

MINUTE ENTRY
FALLON, J.
March 7, 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 THE FOLLOWING CASES:
Civil Action No. 00-2497, and only regarding
Plaintiff Ernestine J. Brock;
Civil Action No. 00-2577, and only on behalf of
Plaintiff Patricia L. Deiz, wife of and on behalf of
Richard Diez, Richard Diez, Jr., and Marc J. Diez;

A pretrial status conference was held on this date in the Chambers of Judge Eldon E. Fallon regarding the above-captioned cases. Participating were Roy Amedee and A. J. Rebennack, Jr. for the plaintiffs and Jim Irwin, Tom Campion, and William H. Murphy, Jr., for the defendants. Counsel discussed the upcoming trials with the Court. The Court advised counsel of the following pre-trial deadlines:

The following shall be due in Chambers no later than Tuesday, March 11, 2003:

1. Proposed special voir dire/ jury instructions/ verdict forms;
2. Objections to exhibits;
3. Bench books;
4. Motions in Limine; and
5. Redacted deposition testimony.

Objections to deposition testimony are due in Chambers on the next day of business, which is

Wednesday, March 12, 2003.

The following documents are due on the following day, which is Thursday, March 13, 2003:

1. Responses to objection to exhibits;
2. Memoranda in opposition to motions in limine; and
3. Responses to objection to depositions.

Trial in the *Diez* matter is scheduled to begin on Monday, March 17, 2003 at 8:30 a.m. Trial in the *Brock* matter is scheduled for Monday, April 7, 2003 at 8:30 a.m. Trial in each matter is expected to last approximately 8 days. Counsel shall report to Chambers no later than 30 minutes prior to the scheduled start of trial.

Following the pretrial conference, the Court heard oral arguments on various motions filed by the parties in the above-captioned case. Arguing were Roy Amedee, Bradley Duhe, and A. J. Rebennack, Jr. for the plaintiffs; Arnold Levin and Leonard Davis on behalf of amicus Plaintiffs' Steering Committee; and Jim Irwin, Tom Campion, and William H. Murphy, Jr. for the defendants. The court reporter was David Zarek. The Court made the following oral decisions on the motions:

1. **Plaintiffs' Motion for Reconsideration of Their Motion to Compel Discovery Responses and for Discovery Sanctions [Record Doc. No. 952]:** GRANTED IN PART AND DENIED IN PART. The Court AMENDED its January 2, 2003 Minute Entry [Record Doc. No. 888] to limit its effect only to the above-captioned cases. The motion was DENIED in all other respects.
2. **Plaintiffs' Motion in Limine to exclude any and all evidence, exhibits, and/ or testimony relating to various issues regarding the testimony of Dr. William E. Shell (Record Doc. 968):** GRANTED IN PART AND DENIED IN PART. The Court

granted the motion as to issues concerning Dr. Shell's medical license, investigations by the FTC and SEC, interests received from various plaintiff litigation groups, and his marketing efforts concerning the "fat magnet." The Court denied the motion as to tax issues and judicial proceedings involving Dr. Shell's divorce. The Court reserved ruling until trial on the Madigan report.

3. **Defendants' Motion in Limine to Exclude Correspondence from the United States Food & Drug Administration's Division of Drug Marketing, Advertising, & Communication ("DDMAC") (Record Doc. 983):** GRANTED.
4. **Defendants' Motion in Limine to Exclude Evidence Related to Foreign Regulatory Material (Record Doc. 988):** The Court RESERVED ruling on this matter until trial.
5. **Defendants' Motion in Limine to Exclude Evidence Pertaining to Adverse Event Reports and Other Lawsuits (Record Doc. 989):** During oral arguments, plaintiffs' counsel indicated that he would omit reference to other lawsuits. The Court RESERVED ruling on adverse event reports until trial.
6. **Defendants' Motion in Limine to Exclude Exhibits Consisting of Memoranda of Meeting Minutes and Other FDA Statements (Record Doc. 971):** The Court RESERVED ruling on this matter until trial.
7. **Defendants' Motion in Limine to Exclude Evidence Pertaining to Other Drugs (Record Doc. 978):** The Court RESERVED ruling on this matter until trial.
8. **Defendants' Motion in Limine to Exclude Testimony of Dr. William Stuppy (Record Doc. 977):** The Court RESERVED ruling on this matter until trial.

9. **Defendants' Motion in Limine to Exclude Evidence Related to Pediatrics (Record Doc. 976):** During oral arguments, plaintiffs' counsel indicated that he would withdraw any and all references to pediatrics. The Court will, therefore, DENY AS MOOT this motion.
10. **Defendants' Motion in Limine to Exclude Evidence of Subsequent Remedial Measures (Record Doc. 975):** GRANTED IN PART AND TAKEN UNDER SUBMISSION IN PART. The Court GRANTED the motion as it pertains to warning labels issued after the death of Richard Diez. The Court TOOK UNDER SUBMISSION the issue of the Propulsid Limited Access Program.
11. **Defendants' Motion in Limine to Exclude Evidence Consisting of Marketing Material (Record Doc. 974):** The Court RESERVED RULING on this matter until trial.
12. **Defendants' Motion for Partial Summary Judgment Dismissing Composition, Express Warranty and Design Claims in Civil Action Number 00-2497 and only regarding Plaintiff Ernestine J. Brock (Record Doc. 973):** TAKEN UNDER SUBMISSION.
13. **Defendants' Motion for Summary Judgment on the Issue of Medical Causation in Civil Action Number 00-2497 and only regarding Plaintiff Ernestine J. Brock (Record Doc. 972):** TAKEN UNDER SUBMISSION.
14. **Defendants' Motion for Partial Summary Judgment Dismissing Composition, Express Warranty and Design Claims in Civil Action No. 00-2577 and only on**

behalf of Plaintiff Patricia Diez, wife of and on behalf of decedent Richard Diez, Richard Diez, Jr. and Marc J. Diez (Record Doc. 979): TAKEN UNDER SUBMISSION.

15. **Defendants' Motion for Summary Judgment Dismissing All Claims for Lack of Medical Causation in Civil Action No. 00-2577 and only on behalf of Plaintiff Patricia Diez, wife of and on behalf of decedent Richard Diez, Richard Diez, Jr. and Marc J. Diez (Record Doc. 970): DENIED, for oral reasons given.**