

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: PROPULSID PRODUCTS : **MDL NO. 1355**
LIABILITY LITIGATION :
 : **SECTION: L**
THIS DOCUMENT RELATES TO :
(All Plaintiffs, Enrollees, and Cases in the :
Second MDL Resolution Program) : **JUDGE FALLON**

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR AN ORDER
TO TERMINATE THE CLAIMS OF ALL ENROLLEES IN THE SECOND MDL
RESOLUTION PROGRAM AND TO AUTHORIZE RETURN TO THE
DEFENDANTS THE BALANCE OF THE SETTLEMENT FUND AND
ADMINISTRATIVE FUND AFTER ALL
PAYMENTS DUE THEREUNDER HAVE BEEN MADE**

Defendants, Johnson & Johnson and Janssen Pharmaceuticals, Inc. (Defendants), submit the following Memorandum in Support of Defendants' Motion for an Order to Terminate the Claims of All Enrollees in the Second MDL Resolution Program and to Authorize Return to the Defendants the Balance of the Settlement Fund and Administrative Fund After All Payments Due Thereunder Have Been Made.

1. In December 2005, the Plaintiffs' Steering Committee (PSC), the State Liaison Committee (SLC), and Defendants reached an agreement to create a comprehensive resolution program (Second MDL Resolution Program) to resolve the state and federal lawsuits that were not eligible to enroll, or chose not to enroll, in the First MDL Resolution Program, as well as the remaining unfiled claims subject to tolling agreements.

2. The Second MDL Resolution Program became effective on October 31, 2006, when 90% of the plaintiffs representing decedents, 95% of the personal injury

plaintiffs and most of the remaining tolled claimants were confirmed enrolled and had agreed to the terms of the program.

3. Enrollment in the Second MDL Resolution Program closed on December 7, 2007, and the deadline for filing claim forms expired in April 2008.

4. The terms of the Second MDL Resolution Program are set forth in the December 19, 2005 Consent Order and in the Second MDL Resolution Program Term Sheet, dated December 15, 2005. Copies of these documents are attached as Exhibits A and B, respectively, to the Affidavit of Brian P. Quirk, Esq., counsel for Defendants (Quirk Affidavit). The Quirk Affidavit is filed concurrently with this Motion. These documents were made a part of the enrollment form, and those who enrolled in the Second MDL Resolution Program certified that they had read and understood these documents.

5. Those who enrolled in the Second MDL Resolution Program filled out an enrollment form and agreed to its terms. A copy of the enrollment form is attached as Exhibit C to the Quirk Affidavit. Upon enrolling, enrollees agreed that they would be subject to the jurisdiction of the MDL Court, could not withdraw from the Second MDL Resolution Program, would be bound by the Program's results and would surrender any other rights or claims they may have had with respect to Propulsid® use. They further agreed that their enrollment served as a release of any claims against the Defendants and any other parties against whom they may have had a claim. Upon enrollment, they further agreed that their claims would be dismissed if they failed to serve completed claim forms and provide the required medical records within the timeframes specified.

6. The Term Sheet states that “[t]his Program will be in lieu of any further litigation by the plaintiffs and tolling agreement claimants who enrolled in this Second MDL Program respecting their acquisition or use of Propulsid.” See Exhibit B to the Quirk Affidavit at page 2. It further sets forth that the parties will jointly petition the MDL Court to accept jurisdiction over this Program and to manage the resolution of both federal and state court actions, as well as claims of claimants. On December 19, 2005, this Court signed the parties’ Consent Order, assuming jurisdiction over enrolled state plaintiffs and over claimants, who would not otherwise be subject to the jurisdiction of the MDL Court. See Exhibit A to the Quirk Affidavit, ¶ 2.

7. All plaintiffs who enrolled in the Second MDL Resolution Program, including plaintiffs whose cases were pending in state courts, were required to deliver to defense counsel a fully-executed stipulation of dismissal and proposed order of dismissal with prejudice of their cases. These stipulations of dismissal were styled with the MDL Court’s caption and the MDL Case/Docket number. See Exhibit C to the Quirk Affidavit.

8. As part of their enrollment packages, enrollees were instructed to fill out claim forms and to submit claim forms and medical records to the Special Master’s Office within certain deadlines. The Court additionally posted all forms and information related to the Second MDL Resolution Program on its website. The Special Master’s Office collected and tracked the receipt of the enrollees’ forms and sent to their counsel notices of delinquent and/or deficient submissions, as appropriate. The Special Master’s Office additionally notified counsel for all enrollees of the enrollment status of each enrollee (whether each had been disqualified and the reason(s) for that determination, with the

opportunity to challenge that disqualification or seek reconsideration of same, whether each had been qualified and how each had been qualified – whether as a wrongful death plaintiff, a personal injury plaintiff or a tolling claimant). The Special Master’s Office regularly shared with the parties data updates regarding enrollment and the receipt of claim forms and medical records from enrollees. See Juneau Affidavit filed concurrently with this Motion, ¶ 2.

9. As the Special Master’s Office received submissions from enrollees and deemed them complete for review, it forwarded the claim forms and medical records to a three-physician panel for review and eligibility determinations. For the remaining balance of submissions that were not deemed eligible for awards, claimants with sufficient records were entitled to payments to defray the costs of obtaining medical records required for participation in the Program (medical records reimbursements) in accordance with the Term Sheet. The Special Master’s Office processed and paid medical records reimbursements to a large number of enrollees in the Second MDL Resolution Program. All enrollees who received awards or medical records reimbursements have had their claims fully processed, and their claims and cases should be terminated. See Juneau Affidavit, ¶ 3.

10. Some enrollees failed to submit claim forms. Some enrollees failed to submit medical records. Some enrollees failed to submit the necessary records to qualify them for medical records reimbursements. Each was given notice of these deficiencies, with the ability to cure them, and their claims were fully processed according to the

requirements of the Term Sheet for the Second MDL Resolution Program. Their cases and claims should be terminated. See Juneau Affidavit, ¶ 4.

11. A list of every enrollee and plaintiff in the Second MDL Resolution Program is attached as Exhibit D to the Quirk Affidavit and can be found on the Court's website at <http://propulsid.laed.uscourts.gov/>.

12. All claims have been processed and finalized, and the Defendants seek an order from this Court, terminating the Second MDL Resolution Program and the claims and cases of all enrollees in the Second MDL Resolution Program, and authorizing the Special Master to return to the Defendants the balance of the money in the Administrative Fund and Settlement Fund once all the payments that are due under those Funds have been paid.

Accordingly, Defendants, Janssen Pharmaceuticals, Inc. and Johnson & Johnson, respectfully request that this Court issue an order terminating the Second MDL Resolution Program including dismissing with prejudice the claims and cases of all the plaintiffs and enrollees therein, including all of the claimants and plaintiffs listed on Exhibit D to the Quirk Affidavit, and further authorizing the return of balances of the Settlement and Administrative Funds to the Defendants once all payments due under those funds have been made.

Respectfully Submitted:

/s/Brian P. Quirk

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Defendants' Memorandum in Support of Motion for an Order to Terminate the Claims of All Enrollees in the Second MDL Resolution Program and to Authorize Return to the Defendants the Balance of the Settlement Fund and Administrative Fund After All Payments Due Thereunder Have Been Made, has been served upon all parties by electronically uploading the same to LexisNexis File & Serve, by U.S. mail, certified, return receipt requested to the counsel of record for plaintiffs and claimants, as listed on Exhibit D to the Quirk Affidavit (which has been uploaded to the Court's website, <http://propulsid.laed.uscourts.gov/>), and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing on this 18th day of September, 2012. This document will also be served on all counsel of record for the enrollees in the Second MDL Resolution Program by Dawn M. Barrios, Esq. of the MDL State Liaison Committee.

/s/Brian P. Quirk

BRIAN P. QUIRK