

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: PROPULSID PRODUCTS  
LIABILITY LITIGATION

Docket No. MDL 1355  
New Orleans, Louisiana  
Thursday, May 21, 2009

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TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE  
(BY TELEPHONE)

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

P R O C E E D I N G S

(THURSDAY, MAY 21, 2009)

(STATUS CONFERENCE)

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5 THE COURT: Hello. This is Judge Fallon. Who do I have  
6 on the line? First plaintiffs.

7 MR. HERMAN: Your Honor, Russ Herman, Jim Capretz,  
8 Richard Arsenault, Bucky Zimmerman and Fred Longer.

9 MR. LEVIN: And Arnold Levin, your Honor.

10 THE COURT: And for the defendants?

11 MR. CAMPION: Tom Campion and Monique Garsaud.

12 THE COURT: Anyone else on the line?

13 MR. JUNEAU: Pat Juneau on the line.

14 THE COURT: Would you please say it again.

15 MS. ALEXANDER: Betty Alexander.

16 MS. REYNOLDS: And Marilyn Reynolds.

17 MR. HILL: And Barry Hill.

18 THE COURT: Okay. All right. I have before me the joint  
19 report setting forth the agenda. The first item is the State  
20 Liaison Counsel's report regarding the Propulsid II program, the  
21 status of it. Anything there?

22 MR. ARSENAULT: Yes, this is Richard Arsenault. The  
23 update on the Propulsid timeline, and your Honor has that,  
24 everything seems to be continuing according to plan.

25 THE COURT: How is it going so far, Richard?

1 MR. ARSENAULT: I think it's going well, Judge. There is  
2 an issue that's arisen in connection with the medical records  
3 submissions and what constitutes complete submissions, and we had a  
4 meeting with Special Master Juneau and Mr. Herman and members of  
5 the defense team and members of the plaintiffs' team and a variety  
6 of issues were discussed and raised and are being considered and  
7 dealt with. But other than that, I think everything else is moving  
8 along according to plan.

9 THE COURT: Are you getting the records on time and from  
10 the record custodians without any problem?

11 MR. ARSENAULT: In some instances there are incomplete  
12 records that have been submitted. Some of those are through no  
13 fault of plaintiff's counsel because they're simply not available;  
14 and other issues, some authorizations that are not complete or  
15 unavailable. So there are a variety of issues that we discussed at  
16 length in New Orleans with Special Master Juneau, and my  
17 understanding is steps will be taken to try to remedy any of the  
18 problems. Certainly with healthcare providers that either refuse  
19 to or there is any issue with regard to them submitting records we  
20 will, I am assuming, take some of the same steps we used in Vioxx  
21 to encourage their compliance. But that was one of about four or  
22 five issues associated with medical records.

23 MR. JUNEAU: Judge, Pat Juneau on that specific subject.  
24 Mr. Arsenault is correct, we specifically discussed that. Lenny  
25 Davis is going to take the first shot at preparing a document kind

1 of following the Vioxx example. That would have to do, we still  
2 run because of duration and so forth to get those documents  
3 released, the execution just like you did in that other case --

4 THE COURT: Right.

5 MR. JUNEAU: -- would have a tremendous effect, but I  
6 think Lenny is pretty actively involved getting that draft together  
7 and circulating that to us.

8 MR. HERMAN: Your Honor, this is Russ Herman, I just want  
9 to address the issue quickly. On December 22nd, 2008, you'll see  
10 at page 4 of the report, IV, your Honor had previously issued a  
11 show cause order to certain medical providers in which expedited  
12 production. What we're waiting for is a list of the providers  
13 cross-referenced to the individuals, the individual patients, which  
14 we don't have. There were two problems primarily. The first  
15 problem was that J&J did not feel that it was in a position because  
16 it was unable to obtain complete records. Then there were problems  
17 coming from the other side.

18 As I recall and what my notes show it was finally agreed  
19 that we would be provided the names of the healthcare providers,  
20 for example, XYZ Hospital and the name of the patient and we would  
21 then file a motion which listed an attachment by name of healthcare  
22 provider record identification of an individual to deal with.

23 In addition to that, the event additional records could  
24 not be obtained, for example, I'll just pick Charity Hospital.  
25 Those records don't exist anymore, then the records that do exist

1 would just be submitted to the medical panel; and if the medical  
2 panel found them insufficient, they would just issue their opinion.  
3 So that's where we are on this issue.

4 THE COURT: Okay. Anything from the defendants on that?

5 MR. CAMPION: The defense is trying to gather a list of  
6 the type that Russ described.

7 THE COURT: Okay. The MDL Mediation Resolution Program.  
8 Pat, do you have anything on that?

9 MR. JUNEAU: A good report in this, Judge. I spent  
10 sometime today, as of this morning we currently have in Propulsid  
11 I, 1,448 tier claims yet to be addressed, you know, to the panel.  
12 They're in various stages but to be addressed by the panel. We've  
13 been working through a collaborative effort on the parts of the  
14 defendants and the PLC and we've expedited pretty significantly the  
15 receipt of these cases in terms of, you know, the briefings, all of  
16 the necessary things before we ever get to the panel. And we've  
17 stepped that up. I think we're running ahead, as I speak today,  
18 ahead of schedule what I've made in the last projection.

19 And I am just -- everything is subject to change, but it  
20 looks like towards the end of this year or by the first of January  
21 of next year we're going to be darn, real close, real, real close,  
22 if not finalized, the submission of all of these cases to panel.  
23 And the reason I say that is because there are a lot of these  
24 hanging issues like we're talking about now.

25 But that's essentially where we are with the final

1 comment that I am pleased to announce that we are running faster  
2 than I thought we would.

3 THE COURT: You're talking about Propulsid I?

4 MR. JUNEAU: Yes. And there are, let me give you a  
5 little report on that. In Propulsid II there are 291 claims  
6 remaining, and as I indicated previously, we're trying to run these  
7 cases in tandem, the two programs together. We've been fairly  
8 successful at doing that realizing we want to get closer attention,  
9 more attention to the older claim and they would come from  
10 Propulsid I obviously. But the time frames I am talking about,  
11 they're going to be pretty close for both of them.

12 THE COURT: Any input from the defense on that?

13 MR. CAMPION: No, your Honor.

14 THE COURT: How about from the PLC?

15 MR. HERMAN: Your Honor, we did approve Dr. Thornton as a  
16 medical panel replacement. It's been suggested that he would be  
17 available on July 15th or 16th in the event it met with the court's  
18 schedule on behalf of PLC, and that would be at three o'clock P.M.  
19 And on behalf of the PLC we would be available on the 16th of July.

20 THE COURT: What are we talking about the 16th?

21 MR. HERMAN: What we're talking about would be a  
22 representative of the plaintiffs, a representative of the  
23 defendants --

24 THE COURT: In court like we've done before?

25 MR. HERMAN: Right, yes, sir.

1 THE COURT: The 16th is better for me.

2 MR. HERMAN: I hadn't checked with Pat.

3 MR. JUNEAU: That's fine with me.

4 MR. HERMAN: I just got this e-mail and I am assuming  
5 that if it's okay with the defendants.

6 MR. CAMPION: It is.

7 THE COURT: Let's set it up then on the 16th in court.

8 MR. HERMAN: Fred Longer, would you note that on your  
9 schedule now.

10 THE COURT: And, Fred, what about the time?

11 MR. HERMAN: Three o'clock is what the e-mail says.

12 THE COURT: All right. Let's do it at three.

13 MR. CAMPION: That's fine, your Honor.

14 THE COURT: The next issue is attorney fee issues, I  
15 think I issued an order recently on that.

16 MR. HERMAN: You did. I have other motions, very few,  
17 three or four that are outstanding in the next couple of weeks.

18 THE COURT: All right. The fourth item is medical  
19 records from medical record providers, I think we discussed that.

20 MR. CAMPION: Yes, sir.

21 THE COURT: Anything further on that?

22 MR. JUNEAU: Just one caveat. We had discussed this  
23 issue. You previously signed an order of some records that we long  
24 finished with quite sometime ago and because of the storage issues  
25 we have commenced the destruction process, and it's underway as we



1 speak with regard to those medical records of disposed claims.

2 THE COURT: Right. That was the fifth item, the problem  
3 that we had is that we have so many records and that it's difficult  
4 to send them back to the individual people and we don't want them  
5 floating around because they have some personal information on  
6 them. So we had no other alternative but to destroy the records.  
7 Of course I gave everybody notice beforehand if they did want them.  
8 But not hearing from anyone, I issued an order allowing the  
9 destruction of those particular records.

10 MR. CAMPION: That's correct, Judge.

11 THE COURT: Any new business?

12 MR. HERMAN: No, your Honor. Not from the plaintiffs'  
13 side.

14 THE COURT: Anything from the defendants?

15 MR. CAMPION: No, your Honor.

16 THE COURT: Okay. Anything from the other individuals on  
17 the conference, Ms. Alexander, Ms. Reynolds? Let's hear first from  
18 Ms. Alexander.

19 MS. ALEXANDER: I am deeply grieved. I received the  
20 letter and it was stating that I didn't meet the qualifications,  
21 although they were divided into three tiers and they said something  
22 that the medicine wouldn't be in your body it could no longer do  
23 you any harm. But I know that once you suffer from one heart  
24 attack even though you may not -- no longer be on the medicine,  
25 you're subject to more heart attacks, two or three more and finally

1 your heart stops.

2 I just feel like I wasn't represented right. I just feel  
3 like no one told me anything. I called and called and write  
4 letters and even talk to you. I just don't feel like they handled  
5 my case right.

6 I felt very depressed and there was nothing I could do  
7 about it because they said once you quit taking it can't harm but  
8 it's already damaged your heart, your heart is going to stay  
9 damaged and you're subjected to more heart attacks and my mother  
10 went on and had two more. I don't know why justice didn't prevail  
11 in my case.

12 Also I need to pursue this, I am deeply grieved, I am a  
13 Jehovah's witness, I don't lie, I try to be honest. But I do want  
14 to thank you and Mr. Herman for your time. And for listening to  
15 me. I am just sorry that it took all of these years and then I  
16 didn't get any real justice.

17 THE COURT: Well, part of justice, Ms. Alexander, is the  
18 ability to participate in the process. The process is where the  
19 justice lies and not necessarily in the result. Justice is  
20 achieved by allowing individuals to proceed and have adequate  
21 representation and you've had adequate representation, very fine  
22 representation in this case. You have had an opportunity to  
23 proceed as all of the other people who participated in, have had an  
24 opportunity to proceed, and it was reviewed carefully by  
25 independent doctors and they were presented with all of the records

1 that were able to be developed and they were given to these  
2 independent doctors who then issued an opinion. And so from that  
3 standpoint, I know you're disappointed that you didn't prevail.

4 MS. ALEXANDER: Because I been calling, they said it  
5 didn't go to 2004, but my mother started in 2000 and died 2001 and  
6 I pursued it. And that was the reason I had the abnormal and the  
7 normal EKG because my mother being stubborn and never liking  
8 doctors, they say she waited too late to go.

9 THE COURT: Yes, ma'am.

10 MS. ALEXANDER: And that's why they said.

11 THE COURT: No, I don't think anybody says that your  
12 mother didn't have a heart attack. The issue is whether or not  
13 Propulsid caused or precipitated or had anything to do with her  
14 heart attack.

15 MS. ALEXANDER: It did, your Honor.

16 THE COURT: I know you feel that way.

17 MS. ALEXANDER: She was taking it, she was complaining  
18 about all of the symptoms and she said I don't like these  
19 sensation, and I said, momma, if you think that, just discontinue  
20 use; but she waited two more months, it was October 1st of '99, she  
21 waited until December '99 before she went to a doctor. And when  
22 they said she had a heart attack, she didn't know herself that she  
23 had it.

24 So, therefore, I appreciate it, I just wish justice would  
25 have prevailed for me. I told the truth about it and I really

1 pursued it.

2 But thank you for listening and thank Mr. Herman. I  
3 appreciate it.

4 THE COURT: Good. Thank you, Ms. Alexander.

5 MS. ALEXANDER: All right. Thank you.

6 THE COURT: Ms. Reynolds, you had something to  
7 contribute?

8 MS. REYNOLDS: Thank you, Attorney Davis' office and  
9 Heather for explaining further what stage I was in in respect to my  
10 case because I just been wondering for eight years now how and  
11 where I am in this whole process. But I do have a couple of simple  
12 questions, I hope.

13 THE COURT: Yes, ma'am.

14 MS. REYNOLDS: I heard you discussing the fact that  
15 you're not hearing or getting complete medical records from the  
16 providers. And I was wondering how do I find out whether, that my  
17 provider has given me everything that I've needed? And if that's  
18 not the case, do I have the chance to recover? What you do  
19 actually need?

20 THE COURT: Okay. Anybody knowledgeable on Ms. Reynolds  
21 can answer that question.

22 MR. HERMAN: Judge, this is Russ Herman. I will pull  
23 Ms. Reynolds' file. Ms. Reynolds give me your phone number,  
24 please.

25 MS. REYNOLDS: (412) 229-8600. And I had a heart

1 transplant since I've been involved in all of this and I am very  
2 anxious to find out exactly, you know, make sure that you have all  
3 of the paperwork and so forth that you're supposed to have.

4 MR. HERMAN: I am going to pull your record and we will  
5 send you a copy of all of the records that we have and that we've  
6 submitted. And after you've reviewed them, if you would get back  
7 to me I can answer your question.

8 MS. REYNOLDS: Okay. Sir. But I mean that doesn't  
9 really help me because I don't know exactly what you do need, you  
10 know what I mean. I mean, what is exactly missing or whatever from  
11 my case that would help.

12 THE COURT: Well, your case, they may have all of the  
13 records in your case, Ms. Reynolds. There was just some records in  
14 some cases that nothing was received or if it wasn't received then  
15 just portions of it was received and it was obvious that it was  
16 portions. And so either they brought that to me and I encouraged  
17 the parties, the providers to go back and look further or to come  
18 up and tell me in court that they had done that.

19 MS. REYNOLDS: Okay.

20 THE COURT: For the most part we've gotten those records.  
21 Now, your records may be totally and completely full, and so you  
22 may not need to do anything.

23 But if you do need to do something, I'm certain that your  
24 attorney will take the appropriate action because they have always  
25 done so.

1 MS. REYNOLDS: I don't know any particular changes about  
2 it, I just thought that maybe you could, I had a list or something  
3 and you were missing. I don't know.

4 THE COURT: Right.

5 MS. REYNOLDS: But I really just want this to work for me  
6 and my family. We've just been through so much turmoil because of  
7 my heart attack and it's just -- I'm just glad that it's moving  
8 forward.

9 THE COURT: Yes, ma'am. You said you had two questions,  
10 was there another one?

11 MS. REYNOLDS: No, sir, I think in the process you  
12 answered one.

13 THE COURT: Okay. All right. Thank you very much.  
14 Anything else from anyone?

15 Okay. Folks, our next conference then on the telephone  
16 how about June 26th, will that work for everyone, at 1:30?

17 MR. CAMPION: Yes, your Honor. What time of day?

18 THE COURT: 1:30 central standard, will that work for  
19 everyone?

20 MR. HERMAN: Yes, your Honor.

21 MR. CAMPION: Yes.

22 THE COURT: Okay. I will put that down in the minute  
23 entry and post it on the web site. Thank you everyone for  
24 participating. Bye-bye.

25 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, 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.



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Karen A. Ibos, CCR, RPR, CRR  
Official Court Reporter