

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCTS
LIABILITY LITIGATION

Docket No. MDL 1355
New Orleans, Louisiana
Thursday, March 1, 2007

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

(JANUARY 14, 2005)

(JANUARY MONTHLY STATUS CONFERENCE)

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5 THE COURT: Be seated, please. Good afternoon, ladies and
6 gentlemen. I understand we have some folks on the phone. Hopefully
7 you won't be cut off, it's been happening, so we'll deal with it if
8 it comes.

9 I received from parties the joint report agenda, and I'll
10 take them in the order. First, State Liaison Counsel/MDL Resolution
11 Program II.

12 MR. HERMAN: May it please the court, good afternoon, your
13 Honor, Judge Fallon, Russ Herman for the PSC. Mr. Irwin and I will
14 meet very shortly to discuss potential extensions of certain
15 deadlines in Propulsid II, and there are some issues in Propulsid II
16 that plaintiffs counsel are concerned with that we have briefed
17 under seal and the defendants have briefed under seal as related to
18 Propulsid I. And Mr. Irwin and I will, when Mr. Campion's
19 available, come to your Honor and ask for a date for that matter to
20 be argued to the court in the event it's not resolved before then.
21 That is also Item 7, relates to Item 7.

22 THE COURT: Okay. Anything from the defendant, who is
23 also present in the court represented by Mr. Irwin.

24 MR. IRWIN: Yes, your Honor, Jim Irwin for the defendants.
25 We are going to try to get back with Mr. Herman tomorrow and see if

1 we can then communicate with the court about these dates.

2 THE COURT: What about the Trust Account, anything to
3 report on that?

4 MR. HERMAN: I just received a trust account report in our
5 office. The trust accounts in excellent shape, all of the accounts.
6 The investment counselor and vehicle we mutually agreed on, I might
7 add, has done an excellent job. It's been appreciation in all
8 accounts.

9 THE COURT: Trial Schedule.

10 MR. IRWIN: Your Honor, the joint report describes how the
11 Gellner matter which had been set for trial, is now off the trial
12 calendar.

13 THE COURT: All right. And the fourth item is the MDL
14 Mediation Resolution Program, we have with us the Special Master.
15 Any report from the Special Master?

16 MR. JUNEAU: Your Honor, Patrick Juneau, Special Master.
17 I previously submitted to the court, and it's filed of record, is a
18 report to the court given some meticulous statistics about where we
19 are and the status of the case. But let me summarize these few
20 things. No. 1, there have been, according to our records, 4,370
21 Tier claims filed with our office. There are quite a large number
22 of those that still have deficiencies. All of the counsel involved
23 and the parties where the deficiencies have been noted have been so
24 notified. We have submitted and actually had medical determinations
25 on 184 of the Tier cases that have been submitted. Six of those

1 were declared eligible thus far.

2 In addition to that we have identified approximately 400
3 claims that we thought could be treated on an expedited basis based
4 on the information that we have. By expedited I mean it reduces the
5 briefing period we worked out to try to shorten the time periods
6 involved for a determination. We expect to receive within the next
7 45 days -- and I'm using the 45 days, your Honor, just to project
8 for you some forecast -- we should receive about 400 of those claims
9 back to us at that time. With the normal ordinary processing time
10 which we have followed, which has been according to schedule, we
11 anticipate to having eligibility determinations on those 400 claims
12 by April 30th, 2007.

13 So if you take what has already been decided in terms of
14 eligibility and add that to the claims we anticipate going the next
15 45 days, we would have over 600 claims where we would have
16 determinations made in those claims.

17 Aside from the Tier claims, we have received 8,677 medical
18 record reimbursement forms, and of that number 4,786 have been
19 processed and reviewed by the medical panel, and we disbursed those
20 in terms of the payments required under the term sheet. Or even on
21 some of those claims, deficiencies which have been noted on those
22 claims, and we have so notified the submitting parties. Where we
23 are, your Honor, is I have set the date of March 30 as the final
24 date for correcting any deficiencies and submitting required, under
25 the definition required medical reports.

1 I have determined that on those cases where there are no
2 medical submissions, complete deficiency of medical records, I am
3 proposing and will submit to your Honor under the terms of the term
4 sheet a motion to have those cases dismissed, and that will be a
5 motion of the Special Master. In advance of that I will be
6 circulating that listing so the parties will know exactly who we are
7 talking about in that regard.

8 THE COURT: We ought to do something on the web site, put
9 something on the web site and post it.

10 MR. JUNEAU: If I might add, your Honor, in addition to
11 the filing, putting it on the web site that we are talking about,
12 the report that I just mentioned to you contains these dates. But
13 as a precautionary measure, we have notified and are notifying the
14 attorneys of that cutoff date. So we are going to have kind of
15 cross-reference of the material. And the object is to expedite all
16 of these claims.

17 The bottom line of what in essence of what I'm saying at
18 this time, your Honor, is we are going to start seeing some rapid
19 development of the analysis of some of these claims, because as I
20 indicated previously, we've been able to work out with the
21 plaintiffs and defendants through their joint cooperation in certain
22 of these claims a reduced briefing period, which is to the
23 assistance of all parties to get it squeezed down so we can get
24 cases considered and actually submitted to the panels.

25 And finally, your Honor, we still have a full component of

1 panel members, they have been responsive and have been making
2 eligibility determinations within very short order. At the time we
3 were able to gather all of the information and submit it to them, so
4 the process now is beginning to see some real rapid development in
5 numbers.

6 THE COURT: Do you have any feel for split decisions, how
7 many of them are you getting split?

8 MR. JUNEAU: Yes, sir. I had those numbers, your Honor, I
9 don't want to give you an erroneous number.

10 THE COURT: And we all recall that if two people feel that
11 their claim is not appropriate then that ends it, if two people hold
12 the claim is appropriate that ends it. But if one holds each way,
13 then we pick another doctor and it's two to one, and that's the
14 issue.

15 MR. JUNEAU: Yes, sir. I apologize, your Honor, I don't
16 have that precise number.

17 THE COURT: That's all right.

18 MR. JUNEAU: But it is in the range, I'm fairly certain
19 it's going to be somewhere around 13, 14, something like that.

20 THE COURT: Percent, 13 or 14 percent?

21 MR. JUNEAU: Split decision, maybe a little higher than
22 that, but something in that neighborhood. So we do have -- and
23 maybe some of those that came from split decisions that resulted in
24 claims being declared eligible. But there is a bulk of some cases
25 out there that fall in the split decision that were declared not

1 eligible, and I think that's probably, that probably is in the 12 to
2 14 number.

3 THE COURT: But the large percentage has not been split?
4 I mean, if there's only 14 percent --

5 MR. JUNEAU: My recollection, your Honor, is that the
6 majority of the cases have resulted in a split decisions, even in
7 the eligible claim. So even in the eligible, of the six eligible --

8 THE COURT: No, I mean the whole --

9 MR. JUNEAU: No, sir, no, sir. The majority, the
10 overwhelming majority of those were unanimous decisions by far and
11 the declarations of non-eligibility. Thank you, your Honor.

12 THE COURT: Thanks.

13 MR. PREUSS: Your Honor, just to supplement the
14 statistics, I'm not sure of today's numbers, but very shortly were
15 88 percent were unanimous by the panel.

16 THE COURT: Okay. Anything further on that issue, the
17 fourth item on the agenda? Fifth item is Pro se Plaintiffs.

18 MR. HERMAN: Your Honor, both the State Liaison Counsel
19 and the Plaintiff Steering Committee have reviewed the pro se
20 plaintiffs to be dismissed. That list will be resent today to
21 Mr. Irwin's office.

22 THE COURT: Okay.

23 MR. IRWIN: And we will promptly get it to the court, your
24 Honor.

25 THE COURT: Okay. The next item is six, Emergency Motion

1 for Distribution of Attorney's Fees. I understand we have two
2 motions, one by Mr. Becnel and the other one by Mr. Dumas, and I
3 understand that these will be continued to another date?

4 MR. HERMAN: Yes. I do want to indicate for the record,
5 Mr. Dumas is in court or he was certainly here. Although I've had
6 an opportunity to meet several times with Mr. Becnel at his request
7 in order to resolve the matter, I have not had an opportunity,
8 Mr. Dumas has requested a one-on-one meeting and I am certainly
9 going to do in the that in the next two weeks and see if we can
10 resolve the Dumas matter. But they're both continued to be set at a
11 later date, and presumably on the same date.

12 THE COURT: Okay. New items on the agenda, Liaison
13 Counsel's Motion for Equitable Administration. Anything on that?

14 MR. HERMAN: Yes, it's under seal.

15 THE COURT: That's the seventh item that you mentioned
16 before was the same as No. 1, yes.

17 MR. HERMAN: Related to the No. 1 issue. It's under seal,
18 the defendants have briefed it, we are going to file a reply brief
19 under seal, and Mr. Irwin and I will suggest to the court a hearing
20 date at the court's schedule for that matter.

21 THE COURT: All right. I have finally Item No. 8 is
22 renewal of a motion or a motion for remand. It's a Patricia Barnes
23 v. Janssen Pharmaceutical, Inc.

24 MR. IRWIN: Your Honor, that one was a little new on our
25 radar screen. We are looking into it now.

1 THE COURT: All right.

2 MR. HERMAN: If it please the court, it's a request of
3 Ms. Barrios to follow-up with the determination of who the attorney
4 is and we will try to provide that information as quickly as we can
5 with whatever address and phone number, information there is so that
6 Ms. Barrios can contact that attorney and the PSC is willing to
7 assist in the event Ms. Barrios would like us also to talk to
8 whoever the attorney is.

9 THE COURT: All right. Anything else from anybody?
10 Anything from anyone on the phone?

11 MR. HILL: This is Barry Hill, nothing to add.

12 THE COURT: Who else was that?

13 MR. LEVIN: That was Levin with a no, sir, your Honor.

14 MR. LEVIN: No, sir.

15 MR. HERMAN: Your Honor, I do want to apologize to the
16 defendants for the inadvertent failure to file a motion which should
17 have been filed under seal, and I understand corrective measures
18 have been taken.

19 THE COURT: We have moved that under seal.

20 MR. HERMAN: And we do apologize for that.

21 THE COURT: Anything further?

22 MR. HERMAN: Okay, folks, thank you very much.

23 THE DEPUTY CLERK: Are you going to set another meeting?

24 THE COURT: While everybody is here, let's set another
25 meeting.

1 MR. IRWIN: April 13, Friday the 13th?

2 MR. LEVIN: April 12th is the next Reslin conference, can
3 we do it back to back?

4 THE COURT: That's the next Vioxx.

5 MR. LEVIN: I mean Vioxx.

6 THE COURT: Close enough.

7 THE DEPUTY CLERK: Judge, what about Thursday, April 19th?

8 THE COURT: What about Thursday the 19th? I have a trial
9 that's going to be going on during that Vioxx conference, so I'm
10 going to kind of be in and out of it.

11 MR. LEVIN: That's fine.

12 THE COURT: The 19th.

13 MR. HERMAN: Yes, your Honor, that's a good week before
14 Jazz Fest.

15 MR. IRWIN: Your Honor --

16 THE DEPUTY CLERK: 8:30 and 9:00?

17 MR. IRWIN: Excuse me, may we check with Mr. Champion?
18 It's okay with us here at this table, but we need to check with him.

19 MR. HERMAN: Be nine o'clock or if you're in trial.

20 THE COURT: No, let's do it at 8:30, do 8:30 in the
21 conference room for liaison and then nine o'clock here.

22 MR. HERMAN: Thank you, your Honor.

23 THE COURT: All right. Thank you very much. The court
24 will stand in recess.

25 THE DEPUTY CLERK: Everyone rise.

1 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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7 REPORTER'S CERTIFICATE

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9 I, Karen A. Ibos, CCR, Official Court Reporter, United States
10 District Court, Eastern District of Louisiana, do hereby certify
11 that the foregoing is a true and correct transcript, to the best of
12 my ability and understanding, from the record of the proceedings in
13 the above-entitled and numbered matter.

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16 _____
17 Karen A. Ibos, CCR, RPR, CRR
18 Official Court Reporter
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