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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID * Docket MDL NO. 1355-L
PRODUCTS LIABILITY LITIGATION *
* September 27, 2007
*
* New Orleans, Louisiana
* * * * *

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

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Proceedings recorded by mechanical stenography, transcript
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PROCEEDINGS

(September 27, 2007)

1 **THE COURT:** Who do I have?

2 **MR. CAMPION:** Tom Champion.

3 **MR. ARSENAULT:** Richard Arsenault.

4 **MR. ZIMMERMAN:** Bucky Zimmerman.

5 **MR. JUNEAU:** Pat Juneau.

6 **THE COURT:** Anyone else?

7 **MS. BARRIOS:** Dawn Barrios.

8 **THE COURT:** Okay, Dawn. Anyone else? Sounds like
9 somebody's coming in. What is that? Let's wait until the
10 music's over and we'll start.

11 This is our monthly meeting on the Propulsid
12 litigation. I have a joint report provided to me. The first
13 item on the report is state liaison counsel's MDL resolution
14 program II. Anything on that, Dawn?

15 **MS. BARRIOS:** Yes, sir. We had sent out a massive
16 newsletter campaign to all the attorneys that the state
17 committee had e-mail addresses for and then the claims office.
18 So we blanketed that out to everyone to alert them to the
19 change in Propulsid I and to the deadline in Propulsid II.

20 I understand that Monique put the notice also on
21 the Web site. So everyone should be fully aware.

22 **THE COURT:** Okay. Anything from you on that, Tom?

23 **MR. CAMPION:** No, Your Honor.

1 **THE COURT:** All right. Trust account, anything?

2 The third item is MDL mediation resolution
3 program.

4 **MR. JUNEAU:** Judge, we have, if you'll permit me,
5 I'll just give this --

6 **THE COURT:** Sure.

7 **MR. JUNEAU:** -- report to you and to all counsel at
8 this time. These are the current numbers. There's been a
9 total of 1,015 cases presented to the panel. 840 of those were
10 in what we call the expedited category. Six of those were
11 declared eligible; 895 were ineligible; of that number 736 were
12 expedited. We have 114 in review.

13 There's a couple of other items, Judge, if
14 you'll permit me --

15 **THE COURT:** Sure.

16 **MR. JUNEAU:** -- on these same lines. I've been
17 working on supplanting the people that have rolled off of this
18 medical panel and we've got one approved last week, and I'll
19 refer to the defendant. We had one pending on a submission by
20 the plaintiff. I think it was a Dr. Goode, as I recall.

21 **MR. CAMPION:** Yes, sir, we sent a notice yesterday
22 saying we approve him.

23 **MR. JUNEAU:** Oh, great. Well, Judge, the thing we
24 need to do, and it would be a good opportunity to discuss that
25 right now.

1 We've got these two new doctors and we need to
2 orient these two doctors, which has been a very critical part
3 of this process. I'll leave it to the parties. The last time
4 we did it, we had a group and we brought them into the
5 courtroom, plaintiff and defendant were both there. The
6 presentation was made and, you know, the standard procedures
7 you followed at that time.

8 I'm assuming that's what people want to do this
9 time. If anybody has any other thoughts, I guess, now would be
10 the time to speak up.

11 **THE COURT:** Whatever is the easiest for you folks.
12 I'll do it whatever way you're comfortable with.

13 **MR. CAMPION:** We believe orientation should be done
14 as it was done with the last two groups, and that it should be
15 done in the court.

16 **THE COURT:** Okay.

17 **MR. CAMPION:** We would request that the judge speak
18 to the panelists after the orientation.

19 **THE COURT:** Okay. We'll do it that way.

20 **MR. JUNEAU:** Well, Judge, I'll coordinate with your
21 office a convenient time and we've got to get with these
22 doctors because they work on call and so forth.

23 **THE COURT:** Sure. Whenever you can set it up.

24 **MR. JUNEAU:** I'll be working through your staff on
25 that. I'll start on that today.

1 **THE COURT:** Okay.

2 **MR. JUNEAU:** One other thing, Judge, if you'll permit
3 me. We have -- Dawn talked about the notices which they did
4 send. We're getting a lot of inquiries. There seems to be a
5 little confusion out there in the fields as to where they
6 should submit their papers.

7 I think we kind of all agree, because it's
8 worked better as kind of a funneling part if they could get out
9 a joint-- I would think it ought to be joint between the
10 plaintiff and the defendant -- saying to send that to the
11 special master's office and we will immediately turn around and
12 make copies for both sides, plaintiff and defendant.

13 That way we got a monitoring source to track
14 these cases. But we need to get that notice jointly put out
15 when you -- from the plaintiff and defendant and notify them to
16 do that. Because there is some confusion about that about
17 people in the field.

18 **THE COURT:** What's the answer to that? Anybody from
19 defendant? Chuck, do you have any suggestions?

20 **MR. PREUSS:** Well, I think we could talk to Dawn and
21 the PSC and maybe publish another notice on the Web site.

22 **THE COURT:** Dawn, any input on that?

23 **MS. BARRIOS:** We can also do -- I find it more
24 effective to do the e-mails and we can certainly do that.
25 Chuck, if I can impose upon you, if maybe you do a first draft.

1 It seems to me to be a plain vanilla instructions to them and
2 then if you can get that to Lenny and I, we can look at it and
3 I can start the e-mails going out this afternoon.

4 **MR. PREUSS:** Okay.

5 **MR. JUNEAU:** That would be fine, Judge. I think that
6 will easily take care of what we're talking about. I have one
7 last item, Judge.

8 **THE COURT:** Just copy me on that, Dawn, and also send
9 a copy to Pat so that everybody's on the same page.

10 **MS. BARRIOS:** Yes, sir.

11 **MR. JUNEAU:** The last item I have, Judge. We've
12 gotten several, several inquiries from attorneys saying,
13 please, provide us with the reasons for the denial of the claim
14 by the medical panel, the declaration of non-eligibility. The
15 response I've been giving, which was an accurate response, is
16 that it was just denied.

17 So the question on the table is: Do I still do
18 that, or what is you-all's input as to whether or not they
19 should or should not receive these denial forms? A lot of them
20 just says "denied" on it. It's kind of like an internal
21 document for these doctors, and it really wouldn't mean much.

22 But I'm putting it on the table to see what the
23 parties feel comfortable with insofar as how we would reply.

24 **MR. CAMPION:** The defense has some strong views on
25 this one. The term sheet explicitly said that the members of

1 the medical panel only had to write "approved" or "denied", and
2 there is nothing else that is required of them. That was one
3 of the reasons we thought we'd be able to attract good people,
4 they do their thinking process and just come down with the
5 answer.

6 We noted that the special master's office, when
7 it prepared the form, put something on one of the pages which
8 would give the doctors the opportunity to write notes. We
9 really didn't think that was needed and that may cause some
10 problems.

11 The basic purpose is that the medical panel is
12 the supreme court as far as this is concerned. They don't have
13 to justify their positions. They're in there on the basis of
14 their experience and their integrity. If the plaintiff
15 prevails, so be it; if the defendant prevails, so be it.

16 We strongly oppose any proposal of the type that
17 is included in the remarks made by attorneys who are calling
18 Pat Juneau.

19 **MR. PREUSS:** In addition, I would think the term
20 sheet itself specifies the terms for eligibility or
21 ineligibility. So if they read that, then they could only
22 presume the reason for denial or a grant by the panel.

23 **MR. JUNEAU:** Judge, this is Pat Juneau.

24 **THE COURT:** Yes.

25 **MR. JUNEAU:** From my standpoint, I concur with those

1 comments. I'm just raising the issue.

2 **THE COURT:** Sure.

3 **MR. JUNEAU:** I think it was never intended, never
4 designed, it was just a note-taking thing. And it's not on all
5 of them anyway; and it was not designed to be a written reasons
6 for conclusions or anything like that. So that would be
7 grossly misinterpreted, you know, just a little short note or
8 something like that.

9 I don't think it accurately reflects -- and I
10 think what Tom said about the term sheet is accurate. But I
11 wanted to just raise the issue because we get a lot of
12 inquiries about that. And I wanted to tell everybody how we
13 were responding and that is on the term sheet they just declare
14 eligible or non-eligible, and that's what we're determining.

15 **THE COURT:** Ruth tells me that Lenny Davis has called
16 in -- oh, all the plaintiffs are on the other line.

17 **MR. CAMPION:** We have an e-mail from Jim Irwin's
18 office saying that they can hear what's being said, but that
19 they can't get to speak.

20 **MR. JUNEAU:** Is that by design, Tom?

21 **MR. CAMPION:** Nope.

22 **THE COURT:** Let me put you on hold and see if we can
23 pull everybody in.

24 **(WHEREUPON, there was a break in the proceedings.)**

25 **THE COURT:** Hello. Is everybody with us now? You're

1 there, Lenny?

2 **MR. DAVIS:** Yes, I'm here. But I had a slew of
3 people that were not able to get in with me, including
4 Jim Irwin, Monique, Arnold, Jim Capretz. I'm not sure who
5 else.

6 **MR. LEVIN:** Fred Longer is with me, Your Honor.

7 **MR. DAVIS:** We've been on the line for at least the
8 last 20 minutes --

9 **THE COURT:** Well, I'm sorry.

10 **MR. DAVIS:** -- and have missed, quite frankly, most
11 everything that's gone on.

12 **THE COURT:** Well, let's look at it again.

13 The first item was state liaison counsel's
14 resolution program II. Dawn Barrios reported that they've
15 reached the threshold area and that they're in full swing on
16 it. There's some question of notifying people as to what they
17 have to do and that's been taken care of.

18 No item on the trust accounts.

19 **MR. DAVIS:** Your Honor, just so you're aware, there
20 was notice that was placed on the Web site and Russ intends on
21 sending a broadcast e-mail to all plaintiff's counsel advising
22 them as to the posting on the Web site and the same sum and
23 substance.

24 **THE COURT:** All right. We had some problem with some
25 people were either not getting notice or didn't understand it.

1 Dawn suggested that Chuck draft something and send it to you
2 and her so you can look at it; and if everybody's agreeable,
3 then she could e-mail it to everyone.

4 **MR. DAVIS:** I think that's fine, and that's what Russ
5 had in mind also, primarily utilizing what we had agreed upon.
6 When I say "we", all three, state, plaintiffs and defendants,
7 that was posted on the Web site. So that would be posted. If
8 Chuck wanted to send something to us, we certainly would look
9 at it.

10 **MR. PREUSS:** Well, the issue only is that the special
11 master indicated that he gets a lot of calls as to where to
12 send the enrollment forms and the claim forms. So it would
13 just be a reminder notice that both documents be sent to the
14 special master and give the identifying patient information to
15 the special master.

16 **MR. DAVIS:** I think we could do that. We don't have
17 a problem with that. If you want to give us something that
18 incorporates all of that, we'll look at it and we'll get it
19 out.

20 **THE COURT:** Right. So it will be sent to you and to
21 Dawn and you-all can get together on it.

22 The MDL mediation program. Pat, do you want to
23 tell us about that again?

24 **MR. JUNEAU:** Yeah. Lenny, you didn't hear the
25 numbers I ran through, apparently.

1 **MR. DAVIS:** No.

2 **MR. JUNEAU:** Let me give them to you. There were
3 1,015 to the panel. Of that 840 were expedited; six eligible;
4 ineligible, 895; 736 of that were expedited. There are 114 in
5 review. Of that number 104 were expedited.

6 Also, Tom Campion said earlier, because I
7 inquired about the panel members, they had checked off and
8 okayed your nomination of Dr. Goode as a panel member.

9 **MR. DAVIS:** Right.

10 **MR. JUNEAU:** So what I'm going to be doing is setting
11 up, through Judge Fallon's office, the orientation of those two
12 new doctors we got to orient.

13 **MR. DAVIS:** All right.

14 **MR. JUNEAU:** I'll coordinate that. I'm going to
15 start on that today.

16 **MR. DAVIS:** Okay. We would like to get that done as
17 soon as we can.

18 **MR. JUNEAU:** Absolutely. We'll be making those calls
19 today. The last item that I addressed was the -- I told them
20 we had gotten some inquiries from claimant attorneys saying,
21 give us the reasons for the denial.

22 My input into that was that our standard
23 procedure is that we tell people that under the term sheet
24 they're either declared eligible and non-eligible by the
25 doctors. There's no required, no intended written reasons, if

1 you will, for the determinations. The only question was people
2 said, well, could we have the determination sheet?

3 My input into that was that these determination
4 sheets were never intended to do that because nobody's putting
5 down the written reasons per se, and that's not what the
6 instructions were. And I put it on the table for everybody so
7 they would know what the inquiry was.

8 I do not recommend we do that. I think -- I'm
9 not speaking for him, but Tom Campion said that on the term
10 sheet that was never contemplated. It was an up or down
11 decision. I just said, I happen to concur with that. But I
12 just advised people what the inquiry was and that my current
13 intention was to proceed as we'd been proceeding up to this
14 stage.

15 **MR. DAVIS:** Well, I think we need to find some means
16 whereby folks who want to opt into this reconsideration process
17 can do so with some type of information. Otherwise, it's just
18 willy nilly and you don't know whether or not to reconsider.

19 So they've got to get some type of information
20 regarding their case, certainly, if they want them
21 reconsidered; and we're going to have to address what type of
22 information, I believe.

23 **MR. CAMPION:** Okay. The defense position is that
24 there is no information going to the people who want to be
25 reconsidered. They either got voted in or they got voted out.

1 That was the deal that we negotiated a couple of years ago.

2 **MR. CAPRETZ:** Tom, this is Jim Capretz. Wouldn't it
3 make -- I understand your position. But wouldn't it make some
4 sense if we said something to the effect that: Does not meet
5 criteria; or record incomplete; or something succinct that lets
6 them know some basic information rather than just affirmed,
7 denied.

8 **MR. CAMPION:** Well, the agreement on reconsideration
9 is a simple agreement. It says that whatever you filed last
10 time, you can file again. Whatever we filed last time, we can
11 file again. There is no new filing material. You're simply
12 having a new set of eyes look at the same material that the
13 original panel did.

14 **MR. DAVIS:** Well, I think we need to discuss that,
15 Pat, amongst ourselves and get some resolution on it.

16 **MR. CAMPION:** I'm happy to discuss it, but you know
17 what our position is.

18 **THE COURT:** Let's both sides look at it, talk about
19 it. Bring it to me if you have a problem and we'll deal with
20 it that way, but I'd really like to have it resolved within the
21 next two weeks.

22 **MR. DAVIS:** We'll get back with Pat and we'll get
23 with Tom or Chuck and address it.

24 **THE COURT:** Well, the three of you probably need to
25 meet and talk about it. Pat's going to have to give you the

1 lay of the land as to what kind of inquiries he's getting, and
2 then you're going to have to talk about it with Tom. If
3 you-all can come to an agreement, fine; if you can't, then I'll
4 resolve it.

5 Anything further, Pat, from you?

6 **MR. JUNEAU:** No, Judge.

7 **THE COURT:** What about the pro se plaintiffs?

8 **MR. ZIMMERMAN:** Judge, this is Bucky Zimmerman. I
9 have some news on the settlement program.

10 **THE COURT:** Yes.

11 **MR. ZIMMERMAN:** Several months ago, maybe six months
12 ago, Kim West from the third-party payers was brought into a
13 session before the judge and we went into an anteroom and I was
14 asked to discuss with her resolution on somewhat of a global
15 basis of the third-party payer interest that she represented.

16 She, apparently, represented all the Blues and
17 Crosses. That didn't really go anywhere. But recently she has
18 approached me and said, frankly, that she is prepared to, what
19 she would consider a nominal demand, to try and put this matter
20 behind her and behind us. I asked her to put something in
21 writing and I would relay it to the committee.

22 She just wanted me to inform you and, I guess, I
23 want to inform you that that is in play; again, with no
24 commitments from anyone, but that it appears they are very
25 willing to do something on a global basis to resolve any

1 third-party payer claims that exist within the fund, at least
2 with regard to Blues and maybe on a wider basis.

3 But she asked me to report that to you, and I
4 think it is my obligation, because I was approached and asked
5 to be in touch with her, and we've had these discussions. So
6 that's my report.

7 **THE COURT:** Okay. Thank you, Bucky. Tom, is there
8 any interest in any of that?

9 **MR. CAMPION:** The high likelihood is no. I mean, if
10 she's looking for \$500, I suppose we could say yes to that.

11 **MR. LEVIN:** Your Honor, it's almost hysterical given
12 the claims process here.

13 **MR. DAVIS:** Yeah, I mean, this is the first we're
14 hearing of it; and we certainly would respond to Ms. West if
15 she brought something to us.

16 **MR. ZIMMERMAN:** And she will be and I'll get it to
17 you, Lenny. I'll get it this morning.

18 **THE COURT:** Okay. Bucky, you get with Lenny and see
19 what the situation is there.

20 **MR. ZIMMERMAN:** All right.

21 **THE COURT:** Any pro se plaintiffs other than that?

22 **MR. DAVIS:** No, we can probably remove that from the
23 agenda, Your Honor.

24 **THE COURT:** Emergency motion for distribution of
25 attorney's fees.

1 **MR. DAVIS:** That's been continued by the Court and
2 we're not having any issues on that.

3 **THE COURT:** Liaison motion for equitable
4 administration of the settlement agreement. That's what we
5 talked about a moment ago. We're in the second phase of that
6 where some folks are able to have another go at it. Is that
7 that portion of the agenda?

8 **MR. DAVIS:** Right. We just need to get the process
9 down and when those can go forward. Our position is that they
10 ought to be able to enroll at any time and starting now.

11 **THE COURT:** What about supplemental agreement
12 Propulsid I and II, anything?

13 **MR. DAVIS:** Our position on that is that
14 Propulsid II is up and ready to roll; and we think that it
15 ought to proceed now.

16 **THE COURT:** Any input from defendants on that?

17 **MR. CAMPION:** Agreed.

18 **MR. IRWIN:** We're fine with that.

19 **THE COURT:** Anything further?

20 **MR. DAVIS:** No. We'll get with Pat Juneau and talk
21 to him about these matters. Your Honor, I'm sorry that we were
22 delayed, but it was obviously out of our control.

23 **THE COURT:** No problem.

24 **MR. DAVIS:** I'm sorry you had to repeat all this.

25 **THE COURT:** That's all right. The next meeting is

1 October 26th at 9:00. We'll call in the same way.

2 Lenny, you and Tom talk about that other issue
3 with Pat and then get to me and let me know something in two
4 weeks.

5 MR. DAVIS: We will do that.

6 THE COURT: All right. Anything further? All right,
7 folks. Thank you very much.

8 MR. JUNEAU: Thank you, Judge.

9 MR. DAVIS: Thank you, Your Honor.

10 MS. BARRIOS: Thank you, Your Honor.

11 MR. CAMPION: Thank you, Your Honor.

12 (WHEREUPON, the Court was adjourned.)

13 *****

14 CERTIFICATE

15 I, Jodi Simcox, RMR, Official Court Reporter for the
16 United States District Court, Eastern District of Louisiana, do
17 hereby certify that the foregoing is a true and correct
18 transcript, to the best of my ability and understanding, from
19 the record of the proceedings in the above-entitled and
20 numbered matter.

21
22
23 _____
24 Jodi Simcox, RMR
25 Official Court Reporter