

MINUTE ENTRY  
FALLON, J.  
August 3, 2001

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 August 3, 2001 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Richard J. Arsenault, Dawn Barrios, Daniel E. Becnel, David Buchanan, James Capretz, John Climaco, Leonard Davis, Samuel Davis, James Dugan, Walter Dumas, Kim Evers, Hector Gancello, Hugh Glenn, Ron Goldsen, Russ M. Herman, Barry Hill, David Jacoby, Arnold Levin, Fred Longer, John Massicot, Stephen B. Murray, Sr., Mike Papantonio, Gale Pearson, Thomas Penfield, Carlos Prietto, Stephen Randall, A. J. Rebennack, Chris Seeger, Joy Simon, Charles Taylor, Michelle Walker, Bob Wright, and Charles Zimmerman. In attendance for Defendants were Thomas F. Champion, James B. Irwin, Kim Meaders, Miriam McMichael, Charles Preuss, Ike Ryan, Quentin Urquhart, and Virginia Trainor. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 9 of Plaintiffs' and Defendants' Liaison Counsel.

1. Master Complaint/Answer

Plaintiffs' Liaison Counsel (PLC) delivered to Defendants' Liaison Counsel (DLC) a draft Master Class Action Complaint on July 5, 2001. PLC expects to file the Master Class Action

Complaint by September 28, 2001, and DLC expects to file an answer three weeks thereafter.

2. Update to Rolling Document Production and Electronic Document Production

Liaison Counsel informed the Court that Defendants delivered approximately 423,000 pages of documents on CD-ROM to Plaintiffs on June 29, 2001 thereby increasing to date the total number of pages produced on 324 CD-ROMs to 3,467,456.

Counsel explained that they are working toward the production of electronic data and expect to begin production in several weeks. PLC and DLC have agreed to a procedure for imaging hard drives in Beerse, Belgium, which included an instructional text and certification language providing a method for the procedure and an assurance of compliance. DLC anticipated the production of five databases by Labor Day, but expressed concerns regarding the allocation of costs. The Court indicated that the parties should continue producing material and that it would resolve cost issues if necessary.

PLC and DLC indicated that they are negotiating a joint inspection of Janssen's computer system to view data bases.

The parties are also continuing to discuss a nominee for a Special Master as required by Section H-3 of PTO-10.

3. Electronic Service/Verilaw

The parties have agreed to additional security measures requested by Verilaw for sealed documents that are served electronically. Verilaw's current 160 users will receive a letter providing them information on how to obtain devices for viewing sealed documents beginning August 24, 2001.

4. State Liaison Counsel

State Liaison Counsel advised the Court of the progress of coordinating state cases. They

receive notices of depositions and can attend and participate to the extent they deem necessary. To further cooperation with coordinate state litigation, the Court met with members of the State Liaison Counsel following the status conference. At the meeting, David Jacoby reported on the status of the Propulsid litigation in New Jersey advising that class certification hearings were imminent and that a trial date has been set for sometime in January. All counsel in the MDL expressed concern that class certification and trial dates in the New Jersey putative class action had been scheduled prematurely before essential discovery has been completed. Other state liaison counsel, except for New Jersey, seemed to concur. This situation can adversely affect the effective and efficient handling of this MDL action which now consists of several hundred cases by thousands of plaintiffs including over twenty class actions from over eight states.

5. Plaintiff Profile Forms and Authorizations

Defense Liaison Counsel noted that as of June 27, 2001 defendants have received 421 Patient Profile Forms (PPFs) while 68 are currently overdue and 49 PPF's will become due within thirty (30) days. PLC and DLC continue to communicate with Plaintiffs' attorneys whose PPF's are overdue.

The Court granted defendants' motions to dismiss with prejudice the claims of Mabel Charles, Calvin Aubert, Charlar P. Brewer, James Carter, Katherine Clayton, Ta Lacey Clayton, Tracy Clayton, Angelique Mallery, Marquell Mitchell, Albert Williams, Sr., Della Williams, Ernestine Williams, Katia Williams, Khymest Terre Williams, Lisa Lynette Williams, Shelton Williams, Jr., Shelton Williams, Sr. and Tyler James Williams. DLC will submit a proposed judgment to the Court. Defendants withdrew the Motions to Dismiss the Claims of Brewer, Mallery, and Lucius Hinkle.

DLC and PLC are discussing some alleged general deficiencies in some of the responses contained in the PPFs.

6. Subpoena to FDA

PLC filed a Motion to Compel Production of Documents on July 13, 2001 arising from a subpoena duces tecum served upon the FDA. In response to the motion, counsel for the FDA has indicated that all documents would be produced by the middle of September. PLC advised the Court that it would continue its motion to compel and will inform the Court if there are further problems in production.

7. Service List of Attorneys

PLC presented the Court with the most current Master List of all Counsel.

8. Ongoing Studies

PLC reported that a BevGlen Medical Systems Corporation of Delaware was served on July 27, 2001 with a subpoena duces tecum concerning the production of studies regarding Cisapride. PLC and DLC have agreed to discuss the production of materials responsive to this request, the relevance of the materials, and any confidentiality issues. The parties further indicated that they will negotiate a proposed order concerning on-going scientific studies that may not yet be completed, studies which are completed, and the preservation of all data, including raw data, utilized in connection with all studies.

9. Third Party Subpoena Duces Tecum Issued by PSC

PLC and DLC have been in negotiations in an attempt to coordinate production responses from third party subpoenas. PLC and DLC are discussing the creation of a protocol to enable efficient and economical production of information received from third parties to which subpoenas are issued. Liaison Counsel are working to create a pretrial order establishing a protocol for managing information received from third parties to whom subpoenas are issued.

10. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification

The Court heard argument on Defendants' Motion to Enter Scheduling Order for Motion and Hearing on Class Certification. Following oral argument, the Court granted in part and denied in part Defendants' motion.

The Court granted Defendants' motion with respect to the presentation of *Daubert* issues at the class certification hearing, but restricted the presentation to issues directly related to class certification such as predominance of common fact and legal questions, the superiority of a class action over individual suits, and other relevant requisites of Rule 23.

The Court also granted Defendants' motion with respect to scheduling a date certain to hold the class certification hearing, but instructed Liaison counsel to meet and confer and agree upon a fixed date that affords sufficient time for the completion of discovery, failing which the Court will set the date.

The Court denies Defendants' motion with respect to fact discovery and limits discovery to the class representatives designated in the Master Complaint. Defendants, however, may file for further discovery after discovery of the class representatives but will have the burden of demonstrating why other information is needed.

11. Tolling Agreement/Master Complaint of Louisiana Propulsid Claimants

By agreement of the parties, Plaintiffs filed a Master Complaint of Louisiana Propulsid Claimants and a First Supplemental and Amended Master Complaint of Louisiana Propulsid Claimants on July 13, 2001 and July 16, 2001, respectively. The complaint, as amended will be placed on the Court's inactive docket pending further orders of the Court. No discovery shall take place as regards these plaintiffs, who, while on the inactive docket, are not governed by Pretrial Order No. 9. Plaintiffs agreed to redact and eliminate references to "John Doe" and "Jane Doe" plaintiffs in the aforementioned Complaints.

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

On May 8, 2001, PLC served a copy of Plaintiffs Merits Request for Production of Documents Propounded to Defendants - Set No. 2. This Request sought production of documents regarding Norcisapride. The parties will meet and confer to resolve issues related to production.

On May 22, 2001, defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. One: Ongoing Studies. In compliance with Local Rule 37.1 and Pretrial Order No. 2, Paragraph VIII(a), DLC will schedule a telephone conference call for plaintiff counsel who have not responded.

On June 5, 2001, defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. Two. Plaintiffs indicated that their response is forthcoming.

13. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, September 28, 2001 at 9:00 a.m.