

**MINUTE ENTRY**  
**FALLON, J.**  
**August 6, 2004**

**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 Friday, August 6, 2004, at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Leonard Davis, Bob Wright, Julie Jacobs, Dawn Barrios, James Capretz, Richard Arsenault, Barry Hill, David Buchanan, A.J. Rabennack, and James Dugan. In attendance for the Defendants were James Irwin, Charles Preuss, Thomas Champion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 32 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. The parties have discussed and exchanged comments regarding a Stipulation concerning the suspension of electronic preservation as required by Pre-Trial Order No. 10. The parties have prepared a draft Order, the details of which they are still discussing and expect to have completed by the next monthly status conference.

2. State Liaison Counsel

State Liaison Counsel advised the Court that they are interested in exploring a settlement program between state court Plaintiffs and the Defendants. The DLC reported that the subject is under discussion, but are not prepared to move forward with a formal proposal until the MDL resolution program is underway and they have had an opportunity to evaluate its success.

The State Liaison Counsel also indicated that they are willing to assist the PSC with the seminars scheduled to educate lawyers about the resolution program and the mechanics of participating in the program. The Court was supportive of the involvement of the State Liaison Counsel with the seminars.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of August 3, 2004, they have received 3,131 PPF's, 857 are overdue, and 0 will become due in thirty days. The Defendants advised the Court that they will halt filing motions to dismiss for failure to provide a PPF during the period in which claimants may opt in to the MDL 1355 settlement.

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. Motion for Class Certification

The Plaintiffs reported that they have postponed filing their motion in light of the pending settlement.

6. Trust Account

Since last month's status conference, the Defendants have made no deposits of settlement funds into the Court's registry. The parties discussed the fact that the interest earned on the

monies in the trust account may be exposed to tax liability. The parties indicated that they would explore options to limit this exposure.

8. Mediation

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

9. Trial Schedule

The DLC reported that no state court trials are scheduled for the rest of the year.

10. Pharmacy Indemnity Agreements

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

11. MDL Mediation and Resolution Program

On February 4, 2004, the parties announced that they had reached an agreement in principle to resolve all federal lawsuits related to Propulsid. On February 5, 2004, the Court entered a Consent Order as to this agreement.

The parties reported the following regarding the resolution program:

- (a) The parties have finalized the Claims Form and Enrollment Forms. Those forms have been uploaded to the Court's website.
- (b) The parties have selected Daniel Clavier to assist in the accounting/administrative aspect of the resolution program. They are preparing a Joint Motion/Order for appointment of Mr. Clavier as the Court Appointed Disbursing Agent;
- (c) The parties have negotiated a lease for office space;
- (d) The parties have made two offers for administrative positions to assist Special Master Pat Juneau in administering the Program;

(e) The parties have reviewed the lists of proposed medical panel members proposed by each side. Two doctors have been selected on each side, for a total of four. They will continue the selection process for one more doctor on each side, but will move forward with a panel of four.

11. Global Application of Daubert

The DLC indicated that this matter is on hold pending the outcome of the settlement program.

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

The parties reported that they have exchanged comments regarding a Stipulation concerning the use of depositions in MDL matters. The parties advised that they are close to reaching an agreement on the Stipulation and should have it completed by the next monthly status conference.

13. CIS NED-32 Deposition

The 30(b)(6) deposition regarding the final version of CIS NED-32 has been canceled, without prejudice, to be rescheduled at a later date. This item can be removed from the Agenda.

14. Motion for Summary Judgment

The PLC indicated that they have postponed filing this motion due to the pending settlement agreement.

15. Special Master

The Order appointing Patrick Juneau as Special Master was entered on June 29, 2004. This matter may be removed from the Agenda.

16. Walgreen Louisiana Company, Inc.'s Motion for Summary Judgment (*Janet Beo*

v. Stephanie Newport, et al, No. 01-0600

The Court has deferred ruling on this Motion until enrollment figures have been determined.

17. Motions for Summary Judgment as to Doctor Defendants Stephen A. Tramill (*Robert Boykin v. Johnson & Johnson*, No. 03-2541)

DLC has been notified that Dr. Tramill has not secured dismissal from Plaintiff's attorney as requested. Counsel for Dr. Tramill requested that if the enrollment figures are not met within 60 days the Court re-visit his request for a dismissal. DLC does not object, and the PLC has not position on the motion. The Court shall reserve its ruling.

18. Pre-Trial Order listing MDL Plaintiffs

On July 20, 2004, the Defendants filed a Motion and Order Identifying Individuals Whose Cases are Pending in the MDL. The parties are communicating regarding this issue and have agreed to postpone the hearing date on the motion. The parties agreed that entry of the order would not be with prejudice to anyone's claims. The purpose of the motion is to identify the population of claims as part of the resolution program.

19. New Business

The DLC reported that they have prepared a draft letter to be sent to the government regarding medicare liens. Assistant United States Attorney for the Eastern District of Louisiana Tom Watson shall provide to the Court the names and contact information of those individuals who should participate in future discussions of this issue as soon as possible.

20. Scheduling of Next Pretrial Status Conference

The next pretrial status conference shall be held on Thursday, September 23, 2004, at 9:00 a.m.