

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCT
LIABILITY LITIGATION

MDL 1355
Section "L"
New Orleans, Louisiana
Thursday, March 11, 2004
9:00 a.m.

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

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P R O C E E D I N G S

(STATUS CONFERENCE)

(THURSDAY, MARCH 11, 2004)

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5 THE COURT: Sorry I'm a little late. I was meeting
6 with liaison counsel. This is our monthly meeting, I've been
7 presented with an agenda. The first item on the agenda is
8 Update of Rolling Document Production Electronic Document
9 Production.

10 MR. ZIMMERMAN: Russ just stepped out to go down the
11 hall.

12 THE COURT: We will hear from you, Jim.

13 MR. IRWIN: Good morning, your Honor. Jim Irwin for
14 the defendants. We believe that the matters concerning the
15 document production are concluded. And as we mentioned this
16 morning in our preconference discussions as we placed on the
17 court's new items agenda, we will be meeting to discuss
18 preparation and presentation to the court of an order
19 permitting Janssen to suspend preservation of current e-mails
20 and because of the attendant and continuing expenses associated
21 with that.

22 THE COURT: All right. When you do that, send a copy
23 to State Liaison Counsel so that if they have any input they
24 can give that to me. It seems to me to be a fair request. If
25 it gives State Liaison Counsel any particular problem, I'd like

1 to know and understand why it does, at least I'll hear from you
2 on it.

3 MR. ARSENAULT: Sure, okay.

4 MR. IRWIN: We will make sure they're in the loop on
5 that.

6 THE COURT: And we have State Liaison Counsel next.
7 Anything that you're interested in reporting on, Mr. Arsenault?

8 MR. ARSENAULT: No, your Honor. We attended the
9 meeting in Orlando and that information is being disseminated.

10 THE COURT: Okay. Fine. The matter is rolling along
11 in the MDL from the standpoint of resolution. What I've tried
12 to do through the State Liaison Counsel is to give you access
13 to the information and also to keep you up-to-date on it. But
14 perhaps there is also a way of trying to craft something that
15 is workable from the states once this is finalized with a
16 little more certainty and maybe we can utilize the state
17 liaison committee to get involved in that aspect of the case.

18 MR. ARSENAULT: Yes, your Honor.

19 THE COURT: That may be something for another day, but
20 I will keep an eye on it.

21 Three is the Patient Profile Forms and
22 Authorizations.

23 MR. IRWIN: Your Honor, as the report indicates, there
24 are some that are overdue. However, we are suspending any
25 motion practice in light of the pending settlement.

1 THE COURT: Okay. Service list of attorneys.

2 MR. IRWIN: Yes, sir. We have a current list for
3 plaintiff liaison counsel, for the state committee and also for
4 Ms. Lambert.

5 THE COURT: The Motion for Class Certification is item
6 No. 5.

7 MR. HERMAN: Good morning, your Honor, may it please
8 the court, Russ Herman for the PLC. We have postponed the
9 filing of that motion in light of the pending settlement. It's
10 prepared and we will hold it in abeyance if your Honor will
11 permit.

12 THE COURT: All right. As you know, I've put on the
13 web site the fact of the settlement and a bit about it. There
14 is a term sheet that is being prepared, it has to be finalized,
15 and also various forms have to be drafted, that it is
16 anticipated will be filled out by the claimants or the
17 claimants' attorneys. When that is finalized, and it should be
18 within the next couple of days or a week, I'll post that on the
19 web site, too, so that everybody can see that.

20 The next item is 6, Plaintiffs' and Defendants'
21 Respective Requests For Production.

22 MR. HERMAN: Plaintiffs and defendants have each
23 prepared an order on preservation of electronic materials. And
24 in connection with that, your Honor, --

25 THE COURT: Just a minute. Mr. Herman, just a minute.

1 The matter, one aspect of this case that was troubling to me
 2 and of concern to me is the potential liens which the
 3 government may have resulting from Medicare and other matters.
 4 I would like to get those liens resolved,, and I called the U.S.
 5 Attorney and I see them in the back, the U.S. attorneys are
 6 with us.

7 And I'm going to ask them to meet in a few moments
 8 with the liaison people and you can fill them in as to the
 9 problem. I know that they will be able to work it out and be a
 10 very much help to us in this case. I thank them for being here
 11 today.

12 MR. HERMAN: Your Honor, in connection with XI,
 13 Plaintiffs and Defendants' Request for Production. We have
 14 pending a motion with regard to documents as to whether they're
 15 admissible as an exception of the hearsay rule. The documents
 16 have been collated by both parties. Each party has a very
 17 short paragraph as to why they are or are not admissible, and
 18 we will be presenting that jointly to you sometime within the
 19 next ten days.

20 THE COURT: Get it to me and I'll resolve it, and then
 21 I'll do it as fast as I can for you. We are dealing with
 22 803(6) exceptions and parties have resolved most of the issues
 23 but some have not and I'll work those out.

24 The trust account is No. 7.

25 MR. HERMAN: We will check with the clerk's office to

1 find out how much has been placed in trust. We don't have that
2 information today, but there have been some settlement funds
3 deposited since January 27th.

4 THE COURT: And 8 is Declassified Documents.

5 MR. HERMAN: Nothing new on classified documents or
6 regarding mediation in light of the settlement. The DLC has
7 furnished a list of all state court trials scheduled.

8 THE COURT: How many states court trials are there at
9 this point?

10 MR. CAMPION: Twenty are scheduled for trial.

11 THE COURT: In which states?

12 MR. CAMPION: Mississippi, New Jersey -- I'm sorry.
13 Mississippi, New York, Texas, Pennsylvania, I think those are
14 the states.

15 MR. HERMAN: The planning committee, we had a meeting
16 in Orlando that was publicized. 80 lawyers attended
17 representing 50 or more firms. Several lawyers were state
18 cases there and most of the folks attending by a large number
19 indicated that their firms wanted to put their cases into the
20 MDL process for settlement and are awaiting enrollment forms.

21 The term sheet was distributed and explained.
22 They were advised that the term sheet's in draft form but there
23 would be some non-substantive changes. We do not anticipate
24 reaching the enrollment levels required of us within four
25 months of the enrollment form and the term sheet being posted

1 on the court's web site. Counsel opposite than I Jim Irwin
2 will either meet or call your Honor sometime hopefully this
3 week, within a week advising that we have a modified term sheet
4 and an enrollment form to be placed on your Honor's web site.

5 THE COURT: And the anticipation is that the claimants
6 from wherever can download that form from the web site, the
7 Propulsid web site and to utilize it in that form and will be
8 able to get it out faster.

9 MR. HERMAN: The PLC intends to send out an e-mail and
10 correspondence to all of the attorneys with whom we are
11 acquainted that appear to have MDL filed cases telling them to
12 access the web site, how to do it, advise them that they are
13 not required to enroll any death cases or hospitalization type
14 cases in the MDL if they are on a term sheet, that the focus is
15 on MDL filed cases.

16 THE COURT: All right. Pharmacy agreements and the end
17 game.

18 MR. IRWIN: Your Honor, I don't think there have been
19 any new pharmacy indemnity agreements, I don't remember any
20 recently. But as we get them we do circulate them to the
21 plaintiffs' liaison counsel.

22 THE COURT: Okay. Anything from the End Game Committee
23 No. 12.

24 MR. HERMAN: Nothing other than what we've previously
25 represented to the court.

1 THE COURT: 13, global application of Daubert.

2 MR. HERMAN: The defendants want to bring a motion and
3 we're going to oppose it.

4 MR. IRWIN: Well, right now, your Honor, we are going
5 to suspend any motions of that kind for the reasons of the
6 pending settlement.

7 THE COURT: When we're finished with the settlement
8 area, we ought to focus or you ought to focus me on that
9 question one way or the other. I can do one of several things,
10 I can rule on it, I can send it back to the various states or I
11 can deal with it in some way, some perhaps other way. But I do
12 want to at least focus on it before I turn this case loose.

13 Motions to Withdraw as Counsel of Record.

14 MR. HERMAN: These are on hold for the motions that are
15 pending.

16 THE COURT: And stipulations, pretrial order.

17 MR. HERMAN: I think with two or three words changed,
18 we should be able to present that within the next week or ten
19 days.

20 THE COURT: Let's do that within ten days then and get
21 it to me.

22 CIS-NED-32 depositions, anything on 16?

23 MR. HERMAN: Those were the depositions previously
24 scheduled in Brussels and Amsterdam before terms were reached
25 on the term sheet. As a result of the term sheet and the

1 settlement being reached, those depositions were postponed
2 indefinitely. If attorneys who are not on the PLC opt their
3 cases out of the settlement, we are going to provide them with
4 the deposition preparation necessary for them to go take that
5 deposition.

6 THE COURT: All right. That's something from the state
7 standpoint you want to focus on so there are several
8 depositions, both in Belgium and Amsterdam left from the series
9 that have been taken from there, they may need some additional
10 work on that.

11 The Motion for Summary Judgment and the Bailey
12 Motion.

13 MR. HERMAN: We're going to postpone filing that motion
14 in light of the settlement at this time.

15 THE COURT: Okay. Anything else I need to deal with?

16 MR. HERMAN: It's prepared. The Bailey motion, we
17 don't take any position with.

18 THE COURT: I do have a couple of motions, one is the
19 Bailey motion and the motion from the government to substitute
20 the various physicians, which I move till the next term, the
21 next meeting.

22 Anything from the states, any input that you have?

23 MR. ARSENAULT: No.

24 THE COURT: Okay, our next meeting --

25 MR. CAMPION: If I may address just one or two points,

1 Judge. We have advised the PFC that with the exception of a
2 couple of tolling agreements, which are still in the course of
3 being processed, we will not be entering into tolling
4 agreements on an ongoing forward basis. It has been brought to
5 my attention that there may be a couple of states in the United
6 States where the statute of limitations is unexpired. And so
7 be it. We realize that there may be infant or incompetent
8 cases where the statute may not have expired. But as a policy
9 matter, the tolling agreement world has come to an end.

10 Second, by way of a historical footnote, your
11 Honor may recall in the first year of this litigation a great
12 deal of discussion was turning on the New Jersey litigation.

13 THE COURT: Yes.

14 MR. CAMPION: The New Jersey litigation at this moment
15 consists of three pending cases. A substantial amount of the
16 New Jersey litigation by a long round about route found its way
17 into this room. The cases are now pending in federal courts
18 and either have been or are being removed here under tag along
19 basis.

20 We would like to take the opportunity to express
21 our thanks to the members of the PSC for the work they did in
22 the negotiation process, it was most difficult. Their level of
23 cooperation was extraordinary, and we think we have brought
24 this into a safe harbor, and we look forward to a successful
25 administration of this program. We have both begun to

1 interview physicians who will serve as medical panelists and we
2 hope things are good on an ongoing basis. Thank you.

3 THE COURT: All right. Our next meeting, how about
4 April the 15th for our next meeting? How does that look?
5 That's a Thursday, third Thursday in April.

6 MR. ZIMMERMAN: I think that's the same as the Baycol
7 hearing.

8 THE COURT: Okay. 22nd, how about April 22nd?

9 MR. IRWIN: We have on problem on our side with that
10 one, Judge.

11 THE COURT: April 29th, does that work?

12 MR. HERMAN: Your Honor, we'll have either Mr. Wright
13 or Mr. Levin or Mr. Murray representing with Mr. Davis the PSC.
14 It won't be Mr. Murray. We go back in the tobacco litigation,
15 the trial is set for March 29th, and we're in trial just about
16 every day until it's over.

17 THE COURT: All right. April 29th then at 9 o'clock, I
18 will see members of the PSC at 8:30. And I would like to see
19 the liaison counsel with the U.S. Attorneys. Thank you. The
20 court will stand in recess.

21 THE DEPUTY CLERK: Everyone rise.

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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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