

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

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IN RE: PROPULSID PRODUCTS : **MDL NO. 1355**
LIABILITY LITIGATION :
: **SECTION: L**
: **JUDGE FALLON**
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This Document Relates to: :
All cases :
: _____
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PLAINTIFFS’ LIAISON COUNSEL’S
MEMORANDUM IN SUPPORT OF MOTION FOR FINAL DISTRIBUTION
OF REMAINING FUNDS (MDL SETTLEMENT PROGRAM)

Russ M. Herman, Plaintiffs’ Liaison Counsel, hereby submits this Motion for Final Distribution of Remaining Funds (MDL Settlement Program) in connection with the Propulsid MDL Settlement Program. The Court is very familiar with this MDL which began on August 7, 2000. On October 2, 2013, this Court issued an Order Recommending Termination of Multidistrict Litigation [Rec. Doc. 4698].

The litigation concluded as a result of a Settlement Program that was developed and created by the Plaintiffs’ Steering Committee (“PSC”) along with the defendants, Johnson & Johnson and Janssen Pharmaceutica, Inc., under the guidance and supervision of the Court.¹ On February 4, 2004, the Settlement Agreement in the MDL was reached with defendants and since that time, claims were processed and the entire Settlement Program has concluded. The Court has previously issued Orders concerning distributions of attorneys’ fees and costs. The last distribution for the

¹ There was also the Propulsid Settlement Program II.

MDL Settlement Program occurred on April 25, 2012 when the Court issued an Order granting a distribution (see Rec. Doc. 4497). In that Order, the Court stated:

IT IS FURTHER ORDERED that any remaining funds, following these distributions, held at Deutsch Bank in the Attorneys' Fee Fund of MDL 1355, be distributed to Plaintiff's Liaison Counsel, Russ M. Herman, for the purposes of winding down this litigation and to pay outstanding expenses incurred or to be incurred. If funds remain following payment of additional costs and expenses, Russ M. Herman, as Plaintiff's Liaison Counsel, will petition the Court to distribute any remaining funds pro rata to all counsel who have been allocated attorney's fees from the Deutsch Bank Attorneys' Fee Fund in this litigation.

Plaintiffs' Liaison Counsel has been active over the last months winding down this litigation. This included dismantling the Propulsid Depository, concluding matters with the Special Master, addressing administrative matters, handling Court docket issues including dismissals of cases, paying outstanding expenses and other functions required by the Court pursuant to its Order setting forth the duties of Liaison Counsel. Outstanding expenses known to Liaison Counsel have been paid. Most recently, Plaintiffs' Liaison Counsel has provided to Philip Garrett various statements from financial institutions identifying the balance of funds on deposit and also has met with Philip Garrett and the Clerk of Court to review any amounts deposited into the registry of the Court in accordance with Pre-Trial Order No. 16. It is anticipated that Plaintiffs' Liaison Counsel and Philip Garrett will have additional functions to perform in order to conclude the Propulsid MDL. These functions include the disbursement of the balance of any attorney's fees awarded, the filing of tax reports, closing bank accounts and other related matters. Movant suggests that \$10,000.00 be withheld from the final payment for the purpose of paying any remaining costs.

Plaintiffs' Liaison Counsel is aware of the following funds that remain and hereby petition's the Court to distribute these funds (after withholding an amount to pay anticipated future expenses) pro rata to all counsel who have been allocated attorney's fees from the Deutsche Bank Attorneys'

Fee Fund in this litigation, all in accordance with the April 25, 2012 Order of this Court.

A. Funds Held by Plaintiffs' Liaison Counsel - \$110,376.02

These funds have been held by Plaintiffs' Liaison Counsel pursuant to distributions previously made in this litigation. Funds in this account have been utilized previously for the payment of cost and expenses. All costs and expenses have been reviewed by Philip Garrett as evidenced by the attached Affidavit of Philip Garrett, Exhibit "A."

B. Deutsche Bank Attorneys' Fee Fund - \$125,745.97

Bourgeois Bennett, LLC recently requested that Deutsche Bank disburse funds remaining in the Propulsid accounts held at Deutsche Bank in order to conclude the Propulsid litigation and close outstanding accounts. In connection with those matters, funds were requested to be transferred to Russ M. Herman, Plaintiffs' Liaison Counsel to finalize the closure of the Propulsid matter in its entirety. The amount requested to be transferred to Plaintiffs' Liaison Counsel, net payment of tax liability, totals \$137,914.24 representing final attorney fee fund balances (this includes \$12,168.27 which is due to LeBlanc Maples & Waddell, therefore leaving a net of \$125,745.97).

C. PTO No. 16 Litigation Fund - \$397,860.00 (principal only)

The Clerk of Court has advised that there is presently a principal balance of \$397,860.00 in the Propulsid MDL 1355 PTO No. 16 Litigation Fund and interest as of 12/31/2013 of \$72,114.53, thus as of 12/31/2013 a total of \$469,974.53. Interest continues to accrue daily. These funds were a result of prior settlements. Plaintiffs' Liaison Counsel requests that the funds, plus all interest, be disbursed as attorneys' fees and that payment be distributed pursuant to the April 25, 2012 Order and as outlined in the Philip Garrett Affidavit attached as Exhibit "A."

Attached hereto as Exhibit "B" is a certification of the moving party that a copy of this motion and the proposed Order has been submitted to the Clerk for review. Movant requests that in consistent with C above, the Clerk of Court be authorized and directed to draw a check on the funds on deposit in the registry of this Court in the principal amount of \$397,860.00 as identified in Section C above (PTO No. 16 Litigation Fund), plus all interest earned, less the assessment fee for the administration of funds, and issue a check made payable to Russ M. Herman, Plaintiffs'

Liaison Counsel, Herman Gerel, LLP, 820 O'Keefe Avenue, New Orleans, LA 70113, and mail or deliver the check to Russ M. Herman.

The filing of this motion will conclude this matter, except for the ongoing administrative functions to be handled by Plaintiffs' Liaison Counsel, and will result in a final distribution of remaining funds totaling \$696,096.52. Philip Garrett has reviewed the April 25, 2013 Order, Rec. Doc. 4497 and has recommended a distribution of funds remaining as set forth in Exhibit "A."

Wherefore, movant respectfully requests that the instant Motion for Final Distribution of Remaining Funds (MDL Settlement Program) be granted.

Respectfully submitted,

/s/ Leonard A. Davis

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LIAISON COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on Liaison Counsel, James Irwin, by U. S. Mail and e-mail or by hand delivery and e-mail and upon all parties electronically by uploading the same to Lexis-Nexis File and Serve in accordance with Pre-Trial Order No. 4, 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 in accord with the procedures established in MDL 1355 on this 31st day of January, 2014.

/s/ Leonard A. Davis

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