state and federal courts.

18. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, December 4, 2003 at 9:00 a.m.