

MINUTE ENTRY
FALLON, J.
October 21, 2004

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, Arnold Levine, Leonard Davis, Charles Zimmerman, James Dugan, and Dawn Barrios. In attendance for the Defendants were James Irwin, Charles Preuss, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 34 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 have discussed and exchanged comments regarding a Stipulation concerning the suspension of electronic preservation as required by Pre-Trial Order No. 10. The parties have prepared a draft Order, the details of which they are still discussing and expect to have completed shortly.

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.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of October 18, 2004, they have received 3,131 PPF's, 874 are overdue, and 0 will become due in thirty days. The Defendants advised the Court that they will halt filing motions to dismiss for failure to provide a PPF during the period in which claimants may opt in to the MDL 1355 settlement.

4. 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.

5. Motion for Class Certification

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

6. Trust Account

Since last month's status conference, on October 7, 2004, Defendants deposited settlement funds into the Court's Registry.

7. Mediation

The parties advised that no additional mediations have occurred since the last status conference.

8. Trial Schedule

The DLC reported that no state court trials are scheduled for the rest of the year.

9. Pharmacy Indemnity Agreements

DLC advised that it continues to produce copies of all pharmacy indemnity agreements to the PLC.

10. MDL Mediation and Resolution Program

On February 4, 2004, the parties announced that they had reached an agreement in principle to resolve all federal lawsuits related to Propulsid. On February 5, 2004, the Court entered a Consent Order as to this agreement. The agreement is dependent upon acceptance of the proposal by a certain percentages of plaintiffs. The parties advised the Court that the enrollment process has proceeded since the last monthly status conference. Almost 2,000 plaintiffs and claimants (Tolling and Achord) have enrolled to date, and the parties believe that the enrollment requirements will be met by the enrollment deadline of October 29, 2004.

The parties reported the following regarding the resolution program:

- (a) The PLC held a meeting on September 29, 2004, in New Orleans to assist plaintiffs' counsel with enrollment and follow-up with plaintiffs' counsel on the status of enrollment. The PLC reported that the response they received was encouraging, and they expect that a large number of claimants' counsel will be submitting Enrollment Forms.
- (b) On October 6, 2004, DLC sent a letter and a copy of the Term Sheet to all counsel who represent plaintiffs in the MDL cases and under tolling agreements who are eligible to enroll in the Program to explain the enrollment process and to advise them that defense counsel would be sending Enrollment forms to them shortly. Defense counsel also sent a similar letter with a copy of the Term Sheet to all pro se plaintiffs in the MDL who are eligible to enroll. On October 7, 2004, defense counsel sent another letter to the same counsel and pro se plaintiffs with the Enrollment Form and Stipulations of Dismissal.
- (c) According to defendants' calculations, the number of persons for whom wrongful

death suits are pending is 285. The 85% required minimum enrollment of these cases is 242. The number of users of Propulsid who have their cases pending in the MDL is approximately 3538. The 75% required minimum enrollment of these cases is approximately 2653.

(d) Since the last status conference, the parties have met and conferred with the Special Master, Deutsche Bank, and the Claims Disbursing Agent to discuss the administration of the resolution program. The Special Master's office is projected to be open and operational on Wednesday, October 27, 2004. Further, Janssen has agreed to partially fund the Administrative Fund of the Settlement Program, at this time, to pay certain expenses such as compensation for the two (2) individuals hired to assist the Special Master and the disbursing agent, Danny Clavier. The defendants have agreed that the settlement funds will be administered as a Qualified Settlement Fund (QSF).

11. Global Application of Daubert

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

12. Stipulation and Pre-trial Order Providing for Use at Trial of Depositions in State or Federal Courts

The parties reported that they have exchanged comments regarding a Stipulation concerning the use of depositions in MDL matters. The parties advised that they are close to reaching an agreement on the Stipulation and should have it completed shortly.

13. Motion for Summary Judgment

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

14. Motion for Summary Judgment as to Doctor Defendant, Stephen A. Tramill, M.D. (Robert R. Boykin v. Johnson & Johnson, #03-2541)

Doctor Defendant Stephen A. Tramill, M.D., filed a Motion for Summary Judgment in the aforementioned case as to his liability. The parties submitted a proposed Order to the Court, which the Court shall grant. This item may be removed from the Agenda.

15. Pre-Trial Order listing MDL Plaintiffs

DLC filed a Motion to identify the list of individuals whose cases are pending in the MDL for purposes of the settlement program. The Court signed the Order on October 8, 2004. The Order and the attachment listing the individuals has been posted to the Court's website. This matter may be removed from the Agenda.

16. Michael L. King Suspension

The parties reported that on September 10, 2004, correspondence was received indicating that the Supreme Court of Ohio had suspended plaintiff counsel, Michael L. King, from the practice of law. King represents the plaintiffs in the *Emma McClain* matter (#01-2520). The parties were contact by the Court appointed receiver, who indicated he has contacted Mr. King's clients in the Propulsid litigation and advised them that they need to obtain new counsel. PLC has received several inquiries from claimants previously represented by Mr. King. In addition, State Liaison Committee member, Barry Hill, contacted the Office of Disciplinary Counsel in Ohio to offer his services to review Mr. King's files and interview his clients. The parties and the Court thanked Mr. Hill for assistance in this matter.

17. Opt Out Form for Johnnie L. Jones

This item may be removed from the Agenda.

18. Defendant Simon Cofrancesco, D.O.'s Motion for Summary Judgment;

Defendant Mary Thornton, C.N.P.'s Motion for Summary Judgment

The Court received the above Motions on September 20, 2004. The PLC and DLC advised that they have no position on these motions. Accordingly, the Court hereby GRANTS the Motion of Simon Cofrancesco for Summary Judgment and GRANTS the Motion of Mary Thornton for Summary Judgment.

19. *Milton Adams, et al v. Johnson & Johnson, et al* (No. 03-CV-3496)

This item may be removed from the Agenda.

20. Scheduling of Telephone Status Conference and Next Pretrial Status Conference

A telephone status conference shall beheld on Wednesday, November 3, 2004, at 2:30 p.m. The Court shall initiate the call. Members of the DLC and PLC who wish to participate shall provide contact telephone numbers to Monique Garsaud who will then forward the information to the Court.

The next pretrial status conference shall be held on Friday, November 19, 2004, at 9:00 a.m.