

C L 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: * Civil Action
* No. MD 00-1355
*
PROPULSID PRODUCTS LIABILITY * Section "L"
LITIGATION *
* New Orleans, Louisiana
* June 26, 2003
* * * * *

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

APPEARANCES:

For the Plaintiffs' Herman, Mathis, Casey, Kitchens &
Liaison Counsel: Gerel, LLP
By: LEONARD A. DAVIS, ESQ.
820 O'Keefe Avenue, Suite 100
New Orleans, Louisiana 70113

For the State Liaison Barrios, Kingsdorf & Casteix
Committee: By: DAWN BARRIOS, ESQ.
701 Poydras Street, Suite 3650
New Orleans, Louisiana 70130

For the Plaintiffs' Becnel Law Offices
Steering Committee: By: DANIEL E. BECNEL, JR., ESQ.
106 West Seventh Street
Reserve, Louisiana 70084-0508

Levin, Fishbein, Sedran & Berman
By: ARNOLD LEVIN, ESQ.
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106

1 APPEARANCES CONT'D.

2 For the Defendant's
Liaison Counsel:

Irwin, Fritchie, Urquhart & Moore
By: JAMES B. IRWIN, V, ESQ.
Texaco Center
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130

5 For Defendant's
Co-Lead Counsel:

Drinker Biddle
By: THOMAS F. CAMPION, ESQ.
500 Campus Drive
Florham Park, New Jersey 07932-1047

8 Also Present:

9 **For Plaintiffs:**

10 Blaine Barrileaux
11 Robert Caluda
12 Rebecca Cunard
13 Julie Jacobs
14 John L. Olivier
15 Charles Zimmerman

14 **For Defendants:**

15 Monique Garsaud
16 Charles Preuss

17 Court Audio Operator:

Betty DiMarco

18 Transcriptionist:

Dorothy Bourgeois
c/o U.S. District Court
500 Camp Street, Room C151
New Orleans, Louisiana 70130
(504) 589-7720

21 Proceedings recorded by electronic sound recording,
22 transcript produced by transcription service.

23

24

25

P R O C E E D I N G S

(Thursday, June 26, 2003)

(Call to Order of the Court)

1
2
3
4 THE COURT: Good morning, ladies and gentlemen. Be
5 seated, please.

6 Call the case.

7 THE CLERK: MDL Number 1355, In Re: Propulsid
8 Products Liability Litigation.

9 THE COURT: Would Counsel make their appearance for
10 the record, please.

11 MR. IRWIN: Good morning, Your Honor. Jim Irwin for
12 Defendants.

13 MR. DAVIS: Good morning, Your Honor, Leonard Davis.
14 I'm substituting for my partner, Russ Herman, who is in the
15 middle of litigation in state court, which the Court is
16 familiar with. I'm from the Herman Mathis Law Firm.

17 THE COURT: We're here today for our monthly status
18 conference in this matter. I have received from them an
19 agenda.

20 The first item on the agenda is Update of Rolling
21 Document Production and Electronic Production. Anything on
22 that? I'll hear from the Defendants or Plaintiffs.

23 MR. DAVIS: Your Honor, the Defendants have advised
24 that there's no schedule for their document production. The
25 Discovery Committee for the PSC is reviewing what's been

1 produced and that's ongoing.

2 THE COURT: All right. I have checked the calendar
3 on Verilaw's web site and I notice that there's nothing
4 scheduled in the foreseeable future from the standpoint of
5 discovery. So, this confirms that we're going into or coming
6 into the end of the discovery phase of the case as I
7 understand it.

8 Second, is State Liaison Counsel. Anything from
9 State Liaison Counsel?

10 MS. BARRIOS: Yes, Your Honor. Pursuant to our last
11 court appearance -- excuse me, my name is Dawn Barrios for the
12 State Liaison Counsel. I'm appearing for the entire committee
13 today.

14 We had two sessions with Mr. Herman and Mr. Davis on
15 Monday of this week. They were extremely productive. We
16 raised questions; they promised to get the answers from the
17 accountants. They're, I believe, going to now go back to the
18 Plaintiffs' Steering Committee and discuss the issues we
19 raised with them. We feel that just allowing us more time for
20 some further production -- conversation will be very fruitful
21 and we won't have to return to the Court with the issue.

22 THE COURT: All right. I do appreciate the attention
23 that the State Liaison has been giving to this issue. It's an
24 issue involving costs. The Plaintiffs' Committee has filed a
25 motion seeking to withdraw certain funds from the Registry of

1 the Court to reimburse various members of the committee and
2 others for the costs that they have expended, and there was
3 some discussion between the PLC and the State Committee.

4 I would like to see an agreement worked out, so that
5 the Court doesn't get involved. But if not, then I will get
6 involved and I'll handle the matter.

7 MR. DAVIS: Your Honor, we are planning on additional
8 discussions with Ms. Barrios, Mr. Arsenault, and Mr. Capretz.

9 THE COURT: The third item on the agenda is Patient
10 Profile Forms and Authorization.

11 MR. IRWIN: Your Honor, the current status is as
12 described in that segment of the Joint Report. Also, in
13 connection with the PTO 9 motion, the supplemental one that we
14 have filed and that is pending before Your Honor, we have
15 brought with us a list of the Plaintiffs that we believe are
16 subject to the motion and I have two copies to give to your
17 law clerk, Mr. McGlone.

18 I can state for the record, and some clarification I
19 hope, that the first part of this list under Section "A"
20 comprises about 91 people subject to the motion. Then under
21 Section "B," there is a list of names of people who were on
22 the motion, but they should not be subject to the motion or
23 the dismissal, because we incorrectly identified them as
24 having not furnished a PPF. We had glitch in our database,
25 and we determined that they in fact had purchased a PPF;

1 therefore, their claims should not be subject to dismissal.

2 THE COURT: All right. So, the people on "A" you
3 want me to dismiss?

4 MR. IRWIN: That is correct, Your Honor. We believe
5 that the record is -- as it is in other motions of this kind,
6 demonstrate that they have not complied with PTO 9, whereas,
7 those people identified under Part "B" have complied with PTO
8 Number 9.

9 THE COURT: All right, and I do understand that the
10 Plaintiffs oppose this and feel that if it is given, it should
11 be given without prejudice. The Court, for reasons explained
12 in previous discussions, will overrule the objection and grant
13 the motions with prejudice.

14 The fourth is Service List of Attorneys.

15 MR. IRWIN: Your Honor, we have the current list for
16 Ms. Lambert, Mr. Davis, and Ms. Barrios.

17 THE COURT: Third Party Subpoena Duces Tecum. We've
18 had some matters come up in the last couple of months on
19 subpoenas. The Court has convened conferences with these
20 third parties and made certain rulings. Have you been able to
21 get the material?

22 MR. DAVIS: Your Honor, there are two matters that we
23 are waiting on, one is the Medicom certification, and I'm
24 under the understanding that Defendants are in the process of
25 obtaining that and I expect that we will get that. And then

1 the other is the Degge Group, who has recently written and
2 provided documents and we are still waiting for a privilege
3 log. I understand that will be forthcoming.

4 THE COURT: Okay. And Motion for Class
5 Certification. I do have that motion before me. It's been
6 pending for some time. I haven't ruled on it or set it for
7 hearing, because the parties have asked that I not do that to
8 give them an opportunity to have more discovery and also to
9 discuss various other matters.

10 Is that still your purpose or do you want me to move
11 forward with that?

12 MR. IRWIN: We think that is correct, Your Honor.

13 MR. LEVIN: That's our purpose here.

14 THE COURT: All right. And seven is Plaintiffs' and
15 Defendants' Respective Requests for Production of Documents.
16 Anything on that?

17 MR. DAVIS: Your Honor, we understand that the
18 Defendants will be supplementing Interrogatories Set Number 7.
19 We've discussed that with the Defendants, and the others,
20 there's nothing further at this point.

21 THE COURT: What's a reasonable time to supplement to
22 finish that; what are we looking at?

23 MR. IRWIN: Your Honor, we're looking at two more
24 supplements, one -- I think the Joint Report describes that
25 there may have been three already, at least two, maybe three

1 -- one more supplement will be completed by next week for
2 sure.

3 THE COURT: Are you comfortable with that?

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: Okay, let's do it then within that period
6 of time.

7 MR. IRWIN: And then, Judge, there will be one final
8 supplement after that and I don't know when that will be
9 complete. If the Court would give me until next week, I can
10 give Mr. Davis a definitive date when that final supplement
11 will be completed.

12 THE COURT: All right. Let's also do that within a
13 week. Let him know when you can do it.

14 MR. IRWIN: Thank you.

15 THE COURT: Thank you.

16 Anything further on that item?

17 Item Number 8 is the Trust Account. Anything on
18 Trust Account?

19 MR. DAVIS: Your Honor, as Ms. Barrios previously
20 reported, those discussions are ongoing and there's nothing
21 further to report.

22 THE COURT: The Declassification of Documents,
23 Number 9, anything on that? Nothing?

24 Mediation is Number 10. The Court has appointed a
25 mediator in this matter. The mediation has been proceeding

1 for approximately nine months now. We've gotten some movement
2 from it, but it has been slow. What's the current situation
3 on the mediation?

4 MR. DAVIS: There are approximately 13 matters set
5 August, I believe it's 6th, 7th and 8th, and those are the
6 mediations that are presently set. Those dates have been
7 cleared with Mr. Juneau and we expect those mediations to go
8 forward.

9 THE COURT: Okay. I do notice in the audience that
10 we do have a number of people who are participating in this by
11 being spectators. If you're interested in mediating your
12 cases, as I said in previous meetings and also put on our web
13 site, please contact the Plaintiffs' Committee and get into
14 this action so that you can see whether or not your cases can
15 be resolved.

16 Number 11 is the Trial Schedule. We're moving in
17 several areas at the same time in this particular matter. It
18 seems to me that it's appropriate to begin moving cases
19 through the trial aspect. We've got mediation going on.
20 Discovery is still proceeding, but is in the waning stage.
21 Now, we have to pick up speed on the trial aspect of the case.

22 My suggestion to Counsel was that they come up with
23 some categories that they feel the cases logically fall into
24 and that each side pick one case in each of those categories.
25 I assume the Plaintiffs will pick their best case. The

1 Defendants will pick their best case, and then we will see what
2 the juries do with those particular cases. They can either
3 give us goal posts or they can express themselves on the
4 liability aspect of the case, but that's a way of doing it.

5 I plan to meet with the Plaintiffs' Liaison Counsel
6 and Defendants' Liaison Counsel shortly, pick some dates, set
7 the cases for trial and then proceed to trial on them. I
8 understand that the parties will get to me by the end of the
9 day, giving me a date at which I can schedule the meeting, and
10 then we'll go forward with that.

11 Number 12 is Pharmacy Indemnity Agreements. Anything
12 on that?

13 MR. IRWIN: No, Your Honor.

14 THE COURT: Other than the fact that the Defendants
15 continue to produce copies of all MDL Pharmacy Indemnity
16 Agreements which have been executed to the PLC.

17 Verilaw is the 13th item. Anything on Verilaw?

18 MR. IRWIN: No, Your Honor.

19 THE COURT: Verilaw has been helpful in this
20 particular case to not only serve as a medium of communication
21 with everyone, but also as a medium of notification in lieu of
22 document notices it's been helpful, and I think that's been
23 helpful to the litigation.

24 We have created an End Game Committee. It seems to
25 me that the case is, while it's not there yet, we're beginning

1 to at least see an end in sight. Though fuzzy and
2 impressionistic as it is, it's still coming into focus a
3 little bit. I expect it to be more in focus shortly.

4 But, we have created an End Game Committee to focus
5 on such things as some creative ways of resolving the matter
6 or portions of the matter, also figuring out how we send it
7 back to the states, how we package the cases, the role of
8 this Court in certifying questions for states. We have
9 approximately 30 class actions from 28 states -- or I should
10 say 28 class actions from 30 states, or thereabouts.

11 The question is whether this Court should certify
12 those particular matters or focus on the certification of
13 those matters, or send them back to the state courts so that
14 they can focus on them. I think the consensus is from the
15 parties that this Court does have the power to certify or at
16 least focus on the certification of those matters. So, we're
17 beginning to at least talk and figure out a plan of getting
18 them back to the states one way or the other.

19 Anything from the parties?

20 MR. BECNEL: Judge --

21 THE COURT: Yes?

22 MR. BECNEL: On that issue, there was an excellent
23 opinion that came out in the Firestone case this past week. I
24 don't know if the Court is aware of it.

25 THE COURT: Yes, I did look at that one. I

1 appreciate it.

2 That was Mr. Danny Becnel speaking for the
3 Plaintiffs.

4 Anything further from anyone on that End Game
5 Committee?

6 New agenda items, the Motions to Withdraw. I'm
7 receiving a number of motions from lawyers seeking to withdraw
8 from cases. The local rules require that before a motion can
9 be granted that an attorney be substituted for the withdrawing
10 attorney.

11 In this particular case I'm looking for input from
12 the Plaintiffs' Committee and also from Defendant Liaison
13 Committee regarding these matters. So, I suggest if anybody
14 is interested in withdrawing, that they chat at least first
15 with the Plaintiffs' Liaison Committee and work through some
16 of the procedures that have to be made.

17 Also, from the stand point of states, this case is
18 before this Court; it's no longer at the state level. So, if
19 state courts allow the parties to withdraw, I'm going to
20 nullify that. It has to come from this Court, because this
21 Court now has jurisdiction over this particular matter. I
22 mention that so that there's no confusion and the parties
23 understand the position of the Court.

24 Finally, I turn to the case of Donald and Loretta
25 Anderson. An attorney in Nevada sought to withdraw. He got

1 approval of the state court in Nevada and advised this court
2 that he had withdrawn from the case. I nullified that ruling.
3 He's still in the case.

4 I received recently a Motion for Reconsideration.
5 I've reconsidered the matter and reinstate my ruling. I'm not
6 going to permit him to withdraw from this matter at this time.

7 Anything further from either Plaintiffs' Liaison or
8 Defendants' Liaison Committee?

9 MR. IRWIN: Nothing on our side.

10 MR. DAVIS: I have two matters that I'd like to bring
11 to the attention of the Court. One is on behalf of Russ,
12 myself, and the PSC, we want the Court to be aware and we wish
13 Bob Wright a speedy recovery. He had bypass surgery and we
14 understand that he is doing well and is resting comfortably.
15 We just wanted the Court to be aware and we do wish him a
16 speedy recovery.

17 THE COURT: We've been together now for nearly three
18 years. We've had babies born. We've had daughters get
19 married and, unfortunately, we have had some illness. I do
20 wish our old friend, Bob, a speedy recovery.

21 MR. DAVIS: The other --

22 MR. IRWIN: We join in those sentiments, Your Honor.

23 MR. DAVIS: The other, Your Honor, is something that
24 gives me great pride both personally and professionally. In
25 the courtroom is a Two-Star General in our services. His name

1 is General Mike Dunlavey.

2 General Dunlavey has served this country quite well.
3 He is a General who has been in Cuba interrogating terrorists.
4 He has traveled all over the world to protect this country, in
5 particular to the Middle East, and I know that I haven't
6 spoken to him or seen him in probably over a year, maybe two.
7 And I had the pleasure of working with him, and Russ also had
8 the pleasure of working with him up in Pennsylvania in a
9 matter.

10 He is also a judge in the state court in Pennsylvania
11 and has not been able to serve his state quite well in the
12 last few years, but I do want to present him to the Court and
13 tell him that we really appreciate everything that he's done
14 and I thank him.

15 THE COURT: Well, General, we appreciate you being
16 here and, of course, we're honored by your presence. I'm
17 delighted that you could visit with us, and we all honor you
18 and thank you for all the work that you've been doing for all
19 of us.

20 GENERAL DUNLAVEY: Well, Your Honor, may it please
21 the Court, I'm familiar with Jim Irwin's reputation and I know
22 Len personally, and of course we have from Philadelphia are
23 represented.

24 And I spent ten years chasing and studying terrorists
25 and the last two year inviting them to an expense-paid trip to

1 the Caribbean, where we engaged in personal conversation in
2 order to stop the next 9/11. And after being in court for a
3 very short period of time, I'm offering my services to you to
4 protect you from these terrorists.

5 (Laughter)

6 THE COURT: Thank you very much.

7 GENERAL DUNLAVEY: And I can assure you, if you wish
8 for me to do so, that I will eliminate them as a headache for
9 you.

10 THE COURT: Well, thank you, General, for your
11 comments.

12 The next date, we've got the date August the 7th.
13 How does that work for you all? Is there a problem, Tom?

14 MR. CAMPION: I'm afraid that's a bad date, Judge.

15 THE COURT: All right.

16 MR. CAMPION: The preceding week would be grand. The
17 following week would be grand.

18 THE COURT: Okay, let's see -- how about the 14th?
19 What about August 14th, will that make it all right with you
20 all?

21 Okay, August 14th.

22 I'm in the process of changing clerks and I'm trying
23 to get some overlap so that the clerks can learn from each
24 other on this particular case. We've had about four clerks,
25 three or four clerks working on this matter now, so it's

1 getting to the end, hopefully.

2 Anything further from anybody?

3 MR. BECNEL: Judge, on the people withdrawing or not
4 withdrawing, we had a similar problem in breast implant, and
5 the Court appointed people -- the lawyers just didn't want to
6 proceed for financial reasons by in large, and the Court
7 appointed people and paid them -- Judge Pointer did that, and
8 I know our office had handled 300 or 400 of them.

9 I'm just throwing that out as a different method.

10 THE COURT: Yes. I'll be amenable to suggestions
11 from Counsel. That's one way of doing it, and I do look to
12 have Counsel who are experienced and also understand what's
13 been happening. A lot has gone on in this case and a lot of
14 it depends upon the movement and the direction that the case
15 has been going in now and I want to keep the case on
16 track. I don't want to re-create the wheel; so, I'm
17 interested in input from Counsel before I open the door to new
18 folks in this matter.

19 All right, thank you very much. Court will stand in
20 recess.

21 * * * * *

22 (Whereupon, the hearing was adjourned)

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.


Dorothy M. Bourgeois

7/3/03
Date