

MINUTE ENTRY
FALLON, J.
August 28, 2002

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 August 23, 2002 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Stephen Murray, Bob Wright, Leonard Davis, Arnold Levin, Roy Amedee, Jr., J. Bradley Duhe, James Dugan, A.J. Rebennack, Richard Arsenault, Barry Hill, Jim Watts, Chris Seeger, Brett Slobin, Julie Jacobs, Bucky Zimmerman, Bruce Kingsdorf, and Jim Capritz, . In attendance for the Defendants were James Irwin, Thomas Campion, Chuck Preuss, Bobby Truitt, and Charlotte Gilman. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 17 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 August 2002, approximately 7.15 million pages of documents, including hard copy documents and e-mails with attachments, have been produced. DLC advised the Court that there have been technical difficulties in producing readable e-mail attachments. The Court indicated to the parties that it

would look to Ken Conour as the person responsible for resolving these problems.

2. State Liaison Counsel

The State Liaison Committee ("SLC") informed the Court that it has prepared a newsletter for all state attorneys detailing the progress of the MDL. Plaintiffs' Liaison Counsel ("PLC") has reviewed the document and approved it for distribution.

3. Plaintiff Profile Forms and Authorizations

As of August 20, 2002, Defendants had received 1,420 Patient Profile Forms ("PPFs"), 52 are currently overdue, and 78 PPFs will become due within thirty (30) days.

At the conference the Court addressed the Defendants' Motion to Dismiss with Prejudice the Claims of Plaintiffs for Failure to Furnish a Plaintiff Profile Form [MDL-1335 Document No. 693]. In connection with this motion the Court entered the following orders:

IT IS ORDERED that the Defendants' motion to dismiss be and hereby is GRANTED IN PART AND DENIED IN PART. Accordingly, the claims of the individual plaintiffs listed in the Appendix to this Minute Entry are DISMISSED WITH PREJUDICE. In due course, DLC shall submit a motion for entry of a Rule 54(b) judgment in connection these dismissals. As to all other individual plaintiffs named in the Defendants' motion to dismiss, the motion is DENIED.

DLC informed the Court that he intends to file a motion to tax costs to those individual plaintiffs who untimely filed Patient Profile Forms but whose claims were not dismissed.

The Court further ordered that the following duplicate individual actions be DISMISSED WITHOUT PREJUDICE:

<u>Plaintiff Name</u>	<u>Civil Action No.</u>
Brady, Melba	01-2702
Carter, Pearlie	01-2703
Warren, Lisa	01-2694
Williams, Irene	01-2700

4. Subpoena to FDA

PLC informed the Court that FDA document production is virtually complete. FDA will certify its compliance with the subpoena upon completion of document production to Plaintiffs' Steering Committee ("PSC").

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

At the conference, PLC and DLC presented arguments in connection with the PSC's Motion to Remove Confidential Designation from Certain Documents Produced by the Defendants [MDL Document No. 711]. For reasons orally assigned, the Court ORDERED that the PSC's motion be DENIED. The Court concluded that the relief sought was not warranted insofar as it required the en globo declassification of all documents produced by the Defendants. Regarding PSC's request to declassify the CIS-NED-32 and Shell/Morganroth studies, the Court noted that there may come a time when the plaintiff's experts will seek to publish their conclusions concerning these studies in order to subject their methodology and conclusions to peer review. However, because there are no articles ready for publication at the present time, the Court made no ruling as to the propriety of a limited declassification of these studies on this basis.

7. Third Part Subpoena Duces Tecum Issued by Defendants

At the request of PLC and DLC, the Court DISMISSED AS MOOT the motion of the Neuro Transmitter and Environmental Testing Treatment Foundation and the Young Hearts Foundation [MDL Document No. 524] for a protective order from certain information sought through a subpoena duces tecum. This motion may again be filed if it later becomes necessary.

Additionally, the Court ordered DLC to advise the Court by the end of the day as to the state of compliance with the PSC's subpoenas duces tecum issued to Dr. Thomas L. Abell and Dr. Jerry Herron.

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

On July 16, 2002, PLC has filed a Motion to Compel the production by defendants of all information requested in PSC's Request for Production No. 2 regarding Norcisapride, the major metabolite of Cisapride. Liaison Counsel informed the Court that they had filed a joint motion to continue without date the hearing on this motion.

With regard to the PSC's request for production of indemnity agreements entered into by and between the Johnson & Johnson and Janssen defendants and the pharmacy defendants in this case, the Court ordered that DLC shall within three (3) days provide copies of these agreements to the PLC.

9. Shell/Morganroth Study

On October 19, 2001, the Defendants served a subpoena duces tecum on Dr. William Shell, individually and through his Foundation, for documents relating to the Shell Study. PLC informed the Court that the requested information has been provided to the Defendants. The Court ORDERED that within ten (10) days Dr. Shell shall certify his full compliance with the

subpoena.

10. 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. The Court will again DEFER setting a hearing date on this motion. However, Liaison Counsel shall continue to make recommendations as to a future hearing date at each monthly status conference.

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

PLC indicated his desire for a stipulation by the Defendants as to the authenticity and foundation of the documents to be used in the 30(b)(6) depositions. DLC noted that such a stipulation is already in place in which the Defendants have stipulated to the authenticity of all Johnson & Johnson and Janssen documents produced by the Defendants through discovery. The Court directed the parties to review the stipulation to determine if it is broad enough for purposes of the deposition.

12. Trial of Louisiana Cases

In an Order dated August 20, 2002, this Court set two individual actions for trial on the following dates: January 6 - 10, 2003 and January 13 -17, 2003. The Court ordered Mr. Roy Amedee to produce by the end of the day the name of the third action to be set for trial in January 2003. A single Final Pretrial Conference for the three actions has been set for Monday, December 16, 2002 at 1:00 p.m. (Mr. Amedee has since complied with the Court's Order and provided the

name of the third action to be set for trial. Accordingly, the individual claim of Ernestine J. Brock raised in Civil Action No. 00-2497 shall be set for trial on January 21 -24, 2003.)

13. Settlement Negotiations

Liaison Counsel advised the Court that they have met and conferred regarding a proposed joint motion and order appointing Mr. Pat Juneau as the mediator in this case. DLC indicated that an initial mediation session with Mr. Juneau is set for September 17, 2002. DLC shall inform the Court of the agenda for the initial session as well as the dates and agendas for all subsequent meetings. The Court also ordered that State Liaison Counsel Richard Arsenault shall inform the mediator of the number of Propulsid cases pending in the state courts as well as provide the mediator with information concerning the variations of state law in those jurisdictions in which Propulsid cases are pending.

14. Trust Account

The parties have met with representatives of the Whitney Bank regarding the establishment of a trust account. Liaison Counsel requested, and the Court agreed, that PLC be allowed to open an interest bearing joint checking account rather than a trust account in order to minimize costs.

15. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, September 27, 2002 at 9:00 a.m.

APPENDIX

<u>Plaintiff Name</u>	<u>Civil Action No.</u>
Barr, Victor	02-0114
Battie, Johnnie	02-0114
Bess, Ryland	01-3872
Brown, Karen	01-3850
Brown, Ruthie	01-2694
Busch, Lisa	02-0115
Campbell, Jr., Harold	01-3874
Childress, Wanda	01-2702
Davis Jackson, Rachel	02-0115
Dixon, Darnell	01-2694
Ellison, Billy	02-0114
Garcia, Santos	02-0114
Glass, Alec	02-0114
Greenier, Robert	01-2550
Hardy, Fred	02-0115
Horn, Willie	01-2693
Hunter, Samuel	02-0114
Jones, Alin David	02-0592

Kowalczyk, Florence	01-2702
Marsalisi, Anthony	01-3858
Matthews, Joey	02-0115
Melendez, Gregorio T.	00-3494
Miller, Andrea	01-3858
Okorie, Dorris	02-0115
Oliver, Hattie	01-2550
Owens, Sonya	01-2702
Parrot, Brandon	02-0114
Peaks, Christin	02-0114
Quintero, Roger	02-0115
Reeves, Trapper	02-0114
Robinson, Stella	01-2547
Stevenson, Jasmine	02-0114
Stone, Steve	02-0278
Vanderoff, Margaret	01-2550
Wiley, Rosie	01-2701
Wilson, Richard	01-3858
Winters, Earl	01-2694