

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
CLERK

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

CONSENT ORDER

The Plaintiffs' Steering Committee and the defendants Janssen Pharmaceutica Inc. and Johnson & Johnson (hereafter "the Parties") have negotiated a comprehensive MDL resolution program (hereafter the "Program") to conclude as many cases as possible in the MDL. A copy of the Program (MDL-1355 Term Sheet) is attached under seal until plaintiffs meet on February 17, 2004. This Program will come into existence when an agreed upon number of plaintiffs in MDL cases and an agreed upon number of persons who have signed tolling agreements consent to join the Program and to be bound by its terms. Upon enrollment in the Program, any enrolled plaintiff or claimant consents to the terms and conditions of the Program and accepts the jurisdiction of the MDL Court until all proceedings under the Program have been concluded and agree that this MDL Court, by their consent, is empowered to enter orders (1) terminating MDL plaintiff and claimant rights to sue defendants if they fail to submit the medical records within the time set forth in the Term Sheet or if the Medical Panel decides that they are not entitled to compensation and (2) authorizing the Special Master to pay from the Settlement Fund any award that he makes in favor of a MDL plaintiff or claimant consistent with this Fee

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Program in return for a release of all claims.

Because this Program is private, its terms do not require approval of this MDL Court except as may be necessary in the approval of any settlement involving minors or incompetents or a determination of appropriate attorneys' fees as set forth in Section 19 of the Term Sheet. Notwithstanding, the Parties have petitioned this MDL Court for its participation and assistance in certain areas respecting management of the Program if the minimum enrollment levels required to activate the Program are achieved. The Parties have represented that the Program has, as one of its conditions, the requirement that this MDL Court agree to participate in the following aspects of the Program:

1. Acceptance of jurisdiction over enrolled plaintiffs in the MDL, enrolled claimants not presently subject to the jurisdiction of this MDL Court and defendants until all proceedings under the Program have been concluded, with empowerment to enter orders (1) terminating MDL plaintiff and claimant rights to sue defendants if they fail to submit the medical records within the time set forth in the Term Sheet or if the Medical Panel decides that they are not entitled to compensation and (2) authorizing the Special Master to pay from the Settlement Fund any award that he makes in favor of a MDL plaintiff or claimant consistent with this Program in return for a release of all claims..
2. Appointment of a Special Master to manage the Program in accordance with the terms agreed upon by the Parties;
3. Replacement of the Special Master or any physician appointed to the Medical Panel as necessary and appropriate;
4. Maintenance as open cases on the docket, all lawsuits whose plaintiffs enter the Program, to be dismissed with prejudice only upon payment of an award under the Program or upon determination by the Medical Panel established under the Program that the claimant is not eligible for an award under the Program;
5. The MDL Court will determine and approve an appropriate award of

attorneys' fees to the Plaintiffs' Steering Committee ("PSC"), such fee to be paid by defendants in an amount not to exceed the amount stipulated under the Term Sheet.; and

6. Exercise of such additional powers as may be called for under the Program or as may be necessary for the proper management of cases which are before this Court pursuant to its appointment as the MDL Court for this Propulsid litigation.

UPON CONSIDERING THE ABOVE, IT IS, THIS 17th DAY OF FEBRUARY, 2004, ORDERED AS FOLLOWS:

1. If the minimum enrollment required under the Program is achieved, this MDL Court agrees to exercise the powers which the parties have requested of it in the Program;

2. This MDL Court, by consent of the parties and upon the Program being effective, shall assume jurisdiction over enrolled MDL plaintiffs, enrolled claimants not presently subject to the jurisdiction of the MDL Court and defendants until all proceedings under the Program have been concluded and will exercise its powers (1) to terminate MDL plaintiff and claimant rights to sue defendants if they fail to submit the medical records within the time set forth in the Term Sheet or any approved extension thereof or if the Medical Panel decides that they are not entitled to compensation and (2) to authorize the Special Master to pay from the Settlement Fund any award that he makes in favor of a MDL plaintiff or claimant consistent with this Program in return for a release of all claims;

3. Patrick A. Juneau is appointed Special Master of the Program, to exercise his rights and responsibilities as set forth in the Program. His appointment will become effective as soon as the minimum enrollment under the Program has been achieved;

4. After the Program has become effective, upon application by the Plaintiffs' Steering Committee, this Court will set a hearing for the determination of an

appropriate award of attorneys' fees to the PSC to be paid by defendants subject to the provisions and limitations of the Term Sheet;

5. The parties shall prepare the Enrollment Form and Claims Form as provided for in the Term Sheet for the MDL Court's review and later inclusion as a part of this Consent Order;

6. The parties shall prepare provisions for the MDL Court's review and later inclusion as part of this Consent Order which will set forth how the management of the Program will be conducted, including duties to be performed by the Special Master. proposed fee arrangement for members of the Medical Panel, as well as how they should fulfill their duties, reports to the PSC and defendants about the submission of claims under the Program and all other administrative matters designed to accomplish the purposes of the Program; and

7. This Court will issue additional orders as may be called for or appropriate with respect to the Program or as may be necessary for this Propulsid litigation.

NEW ORLEANS, LOUISIANA, this 4th day of February, 2004.


JUDGE ELDON E. FALLON