

MINUTE ENTRY
FALLON, J.
February 25, 2005

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, Jim Capritz, 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 Champion, 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. This item may be removed from the agenda and re-presented at the appropriate time in the future.

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. They further advised that they are in the process of determining how many state cases are currently pending, the type of case, and whether the parties in those cases wish to be involved in settlement discussions. State Liaison Counsel also requested the names of the plaintiffs and claimants who were not eligible to participate in the settlement program.

3. 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.

4. Motion for Class Certification

The Plaintiffs reported that they have postponed filing their motion in light of the pending settlement.

5. Trust Account

On February 4, 2005, a deposit was made into the Court's registry. Further, on January 27, 2005, the Court issued an Order allowing the PSC to withdraw funds from the Court's Registry. On February 17, 2005, these funds were delivered by the Clerk to the PLC, and thereafter, deposited by the PLC into the PSC account.

6. Trial Schedule

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.

7. 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.

8. 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 28,368 plaintiffs and claimants have served enrollment forms and, of that number, over 22,000 have enrolled. 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.

Each week the Special Master holds a telephone conference with the parties to discuss the administration of the Resolution Program.

The parties also reported that they have agreed upon the qualified settlement fund order and will submit it to the Court forthwith.

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: 242 enrolled; required minimum enrollment of 241
2. Personal injury claims: 2,906 enrolled; required minimum enrollment of 2,653

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

C. *Achord* claimants: all but 454 enrolled; required that all *Achord* claimants enroll. At

the last status conference, the Court asked the parties to submit a list of the *Achord* claimants, and their counsel, who have not enrolled in the Settlement Program. On February 4, 2005, the DLC delivered such list. In turn, this Court issued a Minute Entry ordering counsel for these claimants to attend this month's Status Conference and report to the Court why these claimants had not been enrolled. Counsel provided satisfactory responses in most cases such that those matters were concluded. The PLC advised the Court that most of the outstanding matters should be resolved within ten days of this status conference. Attorneys with unresolved issues related to claimants should have these matters resolved by the next monthly status conference. Failure to do so may result in this Court issuing a rule to show cause why the case should not be dismissed.

D. Government's Potential Claims: Ruth Harvey of the United States

Department of Justice participated via telephone and reported to the Court that they have begun developing models of care and payment estimates for those models of care based on the information they have received regarding participants in the Settlement Program. Ms. Harvey further reported that the next step is for them to receive information regarding specific individuals who will be qualified to receive payment. The Court encouraged the parties to approach resolving the government's claim from a global, rather than case by case, perspective.

9. Global Application of Daubert

The DLC indicated that this matter is on hold pending the outcome of the settlement program.

10. Motion for Summary Judgment

The PLC indicated that they have postponed filing this motion due to the pending settlement agreement. This matter may be removed from the agenda.

11. Pro se Plaintiffs

As plaintiffs become pro se, the DLC are updating their service list to reflect this change in representation. On January 17, 2005, the PLC wrote each pro se plaintiff and, as requested by the Court, asked each pro plaintiff to contact the PLC and advise regarding their desire to have counsel representation in the matter. The PLC reported that they have received a number of responses from pro se plaintiffs. The Court indicated that plaintiffs who do not respond will be ruled into Court to show cause why their cases should not be dismissed. The PLC also reported that some pro se plaintiffs indicated that they wanted the Court to appoint counsel to represent them. With regard to these plaintiffs, the Court indicated that it will appoint an omnibus counsel, one who has had no involvement in the case, to represent these individuals. For those individuals who cannot be reached or located, the Court will entertain motions to dismiss for failure to prosecute t the appropriate time.

12. Plaintiffs Correspondence to the Court

The parties noted that information related to these matters is in the record.

13. Verilaw/Lexis Propulsid Litigation Migration

The parties discussed the fact that Lexis/Nexis purchased Verilaw, the electronic service system that parties have been using throughout the case. The parties reported that they will meet and discuss the migration of the service form Verilaw to Lexis/Nexis with a Lexis/Nexis representative and prepare an order regarding same. The Court advised that it will meet with the Lexis/Nexis representative as well.

14. Correspondence from Counsel for Walgreen Louisiana Company, Inc.

(Margaret Beo, et al v. Walgreen Louisiana Co., Inc., et al, #01-0600

On January 26, 2005, the Court received correspondence from counsel for Walgreen's in which he requested that the Court rule on its pending Motion for Summary Judgment and

dismiss Walgreen. At the June 25, 2004, monthly status conference the Court deferred ruling on the motion until the enrollment process was complete. The DLC advised the Court that this case may have already been enrolled in the settlement program thereby mooting the issue. The DLC stated that it will investigate the matter and provide a report at the next status conference. As such, the Court deferred considering the matter until the next status conference.

15. Remand Motions

Michael Pederson from the Witz and Luxenberg law firm participated by telephone regarding this matter. Mr. Pederson reported that he filed remand motions in cases involving *Helena Masluk*, Docket No. 04-1278, *Marion Bucaria for the Estate of Thomas Bucaria*, Docket No. 04-1277, and *Judy Ridway for the Estate of Kenneth Ridgway*, Docket No. 04-1809. At the December 16, 2004 monthly status conference, the Court continued the motions without date, indicating that it wished to consider remand motions in globo rather than on a case-by-case basis. Mr. Pederson requested that the Court consider these motions at this time due to the unique circumstances of his clients.

The DLC indicated that it would appreciate the opportunity to study these three cases over the next month and discuss a briefing schedule at the next status conference.

The Court passed on the matter until the next status conference. At that time, the Court shall set a briefing schedule. The Court requested that counsel from Witz and Luxenberg participate in the next status conference, either by phone or in person.

16. Next Pretrial Status Conference

The next pretrial status conference shall be held on Thursday, March 24, 2005, at 9:00 a.m.

Clerk to serve:

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