

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID : MDL NO. 1355
 PRODUCTS LIABILITY LITIGATION : SECTION: L
 : JUDGE FALLON
 : MAG. JUDGE AFRICK
THIS DOCUMENT RELATES TO ALL CASES :
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**JOINT REPORT NO. 1 OF
PLAINTIFFS’ AND DEFENDANTS’ LIAISON COUNSEL**

Plaintiffs’ Liaison Counsel (PLC) and Defendants’ Liaison Counsel (DLC) jointly submit this Report No. 1. The Court, on October 2, 2000 entered Pretrial Order No. 2 (PTO2) and set forth numerous “meet and confer” issues to which this report addresses.

I. Electronic Service/Website - (PTO2 - IV(C)(C))

PLC and DLC met with the Court and Verilaw Technologies, Inc. for a demonstration on November 3, 2000. PLC and DLC are in agreement that a website that plaintiffs, defendants and the Court can jointly create and utilize would be beneficial. PLC and DLC further agree that cost, security, work product and privacy are important issues as well as integrating the MDL with state court actions, to the extent possible. Nothing herein with respect to the implementation of an

electronic service application should alter or modify the provisions of paragraph IV.B. of Pretrial Order No. 2, except to the extent that Liaison Counsel need only serve on each other one copy of any pleading, motion, or other document filed with the Court, together with a disc or CD-ROM in either WordPerfect format or Microsoft Word, and further that service and distribution by Liaison Counsel to other attorneys of record may be accomplished electronically through Verilaw in lieu of overnight courier service or telecopier.

Electronic Service - After investigation of several potential systems, PLC and DLC have agreed that Verilaw Technologies, Inc. can provide the best service to meet our existing needs. Verilaw Technologies, Inc. provides web based docket and document delivery systems. PLC and DLC received an online Internet demonstration of the Verilaw proposal on October 24, 2000. A similar demonstration was provided to the Court on November 3, 2000. This system handles electronic service to all counsel, prepares an index of served pleadings, creates a calendar and is completely searchable. Verilaw has thirteen (13) technology sites up and running. Verilaw has two hundred (200) users in the federal diet drugs litigation, maintains the Court site for Fen-Phen and works closely with the Philadelphia Municipal Court. Judge Corodemus and liaison counsel in the New Jersey Propulsid litigation have agreed to use Verilaw for electronic service, web based docket and a website. The setup cost for the MDL site for Verilaw is \$30,000 but may be reduced as a result of the New Jersey state action. This setup cost will be split evenly between plaintiffs and the defendants. The only other additional charge is a \$10 per document service cost that is charged to the server of the document. Correspondence dated October 24, 2000 from Verilaw is attached as Exhibit A. This correspondence identifies some promotional material along with some of

the screen shots from the demonstration.

Other computer equipment may be necessary to handle mass distributions by PLC and/or DLC such as a fax machine, server, computer and digital sender. PLC and DLC will determine what may be necessary and advise the Court at a later date.

Websites - Several website entities have been consulted. The leading candidates are Verilaw, Planet Guide.com and Resurrection Technologies, Inc. Additional discussion with Verilaw is necessary to determine the extent of its ability to handle a website and its desire to sub-out portions of the website. Also, Lextranet has been recommended, but we have not yet communicated with this vendor. Patty Soule, the Federal Eastern District technology point person has also provided potential electronic entities that should be consulted.

II. 12(b) Motions, Master Complaint and Motions for Summary Judgment - (PTO2 - VI(B))

PLC and DLC have agreed to report later on Rule 12 and Rule 56 motions.. We have agreed that a master complaint will be drafted. The initial deadline for filing the master complaint is January 31, 2001. Additional discussion on this issue should include the advisability of employing a complementary master answer and making both mandatory. We have agreed to report to the Court on whether a short form complaint filing is practical.

III. Confidentiality Order - (PTO2 - VIII(C)(C))

The PLC and the DLC are discussing the issue of a confidentiality order and are exchanging possible language. Because of the significance of this issue and its role in an orderly document production, it may be appropriate to submit this issue to the Court for guidance before filing formal motions and briefs. This can be discussed at the November 16 Status Conference.

IV. Non Destruct/Preservation Order - (PTO2 - VIII(B))

PLC has been informed by DLC that defendants have some “return product” that they would like to destroy. Pursuant to the terms of paragraph VIII.B., the parties request that the Court enter an order permitting destruction of the return product only after the defendants have produced copies of all non-privileged documents regarding return of the product as well as a written protocol for its destruction. Furthermore, the order should provide that plaintiffs are entitled to examine a sample of the return product provided they demonstrate a reasonable basis for and need to do so.

V. Bates Numbering System - (PTO2 - VIII(F))

Efforts are being made to adopt a common convention for Bates numbering documents.

VI. Authentication - (PTO2 - VIII(H))

The PLC has proposed and DLC has agreed in principle to enter into a stipulation that company documents generated by the defendants in the ordinary course of business will be deemed authentic. Details of the stipulation will be resolved by the PLC and DLC. Further provision for the accommodation of authentication can be managed through the deposition and pretrial process.

VII. Initial Disclosures - (PTO2 - IX)

PLC and DLC have agreed that a production protocol needs to be established before the initial disclosures are made. No documents will be produced on November 15, 2000 as the Court has continued the production date pending the November 16, 2000 court conference. Document production will commence upon resolution of issues pertaining to the confidentiality order and document production protocol. On November 6, 2000 PLC and DLC discussed protocol. Further, PLC has agreed to work on a plaintiff fact sheet. DLC has provided PLC a fact sheet and has agreed to provide a proposed medical authorization. PLC has indicated that plaintiffs will not agree to

blanket authorizations and that any medical records received by Defendants, pursuant to such medical authorizations, will be Bates numbered by Defendants and reproduced in their entirety to plaintiffs. The parties agree that all records obtained pursuant to a medical authorization, whether collected by counsel for the defendants or by a medical records collection contractor retained by the defendants, will be made available for a reasonable copying cost to plaintiffs' counsel. By the same token, any medical records in the possession of plaintiffs or collected by plaintiffs' counsel will be made available for a reasonable copying cost to defendants' counsel.

VIII. Document Production Protocol - (PTO2 - XI)

Document production, sequencing of production and imaging/document/data identification conventions and a virtual document depository have been the subject of numerous discussions between PLC and DLC, other counsel and technical advisors. Written proposals have been reviewed and will be the subject of further discussions and exchanges. PLC and DLC agree that documents should be exchanged with Bates numbers properly affixed and that both sides get documents in the condition and pursuant to a protocol that Liaison Counsel agree to or the Court may order. Because of the complexity and technical nature of these interconnected issues, it may be appropriate to take these matters up in a special breakout session with the Court or Magistrate.

IX. Privilege Logs - (PTO2 - XIII)

PLC and DLC agree that if a party claims a privilege to any production material then the party claiming the privilege shall "furnish a log identifying documents or other communications" by Bates number, type of document, "by date and by the names of the author(s) and recipient(s), and describing their general subject matter, including (without revealing the privileged or protected material)" as set forth in MCL3 §21.431. PLC has indicated to DLC plaintiff's concern about the production of

documents with redaction and DLC has agreed to provide an explanation of the methodology for the redaction of any documents produced.

X. Depository Location - (PTO2 - VIII(E))

PLC is working on securing a depository location. No site has been selected yet. As discussions concerning the establishment of a virtual document depository continue, the defendants have no present intention of creating a document depository with a physical location and a mailing address.

XI. Plaintiffs Fact Sheet - (PTO2 - X(E))

See discussion regarding Initial Disclosures herein.

XII. Guidelines for Depositions - (PTO2 - XII)

Guidelines for depositions including the location of the depositions, the necessity for issuance of subpoenas, the scheduling of a master calendar, the time frame for issuing notices, real time stenographers, videotaping, production of exhibits for use at the deposition, costs (both experts and travel costs) are being discussed by Liaison Counsel, and drafts of proposed guidelines have been exchanged. The parties expect to be able to agree upon some elements of deposition guidelines prior to the November 16 Status Conference and will report to the Court accordingly at that time. PLC and DLC have agreed that, to the extent reasonably possible, depositions of domestic United States employees of defendants will take place in Philadelphia, Pennsylvania.

XIII. November 16, 2000 Hearing

This submission is intended to apprise the Court of the issues set forth in PTO2 and will satisfy the submission required to be made by November 13, 2000 pursuant to Section XV of PTO2 as respects “meet and confer” issues. Further, PTO2, Section VII(b) requires a report on the status

of document production, a discovery schedule, fact witness discovery schedule, depositions, etc. which is also included in this submission.

XIV. PTO2 Section VII(B) Issues

The parties have had numerous meetings regarding document production, sequencing of production and depositions. The PLC has furnished DLC with a written layout for sequencing the production of documents, and defense counsel are reviewing the proposal and further meetings are planned on this issue. Related to this are discussions regarding a document production protocol, to include imaging and document data and identification conventions. Written proposals are being worked on, and a conference call is scheduled for Tuesday, November 14, 2000, for follow-up. Regarding depositions, the parties have exchanged proposed deposition guidelines. There are a number of areas where the parties agree, and a separate conference call is scheduled for Tuesday, November 14, 2000 in an effort to iron out differences. The parties are hopeful that much of this can be worked out through continued discussions.

XV. Other Matters:

1. Subpoenas to Entities Out of the Country

PLC has advised DLC of plaintiffs' desire to address the issuance of subpoenas and matters relating to the Hague Convention.

2. Subpoenas Served to Corporate Employees, Officers and Directors

PLC has requested DLC to consider whether DLC will accept subpoenas for corporate employees and fiduciaries. PLC has requested DLC to waive the necessity of the issuance of formal subpoenas and subpoena duces tecums on 30(b)(6) corporate depositions.

XVI.. Proposed Agenda - (PTO2 - XV):

A proposed Agenda for the November 16 Status Conference is attached and identified as Exhibit "B".

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on all counsel of record by depositing same in the US Mail postage prepaid this 13th day of November, 2000.

RUSS M. HERMAN