

**MINUTE ENTRY**  
**FALLON, J.**  
**September 23, 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 on this date in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Arnold Levine, Leonard Davis, Bob Wright, Julie Jacobs, Dawn Barrios, James Capretz, Richard Arsenault, A.J. Rabennack, Robert Becnel, Matt Moreland, and James Dugan. In attendance for the Defendants were James Irwin, Charles Preuss, Thomas Champion, and Monique Garsaud. In attendance for the government were Ruth Harvey and Katherine Brown. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 33 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 and expect to have

completed shortly..

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 are not prepared to move forward with a formal proposal until the MDL resolution program is underway and they have had an opportunity to evaluate its success.

Regarding participation of the State Liaison Counsel in the MDL resolution program, the PLC and DLC believe that direct participation is not appropriate at this time. The parties shall keep the Court informed on the status of discussions regarding participation of State Liaison Counsel in the MDL resolution program.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of September 20, 2004, they have received 3,131 PPF's, 874 are overdue, and 0 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. Trust Account

Since last month's status conference, on September 20, 2004, Defendants deposited

settlement funds into the Court's Registry.

7. Mediation

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

8. Trial Schedule

The DLC reported that no state court trials are scheduled for the rest of the year.

9. Pharmacy Indemnity Agreements

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

10. 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 DLC reported that enrollment is proceeding at an acceptable rate. To date, 1100 plaintiffs and claimants have enrolled, and the parties believe a large number of enrollments will be completed in the next two weeks. DLC reported that they are encouraged by the enrollment numbers thus far and the communications they have had with plaintiffs' counsel throughout the country.

The DLC has also been assisting plaintiffs' counsel with the enrollment process. According to the DLC, the number of persons for whom wrongful death suits are pending is 285. The number of non-death suits is 2653. The number of claims under tolling agreements is approximately 12,000.

(b) The PSC has scheduled a meeting for September 29, 2004, in New Orleans to assist plaintiffs' counsel with the enrollment process and follow-up with plaintiffs' counsel on the status of enrollment;

(c) On September 10, 2004, the parties met with the Special Master, Deutsche Bank, and the Claims Disbursing Agent to discuss the administration of the resolution program.

Several issues were addressed, including a revised Claim Form that will require each claimant to serve the Special Master with the Claim Form, and not the DLC and PSC as currently required by the Term Sheet,

(d) The parties announced that they have hired two individuals to assist the Special Master in the administration of the program. They are Jerry Vodell and Angela Paternostro.

11. Global Application of Daubert

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

12. 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 are close to reaching an agreement on the Stipulation and should have it completed shortly.

13. Motion for Summary Judgment

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

14. Motion for Summary Judgment as to Doctor Defendant, Stephen A. Tramill,

M.D. (Robert R. Boykin v, Johnson & Johnson, #03-2541)

Doctor Defendant Stephen A. Tramill, M.D., filed a Motion for Summary Judgment in the aforementioned case as to his liability. DLC reported that they do not oppose the Motion based on the condition that the Statement of Uncontested Facts is revised to reflect what the Defendants claim are errors. PLC has no position on the Motion. DLC reported that they expect to reach an agreement with movant by the next status conference.

15. Pre-Trial Order listing MDL Plaintiffs

On July 20, 2004, the Defendants filed a Motion and Order Identifying Individuals Whose Cases are Pending in the MDL. The parties are communicating regarding this issue and have agreed to postpone the hearing date on the Motion. The parties agreed that entry of the Order would not be with prejudice to anyone's claims. The purpose of the motion is to identify the population of claims as part of the resolution program. Parties reported that proposed Order shall be submitted to the Court forthwith.

New Business

16. Michael L. King Suspension

The parties reported that on September 10, 2004, correspondence was received indicating that the Supreme Court of Ohio had suspended plaintiff counsel, Michael L. King, from the practice of law. King represents the plaintiffs in the *Emma McClain* matter (#01-2520).

17. Opt Out Form for Johnnie L. Jones

On August 17, 2004, Johnnie L. Jones submitted an Opt Out Form to the Court. However, Jones's claim was dismissed with prejudice on November 17, 2004. The Court shall not revisit this issue.

18. Defendant Simon Cofrancesco, D.O.'s Motion for Summary Judgment:

Defendant Mary Thornton, C.N.P.'s Motion for Summary Judgment

The Court received the above Motions on September 20, 2004. The Motions were set were for hearing for October 13, 2004. The hearing date on the Motions is hereby CONTINUED until the next monthly status conference. The parties shall be prepared to discuss the Motions at that time.

19. Scheduling of Next Pretrial Status Conference

The next pretrial status conference shall be held on Thursday, October 21, 2004, at 9:00 a.m.