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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID * Docket MDL NO. 1355-L
PRODUCTS LIABILITY LITIGATION *
* April 19, 2007
*
* New Orleans, Louisiana
* * * * *

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

APPEARANCES:

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PROCEEDINGS

(April 19, 2007)

1
2
3 **THE COURT:** We're at our conference. We might as
4 well start now. It was scheduled for 9:00, but let's go on.

5 **THE LAW CLERK:** I'm sorry, Judge. We have another
6 conference code for that one, so some people might be joining
7 in the other one.

8 **THE COURT:** Okay. Do we have anybody else joining
9 in?

10 **MR. HERMAN:** Yes, you have one.

11 **THE COURT:** Fine. Anybody else that we're expecting?

12 **MR. IRWIN:** I don't believe so, Your Honor.

13 **THE COURT:** Fine. Why don't we use this as our main
14 conference. I have the report from you. The first item of
15 business is state liaison MDL resolution program II. Anything
16 on that, Dawn? This is your program.

17 **MS. BARRIOS:** Yes, sir. The only thing I have to
18 report is at our last meeting there was a Mississippi attorney
19 who filed a motion for remand. His name is Daniel Czamanske.
20 I have been in touch with him several times and he is reluctant
21 to agree to the program because he said he doesn't know how
22 much his clients will get.

23 I have the sense that the case is not of
24 monumental damages, and he had the file in storage. So I did
25 my best to get him to pull his motion down and to enroll with

1 the program, but he wasn't interested in doing it.

2 **THE COURT:** All right. The defendants have filed an
3 answer to the motion for remand, so I'll deal with that. I
4 wanted to wait until we had this conference to see what
5 position he was taking on it because we haven't had a chance to
6 talk with him about the program.

7 **MR. HERMAN:** Your Honor, this is Russ Herman. I
8 didn't add it in here because I've got to have PSC approval and
9 I did not have enough participation in the conference call. I
10 called, but our intention is to file a motion to set aside the
11 state settlement program and to ask for a hearing in which
12 testimony and evidence will be given.

13 As a corollary motion, I'm going to ask that I
14 be allowed to testify -- and if I have to resign as liaison
15 counsel in order to give testimony, there will be a corollary
16 motion -- but the issue revolves around language dealing with
17 reversion of all the funds to J & J, if there are funds left.

18 And I wanted to alert the court that those
19 motions will be filed as soon as I have a PSC meeting.

20 **THE COURT:** All right. Well, that is an area that
21 we're going to have to set and we'll deal with it by hearing,
22 because that is an issue as to what was meant by those terms.
23 If there's a position that they're vague and ambiguous, or not
24 in conformity, not a meeting of the minds on it, then we'll
25 have to deal with that as a factual issue, if it is a factual

1 issue.

2 So I'm going to have to pass on number I. What
3 about the trust account? Anything on the trust account, item
4 II?

5 **MR. HERMAN:** No, Your Honor.

6 **THE COURT:** And then number III, I understand there's
7 no trial set. Number IV is MDL mediation resolution program.
8 Anything from the special master on that one?

9 **MR. JUNEAU:** Judge, what I did, I electronically
10 filed a status report. We sat down and spent a lot of time
11 doing some projections based on what we know has taken place in
12 the past to give people some idea of how long it would take to
13 go through, you know, these panel reviews and so forth.

14 I sat down with staff, Danny Greer and myself,
15 and that report reflects our best estimate. I will say that
16 because of some of these claims may fall in the expedited
17 category, that's the outside of what I see; and my intention is
18 to squeeze down and keep moving to approve that duration of
19 that time, which I'm pretty confident we can do that.

20 But at least I've tried to realistically
21 project, as best we can, if you just did the full numbers, not
22 knowing how many of these would come down necessarily as
23 expedited claims.

24 But that's the report. I think I filed it
25 yesterday or the day before and everybody should have that now.

1 **THE COURT:** Yes, I have it now. I'll attach it as
2 part of the record, too.

3 **MR. JUNEAU:** That actually comports to what our
4 status is today. I think all counsel have incorporated, and I
5 think Lenny will verify this and verify the latest numbers that
6 we have that have been submitted to the panel, but that's in
7 the joint report.

8 **MR. DAVIS:** Pat, this is Lenny. I don't recall
9 seeing the status report. I may have missed it.

10 **MR. JUNEAU:** It's on the electronic filing, according
11 to the federal -- I'll be glad to fax it to you.

12 **MR. DAVIS:** I am. I just don't recall having seen
13 it.

14 **MR. JUNEAU:** I'll fax you a copy just in the next few
15 minutes.

16 **MR. DAVIS:** Thank you.

17 **MR. CAPRETZ:** Lenny, this is Capretz, and I haven't
18 seen one either, Special Master Juneau.

19 **MR. JUNEAU:** Well, let me ask you: Are you on that
20 electronic filing list of the Clerk?

21 **MR. CAPRETZ:** I'm not sure, to be honest.

22 **MR. JUNEAU:** It doesn't matter. I'll get you a copy.

23 **MR. CAPRETZ:** All right. Thank you.

24 **THE COURT:** I have it. Pat, don't you have some
25 cases that have to be dismissed because nobody's filed --

1 **MR. JUNEAU:** Yes, and we're assembling that now. My
2 intention is to get that list -- I'm going to simultaneously
3 get that list to the plaintiffs and to the defense counsel so
4 they can see what that list is.

5 And if by chance -- we want to make sure that
6 the representation is correct. If it's an incorrect
7 representation and we don't have any medical records on those
8 from either side, I need to know about that.

9 And my intention is to proceed then with a
10 motion to the court to have those cases dismissed. We are
11 assembling that list as we speak. We've already gotten a good
12 bit of it done already.

13 **MR. HERMAN:** Pat, is that list by claimant and
14 attorney, or only by claimant?

15 **MR. JUNEAU:** I think we can do it both ways.

16 **MR. HERMAN:** If you could do it by claimant and
17 attorney. I think that we have to notify those attorneys, and
18 the easiest way to do that is if we've got a list.

19 **MR. JUNEAU:** I'll give it to you like that rough.

20 **MR. HERMAN:** That's great. Thank you.

21 **THE COURT:** Okay. Anything?

22 **MR. JUNEAU:** It's in the database like that.

23 **MR. HERMAN:** I appreciate it.

24 **THE COURT:** Anything else from anybody on the
25 mediation resolution program? All right. The next item is pro

1 se plaintiffs, item number V.

2 MR. HERMAN: Nothing more additional on that, Your
3 Honor.

4 THE COURT: All right. Number VI?

5 THE OPERATOR: Excuse me, Judge. This is the
6 operator. I wanted to inform you that we do have five
7 participants that have called in for 9:00 conference and it's
8 one after 9:00. How would you like to proceed?

9 THE COURT: Can they join this call?

10 THE OPERATOR: Certainly. Do you want to know their
11 names or --

12 THE COURT: Sure. Okay.

13 THE OPERATOR: This will be Barry Hill, John Hinkle,
14 Monique Garsaud, Phillip Schrader and Carroll Ingram.

15 THE COURT: Okay.

16 THE OPERATOR: Okay. I'll place them in and then
17 will let you know, okay?

18 THE COURT: Yes. Okay.

19 THE OPERATOR: Thank you.

20 THE COURT: Is everybody else on?

21 MR. HERMAN: Yes, sir.

22 MR. IRWIN: Yes, sir.

23 THE COURT: Hold on, okay?

24 THE OPERATOR: Yes, Judge, all the others have joined
25 you now.

1 **THE COURT:** Okay. Fine. Just to bring everybody up
2 to speed, we're starting to talk about the conference. The
3 state liaison and MDL resolution program was the first item on
4 the agenda.

5 Ms. Barrios gave us a report about a motion to
6 remand, and the attorney wants to go forward with the motion to
7 remand. I have the response for the defendant, and I will be
8 ruling on that shortly.

9 The liaison counsel indicates that the
10 resolution program II is not consistent with his agreement or
11 understanding of the program. The defendants take the opposite
12 position. It may be necessary to have some hearing on it with
13 the potential of taking testimony. I'll reserve ruling on all
14 of that until I get motions before me.

15 There was no action on the trust account. The
16 trials are scheduled. The mediation program is underway and
17 the special master has presented a report, which has been filed
18 into the record. He anticipates shortly filing a list of
19 claimants by both claimant's name, as well as attorney, who are
20 delinquent in filling out the necessary forms and he will,
21 according to the program, seek the dismissal of those claims.

22 We're on pro se plaintiffs. There's no action
23 on that and the emergency motion for distribution of attorney's
24 fees was the next item, which is number VI.

25 **MR. HERMAN:** Your Honor, this is Russ Herman. I'm

1 pleased to report that I met Saturday in my office with Walter
2 Dumas, who brought a number of materials to me. I should have
3 the remainder of his materials, and I believe that I am going
4 to be able to resolve his issues without a hearing and make a
5 recommendation to the court at our next status conference.

6 **THE COURT:** All right.

7 **MR. HERMAN:** I have also been in contact with
8 Mr. Becnel and requested that he meet with me as soon as his
9 calendar permits in an attempt to try and resolve that matter.

10 **THE COURT:** All right. The next item was liaison
11 counsel's motion for equitable administration of the settlement
12 agreement. Is that number VII? Did we talk about that
13 earlier?

14 **MR. HERMAN:** No, Your Honor, this is a different
15 issue. This issue has to do with any potential modification of
16 the process in which cases are approved or denied by the
17 medical panel. We've been discussing that, but there's been no
18 resolution, mutually, of that issue.

19 And I understand that Buckie Zimmerman was in
20 contact with either Chuck or Tom since the last status
21 conference. We have set up a conference call with Buckie this
22 afternoon in order to find out what exactly information they've
23 exchanged.

24 But because of the effect of Propulsid II on
25 Propulsid I, and I don't know that we can make any headway on

1 this issue until the other issue is resolved. I hope that we
2 can, but I don't know that we can.

3 **THE COURT:** Well, there may be some relationship, and
4 I haven't reviewed this in exquisite detail, and I really
5 haven't given counsel an opportunity to explore it with me or
6 discuss it with me, but as I always understood, number one, is
7 that before anything was done with the money, whether it was
8 given to charity or given to whoever, two, three, four, that I
9 had to look at it first to see whether there was anything that
10 I had to weigh in on.

11 So I haven't really -- I don't want my silence
12 to be interpreted or misinterpreted by anybody. I have to look
13 at the program and look at what the whole situation is before
14 anything is done with the funds, at least that's my
15 understanding of the program initially. But as I said, I don't
16 write that in stone, but that was something that I had always
17 looked at.

18 So I don't know whether the issue in II is moot
19 or not moot, because I hadn't really focused on whether or not
20 there is any remaining funds. So I have to look at that.

21 The next item on the agenda is *Patricia Barnes*
22 *versus Janssen Pharmaceutical*, and we talked about that
23 earlier, didn't we Dawn? Is that the issue?

24 **MR. HERMAN:** I do want to say that to the extent that
25 the special master has been able to, he has attempted, without

1 voicing any opinion on resolution of the outstanding issue, to
2 get the defense team and the plaintiff team together in some
3 way to resolve the outstanding issue, and I want to thank the
4 special master for his efforts.

5 **THE COURT:** Okay.

6 **MR. JUNEAU:** What you're saying is we're not through
7 yet?

8 **MR. HERMAN:** That's right.

9 **THE COURT:** Yes, that's the way I see it. This whole
10 program has to run and then I have to weigh in on the
11 situation; and then if there is anything left, we'll deal with
12 that. I don't know. It's hard to say at this point. It looks
13 like there will be money left, but who knows.

14 We've got a number of cases that are still in
15 the mill, and there's split decisions that are still in the
16 mill, and I don't see this as any *fait accompli* at this time.
17 But those issues may not be before me at this point.

18 Last item was the remand. Is that what we
19 talked about earlier?

20 **MS. BARRIOS:** Yes, sir.

21 **THE COURT:** Okay. Any new issues that we have to
22 talk about? Okay, folks. Let's see. Do we need another
23 conference? Do you want me to set one for May 24th?

24 **MR. JUNEAU:** That's fine.

25 **MR. HERMAN:** That's fine, Your Honor.

1 **MR. IRWIN:** Your Honor, was that May 24th that you
2 said?

3 **THE COURT:** Yes.

4 **MR. HERMAN:** What time, Judge?

5 **THE COURT:** 9:00 is fine.

6 **MR. HERMAN:** Will this also be by telephone
7 conference?

8 **THE COURT:** I'm okay with that unless you-all want to
9 come in. I'm okay with either way. Why don't you let liaison
10 counsel kick it around and let me know. I can do it on the
11 phone.

12 **MR. JUNEAU:** Judge, this is Pat Juneau. What I would
13 suggest, Judge, knowing what we got cooking out there, I would
14 suggest we set it as a telephone conference. And I'm going to
15 be in touch with everybody --

16 **THE COURT:** Okay.

17 **MR. JUNEAU:** -- and if we find it should be converted
18 to "in person", if it's all right with you, I'll contact your
19 office or Amelie and set that up accordingly.

20 **THE COURT:** Okay. I like that, Pat. Let's do it
21 that way. We'll set it as a telephone conference and we'll get
22 everybody the numbers.

23 **MR. JUNEAU:** Thank you, Judge.

24 **THE COURT:** Thank you very much.

25 **MR. HERMAN:** Thank you.

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MR. IRWIN: Thank you, Your Honor.
(WHEREUPON, the Court was adjourned.)

CERTIFICATE

I, Jodi Simcox, RMR, FCRR, Official Court Reporter for the 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.

/s/ Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter