

MINUTE ENTRY
FALLON, J.
February 6, 2003

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 Tuesday, January 28, 2003 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Leonard Davis, Roy Amedee, Robert Wright, Arnold Levin, James Capretz, Julie Jacobs, Albert J. Rebennack, Daniel E. Becnel, Jr., Dawn Barrios, Fred S. Longer, Richard J. Arsenault, Edward J. Parr, Jr., Mark Whitehead, Jim Watts, Carlos Prietto, Barry Hill, Lynn Swanson, and R. Larry Morris. In attendance for the Defendants were James Irwin, Thomas Campion, Monique Garsaud, Chales F. Preuss. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 20 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") informed the court that defendants had produced additional e-mails from Belgium and Titusville bringing the total

production of documents on CD to approximately 7.047 million pages. The remaining documents are foreign language e-mails and attachments. Defendants anticipate production of these documents will be complete in March, 2003.

2. State Liaison Counsel

The State Liaison Committee ("SLC") informed the Court that it is working with the PLC to schedule depositions for state court matters. The Court noted that it had spoken with Mr. Sol Weiss who no longer plans to move for withdrawal from the state-federal cooperation.

3. Plaintiff Profile Forms and Authorizations

As of January 17, 2003, Defendants had received 1,523 Patient Profile Forms ("PPFs"), 169 are currently overdue, and 1 PPF will become due within thirty (30) days. DLC advised the Court that they will work with the PLC to contact counsel whose clients' PPFs are overdue. DLC announced his intent to file in the near future a motion for dismissal of those plaintiffs whose PPFs are overdue; counsel noted that the matter would be set for hearing at the next monthly status conference. The Court noted, for the record, the continuing objections of the PSC to the Court's dismissal with prejudice of these plaintiffs.

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.

5. Ongoing Studies/Subpoena to BevGlen

The parties had nothing to report on this issue, and this matter will be removed from subsequent agendas.

6. Third Party Subpoena Duces Tecum

On December 18, 2002, the PLC served a subpoena duces tecum on defense expert, Dr. Douglas Zipes. DLC responded that the returns on this subpoena, as well as the one issued to Sciens Worldwide Medical Association on October 1, 2002, will be made in letter form by January 31, 2003, and full compliance by February 7, 2003. The Court ordered that defense attorneys Zimmer and Winter shall copy the Court on the information provided in response to these subpoenas.

7. Motion for Class Certification

In an Order dated June 27, 2002, this Court indicated that it would in due course set a hearing date in connection with the PSC's second motion for class certification [MDL Document No. 619]. At the status conference both DLC and PLC recommended to the Court that the hearing on the motion not be scheduled until after all electronic discovery is received and reviewed by the PSC. Accordingly, the Court will again DEFER setting a hearing date on this motion. Liaison Counsel should continue to make recommendations as to a future hearing date at each monthly status conference.

PSC member Daniel Becnel suggested that the Court begin to conduct hearings regarding certification of state-wide class actions. The Court deferred consideration of this matter until after the upcoming *Daubert* hearings and requested that the parties be prepared to discuss this matter at the next monthly status conference.

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

DLC informed the Court that it plans to have a partial response to the PLC's "Merits" Request for Production of Documents and Interrogatories – Set No. 6 no later than January 31, 2003. The Court requested that the PLC notify it of compliance by the end of the week.

On November 22, 2002, PLC served on DLC Request for Admissions and Interrogatory regarding business records of Defendants. DLC has objected to responding to approximately 4,000 documents. The Court instructed the PLC and DLC to work together to resolve the issue or bring the matter to the Court's attention no later than February 7, 2003 for a final decision. The Court indicated that its decision on this matter will control the course of similar requests in the future.

PLC and DLC informed the Court that the Motion to Compel regarding Norcisapride be continued pending additional discovery. The parties shall advise the Court when this discovery is complete.

PSC noted that counsel for plaintiff in the Richard Diez case previously filed a motion to compel and for sanctions and the production of electronic calendars; this motion was denied by the Court in a Minute Entry entered January 2, 2003. Counsel plans to move for reconsideration of this ruling and must do so no later than February 7, 2003.

10. Shell/Morganroth Study

DLC indicated that this matter has been resolved and may be removed from the agenda.

11. Rule 30(b)(6) Deposition of Defendants Regarding Studies

Defendants produced a draft database in CD form to the PLC on December 31, 2002. DLC informed the Court that a final form will be provided no later than February 7, 2003.

12. Trust Account

The Court signed an order on January 15, 2003 amending Pre-trial Order No. 16 to establish the Plaintiff's Litigation Fund in the Registry of the Court. DLC indicated that it will shortly deposit the money, and the PLC will thereafter contact the Court regarding distribution.

13. Declassified Documents

On January 29, 2003 the Court entered a joint Motion and Order of the PLC and DLC for the declassification of certain documents and exhibits. Regarding the PLC's Motion for Relief from Pretrial Order No. 5, DLC advised the Court that defendants' response to that matter will be made no later than January 31, 2003.

14. Mediation

PLC and DLC advised the Court that 12 cases have been mediated, with 7 having been settled as of the time of this Minute Entry. This includes state and MDL cases. The Court expressed its concern over the progress of the mediation, stating that a case-by-case approach was not appropriate for the MDL. The Court stated that it will begin remanding cases for trial if sufficient progress is not made in the mediation. The Court ordered that the parties will inform the Court at the next monthly status conference of the progress of the mediation so a decision can be made on continuing the talks. Currently, no future mediation sessions have been set.

15. Trial of Louisiana Cases

Three matters are currently set for trial in March, 2003. Furthermore, the Court will hear oral arguments on Monday, February 3, 2003 at 9:00 a.m. regarding defendants' Motion for Summary Judgment in the Samantha Reed case and a *Daubert* motion in the Ernestine Brock case. The Court GRANTED the PSC's request to present oral arguments at the *Daubert* hearing on February 3.

16. Verilaw

PLC and DLC advised the Court that Verilaw wishes to modify its pricing schedule. Counsel plan meetings with Verilaw representatives to discuss this issue.

17. Pharmacy Indemnity Agreements

DLC advised the Court that it is providing these agreements as they are executed.

18. Pro Se Plaintiff, Reynaldo Perez

DLC advised the Court that it plans to move to dismiss this plaintiff's case for failure to properly serve defendants.

19. End Game Planning Committee

Committee members Arnold Levin for the plaintiffs and Tom Campion for the defendants informed the court that the committee has met twice since the previous status conference. DLC indicated that it was not receptive to PLC's suggestions regarding termination of this MDL, and further that defendants have given its proposal to the PLC and is awaiting response.

The Court requested that the parties focus on the following issues for its role as MDL Court: conclusion of discovery, progress of mediation, and upcoming *Daubert* motions. The Court expressed its concern that this MDL avoid the "black hole" effect.

16. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, March 7, 2003 at 9:00 a.m.