

especially since the defendants have made no commitment to the establishment of any future program which might involve cases pending in state courts and until a significant number of cases are enrolled and processed in the MDL Settlement Program. Further, the parties will be prepared to discuss State Liaison Committee involvement with the MDL Settlement.

III. Patient Profile Form and Authorization

As of September 20, 2004 defendants have received 3131 PPFs, 874 are overdue, and 0 will become due in thirty days.

DLC has agreed to PLC's request that motions to dismiss for failure to provide a PPF be halted during the period in which claimants may opt in to the MDL 1355 settlement.

IV. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

V. Motion on Class Certification.

The PLC has not yet filed the revised Motion for Class Certification. The filing has been deferred.

VI. Trust Account

Since last month's Status Conference, on September 20, 2004, Defendants made deposits of settlement funds into the Court's Registry.

VII. Mediation

No additional mediations have taken place since the last month's Status Conference.

VIII. Trial Schedule

On September 21, 2004 DLC furnished PLC with an updated list of state court trials

scheduled next year.

IX. Pharmacy Indemnity Agreements

DLC continues to produce copies of all MDL pharmacy indemnity agreements that Defendants have executed to PLC. DLC will continue to furnish such agreements, if any, as they are executed.

X. MDL Mediation and Resolution Program

The enrollment process has proceeded since the last Monthly Status Conference. More than 1100 plaintiffs have enrolled so far, and the parties believe that a large number of enrollments will be completed for more plaintiffs/and or tolling agreement claimants within the next two weeks. Counsel for defendants and PLC have had numerous communications and meetings with plaintiffs' counsel throughout the country and are encouraged by the responses thus far.

The PSC has been in communication with plaintiffs' attorneys to facilitate their enrollment in the MDL Settlement Fund. Steps have been taken by the members of the PSC to complete their clients' enrollments in the program. Defense counsel, with the cooperation of the PSC, have been dealing directly over the past few weeks with certain plaintiffs' attorneys to facilitate the preparation and submission of their enrollment forms to satisfy the requirements of the Term Sheet.

The PLC has scheduled a meeting for September 29, 2004 in New Orleans for the express purpose of having members of the PLC follow-up with counsel for plaintiffs nationwide the status of enrollment into the MDL Settlement Program.

The parties expect that the Court will soon be presented with the Order Governing the Identification of Individuals Whose Cases are Pending in the MDL. The parties acknowledge that this Order will be amended if it develops that additions, amendments or deletions are required. The Motion and Order are without prejudice to any claimant.

According to defendants' calculations, the number of persons for whom wrongful death suits are pending in the MDL is 285. The 85% required minimum enrollment of these cases is 242. The number of users of Propulsid who have their cases pending in the MDL is approximately 3538. The 75% required minimum enrollment of these cases is approximately 2653.

On September 10, 2004, the parties held a meeting with the Special Master, Deutsche Bank and the Claims Disbursing Agent to discuss the administration of the Resolution Program. Several issues were addressed, including a revised Claim Form that will require each claimant to serve the Special Master with the Claim Form, and not the DLC and PLC as currently required by the Term Sheet. The parties will furnish the Court with the revised Claim Form to be uploaded to the Court's website. In addition, the two individuals hired to assist the Special Master in the administration of the Program have been hired and have begun work. Janssen has agreed to pay their compensation as an advance under the Administrative Fund.

The parties will be prepared to discuss these issues further at the September 23, 2004 Monthly Status Conference.

XI. Global Application of Daubert

The parties have had no further discussions regarding this matter and the matter is on hold pending the outcome of the MDL's Settlement Program.

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

The parties have discussed and exchanged comments regarding a Stipulation concerning the use of depositions in MDL matters. The parties will be prepared to discuss this further at the September 23, 2004 Monthly Status Conference.

XIII. Motion for Summary Judgment

PLC has delayed the filing with the court of a Motion for Summary Judgment regarding Johnson & Johnson's liability. The parties will be prepared to discuss this further at the September 23, 2004 Monthly Status Conference.

XIV. Motions for Summary Judgment as to Doctor Defendant, Stephen A. Tramill, M.D. (*Robert R. Boykin v. Johnson & Johnson*, #03-2541;)

Doctor defendants, Stephen A. Tramill, M.D. filed a Motion for Summary Judgment in the aforementioned case as to his liability. Defendants do not oppose the Motion based on the condition that the Statement of Uncontested Facts is revised to reflect the correct facts. Defendants will work with counsel for Dr. Tramill to ensure the facts are corrected. PLC has no position on the Motion. The parties will be prepared to discuss this at the September 23, 2004 Monthly Status Conference.

XV. Pre-Trial Order listing MDL Plaintiffs

DLC filed a Motion with the Court to identify the list of individuals whose cases are pending in the MDL for purposes of the End Game. The parties will present the Court with a proposed Order at the September 23, 2004 Monthly Status Conference.

NEW ITEMS

XVI. Michael L. King Suspension

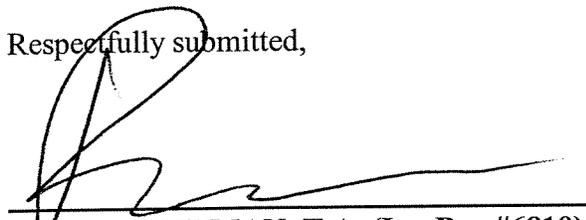
On September 10, 2004, the parties received correspondence that indicated the Supreme Court of Ohio had suspended plaintiff counsel, Michael L. King, from the practice of law. Mr. King represents the plaintiffs in the *Emma McClain* matter (#01-2520). The parties were contacted by the Court appointed receiver, who indicated he has contacted Mr. King's clients in the Propulsid litigation and advised them that they need to obtain new counsel.

XVII. Opt Out Form for Johnnie L. Jones

On August 17, 2004, Johnnie L. Jones, through his attorney of record, Nathaniel Armistad, submitted an Opt Out Form to the Court. It is DLC's position that Mr. Jones cannot participate in the Resolution Program or opt out of the same as his claim was dismissed with prejudice on November 17, 2003. PLC has no position on this matter. Per the Court's Minute Entry of August 18, 2004, the parties will be prepared to discuss this issue further at the September 23, 2004 Monthly Status Conference.

A proposed Agenda for the September 23, 2004 Monthly Status Conference is attached.

Respectfully submitted,



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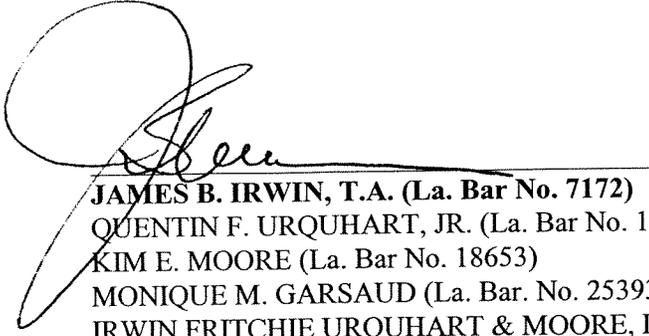
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 33 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this 21st day of September, 2004.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID
PRODUCTS LIABILITY LITIGATION

: MDL NO. 1335
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: SECTION: L
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: JUDGE FALLON
: MAG. WELLS ROBY
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THIS DOCUMENT RELATES TO
ALL CASES

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Monthly Status Conference
September 23, 2004- 9:00 a.m.

AGENDA

Current Matters:

1. Update of Rolling Document Production and Electronic Document Production
2. State Liaison Counsel
3. Patient Profile Form and Authorization
4. Service List of Attorneys
5. Motion on Class Certification
6. Trust Account
7. Mediation
8. Trial Schedule
9. Pharmacy Indemnity Agreements
10. MDL Mediation & Resolution Program
11. Global Application of Daubert
12. Stipulation and Pre-Trial Order Providing for the Use at Trial of Depositions in

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13. Motion For Summary Judgment
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