

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF LOUISIANA

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IN RE: PROPULSID PRODUCTS \* MDL 1355, Section L  
LIABILITY LITIGATION \*  
\* New Orleans, Louisiana  
\*  
\* December 4, 2003, 9:00 a.m.  
\* \* \* \* \*

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

APPEARANCES:

For the Plaintiffs: Herman, Mathis, Casey,  
Kitchens & Gerel  
BY: RUSS M. HERMAN, ESQ.  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113

For the Defendants: Irwin Fritchie Urquhart  
& Moore  
BY: JAMES B. IRWIN, ESQ.  
400 Poydras Street, Suite 2700  
New Orleans, Louisiana 70130

Official Court Reporter: Toni Doyle Tusa, CCR  
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New Orleans, Louisiana 70130  
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Proceedings recorded by mechanical stenography, transcript  
produced by computer.



1 Do we still have attorneys coming in, new cases, new counsel?

2 MR. IRWIN: Your Honor, we have had a couple of new  
3 ones recently and the list has been updated. I have copies for  
4 your clerk and for plaintiffs' liaison counsel. I will send a  
5 copy to the State Liaison Committee.

6 THE COURT: "Third Party Subpoena Duces Tecum."

7 MR. HERMAN: None outstanding, Your Honor.

8 THE COURT: "Motion for Class Certification."

9 MR. HERMAN: It should be filed before the first of  
10 the year, Your Honor.

11 THE COURT: Let's get it to me so we can then begin  
12 meeting on it and resolve that. "Plaintiffs' and Defendants'  
13 Respective Requests for Production of Documents." Any report  
14 with regard to that?

15 MR. HERMAN: Your Honor, we have reduced our request,  
16 actually, for admissions regarding admissibility and exceptions  
17 to the hearsay rule to 229. The defendants have responded in  
18 detail stating the nature of their objection, et cetera, in  
19 chart form. We will be bringing a motion for hearing on  
20 admissibility of those documents, leaving aside the question of  
21 relevancy.

22 THE COURT: I do think it's helpful to have a ruling  
23 from this Court on that. There are some issues that you may  
24 want to reserve or package for the remand and let the states  
25 resolve issues that are peculiarly factual so the difference

1 will be meaningful and will be related to the different facts  
2 that are involved in each of those cases. Some issues,  
3 primarily factual, ought to be globally treated so everybody  
4 knows what the rules are when they go back to their states  
5 rather than having inconsistent rulings from 50 or 60 different  
6 courts on various evidentiary calls. I think you will profit  
7 from having one ruling, so get it to me and I will rule on it.

8 MR. HERMAN: Your Honor, just one other matter I want  
9 to mention. It appears in connection with admissibility issues  
10 and evidentiary issues it will be necessary to take two  
11 30(b)(6) depositions, one directed to the FDA and one directed  
12 to the defendants.

13 MR. IRWIN: I can point out to the Court and for  
14 purposes of completing the record that the original request for  
15 production was served and requested that the defendants admit  
16 the business records status of 4,489 documents. Four responses  
17 were filed beginning first on April 11, then on April 18, and  
18 April 19 -- pardon me, April 25 and then on May 9. As a result  
19 of those serial responses, the defendant admitted the business  
20 record status of 1,070 exhibits and made categories of  
21 objections which were recited with respect to the others.

22 The recent requests comprised 229 exhibits. Two  
23 hundred of those were from the original slate of 4,489. They  
24 were a subset of that original slate. We restated our position  
25 on those 200. Twenty-nine new documents were requested in that

1 most recent request of 229. We admit the status of eight of  
2 those. With respect to the categories Your Honor has referred  
3 to, we are prepared to address those in briefings and hearings  
4 as may be appropriate.

5 MR. HERMAN: May it please the Court. I would like  
6 to make it clear we are not going to ask the Court to rule on  
7 3,000 documents. There are only approximately 200 that are at  
8 issue.

9 THE COURT: What about the next item, "Trust  
10 Account," anything on that?

11 MR. HERMAN: We are advised by the defendants they  
12 have made additional deposits in the trust account and we have  
13 no present problem with regard to the trust account.

14 THE COURT: "Declassified Documents."

15 MR. HERMAN: No issue pending before the Court or  
16 anticipated at this time.

17 THE COURT: "Mediation."

18 MR. HERMAN: There have been no additional  
19 mediations. We have been discussing ways in which to  
20 facilitate mediation, but we have nothing to report in that  
21 regard.

22 THE COURT: "Trial Schedule." I set ten of the cases  
23 or so for trial. Many of them have been resolved. We still  
24 have three outstanding.

25 MR. HERMAN: We have had one inquiry from one counsel

1 who has a case set and intends to try his case. We are going  
2 to facilitate that counsel looking at the depository documents  
3 that that counsel feels are necessary, as well as any  
4 demonstratives that have been developed.

5 MR. IRWIN: With respect to the three cases that  
6 remain, there are discussions about the possible voluntary  
7 dismissal of two of those. The third case is being prepared.  
8 It is being discovered. Actually, depositions are scheduled in  
9 all of them, but it is reasonable to expect that two of them  
10 may be shortly dismissed. I think the third is liable to be --  
11 we might see that one go through the routine process that we  
12 saw, for example, in Diaz.

13 THE COURT: "Pharmacy Indemnity Agreements."

14 MR. HERMAN: We continue to receive them  
15 periodically. I neglected to mention in connection with  
16 Patient Profile Forms we had one inquiry from the Pittman firm  
17 in Mississippi indicating that they did not feel it was  
18 necessary to fill out Patient Profile Forms because they were  
19 going to file a remand. We advised them in writing and orally  
20 that they should fill those forms out, that the Court had on  
21 numerous occasions dismissed cases with prejudice for failure  
22 to file those reports. I sent Mr. Irwin a copy of my letter to  
23 the Pittman firm. I don't know the status of that. I also  
24 advised Mr. Pittman that the plaintiffs' committee has a  
25 continuing objection to dismissals with prejudice.

1 THE COURT: Okay. "End Game Planning Committee."

2 MR. HERMAN: Nothing to report, Your Honor.

3 THE COURT: "Global Application of Daubert."

4 MR. HERMAN: When defendants bring some motion for a  
5 universal Daubert hearing, we will oppose it on grounds  
6 previously stated on the record at our last meeting.

7 THE COURT: We ought to get that in the mill, too,  
8 maybe not immediately, but that's something that at least ought  
9 to be resolved one way or another before you go back. "Motions  
10 to Withdraw as Counsel of Record."

11 MR. HERMAN: The PLC has no comment on that issue.

12 THE COURT: "Stipulation and Pretrial Order Providing  
13 for the Use at Trial of Depositions in State or Federal  
14 Courts."

15 MR. HERMAN: I was advised by Mr. Irwin last night he  
16 has the final draft. We have gone back and forth. I haven't  
17 seen it yet.

18 MR. IRWIN: We will circulate the final draft to them  
19 today. We have it ready to send.

20 THE COURT: Anything further?

21 MR. HERMAN: No.

22 THE COURT: How about from the defendants?

23 MR. IRWIN: No. Thank you.

24 THE COURT: Anything from anybody else? Mr. Diaz,  
25 are you still with us?

1 MR. DIAZ: I have nothing to add.

2 THE COURT: Let's set the next meeting, then. How  
3 about January 29? Does that work?

4 MR. HERMAN: I'll be available or someone  
5 representing the PLC will.

6 MR. IRWIN: We are available, Your Honor.

7 THE COURT: Let's meet again on January 29, 2004, at  
8 9:00 a.m. I will meet at 8:30 with the liaison counsel. Thank  
9 you very much.

10 \* \* \*

11 CERTIFICATE

12 I, Toni Doyle Tusa, CCR, Official Court Reporter,  
13 United States District Court, Eastern District of Louisiana, do  
14 hereby certify that the foregoing is a true and correct  
15 transcript, to the best of my ability and understanding, from  
16 the record of the proceedings in the above-entitled and  
17 numbered matter. This certification is valid only for a  
18 transcript accompanied by my original signature and seal on  
19 this page.

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Toni Doyle Tusa, CCR  
Official Court Reporter

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ROUGH DRAFT

court will stand in recess.

THE DEPUTY CLERK: Everyone rise.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

\* \* \* \* \*

REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

Karen A. Ibos, CCR, RPR  
Official Court Reporter

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