

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

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

.....

**JOINT REPORT NO. 70 OF PLAINTIFFS'  
AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Joint Report No. 70 in preparation of the December 11, 2008 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. Seventy-three claims have been submitted to the Medical Panel for review, of

which defendants have treated seventy-one on an expedited basis. The parties will be prepared to discuss this further at the November 14, 2008 Monthly Status Conference.

**II. Trust Account**

No deposits have been made into the Trust Account since the last Status Conference.

**III. MDL Mediation and Resolution Program**

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

On October 14, 2008 the Court met with the new doctor panelist member.

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 2,491 Tier I, II and III claims to the Medical Panel for review. Of the 2,491 claims the Defendants have treated 2,150 on an expedited basis. Twenty-two (22) of the tiered claims submitted to the Panel have been found eligible by the Panel, and the Special Master has made those awards. Two hundred and twenty-five (225) tiered claims are still in review by the Panel, 198 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 Medial 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 November 14, 2008 Monthly Status Conference.

#### **IV. 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.

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

Plaintiffs' Liaison Counsel and Defendants are continuing their discussions to work out an arrangement so that 100% of all awards can be paid at one time. The parties continue discussions regarding this matter and will be prepared to discuss this further at the monthly status conference on December 11, 2008.

James Dugan and Douglas Plymale have requested that an award made to one of their clients be subject to the April 14, 2008 Order waiving the 50% holdback. The parties will be prepared to discuss this further at the status conference on December 11, 2008.

**NEW ITEM**

**VI. 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 provides 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 December 11, 2008.

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. 70 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 9<sup>th</sup> day of December, 2008.

**/s/ Leonard A. Davis**

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

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

.....

**Monthly Status Conference  
December 11, 2008 – 3:30 p.m.**

**AGENDA**

**Current Matters:**

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