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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1335**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION: L**  
: **JUDGE FALLON**  
: **MAG. WELLS ROBY**  
**THIS DOCUMENT RELATES TO ALL CASES** :  
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**JOINT REPORT NO. 18 OF  
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 18.

**I. Update of Rolling Document Production and Electronic Document Production -**

DLC advises that as of September, 2002 approximately 7,194,682 pages of documents have been produced. At the end of September, Defendants produced 25,491 pages, consisting almost exclusively of e-mails and electronic document attachments.

Defendants advise they have produced 571,518 pages of e-mails and electronic document attachments directly from computers. This number does not include the pages of e-mails and

attachments produced from paper that had been printed and saved in files.

Defendants anticipate that production of remaining e-mails and attachments will be completed by the end of November, 2002, with the possible exception of a limited number of e-mails from a few sources.

Counsel and consultants for Defendants and PLC met in New York in mid-September to address issues with the electronic discovery production. Since that meeting ongoing discussions have occurred. It was agreed that the initial vendor retained for the production of e-mails and attachments, Applied Discovery, did not meet the requirements developed by Defendants and the PLC. Thus, although e-mail and attachments were produced, errors by Applied Discovery resulted in several concerns with the PLC's use of the documents. Accordingly, Defendants and the PLC will identify all remaining issues with that production and, if necessary, will meet with Applied Discovery to develop an approach to resolve those concerns. The parties have discussed the issues together with their respective electronic consultants, and Ken Conour for the defendants and David Buchanan for the plaintiffs will be present at the October 15, 2002 monthly status conference to advise the court.

On August 22, 2002, Defendants produced the CIMS International database. This is the Beerse database of clinical trials, and includes all countries.

**II. State Liaison Counsel - (Minute Entry, November 16, 2000)**

PLC has actively participated in scheduling matters of depositions in the MDL in State Court litigations. The State Court Counsel Committee will report to the Court regarding the efforts of the Committee at the October 15, 2002 monthly status conference.

### **III. Patient Profile Form and Authorization**

As of October 4, 2002, Defendants have received 1433 Patient Profile Forms (PPFs). 79 are currently overdue, and 88 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue. DLC and PLC will work together to contact counsel for plaintiffs whose PPFs are overdue to obtain the delinquent documents.

At the last status conference, the Court ordered the dismissal of 37 plaintiffs for their failure to furnish Defendants with PPFs in violation of Pre-Trial Order No. 9. Since such time, Defendants have furnished the Court with a Motion for the Entry of a 54(b) Judgment as to these plaintiffs.

In addition, DLC informed the Court a number of plaintiffs who were subject of the Motion to Dismiss submitted PPF's prior to the August 23, 2002 Status Conference; however, such PPFs were deficient. Defendants informed the Court they would seek \$250.00 in costs as to each of these plaintiffs. Per the Court's directions, Defendants are preparing a Motion for Costs.

### **IV. Subpoena to FDA**

PLC has reviewed the production from the FDA. FDA provided a list of documents that previously had been unaccounted for in the prior FDA productions. PLC has reviewed this listing. Based upon the listing and the documents received, it appears that PLC has received a complete set of the documents produced by the FDA through defendants, subject to defendants' redactions (PLC reserves its right and maintains it may challenge the redactions at a later date, if necessary). The parties will be prepared to discuss this at the October 15, 2002 monthly status conference.

### **V. 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.

**VI. Ongoing Studies/Subpoena to BevGlen**

DLC has nothing to insert.

**VII. Third Party Subpoena Duces Tecum Issued by PSC**

Covance - On September 18, 2002 PLC wrote to Covance and requested a certification regarding documents produced by Covance in response to a subpoena duces tecum. Covance replied on September 19, 2002. On September 23, 2002 PLC wrote DLC and forwarded the comments from Covance and requested that DLC provide certification concerning some of the issues raised by Covance in their communication of September 19, 2002. PLC is awaiting a reply from DLC. Upon receipt of a reply from DLC, the certification from Covance can be obtained.

Dr. Thomas Abell - A certification from Dr. Abell was received by PLC on September 11, 2002.

Dr. Jerry Herron - On June 28, 2002, PLC issued a subpoena duces tecum to Dr. Jerry Herron. Defendants advised they have received all such documents in response to the subpoena and have reviewed them for confidential information. These documents were produced to PLC on September 24, 2002. DLC is obtaining a certification from counsel for Dr. Herron, Chris Parker.

SmithKline Beecham Clinical Laboratories - DLC forwarded, in August 2002, to PLC documents obtained from Quest/Smith Kline Beecham. On August 15, 2002 PLC advised DLC it had not received a certification. PLC is awaiting receipt of the certification.

**VIII. Motion on Class Certification.**

The parties have agreed that a hearing on class certification should be deferred until additional electronic discovery is complete. The parties will be prepared to discuss this further at

the October 15, 2002 Monthly Status Conference.

**IX. Plaintiffs' and Defendants' Respective Requests for Production of Documents**

On August 20, 2002, Defendants served PLC with their responses to Request for Production of Documents No. 5. The PLC is reviewing such responses.

On October 9, 2002, PLC served upon DLC Plaintiffs' "Merits" Request for Production of Documents and Interrogatories - Set No. 6. PLC is awaiting responses.

PLC previously filed with the Court a Motion to Compel regarding Norcissipride. The parties have been engaged in the additional discovery that was agreed upon. At the present time, there is no action to be taken regarding this motion, and, upon completion of the agreed upon discovery, the parties will advise the Court further.

**X. Shell/Morganroth Study**

On October 19, 2001 Defendants served a subpoena on Dr. William Shell, individually and on the Laboratory Industry Services Foundation, LLC, for documents relating to an abstract being performed by Dr. Shell, Dr. Morganroth, Elizabeth Charuvastra, Fernando DeMesa and Dr. Vincent. Peter Butler, Esq. was retained by Dr. Shell and the foundations in connection with responses made to the subpoena duces tecum. A return on the subpoena was made. Following the deposition of Dr. Morganroth on April 18, 2002, DLC wrote PLC and requested additional information identified in the deposition. Specifically, EKG data of Dr. Vincent was requested. PLC contacted Dr. Vincent and Dr. Shell and on September 19, 2002 produced the EKG data requested from Dr. Vincent. DLC is reviewing the information. Following receipt of the information, DLC then requested a certification for Dr. Shell to execute. DLC forwarded a draft of the certification to PLC for review. PLC advised DLC that the certification requested sought information in addition to the requested

information in the deposition of Dr. Morganroth concerning EKG studies and advised DLC that counsel for Dr. Shell and the foundations, Peter Butler, should be consulted. PLC forwarded the request to Peter Butler. The parties will be prepared to discuss this at the October 15, 2002 monthly status conference.

**XIII. 30(b)(6) Deposition of Defendants Regarding Studies**

As to the 30(b)(6) request respecting clinical studies, the parties agreed, prior to the August 2002 status conference, upon the matters which should be the subject of the computer-based program which will serve as the basis of the response to that request. Defendants have retained a third-party to undertake the project. PLC is awaiting receipt of the database. The parties will be prepared to discuss this issue at the October 15, 2002 monthly status conference.

**XIV. Trust Account**

The parties have agreed to establish a checking account with the Whitney National Bank. The parties are preparing a Joint Motion and Order regarding the establishment of this account and will present it to the Court at the October 15, 2002 Monthly Status Conference. Issues regarding the tax consequences of the account will be brought to the Court's attention.

**XV. Motion to Dismiss filed by Forshag's Pharmacy**

This item may be removed from the Agenda.

**XVI. Declassified Documents**

At the August 23, 2002 status conference, this Court denied plaintiffs' Motion to Declassify documents related to the 800+ studies conducted by Defendants and class certification exhibits. Plaintiffs have filed a Motion for Reconsideration which was set for hearing on Wednesday, September 25, 2002. Defendants have opposed such Motion and the matter is under submission

with the Court.

In addition, PLC has filed a Motion to Declassify a number of depositions and exhibits. The matter is set for hearing on October 16, 2002. Defendants are preparing an opposition.

**XVII. Motion to Withdraw as Counsel of Record - Anthony Scott, #01-1394**

This item may be removed from the agenda.

**XVIII. Mediation**

The parties met with mediator, Patrick Juneau, on September 17, 2002 and presented their positions. Following the mediation, Mr. Juneau communicated with PLC regarding the position taken by the Defendants at the mediation. PLC requested that Mr. Juneau convey this information and the mediator's views of the mediation process to the Court. Mr. Juneau will be present at the October 15, 2002 status conference to advise the Court regarding the status of mediation. Mr. Juneau has scheduled mediation on nine individuals which is set for October 23-25, 2002.

**XIX. Trial Schedule**

On August 20, 2002, this Court issued an Order setting the matters of Richard Joseph Diez, Sr. (#00-2577) and Samantha Ann Reed (#00-0282) for trial on January 6-10, 2003 and January 13-17, 2003, respectively. On August 28, 2002, this Court issued an Order setting the matter of Ernestine Brock (#00-2497) for trial on January 21-24, 2002.

The parties advise they are proceeding with trial preparations per these Orders.

**XX. Pharmacy Indemnity Agreements**

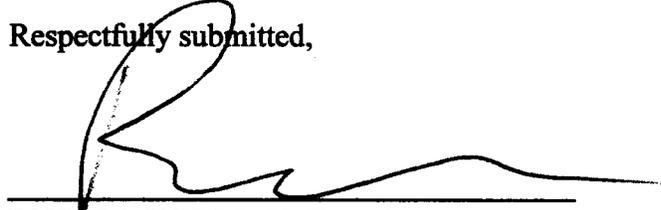
Pursuant to this Court's Order, on August 27, 2002, DLC produced to PLC a copy of the standard pharmacy indemnity agreement used by defendants with Louisiana pharmacies. PLC wrote DLC on September 20, 2002 and requested DLC to advise if indemnity agreements, similar to those

provided involving Louisiana pharmacies, exist with non-Louisiana pharmacies. PLC is waiting for a reply.

**XXI. Agenda**

A proposed Agenda for the October 15, 2002 Monthly Status Conference is attached.

Respectfully submitted,



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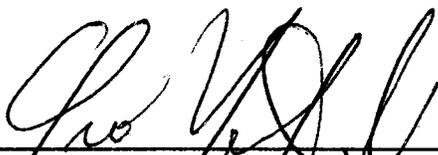
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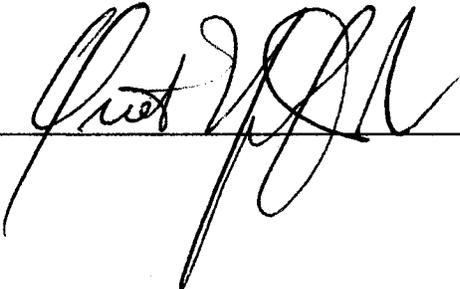
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Joint Report No. 18 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 11<sup>th</sup> day of October, 2002.



A handwritten signature in black ink, appearing to read "Peter J. Gill", is written over a horizontal line.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>IN RE:</b>	<b>PROPULSID</b>	:	<b>MDL NO. 1335</b>
	<b>PRODUCTS LIABILITY LITIGATION</b>	:	<b>SECTION: L</b>
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<b>THIS DOCUMENT RELATES TO ALL CASES</b>		:	
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Monthly Status Conference October 15, 2002 8:00 a.m.
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**AGENDA**

**Current Matters:**

1. Update of Rolling Document Production and Electronic Document Production
2. State Liaison Counsel
3. Patient Profile Form and Authorization
4. Subpoena to FDA
5. Service List of Attorneys
6. Ongoing Studies/Subpoena to BevGlen
7. Third Party Subpoena Duces Tecum Issued by PSC
8. Motion on Class Certification
9. Plaintiffs' and Defendants' Respective Requests for Production of Documents

10. Motions for Suggestion of Remand
11. Deposition Procedure
12. 30(b)(6) Deposition of Defendants Regarding Studies
13. Shell/Morganroth Study
14. Trust Account
15. Declassified Documents
17. Motion to Withdraw as Counsel of Record - Scott
18. Trial Schedule
19. Mediation
20. Agenda

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October 9, 2002