

**MINUTE ENTRY**  
**FALLON, J.**  
**March 28, 2003**

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
 : **JUDGE FALLON**  
..... :

**THIS DOCUMENT RELATES TO ALL CASES:**

A pretrial status conference was held Friday, March 7, 2003 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Leonard Davis, Roy Amedee, Robert Wright, Arnold Levin, James Capretz, Charles Zimmerman, Bradley Duhe', Julie Jacobs, Albert J. Rebennack, Richard J. Arsenault, Edward J. Parr, Jr., Mark Whitehead, Lynn Swanson, Jim Hatch and R. Larry Morris. In attendance for the Defendants were James Irwin, Thomas Campion, Monique Garsaud, and William H. Murphy, Jr. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 21 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") informed the Court that the total production of documents on CD was more than 7.059 million pages. DLC stated that all discovery should be complete by the end of March 2003, except for some outstanding issues. Counsel

advised that they were discussing these issues and working toward a resolution. The Court advised the parties to focus their attention on the end of discovery.

2. State Liaison Counsel

The State Liaison Committee ("SLC") informed the Court that it had no new issues to bring to the Court's attention.

3. Plaintiff Profile Forms and Authorizations

As of February 26, 2003, Defendants had received 1,628 Patient Profile Forms ("PPFs"), 137 are currently overdue, and 476 PPFs will become due within thirty (30) days. DLC advised the Court that they will work with the PLC to contact counsel whose clients' PPFs are overdue. At the hearing, the defendant brought before the Court a Motion to Dismiss with Prejudice for Failure to Furnish a PPF [Record Doc. No. 954]. DLC indicated to the Court that several plaintiffs had submitted PPFs, and the defendants withdrew their motion as to those plaintiffs, whose names were read into the record and are listed below.

DLC further noted that 5 plaintiffs in Civil Action Number 02-2446 [Delores Bowden, Emma McClain, Executrix of the Estate of Anna McClain, Thelma J. Pasters, Deborah Rockett and Jewell Sherrill] had filed a motion in opposition to the defendants' motion. DLC indicated that they would oppose any extension of time in that case or any others. The Court noted the continuing objections of the PLC to the defendants' motion. For oral reasons given, the Court GRANTED the defendants' motion except as to those names set forth below. DLC shall submit, within a reasonable time, an appropriate final judgment pursuant to Rule 54(b) covering those plaintiffs so dismissed.

The DLC withdrew the motion as to the following names in Civil Action No. 02-1639: Robert

Beasley, Leonardo Ramos, Florence Rivon, Ethel Rogers, George Smith, Eugene Soto, Frank Stanley, Roy Waggoner, Dorjoyre Waters, Bethany Wells, Valerie Whitsworth, Don Wilson, and Michael Wilson.

The motion was also withdrawn as to Kerry Thompson and Lawrence Williams, plaintiffs in Civil Action No. 02-1866. Per the DLC's request, the Court will RESERVE ruling on the motion as to Catrice Burell, in Civil Action No. 02-1866 pending the DLC's receipt of the proper authorizations.

4. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

5. Third Party Subpoena Duces Tecum

PLC and DLC advised the Court of the status of the subpoena with respect to defense expert Dr. Douglas Zipes. DLC indicated that he would update his responses. The Court ORDERED that the defendant provide such update no later than one week from the conclusion of the upcoming Diez trial, scheduled to begin on March 17, 2003.

PLC indicated to the Court that it had received documents in response to the subpoena duces tecum served upon Sciens. DLC indicated that it had received one of the two necessary certifications for compliance with the subpoena and was in the process of determining whether that certification is sufficient. The Court ORDERED that the defendants provide such certification within one week of the date of this minute entry.

As to the remaining subpoenas, PLC noted that it had given MediCom a short extension of time to comply, and that it had done the same for the Degge Group, giving it until March 12 to be in compliance. The Court advised PLC to review the documents sought from the Degge Group and determine what would

be needed in discovery. The Court instructed the PLC to inform it of its contact person at the Degge Group and to advise the Court if any assistance was needed.

6. Motion for Class Certification

In an Order dated June 27, 2002, this Court indicated that it would in due course set a hearing date in connection with the PSC's second motion for class certification [MDL Document No. 619]. At the status conference both DLC and PLC recommended to the Court that the hearing on the motion not be scheduled until after all electronic discovery is received and reviewed by the PSC. Accordingly, the Court will again DEFER setting a hearing date on this motion. Liaison Counsel should continue to make recommendations as to a future hearing date at each monthly status conference.

7. Plaintiffs' and Defendants' Respective Requests for Production of Documents

DLC advised that its response to the plaintiffs' merit requests was complete. As to the Merit Interrogatories, PLC indicated that it was awaiting a reply. The Court instructed the parties to set a deadline for compliance with the request and to notify the Court in writing when such deadline was established.

PLC indicated that no answers had been received on its request regarding business records of the defendants. DLC indicated that it was making responses by categories of documents. The Court ORDERED the defendant to provide the material reviewed as of the current time.

PLC brought for hearing before the Court a Motion to Compel Production of Documents for Sales Force [Record Doc. No. 964]. DLC indicated that it had provided all hard documents requested. The parties will have additional discussions regarding electronic copies. The Court instructed the parties to update it on the status of the discussions so that the motion could be resolved.

8. Rule 30(b)(6) Deposition of Defendants Regarding Studies

PLC and DLC indicated that they had nothing to discuss on this issue.

9. Trust Account

The parties discussed Pretrial Order 16 with the Court, and the PLC indicated that it would move to withdraw funds from the Registry of the Court. The Court indicated that it would place such withdrawals under seal because the matters contained therein related to plaintiffs' litigation costs.

10. Declassified Documents

This Court issued a ruling, entered February 26, 2003, granting the PSC's request for relief from Pretrial Order Number 5. PLC indicated that it had complied with the Court's orders set forth in that document.

11. Mediation

PLC indicated that it remained willing to mediate cases. DLC indicated that it had received materials on cases the plaintiffs wished to mediate. The parties informed the Court that they would resume mediation sessions after the upcoming trials in this matter.

12. Trial of Louisiana Cases

Counsel indicated that they are proceeding with preparations for trial in the Diez and Brock cases.

13. Verilaw

PLC and DLC advised the Court that they had nothing new to report on this issue.

14. Pharmacy Indemnity Agreements

DLC advised the Court that it is providing these agreements as they are executed.

15. End Game Planning Committee

Committee members Arnold Levin for the plaintiffs and Tom Campion for the defendants informed the court that the committee was working to resolve differences. The Court re-iterated its desire that the committee focus on the MDL's role as a service to the litigants, and that the parties avoid the "black hole effect." Specifically, the Court advised the parties to focus on devices to send cases back to the states once discovery was complete.

16. PSC's Motion to Reconsider the Court's January 2, 2003 Minute Entry

The Court heard Oral Arguments on the PSC's Motion to Reconsider the Court's January 2, 2003 Minute Entry [Record Doc. No. 990]. For oral reasons given, the Court GRANTED IN PART the motion and ordered that its January 2, 2003 Minute Entry would be limited solely to the *Diez*, *Brock*, and *Reed* cases. The Court further indicated that its findings in that Minute Entry would be without prejudice to the remaining litigants in MDL-1355. As to all other relief requested, the Court DENIED the motion.

17. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, April 25, 2003 at 9:00 a.m.