

**MINUTE ENTRY  
FALLON, J.  
AUGUST 12, 2005**

**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 telephone status conference was held on this date in the Chambers of Judge Eldon E. Fallon. Leonard Davis, Carroll Ingram, and Jennifer Wilkinson participated on behalf of the Plaintiffs, and Thomas Campion and Jim Irwin participated on behalf of the Defendants. Special Master Patrick Juneau also participated in the conference.

The Special Master requested this conference in order to address an issue raised by the firm Ingram & Associates regarding the disposition of their claims using the "Short Form." This form was created pursuant to Section 5C of the Term Sheet to reimburse attorneys in the amount of \$250 for expenses incurred in obtaining and assembling medical records for claimants who are ineligible for the Settlement Program. For approximately 9,000 claims using the Short Form, Ingram & Associates has submitted two pharmacy records for each claim. One pharmacy record shows that the claimant had a prescription for Propulsid. The second pharmacy record shows a prescription for another medical condition; the example used was a prescription for an antibiotic. Ingram & Associates contends that these two records satisfy the standard for reimbursement under the Term Sheet.

JS10(0:30)

Defendants object to this evidence for several reasons. First, Defendants argue that the pharmacy record does not specify that the claimant received the prescriptions at issue: the prescriptions could have been written to other family members covered under the same insurance policy. Second, Defendants argue that the pharmacy record itself does not describe the medical condition attributable to Propulsid, but only lists the drugs prescribed for that condition. According to Defendants, any attribution would be entirely up to the claimant, without any objective evidence of the doctor visited and the medical condition that arose. Moreover, Defendants contend that obtaining the medical records for the claimed medical condition would not be onerous for the Plaintiffs, because the Plaintiffs' attorneys should have already obtained these records when researching their clients' claims.

The relevant language of the Term Sheet reads as follows:

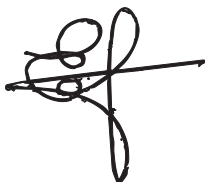
It is understood that the only medical records required to be submitted for the \$250 reimbursement is a single medical or pharmacy prescription record indicating Propulsid use and a medical condition or injury which the claimant has attributed to Propulsid in Section 5A.

The Term Sheet allows claimants using the Short Form to submit a medical *or* pharmacy prescription record to prove the "medical condition or injury" attributed to Propulsid use. Thus, the Court finds that submission of a pharmacy record is sufficient to satisfy the evidentiary standard under Section 5C of the Term Sheet of a medical condition or injury. The Term Sheet only requires a record "indicating" a medical condition or injury, and the pharmacy record logically indicates that the claimant suffers from a condition for which he or she sought medical treatment.

However, the pharmacy record must specifically demonstrate that the claimant, and not

someone else on the pharmacy insurance policy, received the relevant prescriptions. If the claimant chooses to submit a pharmacy record as proof of the medical condition or injury attributed to Propulsid, the claimant should submit an affidavit or declaration that he or she visited a physician after ingestion of Propulsid, and should further give the approximate date of the visit, the physician's name, the general diagnosis, and the prescription received. The affidavit or declaration should further state that the claimant attributes the condition to Propulsid use. In addition, the drug ingested for the medical condition attributed to Propulsid must be a drug prescribed by a licensed medical professional; no over-the-counter-medication will be eligible as proof of a medical condition or injury.

IT IS ORDERED THAT the Special Master shall evaluate Ingram & Associates' Short Form claims in accordance with this Minute Entry.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.