

MINUTE ENTRY
FALLON, J.
October 17, 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 October 15, 2002 at 8:30 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Roy Amedee, Dawn Barrios, Richard Arsenault, Julie Jacobs, Rebecca Conrad, Jim Watts, Daniel E. Becnel, Jr., Arnold Levin, Dave Buchanan, Chris Seeger, Steve Murray, and Mark Whitehead. In attendance for the Defendants were James Irwin, Thomas Campion, Monique Garsaud, and Ken Conour. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 18 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 September 2002, approximately 7.19 million pages of documents, including hard copy documents and e-mails with attachments, have been produced. PLC advised the Court that there have been technical difficulties in

producing readable e-mail attachments, but PLC was meeting with counsel for defendants, Ken Conour, who was present at the meeting. Mr. Konour expects those problems to be resolved by the end of November, 2002. Additional meetings between counsel and the vendors of the technology will be set up over the next several weeks for resolution of the PLC's concerns.

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. Counsel reports that the SLC is meeting with the PLC to schedule depositions in the ongoing state court matters. Counsel further advised the court that it would continue to communicate with the state court attorneys to coordinate issues.

PLC informed the Court that state counsel from New Jersey and Pennsylvania were considering withdrawing from the state-federal cooperation system. The Court advised state liaison counsel to contact counsel from New Jersey and Pennsylvania and express the Court's concern and to keep the Court informed of this situation so that it may take any action necessary to resolve this issue.

3. Plaintiff Profile Forms and Authorizations

As of October 4, 2002, Defendants had received 1,433 Patient Profile Forms ("PPFs"), 79 are currently overdue, and 88 PPFs will become due within thirty (30) days.

Defense counsel has filed a Motion of Entry of a Rule 54(b) Judgment as to those plaintiffs dismissed at the August 23, 2002 status conference. Said motion was signed by the Court on October 16, 2002. DLC informed the Court that he intends to file a motion to tax modest costs to those individual plaintiffs who untimely filed Patient Profile Forms but whose claims were dismissed.

4. Subpoena to FDA

The FDA has provided a list of documents requested by the PLC. PLC informed the Court that it now appears to have received a complete set of the documents produced by the FDA, subject to redactions by Defendants. PLC informed the Court that it may challenge these redactions in a later motion after attempting to first resolve these matters with DLC.

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. PLC informed the Court that it has sent a letter asking for updated e-mail addresses for attorneys, as some of the e-mails have become undeliverable since the list was first created. The Court requested that counsel provide it with a copy of that letter for posting on the Court's website.

6. Ongoing Studies/Subpoena to BevGlen

The parties had nothing to report on this issue.

7. Third Part Subpoena Duces Tecum Issued by Defendants

PLC informed the Court that the only issues remaining were certifications by Covance and SmithKline Beecham. PLC is currently awaiting a response from DLC to its request for certification as to issues raised by Covance in its reply to a subpoena duces tecum on September 19, 2002. DLC informed the Court that it expects to resolve this issue shortly. To facilitate the process, the Court orders Covance to comply with the certification within 15 days of the date of this hearing, or state with specificity why it cannot comply.

PLC reported that it received the certification from Dr. Thomas Abell on September 11, 2002. PLC further noted that it issued a subpoena to Dr. Jerry Herron on June 28, 2002. Defendants have received the information and reviewed it for confidential information; the information was provided to

PLC on September 24, 2002. DLC is in the process of obtaining certification from Dr. Herron. IT IS ORDERED that Dr. Herron shall provide the required certification within 15 days of the date of this hearing or state with specificity why he cannot comply.

Finally, PLC and DLC advised the Court that they would soon meet to resolve issues pertaining to the requested certifications by Quest.

8. 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. Accordingly, the Court will again DEFER setting a hearing date on this motion. Liaison Counsel should continue to make recommendations as to a future hearing date at each monthly status conference.

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

PLC informed the Court that it is currently reviewing the Defendants' responses to its Request for Production of Documents No. 5. A sixth request for production of documents was served on DLC but has not yet become due. PLC has informed the Court that certain questions have arisen pertaining to requests for admissions for the purpose of overcoming hearsay exceptions to certain documents to be produced at upcoming trials. The Court agreed that this issue shall be discussed at the next pretrial status conference.

10. 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 depositions of Dr. Shell have been scheduled for the end of November. Additionally, DLC requested certain EKG data of Dr. Vincent. On September 19, 2002, Dr. Vincent produced the requested information. DLC has sent a proposed certification to PLC for signing by Dr. Shell. PLC referred the issue to Dr. Shell's attorney, Peter Butler. DLC informed the Court that he expects a resolution of this issue within 10 days. The Court informed counsel to contact it if necessary.

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

The parties have agreed on the matters that will form the basis of the request for the 30(b)(6) deposition. Defendants have hired a third-party to assist them in preparation of a database to comply with plaintiffs' discovery requests. DLC reports that the database should be finalized in about 10 weeks.

12. Trust Account

The parties have agreed to establish a checking account with the Whitney National Bank. The parties are preparing an order for the Court to sign establishing the account. PLC informed the Court of potential tax issues relating to the account and provided the Court with a copy of its accountant's position. The parties hope to have this issue resolved in the next several weeks.

13. Declassified Documents

In oral reasons given at the August 23, 2002 status conference, the Court denied Plaintiffs' Motion to Declassify Documents related to the studies conducted by defendants and class certification exhibits. Plaintiffs have filed a Motion for Reconsideration of that ruling which was set for hearing on

September 25, 2002. Plaintiffs have also filed a Motion to Declassify certain depositions and exhibits; this matter is set for hearing on October 16, 2002. Counsel informed the Court that it would like the opportunity to present oral arguments regarding these motions. Accordingly, IT IS ORDERED that the Motion for Reconsideration and Motion to Declassify be and hereby are CONTINUED to and are set for hearing with oral argument on Wednesday, October 30, 2002 at 8:15 a.m.

Defense counsel informed the Court that plaintiffs' counsel in a state court proceeding inadvertently filed some documents his case which were the subject of a confidentiality and classification order. Counsel withdrew his confidentiality designation for those documents only. Thereafter, any documents as to which declassification is sought should be made the subject of a motion following the current procedures already in place.

14. Mediation

The parties met with mediator, Patrick Juneau on September 17, 2002 and presented their positions. Mr. Juneau has informed PLC and the Court of the Defendants' position in the mediation. Mr. Juneau was also present at the status conference.

A second round of mediation discussions are scheduled for October 23-25, 2002. The mediation will take place on October 23 in the Courtroom of Judge Eldon E. Fallon, Room C468 in the United States Courthouse. On October 24, the mediation will take place from 9 a.m. until 12 noon in the former courtroom of Judge Clement, Room C467 of the United States Courthouse. The mediation will resume in Judge Fallon's courtroom after noon on October 24 and will take place there as well on October 25.

Nine cases are currently scheduled for mediation on those dates. PLC informed the Court that

it will contact attorneys regarding additional cases to be discussed at these talks. PLC further reiterated that he is prepared to submit any cases, whether state cases or MDL cases, for mediation. Counsel are invited to contact PLC should they feel mediation is appropriate. The Court advised the parties to focus on common issues in the hopes of resolving some of their differences.

15. Trial of Louisiana Cases

In Orders dated August 20, 2002, and August 28, 2002 this Court set three individual actions for trial on the following dates: January 6 - 10, 2003, January 13 -17, 2003, and January 21-24, 2003. Counsel advise that they are proceeding with discovery in these matters in compliance with the Court's scheduling orders.

16. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Monday, November 25, 2002 at 9:00 a.m.