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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID \* Docket MDL NO. 1355-L  
PRODUCTS LIABILITY LITIGATION \*  
\* April 19, 2007  
\*  
\* New Orleans, Louisiana  
\* \* \* \* \*

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

APPEARANCES:

Liaison Counsel for  
Plaintiffs:

Herman, Mathis, Casey,  
Kitchens & Gerel  
BY: RUSS M. HERMAN, ESQ.  
LEONARD A. DAVIS, ESQ.  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113

Hartley, O'Brien, Parsons,  
Thompson & Hill  
BY: BARRY HILL, ESQ.  
2001 Main Street, Suite 600  
Wheeling, West Virginia 26003

Capretz & Associates  
BY: JAMES CAPRETZ, ESQ.  
5000 Birch Street  
Suite 2500  
New Port Beach, California 92660

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APPEARANCES:

Barrios, Kingsdorf & Casteix  
BY: DAWN M. BARRIOS, ESQ.  
701 Poydras Street, Suite 3650  
New Orleans, Louisiana 70139

Ingram & Associates  
BY: CARROLL H. INGRAM, ESQ.  
P. O. Box 15039  
Hattiesburg, Mississippi 39404

For Defendants:

Irwin, Fritchie, Urquhart  
& Moore  
BY: JAMES B. IRWIN, ESQ.  
BY: MONIQUE GARSAUD, ESQ.  
400 Poydras Street, Suite 2700  
New Orleans, Louisiana 70130

Court-appointed Special  
Master:

Juneau Law Firm  
BY: PATRICK A. JUNEAU, ESQ.  
1018 Harding Street  
Suite 202  
Lafayette, Louisiana 70503

Official Court Reporter:

Jodi Simcox, RMR, FCRR  
500 Poydras Street, Room HB-406  
New Orleans, Louisiana 70130  
(504) 589-7780

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1 the program, but he wasn't interested in doing it.

2           **THE COURT:** All right. The defendants have filed an  
3 answer to the motion for remand, so I'll deal with that. I  
4 wanted to wait until we had this conference to see what  
5 position he was taking on it because we haven't had a chance to  
6 talk with him about the program.

7           **MR. HERMAN:** Your Honor, this is Russ Herman. I  
8 didn't add it in here because I've got to have PSC approval and  
9 I did not have enough participation in the conference call. I  
10 called, but our intention is to file a motion to set aside the  
11 state settlement program and to ask for a hearing in which  
12 testimony and evidence will be given.

13                   As a corollary motion, I'm going to ask that I  
14 be allowed to testify -- and if I have to resign as liaison  
15 counsel in order to give testimony, there will be a corollary  
16 motion -- but the issue revolves around language dealing with  
17 reversion of all the funds to J & J, if there are funds left.

18                   And I wanted to alert the court that those  
19 motions will be filed as soon as I have a PSC meeting.

20           **THE COURT:** All right. Well, that is an area that  
21 we're going to have to set and we'll deal with it by hearing,  
22 because that is an issue as to what was meant by those terms.  
23 If there's a position that they're vague and ambiguous, or not  
24 in conformity, not a meeting of the minds on it, then we'll  
25 have to deal with that as a factual issue, if it is a factual

1 issue.

2 So I'm going to have to pass on number I. What  
3 about the trust account? Anything on the trust account, item  
4 II?

5 **MR. HERMAN:** No, Your Honor.

6 **THE COURT:** And then number III, I understand there's  
7 no trial set. Number IV is MDL mediation resolution program.  
8 Anything from the special master on that one?

9 **MR. JUNEAU:** Judge, what I did, I electronically  
10 filed a status report. We sat down and spent a lot of time  
11 doing some projections based on what we know has taken place in  
12 the past to give people some idea of how long it would take to  
13 go through, you know, these panel reviews and so forth.

14 I sat down with staff, Danny Greer and myself,  
15 and that report reflects our best estimate. I will say that  
16 because of some of these claims may fall in the expedited  
17 category, that's the outside of what I see; and my intention is  
18 to squeeze down and keep moving to approve that duration of  
19 that time, which I'm pretty confident we can do that.

20 But at least I've tried to realistically  
21 project, as best we can, if you just did the full numbers, not  
22 knowing how many of these would come down necessarily as  
23 expedited claims.

24 But that's the report. I think I filed it  
25 yesterday or the day before and everybody should have that now.

1           **THE COURT:** Yes, I have it now. I'll attach it as  
2 part of the record, too.

3           **MR. JUNEAU:** That actually comports to what our  
4 status is today. I think all counsel have incorporated, and I  
5 think Lenny will verify this and verify the latest numbers that  
6 we have that have been submitted to the panel, but that's in  
7 the joint report.

8           **MR. DAVIS:** Pat, this is Lenny. I don't recall  
9 seeing the status report. I may have missed it.

10          **MR. JUNEAU:** It's on the electronic filing, according  
11 to the federal -- I'll be glad to fax it to you.

12          **MR. DAVIS:** I am. I just don't recall having seen  
13 it.

14          **MR. JUNEAU:** I'll fax you a copy just in the next few  
15 minutes.

16          **MR. DAVIS:** Thank you.

17          **MR. CAPRETZ:** Lenny, this is Capretz, and I haven't  
18 seen one either, Special Master Juneau.

19          **MR. JUNEAU:** Well, let me ask you: Are you on that  
20 electronic filing list of the Clerk?

21          **MR. CAPRETZ:** I'm not sure, to be honest.

22          **MR. JUNEAU:** It doesn't matter. I'll get you a copy.

23          **MR. CAPRETZ:** All right. Thank you.

24          **THE COURT:** I have it. Pat, don't you have some  
25 cases that have to be dismissed because nobody's filed --

1           **MR. JUNEAU:** Yes, and we're assembling that now. My  
2 intention is to get that list -- I'm going to simultaneously  
3 get that list to the plaintiffs and to the defense counsel so  
4 they can see what that list is.

5           And if by chance -- we want to make sure that  
6 the representation is correct. If it's an incorrect  
7 representation and we don't have any medical records on those  
8 from either side, I need to know about that.

9           And my intention is to proceed then with a  
10 motion to the court to have those cases dismissed. We are  
11 assembling that list as we speak. We've already gotten a good  
12 bit of it done already.

13           **MR. HERMAN:** Pat, is that list by claimant and  
14 attorney, or only by claimant?

15           **MR. JUNEAU:** I think we can do it both ways.

16           **MR. HERMAN:** If you could do it by claimant and  
17 attorney. I think that we have to notify those attorneys, and  
18 the easiest way to do that is if we've got a list.

19           **MR. JUNEAU:** I'll give it to you like that rough.

20           **MR. HERMAN:** That's great. Thank you.

21           **THE COURT:** Okay. Anything?

22           **MR. JUNEAU:** It's in the database like that.

23           **MR. HERMAN:** I appreciate it.

24           **THE COURT:** Anything else from anybody on the  
25 mediation resolution program? All right. The next item is pro

1 se plaintiffs, item number V.

2 MR. HERMAN: Nothing more additional on that, Your  
3 Honor.

4 THE COURT: All right. Number VI?

5 THE OPERATOR: Excuse me, Judge. This is the  
6 operator. I wanted to inform you that we do have five  
7 participants that have called in for 9:00 conference and it's  
8 one after 9:00. How would you like to proceed?

9 THE COURT: Can they join this call?

10 THE OPERATOR: Certainly. Do you want to know their  
11 names or --

12 THE COURT: Sure. Okay.

13 THE OPERATOR: This will be Barry Hill, John Hinkle,  
14 Monique Garsaud, Phillip Schrader and Carroll Ingram.

15 THE COURT: Okay.

16 THE OPERATOR: Okay. I'll place them in and then  
17 will let you know, okay?

18 THE COURT: Yes. Okay.

19 THE OPERATOR: Thank you.

20 THE COURT: Is everybody else on?

21 MR. HERMAN: Yes, sir.

22 MR. IRWIN: Yes, sir.

23 THE COURT: Hold on, okay?

24 THE OPERATOR: Yes, Judge, all the others have joined  
25 you now.

1           **THE COURT:** Okay. Fine. Just to bring everybody up  
2 to speed, we're starting to talk about the conference. The  
3 state liaison and MDL resolution program was the first item on  
4 the agenda.

5           Ms. Barrios gave us a report about a motion to  
6 remand, and the attorney wants to go forward with the motion to  
7 remand. I have the response for the defendant, and I will be  
8 ruling on that shortly.

9           The liaison counsel indicates that the  
10 resolution program II is not consistent with his agreement or  
11 understanding of the program. The defendants take the opposite  
12 position. It may be necessary to have some hearing on it with  
13 the potential of taking testimony. I'll reserve ruling on all  
14 of that until I get motions before me.

15           There was no action on the trust account. The  
16 trials are scheduled. The mediation program is underway and  
17 the special master has presented a report, which has been filed  
18 into the record. He anticipates shortly filing a list of  
19 claimants by both claimant's name, as well as attorney, who are  
20 delinquent in filling out the necessary forms and he will,  
21 according to the program, seek the dismissal of those claims.

22           We're on pro se plaintiffs. There's no action  
23 on that and the emergency motion for distribution of attorney's  
24 fees was the next item, which is number VI.

25           **MR. HERMAN:** Your Honor, this is Russ Herman. I'm

1 pleased to report that I met Saturday in my office with Walter  
2 Dumas, who brought a number of materials to me. I should have  
3 the remainder of his materials, and I believe that I am going  
4 to be able to resolve his issues without a hearing and make a  
5 recommendation to the court at our next status conference.

6 **THE COURT:** All right.

7 **MR. HERMAN:** I have also been in contact with  
8 Mr. Becnel and requested that he meet with me as soon as his  
9 calendar permits in an attempt to try and resolve that matter.

10 **THE COURT:** All right. The next item was liaison  
11 counsel's motion for equitable administration of the settlement  
12 agreement. Is that number VII? Did we talk about that  
13 earlier?

14 **MR. HERMAN:** No, Your Honor, this is a different  
15 issue. This issue has to do with any potential modification of  
16 the process in which cases are approved or denied by the  
17 medical panel. We've been discussing that, but there's been no  
18 resolution, mutually, of that issue.

19 And I understand that Buckie Zimmerman was in  
20 contact with either Chuck or Tom since the last status  
21 conference. We have set up a conference call with Buckie this  
22 afternoon in order to find out what exactly information they've  
23 exchanged.

24 But because of the effect of Propulsid II on  
25 Propulsid I, and I don't know that we can make any headway on

1 this issue until the other issue is resolved. I hope that we  
2 can, but I don't know that we can.

3           **THE COURT:** Well, there may be some relationship, and  
4 I haven't reviewed this in exquisite detail, and I really  
5 haven't given counsel an opportunity to explore it with me or  
6 discuss it with me, but as I always understood, number one, is  
7 that before anything was done with the money, whether it was  
8 given to charity or given to whoever, two, three, four, that I  
9 had to look at it first to see whether there was anything that  
10 I had to weigh in on.

11           So I haven't really -- I don't want my silence  
12 to be interpreted or misinterpreted by anybody. I have to look  
13 at the program and look at what the whole situation is before  
14 anything is done with the funds, at least that's my  
15 understanding of the program initially. But as I said, I don't  
16 write that in stone, but that was something that I had always  
17 looked at.

18           So I don't know whether the issue in II is moot  
19 or not moot, because I hadn't really focused on whether or not  
20 there is any remaining funds. So I have to look at that.

21           The next item on the agenda is *Patricia Barnes*  
22 *versus Janssen Pharmaceutical*, and we talked about that  
23 earlier, didn't we Dawn? Is that the issue?

24           **MR. HERMAN:** I do want to say that to the extent that  
25 the special master has been able to, he has attempted, without

1 voicing any opinion on resolution of the outstanding issue, to  
2 get the defense team and the plaintiff team together in some  
3 way to resolve the outstanding issue, and I want to thank the  
4 special master for his efforts.

5 **THE COURT:** Okay.

6 **MR. JUNEAU:** What you're saying is we're not through  
7 yet?

8 **MR. HERMAN:** That's right.

9 **THE COURT:** Yes, that's the way I see it. This whole  
10 program has to run and then I have to weigh in on the  
11 situation; and then if there is anything left, we'll deal with  
12 that. I don't know. It's hard to say at this point. It looks  
13 like there will be money left, but who knows.

14 We've got a number of cases that are still in  
15 the mill, and there's split decisions that are still in the  
16 mill, and I don't see this as any *fait accompli* at this time.  
17 But those issues may not be before me at this point.

18 Last item was the remand. Is that what we  
19 talked about earlier?

20 **MS. BARRIOS:** Yes, sir.

21 **THE COURT:** Okay. Any new issues that we have to  
22 talk about? Okay, folks. Let's see. Do we need another  
23 conference? Do you want me to set one for May 24th?

24 **MR. JUNEAU:** That's fine.

25 **MR. HERMAN:** That's fine, Your Honor.

1           **MR. IRWIN:** Your Honor, was that May 24th that you  
2 said?

3           **THE COURT:** Yes.

4           **MR. HERMAN:** What time, Judge?

5           **THE COURT:** 9:00 is fine.

6           **MR. HERMAN:** Will this also be by telephone  
7 conference?

8           **THE COURT:** I'm okay with that unless you-all want to  
9 come in. I'm okay with either way. Why don't you let liaison  
10 counsel kick it around and let me know. I can do it on the  
11 phone.

12           **MR. JUNEAU:** Judge, this is Pat Juneau. What I would  
13 suggest, Judge, knowing what we got cooking out there, I would  
14 suggest we set it as a telephone conference. And I'm going to  
15 be in touch with everybody --

16           **THE COURT:** Okay.

17           **MR. JUNEAU:** -- and if we find it should be converted  
18 to "in person", if it's all right with you, I'll contact your  
19 office or Amelie and set that up accordingly.

20           **THE COURT:** Okay. I like that, Pat. Let's do it  
21 that way. We'll set it as a telephone conference and we'll get  
22 everybody the numbers.

23           **MR. JUNEAU:** Thank you, Judge.

24           **THE COURT:** Thank you very much.

25           **MR. HERMAN:** Thank you.

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**MR. IRWIN:** Thank you, Your Honor.  
**(WHEREUPON, the Court was adjourned.)**

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**CERTIFICATE**

I, Jodi Simcox, RMR, FCRR, Official Court Reporter for the 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.

          /s/ Jodi Simcox, RMR, FCRR            
Jodi Simcox, RMR, FCRR  
Official Court Reporter