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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCTS * Docket MDL 1355-L
LIABILITY LITIGATION *
* January 25, 2006, 9:00 a.m.
*
* New Orleans, Louisiana
* * * * *

STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES :

For the Plaintiffs: Herman, Mathis, Casey,
Kitchens & Gerel
BY: RUSS M. HERMAN, ESQ.
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For the Defendants: Drinker, Biddle & Reath
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For the Defendants: Drinker, Biddle & Reath
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1 APPEARANCES (Continued):

2

Also Participating:

3

SPECIAL MASTER PATRICK JUNEAU

RICHARD J. ARSENAULT, ESQ.

4

DAWN M. BARRIOS, ESQ.

BARRY HILL, ESQ.

5

CARROLL INGRAM, ESQ.

ARNOLD LEVIN, ESQ.

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P R O C E E D I N G S

(JANUARY 25, 2006)

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3 THE DEPUTY CLERK: Everyone rise.

4 THE COURT: Be seated, please. Good morning.

5 THE DEPUTY CLERK: MDL 1355, In re: Propulsid.

6 THE COURT: Counsel make their appearance for record,
7 please.

8 MR. IRWIN: Good morning, Your Honor. Jim Irwin for the
9 defendants.

10 MR. HERMAN: Good morning, Judge Fallon. Russ Herman
11 for plaintiffs. There is a gentleman outside looking for
12 Division A, and I told him we would let him know where Division A
13 is. I don't recall.

14 THE COURT: We'll do that.

15 We are here today for our monthly status
16 conference. I have met with liaison counsel in advance of the
17 conference and discussed this upcoming conference with them.
18 They presented me with an agenda and we'll take them in order.
19 The state liaison counsel, please.

20 MR. ARSENAULT: Yes. Good morning, Your Honor.
21 Richard Arsenault. The Propulsid II program is moving along
22 well. The enrollment forms and the claim forms either are on
23 Your Honor's website or should be on there shortly. So that will
24 occur no later than the end of this week. The enrollment forms,
25 the cut off for that is June 17th.

1 We're in communication with over a hundred law firms now
2 that have potential enrollees. We have weekly calls with the
3 Special Master, and defense counsel and plaintiff counsel work
4 together to keep our fingers on the pulse of what's happening
5 with regard to Propulsid I and bringing the Special Master up to
6 date on the plans with regard to Propulsid II.

7 And we have informational packets that are going to be
8 going out shortly and several meetings that Ms. Barrios, with
9 Your Honor's permission, will bring to your attention at this
10 time.

11 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios
12 for the state liaison committee. I'm going to get together with
13 Mr. Davis, and one or both offices will send out informational
14 packages to the over a hundred law firms who have clients who are
15 potential enrollees for Propulsid II.

16 We have two informational meetings scheduled. We're
17 basing them on the informational meeting that Mr. Herman had on
18 Propulsid I. One will occur at the Propulsid litigation group
19 meeting at the mid winter convention for ATLA. The other will
20 occur in Jackson, Mississippi on February 23rd, where we'll make
21 the presentation to the attorneys who attend.

22 We've chosen Jackson because our database shows that
23 the majority of the attorneys come from Mississippi, so we're
24 trying to make it as convenient as possible for everyone.

25 THE COURT: Okay. If I can lend the assistance of the

1 Court in any way, keep me advised on it. If we want to have any
2 meetings in court here, I'll set them up. If we want to have any
3 representative group meet with the court, I'll meet with them.

4 MS. BARRIOS: Thank you, Your Honor.

5 THE COURT: As I understand it, the procedure is that I
6 sign an order moving those cases to me as stipulated by and
7 between counsel, and the Court will administer this program,
8 Propulsid II.

9 MR. LEVIN: Yes, Your Honor. I guess I speak for the
10 PSC as the chancellor of the exchequer. We also have a motion
11 and an order, now that they are in Federal court, to conform with
12 PTO 16 and for there to be a 6 percent assessment. There is no
13 money being paid. It's just being accumulated and that will all
14 be subject to a petition, and if anybody objects at that time,
15 they could then object.

16 THE COURT: All right. We'll agree with that.

17 Anything else? Barry, do you have something?

18 MR. HILL: Barry Hill for the state liaison. When we
19 have that seminar on the 23rd, it's going to be a half day. If
20 you could be available by phone from, say, 11:30 to 12:00 that
21 day, if something comes up, that we could be able to tell those
22 folks we can check with the judge at the end of the seminar and
23 we'll give you an answer before you leave.

24 THE COURT: Sure, I'll do that. Make sure that we're
25 all on the same page there and if you can set it up, or if you

1 want me to speak to everybody, I can do that, too, on the phone.

2 MR. HILL: Great. Thank you.

3 THE COURT: The next item is service list of attorneys.
4 Do we still need that?

5 MR. IRWIN: Thank you, Judge. We have one here. It was
6 our suggestion -- this is not changing now, to the best of our
7 information, and with permission of the Court and opposing
8 counsel, we would propose only to present changes to the lists as
9 they may develop, and I do have the most recent list here.

10 MR. HERMAN: We agree.

11 THE COURT: Okay. The third item is trust account.
12 Anything on the trust account?

13 Trial schedule. Anything on the trial schedule for
14 the fourth item? You have one case set for trial.

15 MR. CAMPION: Just one, Judge. That's all.

16 THE COURT: And the fifth item is mediation and
17 resolution program. Anything from the counsel or Special Master?

18 SPECIAL MASTER JUNEAU: Your Honor, Patrick Juneau, the
19 Special Master. Just a report to the Court, Your Honor. We
20 have, as previously indicated to the Court, worked out in
21 principal a global settlement matter with the government. We are
22 waiting on the government to provide us, the plaintiffs and
23 defendants, with the draft of the agreement.

24 We need to finalize that before we can actually start
25 making the awards in Tier I, Tier II, and Tier III cases. I

1 would anticipate during the day getting in touch with the
2 government and finding out the status.

3 THE COURT: Let's give the phone number to me after this
4 conference. We'll reach the person and I'll talk with them in
5 your presence.

6 SPECIAL MASTER JUNEAU: To me, Your Honor, it's simply a
7 paperwork matter at this time. As soon as we can expedite that,
8 we're pushing to get that done so we can proceed with our work.

9 Statistically, Your Honor, so that you would be aware,
10 we have 7,687 cases recorded and received in the Special Master's
11 office. We have 419 that fall in the Tier I category, and at
12 Tier II and III is 3,243. In the administrative category is
13 4,025.

14 There are many cases that are presently in the process
15 of being reviewed by the medical panels as we speak. There is
16 some set again this week. As you understand, one will see one,
17 and we'll have the other panel and get them on a different day.
18 Two of those have already cleared. I've looked at those cases.
19 We're trying to formalize the government things before we make
20 those awards.

21 Administrative claims paid to date is 1,274. It is
22 \$318,500. We have an additional 400 that are being submitted to
23 the defense for payment of approval, which should be a fairly
24 instantaneous thing. That would be an additional hundred
25 thousand dollars.

1 One other item, Your Honor. We are putting on a clerk
2 to administratively handle those claims. We've already contacted
3 with a temporary agency, and that will be effective starting
4 Monday. That will help us greatly because we can do a lot of
5 things in-house that they have to ship out now by using that
6 person, because the copying costs get very expensive. That's
7 going to happen Monday, so that's essentially where we are today.

8 THE COURT: Anything further from anyone on the
9 mediation and resolution program?

10 MR. HERMAN: Your Honor, I am going to meet with the
11 Special Master on behalf of the PSC to take a look and spot check
12 the number of the claims that have gone through so that I could
13 report to the PSC and the attorneys who may have an inquiry as to
14 the process that the physician panel has been following.

15 I hope to do that today. If we can't arrange to do it
16 today, I'll make a time with the Special Master, and it will
17 certainly be done within the next four or five days.

18 THE COURT: Okay. Next item is pro se plaintiffs.
19 Anything on that?

20 MR. HERMAN: Your Honor, we have exchanged, Mr. Irwin
21 and I, suggestions on a curator, and Mr. Irwin is going to
22 contact today some -- one or more Louisiana counsel who the Court
23 will be familiar with, who are licensed to practice and also
24 members of the Federal bar here, and Mr. Irwin and I will report
25 to you hopefully by tomorrow.

1 THE COURT: Okay. When we get the person, I would like
2 to meet with the individual together with each of you and we'll
3 officially appoint them, and we'll discuss their duties and the
4 range and scope of their duties.

5 MR. HERMAN: I think it would be helpful if it could be
6 done at a time when the Special Master is available also.

7 THE COURT: Sure. Right. Okay. The proposed order to
8 reflect dismissal of the tolling agreements. We have been having
9 tolling agreements in this matter.

10 MR. HERMAN: Your Honor, the PLC and defense counsel
11 have exchanged documents. The PLC has no objection to the draft
12 dismissal and order that Mr. Irwin will present to the Court.

13 THE COURT: Okay. When can you present that to me,
14 Mr. Irwin?

15 MR. IRWIN: Today, Your Honor.

16 THE COURT: Let's do it and I'll sign it today.

17 Motion for clarification of August 12th meeting.
18 What's that about?

19 MR. CAMPION: Your Honor, I believe that's the
20 application made by Mr. Ingram and it remains under discussion.

21 THE COURT: What's your feeling on that? How does it
22 look?

23 MR. CAMPION: All I can say is it remains under
24 discussion. We hope to be able to come to a resolution.

25 THE COURT: Try to be patient, everybody, on this and

1 see if we can use some patience to bring it home. I am aware,
2 Mr. Ingram, of the problem. I firmly believe that the attorneys
3 are understanding, and they are going to try to do whatever they
4 can on it, so I think you've got some people in your corner, so
5 to speak, and hopefully you can bring it to your satisfaction.

6 MR. HERMAN: Your Honor, on behalf of the PSC, I'll have
7 discussions with Mr. Campion on this matter before we meet
8 next -- next.

9 THE COURT: What about the ninth item, the proposed
10 order approving a wrongful death award?

11 MR. HERMAN: The plaintiffs and defendants have
12 exchanged documents on this. Mr. Hill's suggestions were
13 incorporated, and we have no objection to it, and Mr. Irwin will
14 submit that order and the affidavit in the motion.

15 THE COURT: Okay. Mr. Hill, how do you anticipate it
16 moving? What's the situation from here?

17 MR. HILL: I think the documents as drafted by the
18 defense look good. They have accomplished everything that we
19 were hoping to accomplish, and it seems to me that once the
20 issues are resolved, that are keeping the awards from actually
21 being made, that these could be tendered almost immediately to
22 the Court.

23 If we end up needing any type of a hearing, I doubt it.
24 I think the affidavit takes care of that. Those probably can be
25 scheduled with the monthly status conferences, but I don't think

1 we're going to have to do that.

2 THE COURT: All right.

3 MR. HERMAN: I would make this comment again,
4 Your Honor, at your direction and with the cooperation of both
5 sides, this is the type of document that can be replicated as a
6 template in other MDLs and other complex litigation. And I want
7 to compliment Mr. Hill and defense counsel and, on our side,
8 Mr. Davis and Mr. Levin for the time that they have put in in
9 reaching the perfection of these documents.

10 THE COURT: Now, with those documents, are they then
11 available for filing in state court? How does that tie in with
12 any state proceeding?

13 MR. CAMPION: If it is necessary under local law that
14 something be filed, sets of the papers that you would sign would,
15 in fact, be filed there.

16 THE COURT: Okay. The next item is the emergency
17 motion.

18 MR. HERMAN: Yes. We've asked Your Honor that
19 Mr. Becnel had requested a continuance from today, and we're
20 going to ask that that motion hearing be set at our, either at
21 the next status conference so that it can be handled at the same
22 time, and we will be submitting our opposition this week.

23 THE COURT: Our next status conference will be on
24 March 9th, and I'll set it at that time.

25 Anything from anybody that we haven't talked about?

1 Any new business? Any difficulties that you-all want to talk
2 about?

3 MR. CAMPION: Mr. Levin and I have been discussing the
4 resolution of the open class action issues. We have agreed upon
5 a set of papers. Mr. Arsenault will be presenting an order to
6 show cause to you shortly to be made returnable at the next MDL
7 hearing. It would give notice to those lawyers who represent
8 plaintiffs in punitive class actions that those claims should be
9 dismissed.

10 MR. LEVIN: That's correct.

11 THE COURT: Mr. Arsenault, give me a notice that I can
12 put on the website to also notify him, and then the hearing by
13 next time, we'll resolve that issue.

14 Anything else?

15 MR. HERMAN: May it please the Court, Your Honor, that
16 concludes the agenda for today.

17 THE COURT: Thank you very much. Court will stand in
18 recess.

19 THE DEPUTY CLERK: Everyone rise.

20 (END OF PROCEEDINGS)

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REPORTER 'S CERTIFICATE

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3 I, Cathy Pepper, Certified Realtime Reporter, Registered
4 Professional Reporter, Certified Court Reporter, Official Court
5 Reporter, United States District Court, Eastern District of
6 Louisiana, do hereby certify that the foregoing is a true and
7 correct transcript, to the best of my ability and understanding,
8 from the record of the proceedings in the above-entitled and
9 numbered matter.

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12 _____
13 Cathy Pepper, CCR, RPR, CRR
14 Official Court Reporter
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