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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 :
:

**JOINT REPORT NO. 19 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 19.

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

DLC advises that as of November 20, 2002 approximately 7,207,813 pages of documents have been produced.

Defendants advise they have produced 13,131 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 the majority of remaining e-mails and

attachments that have been collected will be completed by mid-December. DLC advises that remaining documents from the collection will be produced by mid-January 2003.

Counsel for Plaintiffs and Defendants have continued to have discussions addressing issues with the electronic discovery production. Meetings have not yet taken place with Applied Discovery, however, continued discussions with electronic consultants for both Plaintiffs and Defendants have taken place. The parties will be prepared to discuss this further at the November 25, 2002 Status Conference.

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 November 25, 2002 monthly status conference.

III. Patient Profile Form and Authorization

As of October 4, 2002, Defendants have received 1473 Patient Profile Forms (PPFs). 156 are currently overdue, and 2 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.

IV. Subpoena to FDA

This matter may be removed from the Agenda.

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

PLC and DLC have nothing to report on this matter.

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. Since the last status conference, PLC has communicated on several occasions with DLC regarding this certification. On November 21, 2002, DLC provided a certification it had obtained from Covance. PLC is reviewing the certification. The parties will be prepared to discuss this further at the November 25, 2002 status conference.

Dr. Jerry Herron - This certification has been received by PLC.

SmithKline Beecham Clinical Laboratories - This certification has been received by PLC.

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 November 25, 2002 Monthly Status Conference.

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

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

On October 22, 2002, PLC served upon DLC Request for Admissions. DLC provided a response on November 14, 2002.

PLC previously filed with the Court a Motion to Compel regarding Norcisapride. 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.

On October 28, 2002, Daniel Becnel advised DLC that while participating in three depositions of Janssen employees, Mr. Dirk Reyn, Dr. Ludo Lauwers, and Dr. Robert Vermeulen at the end of September and beginning of October 2002, questions regarding electronic calendars were posed. On October 28, 2002, Mr. Becnel wrote DLC and requested that the Defendants produce the electronic calendars of these witnesses, as well as other individuals. On November 6, 2002, DLC responded in writing and advised Mr. Becnel that in accordance with Pre-Trial Order No. 10 any calendar items which were responsive to the search terms agreed upon by the parties were being produced. Mr. Becnel has brought a Motion to Compel as to this issue in the Diez, Brock and Reed matters which is set for hearing on December 11, 2002, which Defendants will

oppose.

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. The Foundation retained Peter Butler, Sr., Esq. in connection with the responses made to the subpoena duces tecum. A return on the subpoena was made; however, not all of the documents requested by the subpoena were produced, notably the EKG data of Dr. Vincent and Dr. Morganroth. Following several requests by DLC for such information and subsequent receipt of the same, DLC asked PLC for a certification from Dr. Shell and DLC forwarded a draft of such certification to PLC for review. In response, PLC directed DLC to consult with Mr. Butler to obtain the certification. Counsel reported to the Court at last month's status conference regarding this issue.

Since such time, DLC contacted Mr. Butler who informed DLC he did not represent Dr. Shell, personally, and would therefore not furnish the requested certificate. PLC, upon receipt of correspondence from Mr. Butler advising of this, further communicated with Dr. Shell and requested the certification. PLC has been in communication with Dr. Shell and has been advised that the certification is in the process of being signed. DLC awaits delivery of this certification. The parties will be prepared to discuss this at the November 25, 2002 monthly status conference.

XI. 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 who has begun working on the project. PLC is awaiting receipt of the database. The parties will be prepared to discuss this issue at the November 25, 2002 monthly status conference.

XII. Trust Account

The parties have agreed to establish a checking account with the Whitney National Bank. The parties are prepared to submit a joint motion and order regarding the establishment of this account. On November 14, 2002, PLC wrote the Court and advised the Court the amount that the Defendants are prepared to place into the account and requested assistance from the court to get the account established. The parties had a telephone conference with the Court on Thursday, November 21, 2002 to discuss the matter further. Following the conference, PLC spoke with Lee Navarre in the Clerk of Court's office. A meeting has been scheduled with Mr. Navarre and the Clerk of Court, Loretta Whyte on November 22, 2002. Upon information from the court concerning the tax consequences of the account, this issue may be removed from the report, and the account can be established. The parties will be prepared to discuss this issue at the November 25, 2002 monthly status conference.

XIII. Declassified Documents

On November 14, 2002, DLC wrote PLC and advised that they had reviewed the

depositions and exhibits which were recently the subject of the Motion to Compel Declassification of depositions and exhibits. Certain documents were agreed by DLC to be declassified. PLC is reviewing the listing of documents and will discuss this further with DLC. PLC and DLC intend on submitting a Joint Motion and Order requesting that these documents be declassified. The parties will be prepared to discuss this issue at the November 25, 2002 monthly status conference.

XIV. Mediation

The parties met with mediator, Patrick Juneau, at a mediation that occurred on October 23, 2002. Nine cases were selected for mediation, two of which were settled. The mediation terminated. PLC advised DLC on November 6, 2002 that PLC was prepared to continue mediation provided certain conditions were met. On November 21, 2002 DLC advised that they had been attempting to contact Patrick Juneau to schedule additional mediation times. As of this date, no further dates for mediation have been set. DLC further advises that they are continuing to review cases for potential mediation and will be working with the mediator and PLC to select mediation dates. Plaintiffs have provided Defendants in excess of fifty brochures. DLC advises that it will, by the November 25, 2002 Status Conference, have scheduled the next session of mediation. DLC and counsel for the Diezes are also discussing the possibility of mediating the *Diez* case and are in contact with the mediator regarding a mediation date. PLC and DLC will be prepared to discuss the matter further with the Court at the Status Conference. Additional counsel have requested that additional claims be included in the mediation process. The parties

will be prepared to discuss this further at the November 25, 2002 monthly status conference.

V. 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. Plaintiffs have recently filed a Motion to Continue Trial which is set for hearing on November 25, 2002, which the defendants have opposed.

XVI. 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. On November 20, 2002 DLC forwarded to PLC two additional indemnity agreements as to non-Louisiana pharmacies.

NEW ITEMS

XVII. Verilaw

PLC and DLC have been advised that Verilaw desires to change its pricing schedule for continued use of the Verilaw electronic pleadings service. PLC and DLC have attempted to discuss this further with Verilaw and are in the process of scheduling a conference call to discuss this further with Verilaw. The parties will be prepared to discuss this at the November 25, 2002 status conference.

DLC received a hand written letter from Reynaldo Perez, a pro se plaintiff who completed a "Defense" Counsel Electronic Service Registration Form. PLC and DLC believe that this pro se plaintiff desires to be included in the service registration for Plaintiffs' counsel this is maintained by PLC. Presently, PTO No. 4 (Electronic Service) only applies to counsel. The parties will be prepared to discuss this at the November 25, 2002 status conference.

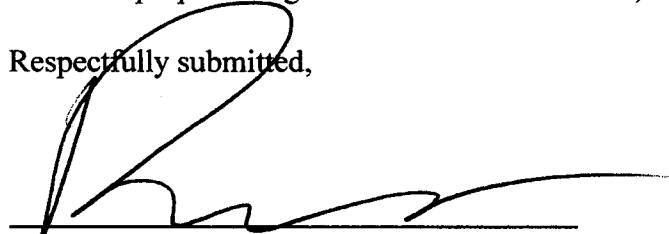
XVIII. State Federal Coordination

PLC and DLC have received a Motion to Withdraw From the Terms of Pretrial Order No. 14 and Accompanying Agreement that has been forwarded by Sol Weiss on behalf of "The Pennsylvania Plaintiffs". The parties will be prepared to discuss this at the November 25, 2002 status conference.

XIX. Agenda

A proposed Agenda for the November 25, 2002 Monthly Status Conference is attached.

Respectfully submitted,



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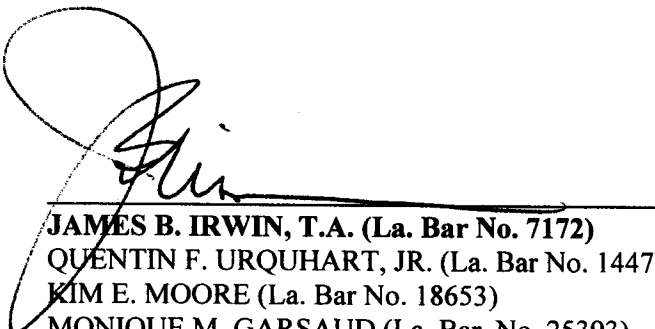
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 19 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 21st day of November 2002.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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 : **MAG. WELLS ROBY**
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Monthly Status Conference
November 25, 2002
8:00 a.m.

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. Shell/Morganroth Study
11. 30(b)(6) Deposition of Defendants Regarding Studies
12. Trust Account
13. Declassified Documents
14. Mediation
15. Trial Schedule
16. Pharmacy Indemnity Agreements

New item

17. Verilaw
18. State Federal Coordination

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