

MINUTE ENTRY
FALLON, J.
December 10, 2001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

	:	MDL NO. 1355
IN RE: PROPULSID	:	
PRODUCTS LIABILITY LITIGATION	:	SECTION "L"
	:	
	:	JUDGE FALLON
.....	:	JUDGE AFRICK

THIS DOCUMENT RELATES TO ALL CASES:

A pretrial status conference was held November 30, 2001 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Arnold Levin, Richard Arsenault, Dawn Barrios, Charles Zimmerman, Ron Goldser, Barry Hill, Stephen Murray, James Dugan, Bob Wright, Lynn Swanson, Michael Gallant, Walter Dumas, Daniel Becnel, Jr., Russ Herman, and Leonard Davis. In attendance for Defendants were James Irwin, Thomas Campion, Charles Preuss, Kim Meaders, Virginia Trainor, Chris G'sell, Elizabeth Kowner, and Dan Oser. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 12 of Plaintiffs' and Defendants' Liaison Counsel. Diane Malouse served as Court Reporter.

1. Master Complaint/Answer

The Master Complaint was filed on October 5, 2001. Defendants filed a Master Answer on November 13, 2001.

2. Update to Rolling Document Production and Electronic Document Production

Plaintiff's Liaison Counsel ("PLC") advised the Court that most of the non-electronic production has been completed. Approximately four million pages of documents have been produced. Electronic database production is ongoing. PLC informed the Court that it expects to receive from the Defendants within two weeks two particular databases—one concerns safety and the other concerns sales. In response to this Court's inquiry, DLC informed the Court that the second database may take more time to be developed and it is being worked on by Kenneth Conour.

The Court ordered that if the sales database cannot be delivered within two weeks, then Mr. Conour must appear before the Court to explain why it could not be done.

3. State Liaison Counsel

Thomas Campion, co-counsel for Defendants, informed the Court that a discovery coordination agreement had been reached with Plaintiffs' counsel in both the MDL and various state court actions. Having reached such an agreement, the Defendants indicated that they would move to withdraw their motion for injunctive relief without prejudice to their right to reurge the motion should coordination prove fruitless.

4. Plaintiff Profile Forms and Authorizations

As of Monday, November 26, 2001, Defendants had received 1,185 Patient Profile Forms ("PPFs"), 103 are currently overdue, and 10 PPFs will become due within thirty (30) days.

Defendants WITHDREW their motions to dismiss the claims of Roy Vernon (No. 01-1297); Myra Gill as next friend to Alexa Gill, minor child, (No. 01-1298); Sandra McGowan (No. 01-1298); Vera Starkey (No. 01-1298); George Duet (No. 01-1296); and Rosemary Fredrick (No. 01-1739).

The Court GRANTED Defendants' motion to dismiss with prejudice the claim of Lillie

Chapman, individually and on behalf of the Estate of Carol Behre (No. 01-1303).

Regarding the Defendant's motion to dismiss the claim of Betty Manasco, individually and on behalf of the Estate of Rickey Manasco (No. 01-1300), the Court DEFERRED RULING on the motion until Friday, January 11, 2002 so as to afford Plaintiff's counsel an opportunity to appear and oppose the motion to dismiss.

Before the Court is the motion of Charles Long (No. 01-1826) for voluntary dismissal of his claim. Also before the Court is the motion of the Defendant's for dismissal with prejudice of the claim of Charles Long (No. 01-1826). The motion of Charles Long for voluntary dismissal is DENIED, and the motion of the Defendants for dismissal of the claim of Charles Long with prejudice is GRANTED.

5. Subpoena to FDA

PLC advised the Court that he has not received to his satisfaction all discovery from FDA. In particular, PLC mentioned that he has learned of a previously unknown FDA database which to date has not been produced. The Court advised PLC to bring this matter to the attention of the Court if there is not satisfaction within the next week.

6. 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.

7. Ongoing Studies

PLC informed the Court that BevGlen, in particular Mr. Callahan, has not yet issued a certification of complete production of discovery materials. If there is not satisfaction within the next week, PLC will bring the matter to the Court's attention for action.

8. Third Party Subpoena Duces Tecum Issued by PSC

The Court discussed with the parties the status of the production by third parties. PLC reported that he has received most of the certifications of completion. The Court urged the parties to cooperate to obtain this material promptly so that both parties would be prepared for the class certification hearing. If this is not done, the Court will revisit the third party production procedure.

9. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification

A scheduling order for motion and hearing on class certification has been approved by the Court and is adopted as this Court's Pretrial Order No. 15.

10. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On June 5, 2001, Defendants served their Request for Production of Documents Propounded to Plaintiffs—Set No. Two. Plaintiff advised the Court that it expects to file a reply to the request shortly.

On October 31, 2001, PLC informed DLC about an outstanding discovery request from defendants in a Tennessee state court action. DLC informed the Court that it will answer that discovery.

11. Scheduling of Depositions—Coordination with States

PLC informed the Court that it would be working with DLC and SLC on a coordinated deposition schedule. Regarding foreign discovery, PLC advised that he would be meeting with DLC to devise a joint order applicable to both MDL and state court litigants.

12. New Matters

The parties reported to the Court generally on the following new matters which did not require

resolution by the Court: status of databases; Price and Oliver depositions; Carr and Zipes depositions; Texas depositions; Chuen Yee deposition; Fernandez, Williams, Davis & Ferguson deposition; Morganroth deposition exhibits; posting of Verilaw deposition dates; master complaint medical information obtained from the defendants; and SDT issued to Shell.

13. Settlement Negotiations

Following the conference the Court met with the Settlement Committee's for both Plaintiffs and Defendants in chambers to discuss a framework for settlement discussions. The Committee members are to report to the Court regarding their progress on Wednesday, December 19, 2001.

14. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, January 11, 2002 at 9:00 a.m.