

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>IN RE:</b>	<b>PROPULSID</b>	<b>:</b>	<b>MDL NO. 1355</b>
	<b>PRODUCTS LIABILITY LITIGATION</b>	<b>:</b>	
		<b>:</b>	
		<b>:</b>	<b>SECTION: L</b>
		<b>:</b>	
<b>THIS DOCUMENT RELATES TO ALL CASES</b>		<b>:</b>	<b>JUDGE FALLON</b>
		<b>:</b>	<b>MAG. WELLS ROBY</b>

.....

**JOINT REPORT NO. 72 OF PLAINTIFFS'  
AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Joint Report No. 72 in preparation of the March 12, 2009 Monthly Status Conference. To participate via telephone, dial-in information may be accessed on the Court's website at <http://propulsid.laed.uscourts.gov/>.

**I. State Liaison Counsel/MDL Resolution Program II**

The enrollment requirements have been met for the State Settlement Program (Propulsid II). Escrow Agreements have been executed and Defendants have funded the various funds. The claims, medical records and claimant memoranda deadlines have passed. Administrative claims are being processed and disbursements have begun. The Special Master's Office has begun clearing claims for defense briefing, and the defendants have begun submitting defense memoranda. One hundred sixteen (116) claims have been submitted to the Medical Panel for

review, of which defendants have treated 113 on an expedited basis. The parties will be prepared to discuss this further at the March 12, 2009 Monthly Status Conference.

## **II. MDL Mediation and Resolution Program**

The deadline for enrollment and the submission of Claim Forms for the First MDL Resolution Program has expired.

The Special Master's office continues to review Claims Forms to determine if the Forms meet the qualifying criteria for submission to the Medical Panel set forth in the Term Sheet. The Special Master's office advises that it will be submitting a Status Report to the Court in advance of the monthly status conference. The Special Master continues to notify the attorneys for the claimants that have deficiencies. Thus far, in Propulsid I, the Special Master has submitted 2,711 Tier I, II and III claims to the Medical Panel for review. Of the 2,711 claims the Defendants have treated 2,332 on an expedited basis. Twenty-three (23) of the tiered claims submitted to the Panel have been found eligible by the Panel, and the Special Master has made those awards. One hundred seventy-four (174) tiered claims are still in review by the Panel, 145 of which are considered expedited by the Defendants. The Special Master will report to the Court regarding the current status of claim administration.

On April 29, 2008 the Court entered an Order regarding the waiver of the 6% MDL assessment fee as to those claimants found eligible by the Medical Panel. As for those claimants who have already received awards as of April 14, 2008 and whose awards were subject to the 6% assessment, the Clerk of the Court remitted a check to the Special Master to reimburse those claimants for such assessment and further, the balance of the awards, the holdback 50% of the award, was paid out from the Settlement Fund to each claimant that was found eligible for an

award, and who had previously received 50% of their award. As to all awards made after April 14, 2008, the 50% holdback remains in place.

Defendants continue to submit a list of plaintiffs/claimants whose records have already been obtained by defendants in whole or in part, so when necessary, the parties, the Special Master and the attorneys for these plaintiffs/claimants can expedite the submission and review of the Claim Forms for these individuals.

The parties have agreed on a select number of cases that will be subject to a second review, 9 of which have been deemed eligible for awards.

The weekly telephone conference with the Special Master, PLC, DLC and SLC continues to take place to discuss a number of administrative issues germane to the Resolution Program.

The parties will be prepared to discuss these issues further at the March 12, 2009 Monthly Status Conference.

### **III. Attorney's Fees Issues**

On November 23, 2005, the Court issued an Order and Reasons regarding the Emergency Motion for Distribution of Attorney's Fees with full reservation of rights to all attorneys who may claim any right to common fees and expense reimbursement. On December 5, 2005, Daniel E. Becnel filed a Motion to Reconsider the Motion. The matter was set for hearing on September 24, 2008 at 9:00 a.m., but has been continued.

On March 2, 2006 Dumas & Associates Law Corporation filed a Motion for Common Benefit Fees and Expenses Reimbursements. On April 4, 2006, the PLC filed a response to the motion. The hearing date has not been set.

On August 5, 2008, Robert J. Caluda and A.J. Rebennack filed a Motion for Leave to File Motion for Reimbursement of Costs for Common Benefit to the Class and Committee. The PSC

filed an opposition to the motion on October 6, 2008. The matter was set for hearing on November 5, 2008 and a resolution was reached.

**IV. Plaintiff's Counsels' Request to Receive 100% of Award**

Plaintiffs' Liaison Counsel and Defendants have agreed to a permanent modification of the 50% holdback provision of the Term Sheet in Propulsid I. The law firms of Herman, Gerel, LLP and Levin, Fishbein, Sedran & Berman have agreed to guarantee the funds necessary to allow 100% payments to all eligible claims (excluding the prior 12 that have been paid in full) in the event the total sums awarded to those eligible claimants exceed the total balance available in the Settlement Fund. Payments of the 50% holdback have been made to 6 claimants since the last status conference and the Special Master will continue to make payments of 100% of awards to eligible claimants pursuant to the parties modification as stated above. The parties will be prepared to discuss this further at the March 12, 2009 Monthly Status Conference.

**V. Medical Records From Medical Records Providers**

On December 4, 2008, the Court issued an Order requiring certain medical providers who have failed to comply with or even respond to legal requests made by Propulsid claimants for the production of their medical records to appear in Court on December 22, 2008 to show cause why they should not be held in contempt of court and why they should not also be fined \$1,000 per day for every day thereafter until such records are produced. The Order provided that the medical records providers can satisfy the records request by submitting the information to Special Master Patrick Juneau in the Special Master's Office, 400 Poydras Street, Suite 2820, New Orleans, Louisiana 70130-6901, prior to Thursday, December 18, 2008, so that they will no longer be subject to the Order and no required to appear in Court. The parties will be prepared to discuss this further at the monthly status conference on March 12, 2009.

**VI. Destruction and/or Retrieval of Medical Records**

On March 5, 2009, the Special Master, filed a Motion Seeking Authorization for Destruction of Medical Records Pertaining to Propulsid I which seeks to establish a process for the destruction and/or the retrieval of medical records that the Special Master has collected for the claims in the Settlement Programs. On March 6, 2009, the Court issued an Order requiring that any claimant, whose claim has had a determination on eligibility for payment under the terms and provisions of the Resolution Program I, who objects to his/her medical records in the possession of the Special Master being destroyed, must file a written objection with the Court no later than Wednesday, April 15, 2009, and show cause on Wednesday, April 22, 2009, at 9:00 a.m. why such records should not be destroyed. Anyone who has had a determination of eligibility and not filing a timely objection shall have their records destroyed at the direction of the Special Master. The parties will be prepared to discuss this further at the monthly status conference on March 12, 2009.

Respectfully submitted,

**/s/ Monique M. Garsaud**

**JAMES B. IRWIN, T.A. (La. Bar No. 7172)**  
**QUENTIN F. URQUHART, JR. (La. Bar No. 14475)**  
**KIM E. MOORE (La. Bar No. 18653)**  
**MONIQUE M. GARSAUD (La. Bar. No. 25393)**  
**IRWIN FRITCHIE URQUHART & MOORE, LLC**  
400 Poydras Street, Suite 2700  
New Orleans, Louisiana 70130  
Phone: (504) 310-2100  
Fax: (504) 310-2101  
**LIAISON COUNSEL FOR Defendants,**  
**JANSSEN, L.P. AND JOHNSON & JOHNSON**

DRINKER BIDDLE & REATH LLP  
THOMAS F. CAMPION  
SUSAN M. SHARKO  
500 Campus Drive  
Florham Park, NJ 07932-1047  
Phone: (973) 549-7300  
Fax: (973) 360-9831

**-and-**

DRINKER BIDDLE & REATH, LLP  
CHARLES F. PREUSS  
50 Fremont Street, 20<sup>th</sup> Floor  
San Francisco, CA 94105-2235  
Phone: (415) 591-7500  
Fax: (415) 591-7510  
**CO-LEAD COUNSEL FOR Defendants,  
JANSSEN, L.P. AND  
JOHNSON & JOHNSON**

/s/ Leonard A. Davis  
**RUSS M. HERMAN, T.A. (La. Bar #6819)**  
LEONARD A. DAVIS, #14190  
JAMES C. KLICK, #7451  
HERMAN, MATHIS, CASEY, KITCHENS & GEREL, LLP  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113  
Phone: (504) 581-4892; Fax: (504) 561-6024  
**LIAISON COUNSEL FOR PLAINTIFFS**

DANIEL BECNEL, JR.  
106 W. Seventh Street  
Reserve, LA 70084-0508  
Phone: (504) 536-1186  
Fax: (504) 536-6445

JAMES DUGAN  
650 Poydras Street  
Suite 2150  
New Orleans, LA 70130  
Phone: (504) 648-0180  
Fax: (504) 648-0181

ARNOLD LEVIN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106-3875  
Phone: (215) 592-1500  
Fax: (215) 592-4663

STEPHEN B. MURRAY  
909 Poydras Street, Suite 2550  
New Orleans, LA 70112  
Phone: (504) 525-8100  
Fax: (504) 584-5249

J. MICHAEL PAPANTONIO  
316 S. Baylen Street, Suite 600  
P.O. Box 12308  
Pensacola, FL 32581  
Phone: (850) 435-7000  
Fax: (850) 435-7020

CHRISTOPHER A. SEEGER  
One William Street  
New York, NY 10004  
Phone: (212) 584-0700  
Fax: (212) 584-0799

BOB F. WRIGHT  
556 Jefferson Street, Suite 500  
Lafayette, LA 70502-3668  
Phone: (337) 233-3033  
Fax: (337) 232-8213

CHARLES S. ZIMMERMAN  
651 Nicollet Mall  
Suite 501  
Minneapolis, MN 55402  
Phone: (612) 341-0400  
Fax: (612) 341-0844

**PLAINTIFFS' STEERING COMMITTEE**

### **CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Joint Report No. 72 of Plaintiffs' and Defendants' Liaison Counsel has been served upon all parties by electronically uploading the same to LexisNexis File & Serve, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing on this 11th day of March, 2009.

**/s/ Leonard A. Davis**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID : MDL NO. 1335  
PRODUCTS LIABILITY LITIGATION : SECTION: L  
 : JUDGE FALLON  
 : MAG. WELLS ROBY  
THIS DOCUMENT RELATES TO :  
ALL CASES :  
.....

Monthly Status Conference  
March 12, 2009 – 3:30 p.m.

AGENDA

Current Matters:

1. State Liaison Counsel
2. MDL Mediation & Resolution Program
3. Attorney's Fees Issues
4. Plaintiff's Counsels' Request to Receive 100% of Award
5. Medical Records From Medical Records Providers
6. Destruction and/or Retrieval of Medical Records