

**MINUTE ENTRY**  
**FALLON, J.**  
**March 24, 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, Dawn Barrios, Daniel Becnel, Barry Hill, Richard Arsenault, Julie Jacobs, Stephen Murray, Bob Wright, Victoria Maniatis, Stacie Miller, Carroll Ingram, Matt Moreland, Larry morris, Rebacca Cunard, A.J. Rabennack, and Carl McAfee (by telephone), and Dudley Jordan (by telephone). In attendance for the Defendants were James Irwin, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 38 of Plaintiffs' and Defendants' Liaison Counsel.

1. 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. State Liaison Counsel further advised that they are in the process of determining how many state cases are pending around the country. State

Liaison Counsel is in communication with counsel in these matters.

2. 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.

3. Trust Account

Since the last status conference, there has been no activity with respect to the Trust Account.

4. 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.

5. 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.

6. MDL Mediation and Resolution Program

The DLC reported that the open issues that existed respecting enrollments have been resolved. The DLC further reported that the enrollment numbers have been reached, thus concluding the enrollment period in the matter. This event triggers several deadlines under the Term Sheet. First, enrollment remains open for 6 months from this status conference. Second, claim form administration has begun and claim forms of all enrollees are to be submitted within 120 days of this status conference. Third, the Defendant has 30 days from this status conference in which to make the initial fund deposit of \$69.5 million.

The DLC also reported that the defendant is now to fund the balance of the administrative fund.

7. Global Application of Daubert

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

8. Motion for Summary Judgment

The PLC indicated that they have postponed filing this motion due to the pending settlement agreement.

9. Pro se Plaintiffs

As plaintiffs become pro se, the DLC are updating their service list to reflect this change in representation. The DLC shall provide an updated list of pro se plaintiffs to the PLC by Tuesday, March 29, 2005. After that time, the Court will consider how best to address cases in which the plaintiffs are proceeding pro se.

10. Verilaw/Lexis Propulsid Litigation Migration

The parties have continued discussions with Lexis/Nexis regarding the migration of the Propulsid electronic service system from Verilaw to the Lexis/Nexis File & Serve Electronic Service System. The migration is scheduled to occur on April 11, 2005. Before the migration date, Lexis/Nexis will be instructing all counsel to subscribe to the system on new procedures and changes in the electronic service system.

11. 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's. 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 the issue is moot as the plaintiffs in Beo have enrolled in the settlement program.

Accordingly, the Motion of Walgreen's to Dismiss is hereby DISMISSED AS MOOT.

12. Remand Motions

Pending before the Court are the Motions to Remand of three plaintiffs (*Helena Masluk*, # 04-1278; *Marion Bucaria* for the Estate of Thomas Bucaria, #04-1277; and, *Judy Ridgway for the Estate of Kenneth Ridgway*, #04-1809) represented by the law firm of Weitz & Luxemberg. Counsel for the plaintiffs asked the Court to set a briefing schedule regarding these motions.

Defendants shall file any responses within thirty days of this status conference. The motions shall be set for hearing on the date of the May monthly status conference.

The Defendants requested that the parties be permitted to resume plaintiff-specific discovery regarding the remaining plaintiffs represented by Weitz & Luxemberg. The Court granted the request.

13. New Items

A. Proposed Remand Order

The PLC and DLC have begun discussion about the contents of a proposed Remand Order. Defendants will present a draft Remand Order and circulate it to the PLC and the PSC for their review.

B. Motion to Dismiss filed by Harold Wheeler (*Lawrence Mack, et al v. Janssen Pharmaceutica, Inc. et al*, #03-1521)

During the status conference, the DLC requested an opportunity to research the matter and contact the Court with a response. Thereafter, the parties contacted the Court and indicated

that neither the PLC nor the DLC shall take a position on the matter or oppose the motion.

Accordingly, the Court hereby GRANTS the Motion to Dismiss Harold Wheeler, M.D. As such, all claims against Harold Wheeler, M.D. are hereby dismissed with prejudiced.

14. Next Pretrial Status Conference

The next pretrial status conference shall be held on Tuesday, April 26, 2005, at 9:00 a.m.