

MINUTE ENTRY
FALLON, J.
June 25, 2004

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, June 25, 2004, at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Charles Zimmerman, Fred Longer, Dawn Barrios, James Dugan, Richard Arsenault, Larry Morris, Barry Hill, David Buchanan, Stephen Murray, A.J. Rabennack, Daniel Becnel, and Jim Capretz. In attendance for the Defendants were James Irwin, Charles Preuss, Thomas Campion, and Monique Garsaud. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 31 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

DLC advised the Court that there is no further scheduled document production. The parties have discussed and exchanged comments regarding a Stipulation concerning the suspension of electronic preservation as required by Pre-Trial Order No. 10. The parties have prepared a draft

Order, the details of which they are still discussing.

2. State Liaison Counsel

State Liaison Counsel advised the Court that they are interested in exploring a settlement program between state court Plaintiffs and the Defendants. The DLC reported that the subject is under discussion, but presently they are focused on the settlement program for the MDL cases.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of June 17, 2004, they have received 3,132 PPF's, 837 are overdue, and 17 will become due in thirty days. The Defendants advised the Court that they will halt filing motions to dismiss for failure to provide a PPF during the period in which claimants may opt in to the MDL 1355 settlement.

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. Motion for Class Certification

The Plaintiffs reported that they have postponed filing their motion in light of the pending settlement.

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

On May 20, 2004, the parties submitted 157 documents to the Court that were subject to the PLC's 803(6) challenge, along with each parties' comments as to the same. By Minute Entry dated May 28, 2004, the Court concluded that the trial court, not the MDL transferee court, should determine whether or not the documents are admissible. Accordingly, the Court declined to rule on the

documents.

On May 3, 2004, the parties submitted a Joint Motion for the Entry of Pre-Trial Order No. 20, which provides for the use of electronic data preserved by Janssen Pharmaceutica's sales force. The Order was entered by the Court on May 10, 2004.

As both of the above issues regarding requests for production of documents have been resolved, the parties indicated that this item may be removed from subsequent Joint Reports.

7. Trust Account

Since last month's status conference, the Defendants made deposits of additional settlement funds into the Court's Registry on May 18, 2004, and May 24, 2004.

8. Mediation

The parties advised that no additional mediations have occurred since the last status conference.

9. Trial Schedule

The DLC reported that only a couple of state court trials are scheduled for the rest of the year.

10. Pharmacy Indemnity Agreements

DLC advised that it continues to produce copies of all pharmacy indemnity agreements to the PLC.

11. MDL Mediation and Resolution Program

On February 4, 2004, the parties announced that they had reached an agreement in principle to resolve all federal lawsuits related to Propulsid. On February 5, 2004, the Court entered a Consent Order as to this agreement.

The parties reported the following regarding the resolution program:

- (a) The parties have finalized the Claims Form and Enrollment Forms. Those forms shall be sent to the Court forthwith and uploaded to the Court's website. At this time, the forms cannot be electronically completed or filed, but the parties will continue to explore the feasibility of such a process. In addition to the website, the Defendants advised that they will reproduce several hundred copies for distribution;
- (b) The parties have selected Deutsche Bank to hold the money from the Settlement and Administrative funds;
- (c) The parties have obtained several quotes for office space for the administrator and staff and are communicating regarding the lease of such space;
- (d) The parties have interviewed several applicants for the Administrator position and expect that a decision will be made forthwith; and
- (e) The parties have exchanged nominees for the medical panel. The Defendants have objected to one of the PSC's nominees. The PSC is reviewing the Defendant's list.

12. Global Application of Daubert

The DLC indicated that this matter is on hold pending the outcome of the settlement program.

13. Motions to Withdraw as Counsel of Record

The parties are in receipt of a Motion to Withdraw as Counsel of Record, filed by plaintiff's counsel, Carl McAfee, in the matter of *Thelma Johnson v. Johnson & Johnson, et al*, No. 00-3495. The PLC has no position on the motion. The DLC asked the Court to reserve ruling on the Motion pending the settlement program. The Court granted the Defendant's request and shall defer ruling on

such motion.

14. Stipulation and Pre-trial Order Providing for Use at Trial of Depositions in State or Federal Courts

The parties reported that they have exchanged comments regarding a Stipulation concerning the use of depositions in MDL matters. The parties advised that they shall submit a Joint Stipulation to the Court on or before Friday, July 2, 2004. If the parties are unable to agree on the stipulations, the parties shall submit their respective proposed Stipulation to the Court for resolution.

15. CIS NED-32 Deposition

The 30(b)(6) deposition regarding the final version of CIS NED-32 has been canceled, without prejudice, to be rescheduled at a later date.

16. Motion for Summary Judgment

The PLC indicated that they have postponed filing this motion due to the pending settlement agreement.

17. Special Master

The parties are finalizing the Stipulation and Order providing for the appointment of Special Master Patrick Juneau in compliance with revised Federal Rule of Civil Procedure 53. The parties expect to submit the Stipulation and Order to the Court forthwith.

18. Walgreen Louisiana Company, Inc.'s Motion for Summary Judgment (*Janet Beo v. Stephanie Newport, et al.*, No. 01-0600)

On May 5, 2004, Walgreen Louisiana Company, Inc. filed a Motion for Summary Judgment against the Defendants and claimed that it was entitled to an unqualified indemnity and defense by

Defendants. The Defendants asked the Court to reserve its ruling on the Motion pending the outcome of the MDL's Settlement Program. The Court granted the Defendant's request and shall defer its ruling.

19. Motions for Summary Judgment as to Doctor Defendants Stephen A. Tramill and Paul Varela (Robert Boykin v. Johnson & Johnson, No. 03-2541; Faye Aldridge v. Johnson & Johnson, No. 03-3501)

On May 17, 2004, Defendant Paul Varela, M.D. filed a motion to dismiss the claims filed against him by Plaintiff Irene Cooley. Thereafter, the parties filed a Stipulated Order of Dismissal which the Court entered on June 17, 2004. The DLC indicated that the language of the Order was unclear in that it stated that the Court was granting the Motion. The Court shall issue a Minute Entry clarifying that it was the intention of the Court to enter the Stipulated Order of Dismissal, thereby rendering the Motion to Dismiss moot.

Regarding the motion of Stephen Tramill, M.D., the DLC requested that the Court reserve its ruling on the motion pending the outcome of the MDL's Settlement Program. The Court granted the Defendant's request. Accordingly, the Court shall reserve its ruling.

20. Pre-Trial Order listing MDL Plaintiffs

The DLC has submitted a draft Motion and Order to the PLC that will identify the list of individuals whose cases are pending in the MDL for purposes of the MDL Mediation and Resolution Program. The parties are communicating regarding this issue.

21. Scheduling of Telephone Status Conference and Next Pretrial Status Conference

A telephone status conference shall be held on Thursday, July 22, 2004, at 9:00 a.m., to

follow-up with the parties. Counsel shall provide a list of participants and their phone numbers. The Court shall initiate the call.

The next pretrial status conference shall be held on Friday, August 6, 2004, at 9:00 a.m.