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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS, LOUISIANA

IN RE: PROPULSID PRODUCTS * Docket 00-MDL-1355-L
LIABILITY LITIGATION *
* December 16, 2004, 9:00 a.m.
* * * * *

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

APPEARANCES:

For the Plaintiffs: Levin, Fishbein, Sedran & Berman
BY: ARNOLD LEVIN, ESQ.
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Philadelphia, Pennsylvania 19106

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

For the Defendants: Drinker, Biddle & Reath
BY: CHARLES F. PREUSS, ESQ.
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New Orleans, Louisiana 70130
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 preservation until the enrollment quotas are met, which we hope
2 will occur soon. I would like to reiterate this is an
3 important issue for us for cost reasons, if for no other, to
4 try to get some resolution of this suspension of the electronic
5 document preservation.

6 THE COURT: Anything from the plaintiffs on that one?

7 MR. LEVIN: No, sir.

8 THE COURT: State liaison counsel, any issues you
9 want to raise?

10 MR. LEVIN: They are present in the courtroom.

11 MS. BARRIOS: Dawn Barrios for the committee. I
12 received a copy of a letter from the defendants to Mr. Davis
13 giving us a list of all the cases in the state courts that
14 would be coming up for trial during 2005. The committee has
15 done a memo to those attorneys offering any help or assistance
16 they may need on any documents or any other trial assistance.
17 That memo just went out last week. I haven't gotten a
18 response. I also received from the defendants a list of all
19 the pending state court cases, and we will have a committee
20 meeting to decide the best way to approach the attorneys listed
21 on that roster.

22 THE COURT: Anything from the defendants on this
23 issue?

24 MR. IRWIN: No, Your Honor.

25 THE COURT: Thank you very much, Ms. Barrios. I

1 appreciate it. Patient profile form is the next item.

2 MR. IRWIN: Your Honor, as reported last month, we
3 are suspending action on those motions. We have recorded the
4 numbers in the report and we will address that when the quotas
5 are met for the settlement program.

6 THE COURT: Service list of attorneys, do we have
7 that?

8 MR. IRWIN: Your Honor, for the first time -- I'm
9 thinking this is Joint Report 36 -- I forgot to bring it. I
10 apologize.

11 THE COURT: You can supplement the record. Send them
12 over to us. Motion for class certification, that's still on
13 hold and has been deferred?

14 MR. LEVIN: Yes.

15 THE COURT: Anything on trust accounts?

16 MR. LEVIN: Nothing, sir.

17 THE COURT: Trial schedule. Do we have any
18 information on the state cases? Ms. Barrios mentioned there
19 are a number of them. Where are those cases; do we know?

20 MR. CAMPION: West Virginia in April is the first one
21 and the others are as set forth on the list.

22 THE COURT: If they need anything, Ms. Barrios, and
23 you don't have it, get with the plaintiff liaison committee
24 and/or give me a call. Pharmacy indemnity agreements, anything
25 on that?

1 MR. IRWIN: Your Honor, we have had no new requests
2 on that. The Court has kindly informed us this morning that a
3 motion for a cross claim --

4 THE COURT: Yes. I received a cross claim in a case
5 against Johnson & Johnson from the Texas court. I'll look at
6 that and decide. I just received it, so that's the reason you
7 all probably haven't received it. It must be in the mail.
8 It's a claim filed in a Texas proceeding against Albertson, and
9 Albertson filed a cross claim against J&J.

10 MR. IRWIN: Your Honor, we have not yet seen that.
11 If we don't get a copy in a day or so, could we trouble
12 Your Honor's office for a copy?

13 THE COURT: Yes. Give me a call and I'll send a copy
14 to you. I'm interested in your input. The mediation and
15 resolution program, can we have some update?

16 MR. LEVIN: Chuck Preuss has all the numbers.

17 MR. PREUSS: Your Honor, subsequent to our last
18 meeting, as we discussed, we got information out to the
19 plaintiffs' counsel, the various law firms where we needed some
20 supplemental identification information, Social Security
21 numbers, date of birth, addresses. This information is coming
22 back. December 20 was the date that plaintiffs felt they could
23 comply with. We are looking forward to receiving that
24 information at that time. We are scheduled to have a
25 conference with them the day after that to see exactly where we

1 are.

2 In the meantime, we have been working on the
3 data we have and I will give you the latest statistics. We
4 have MDL plaintiffs, 2,980. We have decedents, 234; minimum
5 required is 242 under the agreement. Personal injury cases,
6 2,733; 2,653 are required. Tolling agreement claim members,
7 20,468, and 12,000 must be enrolled. As to Achord plaintiffs,
8 which are included as part of the tolling agreement ultimately,
9 1,304, and we need 1,767.

10 The uncategorized group, 2,856, those are
11 individuals who have filed and not indicated as to where they
12 are raising their claim. That we hope to reduce significantly
13 by the information we get on December 20 and, as indicated
14 earlier, we will need to make sure that these various
15 individuals are, indeed, eligible pursuant to the terms of the
16 agreement. We are working hard on it and we have brought the
17 special master's office into the picture. They have been very
18 helpful in following up matters such as claimants who are
19 represented by multiple attorneys, and we are getting the
20 cooperation of the PLC. We hope to move along rapidly once we
21 get the information on the 20th.

22 THE COURT: There are really two issues, as I see it,
23 in these matters. One is making certain that the PLC has
24 satisfied the requirements so that the program can get started
25 and, secondly, getting all interested parties, all others

1 involved in it, in the program. I think all of the efforts
2 ought to be put toward getting the required amount taken care
3 of, that is to say, decedents, you need eight more, go look for
4 the eight. See whether or not those eight are in some other
5 category. The personal injury cases, you may have to separate
6 some of them, but that should be easily done. Achord
7 plaintiffs, as I understand, all of the PLC members are
8 interested in pursuing the matter, so if they are all in, then
9 Achord ought to be all in. If not, then there may be some
10 duplication, but that ought to be able to work itself out. My
11 suggestion to you all is to get the program running so people
12 can see that it is feasible and it is done so we can go to the
13 next step. When will you have a clearer picture, on the 20th?

14 MR. PREUSS: We have got 50 back out of 111. Some of
15 the firms with the most plaintiffs are still, obviously, busy
16 with it. Once we get those in on the 20th, that should give
17 us a better feel.

18 THE COURT: Are you going to meet with the
19 plaintiffs?

20 MR. PREUSS: We are scheduled to have a conference
21 the day after the 20th, so it will be on the 21st.

22 THE COURT: Get with me after that and let me know
23 what the results are. Let's have a conference call so I can
24 talk with you and the plaintiffs' representative.

25 MR. PREUSS: We will. Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. LEVIN: As we have told you earlier today,
3 plaintiffs' liaison counsel will be following up, namely
4 Russ Herman.

5 MR. IRWIN: I did find my service lists. I have one
6 for Ms. Lambert. I'm now 36 for 36.

7 THE COURT: All right. Global application of Daubert
8 is the next item on the agenda. We are tabling that still?

9 MR. LEVIN: Yes, sir.

10 THE COURT: Stipulation and Pretrial Order providing
11 for use of trial depositions in state and federal court.

12 MR. IRWIN: That has been entered by the Court and
13 may be removed from the agenda, Your Honor.

14 THE COURT: The states ought to be advised that's
15 been done. Motions for summary judgment.

16 MR. LEVIN: We have deferred filing that, sir.

17 THE COURT: Pro se plaintiffs, where are we with
18 that?

19 MR. LEVIN: We are thinking and working on a
20 solution.

21 THE COURT: Anything from the defendants on that?

22 MR. IRWIN: Your Honor, we have updated the service
23 list. They are now being included on all necessary services,
24 and our feeling is that we should again defer this until the
25 enrollments are satisfied. I'm not aware of any activity at

1 this point that is affecting these particular unrepresented
2 plaintiffs.

3 THE COURT: I will be looking at that, though,
4 because they are plaintiffs in the case. I'll take that up,
5 but I will defer that presently. I will look at them in globo.

6 The next item is motions to remand. I have
7 received a number of motions to remand, primarily from New York
8 and Arizona. I'm going to continue those without date. I will
9 be looking at them globally. I will try to approach them by
10 categorizing them by state or some other issue, perhaps, and
11 deal with them at one time rather than piecemeal. I will defer
12 ruling on those until another time. I do want the parties to
13 concentrate on seeing where we are with the resolution program.
14 Any other items that we need to cover?

15 MR. IRWIN: I believe that covers the agenda today,
16 Your Honor.

17 THE COURT: Any new items on the agenda?

18 MR. IRWIN: That was the only new item, the remand
19 issue.

20 THE COURT: Anything from the states that you wish to
21 bring up? I'll have the next meeting on January 14, 2005, at
22 9:00. I will meet with the liaison committee earlier that day.
23 Anything further from anyone? Thank you very much. I
24 appreciate your work. Court will stand in recess. Have a
25 happy holidays.

1 THE DEPUTY CLERK: Everyone rise.

2 (WHEREUPON, the Court was in recess.)

3 * * *

4 CERTIFICATE

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

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15 Toni Doyle Tusa, CCR
16 Official Court Reporter
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ROUGH DRAFT