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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE  
CLERK

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

**IN RE: PROPULSID : MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION :**  
:  
:  
**SECTION: L**  
:  
**THIS DOCUMENT RELATES TO ALL CASES : JUDGE FALLON**  
**MAG. WELLS ROBY**  
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**JOINT REPORT NO. 43 OF  
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Joint Report No. 43.

**I. State Liaison Counsel (Minute Entry, November 16, 2000)**

The State Liaison Committee continues to communicate with the DLC and PLC regarding the status of the remaining state court cases. On October 7, 2005 Defendants supplied the SLC with an updated list of potential plaintiffs and claimants who may qualify for a potential second settlement program. Representatives of the Defendants, the PSC and the State Liaison Committee have scheduled a meeting in Houston prior to the next status conference to discuss confection of the Second Settlement Program. The parties will report to the Court regarding these efforts at the October 18, 2005 Monthly Status Conference.

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Process \_\_\_\_\_  
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CtRmDep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

**II. Service List of Attorneys**

The parties will present the Court with the most current Master List of all Counsel and pro se plaintiffs, which will contain, where available, e-mail addresses.

**III. Trust Account**

Since the last status conference, there has been no activity with respect to the Trust Account.

**IV. Trial Schedule**

On August 10, 2005 Defendants provided PLC with an updated trial list. The matter of *Marion T. Bucaria for the Estate of Thomas Bucaria v. Johnson & Johnson Co., et al*, #04-1277, remains on this Court's trial docket for February 6, 2006. The Court has set a schedule for pretrial activities and discovery has been proceeding in this case. The parties participated in a status conference with the Court on October 13, 2005 and discussed upcoming deadlines and other pre-trial issues.

**V. Pharmacy Indemnity Agreements**

There have been no pharmacy indemnity agreements executed by defendants since the last Status Conference. DLC will continue to furnish copies of all MDL pharmacy indemnity agreements if and when they are executed.

**VI. MDL Mediation and Resolution Program**

On October 10, 2005, there was a deadline for submitting Claim Forms to the Special Master for those plaintiffs/claimants who comprised the minimum enrollment levels for death, personal injury and tolling claims necessary to implement the MDL Settlement Program. For the past several months leading up to this deadline the Special Master's office has been receiving Claim Forms which have been reviewed by the Special Master's Office to determine if

the Forms meet the qualifying criteria set forth in the Term Sheet. The Special Master has been communicating consistently with claimants' attorneys to address the submissions and to identify any deficiencies. These communications have necessarily been hindered by the displacement of some Louisiana and Texas counsel and claimants in this process as a result of the effects of Katrina and Rita. The Special Master has identified a number of Claim Forms for which there are no deficiencies or the deficiencies have been remedied. As to these Claim Forms, once the Defendants receive notice from the Special Master, Defendants will exercise their right under the Term Sheet to collect outstanding medical records and submit memoranda within 60 days of notice to the Special Master. After this process is complete, in turn, the Special Master will submit the claims to the Medical Panel for review. Because the content of the medical records ultimately determines whether a claimant is eligible for an award under Exhibit A of the Term Sheet, the parties need to continue their efforts to collect the medical records and submit them timely to the Special Master.

In addition, Defendants have anticipated the receipt of certain specific Claim Forms. These were based upon knowledge of those cases which were being actively pursued through discovery or mediation prior to the implementation of the MDL Settlement Program. As a result, defendants have provided the Special Master and PSC with the names of 10 plaintiffs/claimants on which Claim Forms have been submitted and on which defendants can begin immediately submitting memos for consideration by the Medical Panel in its eligibility determinations for awards as soon as the Special Master's Office has resolved any remaining deficiencies in those 10 Claim Forms. Defendants have also prepared a second list for the Special Master and PSC by law firm representation of those plaintiffs/claimants whose records have already been obtained by defendants in whole or in part, so that the PSC, the Special Master and the attorneys for these

plaintiffs/claimants can prioritize the submission and review of the Claim Forms for these individuals, which will in turn enable defendants to speed up their preparation of the eligibility memos because of defendants' prior knowledge of the medical records in these cases. Almost all of the cases on this list are Tier I wrongful death claims. These two steps should reduce the time frame to fully process these Claim Forms for submission to the Medical Panel for its eligibility determinations, so that the first of the plaintiffs/claimants, most of whom are Tier I plaintiffs/claimants, can begin to receive their monetary awards.

The PLC and defendants continue to discuss a number of administrative issues germane to the Resolution Program. The weekly telephone conference with the Special Master, PLC and DLC continues to take place. The Special Master notifies the parties on a weekly basis of claimants whose claim forms have been submitted. The Special Master continues to review claim forms and medical records that are submitted and advises claimants' attorneys of any deficiencies and the status of such claims and the progress of processing such claims for payment. The Special Master will notify the parties of commencement of the sixty (60) day period identified in Section 13(A) and (B) of the Term Sheet for submission of the memoranda or one (1) page summary.

The parties will be prepared to discuss these issues further at the October 18, 2005 Monthly Status Conference.

## **VII. Motions**

Defendants have filed Motions for Summary Judgment in the matters of *James T. Crum v. Johnson & Johnson, et al*, #02-2447; *Margaret O. Henderson v. Johnson & Johnson, et al*, #02-2448; and *Janet Salyard v Johnson & Johnson, et al*, #02-2448. Plaintiffs filed Motions to Remand in the same cases. The parties have agreed to withdraw all motions without prejudice.

**VIII. Pro se Plaintiffs**

On September 26, 2005, Defendants provided the PLC with a revised proposed Motion and Order setting forth procedures for notice to pro se plaintiffs and suggestions for how their cases should be managed from this point forward. The parties continue to discuss this Motion and Order. The parties will be prepared to discuss this at the October 18, 2005 Monthly Status Conference.

**IX. Verilaw/Lexis Propulsid Litigation Migration**

There have been no further difficulties with Lexis-Nexis File and Serve since last month's status conference.

**X. Preservation of Electronic Data**

Defendants provide to PLC a Motion setting forth modification of the preservation procedures that previously have been implemented by J&J. The proposed Motion was circulated to Plaintiffs' counsel for comments. The parties will be prepared to discuss this at the October 18, 2005 Monthly Status Conference.

**XI. Proposed Order to Reflect Dismissal of Certain Tolling Agreement Claimants**

The parties are discussing an appropriate dismissal order to submit to the Court for the Court's consideration. Tolling agreement claimants who are not awarded compensation and those persons whose claims are covered by Medical Records Reimbursements will be the subject of the dismissal order.

**NEW ITEMS**

**XII. Report of Special Master**

On September 28, 2005, Special Master Patrick A. Juneau submitted his report on the current status of the Propulsid Litigation to this Honorable Court.

**XIII. Motion for Clarification of August 12, 2005 Minute Entry**

On September 15, 2005, Ingram & Associates, PLLC filed a Combined Motion for Clarification of August 12, 2005 Minute Entry and Memorandum in Support of Said Motion and Request for Additional Relief regarding the Court's ruling related to the disposition of claims using the "Short Form." Defendants filed an opposition on October 11, 2005.

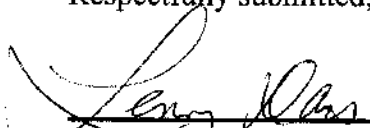
**XIV. Proposed Order Approving A Wrongful Death Award Made by the Special Master in the MDL 1355 Settlement Program**

On October 7, 2005, a Proposed Order was provided to Defendants' counsel that would avoid approvals by State Equity, Chancery and Common Pleas Courts of settled claims. This proposed Order was sought to avoid multiple approvals that may require additional time and expense, and to consolidate the issues into one MDL Order to handle the various matters. Defendants are in receipt of the proposed Order and are reviewing it.

**XV. Emergency Motion for Distribution of Attorney's Fees**

The PSC has set for hearing at the October 18, 2005 Monthly Status Conference an Emergency Motion for Distribution of Attorney's Fees with Full Reservation of Rights of All Attorneys Who May Claim Any Right to Common Fees and Expense Reimbursements. On October 11, 2005, a meeting of the PSC took place to further discuss this motion. Defendants take no position on this Motion.

Respectfully submitted,

  
**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

Temporary address:

3411 Richmond Avenue, Suite 460  
Houston, TX 77046  
Phone: (713) 877-1843; Fax: (713) 871-9750

**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**



**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

**Temporary Address:**

5555 Hilton Avenue, Suite 620

Baton Rouge, LA 70808

Phone: (225) 615-7150

Fax: (225) 615-7400

**LIAISON COUNSEL FOR Defendants,**

**JANSSEN PHARMACEUTICA INC. 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

DONALD F. ZIMMER, JR.

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,**

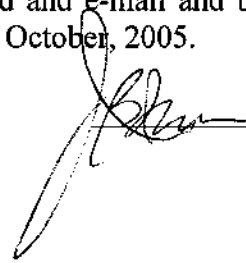
**JANSSEN PHARMACEUTICA INC. AND**



**JOHNSON & JOHNSON**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Joint Report No. 43 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to LexisNexis, on this 14<sup>th</sup> day of October, 2005.



A handwritten signature in black ink, appearing to be 'J. Johnson', is written over a horizontal line that extends to the right.

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

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**Monthly Status Conference**  
**October 18, 2005- 9:00 a.m.**

**AGENDA**

**Current Matters:**

1. State Liaison Counsel
2. Service List of Attorneys
3. Trust Account
4. Trial Schedule
5. Pharmacy Indemnity Agreements
6. MDL Mediation & Resolution Program
7. Daubert Motions
8. Pro Se Plaintiffs
9. Verilaw/Lexis Propulsid Litigation Migration
10. Preservation of Electronic Data
11. Proposed Order to Reflect Dismissal of Certain Tolling Agreement Claimants

NEW ITEMS:

12. Report of Special Master
13. Motion for Clarification of August 12, 2005 Minute Entry
14. Proposed Order Approving A Wrongful Death Award Made by the Special Master in the MDL 1355 Settlement Program
16. Emergency Motion for Distribution of Attorney's Fees