

MINUTE ENTRY
FALLON, J.
November 19, 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, Leonard Davis, Charles Zimmerman, James Dugan, Paul Tellarico, Jim Capritz, Stephen Murray, Julie Jacobs, Mary Williams, Jewel Welsch, and Dawn Barrios. In attendance for the Defendants were James Irwin, Charles Preuss, and Thomas Campion. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 35 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 November 12, 2004, they have received 3,096 PPF's, 880 are overdue, and 1470 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, no new settlement funds have been deposited into the Court's Registry.

7. Mediation

The parties advised that no additional mediations have occurred since the last status conference. This item can be removed from future reports.

8. Trial Schedule

The DLC reported that there have been no changes to the trial schedule since last month's status conference. DLC will continue to update PLC if and when the schedule is revised.

9. 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.

10. MDL Mediation and Resolution Program

The parties reported that the enrollment process has proceeded since the last status conference. The deadline for enrollment was October 29, 2004. Approximately 25,900 claim forms have been submitted. The DLC reported that they are currently in the process of reviewing the enrollment forms to confirm eligibility, absence of duplicative enrollments, and compliance with Term Sheet enrollment guidelines. The parties reported that to date, approximately 70% of the enrollment forms have been reviewed.

Accordingly to the DLC, the following numbers of plaintiffs and claimants have enrolled:

A. MDL Plaintiffs:

1. Wrongful death claims: 311 enrolled; 121 verified; required minimum enrollment of 242
2. Personal injury claims: 1473 enrolled; 1307 verified; required minimum enrollment of 2653

B. Claimants: 17,977 enrolled; 8,259 verified; required minimum enrollment of 12,000, including *Achord* claimants.

C. Uncategorized group: 3714 plaintiffs/claimants submitted enrollment forms without indicating in which category they should be placed. The parties are in the process of determining the proper category in which to place these enrollees. The parties believe that a number of these enrollees will be MDL plaintiffs with personal injury claims.

To facilitate the confirmation process, the DLC shall provide a list to the PLC of plaintiffs for whom they need identifying information on or before Wednesday, November 24, 2004. After receipt of the list, the PLC shall contact counsel for these individuals so that the missing information can be supplied to the DLC. The parties anticipate that the enrollment process will be completed by January 15, 2005.

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 open and operational. Further, Janssen has partially funded the Administrative Fund of the Settlement Program to pay certain expenses.

The parties submitted to the Court a Stipulated Order to appoint Danny Clavier as the disbursing agent. Additionally, the parties will be submitting a Motion and proposed Order so 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

On November 5, 2004, the parties filed Pretrial Order Number 19 concerning the use of depositions in MDL matters. This item can be removed from future reports.

13. Motion for Summary Judgment

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

14. Pro se Plaintiffs

The parties advised the Court that recently, several plaintiffs' counsel have filed motions withdrawing as counsel of record for the reasons that their client(s) cannot be located and/or have chosen to opt out of the Settlement Program. These plaintiffs now appear pro se. Additionally, the claimants previously represented by Michael L. King who have not retained new counsel have also become pro se plaintiffs. Defendants have updated their service list to reflect this change in representation.

The Court advised the parties that a schedule should be created and provided to these pro se plaintiffs so that those who desire to remain in the litigation may do so. Those pro se plaintiffs who do not follow the scheduling order or who cannot be located after every diligent effort has been made by the PLC to locate them will be dismissed from the case.

15. Next Pretrial Status Conference

The next pretrial status conference shall be held on Thursday, December 16, 2004, at 9:00 a.m.