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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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IN RE: PROPULSID PRODUCTS DOCKET MDL 1355-L
LIABILITY LITIGATION THURSDAY, MARCH 27, 2008, 9:00 AM
NEW ORLEANS, LOUISIANA

* * * * *

STATUS CONFERENCE HELD BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
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P R O C E E D I N G S

THURSDAY, MARCH 27, 2008, 9:00 AM

(IN CHAMBERS)

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6 THE COURT: We're at our monthly status conference, and
7 I've got the proposed agenda. The first item on the agenda is
8 state liaison counsel's report. Would you identify yourself when
9 you talk, please.

10 MR. ARSENAULT: This is Richard Arsenault. At the last
11 conference, you requested a tentative time line with regard to
12 *Propulsid I*, and we submitted that to Your Honor, and we continue
13 to be on track with that.

14 THE COURT: We had some problem on the line. You
15 continue to be on track, Richard?

16 MR. ARSENAULT: Yes, Your Honor.

17 THE COURT: Any comment from the defendant on that?
18 Jim, anything? Tom?

19 MR. IRWIN: Jim Erwin. Excuse me.

20 THE COURT: Anything further on state liaison?

21 MR. ARSENAULT: Other than, I understand Special Master
22 Juneau continues to work with the individuals that are going to
23 be responsible for attempting to resolve the Medicare and
24 Medicaid liens, and I think the ball is in their court.
25 Mr. Juneau has provided them with the materials that they need,

1 and I understand he anticipates to hear from them shortly.

2 THE COURT: Do you have anybody, Richard, looking after
3 those liens?

4 MR. ARSENAULT: Dawn Barrios and myself, and I think
5 others have been coordinating with Mr. Juneau to make sure that
6 the materials that the individual from Washington wants in order
7 to try to resolve those.

8 THE COURT: Go ahead.

9 MR. ARSENAULT: So I think that's under control, Judge,
10 and we are on top of it.

11 MR. JUNEAU: Judge, this is Pat Juneau. Just briefly,
12 since we're on that subject, I have, in fact, corresponded and
13 talked several times with the government. They needed some
14 information. I've provided that information to them. The
15 problem with them is the key person that was involved is kind of
16 the pivotal person for the government in that regard. He's been
17 out for the last two weeks. He's supposed to come in this
18 Monday.

19 And they indicated there might be one small piece of
20 information that they wanted. I think I know what it is, but
21 until they define it for me, I can't give it to them, but it's
22 going to be readily accessible from the database because we
23 already geared up to do that.

24 I think what's going to happen, immediately after that,
25 after we get that data, I'm going to convene the committee from

1 the PLC to get together with the government, and we will work
2 that out. The fact that we have been through this in *Propulsid*
3 *II* is a real head start in the game. We've got detailed
4 statistics and stuff to get, so I don't think this is going to
5 take very long.

6 THE COURT: Okay. If you run into any problems, Pat,
7 get to me and I'll convene a meeting with you and the person from
8 Washington and the representative from the state committee.
9 Sometimes that helps.

10 MR. JUNEAU: She told me she enjoyed coming down here
11 the last time.

12 THE COURT: Yes, okay. Trust account, anything on trust
13 account?

14 MR. DAVIS: This is Leonard Davis. No, Your Honor,
15 there is nothing new. There have been no deposits in the trust
16 account since the last status conference.

17 THE COURT: MDL mediation and resolution program, number
18 three on the agenda.

19 MR. DAVIS: Your Honor, the Special Master continues to
20 review the claim, and the process is ongoing. We also continue
21 to have our weekly meetings with the Special Master wherein we
22 discuss and review the progress that's been made, and the
23 Special Master reports his findings on a regular basis.

24 We also have had additional discussions in those conferences
25 and as well as outside of those conferences regarding two

1 distinct matters. One, and we're happy to report that after a
2 number of discussions, the parties have come to an agreement
3 whereby the 12 claimants who have been processed thus far and who
4 are entitled to settlement funds through the settlement program
5 will be able to receive a hundred percent of their funding. The
6 Court may be aware that the agreement previously provided that
7 50 percent of the funding would be paid immediately upon a
8 determination and the balance made at a determination when the
9 entirety of the claims have been reviewed.

10 In a meeting, the PSC attendees who were at the meeting
11 unanimously agreed that the PSC would guarantee the necessary
12 funds from the attorney's fees fund as opposed to the settlement
13 fund, so that the claimants found eligible thus far for an award
14 by the medical panel could receive the balance, that is, the
15 50 percent holdback at this time, from the settlement fund. This
16 would allow those eligible recipients thus far to receive
17 100 percent of the awards issued at this time, and it means that
18 100 percent of the amount awarded will be funded now. Johnson &
19 Johnson is aware of this. Special Master Juneau is aware of
20 this, and we wanted to advise the Court of this agreement.

21 We discussed this with Pat Juneau, and Pat Juneau advises us
22 that in order for this to be effectuated, an order needs to be
23 issued by the Court directing the Special Master to draw the
24 funds from Deutsche Bank so that the payouts can be made.

25 What this, in essence, does is allow those claimants to

1 compensation awards to the settlement fund to be funded fully at
2 this time, and the balance, that is, the balance of the
3 50 percent, if there is any shortfall at the conclusion of the
4 program, will be guaranteed by the lawyers out of the attorney
5 fee account.

6 THE COURT: Well, I'm happy to hear that. Who is going
7 to draft the order?

8 MR. JUNEAU: Judge, this is Pat Juneau. It seems to me,
9 and I just want to make absolutely sure from the plaintiff and
10 defendant's standpoint, that that's all signed off on. As soon
11 as I'm given that notification, I can submit, you know, a motion
12 and order for the Court.

13 THE COURT: Well, either that or, Lennie, you and Jim
14 get together on a form --

15 MR. JUNEAU: Same thing.

16 THE COURT: -- and draft it, and make sure everybody is
17 on board.

18 MR. DAVIS: Jim and I will get together with a proposed
19 order, and Pat will run it by you prior to submitting it to the
20 Court, if that's acceptable, Jim.

21 MR. IRWIN: This is Jim. That's fine, Lennie.

22 THE COURT: That's agreeable with the defendants; is
23 that my understanding?

24 MR. CAMPION: Tom Campion, Your Honor. Yes, it is.

25 MR. DAVIS: Your Honor, the other thing we're happy to

1 advise the Court is that further discussions have taken place
2 between defendants and our office regarding the second review of
3 claimants, and the parties will be meeting as required under the
4 agreement to further discuss those claims that are entitled to a
5 second review.

6 MR. CAMPION: The defense has provided the PSC with a
7 schedule of those cases in which second reviews have been
8 requested, and we await word from the PSC when they want to meet
9 on this.

10 MR. DAVIS: And we expect those meetings to occur soon.

11 THE COURT: The next item is emergency motion for
12 distribution of attorney's fees.

13 MR. DAVIS: Your Honor, that matter can be passed at
14 this time.

15 THE COURT: Fifth is the supplemental agreement of
16 *Propulsid I* and *II*.

17 MR. DAVIS: Your Honor, that's actually in there, as it
18 has been in prior months, and I don't believe that there is
19 anything further. We can probably delete that from future
20 agendas.

21 THE COURT: I just received Barry Hill's proposed
22 material. I haven't had a chance to review it or focus on it,
23 but I will do so. I understand that the intention is to put it
24 under seal, but I'm told that it was forwarded to LexisNexis,
25 which is problematic from the sealed standpoint. When that is

1 forwarded to LexisNexis, it gets posted and is available to the
2 universe. So if you want that off of LexisNexis, you're going to
3 have to pull it off and just either e-mail it to us, and we've
4 already gotten it from the e-mail standpoint.

5 Anything further?

6 MR. DAVIS: Your Honor, the next conference.

7 THE COURT: The next conference.

8 Richard, while I'm getting the calendar sent to me, what's
9 your read on the state cases? What's the next step?

10 MR. ARSENAULT: I think the next step is the submission
11 by the claimants on the memorandums, which are due March 30th,
12 just in a few days, and from that point, the administrative
13 claims will begin being processed on April 1st. The
14 Special Master's office is going to begin clearing claims for the
15 defense briefing on May 31st. The Special Master's office
16 expects to start receiving defense memorandums in August.

17 Expedited claims should begin going to medical panels by
18 August 15th, and any of those claims that are declared ineligible
19 should begin being paid on, probably December 1st, November 30th.
20 The nonexpedited claims should begin going to medical panels by
21 November 30th. Any of those declared ineligible should begin
22 getting payments about February 1st, '09, and the process is
23 moving along according to plan.

24 MR. JUNEAU: Judge, this is Pat Juneau. You might just
25 want the statistics so you're in the loop on this. In

1 *Propulsid II*, there are 1,579 recorded claims.

2 THE COURT: Yes.

3 MR. JUNEAU: And just a breakdown of that, it looks like
4 there is 48 of those are wrongful death claims, tier one. There
5 is 314 tier two and three, and in an administrative category, we
6 have one thousand --

7 THE COURT: What is it? 1,200 and --

8 MR. JUNEAU: 17. And -- but the time line that Richard
9 referred to is correct. We have been over that. If anything,
10 we'll probably -- we're going to be on the safe side. We can
11 probably shorten that time frame some on these claims. It's just
12 a matter of processing, you know, with the briefing period and so
13 forth, but we sat down and worked out that time line you looked
14 at, but what I'm saying, I feel pretty secure we can operate
15 within that time frame.

16 THE COURT: And the doctor panels are in?

17 MR. JUNEAU: Oh, yes, that's worked out fine.

18 On that matter, so I'll give you the full view of things.
19 On *Propulsid I*, Your Honor, we've actually had 1,736 cases that
20 have actually gone to the panel, to medical panels. We've got 12
21 eligible currently on that. There are 299 currently in review.
22 There are 1,425 were declared ineligible.

23 And looking -- looking at all of these matters -- I
24 discussed this with the defendants the other day, because part of
25 this has to do with timing -- it looks like, to me, a realistic

1 projection that I think we'll be able to complete this project on
2 *Propulsid I* within an 18-month time frame.

3 THE COURT: Okay. Anything else from anyone?

4 MR. CAMPION: Judge, Tom Campion. You will shortly be
5 receiving a proposed order for the dismissal of in excess of
6 11,000 enrollees of the program. These names have been vetted
7 again and again, and we would be obliged if you could enter the
8 order once it's presented to you.

9 MR. DAVIS: Your Honor, just so that the record is
10 clear, the defendants forwarded a draft of that motion and
11 circulated that with Special Master Juneau, as well as to our
12 office. We, in turn, have taken that draft motion and have
13 circulated it to the plaintiffs that we have in our database who
14 registered with us so that it could be reviewed prior to the
15 motion being filed, and we've asked any attorney who received a
16 draft copy of that to review it, and if they have any issues with
17 it, to get in touch with Jim Irwin's office or our office.

18 THE COURT: And no one has?

19 MR. DAVIS: I believe one lawyer has communicated with
20 us recently.

21 THE COURT: And what happened with that?

22 MR. DAVIS: We assisted them in reviewing their claimant
23 and told them if they had further questions, that they should
24 contact Jim Irwin's office.

25 THE COURT: Jim, did you hear from them?

1 MR. IRWIN: Yes, Your Honor. I was out of town the last
2 two days, and I think -- I assume that's the same lawyer that
3 Lennie is talking about, and I referred that call to Monique, who
4 is in Washington this morning, so I can't give you an answer.

5 MR. DAVIS: And, Jim, if there is any issue we can help
6 with, we'll be available.

7 MR. IRWIN: Okay, thank you.

8 THE COURT: All right. Tom, you anticipate one motion
9 with a schedule on it?

10 MR. CAMPION: Yes, Judge.

11 THE COURT: Okay. That's fine.

12 MR. DIAMOND: Judge?

13 THE COURT: Yes.

14 MR. DIAMOND: This is Jeremy Diamond in Natchez.

15 THE COURT: Yes.

16 MR. DIAMOND: We represent Beverly Marcelli (spelled
17 phonetically). We would like to file -- I don't really know what
18 the process is here, but I would like to get a hearing date on a
19 motion of remand. Do you do that on your regular status
20 conference days?

21 THE COURT: Why don't you file it and I'll set it.

22 MR. DIAMOND: Okay. Just send a blank order setting it?

23 THE COURT: Yes.

24 MR. DIAMOND: The only reason I haven't filed it yet is
25 because my firm is not part of the filing system, and I'm going

1 through that process now to get on that system so I can file it
2 on ECF and served through Nexis.

3 THE COURT: Right. Check with either plaintiff's
4 liaison, both plaintiff's liaison and defendant's so that you can
5 get some dates that is convenient with them.

6 MR. DAVIS: Jeremy, this is Leonard Davis. If you want
7 to call us, we would be happy to help you in anyway we can.

8 MR. DIAMOND: Okay, I appreciate that.

9 THE COURT: May 15th is the next status conference.

10 UNIDENTIFIED SPEAKER: Judge, will the call-in number be
11 the same?

12 THE COURT: Yes, the number is the same, but the ID, I
13 understand, will be different, and it will go on the web site.

14 UNIDENTIFIED SPEAKER: All right. Thank you.

15 THE COURT: The same time. May 15th. All right, folks,
16 thank you very much.

17 VOICES: Thank you, Judge.

18 (WHEREUPON, at 9:22 a.m., the proceedings were
19 concluded.)

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REPORTER'S CERTIFICATE

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3 I, Cathy Pepper, Certified Realtime Reporter, Registered
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5 Reporter, United States District Court, Eastern District of
6 Louisiana, do hereby certify that the foregoing is a true and
7 correct transcript, to the best of my ability and understanding,
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9 numbered matter.

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12 S/CATHY PEPPER

13 Cathy Pepper, CCR, RPR, CRR
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