

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
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**IN RE: PROPULSID : MDL NO. 1355
PRODUCTS LIABILITY LITIGATION :
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SECTION: L
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THIS DOCUMENT RELATES TO ALL CASES : JUDGE FALLON
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MAG. WELLS ROBY
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**JOINT REPORT NO. 26 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 26.

I. Update of Rolling Document Production and Electronic Document Production

DLC has advised that there is no further scheduled document production. PLC continues to discuss this with the Plaintiffs' Discovery Team and will be discussing this further with DLC.

PLC has advised DLC of additional issues that have come up regarding certain CD's produced during discovery. Defendants anticipate production of the corrected CDs to be made by the October 31, 2003 Monthly Status Conference. Upon receipt of corrected CD, PLC will have further communication with DLC and report back to the court to confirm that this matter has been completed.

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

The State Liaison Committee will report to the Court regarding the efforts of the Committee at the October 31, 2003 monthly status conference.

Fee _____
Process *90*
Dktd *90*
CtRmDep _____
Doc. No. *1395*

III. Patient Profile Form and Authorization

As of October 27, 2003 defendants have received 2426 PPF's, 31 are overdue, and 576 will become due in thirty days. Defendants have filed a Motion to Dismiss with Prejudice as to multiple plaintiffs who have failed to timely furnish a Patient Profile Form in violation of Pre-Trial Order No. 9. The Motion is set for hearing on October 31, 2003 at which time DLC will provide the Court with a list of delinquent plaintiffs against whom Defendants will seek dismissal with prejudice, in addition to a list of compliant plaintiffs as to whom Defendants will withdraw its Motion. As in the past, PLC opposes the Motion to Dismiss.

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. Third Party Subpoena Duces Tecum

On September 10, 2003, the Court issued Orders and Reasons regarding the Motion of the Degge Group for reimbursement under Federal Rule of Civil Procedure 45. Thereafter, on October 1, 2003, the PLC remitted to Leon Taranto, counsel for the Degge Group, a check in the amount of \$1,283.77 representing full payment to the Degge Group in accordance with the Order. No further communications have been received from the Degge Group.

VI. Motion on Class Certification.

Defendants have discussed with PLC establishing a procedure for disposing of the remaining class certification issues. DLC will be submitting a proposed schedule to PLC prior to the next status conference. Failing an agreement as to the proposed schedule, DLC will file a Motion for the Entry of an Order which Defendants will raise at the next status conference. PLC and DLC will be

discussing this further. The parties will be prepared to discuss this further at the October 31, 2003 Monthly Status Conference.

VII. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On December 23, 2002, PLC served upon DLC Request for Admissions and Interrogatory regarding business records of Defendants, to which Defendants submitted responses, including objections. PLC is reviewing the objections and is preparing a narrowed down list of documents to be presented to DLC. If the parties are unable to agree with respect to the narrowed down list of documents, PLC will file a Motion to Traverse those objections which the plaintiffs deem improper. The parties will be prepared to discuss this further at the October 31, 2003 Monthly Status Conference.

On February 17, 2003, PLC served upon DLC a Motion to Compel Production of Documents of Sales Force. The parties have agreed that the production of electronic materials regarding the sales representative information should be addressed in a remand order, which would preserve this issue for the transferor court on an as-needed, case specific basis. DLC will be forwarding to PLC proposed language for the remand order regarding the sales representative information and the parties will be prepared to discuss this at the next scheduled status conference.

On January 24, 2003, PLC served upon DLC Plaintiffs' Merit Interrogatories to Defendants, Janssen Pharmaceutica Inc. and Johnson & Johnson - Set No. 7. The First Response was filed by defendants on April 21, 2003, a supplemental response was received on April 30, 2003, and a second supplemental response was received on June 10, 2003, and a Third Supplemental Response was received on July 7, 2003. On August 21, 2003, DLC served the Fourth, and final, Supplemental Response. DLC advises that there are no further responses to be submitted..

On October 15, 2003, DLC produced to PLC an additional CD containing production of the CIS-NED-32 report. PSC anticipates discovery regarding CIS-NED-32 now that the report has been furnished.

VIII. Trust Account

Defendants made deposits of additional settlement funds into the Court's Registry on October 15, 2003 and October 28, 2003 since last month's Status Conference. In addition, pursuant to the Court's recent Order granting the Motion for the Plaintiffs' Steering Committee for Release and Disbursement of Funds from Deposit made to the Registry of the Court Pursuant to Pretrial Order No. 16 funds were delivered to PLC from the Clerk of Court.

IX. Declassified Documents

The parties have nothing new to report since last month's Status Conference.

X. Mediation

No additional mediations have taken place since the last Status Conference. The parties will be prepared to discuss this at the October 31, 2003 Monthly Status Conference.

XI. Trial Schedule

Pursuant to the Court's Order of October 22, 2003, the following 4 plaintiffs claims have been selected for trial:

Claimant	Civil Action No.	Lead Case
Dorita Black	00-2497	Black
Cecilia Bell Overton	00-2497	Black
Kemper Darnell, Sr.	01-0773	Darnell
Melissa Nettles	02-1866	Alvarez

These matters are scheduled for trial beginning April 19, 2004.

XII. Pharmacy Indemnity Agreements

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

XIII. End Game Planning Committee

Counsel for defendants and representatives of the PSC and the Plaintiffs' Settlement Committee have continued to discuss a system to formalize criteria and monetary evaluations for those cases which defendants are prepared to mediate. The parties have met and communicated several times since the last status conference. The parties plan to report to the Court at the October 31, 2003 Monthly Status Conference concerning the status and efforts to reach such an agreement.

XIV. Motions to Enforce Subpoenas

The Motions to Enforce Subpoenas regarding the Social Security Administration relating to claimants Mitchell Williams and Joseph Cangelosi are all moot and this matter can be removed from the agenda. Also, the Motion to Enforce Subpoenas against Rite Aid regarding Elman Palao and Mitchell Williams are moot, and these matters can be removed from the agenda.

XV. Global Application of Daubert

DLC and PLC have continued discussions regarding DLC's desire to implement a procedure for the application of the *Daubert* ruling where appropriate. PLC opposes such procedure. The parties continue to discuss this issue. The parties will be prepared to discuss this

further at the October 31, 2003 Monthly Status Conference.

NEW ITEMS

XVI. Motions to Withdraw as Counsel of Record

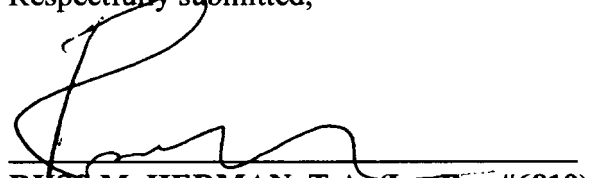
PLC and DLC continue to receive requests by claimants' counsel to withdraw as counsel of record for various claimants in this matter. The parties will be prepared to discuss this further at the October 31, 2004 Monthly Status Conference.

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

PLC and DLC have been in communication regarding the preparation of a stipulation for the use of depositions in MDL matters and for their use at trial in both state or federal courts. DLC provided a draft stipulation to PLC on October 10, 2003. On October 27, 2003, PLC provided comments to DLC. The parties will be prepared to discuss this further at the October 31, 2004 Monthly Status Conference.

A proposed Agenda for the October 31, 2003 Monthly Status Conference is attached.

Respectfully submitted,



RUSS M. HERMAN, T.A. (La. Bar #6819)

LEONARD A. DAVIS, #14190

JAMES C. KLICK, #7451

HERMAN, MATHIS, CASEY, KITCHENS & GEREL, LLP

820 O'Keefe Avenue

New Orleans, Louisiana 70113

Phone: (504) 581-4892; Fax: (504) 561-6024

LIAISON COUNSEL FOR PLAINTIFFS

DANIEL BECNEL, JR.
106 W. Seventh Street
Reserve, LA 70084-0508
Phone: (504) 536-1186
Fax: (504) 536-6445

JAMES DUGAN
3600 North Hullen Street
Metairie, LA 70002
Phone: (504) 456-8600
Fax: (504) 456-8624

ARNOLD LEVIN
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3875
Phone: (215) 592-1500
Fax: (215) 592-4663

STEPHEN B. MURRAY
909 Poydras Street, Suite 2550
New Orleans, LA 70112
Phone: (504) 525-8100
Fax: (504) 584-5249

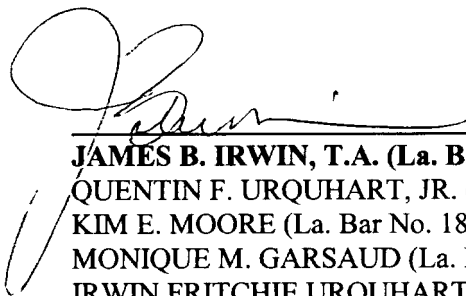
PLAINTIFFS' STEERING COMMITTEE

J. MICHAEL PAPANTONIO
316 S. Baylen Street, Suite 600
P.O. Box 12308
Pensacola, FL 32581
Phone: (850) 435-7000
Fax: (850) 435-7020

CHRISTOPHER A. SEEGER
One William Street
New York, NY 10004
Phone: (212) 584-0700
Fax: (212) 584-0799

BOB F. WRIGHT
556 Jefferson Street, Suite 500
Lafayette, LA 70502-3668
Phone: (337) 233-3033
Fax: (337) 232-8213

CHARLES S. ZIMMERMAN
651 Nicollet Mall
Suite 501
Minneapolis, MN 55402
Phone: (612) 341-0400
Fax: (612) 341-0844



JAMES B. IRWIN, T.A. (La. Bar No. 7172)

QUENTIN F. URQUHART, JR. (La. Bar No. 14475)

KIM E. MOORE (La. Bar No. 18653)

MONIQUE M. GARSAUD (La. Bar. No. 25393)

IRWIN FRITCHIE URQUHART & MOORE, LLC

400 Poydras Street, Suite 2700

New Orleans, Louisiana 70130

Phone: (504) 310-2100

Fax: (504) 310-2101

LIAISON COUNSEL FOR Defendants,

JANSSEN PHARMACEUTICA INC. AND JOHNSON & JOHNSON

DRINKER, BIDDLE & REATH LLP

THOMAS F. CAMPION

SUSAN M. SHARKO

500 Campus Drive

Florham Park, NJ 07932-1047

Phone: (973) 549-7300

Fax: (973) 360-9831

-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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 26 of Plaintiffs' and Defendants' Liaison Counsel was served on Defendants' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this 29th day of October, 2003.

A handwritten signature in black ink, appearing to read "Leonard A. Davis", written over a horizontal line.

LEONARD A. DAVIS

11. Trial Schedule
12. Pharmacy Indemnity Agreements
13. End Game Planning Committee
14. Motions to Enforce Subpoenas
15. Global Application of Daubert

NEW ITEMS

16. Motions to Withdraw as Counsel of Record
17. Stipulation and Pre-trial Order Providing for the Use at Trial of Depositions in State or Federal Courts