UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCTS LIABILITY LITIGATION	:	**MDL NO. 1355**
	:	**SECTION: L**
THIS DOCUMENT RELATES TO (see attached)	:	**JUDGE FALLON**

AFFIDAVIT OF PATRICK A. JUNEAU IN SUPPORT OF DEFENDANTS' MOTION FOR AN ORDER DISMISSING WITH PREJUDICE THE CLAIMS OF PLAINTIFFS WHOSE CLAIMS HAVE BEEN PROCESSED IN THE MDL RESOLUTION PROGRAM

STATE OF LOUISIANA)
) SS:
PARISH OF LAFAYETTE)

Patrick A. Juneau, having been duly sworn according to his oath, deposes and says:

1. I am the Court-appointed Special Master for both the First and Second MDL Resolution Programs and am authorized by this Court to exercise my rights and responsibilities as set forth in the Term Sheets for both Programs. I am familiar with the course of litigation in this matter and if called upon as a witness, could and would testify to the following facts based upon my own personal knowledge.

2. Attached hereto as Exhibits A and B are true and correct copies of the Term Sheets for the First and Second MDL Resolution Programs ("Programs"), respectively.

3. Attached hereto as Exhibit C is a list of plaintiffs who were found ineligible for payment under the Programs, but whose counsel received a $250 payment[1] from the Programs' Administrative Funds to defray costs paid for the medical record assembly for each plaintiff, in accordance with Sections 5C and 16B of the Term Sheets for the Programs.

PATRICK A. JUNEAU

Sworn to before me and
subscribed in my presence
this 22nd day of April, 2011.

Notary Public

Felicia Guidry
#05233

[1] Plaintiffs represented by Ingram & Associates were subject to a separate agreement regarding medical records reimbursement, and their counsel received $125 to defray costs paid for the medical record assembly for each plaintiff.

MDL-1355 TERM SHEET

The Plaintiffs' Steering Committee (PSC) and defense counsel have conferred respecting end game planning committee matters.

They have reached a tentative agreement for resolution of cases pending in this MDL proceeding. This is the agreement:

1. THE PROGRAM

A. The PSC and the defendants will establish a global mediation and resolution Program (hereafter the "Program") whose purpose is to establish a system, subject to this court's jurisdiction, whereby the claims of plaintiffs to a recovery will be reviewed and resolved by a panel of physicians.

This Program will be in lieu of any further litigation by the plaintiffs respecting their acquisition or use of Propulsid.

B. The Program will not become effective unless and until: (1) 85% of the plaintiffs who are maintaining wrongful death actions in cases pending in this court and 75% of the remaining plaintiffs who have cases pending in this court for claims other than wrongful death have agreed in writing by completion and service of an Enrollment Form as described in Section 21 to become part of the Program and to be bound by its terms and (2) the agreements described in 1(C) have also been reached. These three components shall be known as the "minimum enrollment". (As of the present time there are approximately 4000 plaintiffs whose cases are pending in federal courts. Not all of them have had their cases transferred to this court although those transfers are in process. Approximately 300 of the 4000 plaintiffs are maintaining wrongful death actions.) "Pending in this court" shall mean cases filed in or removed to federal court before February 1, 2004 which were then pending in the MDL Court or were in the course of being transferred or hereafter are transferred to this court by the MDL Panel. Plaintiffs and claimants are limited to citizens or residents of the United States.

"Plaintiffs" in this agreement means all persons who claim a loss as a result of the death or injury claimed to have resulted from use of Propulsid. Thus spouses qualify as one plaintiff; all persons who claim any loss as a result of the death of a person qualify as one plaintiff. Thus, spouses, children and/or heirs, together with the person who sustained the claimed injury or death, constitute a single plaintiff for purposes of Section 1.

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C. Once the Medical Panel has made a determination that a plaintiff or claimant is eligible for payment and has determined the category in which the plaintiff or claimant falls, the Special Master shall have sole and exclusive authority to determine the sum to be awarded to that person.

D. The determinations made by the Medical Panel and the Special Master are final determinations and, other than as set forth in Louisiana Civil Code Article 1953, shall not be subject to review or appeal, whether by mandamus or otherwise, in any court by the plaintiffs, the claimants or the defendants.

3. SETTLEMENT AND ADMINISTRATIVE FUNDS

A. The parties agree that the defendants shall pay the sums designated below for the settlement and administrative funds and for the payment described in Section 19.

B. The settlement fund shall be funded by the defendants and shall be no less than $69,500,000 and no more than $90,000,000. The fund shall be $69,500,000 if 85% of the plaintiffs described in Section 1(B) who are maintaining death cases and 75% of the plaintiffs who are maintaining non-death cases and the 12,000 persons described in Section 1(C) agree in writing through their counsel to enter into the agreement, all as set forth in Section 1(D).

In the event more than 85% of the death case plaintiffs agree in writing through their counsel to enter into the agreement set forth in Section 1(D), then the settlement fund shall be increased by an additional sum as follows:

Percentage enrolling	Additional sum to be paid to settlement fund
86%	$700,000
87%	$700,000
88%	$700,000
89%	$700,000
90%	$700,000
91%	$900,000
92%	$900,000
93%	$900,000
94%	$900,000
95%	$900,000
96%	$1,700,000
97%	$1,700,000
98%	$1,700,000
99%	$1,700,000
100%	$1,700,000

Accordingly, if there is 100% enrollment of the death case plaintiffs, the additional sum to be paid to the settlement fund will total $16,500,000.

unlikely event it appears during the administration of the Program that the costs of the administrative fund might exceed $15,000,000, either party shall bring the matter to the attention of the MDL Court, which shall have the authority to modify the Program to ensure that the administrative fund does not exceed $15,000,000. Under no circumstances shall the defendants have any obligation to pay more than $15,000,000 for the administrative fund.

D. Counsel for plaintiffs described in Section 1(B) shall not be permitted to enroll less than 100% of the MDL plaintiffs they represent in those cases. Counsel for plaintiffs within the meaning of this Section are defined to be those who were counsel of record per pleadings filed before February 1, 2004. Counsel who are members of the PSC shall be required to enroll in the Program all the claimants they represent who are under tolling agreements as described in Section 1(C).

E. The parties wish to have the settlement fund maintained in as secure a manner as possible so that those funds will be available to be paid to the plaintiffs and claimants who qualify for payment. They will consult as to the bank depository or other prudential financial institution which will be chosen to hold those funds and will also consult as to the form of prudent investment vehicles to be used for investment of the funds. The PSC shall designate the institution subject to defendants' agreement. Once a tentative decision as to the institution and the form of the investment has been made, the parties shall apply to the Court for approval of the same as having been prudent decisions. The institution so chosen shall thereupon consent to the jurisdiction of the MDL Court acknowledging that it alone has the obligation to manage the settlement fund. Periodic reports should be made to the Court of the interest earned, distributions made, and other matters involving the status of administration. Its management shall thereafter be subject to review by the MDL Court.

F. The defendants will make the initial payment into the settlement fund within 30 days of confirmation that the enrollment levels (85% of the death plaintiffs, 75%of the non-death plaintiffs and 12,000 claimants) have been reached. Thereafter, defendants will pay the additional sums set forth in 3B into the settlement fund within 30 days of confirmation for each 1% incremental increase in death and/or non-death enrollees. If, upon completion of the Program, the aggregate sum of the awards of the Special Master is less than the settlement fund, the difference and interest on that difference shall remain in the fund for disposition as provided in 18F.

4. WAIVERS AND RELEASES

A. In consideration for the plaintiffs and claimants agreeing to enter the Program and surrendering their rights to litigate their cases or claims, the defendants unconditionally waive all defenses in law and equity which they have or may have to those cases or claims except as otherwise described in this document.

medical experts, consultants, depository staff, the Medical Panel, the Court and the Special Master, but such records shall otherwise remain confidential in conformity with HIPPA.

C. In the event the Medical Panel finds that a plaintiff or claimant is not entitled to payment under this Program, a $250 payment to defray costs paid for the medical records or assembly of same by the attorney for the plaintiff or the attorney for the claimant shall be paid from the administrative fund pursuant to Section 16B. It is understood that the only records required to be submitted to qualify for the $250 reimbursement is a single medical or pharmacy prescription record indicating Propulsid use and a medical condition or injury which the claimant has attributed to Propulsid in Section 5A. This aspect of the Program and the payment described are only for the benefit of actual Propulsid users.

6. PAYMENTS BY CATEGORY

A. Once the Medical Panel has determined that a person is eligible for payment and has identified the category, the Special Master shall decide what sum shall be awarded. In so deciding, the Special Master shall give consideration to those factors relevant to the payment of damages for the particular person under commonly accepted rights of recovery.

B. It is not possible to determine what payment will be made to any plaintiff or claimant until: (1) the Medical Panel has made its determinations of eligibility and, if eligible, the category of eligibility and (2) the Special Master has determined the amount to be paid. The final amount of these payments will not be determinable until the claims of all who enroll in this Program have been decided.

C. The Special Master is not to consider the amount of the settlement fund or the exhaustion of that fund as a limitation in making any award. In the event the total sums to be awarded to those persons found eligible under the Program exceed the total sum available in the settlement fund, the awards shall be reduced and paid on a pro rata basis. All relevant liens shall have been resolved before any payments are made under this Program.

D. The parties will explore whether it is feasible to make a partial payment of a sum awarded to a plaintiff or claimant in advance of the final determination of the total sums to be awarded to all plaintiffs and claimants and the timing of release and indemnity agreement. If such a payment is made it will be recognized as a partial, not final payment, all subject to Section 6(B).

7. MEDICAL PANEL

A plaintiff or Claimant shall have 120 days from the date of service by the PSC of notice that the Program's minimum enrollment levels have been reached, or 120 days from the date a plaintiff or Claimant serves an Enrollment Form, whichever is later, to serve a Claim Form. In extraordinary circumstances in cases where the attorney for plaintiffs or Claimants has more than 100 such clients and has not submitted all the Claim Forms in a timely manner, the Special Master may grant a reasonable extension of time to complete submission of the remaining Claim

5. Demonstrative evidence developed by PSC to-date;

6. Deposition excerpts and outlines developed by the PSC to date;

7. Selective documents and any accompanying stipulations on cd rom;

8. Access to the PSC-MDL depository upon fourteen (14) days certified mail notice to the PSC for fourteen (14) months from written notice that claimant will not participate in this Program, but requests a trial package.

9. Additionally, attorneys may request a trial transcript of a Propulsid trial at additional cost payable to plaintiff's attorneys who participated in such trial(s).

C. PSC represents that it has no other obligation, to furnish additional materials, assist in further discovery, trial preparation or trial. PSC represents that the trial package forms a material basis for claimant's case but is not a complete preparation. That preparation must be completed by claimant's attorneys based on the attorney's judgment and at claimant's expense and it is claimant's sole obligation to select, use or supplement the material in the trial package. The package may not be shared, copied or communicated in any manner to any other attorney or claimant.

10. NO ADMISSION OF LIABILITY

Neither Janssen's agreement to, nor participation in, this Program constitutes an admission of liability to any person or other entity by Janssen Pharmaceutica Inc. or any corporate entity or person related to it, e.g., Johnson & Johnson, Janssen Research Foundation, Janssen Pharmaceutica, N.V.

11. CONFIDENTIALITY

The amount and fact of settlements reached under this Program are confidential, except as may be required by statute, court order, court rule, or the settlement approval process where court approval of a settlement is required by law in the relevant jurisdiction. Agreement to, and maintenance of, confidentiality are material terms of any settlement reached. An exemplar release will be jointly prepared by the parties. See Section 24 for additional provisions relating to confidentiality.

12. INFORMATION REQUIRED TO CONSUMMATE SETTLEMENT

A list of the information which must be provided to the attorneys for Janssen before a settlement check is delivered will be provided to the PSC.

14. STANDARDS TO BE USED

A finding for eligibility to enter a defined category does not require findings of medical certainty but only findings that something is more probable than not. The following standards should be used by the Medical Panel or upon inquiries by it to the Special Master:

A. "But for" tests – whether harm (death, cardiac arrest or serious tachycardia ventricular arrhythmia) would more probably have occurred or not because of the user's ingestion of Propulsid.

B. Concurrent cause and substantial factor. Cause-in-fact is usually a "but for" inquiry which tests whether the harm would not have occurred "but for" the use of Propulsid, and the substantial factor inquiry is an alternative method of analysis used when two or more combined causes may be present. Thus, where there may be concurrent causes of an injury, the proper inquiry is whether the product in question was a substantial factor in bringing about the harm or injuries. A party's act may be a substantial factor in bringing about the harm or injury when the harm would not have occurred without the product's use.

C. The package literature identifies certain medications as contraindicated for use while Propulsid is being taken and identifies the presence of certain conditions as a contraindication for the use of Propulsid. The existence of such events in any claimant's case does not of itself entitle the claimant to a recovery nor deny a claimant a recovery.

D. Any legal interpretation of these standards may be referred by the Medical Panel to the Special Master on a case by case basis. The interpretation of the Special Master will be final and unappealable and will be rendered only in writing within 3 calendar days of the request.

15. MEMBERS OF MEDICAL PANELS

A. Six physicians, licensed in Louisiana and in good standing, or a lesser or greater number agreed to by the PSC and Janssen, will be chosen 50% by Janssen and 50% by the PSC. The physicians must be recognized board certified cardiologists, electrophysiologists or internists who have had substantial training and substantial experience treating cardiac problems or physicians board certified in a specialty dedicated to the treatment of cardiovascular diseases or board certified physicians who have documented substantial training and experience treating cardiac problems. They may be active, semi-retired or retired. Each side will have veto over the other side's selection. A member of each physician group shall sit on a panel to determine category eligibility and non-eligibility. Once the members of the Medical Panel have been chosen and no veto as to their selection has been exercised, the parties shall have no ex parte contact with those members. In the event the parties agree to any training to be done with the members of the Medical Panel, that teaching will be done jointly.

B. If either party believes that a member of the Medical Panel is consistently disregarding the Program's provisions respecting requirements for eligibility or non-eligibility, the PSC and defense counsel shall meet and confer to address the issue and, absent a resolution, either party

enrolling participants in the Program. The proposed expenses must be submitted to defense counsel in advance and agreed to within five days of their submission. If such agreement is not reached, the Special Master shall decide whether the expenses or any part of them shall be paid from The Administrative Fund.

B. No administrative funds may be used to pay claims.

C. Excess refunded to defendant.

D. Defendant to supply $15,000,000 after the Program has become effective pursuant to Section 1(B) and the Special Master has been appointed by the MDL Court and has accepted that assignment.

E. Account to be administered in New Orleans by financial institution of defendants' selection with interest accrual on balances. Periodic reports should be made to the Court of the interest earned, distributions made, and other matters involving the status of administration. Interest on those payments to be added to the administrative fund. Interest (after payment of taxes) on the $15,000,000 or any portion thereof shall be added, if needed, to the Administrative Fund to meet its obligations. If not needed, the balance of any principal and/or interest shall be returned to the defendants.

F. All category claims to be determined within 3 months of records submission.

G. PSC and Janssen to establish joint medical and other records depository in New Orleans and each assign a paralegal knowledgeable of the case to administer. Salary to be agreed upon and paid by the fund.

18. SETTLEMENT FUND

A. The Settlement Fund will be established pursuant to Section 3(E).

B. Claims verification and payment milestones (to be detailed in documents submitted with Consent Order).

C. Claims to be paid within an agreed time after verification compliance.

D. Each claim to escrow a reserve and escrow paid if total claims do not exceed fund.

E. If claims exceed amount in Settlement Fund then the Fund will be distributed pro rata (based on claims value) after all claims have been processed.

F. If there are excess funds left in the Settlement Fund after payment of all awards made by the Special Master, the parties shall meet and confer about appropriate ways in which those funds can be used in a manner consistent with mediation and resolution of Propulsid litigation.

foresee that matters not addressed in this document but which are necessary for inclusion in a Consent Order cannot be resolved between them. The PSC shall have 180 days from the date of that Consent Order to secure the required number of written consents from counsel for plaintiffs and persons under tolling agreements, as set forth in Section 1, and to present them to counsel for the defendants. If the requirements set forth in Section 1 have not been satisfied within the 180 day minimum enrollment period, this agreement shall terminate and The Program will not be implemented unless otherwise agreed by the parties.

To the consent order should be attached an agreed-upon enrollment form to be signed by counsel for plaintiffs and counsel for tolling agreement claimants and the claim form to be signed by plaintiffs and tolling agreement claimants when they submit their medical records. In particular, language in the consent order will have to make clear that all plaintiffs and the tolling agreement claimants, i.e., persons not presently subject to the jurisdiction of the MDL Court, and the defendants accept the jurisdiction of that Court and that the Court is, by their consent: a) empowered to enter an order terminating plaintiffs' and claimants' rights to sue the defendants if they fail to submit the medical records within the time set forth in the term sheet or if the Medical Panel does not decide that they are entitled to compensation and, b) empowered to enter an order authorizing the Special Master to pay from the settlement fund any award that he makes in favor of such a plaintiff or claimant consistent with this agreement.

22. ADMINISTRATION OF THE PROGRAM

The parties will include in the Consent Order appropriate provisions for the management of the Program including duties to be performed by the Special Master, proposed fee arrangement for members of the Medical Panel, as well as how they should fulfill their duties, reports to the PSC and the defendants about claims submissions under the Program and all other administrative matters designed to accomplish the purposes set forth in Section 8. All plaintiffs or claimants who participate in the Program stipulate and agree that the Program is and will remain subject to the jurisdiction of the MDL Court until all proceedings under the Program have been concluded.

23. MEDICAL PANEL REVIEW PROCEDURES.

The parties shall prepare a joint written protocol for the members of the Medical Panel to follow in the performance of their responsibilities. The protocol shall cover the administrative issues respecting the work of the Medical Panel, e.g., time limits for case reviews, adherence to the Settlement Requirements set forth in Exhibit A, etc.

24. PUBLIC STATEMENTS ABOUT THIS SETTLEMENT

The parties shall prepare a joint statement describing this settlement and the Program established herein and shall agree upon the manner and timing of distribution. This shall be the only statement to be distributed except as the parties may further agree. The parties and their counsel agree that they shall make no other public statement. These conditions are material

-and-

DRINKER, BIDDLE & REATH, LLP
CHARLES F. PREUSS
DONALD F. ZIMMER, JR.
50 Fremont Street, 20th Floor
San Francisco, CA 94105-2235
Phone: (415) 591-7500
Fax: (415) 591-7510
CO-LEAD COUNSEL FOR Defendants,
JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON

D. **Relevant records.** For the purposes of this Program, the following are a person's relevant medical records. Time periods are deemed appropriately modified where the person was less than twelve years of age at the time of the event. The PSC and J&J may agree to order supplemental records at the expense of the administrative expense fund:

(1) **The one-year period before the event.** Full records for any kind of medical care in the one year preceding the event (doctor, hospital, pharmacy, ambulance, therapy, etc.).

(2) **The three-year period before the event.**

(a) Full hospital records for hospitalizations.

(b) All electrocardiogram, holter monitor, and other cardiac monitoring or testing records for the three years before the event.

(c) Physician records from the person's primary care physician or physicians (if any), cardiologist or cardiologists (if any), gastroenterologists and/or pediatrician or pediatricians (if any).

(d) Prescription records for all prescribed medications.

(3) **The ten-year period before the event.**

(a) Full hospital records where cardiac concerns are implicated.

(b) Full hospital records where GI concerns are implicated.

(c) Full EKG's.

2. SETTLEMENT CATEGORIES

TIER I: DEATH CASES

1. The medical records and other factual information are more consistent with a primary tachycardic ventricular arrhythmia being the cause of death than any other reasonable cause, and

2. Death would not have occurred but for decedent's use of Propulsid, or in those cases where there was more than one contributory cause to the death, Propulsid was a substantial factor as defined in Section 14(B), and

3. The autopsy findings, if any, are more consistent with a primary tachycardic ventricular arrhythmia being the cause of death than any other reasonable cause.

2. The primary tachycardic ventricular arrhythmia (including Torsades de Pointe) is more consistent with the patient's use of Propulsid than any other reasonable cause, and

3. The primary tachycardic ventricular arrhythmia would not have occurred but for the patient's use of Propulsid, or in those cases where there was more than one contributory cause to the primary tachycardic ventricular arrhythmia, Propulsid was a substantial factor as defined in Section 14 (B), and

4. Required medical attention in the form of a hospital evaluation or ER visit for treatment of the arrhythmia.

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cc: *Via Facsimile:*
Thomas F. Campion
Susan M. Sharko
Charles F. Preuss
Donald Zimmer
Arnold Levin
Charles S. Zimmerman

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