

PROCEEDINGS

(November 19, 2004)

THE DEPUTY CLERK: Everyone rise.

Court is in session. Please be seated.

THE COURT: Call the case.

THE DEPUTY CLERK: 00-1355, In Re: Propulsid
Products Liability Litigation.

THE COURT: Counsel, make your appearances for the
record.

MR. HERMAN: May it please the Court. Good morning,
Your Honor. Russ Herman for the Plaintiffs Legal Committee.

MR. IRWIN: Jim Irwin for the defendants.

THE COURT: We are here today in connection with our
monthly meeting. I received from the liaison committees a
joint report. The first item on the joint report is "Update of
Rolling Document Production and Electronic Document
Production." Anything on that?

MR. HERMAN: We have nothing new to report since the
last meeting, Your Honor.

THE COURT: The second item is "State Liaison
Counsel." Anything from the state, Ms. Barrios?

MS. BARRIOS: No, Your Honor. We are just anxiously
awaiting the numbers on the enrollment and, when the federal
settlement gets done, to hopefully move into a state
settlement.

1 THE COURT: The next item is "Patient Profile Form
2 and Authorization."

3 MR. IRWIN: Your Honor, the numbers are as reported
4 in Joint Report 35 and we continue to defer action on these as
5 the settlement program is under way.

6 THE COURT: "Service List of Attorneys."

7 MR. IRWIN: Yes, Your Honor. We have the current
8 service list, and I can confirm to the Court it does contain
9 the pro se names and addresses to the best of our information.

10 THE COURT: "Motion on Class Certification." Is that
11 still on hold?

12 MR. HERMAN: Yes, it is, Your Honor.

13 THE COURT: "Trust Account." Anything on the trust
14 account? Any deposits recently made?

15 MR. HERMAN: There are no new deposits since the last
16 status conference, Your Honor.

17 THE COURT: "Mediation."

18 MR. HERMAN: No new mediations have taken place.

19 THE COURT: "Trial Schedule." What about a trial
20 schedule for state court cases? Anything from the defendants
21 on trial scheduling?

22 MR. HERMAN: We have been advised by defense counsel
23 by letter of approximately a dozen cases that are set for trial
24 beginning in 2005 and none of those cases are MDL cases.

25 THE COURT: Anything from the state on that? Do you

1 have any information?

2 MS. BARRIOS: No, Your Honor.

3 MR. HERMAN: We will provide Ms. Barrios, of the
4 State Liaison Committee, with a list of what those cases are.

5 MS. BARRIOS: Thank you.

6 THE COURT: "MDL Mediation and Resolution Program."
7 Any report on that? Let me hear from plaintiffs or defendants.

8 MR. HERMAN: With respect to the resolution, we are
9 advised that approximately 25,000 enrollment forms have been
10 received. I will let Mr. Preuss advise the Court. He is the
11 counsel most familiar with that process.

12 MR. PREUSS: Well, Your Honor, as stated by
13 Mr. Herman, we have approximately 25,000, 26,000 submissions
14 coming from about 111 law firms. We have linked about 70
15 percent of the names on the submitted ones to our static
16 database established as of February 1 this year.

17 THE COURT: When you say "linked," you mean
18 confirmed?

19 MR. PREUSS: Confirmed. Right now, in terms of
20 submissions for wrongful deaths, there are 311.

21 THE COURT: What was the target?

22 MR. PREUSS: 242.

23 THE COURT: So it looks like that has been met.

24 MR. PREUSS: That has. Right now we have confirmed
25 121 of those, so there is some verification due. With respect

1 to the personal injury category, the minimum requirement is
2 2,653. We have submitted 1,473 so far and 1,307 of those have
3 been verified.

4 On the claimant status, 17,977 have been
5 submitted and the minimum requirement is 12,000, which would
6 also include in that number the accords. We have verified
7 8,259. We have a category of uncategorized -- if you will,
8 where we have not been told where they are submitting them --
9 that's 3,714. We expect that a good number of those will
10 probably move into the MDL personal injury.

11 What we need to do to complete the 30 percent
12 linking is to get identifying information. We have a number of
13 individuals that are represented by multiple law firms. We
14 need to straighten that out, then we simply need to get date of
15 birth information, Social Security for others, and verify the
16 names. We will be going through the MDL, Pat Juneau's office,
17 to help us on that, as well as provide input to the plaintiffs'
18 firms and request their continuing cooperation to get us that
19 information so we can complete the link-up and have a database
20 from which we can start processing the claims forms.

21 THE COURT: What's the process that you anticipate?
22 Do you have a list that you can submit to plaintiffs' counsel?

23 MR. PREUSS: Yes, Your Honor. We will be able to
24 provide a list of individuals who have been listed in their
25 submissions and which we need identifying information. We will

1 send them out to each law firm. The sooner they get them back,
2 the sooner we can do the link-up.

3 THE COURT: When can you get it out?

4 MR. PREUSS: Wednesday of next week.

5 THE COURT: Let's do that by Wednesday of next week.

6 What are the plaintiffs going to do when you get that list?

7 MR. HERMAN: There's a San Andreas Fault, Bermuda
8 Triangle, and Black Hole of the law that takes place between
9 December 15 and January 3, but we intend to convene the
10 Plaintiffs Legal Committee for a two-day phone bank, which was
11 very successful on enrollment, and make assignments. We
12 believe that even though we are in this period that we should
13 be able to contact the approximately 111 plaintiffs' lawyers
14 who have filed enrollments and advise them what they have to
15 do. We hope to have that information by the end of the year
16 and hope that, with the additional information, the enrollment
17 required can be confirmed by the target date of January 15.

18 THE COURT: What's the latest with the government?
19 We are talking now about the potential liens that the
20 government may have.

21 MR. PREUSS: My last communication, which occurred
22 after the last status conference, Your Honor, was a request for
23 representative cases that fell within the various tiers that
24 have been set forth in our term sheet for them to get a handle
25 on what kind of expenses are associated with a Propulsid injury

1 or death. That information has been provided to them and we
2 will continue to keep them informed as to the numbers we are
3 dealing with and respond to their questions. At some point we
4 will want to get with them and see if we can work it out with
5 them in terms of satisfying their liens on a global basis.

6 THE COURT: I may set up some conference with you and
7 the government and a representative of the Plaintiffs Legal
8 Committee so we can talk about that aspect of the case. I need
9 both of you to think about the most efficient way. It seems to
10 me a global handling is the easiest way. If not, I would like
11 to move the decision from the administrative government program
12 to see if they can get aboard with the mediation and let the
13 mediator set the amount of the liens in each individual case so
14 we can move it along. I'm trying to avoid having this come at
15 us after all the funds are either in the registry of the Court
16 or ready to be distributed and then we can't distribute them
17 because we don't know the answer to those specific questions.
18 I really would like that handled before we get to the point of
19 distributing the funds.

20 MR. PREUSS: We'll work with plaintiffs' counsel to
21 effect that, Your Honor.

22 MR. HERMAN: Your Honor, there are two other matters
23 within this item. Recently the Court approved the distributing
24 agent, Mr. Clavier, and the parameters of his duties in the
25 administration of a qualified settlement fund. Mr. Stephen

1 Murray, on behalf of the PLC, has provided us with a first
2 draft of a way in which we may be able to deal with due process
3 and fairness and at the same time satisfy the requirements of
4 the settlement going forward by a notification/affidavit
5 process. We are going to present a second draft, have the PLC
6 prepare that draft, send it to the defendants, and hopefully
7 submit that in motion and short brief form to Your Honor within
8 the next two weeks so that those individuals who have potential
9 claims for which there is no current address, phone number,
10 e-mail, despite every attempt to locate them -- so that those
11 individuals who may be potential claimants may be handled
12 appropriately.

13 THE COURT: Okay. We are dealing with a number of
14 issues. One issue is the resolution of those cases that have
15 come in from the February deadline and that are presently in
16 the mix and that's what we have been talking about. I suspect
17 there will be some cases that may have been slowed down for
18 some reason or other that didn't make the February cutoff, but
19 now are interested in perhaps joining in the program. We are
20 going to have to bunch those cases together and then focus on
21 them to see what can be done with those.

22 I think you are going to have some that have
23 looked at the settlement program and feel that, for various
24 reasons, they may not be interested in resolving the matter in
25 an amicable manner and they want to try the case. We are not

1 there yet, but we may have however many of those cases that we
2 have to then decide what I am going to do with them, either
3 send them back or I go back with them and try the case or
4 devise some method to resolve those cases.

5 With regard to the pro se cases, I think you
6 have two categories. One category is those who are interested
7 in proceeding pro se. I will have to deal with those by
8 advising them what they have to do and give them certain
9 deadlines. If they meet the deadlines, we'll try them pro se.
10 If they don't meet the deadlines, they may have to have their
11 cases dismissed.

12 There are some litigants that nobody has heard
13 from in many years. Those cases, once the Court is satisfied
14 that all actions have been taken to locate those individuals
15 using the mails, using databases, using whatever method is
16 appropriate to reach those individuals, I will assume the
17 responsibility of dealing with those cases and I will have to
18 dismiss those cases. In our profession, lawyers have a duty to
19 represent and keep in contact with a client, but that's a
20 two-way street. The client also needs to advise their lawyer
21 if they have changed addresses or some other information.
22 We'll do the best we possibly can to reach them, but when we
23 have exhausted that, they will have to be dismissed.

24 Then there are the state cases. I don't know at
25 that point whether the state cases want to be bunched together

1 and looked at from the standpoint of settlement. The
2 defendants have indicated they are interested in trying to do
3 that, but you may have that same type of situations above
4 discussed with the state cases. We will have to look at that a
5 little more closely because those cases may not be before me,
6 so I don't know how much I can get involved in dismissing or
7 moving those cases. Give it some thought and we'll talk about
8 it. If I can be of assistance in this case, I would like to do
9 so.

10 The next item is "Global Application of
11 Daubert." The status is still the same on that?

12 MR. HERMAN: Yes, Your Honor.

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

15 MR. HERMAN: We believe we have reached agreement.

16 MR. IRWIN: I believe the Court has signed the order.

17 THE COURT: "Pro Se Plaintiffs" is the last one. I
18 talked a little bit about that. Do we need anything more on
19 that?

20 MR. HERMAN: Not at this time, Your Honor.

21 THE COURT: Anything further from anyone?

22 MR. HERMAN: We need a date for the next one.

23 THE COURT: Anything further from the state?

24 MS. BARRIOS: No, Your Honor.

25 THE COURT: We have a date of Thursday, December 16.

1 I'll meet again with the liaison committees at 8:30 and start
2 at 9:00. Have a good Thanksgiving. Court will stand in
3 recess.

4 THE DEPUTY CLERK: Everyone rise.

5 (WHEREUPON, the Court was in recess.)

6 * * *

7 CERTIFICATE

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

16
17
18 Toni Doyle Tusa
19 Toni Doyle Tusa, CCR
20 Official Court Reporter

