

MINUTE ENTRY
FALLON, J.
January 17, 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, Charles Zimmerman, James Dugan, J.R. Whaley, Jim Capritz, Julie Jacobs, Dawn Barrios, Stephen Echsnel, Robert M. Becnel, Barry Hill, and Dudley Jordan (by telephone). 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. 37 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 Court stated that by the next status conference Defense Counsel shall contact the SLC to discuss issues related to state cases.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that, as of January 11, 2005, they have received 3,097 PPF's, 2,389 are overdue, and 0 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. The PSC has filed a Motion, Under Seal, to withdraw certain sums from the deposit with the Court's Registry. The Motion is set for hearing on February 2, 2005, at 9:00 a.m.

7. Trial Schedule

The matter of Halle Jackson v. Johnson & Johnson, et al, docketed in the District Court of Clark County, NV, which was set for trial on February 14, 2005, has been dismissed on summary judgment. The DLC reported that there have been no other changes to the trial schedule since last month's Status Conference. The DLC will continue to update the PLC if and

when 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 25,000 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: 232 enrolled; required minimum enrollment of 242
2. Personal injury claims: 2,774 enrolled; required minimum enrollment of 2,653

B. Tolling Agreement Claimants: over 19,000 enrolled; required minimum enrollment of 12,000, including *Achord* plaintiffs.

C. *Achord* plaintiffs: 1,797; required that all *Achord* plaintiffs enroll. The DLC indicated that they will provide the names of *Achord* plaintiffs who have not yet enrolled to the PLC. The PLC will then contact these plaintiffs' attorneys.

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

As plaintiffs become pro se, the DLC are updating their service list to reflect this change in representation. The DLC indicated they will provide a list of pro se Plaintiffs to the PLC. The Court requested that the PLC contact these plaintiffs to determine if they are presently or desire to be represented by counsel.

13. Plaintiff–Melissa Hawthorn

On January 4, 2005, the Court received correspondence signed by Melissa Hawthorn indicating that she did not want to enroll in the settlement program. Ms. Hawthorn's attorney-of-record, Dudley Jordan participated in this status conference by telephone and informed the Court that he was uncertain as to the whereabouts of Ms. Hawthorn and whether she had, in fact, written the letter. The Court directed Mr. Jordan to attempt to contact Ms. Hawthorn at the email address provided in the letter. Moreover,

IT IS ORDERED that Ms. Hawthorn contact Mr. Jordan forthwith to provide the name of

the attorney who represents her in this matter. Mr. Jordan shall contact the Court prior to the next status conference.

14. Next Pretrial Status Conference

The next pretrial status conference shall be held on Friday, February 25, 2005, at 9:00 a.m.

Clerk to serve:

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