

MINUTE ENTRY  
FALLON, J.  
NOVEMBER 14, 2008

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 monthly status conference was held on this date by telephone in the Chambers of Judge Eldon E. Fallon. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 69 of Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC). This conference was transcribed by Ms. Toni Tusa, Official Court Reporter. Counsel may contact Ms. Tusa at (504) 589-7778 to request a copy of the transcript. A summary of the monthly status conference follows.

I. State Liaison Counsel/MDL Resolution Program II

The enrollment requirements have been met for the State Settlement Program (Propulsid II). Escrow Agreements have been executed and Defendants have funded the various funds. The claims, medical records, and claimant memoranda deadlines have passed. Administrative claims are being processed and disbursements have begun. The Special Master's Office has begun clearing claims for defense briefing, and the defendants have begun submitting defense memoranda. Seventy-three claims have been submitted to the Medical Panel for review, of which defendants have treated seventy-one on an expedited basis.

II. Trust Account

\_\_\_ Fee \_\_\_\_\_  
\_\_\_ Process \_\_\_\_\_  
 Dktd \_\_\_\_\_  
\_\_\_ CtRmDep \_\_\_\_\_  
\_\_\_ Dec. No \_\_\_\_\_

No deposits have been made into the Trust Account since the last status conference.

### III. MDL Mediation and Resolution Program

The deadline for enrollment and the submission of claims forms for the First MDL Resolution Program has expired.

On October 14, 2008 the Court met with the new doctor panelist member.

The Special Master's office continues to review Claims Forms to determine if the Forms meet the qualifying criteria for submission to the Medical Panel set forth in the Term Sheet. The Special Master continues to notify the attorneys for the claimants that have deficiencies. Thus far, in Propulsid I, the Special Master has submitted 2,378 Tier I, II, and III claims to the medical panel for review. Of the 2,378 claims, Defendants have treated 2,047 on an expedited basis. Twenty-two (22) of the tiered claims submitted to the Panel have been found eligible by the panel, and the Special Master has made those awards. One hundred and sixty-four (164) of the tiered claims are still in review by the Panel, 137 of which are considered expedited by the Defendants.

On April 29, 2008, the Court entered an Order regarding the waiver of the 6% MDL assessment fee as to those claimants found eligible by the medical panel. As for those claimants who have already received awards as of April 14, 2008 and whose awards were subject to the 6% assessment, the Clerk of Court remitted a check to the Special Master to reimburse those claimants for such assessment and further, the balance of the awards, the holdback 50% of the awards, was paid out from the Settlement Fund to each claimant that was found eligible for an award and who had previously received 50% of their award. As to all awards made after April 14, 2008, the 50% holdback remains in place.

Defendants continue to submit a list of plaintiffs/claimants whose records have already been obtained by defendants in whole or in part, so when necessary, the parties, the Special Master and the attorneys for these plaintiffs/claimants can expedite the submission and review the Claim Forms for these individuals.

The parties have agreed on a select number of cases that will be subject to a second review, 9 of which have been deemed eligible for awards.

The weekly telephone conference with the Special Master, PLC, DLC and SLC continues to take place to discuss a number of administrative issues regarding the Resolution Program.

For a more detailed account of the current status of the program, refer to the attached letter.

#### IV. Attorney's Fees Issues

On November 23, 2005, the Court issued an Order and Reasons regarding the Emergency Motion for Distribution of Attorney's Fees with full reservation of rights to all attorneys who may claim any right to common fees and expense reimbursement. On December 5, 2005, Daniel E. Becnel filed a Motion to Reconsider the Motion. The matter was set for hearing on September 24, 2008, but has been continued.

On March 2, 2006 Dumas & Associates Law Corporation filed a Motion for Common Benefit Fees and Expenses Reimbursements. On April 4, 2006, the PLC filed a response to the motion. The hearing date has not been set.

On August 5, 2008, Robert J. Caluda and A.J. Rebennack filed a Motion for Leave to File Motion for Reimbursement of Costs for Common Benefit to the Class and Committee. The PSC filed an opposition to the motion on October 6, 2008. The matter was set for hearing on

November 5, 2008 and a resolution was reached.

V. Plaintiff's Counsel's Request to Receive 100% of Award

James Dugan and Douglas Plymale have requested that an award made to one of their clients be subject to the April 14, 2008 Order waiving the 50% holdback. This holdback was part of an agreement between the parties. The parties indicated that they are open to continuing discussions on this issue.

VI. Next Status Conference

The next status conference will be held by telephone on December 11, 2008 at 3:30 p.m. The dial-in is 1-866-213-7613 and the conference ID is 74238361.

A handwritten signature in black ink, appearing to be a stylized 'J' or 'D' with a horizontal line extending to the right.



"Richard J. Arsenault"

To

cc

11/13/2008 04:10 PM

bcc

Subject Propulsid II

Dear Judge Fallon,

Please find below the current Propulsid II timeline for the distribution of funds.

1. Claim Forms were due on 12/1/07. The Special Master's Office has received 1,663 claim forms. Claims received in Propulsid I which belong in Propulsid II continue to be transferred and entered in the Propulsid II database.
2. Medical Records were due on 1/30/08. To date, approximately 99% of the claimants who have submitted claim forms have submitted medical records. The defense has had issues with inadequacies associated with the submissions and has requested that the Special Master renew efforts to ensure that the medical record submissions meet the requirements of the Program.
3. Claimant memorandums were due on 3/30/08. To date, the Special Master's Office has received 10% of these on Tier claims.
4. Administrative claims began being processed on 4/1/08. To date, 312 of these claims have been paid and proceeds forwarded to claimants.
1. The Special Master's Office began clearing claims for defense briefing on 5/31/08. As of October, five batches of expedited claims were cleared for defense briefing. It is anticipated that the next batch of expedited and full briefing claims will be cleared by December 1, 2008. Claim Form Deficiencies and Duplicate Enrollments between Propulsid I & Propulsid II are in the process of being resolved.
6. The Special Master's Office began receiving defense memorandums on August 22, 2008.
7. Expedited claims began going to medical panels on August 28, 2008 and administrative payments on any of these claims which are declared ineligible should begin on or about November 30, 2008.
8. Non-expedited claims began going to medical panels on September 27, 2008 and

administrative payments on any of these claims which are declared ineligible should begin on or about February 1, 2009.

9. Payment of claims which are declared eligible will begin as soon as they are cleared by the panel and the required documentation has been submitted.

The Special Master agrees that this is a correct and reasonable projected timeline with the caveat that it is based on and assumes timely filings by claimants and the defendant.

Respectfully submitted,

Richard J. Arsenault

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