

**MINUTE ENTRY  
FALLON, J.  
APRIL 15, 2009**

**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 monthly status conference was held on this date by telephone in the Chambers of Judge Eldon E. Fallon. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 73 of Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC). This conference was transcribed by Ms. Toni Tusa, Official Court Reporter. Counsel may contact Ms. Tusa at (504) 589-7778 to request a copy of the transcript. A summary of the monthly status conference follows.

**I. State Liaison Counsel/MDL Resolution Program II**

The enrollment requirements have been met for the State Settlement Program (Propulsid II). Escrow Agreements have been executed and Defendants have funded the various funds. The claims, medical records, and claimant memoranda deadlines have passed. Administrative claims are being processed and disbursements have begun. The Special Master's Office has begun clearing claims for defense briefing, and the defendants have begun submitting defense memoranda. One hundred sixteen (116) claims have been submitted to the Medical Panel for review, of which defendants have treated 113 on an expedited basis. No claim has been found eligible.

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II. MDL Mediation and Resolution Program

The deadline for enrollment and the submission of claims forms for the First MDL Resolution Program has expired.

The Special Master's office continues to review Claims Forms to determine if the Forms meet the qualifying criteria for submission to the Medical Panel set forth in the Term Sheet. The Special Master continues to notify the attorneys for the claimants that have deficiencies. Thus far, in Propulsid I, the Special Master has submitted 2,773 Tier I, II, and III claims to the Medical Panel for review. Of the 2,773 claims the Defendants have treated 2,385 on an expedited basis. Twenty-four (24) of the tiered claims submitted to the Panel have been found eligible by the panel, and the Special Master has made those awards. Two hundred (200) tiered claims are still in review by the Panel, 179 of which are considered expedited by the Defendants.

On April 29, 2008, the Court entered an Order regarding the waiver of the 6% MDL assessment fee as to those claimants found eligible by the Medical Panel. As for those claimants who have already received awards as of April 14, 2008 and whose awards were subject to the 6% assessment, the Clerk of Court remitted a check to the Special Master to reimburse those claimants for such assessment and further, the balance of the awards, the holdback 50% of the award, was paid out from the Settlement Fund to each claimant that was found eligible for an award and who had previously received 50% of their award.

Defendants continue to submit a list of plaintiffs/claimants whose records have already been obtained by defendants in whole or in part, so when necessary, the parties, the Special Master and the attorneys for these plaintiffs/claimants can expedite the submission and review the Claim Forms for these individuals.

The parties have agreed on a select number of cases that will be subject to a second review, 9 of which have been deemed eligible for awards.

The weekly telephone conference with the Special Master, PLC, DLC and SLC continues to take place to discuss a number of administrative issues germane to the Resolution Program.

Debra Austin and Betty Alexander called to inquire about the status of their awards.

III. Attorney's Fees Issues

On November 23, 2005, the Court issued an Order and Reasons regarding the Emergency Motion for Distribution of Attorney's Fees with full reservation of rights to all attorneys who may claim any right to common fees and expense reimbursement. On December 5, 2005, Daniel E. Becnel filed a Motion to Reconsider the Motion. The matter was set for hearing on September 24, 2008 at 9:00 a.m., but has been continued.

On March 2, 2006 Dumas & Associates Law Corporation filed a Motion for Common Benefit Fees and Expenses Reimbursements. On April 4, 2006, the PLC filed a response to the motion. The hearing date has not been set.

On August 5, 2008, Robert J. Caluda and A.J. Rebennack filed a Motion for Leave to File Motion for Reimbursement of Costs for Common Benefit to the Class and Committee. The PSC filed an opposition to the motion on October 6, 2008. The matter was set for hearing on November 5, 2008 and a resolution was reached. On April 3, 2009, Robert J. Caluda and A.J. Rebennack filed a Motion to Compel Reimbursement of Costs for Common Benefit to the Class and Committee.

On April 3, 2009, the PLC filed a Motion for Distribution of Specific Attorney's Fees Awards and for Expenses and Reimbursement (re: MDL Settlement Program I).

The PLC was instructed to provide the Court with the total amounts paid so far, along with dates that those amounts were paid.

IV. Medical Records from Medical Records Providers

On December 4, 2008, the Court issued an Order requiring certain medical providers who have failed to comply with or even respond to legal requests made by Propulsid claimants for the production of their medical records to appear in Court on December 22, 2008 to show cause why they should not be held in contempt of court and why they should not also be fined \$1,000 per day for every day thereafter until such records are produced. The Order provided that the medical records providers can satisfy the records request by submitting the information to Special Master Patrick Juneau in the Special Master's Office, 400 Poydras Street, Suite 2820, New Orleans, Louisiana 70130-6901, prior to Thursday, December 18, 2008, so that they will no longer be subject to the Order and no longer required to appear in Court. On February 5, 2009, the Court issued an order rescinding the Order of Contempt Ab Initio, as all of the medical providers subject to the Order of Contempt complied with the December 4, 2008 Order.

V. Destruction and/or Retrieval of Medical Records

On March 5, 2009, the Special Master, filed a Motion Seeking Authorization for Destruction of Medical Records Pertaining to Propulsid I which seeks to establish a process for the destruction and/or the retrieval of medical records that the Special Master has collected for the claims in the Settlement Programs. On March 6, 2009, the Court issued an Order requiring that any claimant, whose claim has had a determination on eligibility for payment under the terms and provisions of the Resolution Program I, who objects to his/her medical records in the possession of the Special Master being destroyed, must file a written objection with the Court no

later than Wednesday, April 15, 2009, and show cause on Wednesday, April 22, 2009, at 9:00 a.m. why such records should not be destroyed. Anyone who has had a determination of eligibility and has not filed a timely objection shall have their records destroyed at the direction of the Special Master.

VI. Alternative Investment Program

Thomas Campion distributed alternative investment options. The PSC agrees with the proposal to invest funds. Once the funds are invested, the parties will provide a memorandum and notice the Court.

VII. Next Status Conference

The next status conference will be held by telephone on May 21, 2009 at 3:30 p.m. The dial-in is 1-866-213-7163 and the conference ID is 95712498.

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Dear Judge Fallon,

Please find below the current Propulsid II timeline status report.

1. Claim Forms were due on 12/1/07. The Special Master's Office has received 1,663 claim forms.
2. Medical Records were due on 1/30/08. To date, approximately 99% of the claimant who have submitted claim forms have submitted medical records.
3. Claimant memorandums were due on 3/30/08. To date, the Special Master's Office has received 10% of these on Tier claims.
4. Administrative claims began being processed on 4/1/08. To date, 312 of these claims have been paid and proceeds forwarded to claimants.
5. The Special Master's Office began clearing claims for defense briefing on 5/31/08. The most recent batch of full briefing and expedited claims were cleared on March 9, 2009 and it is anticipated that the next batch will be cleared by April 20,2009.
6. The Special Master's Office began receiving defense memorandums on August 22, 2008.
7. Expedited claims began going to medical panels on August 28, 2008. Regarding administrative payments on

any of these claims which were declared ineligible, the disbursement for the first batch was made on December 23, 2008. The most recent batch was released to defense counsel for approval for payment on March 6, 2009 and the next batch should be cleared by April 30, 2009.

8. Non-expedited claims began going to medical panels on September 27, 2008 and the first batch of administrative payments on any of these claims which were declared ineligible was made on December 23, 2008. The most recent batch was released to defense counsel for approval for payment on March 6, 2009 and the next batch should be cleared by April 30, 2009.

9. Payment of claims which are declared eligible will begin as soon as they are cleared by the panel and the required documentation has been submitted.

10. Panel review status:

Total to Panel: 116 (of that, 113 are expedited)

In review: 19 (of that, 18 are expedited)

Ineligible: 97 (of that, 95 are expedited)

The Special Master agrees that this is a correct and reasonable projected timeline.

Respectfully submitted,

Richard J. Arsenault