

MINUTE ENTRY
FALLON, J.
June 28, 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, Stephen Murray, Carroll Ingram, Paul Penncock, Jeremy Diamond, Stacie Miller, Penny Herman Garsamore, Larry Morris, and Arnold Levin. In attendance for the Defendants were James Irwin, Chuck Preuss, Thomas Campion, and Monique Garsaud. Special Master Patrick Juneau, Angela Paternostro, and Jerry Vadell were also in attendance. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 41 of Plaintiffs' and Defendants' Liaison Counsel.

1. State Liaison Counsel

Richard Arsenault of the State Liaison Counsel advised the Court that the SLC continues to communicate with the DLC and PLC regarding the status of the remaining state court cases.

Mr. Arsenault further advised that SLC is in the process of determining how many state cases are pending around the country. SLC is in discussions with PLC and DLC regarding a potential second settlement program for the state court cases.

2. Service List of Attorneys

The parties 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

Defendants have provided PLC with an updated trial list. The parties in the matter of *Marion T. Bucaria for the Estate of Thomas Bucaria v. Johnson & Johnson Co., et al.*, No. 04-1277, have agreed that the suit will be tried in this Court. The trial date has been set for February 6, 2006. A status conference in this case was held on this date in the chambers of Judge Eldon E. Fallon, immediately following the pretrial status conference. In attendance for the Plaintiff was Paul Penncock; in attendance for Defendants were James Irwin, Thomas Campion, and Chuck Preuss. A separate scheduling order will set forth the pretrial dates in this matter.

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

On June 23, 2005, DLC provided the PLC with two additional Medical Panel designees. PLC has accepted DLC's designees, and the Medical Panel is now complete. To begin the physician orientation, counsel will make a joint presentation to the Medical Panel in July, and that presentation will occur in Judge Fallon's courtroom. Counsel will contact the Court shortly regarding potential dates for the presentation. After the presentation, the Medical Panel will visit the offices of the Special Master. The parties have agreed upon the fee schedule for the members of the Medical Panel, as well as a written protocol to be given to members of the panel to assist them in conducting their duties.

The Special Master reported on the status of the Medical Reimbursement Form. On June 21, 2005, counsel filed a Joint Motion for the Entry of an Order Approving the Parties Stipulation Respecting the MDL Resolution Program As to the Use of a Medical Records Reimbursement Form. That motion has been signed by the Court, and the form will be posted on the Propulsid Web site shortly. This form and the related review process is anticipated to expedite payments for the claims to which the process applies.

The Special Master also reported on when he would begin the dialogue with the government regarding distribution of funds. The Court advised the Special Master to involve the government at an early stage. The Special Master stated that once a finalized list of claimants is established, they will hold a conference with the government.

Tom Campion for DLC reported on the enrollment process to date. Currently, 24,361 individuals have enrolled in the Settlement Program. However, only 1,300 claim forms have been received. Because the claim submission deadline is rapidly approaching in August, the Court advised PLC to hold a series of meetings or a hotline for law firms representing Propulsid

claimants to advise them of upcoming deadlines and assist them with filing claim forms. PLC suggested that two meetings would be held, one at the July 23, 2005 conference of the ATLA, and one in New Orleans at a date to be determined in July.

PLC reported that the first disbursements under the Settlement Program will occur in the next three weeks. PLC is to report to the Court when the first disbursements occur.

The parties have agreed on a notification process. The Special Master will be responsible for reviewing claim forms for deficiencies, providing claimants' attorneys the opportunity to correct claim forms, and providing notice to the parties when a claim form is ready for submission to the Medical Panel. Further details of the notification process are outlined in Joint Report No. 41.

Barry Hill of the Plaintiffs' State Liaison Committee reported that the requirement that plaintiffs' counsel submit ten years of medical records with claim forms is delaying submission of otherwise complete claim forms. *See* Exhibit A to the Term Sheet. Mr. Hill expressed fear that the sixty day limit on producing medical records could exclude valid claims because of administrative problems in obtaining medical records. Tom Campion of DLC explained that Term 7 of the Term Sheet is a good faith provision. Under this provision, the Special Master has the ability to waive the sixty-day requirement if the attorneys have made a good faith effort to secure records. Russ Herman stated that PLC will work with DLC over the next thirty days to resolve these issues.

7. Global Application of Daubert

DLC indicated that this matter is on hold pending the outcome of the Settlement Program.

8. Pro se Plaintiffs

Defendants have provided PLC with a proposed Order setting forth procedures for notice to pro se plaintiffs and suggestions for how their cases should be managed. PLC and DLC are now working on a Joint Recommendation and Order that will be submitted to the Court by Friday, July 1, 2005. The issues remaining to be resolved are the curator's fee that will be set by the Court and PLC's request for monthly financial accountings from the curator.

9. Verilaw/Lexis Propulsid Litigation Migration

PLC and DLC continue to have problems with the LexisNexis File & Serve Application. Representatives of LexisNexis File & Serve will meet with the Court on Wednesday, June 29, 2005, and these issues will be discussed at that time.

10. Status of Motions

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) have been withdrawn by plaintiffs without prejudice. Likewise, the four Motions for Summary Judgment filed by defendants in the matters of *Manuel Fernandez, individually and as Administrator for the Estate of Catherine Fernandez*, #04-1805; *Robert Day and Wanda Day*, #03-3039; *Andrew Wiznia, Individually and as Executor of the Estate of Sidney Wiznia*, #04-1280; *Allison Case, on behalf of Evan Case, an Infant*, #03-3025 have been withdrawn without prejudice.

11. Proposed Remand Order

Defendants are finalizing a draft of a proposed Master Remand Order and will circulate it to PSC for discussion.

12. Preservation of Electronic Data

On June 16, 2005, Defendants requested modifications to the preservation procedures that have previously been implemented by Johnson & Johnson. Russ Herman for PLC indicated that, once the claims process begins under the settlement program, the defendants will be relieved of the obligation to preserve electronic data.

13. Motion to Amend June 28 Order Re: Special Master

On June 27, 2005, PLC filed a Motion to Amend June 28, 2004 Order Pursuant to Rule of Civil Procedure 53 Governing the Appointment of Special Master, Patrick Juneau. This motion seeks to expand the Special Master's authority under the settlement program to include making a recommendation to the Court regarding the division of any attorneys' fees and expenses.

Russ Herman for PLC also addressed the Motion for Leave to File Intervention for Attorneys' Fees, Costs and Expenses pending before this Court. The motion was submitted by The Caluda and Rennebeck Law Firm. Because no representative of that firm was in attendance, the Court continued discussion of the motion to the next pretrial status conference.

14. The *Lomax* Cases

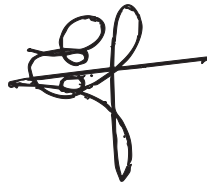
Carroll Ingram, counsel for plaintiffs in *Lomax, et al. v. Janssen, et al.*, No. 2:04-CV-00137SRO (S.D. Miss.), and *Lomax, et al. v. Janssen Pharmaceutica, et al.*, No. 2:05-00084 (S.D. Miss.), reported on the status of these two cases. Plaintiffs' counsel advised that the cases are identical with the exception of one defendant, Merck-Medco, and 24 plaintiffs, whom counsel has identified for the Court. On June 23, 2005, Plaintiffs filed Motions to Consolidate the two cases, and filed a voluntary dismissal of Merck-Medco. Plaintiffs' counsel believe consolidation is the best option in order to preserve all claims.

15. Vernon L. Gray

Russ Herman of PLC reported to the Court regarding PLC's communication with Vernon Gray. PLC has been in contact with Mr. Gray and has provided him with a list of attorneys in Mississippi handling Propulsid claims. PLC has learned that Mr. Gray may have previously been represented in this matter by two or three different attorneys. If Mr. Gray is unable to secure counsel, he will be added to the list of pro se plaintiffs.

16. Next Pretrial Status Conference

The next pretrial status conference shall be held on Tuesday, August 23, 2005, at 9:00 a.m.

A handwritten signature in black ink, appearing to be the initials 'R.H.' with a stylized flourish extending to the right.