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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID * Docket MDL NO. 1355-L
PRODUCTS LIABILITY LITIGATION *
* November 29, 2007
*
* New Orleans, Louisiana
* * * * *

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

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PROCEEDINGS

(November 29, 2007)

1
2
3 **THE COURT:** Hello. Who do I have? This is Judge
4 Fallon. Who do I have on the line, first, from the plaintiffs?

5 **MR. DAVIS:** Good morning, Your Honor. This is
6 Leonard Davis for the plaintiffs.

7 **MR. ARSENAULT:** Richard Arsenault. Good morning.

8 **THE COURT:** Good morning.

9 **MS. BARRIOS:** Dawn Barrios. Good morning.

10 **MR. LONGER:** Fred Longer, Your Honor.

11 **THE COURT:** Okay.

12 **MR. HILL:** Barry Hill from the plaintiffs.

13 **THE COURT:** Now from the defendants.

14 **MR. CAMPION:** Tom Campion, Judge.

15 **MS. GARSAUD:** Monique Garsaud, Your Honor.

16 **MR. PREUSS:** Chuck Preuss, Your Honor.

17 **THE COURT:** Okay. Anybody else?

18 This is our monthly status conference. I have
19 the agenda. First on the agenda is state liaison counsel.
20 Anything on that?

21 **MR. DAVIS:** Your Honor, from the plaintiffs side, we
22 have nothing new to report since last month, other than
23 Propulsid II's deadline for enrollment, I believe, is upcoming
24 in the next week or so and, as I understand it, those matters
25 are proceeding.

1 **THE COURT:** Dawn, do you have input on that?

2 **MS. BARRIOS:** Nothing, other than to say the deadline
3 is December 1st. I've spoke with Angie from the claims office
4 yesterday and she said that she was getting calls from
5 attorneys because December 1st fell on a Saturday. Which she
6 assured them as long as their package was post marked
7 December 1st that they would accept it.

8 **THE COURT:** Anything, Tom, from you or Chuck?

9 **MR. CAMPION:** Nothing from me, Judge.

10 **THE COURT:** Chuck, what's your view, are there any
11 problems with state that you can detect?

12 **MR. PREUSS:** No, I think we're moving along.

13 **THE COURT:** Okay. The next is trust account. Lenny?

14 **MR. DAVIS:** There's nothing to report on that.

15 **THE COURT:** All right. MDL mediation and resolution
16 program, third on the agenda.

17 **MR. DAVIS:** We continue to have our weekly calls with
18 Special Master Juneau. Those are productive, as the Court's
19 aware. I'm pleased to report that there have been some
20 additional claimants who have passed through the system and,
21 hopefully, compensation will be flowing out shortly to those
22 folks.

23 But as I appreciate it, things are running
24 through the special master's office, and we picked up the pace
25 since the addition of the new panel members.

1 **THE COURT:** Okay. Anything from the defendants on
2 that?

3 **MR. CAMPION:** No, Your Honor.

4 **THE COURT:** Okay. What about the numbers that are
5 coming in, Chuck? I remember we talked about new people on the
6 panel. Has that been squared away? Last time you-all spoke
7 and I spoke to the panel members. Are you satisfied that these
8 folks are able to do their job?

9 **MR. CAMPION:** As far as we can see right now, Your
10 Honor, they're up and running.

11 **THE COURT:** Okay. Lenny, any input on that, on the
12 new members?

13 **MR. DAVIS:** No. We understand that they have been
14 working and they've been diligent. My last reports from Angie
15 are that -- who's in the special master's office -- are that
16 they have increased the amount of cases being submitted to the
17 panel, that the panel is working hard.

18 **Obviously, the plaintiffs would like to see more**
19 **cases receive compensation and we're hopeful that that will**
20 **happen. But as I understand it, things are working.**

21 **THE COURT:** Okay. Fourth item is the motion for
22 distribution.

23 **MR. DAVIS:** That matter is on hold for right now.
24 Both of those motions have been deferred at the present time.

25 **THE COURT:** Okay. Fifth item is liaison counsel's

1 **motion for equitable administration of the settlement**

2 agreement. What's that about?

3 **MR. DAVIS:** I think that matter does not need to be
4 addressed at this time.

5 **THE COURT:** All right. I'll take that off the
6 agenda. Supplemental agreement re: Propulsid I and II,
7 anything on that?

8 **THE OPERATOR:** Mr. Patrick Juneau joins your call
9 now, sir.

10 **THE COURT:** Okay.

11 **MR. JUNEAU:** Hello, Judge.

12 **THE COURT:** Hello, Pat. You're just coming in on the
13 supplemental agreement of Propulsid I and II. Anything on that
14 from your standpoint?

15 **MR. JUNEAU:** No. We're fully operational in both
16 phases of that and we've activated those systems. When you get
17 through, Judge, I can give everybody some current numbers. It
18 will brief you and them of where we are about the review
19 process.

20 **THE COURT:** Pat, we just finished talking about the
21 new doctors who came aboard. Any input from you on them? Are
22 they fitting in?

23 **MR. JUNEAU:** No. They've been on the normal rotation
24 panel. They've been doing what we've asked them to do. I
25 might add that all of them right now have been very responsive

1 and have been very active in the review process. We haven't
2 had any delays at all.

3 **THE COURT:** Okay. Anything else from anybody, other
4 than Pat? All right. Pat, what's your input on the numbers?

5 **MR. JUNEAU:** Judge, let me just run through these.

6 The total to the panel to date -- medical panel
7 is 1,211. Of that number, 1,010 of what we called expedited
8 claims, and seven of those are what -- are in the form of the
9 category of the re-reviews. There have been determined nine
10 eligible. Of that nine eligible, one is the result of the
11 second review.

12 There are currently in review by the panel 136
13 claims. 120 of those are what we call in the expedited
14 category, and six are in the second review category. They have
15 been 1,066 ineligibles; and of that number, 890 are expedited
16 claims, and that's as of this morning.

17 **THE COURT:** Any comments, observations, from anybody,
18 plaintiff or defendant, on those numbers?

19 **MR. DAVIS:** We're encouraged that the number of
20 eligibles have increased. Obviously, this re-review process is
21 just starting and we'll see what happens with it.

22 **THE COURT:** Okay. Have we learned anything from this
23 one that can help us in the state in Propulsid II?

24 **MR. JUNEAU:** This is Pat, Judge. Mechanically-wise,
25 we certainly have learned about the flow of things. I mean, we

1 have a very, very rapid, what I consider, to be an efficient
2 process now going to these rotating panels.

3 We are now progressed to the point, which makes
4 a huge difference, we have gleaned out the majority of all of
5 those deficiency claims, which was a huge obstacle for us for
6 months, and months, and months in this case.

7 It stopped us from getting anything to the panel
8 because there was a question of what we had to submit. So I
9 think it's been extremely beneficial. But our time took care
10 of most of that.

11 The last thing I might add, Judge, is we are now
12 in the process -- we're working through Angie at the claims
13 office, we've talked to Tracie with Drinker Biddle, and we're
14 assembling the information, which will be given to everybody
15 simultaneously.

16 A lot of these cases are subject to a
17 consolidated, if you will, dismissal order. Everybody will be
18 fully advised what all those names are. But we are big time
19 actively involved in that because that's going to affect a lot
20 of these numbers overall that we're talking about --

21 **THE COURT:** Yes.

22 **MR. JUNEAU:** -- in terms of disposition. And that's
23 going to be occurring relatively quickly.

24 **THE COURT:** Well, except that those are people who
25 are either abandoned or won't --

1 **MR. JUNEAU:** There's no question about that. But I'm
2 just saying it's going to clean out, administratively, a whole
3 bunch of stuff.

4 **THE COURT:** Right.

5 **MR. JUNEAU:** But insofar as the claims that we
6 have -- I mean, the ones that we have claims forms on and
7 they've submitted the claims, we've just got to run those
8 through the process, and we are actively engaged.

9 It's kind of a dual front approach, if you will,
10 to what we're dealing with. But I did want to make mention
11 that that is also in the hopper now, is to address all those
12 claims simultaneously.

13 **THE COURT:** You know, just an aside on these MDLs, I
14 think you see that in a lot of MDLs and we've got to come up
15 with some kind of system of clearing those types of cases.

16 Because a lot of times in these MDLs,
17 particularly early on, so many people run into the tent to get
18 in, and then they either lose interest in it, or find out that
19 really nothing has happened, or they really don't have a claim,
20 or they move on in life, or whatever it is.

21 But that has a way, simply because of the
22 numbers, of really clogging up the system and stopping people
23 who have an interest in the claim and who have substantial
24 claims from getting treated quickly and expeditiously, from
25 both sides. I don't know what the answer is.

1 **MR. JUNEAU:** Judge, I concur on that 100 percent. I
2 have now, and will have towards the conclusion of the thing,
3 and I think it's been incumbent upon me to do that, is very
4 definitive recommendations as to how to, hopefully, eliminate a
5 lot of that in other litigation. It's procedures and things
6 that maybe we can activate early on.

7 As a good example, you know, someone does
8 something and submits a claim and we've got to deal with it,
9 but we don't have anything. I mean, you know, just -- we don't
10 have a pharmaceutical record, we don't have any gestation.
11 Those claims, there ought to be a cut-out process somewhere in
12 the early, early stage of these things so we don't have to deal
13 with that ultimately in these cases.

14 That's something to be addressed, and your
15 comments are right on target with that.

16 **THE COURT:** We've got to figure out or construct some
17 gates that the claimants must get through so that the census is
18 in better shape by the time you get it and take a look at it.

19 **MR. JUNEAU:** I concur.

20 **THE COURT:** Anything else? Any new business from
21 anybody? All right. Well, it looks like things are working.
22 It's just to now focus on the --

23 **THE OPERATOR:** Ms. Reed has joined the conference.

24 **THE COURT:** We've got to now focus on the
25 Propulsid II so we can get that up and running. Do we need

1 another status conference? Another monthly meeting?

2 **MR. DAVIS:** I think by phone is certainly sufficient.
3 At some point, Your Honor, plaintiffs may bring some issues to
4 the Court's attention. I know we have these motions that are
5 outstanding on attorney's fees and the like, but I don't know
6 when that will be brought to the Court's attention.

7 **THE COURT:** Okay. Are we getting anything out of the
8 meetings from the defendant's standpoint? I don't want to take
9 up your time if you get to a point where they become less, and
10 less, and less productive. I don't mind meeting on the phone
11 or anywhere, but I don't want to be just doing it because we've
12 always done it.

13 **MR. CAMPION:** 15 minutes once a month is not an
14 imposition on anybody.

15 **THE COURT:** All right. How about December 18th at
16 9:00 a.m., telephone, does that work?

17 **MR. DAVIS:** You know, Judge, that's only about two
18 weeks -- three weeks away. We might want to push it until
19 after the first of the year. Just a suggestion. Tom, what do
20 you think?

21 **MR. CAMPION:** That's fine.

22 **THE COURT:** Okay. January 10th at 9:00 a.m., does
23 that work?

24 **MR. DAVIS:** Yes, sir.

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

