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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCTS \* Docket MDL 1355-L  
LIABILITY LITIGATION \*  
\* March 9, 2006, 9:00 a.m.  
\*  
\* New Orleans, Louisiana  
\* \* \* \* \*

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

APPEARANCES:

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Special Master Patrick Juneau

4

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1 P-R-O-C-E-E-D-I-N-G-S.

2 MARCH 9, 2006

3 M O R N I N G S E S S I O N

4 (COURT CALLED TO ORDER)

5 THE DEPUTY CLERK: Everyone rise.

6 THE COURT: Be seated please. Good morning, ladies and  
7 gentlemen. Call the case.

8 THE DEPUTY CLERK: MDL No. 1355 In re: Propulsid.

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

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

13 MR. DAVIS: Good morning, Your Honor, in Russ Herman's  
14 absence, Leonard Davis for the plaintiffs.

15 THE COURT: We're here today with our monthly meeting.  
16 We have received from the liaison committee a report and agenda  
17 of a couple of matters on it and I'll take it in order.

18 The first order of business was state liaison counsel.  
19 Any report from state liaison counsel? You recall Propulsid II.

20 MR. ARSENAULT: Yes, Your Honor. Good morning,  
21 Richard Arsenault.

22 Your Honor, as you know, for many months now we have  
23 been trying to reach out to the lawyers who have cases that might  
24 be eligible for Propulsid II. We've identified those lawyers.  
25 We have been in regular communications with them. We have been

1 working hard to try to make sure we have accurate inventories,  
2 and now with the advent of Propulsid II, we again reached out to  
3 them to try to provide them with as much information in terms of  
4 access to the websites and so forth, continue to work with them  
5 to make sure that the inventories are correct.

6           And then the latest thing we've done, Your Honor, is  
7 we've had two informational seminars, symposium-type functions,  
8 one in Hawaii in connection with the ATLA mid-winter convention,  
9 and another in Jackson, Mississippi. We chose that site because  
10 it seemed like the highest concentration of cases and lawyers  
11 with those cases were in that venue.

12           So on February 23rd we had a program there, Your Honor,  
13 an open program by telephone. We had an overview, a historical  
14 perspective provided by Mr. Zimmerman. We had Arnold Levin, who  
15 talked about the benefits, the risks, and the options associated  
16 with this program.

17           I discussed the administrative claims. Barry Hill  
18 talked in detail about the injury and death claims. Dawn Barrios  
19 talked about the forms and the various cut-offs. And there was a  
20 question-and-answer period, and during that process, the  
21 Special Master Juneau called in, made a brief presentation and  
22 also made himself available to ask questions.

23           I think the attendance was good. The audience appeared  
24 engaged. They had some good questions, I think, that we were  
25 able to resolve. And we're hopeful that this is a positive step

1 in supporting the program associated with Propulsid.

2 THE COURT: You-all talked to me about my involvement in  
3 it. I don't know whether you've thought it through as to whether  
4 I need jurisdiction or whether this is in agreement, and whatever  
5 it is, if I need the Clerk's Office involved in it in some way, I  
6 have to ask you to meet with the Clerk's Office and discuss it  
7 with them.

8 I don't know whether you're at that stage yet, but if  
9 you need anything filed in court, or multiple files -- I don't  
10 know whether I will or will not, you will know better than I --  
11 we're going to have to meet and discuss that and work out the  
12 logistics.

13 MR. ARSENAULT: Thank you.

14 MS. BARRIOS: I'm sorry, Your Honor.

15 THE COURT: That's all right.

16 MS. BARRIOS: Dawn Barrios with the state liaison  
17 committee. I wanted to just put one item on the record, and we  
18 learned about this glitch in dates when we had the informational  
19 meeting in Jackson. So not only did the participants learn  
20 something, actually the attorneys who were working on the case  
21 learned something as well.

22 It appears as though, Your Honor, when J & J Jansen  
23 (spelled phonetically) sent out the termination of the tolling  
24 agreement notification, and every attorney then had 60 days from  
25 the date they received that letter to actually file something in

1 order to preserve the statute, those dates generally will end  
2 sometime in March of '06. The claim forms for Propulsid II are  
3 not due until June 17th of '06, so therefore we had about a  
4 90-day window, and a question was raised from the audience, "Will  
5 my claim prescribe or will the statute run in 90 days?"

6 We spoke with the defense and they have assured us that  
7 anybody who filed a valid claim -- I'm sorry, anyone who was on a  
8 valid tolling agreement and files a claim in Propulsid II, their  
9 statute will be preserved. I wanted to memorialize that  
10 agreement for the record.

11 THE COURT: Fine. Is that the way you see it from the  
12 standpoint of the defendants?

13 MR. PREUSS: Chuck Preuss on behalf of the defendant.  
14 That is correct. If they join the program, then that supersedes  
15 that defense; if they don't, then of course they are subject to  
16 the statute.

17 THE COURT: Is that your understanding?

18 MS. BARRIOS: Yes, Your Honor, that's correct.

19 MR. DAVIS: Your Honor, I just want to let the Court  
20 know and thank Barry, Dawn, Richard, Pat, Bucky Arnold and those  
21 who worked with us in handling the meetings in Mississippi and  
22 making sure that this thing was up and running and we are  
23 encouraged.

24 THE COURT: Good. Okay. The next item is trust  
25 account. Anything there --

1 MR. DAVIS: There have been no new reports. One deposit  
2 was made by the defendant, and as Your Honor is aware there is a  
3 motion for release and disbursement of the funds from deposit  
4 made in the registry of the court pursuant to pretrial order  
5 number 16 is pending before Your Honor. There has been no  
6 opposition filed in connection with that motion. And I think  
7 that the motion spells out the purpose of it.

8 THE COURT: Trial schedule is next. Is that trial still  
9 on in West Virginia?

10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: Mediation and resolution program. Anything  
12 there? Pat, do you want to report on that?

13 One thing that I've been involved with and anxious to  
14 resolve is the government's Medicare claims. I've had a number  
15 of conversations with that office, and I've invited them down to  
16 New Orleans and also Houston. And they participated in a meeting  
17 with me, and we've gotten some drafts back and forth, and  
18 hopefully we're on the final draft at this point of an agreement.  
19 And we'll try to work out their claims globally, and I'll be able  
20 to begin disbursing the cases. That's something that I really  
21 want to see happen as quickly as possible.

22 SPECIAL MASTER JUNEAU: Patrick Juneau for the record,  
23 the special master, Your Honor. As you've indicated, we've had  
24 extensive meetings with the government, including meeting in  
25 Washington. In principal, we do have consensus of an agreement.



1 We're down now, we're dealing with, as recently as this morning,  
2 a draft that the plan is that we will setup a conference call,  
3 and I think there is a substantial chance that we will have this  
4 entire matter finalized language wise no later than Monday, this  
5 coming week, and that being the case, we want to get the  
6 signatories all signed off on it.

7           And if that's the case, then I'm ready to proceed with  
8 making the awards which I have already reviewed but I am not yet  
9 authorized to disburse until such time as that agreement is  
10 finalized. So the light is at the end of the tunnel with regard  
11 to that issue, Your Honor.

12           THE COURT: I do appreciate the government's  
13 participation in this. It's one of those things that has been a  
14 roadblock in MDL matters, and I really hope that we can use this  
15 approach for future MDLs because it's just disconcerting when the  
16 plaintiff gets the money and everybody is happy -- plaintiff,  
17 defendant, lawyers, litigants -- and then they have a problem  
18 with the funds being disbursed at the last minute because of some  
19 lien, so if we can wash that out, get it out in global fashion,  
20 this will expedite matters.

21           SPECIAL MASTER JUNEAU: The turnaround period had been  
22 extremely quick, Your Honor, with regard to these documents. As  
23 you know, that can be a hang-up in these matters, but it looks  
24 like we're right on the verge of completing that next week.

25           THE COURT: Hook me in on that conference call and let

1 me deal with it.

2 SPECIAL MASTER JUNEAU: Yes, sir.

3 THE COURT: Thank you.

4 The next item, let's see, is the pro se plaintiffs.  
5 We've had some movement where you-all have talked to me about a  
6 lawyer at one time, but the lawyer is unable to do it so we've  
7 got another person.

8 MR. IRWIN: Yes, Your Honor. We are going to approach  
9 Jerry Wyble (spelled phonetically), a fine lawyer known to all of  
10 us and to Your Honor.

11 THE COURT: Yes.

12 MR. IRWIN: Lennie Davis and I intend on calling him  
13 today. We may ask for some help from the special master,  
14 Mr. Juneau, and we will encourage Jerry to hopefully have a  
15 conference call with us and with Mr. Juneau to give him the lay  
16 of the land, and we will report to Your Honor promptly.

17 THE COURT: That's fine.

18 All right. The next item is the proposed order to  
19 reflect dismissal of certain tolling agreements.

20 MR. IRWIN: Your Honor, I'm pleased to say I think that  
21 matter is on your desk.

22 THE COURT: Yes, I do have that. In fact, it's been  
23 signed.

24 The next item is motion for clarification of the  
25 August 12th minute entry. What's that?

1 MR. CAMPION: Your Honor, Mr. Ingram is in court.

2 THE COURT: Mr. Ingram, I appreciate your patience on  
3 this one. I understand you that you-all have been working very  
4 hard on it. What's the result?

5 MR. CAMPION: We are happy to report that we have  
6 resolved the matter. For the record, we entered a minute entry  
7 in August. We filed a motion for reconsideration of the minute  
8 entry. The argument was tabled.

9 We have now come to a resolution which has been  
10 embodied in a stipulation which will be signed today and filed.  
11 The stipulation calls for an order from you accepting the  
12 stipulation as part of the administration program. And  
13 Mr. Ingram and I are both satisfied with it.

14 And I have to say in particular, I appreciated his  
15 patience, and his office was the one that came up with the idea  
16 to make it simpler than we had proposed, and we're grateful for  
17 that.

18 THE COURT: Is that your understanding, Mr. Ingram?

19 MR. INGRAM: If the Court please, I'm Carroll Ingram.  
20 And yes, sir, it is our understanding and we're appreciative of  
21 the Court's patience with us as we worked toward this resolution,  
22 and we are appreciative of defense counsel, Mr. Campion for  
23 working with us in getting this issue resolved.

24 THE COURT: Good.

25 MR. INGRAM: And we have signed the stipulation, and

1 it's ready to present to the Court for order.

2 THE COURT: Okay, fine. Yes, I appreciate your work,  
3 Mr. Champion. I know that this is a hard one, and you've stuck  
4 with it, and the Court appreciates that.

5 MR. CAMPION: Thank you, Judge.

6 THE COURT: All right. The proposed order approving a  
7 wrongful death award made by the special master. I think I have  
8 that and I think I signed it.

9 MR. IRWIN: I think that's correct, Your Honor.

10 THE COURT: That's part of the record.

11 Emergency motion for distribution of attorney's  
12 fees. That's --

13 MR. BECNEL: My motion.

14 THE COURT: Yes, your motion, Mr. Becnel, and Mr. Dumas  
15 also.

16 MR. BECNEL: Your Honor, I would like to call some  
17 witnesses.

18 MR. LEVIN: May I be heard, Your Honor.

19 THE COURT: He wants to call some witnesses.

20 MR. LEVIN: That's what I want to be heard on.

21 Arnold Levin, L-E-V-I-N.

22 Your Honor entered an order to set forth a procedure  
23 for determining common benefit work and an allocation of  
24 attorney's fees. That was an interim award of attorney's fees.  
25 It is not a final award. There is no finality whatsoever to the

1 recommendations of the special master or the Court with regard to  
2 those attorney's fees.

3           The order is not subject to appeal. Being  
4 interlocutory, there is no 54(b) attachment to that order. There  
5 is contemplated -- the exact date unknown, but certainly it will  
6 occur -- a proceeding for a final award of counsel fees.

7           At that time, all issues will be raised de novo, and  
8 nobody is prejudiced by this interim award because they will have  
9 the opportunity to once again express themselves, and the  
10 procedure will comport with due process.

11           At that time that award will be final, subject to  
12 revisiting in a motion for reconsideration, whether or not there  
13 are witnesses necessary that -- to determine at that time, and  
14 that order will be subject to appeal to an appellate court, but  
15 at this point, to create a collateral attack on an interim order  
16 by producing witnesses is not only unwarranted, there is no basis  
17 for it, Your Honor.

18           MR. BECNEL: May it please the Court, I'm just going to  
19 show the Court a couple of examples of why this is not the case.  
20 When we started the Propulsid litigation, I think everybody here  
21 will agree that it was at my urging that everybody become  
22 involved in this. I held most of the meetings for months and  
23 months and months prior to that. I developed the concept because  
24 of a physician I was involved with.

25           In addition to that, when we formed a committee, had

1 numerous meetings in which I paid for all of the costs, did  
2 organizational meetings, which I paid for all of the costs, none  
3 of which have been reimbursed.

4           When we organized the document depository,  
5 Mr. Zimmerman brought some of his technical people to set it up.  
6 Since Bill got paid out of the plaintiff committee's assessments,  
7 I didn't. And I had technical people there every day, all day.  
8 In fact, Mr. Herman had never setup a document depository. I had  
9 been involved in seven national document depositories prior to  
10 that and had done, I think, 16 state depositories dealing with  
11 chemical cases around the state.

12           I've never been reimbursed except for one \$50,000  
13 assessment. They said, Well, we'll let you not pay this 50,000;  
14 we'll count that toward your rent. I carried the rent the whole  
15 time. I provided the services to clean that building. I did  
16 virtually everything. My lawyers spent more time at the  
17 depository than anybody else's. Every time there would be an  
18 emergency or something, they would call my office. People would  
19 drive back and forth from reserve to be there.

20           And I was a member of the executive committee, the  
21 three, which I kept insisting on meetings and objecting to using  
22 the office of liaison counsel to get all of the cases, which I  
23 objected to repeatedly, so I got on a blacklist when I started  
24 doing that.

25           And as this court knows, a certain firm wound up

1 getting virtually all of the baby cases that were settled, wound  
2 up getting almost all of the death cases, using the liaison  
3 position to do that. When the thing was argued before the MDL  
4 panel, the only people what were there was myself, Mr. Champion,  
5 and Hugh Lambert. Because we couldn't get a flight there, I  
6 asked him to use his plane to get us to and from Colorado  
7 Springs.

8           But because I made that objection and felt that it was  
9 improper for, once a committee was formed, for any member of the  
10 committee to continue to solicit and get cases, that they should  
11 be working for the common benefit, I got penalized, and I got  
12 penalized insofar as the fee distribution.

13           Some of the lawyers I had were the most competent.  
14 Mr. Herman decided who worked and who didn't work and when they  
15 worked and what they got. If you look at my expenses compared to  
16 everybody else's, it's always the lowest airfare. It's two in a  
17 room, including myself, when taking depositions, et cetera,  
18 et cetera. And that's why I want to present evidence from a  
19 number of the members of the committee.

20           And, you know, I don't know why I have to wait when, as  
21 a member of the executive committee, nobody told me nor was it  
22 ever brought up that there would be a compensation committee.  
23 Never. It was not voted on. It was not talked about. It was  
24 not discussed, much less that the liaison counsel would appoint  
25 them, or two of them, including himself, and when we went and he

1 called a meeting in Atlanta, and I asked the Court to read that  
2 transcript, he says, It's my way or no way at all, and if you say  
3 any objection, you're getting out of the room and I'm throwing  
4 you out of the room.

5 THE COURT: Let me interrupt you here. Let me move to  
6 the other items. We'll get through with this meeting, and then  
7 we'll talk with counsel about this aspect of it, but I don't want  
8 to hold up everybody while we talk about the motion.

9 Let me talk to the motion to strike class allegations  
10 first.

11 MR. LEVIN: Your Honor, excuse me. For the record,  
12 Mr. Dumas has filed the motion. We will respond to that.

13 THE COURT: Mr. Dumas, I have your motion. You filed it  
14 a couple of days ago. The parties haven't had a chance to  
15 respond. I want to hear from you, but I also want to have them  
16 have an opportunity to respond, so I'm not going to be able to  
17 deal with your motion today, but I'll set a date for your motion,  
18 and we'll hear from you as well as from the committee.

19 Motion to strike class allegations.

20 MR. DUMAS: Thank you.

21 THE COURT: Thank you, Mr. Dumas.

22 MS. GARSAUD: Dominique Garsaud for the defendant. Your  
23 Honor, we have a motion to strike the class allegations in seven  
24 cases in which there are still viable class claims, two of which,  
25 I understand, Mr. Hill is counsel of record.



1 MR. HILL: Four.

2 MS. GARSAUD: Well, two of which are subject to this  
3 motion. Right. That he's agreed to dismiss. We're really  
4 talking about five cases. We have filed a motion under the guise  
5 that you have the authority under 23(d)4 to strike these  
6 allegations.

7 We have a rule and order to show cause which was also  
8 filed with that, which, I understand, was not signed, but we do  
9 intend on submitting an order today that would grant that motion  
10 and strike those allegations in those five cases.

11 THE COURT: I accept this. I haven't received any  
12 response from anyone, so --

13 MR. HILL: Barry Hill. I sent Monique not just an  
14 agreement to strike the class actions, I sent a proposed order  
15 dismissing the cases outright, the four class actions in the  
16 federal system, because the class as defined are people who took  
17 Propulsid but have no known injury; therefore, they have no  
18 individual claim, never did. That was strictly for medical  
19 monitoring.

20 When you issued your decision on that, effectively  
21 those cases were just -- they are just dead in the water. And  
22 there is --

23 THE COURT: Right.

24 MR. HILL: I don't see why we would go through striking  
25 class action allegations but the case would still be there.

1 THE COURT: Just dismiss the case.

2 MR. HILL: Let's just dismiss them outright.

3 MS. GARSAUD: We have no objection to that on the four  
4 cases he has.

5 THE COURT: We'll dismiss those outright.

6 MS. GARSAUD: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Any new business other than what we've talked about  
9 with the attorneys?

10 The next meeting then will be May 2nd at 8:30.

11 SPECIAL MASTER JUNEAU: One item, Your Honor. I would  
12 like to have the use of the courtroom at the conclusion of this  
13 to have a meeting. I would like the representatives of the PLC  
14 to be here, the state liaison committee representative to be  
15 here, and the defendant, and Miss West -- I think she's here --  
16 going to meet. We have a matter involving a subrogation issue  
17 that we need to discuss outside the agenda this morning.

18 THE COURT: You might use the jury room because I'll use  
19 the courtroom to hear from the parties.

20 MR. DAVIS: Your Honor, did you say the next status  
21 conference was 8:30 or 9 o'clock?

22 THE COURT: 8:30 for the liaison, 9 o'clock for  
23 everybody else.

24 Okay. All right. That terminates this aspect of  
25 the meeting, and we'll stand in recess at this point, but I'll be

1 back in a couple of minutes to talk with Mr. Becnel, and  
2 Mr. Levin, you stay here, too, and anybody else who wishes to  
3 talk about this particular matter.

4 Court will stand in recess.

5 (END OF COURT)

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10 REPORTER'S CERTIFICATE

11  
12 I, Cathy Pepper, Certified Realtime Reporter, Registered  
13 Professional Reporter, Certified Court Reporter, Official Court  
14 Reporter, United States District Court, Eastern District of  
15 Louisiana, do hereby certify that the foregoing is a true and  
16 correct transcript, to the best of my ability and understanding,  
17 from the record of the proceedings in the above-entitled and  
18 numbered matter.

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21 \_\_\_\_\_  
22 Cathy Pepper, CCR, RPR, CRR  
23 Official Court Reporter  
24 United States District Court  
25