

MINUTE ENTRY
FALLON, J.
June 18, 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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

THIS DOCUMENT RELATES TO ALL CASES:

A pretrial status conference was held June 12, 2002 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Bob Wright, Jim Watts, Arnold Levin, Lynn Swanson, Richard Arsenault, Jim Capritz, Carlos Prietto, Walter Dumas, Daniel Becnel, Jr., Larry Morris, Julie Jacobs, Stephen Murray, Dawn Barrios, Barry Hill, Leonard Davis, and Russ Herman. In attendance for the Defendants were James Irwin, Thomas Campion, Monique Garsaud, and Bobby Truitt. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 15 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Defense Liaison Counsel ("DLC") informed the Court that as of May 2002, approximately 6,582,211 pages of documents have been produced. Plaintiffs' Liaison Counsel ("PLC") advised the Court that it was contemplating filing a motion to compel the production of Johnson & Johnson and Janssen Pharmaceutica e-mail material and attachments. DLC explained that the defendants have experienced technical difficulties in converting the recovered e-mail materials into a usable format. DLC also informed the Court that counsel for the parties must

confer on additional search terms by which nonsegregated e-mails may be retrieved from the defendant's databases.

IT IS ORDERED that attorneys Leonard Davis and David Buchanan shall meet within ten (10) days to discuss additional search parameters to be used in retrieving nonsegregated e-mails.

2. State Liaison Counsel

PLC informed the Court that while members of the State Liaison Council ("SLC") have been actively involved in creating a coordinated deposition schedule for MDL and state counsel pursuant to the coordination agreement memorialized in Pretrial Order No. 14, some state counsel have been remiss in appearing in scheduled foreign depositions.

Out of concern for the perceived lack of cooperation, the Court met with state counsel Sol Weis and David Jacoby, both of whom informed the Court that the problems alluded to were limited to two depositions and did not signify any unwillingness to coordinate discovery efforts between the MDL and state court proceedings. Both counsel reiterated their interest in coordinated discovery. The Court reminded all counsel that there is in place a discovery coordination agreement between the MDL attorneys and the state counsel and that the Court will enforce the agreement.

3. Plaintiff Profile Forms and Authorizations

As of Wednesday, March 6, 2002, Defendants had received 1,352 Patient Profile Forms ("PPFs"), 94 are currently overdue, and 27 PPFs will become due within thirty (30) days. DLC filed with the Court a motion for entry of a Rule 54(b) final judgment as to those claimants who had previously been dismissed for failure to submit PPFs. The Court ordered that within two (2) days PLC should advise the Court of its position with regard to the motion.

4. Subpoena to FDA

PLC informed the Court that it has received additional documents from the FDA which were not initially produced to PLC pursuant to the subpoena. Plaintiffs' Steering Committee ("PSC") is reviewing the material at this time but believes that there is more documentation which still must be produced by the FDA. PLC will report further on this issue at the next monthly status conference.

5. 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.

6. Ongoing Studies/Subpoena to BevGlen

PLC informed the Court that it will file a motion to compel the production of all draft reports documenting the results of an ongoing study referred to as CIS-NED-32. Other than the draft report provided to PSC on June 6, 2002, DLC does not agree to provide prior drafts or revisions of the report.

7. Third Party Subpoena Duces Tecum Issued by PSC

PLC reported that there remain three outstanding certifications from third-parties to whom subpoenas have been issued. Defendants have attempted to contact these entities on several occasions to secure such certifications but have been unable. PLC indicated that PSC would bring a motion to compel against the non-responsive entities.

PLC also objected on behalf of the PSC to the defendants' practice of reviewing all documents produced by third-parties pursuant to PSC subpoenas. PLC urged that the subpoenaed material should be provided directly to the PSC. DLC indicated that the defendants must be

allowed to review such information to protect the identity of individual participants in medical studies concerning Propulsid.

The Court indicated to the parties that the purpose for allowing the defendants to review the third-party information was to ensure the privacy of individuals who are not party to the litigation. The Court reiterated that the defendants must keep a log of all information that is extracted for this purpose. If a dispute arises as to whether certain information should not be extracted, the Court will review the extracted information in camera.

8. Motion for Class Certification

On May 29, 2002, PSC filed a second motion for certification of a nationwide class for medical monitoring. The hearing date and a briefing schedule will be set forth at a later time. See this Court's Minute Entry dated June 14, 2002.

On June 12, 2002, PSC filed a motion to alter, amend or stay judgment of the June 4, 2002 Order denying class certification.

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

Plaintiffs served on the defendants Interrogatories and Request for Production of Documents, Set No. 5 on February 14, 2002. On March 15, 2002, PLC requested additional information that was revealed at the deposition of Mr. Rouleau concerning the Committee for Proprietary Medicinal Products ("CPMP") issuance of a final assessment regarding Cisapride. PLC indicated that it may file a motion to compel the production of this information.

_____DLC informed the Court that it has requested additional information regarding the Marganroth study. PLC indicated that all information has been produced. DLC suggested that a follow-up deposition of Dr. Morganroth may clarify matters.

Liaison Counsel indicated that the parties are in discussions concerning a possible stipulation as to insurance policies held by the defendants.

10. Trial of Louisiana Cases

The Court advised counsel that the Louisiana cases that are ready for trial would be set for trial before the end of this year. Counsel were directed to meet and confer on a list of those cases so pretrial conferences could be set and trial plans promulgated.

11. Expedited Remand of Cases not Filed in Louisiana

The Court discussed the establishment of a procedure whereby counsel may seek expedited remand of individual actions to the transferor court for trial when the litigants and counsel feel that the action is ready for trial even though MDL discovery is not complete. Liaison Counsel shall make recommendations to the Court at the next monthly status conference on the procedure for accomplishing this.

12. Settlement Negotiations

The Court indicated that the parties should meet and confer on the appointment of a mediator to further settlement negotiations in this litigation. The Court informed the parties that if they could not agree on a mediator, the Court will appoint one of its choosing.

13. Deposition Procedure

PLC advised the Court of its concern with not receiving transcripts of depositions together with all exhibits and documents referred to during the deposition. DLC explained the procedure for compiling the documents referenced in the deposition. The Court ordered that the parties submit a proposed amendment to Pretrial Order No. 7 which delineates the procedure for handling and routing exhibits and documents referred to during depositions.

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

On May 9, 2002, PLC forwarded to DLC a draft deposition notice for the 30(b)(6) designee concerning studies. The Defendants have advised the PSC that they are putting into place a system to respond to the 30(b)(6) notice. DLC indicated that there is no one person who is familiar with the status of the approximately 800 clinical studies identified in list of studies provided to the PSC. DLC informed the Court that the Defendants have assigned a physician, presently employed by Janssen and who has experience with clinical studies and who will have supporting staff, to prepare a database which will contain information about the clinical studies which is needed to satisfy the requirements of FRCP 30(b)(6).

15. Declassification of Sealed Documents

The PSC requested that sealed documents filed in connection with the PSC's motion for class certification be unsealed. The parties have conferred and are preparing a joint order to declassify the documents. The parties are still discussing the declassification of seven documents in particular.

16. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, July 18, 2002 at 9:00 a.m.