

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID PRODUCTS
LIABILITY LITIGATION

Docket No. MDL 1355
New Orleans, Louisiana
Wednesday, July 29, 2009

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

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P R O C E E D I N G S

(WEDNESDAY, JULY 29, 2009)

(TELEPHONE STATUS CONFERENCE)

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5 THE COURT: Good afternoon, gentlemen. This is Judge
6 Fallon. Who do I have on the line? First, for the plaintiffs?

7 MR. DAVIS: Good afternoon, your Honor, Leonard Davis on
8 behalf of Plaintiff Liaison Counsel.

9 MR. LEVIN: Arnold Levin, sir.

10 MR. LONGER: Fred Longer as well.

11 MS. BARRIOS: Dawn Barrios for the State Liaison
12 Committee.

13 MR. JUNEAU: Pat Juneau, Judge.

14 THE COURT: Okay. The defense?

15 MR. IRWIN: Jim Irwin.

16 MR. PREUSS: Chuck Preuss.

17 MS. GARSAUD: And Monique Garsaud, too.

18 MR. JUNEAU: As well as Angie Bass from the Special
19 Master's office.

20 MS. REYNOLDS: Marilyn Reynolds.

21 THE COURT: Okay. Anyone else?

22 MS. WEST: Yes, your Honor, Ms. West is here.

23 THE COURT: Okay. Folks, this is our monthly meeting, I
24 have the agenda.

25 First State Liaison Counsel, anything from Propulsid II.

1 MS. BARRIOS: Your Honor, I am making a report on behalf
2 of Mr. Arsenault who couldn't attend the status conference today,
3 but I believe he sent you an e-mail of his current Propulsid II
4 timeline status report that he worked on with the Special Master's
5 report.

6 THE COURT: Right, I have it in front of me: Total to
7 panel 125 (of that, 122 are expedited); in review are 11 (of that,
8 11 are expedited); and ineligible 114 (of that, 111 are expedited).
9 That's the bottom line.

10 MS. BARRIOS: Yes, your Honor.

11 THE COURT: How are we coming with that, Tom, Chuck, Jim?

12 MR. CAMPION: In the joint report you have a reference to
13 the fact that there are 1,400 tiered claims which have not yet gone
14 to the panel, No. 1, and 400 on No. 2. Our understanding is of
15 those 1,800 tiered claims, a substantial part of them end up as
16 administrative claims. The number of actually tiered claims that
17 will require some significant review by the panel will be numbered
18 in, we hope, the low hundreds.

19 THE COURT: Pat, any input on that?

20 MR. JUNEAU: I have Angie on the phone to answer a couple
21 of questions. What we did is a surgical incision of all of these
22 numbers in the past few days so we could give some real insight to
23 the parties of really where we are. And bear with me a minute.
24 Let me give you a couple of numbers. Everybody knows already
25 that --

1 THE COURT: Somebody's got a dog. Trying to disagree
2 with you, Pat.

3 MR. JUNEAU: Well, he must not be impressed with my
4 surgical incision.

5 Just as a starting number, Judge, in Propulsid I this
6 was -- they've been through the panel, the complete panel process
7 3,124 cases and 24 current eligible. Let me break it down because
8 this is the bottom line. I have instructed the staff, I was there
9 last week, we are putting on a full-court press, 100% focused
10 effort on the disposition or addressing, if you will, the remaining
11 tiered claims, that's what's been our focus.

12 THE COURT: Are we talking Propulsid II or I?

13 MR. JUNEAU: I am talking I right now.

14 THE COURT: Okay. Got it.

15 MR. JUNEAU: And I might add, Judge, because of the
16 full-court press, I am addressing mainly putting all of our efforts
17 into one because that's the longest standing claims, we need to get
18 those out of here first, even though we kind of run them in tandem,
19 the focus mainly is on "I" right now.

20 THE COURT: Okay.

21 MR. JUNEAU: With all of that said and done, we have --
22 let me get to my notes here -- according to my calculations, we've
23 got 1,411 remaining tiered claims plus one little caveat. Let me
24 break that down a little bit for everybody. We have cleared and
25 we've sent to the defense, there are 702 cases for defense

1 briefing. There is a considerable number of those that fall in the
2 expedited category, but that's 702 that's gotten, you know, totally
3 through our process.

4 The defense has that now and we are awaiting the briefing
5 of that because, as the court knows, we've got to have the final
6 briefing because this is the final part of the package that allows
7 us to give the case to the panel. That's 702.

8 Now, the remaining part of that is 709, and let me break
9 that down for you. I'll call this 709, it is not clear today from
10 the defense briefing but it's instructive to have subsets of that
11 number. This is an estimated number because a lot of these numbers
12 are being double checked with the records.

13 But approximately 224 are possibly going to be
14 disqualified because the defense has not been able to identify
15 these claims. Now, what that in the database information, what we
16 have to do there is coordinate that between the defendant database
17 information that they have and going to expect the attorneys to get
18 that number, that information cleared up because we just can't
19 automatically dispose of those cases. I anticipate and we spent a
20 good bit of time trying to get these dates down. I anticipate by
21 August 31 us having addressed those 224 cases, they're either going
22 to be in or out.

23 No. 2: There are 119 that are subject to dismissal for
24 lack of medical records, and because of the process going back and
25 forth, I'll give you a timeline on that so that we make sure that

1 we don't have any missed records that would be involved. I
2 anticipate all of that being completed by October the 30th.

3 The other breakdown of that number is 201, the
4 subparagraph C. Those have been flagged as appear to be duplicates
5 in the file. We're working with the defense, with the records we
6 get from the plaintiff attorneys, I anticipate all of that timeline
7 wise to be finalized by October the 30th.

8 Now, again, if that's duplicate, it's coming out; if it's
9 in, it'll go through the panel.

10 Now, of that 709, if you subtract those numbers, that
11 leaves for us, that's the Special Master's office, 165, these are
12 tiered claims which we will have to clear and will clear for the
13 defense briefing. And we have on our timeline to complete that by
14 August 31.

15 Now, there are -- when I started this discussion I said
16 there is one other plus. The one other plus is there's 125, there
17 are 125 cases that are in the panel process as we speak. It might
18 have been seen by one, might have been cleared by two, that's an
19 ongoing process that happens every day, every week, mainly on weeks
20 by these panel members. That's essentially where we stand. We
21 look like we're pretty much on target to accomplish what we thought
22 we could accomplish. But I have, I do have a couple of
23 recommendations, Judge.

24 You had asked at the last conference for us, along with
25 the parties, to consider any mechanism, any procedures, et cetera,

1 that we could institute, revise, modify to try to expedite these
2 processes so we can get these cases closed out, mainly, i.e., the
3 tier cases. I've given a lot of thought to that and that's why I
4 got Angie on the line. And I have to give you this information
5 because I think it would be pertinent information.

6 We pulled time records to show -- you know, a lot of
7 these cases, Judge, in these fully briefed cases we have medical
8 records that would go from my desk to the end of my wall over here.
9 These doctors read these records and some of these records -- and
10 Angie is verifying now, we have the breakdown on it -- some of them
11 take four hours, sometimes six hours, they had to come back twice.
12 One doctor when we had him up there on the weekend to complete two
13 separate days when he got up, to complete the reviews up to 7.5
14 hours, something of that nature. I am just giving you an example.
15 Not all of the days but there are a lot like that.

16 With all of that said and done, we also have rather large
17 factors. No. 1, these are doctors who have very, very, very busy
18 schedules because of the on-call, they work odd hours; they've
19 accommodated with that, but it's difficult to get them and they
20 take some time off for themselves. That creates a problem when
21 we're trying to rotate these cases through. They've been very
22 cooperative and so forth but it creates a delay.

23 My suggestion for the short period of time that we have
24 left is if we could get the consent of both parties, plaintiff and
25 defendant, to nominate from each side two additional doctors to be

1 on this panel, it would give us the "fill-ins" when we can, you
2 know, get the record ready for rotation to move them in and we
3 don't run through these vacation problems, some of these extended
4 call schedules like that. I think that would help us tremendously
5 in this process.

6 And as an alternative to that is if the plaintiff and the
7 defendant could jointly agree, if we couldn't get two, as to
8 jointly agree to one then I could use him as -- you know how we
9 alternate plaintiff, defendant, plaintiff, defendant -- we could
10 just use him as a neutral when we have to fill in when we need it
11 for plaintiffs or defendant. I think that will be a tremendous
12 benefit to us.

13 I've talked to Angie about that at length and I think
14 that would allow us not only to keep it on schedule but to advance
15 it and to make sure that we get these things out because we want to
16 close this case.

17 THE COURT: That's got to be the direction, we really
18 have to move in that direction. It's time now, it's really past
19 time that we've got a situation where we're at the cleanup stage
20 now and I think we have to deal with that.

21 Let me ask the parties to give me some input on that.
22 What's the defendant's say on it? Tom, you, Chuck and Jim,
23 anything? Monique?

24 MR. CAMPION: Your Honor, we don't have any problem with
25 more doctors, it will be a little hard to find them, but we'll work

1 it out.

2 THE COURT: How about you, Lenny and Arnie?

3 MR. DAVIS: We'll do whatever we can to get more doctors.
4 I know that we've already started that process. Russ has actually
5 spoken to Tom about that, specifically about adding some additional
6 doctors, and Russ has been looking.

7 THE COURT: Okay. Let's, Tom, you and Lenny or you and
8 Russ or somebody get together and let's see if we can, with Pat,
9 and let's see if we can increase the staff of the doctors so we can
10 get these matters over.

11 Pat, do you have anything on Propulsid II?

12 MR. JUNEAU: Yes, I do, Judge. We had provided to
13 Richard his numbers -- I think it's incorporated, but hold on just
14 one second.

15 THE COURT: I have 1,673 claim forms.

16 MR. JUNEAU: Angie, you're on the phone, you have that
17 same report. I have a whole spread of papers up here. Give him
18 those numbers on Propulsid II.

19 MS. BASS: The numbers to the panel --

20 MR. JUNEAU: Go ahead, Angie, but I have it before me
21 right now.

22 MS. BASS: Go ahead.

23 MR. JUNEAU: To the panel there is 125, there's zero
24 eligible; there are 11 in review; and there are 114 ineligible, 111
25 of those are expedited. We have tier claims remaining about 416.

1 Before I get off of that subject, I didn't cover this one
2 point because we really need to get focused and we have gotten
3 focused on the tier claims --

4 THE COURT: Propulsid I or II?

5 MR. JUNEAU: Both. Both claims, I am addressing
6 administratively, we have processed and have a whole lot of
7 administrative claims we've already gotten out of here. I've got
8 in Propulsid I approximately 3,076 administrative claims out there,
9 but to me that was kind of a tailing thing. We're working on them
10 but not near the progress we are on the other two. But a lot of
11 those are going to be subject to dismissal, nonmedical records, and
12 they haven't submitted the proper documentation. Looks like when
13 we get through we're going to have about 1,976 to actually address.

14 THE COURT: All right.

15 MR. JUNEAU: But I think the tier claims are more
16 important than those claims to get disposed of and that's what
17 we're addressing right now. Administrative claims of Propulsid II
18 remaining are about 936, but again some of those will be subject to
19 the same dismissals as indicated probably on the same ratio as
20 Propulsid I.

21 THE COURT: All right. Okay. Another item I had was MDL
22 Mediation Resolution Program. We've talked about that.

23 Anything on Attorney's Fee Issues, Lenny?

24 MR. DAVIS: No, Judge. If I can go back. The court and
25 anyone else who gets this transcript is aware there was a training

1 session for a newly agreed upon panel replacement that took place
2 with the court on July the 16th, and my appreciation is that that
3 panel member is up and reviewing submissions at this point.

4 THE COURT: Good.

5 MR. DAVIS: The other thing, Judge, on July 8th the
6 Special Master filed a Motion for Order to Aid in the
7 Implementation of the Propulsid Resolution Programs, specifically
8 that dealt with the authorization issue that the court may recall
9 to enable medical providers, similar to what we did in Vioxx, to
10 accept authorizations. I don't know that the court has acted upon
11 that yet and we are awaiting guidance.

12 THE COURT: I think I have, but we'll check it to make
13 sure. I'll check it and make sure.

14 MR. DAVIS: I think that will also assist in getting any
15 medical records that may be out there and some of those providers
16 have not been as cooperative as we had hoped.

17 THE COURT: Okay. I'll handle that.

18 MR. DAVIS: The only other thing, I just express and I
19 know the court's well aware and so is defense counsel, but there
20 are some claimants that are on the phone. And I just want to
21 express how appreciative we are of the Special Master of moving
22 this matter along, and I know that folks are doing what they can to
23 get these cases through because there are a number of claimants who
24 are still waiting for a decision. And we advise them regularly
25 when they call our office that the matters are pending and in the

1 queue and with the Special Master and that some of the holdups are
2 briefing or gathering medical records, and that the Special Master
3 is working diligently to get these matters through.

4 And I just want the record to so note that we have
5 continuously raised that issue with the court and that the court is
6 aware of the issue.

7 THE COURT: Right. Okay. Anything from the attorneys,
8 anything other than what we've talked about?

9 MR. DAVIS: No, your Honor.

10 THE COURT: What about from any of the claimants, anybody
11 on the line wants to speak?

12 MS. REYNOLDS: Marilyn Reynolds.

13 THE COURT: Okay, Ms. Reynolds.

14 MS. REYNOLDS: What I wanted to know is if I should pass
15 all of the regulatory guidelines that you have set up and receive
16 compensation, what are the guidelines for the compensation and who
17 says how much you receive and what should I expect? I had heard
18 briefly that they go by what you would have missed in a life, in
19 your life because of this situation, pain and suffering and so
20 forth. I have not heard or seen anything in writing as far as what
21 the guidelines are for your exception, how do you know you're
22 receiving a fair amount?

23 THE COURT: Do you have a lawyer, ma'am?

24 MS. REYNOLDS: No, sir.

25 MR. DAVIS: Your Honor, our firm is her lawyer and I know

1 that Heather has spent considerable time with her, and we have
2 written letters and will be happy to resend those letters.

3 MS. REYNOLDS: Okay. Attorney Davis, thank you.

4 THE COURT: And, Ms. Reynolds, the easiest thing to do is
5 just call and ask, just make sure that you're satisfied with the
6 questions, ask the questions and get the information.

7 MS. REYNOLDS: He sent me quite a bit of information but
8 none of those covered that particular question because I just came
9 up with it, and I'm sorry.

10 THE COURT: Okay. Anything else from anyone? Okay.

11 MS. BASS: Angela Bass, Special Master's office. I can
12 confirm your order was signed in reference to the motion Lenny
13 addressed, and it has been sent to the defendants and they are
14 using it.

15 THE COURT: Great, okay.

16 MR. DAVIS: I must have missed that and I apologize.

17 THE COURT: That's all right. Okay. Let's get another
18 date. We want to set another date for the next conference.
19 Hopefully we're going to get to the point, folks, where we don't
20 need to meet every month.

21 MR. JUNEAU: The way I look at it, we're rounding third
22 base, I'm seeing real daylight.

23 MR. DAVIS: Well, I certainly hope that the plaintiffs
24 hit a home run.

25 MS. BARRIOS: An out-of-the-park home run.

1 THE COURT: August the 20th at 1:30, how is that with you
2 all?

3 MR. JUNEAU: Fine, Judge.

4 MR. CAMPION: Fine, sir.

5 THE COURT: All right. I will put that in a minute entry
6 then.

7 All right. In leaving, I just wanted to -- did we say a
8 time, I'm sorry?

9 MS. REYNOLDS: 1:30.

10 THE COURT: This is the point where we've really got to
11 try to speed up the matters of those that we got some medical on,
12 we've just got to assume that that's the end of the medical. If
13 we've been trying to get it for months or years and haven't gotten
14 it, we're going to just have to say that's it. In some of the
15 cases, you know, we're just going to have to start dismissing
16 whatever is out there that hasn't been complied with. We've got to
17 just clean up the matter and put it to bed.

18 All right, folks, thank you very much for participating.

19 MS. REYNOLDS: Thank you, Judge Fallon.

20 MR. DAVIS: Thank you.

21 MR. IRWIN: Thank you.

22 THE COURT: Okay. Bye-bye.

23 (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.

A handwritten signature in cursive script that reads "Karen A. Ibos". The signature is written in black ink and is positioned above a horizontal line.

Karen A. Ibos, CCR, RPR, CRR

Official Court Reporter