

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Defendants: Irwin Fritchie Urquhart
& Moore LLC
BY: JAMES B. IRWIN, ESQ.
and Monique M. Garsaud, ESQ.
400 Poydras Street
Suite 2700
New Orleans, Louisiana 70130
504-310-2100

Preuss Shanagher Zvoleff & Zimmer
BY: Charles F. Preuss
50 Fremont Street
20th Floor
San Francisco, CA 94105-2235
415-591-7500

Official Court Reporter: Pinkey Ferdinand, CCR
500 Poydras Street, Room B-406
New Orleans, Louisiana 70130
(504) 589-7789

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 PROCEEDINGS

2 (February 28, 2008)

3 THE COURT: Hello. This is Judge Fallon. Who do I
4 have on the line?5 MR. DAVIS: Good morning, Your Honor. This is Leonard
6 Davis for the plaintiffs.7 MR. LEVIN: Arnold Levin and Fred Longer for the
8 plaintiffs, Judge.9 MS. BARRIOS: Dawn Barrios for the State Liaison
10 Committee.11 THE COURT: For the plaintiffs? Who is for the
12 plaintiff -- who else for the plaintiffs?13 MR. ARSENAULT: Richard Arsenault. Good morning,
14 Judge.

15 THE COURT: Good morning.

16 MR. HILL: Barry Hill for the plaintiffs.

17 MS. WILLIAMS: Mary Williams for the plaintiff.

18 MR. LATHAM: Bob Latham for the plaintiffs.

19 MR. PREUSS: Chuck Preuss for the defendants.

20 THE COURT: Okay.

21 MR. IRWIN: And Jim Irwin for defendant.

22 THE COURT: Okay.

23 MS. GARSAUD: And Monique Garsaud too, Judge.

24 THE COURT: All right.

25 MS. WEST: And Kim West for the Blue Cross plans,

1 Judge.

2 THE COURT: Okay. This is our monthly status
3 conference. I generally have these in open court, but in the
4 last several months because of the status of the litigation for
5 the convenience of counsel, I've had these matters over the
6 phone. But I consider them still to be in open court, and that
7 the public, and of course the press, are invited to attend. I
8 understand that the press is monitoring the call.

9 The conference is a monthly status conference. I
10 received a proposed agenda from the parties. The first item on
11 the agenda is state liaison counsel. In this particular matter
12 we have not only had an MDL, but we've also had state claims,
13 claims filed in state court. To coordinate those claims I
14 appointed a liaison counsel. Dawn Barrios and Richard Arsenault
15 to be the liaison counsel on those claims.

16 The MDL claims have resolved and we're in the process
17 of going forward with the payout of claims. The State claims
18 now are in the process of resolution. With that, I'll hear from
19 the state liaison counsel.

20 MR. ARSENAULT: Judge, this is Richard Arsenault. The
21 issue that we're working on now is the resolution of the
22 Medicare liens, and that's in the works. There is dialogue that
23 has been ongoing between Dawn Barrios and defense counsel, and
24 Leonard Davis has been involved in that. And there will be some
25 additional communications, and hopefully we'll be able to have

1 it resolved in a fashion similar to the resolution that took
2 place in Propulsid I.

3 THE COURT: Anything further on that from anyone?

4 MR. DAVIS: Your Honor, this is Leonard Davis. Just
5 so the Court is aware, we have been monitoring and have been
6 involved. And as the Court and Mr. Juneau as Special Master is
7 aware, the Propulsid II, matter is discussed in our weekly
8 telephone calls, and we've had a number of discussions on that
9 program which is up and running.

10 THE COURT: Okay. For those attorneys who are in
11 Propulsid I, we've been referring to Propulsid I as being the
12 MDL of Propulsid. The discovery in the MDL was also made
13 available to the states. When the MDL Propulsid I was resolved,
14 I invited the states to look at the program to see whether or
15 not they would be interested in a similar program. They got
16 together on it and manifested an interest. They called it
17 Propulsid II and I've been trying to give them the forum of the
18 MDL to the extent it would be helpful to them.

19 So, while I have no permanent authority over the
20 Propulsid II, since I've been with this case for a while, I've
21 lent them whatever service the Court can give to them. So,
22 that's Propulsid II.

23 UNIDENTIFIED ATTORNEY: Oh, I'm losing my connection.

24 THE COURT: Hello?

25 MR. LEVIN: We can still hear you in Philadelphia,

1 Your Honor.

2 THE COURT: All right. Okay. The Trust Account is
3 the next item on the agenda.

4 MR. LEVIN: Your Honor, there have been no additional
5 deposits made into the trust account and there is nothing
6 further to report on that issue.

7 THE COURT: Anyone else on that issue?

8 The third item is the MDL Mediation and Resolution
9 Program.

10 MR. DAVIS: Your Honor, that matter is proceeding.
11 And, as the Court is aware, we continue to have our weekly
12 telephone conferences with Special Master Juneau. Those are
13 attended by all counsel. And during those conferences we get
14 our updates with respect to the progress through the settlement
15 program. We are continuing those discussions. The numbers that
16 are in the joint report lay out the present status and we
17 continue to discuss issues that come up. Most recently we have
18 had some discussions regarding -- as we just mentioned -- the
19 Propulsid II matter, but we've also had some additional
20 discussions that we're continuing to have and will be having
21 regarding pay-outs to claimants.

22 THE COURT: What basically is that? What are you
23 discussing in that regard?

24 MR. DAVIS: Your Honor, we're discussing the 50
25 percent pay-outs that have occurred thus far. As you know, the

1 settlement program enables a claimant to receive 50 percent of
2 an award, and the balance is held in the account until a
3 determination is made as to total pay-outs for all claimants.
4 And we are attempting to work with J&J to enable claimants who
5 have gone through the program and are entitled to recover
6 additional amounts so that the claimants faculty award could be
7 paid.

8 THE COURT: Anything from the defendant on that?

9 MR. PREUSS: No, Your Honor. We have a proposal to
10 them at their request. And the fact is, given the number of
11 complaints that we have so far that have been deemed eligible,
12 the issue raised isn't really a threat to having sufficient
13 funds when all the claims are paid. It would appear that that's
14 not the case, and so at least on an ongoing basis it may work
15 out fine to pay them in full rather than have them wait until
16 the end of the program to get their full compensation.

17 THE COURT: I think that that deserves both sides
18 looking at. See if that can be worked out. In programs of this
19 sort, I know that it's to the advantage of all sides, both the
20 plaintiffs and the defendants, to not get a total pay-out.
21 Because if you get a total pay-out immediately and there is an
22 insufficient number of funds -- amount of funds to pay
23 everybody, then you have to go back to those individuals and
24 take money from them. In order to avoid that, a partial payment
25 is made until you get to the point where you see whether or not

1 you're going to have a problem with the sufficiency of the
2 funds.

3 But, I think you-all ought to be there now and,
4 therefore, we ought to be able to pay these people who are
5 entitled to money and get them paid. Is there is some way of --
6 if there is some concern from the defendants in that manner,
7 maybe there is a way of handling that concern. But I do think
8 you ought to focus your attention on that.

9 MR. PREUSS: We definitely have, Your Honor. And
10 there is a proposal that's being evaluated by the plaintiffs
11 right now.

12 THE COURT: Okay, I appreciate that.

13 Lets see, the fourth is the Emergency Motion for
14 Distribution of Attorney Fees. What is that about?

15 MR. DAVIS: Your Honor, as you're aware, and as this
16 matter has come up previously, those matters have been deferred.
17 All parties have agreed to defer any issue regarding the
18 attorney fee to a later date.

19 THE COURT: All right. The next item is Supplemental
20 Agreement Regarding Propulsid I and II.

21 MR. DAVIS: Your Honor, that's on the agenda because
22 of Propulsid II which is in fact in effect. And quite frankly,
23 I think that matter can probably be removed from future agenda
24 items.

25 THE COURT: All right.

1 MR. DAVIS: The real issue was that is that it's
2 posted on the Court's website. And I think most people are
3 aware of that.

4 THE COURT: Okay. Richard, on Propulsid II, what's
5 the situation time-wise? How do you look at it? When can you
6 start receiving funds or --

7 MR. ARSENAULT: The first step is make sure that the
8 Medicare issue is resolved. And we don't anticipate a lot of
9 delay with that, given the fact that there was a process in
10 place for Propulsid I that hopefully that we can be the
11 beneficiary of and do some tweaking and put in place for
12 Propulsid II.

13 Probably by next week, Judge, we'll have an idea of
14 where we stand on that and can give you a more definitive
15 prognosis on when dollars can actually be released on Propulsid
16 II.

17 THE COURT: All right. Give me a call by next week.
18 If there is a problem with that I would like to see the
19 Propulsid II people from the standpoint of the Propulsid II and
20 the lienholders so we can talk about this. I don't want it to
21 be too long in resolving.

22 MR. ARSENAULT: Your Honor, I might add, just so that
23 the Court is aware of this, irrespective of the issue with the
24 liens, folks are still preparing their documentation in
25 submitting it into the Special Master. And that process is

1 going so that there is no delay in getting the claimants through
2 Propulsid II.

3 THE COURT: Okay. That's good. Okay. Anything else
4 from anybody on the phone? Any concern about anything? Go
5 ahead.

6 MR. HILL: This is Barry Hill. I have a -- to raise
7 about an individual case not to the litigation generally. There
8 is an award given in a case known as Phipps, and that's an
9 infant death case. That case also has an infant -- a half
10 sister who is a beneficiary.

11 THE COURT: All right.

12 MR. HILL: We have an agreement among the two parents
13 and a tentative agreement on a distribution to the half sister.
14 It's an Arkansas case. We recognize the need for a guardian ad
15 litem.

16 I went through the Arkansas trial lawyers to find
17 somebody in far Northern Arkansas. This is a very rural area
18 without a lot of lawyers up near the Missouri border. I found a
19 very well qualified fellow who is willing to do it. As a matter
20 of fact, he has gone forward. He has met with the grandparents
21 with whom the half sister beneficiary lives, and is prepared to
22 approve the proposed distribution on behalf of the infant. He
23 is prepared to arrange a bank account with a bank to accept the
24 money for the infant beneficiary under a court order regarding
25 release of funds not without a further court order. Everything

1 has -- and we've proposed, as has been the case in the past, to
2 have the distribution approved by you. The only hold-up on the
3 case is an actual appointment of this Attorney Pasting in
4 Arkansas, and I'm not sure what's happening. And I'm not sure
5 what's happened, but here is what I'm proposing. And that is
6 that the appointment be made by you. Attorney Pasting who is
7 the attorney in Arkansas has already signed and sent to me a
8 consent to jurisdiction wherein he consents to the jurisdiction
9 of the MDL court for all matters relating to this guardian ad
10 litem appointment now and in the future. And I want to see if
11 that's okay with everybody that we do it that way. If so, we
12 can get this case done in a matter of a week.

13 THE COURT: What's the defendant's position on it?

14 MR. PREUSS: Well, I think our only concern is whether
15 or not that is jurisdictionally -- whether the Arkansas court
16 would recognize that at some point when the minor becomes
17 majority. And that was the issue that we asked our local
18 counsel. And they seem to think that we need an Arkansas court
19 approval on that, but we're trying to work that out and find out
20 if in fact that's the case.

21 THE COURT: Yeah, lets look at it closely because I do
22 have jurisdiction over some of these matters, over this one
23 particularly if they consent. And I will sign off on it if I
24 have all those documents that Barry Hill said he has.

25 MR. HILL: If your concern was the jurisdictional

1 issue, Your Honor, I think that's going to be acceptable.

2 THE COURT: All right, lets get it done, Barry, and
3 send it over.

4 MR. HILL: We will do it today.

5 THE COURT: Okay.

6 MR. HILL: Thank you.

7 THE COURT: Anything else from anyone?

8 MR. DAVIS: No, Your Honor. I think we need to pick a
9 date for the next conference.

10 THE COURT: Let me give you another date for the next
11 conference. March 27th, 9 a.m.

12 UNIDENTIFIED ATTORNEY: What time, Judge?

13 THE COURT: 9:00 a.m. Any problem with doing it over
14 the phone?

15 UNIDENTIFIED ATTORNEY: No, Your Honor. We're okay
16 with that.

17 THE COURT: Okay, thank you very much.

18 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

19 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

20 UNIDENTIFIED ATTORNEY: Thank you.

21 THE COURT: Bye-bye.

22
23 (At which time the proceedings were concluded for
24 the day.)

25

CERTIFICATE

I, Pinkey Ferdinand, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

Pinkey Ferdinand,
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25