

**MINUTE ENTRY
FALLON, J.
December 16, 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 on this date in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Arnold Levin, James Dugan, Paul Tellarico, Jim Capritz, Stephen Murray, Julie Jacobs, Dawn Barrios, Stephen Echsnel, Bob Wright, Richard Arsenault, Daniel Becnel, and Barry Hill. In attendance for the Defendants were James Irwin, Charles Preuss, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 36 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 continue communication regarding a proposed Motion and Order regarding the relief from electronic document preservation.

2. State Liaison Counsel

State Liaison Counsel advised the Court that they remain in close contact with the DLC and PLC as the settlement program evolves. The SLC further reported that it received correspondence from the DLC with a list of all scheduled state trials, including trials scheduled for 2005. The SLC indicated that it has contacted those attorneys with cases scheduled for 2005 to offer trial assistance and will continue to offer such assistance as trials are scheduled in the future.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that, as of December 13, 2004, they have received 3,096 PPF's, 2350 are overdue, and 19 will become due in thirty days. The DLC has agreed to the 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 Settlement Program.

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, and *pro se* plaintiffs.

5. Motion for Class Certification

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

6. Trust Account

No addition deposits have been made since last month's Status Conference.

7. Trial Schedule

On November 17, 2004, the DLC produced an updated trial schedule to the PLC and the SLC, and will continue to update the list as the schedule is revised.

8. Pharmacy Indemnity Agreements

There have been no pharmacy indemnity agreements executed by defendants since the last status conference. DLC advised that it continues to produce copies of all pharmacy indemnity agreements to the PLC.

9. MDL Mediation and Resolution Program

The parties reported that the enrollment process has proceeded since the last status conference. The deadline for enrollment was October 29, 2004. Approximately 28,000 plaintiffs and claimants have served enrollment forms. The DLC reported that they are currently in the process of reviewing the enrollment forms to confirm eligibility, absence of duplicative enrollments, and compliance with Term Sheet enrollment guidelines.

According to the DLC, the following numbers of plaintiffs and claimants have enrolled. However, the following claims are still being verified and do not necessarily represent enrollees who are eligible to enroll in the settlement program :

A. MDL Plaintiffs:

1. Wrongful death claims: 234 enrolled; required minimum enrollment of 242
2. Personal injury claims: 2,733 enrolled; required minimum enrollment of 2,653

B. Tolling Agreement Claimants: 20,468 enrolled; required minimum enrollment of 12,000, including *Achord* plaintiffs.

C. *Achord* plaintiffs: 1,304; required that all *Achord* plaintiffs enroll

C. Uncategorized group: 2,856 plaintiffs/claimants submitted enrollment forms without indicating in which category they should be placed. The parties are in the process of determining the proper category in which to place these enrollees. The parties believe that a number of these enrollees will be MDL plaintiffs with personal injury claims.

To facilitate the confirmation and verification process, the DLC sent a letter requesting

supplemental information to those attorneys representing clients for whom information was lacking. Responses are due back from plaintiffs' counsel by December 20, 2004. Thereafter, on December 21, 2004, the DLC and PLC have scheduled a meeting to review enrollment information. After their meeting, the parties shall contact the Court forthwith to advise the Court on enrollment information. The parties anticipate that the enrollment process will be completed by mid-January, 2005.

Since the last status conference, the parties have met and conferred with the Special Master, Deutsche Bank, and the Claims Disbursing Agent to discuss the administration of the resolution program.

The parties are preparing a Motion and proposed Order regarding the administration of the settlement funds as a Qualified Settlement Fund (QSF).

10. Global Application of Daubert

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

11. Motion for Summary Judgment

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

12. Pro se Plaintiffs

The parties continue to discuss this issue on an on-going basis. As plaintiffs become *pro se*, the DLC are updating their service list to reflect this change in representation.

13. Motions to Remand (*Marion T. Bucaria, Individually and as the Administrator of the Estate of Thomas Bucaria, #04-1277; Helena Masluk and Jerzy Masluk, #04-1278; July L. Ridgway, Individually and as Personal Representative of the Estate*)

of Kenneth Ridgway, #04-1809)

The Court is in receipt of Motions to Remand the above named cases to respective federal district courts. The Court CONTINUED the Motions WITHOUT DATE. At the appropriate time, the Court shall consider motions to remand *in globo*, rather than in a piecemeal, case-by-case basis.

14. Motion for Leave to File Cross-Claim

The Court is in receipt of the Defendant Albertson's Motion for Leave to File Cross-Claim against Defendants Johnson & Johnson and Janssen Pharmaceutica, Inc. The Court took the matter under submission. The DLC reported that it has not received a copy of the motion. After receipt of the Motion, the DLC shall submit a response, and the Court will thereafter issue its ruling on the Motion.

15. Next Pretrial Status Conference

The next pretrial status conference shall be held on Friday, January 14, 2005, at 9:00 a.m.