

Since the last status conference, both plaintiffs and Merck have filed notices of supplemental authority with the Court. [Rec. Docs. 63966, 63993, 64022].

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"). By Order & Reasons entered June 13, 2012, the Court granted Merck's motion for judgment on the pleadings. [Rec. Doc. 63924]. On July 9, 2012, Plaintiff moved for an extension of time to file an appeal from the Court's ruling [Rec. Doc. 63970], which was granted by the Court [Rec. Doc. 63975]. Plaintiff subsequently filed a motion to alter judgment [Rec. Doc. 63980], which Merck opposed [Rec. Doc. 64020]. The Court has the matter under submission. On September 12, 2012, the Court entered a judgment of dismissal [Rec. Doc. 64101].

II. 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 are engaged in ongoing discovery.

On September 6, 2012, Merck filed a motion to compel in the *State of Utah* proceeding [Rec. Doc. 64094]. The matter has been fully briefed [Rec. Doc. Nos. 64104, 64116, and 64130] and argument will be scheduled for a date and time convenient for the Court and the parties.

The parties will be prepared to discuss these issues further at the Government Entities' status conference on October 11, 2012.

III. 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]. On June 13, 2012, the TPP Fee Allocation Committee filed its final Recommendation [Rec. Doc. 63928]. The Court issued an Order on July 25, 2012 [Rec. Doc. 64011], which included a deadline of August 10, 2012 to file objections. Numerous objections have been filed to the TPP Fee Allocation Committee's Recommendation. The Fee Allocation Committee is in the process of re-reviewing its recommendation, as well as all of the objections, and expects to be able to report back to the Court in late November, 2012. The Fee Allocation Committee will be prepared to discuss the matter further at the status conference on October 11, 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 has been stayed pending documentation of a proposed settlement.

IV. 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. On July 27, 2012, the PSC forwarded to Ms. Oldfather information regarding common benefit fee and expenses pertaining to non-settlement program cases. The parties will be prepared to discuss this matter further at the status conference on October 11, 2012.

On July 9, 2012, Mr. Benjamin filed a Motion to Be Assessed as to the Percentages of Common Benefit Attorney Fees and Expenses [Rec. Doc. 63968]. Merck and Ms. Oldfather filed responses [Rec. Docs. 63997, 63999, and 64003]. The matter was discussed at the status conference on August 16, 2012. The parties await an Order on this matter.

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, entered certain subsequent orders, culminating 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, and which addresses case management deadlines in all remaining personal injury actions.

On August 1, 2012, the deadline for submission of general causation experts in the VTE cases was extended to August 31, 2012, following a telephone status conference when the Court granted an Emergency Motion for Extension of Time [Rec. Doc. 64017]. On August 31, 2012, Liaison Counsel and Lead Counsel for Certain Ineligible Plaintiffs filed and served expert reports addressing the general causation issue on the VTE claims [*see, generally*, Rec. Doc. 64084] with filed reports from: Benedict R. Lucchesi, M.D., Ph.D., F.A.H.A. [Rec. Doc. 64058 and 64092]; Ali J. Olyaei, Pharm.D., B.C.P.S. [Rec. Doc. 64086]; Alex C. Spyropoulos, M.D., F.A.C.P., F.C.C.P., F.R.C.P.C. [Rec. Doc. 64087]; and April Zambelli-Weiner, Ph.D., M.P.H., and Elizabeth Brooks, Ph.D. [Rec. Doc. 64088]. At Merck's request, Drs. Brooks and Zambelli-Weiner filed Supplemental Declarations on October 5, 2012 [Rec. Doc. 64126 and 64127].

Merck filed Rebuttal Reports on September 17, 2012, on the same issue from: Mark A. Crowther, M.D., M.Sc., F.R.C.P.C. and John P. Kress, M.D., F.C.C.P. [Rec. Doc. 64111].

The parties are in the process of deposing these experts, and the concluding deposition is scheduled for October 26, 2012.

The parties will be prepared to discuss these matters further at the status conference on October 11, 2012.

On June 29, 2012, Merck filed a motion for summary judgment relating to plaintiff Sandra Elliott [Rec. Doc. 63959]. The central issue in that motion related to a prior bankruptcy. Plaintiff Elliott moved for additional time in which to respond to the motion [Rec. Doc. 64004], so that she could attempt to have her prior bankruptcy proceedings re-opened. Merck opposed any extension [Rec. Doc. 64007]. By Order and Reasons entered September 17, 2012, the Court denied the motion for extension and granted Merck's motion for summary judgment [Rec. Doc. 64109].

On June 4, 2012, Merck filed a motion for summary judgment relating to the claims of plaintiff MaryAnn Nolan [Rec. Docs. 63898]. Plaintiff Nolan filed two motions for extension of time to respond [Rec. Docs. 63979 and 64023]. By Order entered August 9, 2012, the Court granted a 14 day extension of time [Rec. Doc. 64049]. On August 14, 2012, Merck filed a Motion, Rule and Order to Show Cause Why the *Nolan* case should not be dismissed with prejudice for failure to prosecute [Rec. Doc. 64054] which was noticed for submission on September 5, 2012. On August 22, 2012, plaintiff's counsel moved to withdraw [Rec. Doc. 64080]. That motion was granted by the Court by Order entered September 10, 2012 [Rec. Doc. 64103]. In its Order, the Court rescheduled the show cause motion for October 11, 2012.

On July 17, 2012, Merck filed a motion for summary judgment as to plaintiff *LaDonna King* [Rec. Doc. 63995]. Subsequent to the filing of Merck's summary judgment

motion in *King*, Counsel moved to withdraw as counsel and to remand Merck's motion for summary judgment [Rec. Doc. 64006]. In response, Merck filed a motion to dismiss for lack of prosecution [Rec. Doc. 64013]. The *King* motions were submitted on August 16, 2012 and remain pending.

On September 28, 2012, Merck filed a motion for summary judgment as to plaintiff *Susanna Valencia Bernal* [Rec Doc 64119]. The motion is noticed for submission on October 31, 2012.

B. Matters Noticed for Submission on October 11, 2012

Merck's Motion, Rule and Order to Show Cause Why the *Nolan* case should not be dismissed with prejudice for failure to prosecute [Rec. Doc. 64054] is noticed for submission on October 11, 2012.

V. OTHER PENDING MOTIONS/MATTERS

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 had 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 status conference on June 14, 2012, where it was further discussed. On August 15, 2012, Mr. Stratton filed a "Status Conference Memorandum regarding the Liaison Counsel Objection Heard on September 21, 2011" [Rec. Doc. 64064]. The parties will be prepared to discuss this matter further at the status conference on October 11, 2012.

Plaintiff James Schneller, whose prior case was dismissed with prejudice and the dismissal was upheld on appeal, filed a second suit against Merck, *James D. Schneller, et al. v.*

Mrck & Co., Inc., No. 12-703. By Order entered June 12, 2012, the Court dismissed the suit with prejudice [Rec. Doc. 63913]. Plaintiff Schneller filed a notice of appeal [Rec. Doc. 63984] and a motion for leave to appeal *in forma pauperis* [Rec. Doc. 63985]. By Order entered August 2, 2012, the Court denied the motion for leave to appeal *in forma pauperis* [Rec. Doc. 64033]. On August 7, 2012, plaintiff Schneller filed a motion for reconsideration, to open judgment and for amendment [Rec. Doc. 64040]. The motion was denied by Order entered September 6, 2012 [Rec. Doc. 64093].

On August 13, 2012, Plaintiff Elena Strujan filed a motion for reconsideration [Rec. Doc. 64053] of the Order dismissing her case. The motion was denied by Order entered September 19, 2012 [Rec. Doc. 64114].

The Court has received multiple items of correspondence from, and regarding the case of, Antonio Denson, most recently on October 4, 2012 {Rec. Doc. 64129}. Mr. Denson and his brother, Anthony Denson, appeared at the August 14, 2012, status conference. Ms. Oldfather, as Liaison Counsel, offered to look into Mr. Denson's request and report back to the Court. Since then, Ms. Oldfather has received from Dean Oser, the Court's Case Manager, all of Mr. Denson's filings (most of which were placed under seal) and other matters pertaining to Mr. Denson of record in this action, specifically: Rec. Docs. 40832, 51200, 54507, 59693, 59699, 60497, 62697, 62722, 62728, 62897, 62898, 62899, 62923, 63072, 63675, and 63755, a disc containing Mr. Denson's claim materials as filed with Brown Greer, and certain documents from Mr. Denson. Ms. Oldfather will be prepared to report further to the Court October 11, 2012.

VI. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the

United States Court of Appeals, Fifth Circuit. On August 13, 2012, Merck filed with the Fifth Circuit Court of Appeals a motion for summary affirmance in the *Schneller* case [No. 12-30732]. On August 31 and September 19, 2012, Plaintiff Joanne Roach filed a Notice of Appeal and an Amended Notice of Appeal [Rec. Docs. 64089 and 64115] of the court's dismissal of her case. The parties will be prepared to discuss these matters further at the status conference on October 11, 2012.

VII. 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,

/s/ Leonard A. Davis

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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. 73 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 9th day of October, 2012.

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