

Judgment on the Pleadings or to Strike the Class Allegations in Purchase Claims Master Complaint [Rec. Doc. 63678].

On December 12, 2011 the Court held a telephonic conference with the District of Columbia, Merck and an Assistant Attorney General for the District of Columbia to discuss the status of the District of Columbia's consumer class claim brought on behalf of a taxpayer and the effect of the DOJ settlement on that claim. On February 6, 2012, Merck filed a Motion for Judgment on the Pleadings [Rec. Doc. 63656] on plaintiff Kenneth Walker's claim under the D.C. Consumer Protection and Procedures Act ("CPPA"). Plaintiff filed an opposition [Rec. Doc. 63694], and Merck filed a reply. Plaintiff also moved for leave to amend its complaint [Rec. Doc. 63713]. On May 9, 2012, the Court issued its Order & Reasons [Rec. Doc. 63822], allowing the parties to file supplemental memoranda regarding the legal sufficiency of the proposed Second Amended Complaint. Plaintiff and Merck filed their supplemental memoranda on May 29, 2012 [Rec. Docs. 63876, 63877]. The Court has the matters under advisement.

II. STATE/FEDERAL COORDINATION -- STATE LIAISON COMMITTEE

Representatives of the PSC and the State Liaison Committee have had several communications. The State Liaison Committee, together with Plaintiffs' Liaison Counsel, also has worked on coordinating the discovery efforts of the Government Action cases currently pending before the Court. The parties will be prepared to discuss these issues further at the status conference on June 14, 2012.

III. PRO SE CLAIMANTS

By Order entered February 12, 2008, the Court appointed Robert M. Johnston of Johnston, Hoefer, Holwadel & Eldridge, 400 Poydras Street, Suite 2450, New Orleans, Louisiana 70130, as Curator for *Pro Se* plaintiffs and tolling claimants (collectively, the "*Pro Se* Claimants"). The PLC and Curator will be prepared to discuss this further at the status conference on June 14, 2012.

IV. GOVERNMENT ACTIONS

On June 5, 2012, the Court entered Pre-Trial Order No. 39B [Rec. Doc. 63895] relating to Amendment of Pleadings, Discovery, and Remand/Transfer Scheduling Order for Remaining Government Action Cases.

The parties will be prepared to discuss these issues further at the Government Entities' status conference on June 14, 2012.

V. THIRD PARTY PAYORS

On August 17, 2011, the Court issued Pre-Trial Order No. 57 [Rec. Doc. 63267], which establishes procedures and deadlines for private third party payor common benefit fees. Numerous applicants have submitted submissions pursuant to Section III of the Order and the Fee Allocation Committee is in the process of reviewing and considering such applications. Furthermore, the Fee Allocation Committee requested additional information which was recently received from various applicants and which shall also be considered by the Fee Allocation Committee. The Court has extended the October 10, 2011 and October 20, 2011 deadlines set forth in Section IV of the Order. On November 17, 2011, the Fee Allocation Committee filed its

recommendation pursuant to Pre-Trial Order No. 57. [Rec. Doc. 63555]. The recommendation was supplemented on November 28, 2011. [Rec. Doc. 63582]. The Fee Allocation Committee will be prepared to discuss the matter further at the status conference on June 14, 2012.

On April 23, 2012, the Court entered an Order enjoining Plaintiffs and Plaintiffs' counsel in *Mary Plubell, et al. v. Merck*, pending in the Circuit Court of Jackson County, Missouri, from offering any evidence that does not sufficiently exclude damages attributable to claims already settled through the personal injury and Third Party Payor settlements achieved in this MDL and from executing any judgment obtained through admission of such evidence. [Rec. Doc. 63782]. On May 17, 2012, the *Plubell* Plaintiffs filed a Notice of Appeal [Rec. Doc. 63844]. That appeal will be heard on an expedited basis by the Fifth Circuit Court of Appeal.

VI. PENDING PERSONAL INJURY CASES SUBJECT TO PTOS
28, 29 AND 43

A. General Matters Relating to Remaining Personal
Injury Cases & Pending Motions

On April 25, 2012, the Court issued its Order & Reasons addressing the PSC's Motion to Amend Pre-Trial Order No. 19 [Rec. Doc. 63585], Ms. Oldfather's Motion for Order Requiring Escrow and Disclosures of Common Benefit Fee and Cost Withholdings from Settlement of Ineligible and Non-Enrolled Cases [Rec. Doc. 63154] and Mr. Benjamin's Motion to Exclude Movant from the Requirements of PTO 19 with regard to certain cases [Rec. Doc. 63680]. The Order denied Mr. Benjamin's Motion, required certain further steps by the PSC and directed the parties to meet and confer, after which Ms. Oldfather's Motion could be revisited if appropriate. The parties will be prepared to discuss this matter further at the status conference on June 14, 2012.

On November 2, 2011, Merck filed a Motion for Summary Judgment in VTE Cases [Rec. Doc. 63539]. In response, Ms. Oldfather filed a Motion to Strike or in the Alternative to Remand Merck & Co., Inc.'s Motion for Summary Judgment in VTE Cases [Rec. Doc. 63606]; Merck filed an opposition [Rec. Doc. 63609]. The Court heard argument on the motion to strike following the January 5, 2012 monthly status conference. The Court denied the motion to strike, continued Merck's motion for summary judgment in VTE cases generally, and ordered that "any expert reports on general causation in VTE cases that any party intends to submit in opposition to Merck's motion for summary judgment shall be produced on or before May 7, 2012." [Rec. Doc. 63623]. The deadline of May 7, 2012 was subsequently extended on Plaintiffs' motion, and the deadline of August 15, 2012 was set forth in Pre-Trial Order No. 58 (Case Management Order for Remaining Personal Injury Actions) [Rec. Doc. 63842] which the Court issued on May 15, 2012.

The parties will be prepared to discuss these matters further at the status conference on June 14, 2012.

A dispute has arisen between the parties concerning discovery relating to Merck's Motion for Summary Judgment in VTE Cases. Plaintiffs seek to depose the two experts who provided Merck's affidavits submitted in support of its Motion prior to submitting their own expert reports. The parties would like to bring this dispute to attention of the Court and will be prepared to discuss at the June 14, 2012 status conference.

On April 18, 2012, Merck filed two motions for summary judgment, one relating to plaintiff Joanne I. Roach [Rec. Doc. 63776] and one relating to plaintiff Stanley Long [Rec. Doc. 63777]. Both motions were noticed for submission on May 23, 2012. By Order & Reasons

entered June 5, 2012, the Court granted summary judgment and dismissed with prejudice the claims of plaintiff Joanne Roach [Rec. Doc. 63893]. On May 23, 2012, plaintiff Stanley Long moved for an extension of time to respond. By Order entered May 29, 2012, the Court ordered Mr. Long to file any opposition on or before June 12, 2012 and ordered that Merck's motion for summary judgment will be taken under submission, without oral argument, on June 20, 2012 [Rec. Doc. 63880].

From May 23, 2012 through June 7, 2012, Merck filed motions for summary judgment relating to the claims of plaintiff Elena Strujan [Rec. Doc. 63872], plaintiff MaryAnn Nolan [Rec. Docs. 63891, 63898], Lynn Hudnut [Rec. Doc. 63903], and Janice Baum [Rec. Doc. 63896]. All of these motions are noticed for submission on July 11, 2012.

B. Matters Noticed for Hearing on June 14, 2012

There are no new matters noticed for hearing on June 14, 2012.

VII. OTHER PENDING MOTIONS/MATTERS

Merck's Motion, Rule and Incorporated Memorandum to Show Cause Why Remaining Settlement Program Releases and Stipulations Should Not Be Tendered to Merck [Rec. Doc. 63105] remains pending as to one plaintiff, Louise Young, No. 08-0882. The matter has been resolved, and this Motion is now moot. Merck will submit a proposed Order to the Court.

Merck's Motion to Strike Class Allegations in Plaintiffs' First Amended Complaint [Rec. Doc.19681] in the *Gene Weeks* case was filed on June 22, 2009. On June 6, 2012, the Court entered its Orders & Reasons [Rec. Doc. 63899].

On September 15, 2011, Ms. Oldfather filed a Motion and Supporting Memorandum to Require Court Approval of Liaison Counsel's Fee of Michael A. Stratton [Rec. Doc. 63389]. That matter was argued on September 21, 2011. No response has been filed by Mr. Stratton. On June 6, 2012, the Court entered an Order [Rec. Doc. 63900] adding this matter to the agenda of the upcoming status conference on June 14, 2012. The parties will be prepared to discuss this matter further at the status conference on June 14, 2012.

By Order entered June 7, 2012, [Rec. Doc. 63906], the Court granted the Motion for Disbursement of Funds on behalf Kathryn Snapka [Rec. Doc. 63780].

VIII. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the United States Court of Appeals, Fifth Circuit. The parties will be prepared to discuss these matters further at the status conference on June 14, 2012.

IX. NEXT STATUS CONFERENCE

Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel will be prepared to schedule the next status conference, on a date to be selected by the Court.

Respectfully submitted,

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**Liaison and Lead Counsel for Ineligible or Non-Enrolled
Cases and Certain Other Remaining PI Claims**

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 71 of Plaintiffs' and Defendants' Liaison Counsel and Ann Oldfather, Liaison Counsel for certain pending personal injury cases, has been served upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8C, 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 1657, on this 12th day of June, 2012.

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