

**MINUTE ENTRY
FALLON, J.
MARCH 1, 2012**

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

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION "L"
	*	
	*	JUDGE FALLON
	*	
	*	MAGISTRATE JUDGE KNOWLES
	*	
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THIS DOCUMENT RELATES TO ALL CASES

The monthly status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. The Court first met with members of the Plaintiffs' Steering Committee ("PSC") and the Defendants' Steering Committee ("DSC") to discuss agenda items for the conference. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 69 of Plaintiffs' and Defendants' Liaison Counsel. This monthly status conference was transcribed by Ms. Susan Zielie, Official Court Reporter. Counsel may contact Ms. Zielie at (504) 589-7781 to request a copy of the transcript. A summary of the monthly status conference follows.

I. SPECIAL MASTER

On January 14, 2008, Mr. Patrick A. Juneau was appointed to serve as Special Master under the terms of the Settlement Agreement. Special Master Juneau has completed numerous tasks in that capacity and his service is appreciated. Because his efforts are largely

complete, it will not be necessary at this time to have regular reports from the Special Master at future Status Conferences.

II. CLASS ACTIONS

The only remaining, pending class actions involve Purchase Claims.¹ On June 30, 2010, Merck filed its Motion for Judgment on the Pleadings or to Strike the Class Allegations in Purchase Claims Master Complaint. The motion has been fully briefed, and the Court has heard oral argument and taken the matter under submission. On February 22, 2012, Merck filed a Notice of Supplemental Authority regarding the motion (Rec. Doc. 63678).

III. 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 discussed these issues further at the Monthly Status Conference.

IV. *PRO SE* CLAIMANTS

By Order entered February 12, 2008, the Court appointed Robert M. Johnston of Adams, Hoefer, Holwadel & Eldridge, 601 Poydras Street, Suite 2450, New Orleans, Louisiana, as Curator for *Pro Se* plaintiffs and tolling claimants (collectively, the "*Pro Se* Claimants"). The Curator discussed the status of communications with *pro se* individuals at the Monthly Status Conference on March 1, 2012.

¹Counsel in *Deckowitz v. Merck*, No. 2:05-cv-02102, has noted that the complaint in that action contains not only purchaser claims, but also securities claims brought on behalf of owners of Merck stock.

V. GOVERNMENT ACTIONS

Plaintiffs in the Government Actions other than Louisiana and Merck exchanged formal master discovery requests on June 5, 2009 and served written objections and responses thereto on August 5, 2009. On June 29, 2010, the Court entered Pre-Trial Order No. 39A, which establishes a scheduling order for discovery and ultimate remand/transfer of the remaining Government Action cases.

On November 22, 2010, the Court stayed discovery in the Governmental Actions for 30 days in order to explore global resolution of the AG cases. On December 7, 2010, the Court met with the Special Master, the parties, and a representative from the Department of Justice to discuss parameters of a possible global resolution. Thereafter, the Special Master met with Merck's counsel and with counsel for each Government Action plaintiff. During the stay, the parties have engaged in an information exchange of discovery related to resolution issues under the supervision of Special Master Juneau. Special Master Juneau continues to be in contact with all the parties, as well as with representatives from the Department of Justice and the National Association of Medicaid Fraud Control Units. On July 15, 2011, the Special Master brought Merck and all the governmental agencies (the vast majority of whom personally attended) to New Orleans for a two-day mediation.

On September 1, 2011, the Court held a telephone conference with counsel for Merck and counsel for Santa Clara County. The Court issued a minute entry regarding the conference. (Rec. Doc. 63335). On September 26, 2011, Merck filed a Motion for Judgment on the Pleadings (Rec. Doc. 63425); Santa Clara filed its opposition on November 7, 2011 (Rec. Doc. 63552); and Merck filed its reply on November 18, 2011 (Rec. Doc. 63584). The motion was

heard on January 18, 2012 and the Court has taken it under advisement.

The Court held a telephonic status conference on October 12, 2011 to identify the states that would be continuing to litigate, to discuss how to proceed in those cases. The Court requested that Liaison Counsel for the AGs meet with Merck to formulate a new scheduling order for those AG cases remaining in the MDL. (Rec. Doc. 63478). The parties have been conferring on that issue.

On November 4, 2011, the Court outlined the procedure the parties must undertake before remands may be heard, including the procedure the Court will follow in reporting to the JPML on remands. Each governmental entity must meet and confer with Merck to determine what discovery is still outstanding and to suggest what discovery should be done in this Court and what may be done post remand. Since that date, almost every governmental entity has had a meet-and-confer with Merck. The parties addressed these issues at the Monthly Status Conference on March 1, 2012 and at an additional status conference held after the Monthly Status Conference.

On December 12, 2011, the Court held a telephone conference with the District of Columbia, Merck, and counsel for a citizen of the District of Columbia to discuss the status of the District of Columbia's consumer class claim brought on behalf of that citizen 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 indicates that it intends to file a reply. The parties have requested that the motion be heard on March 14, 2012 during the regular motion docket.

At the January 5, 2012 status conference, the parties informed the Court of the progress on the discovery project to narrow issues between the AGs and Merck. On February 13, 2012, a status report on the progress of discovery and the draft scheduling order was provided to the Court in a conference call. The parties have exchanged a discovery chart to narrow the outstanding issues on discovery, and are working to submit a joint scheduling order to the Court before or at the March 1, 2012 status conference. Merck will obtain from IMS individual proposed protective orders for each entity for the entities to obtain material from IMS.

The parties discussed these issues at the Monthly Status Conference on March 1, 2012.

VI. THIRD PARTY PAYORS

On August 17, 2011, the Court issued Pretrial 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 Third Party Payor 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 extended the October 10, 2011 and October 20, 2011 deadlines set forth in Section IV of PTO 57. On November 17, 2011 the Fee Allocation Committee filed its recommendation pursuant to Pretrial Order 57 (Rec. Doc. 63555) and supplemented the recommendation on November 28, 2011 (Rec. Doc. 63582). The matter was discussed at the Monthly Status Conference on March 1, 2012.

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

A. General Matters Relating to Remaining Personal Injury Cases

Liaison Counsel have substantially completed a census of the remaining personal injury cases and the parties discussed the plans for the remaining personal injury cases at the Monthly Status Conference on March 1, 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).

B. Matters Noticed for Hearing on March 1, 2012

On January 11, 2012, Merck filed a Cross-Motion, Rule and Incorporated Memorandum to Show Cause Why Case Should Not Be Dismissed With Prejudice for Failure to Prosecute in the *Gerald Wagganer* case, No. 05-3125 (Rec. Doc. 63639). On January 4, 2012, counsel for Mr. Wagganer filed a motion to withdraw asserting that he "has not responded to efforts of the undersigned counsel at contact." (Rec. Doc. 63615). The motion was heard immediately following the Monthly Status Conference. A separate Order will follow.

On January 12, 2012, Merck filed a Motion for Entry of a Comprehensive Scheduling Order for "Other Injury" and "PTO 29" Cases (Rec. Doc. 63640). An Opposition was filed by Ms. Oldfather as Liaison Counsel (Rec. Doc. 63649), and multiple responses were filed by

affected plaintiffs (Rec. Docs. 63651, 63653, 63654, 63655, 63657, 63658, 63659, 63665, 63666, 63679, 63691). The PSC also filed a response (Rec. Doc. 63652). Merck filed a reply (Rec. Doc. 63684), and the motion was heard immediately following the Monthly Status Conference. Ms. Janice Baum, one of the litigants subject to Merck's motion, appeared at the Monthly Status Conference and expressed her views on the motion. Ms. Oldfather was directed to submit an alternative proposed scheduling order.

On February 16, 2012, Ms. Oldfather filed a Motion for Extension of Time to Disclose General Causation Experts and Motion to Compel Delivery of the Vioxx Concordance Database (Rec. Docs. 63667 and 63668). The PSC filed a response (Rec. Doc. 63690). Merck also filed a response (Rec. Doc. 63695). Ms. Oldfather filed replies (Rec. Docs. 63700, 63701). The motion was heard immediately following the Monthly Status Conference. The Court will schedule a conference with the parties to discuss the matter further.

B. Other Pending Motions

On November 29, 2011, the PSC filed a Motion to Amend Pre-Trial Order No. 19 to address the common benefit fee and cost assessment for the subset of cases that are both subject to Pre-Trial Order 29 and allege a heart attack or stroke injury. (Rec. Doc. 63585). An opposition was filed by Ms. Oldfather, Liaison Counsel for certain cases (Rec. Doc. 63592); Merck also filed a response to the motion (Rec. Doc. 63587). The motion was heard following the Monthly Status Conference on January 5, 2012, and was taken under submission.

On February 15, 2012, Merck filed a Motion for Summary Judgment in the *Escamilla* case, No. 08-3573 (Rec. Doc. 63662). The motion is noticed for submission on March 14, 2012 at 9:00 a.m. On February 22, 2012, Merck filed under seal a Motion for Summary Judgment

relating to the claims of plaintiff Cheryl Kuykendall, No. 05-4991 (Rec. Doc. 63674). The motion is noticed for submission on March 14, 2012 at 9:00 a.m. On February 22, 2102, Ms. Oldfather filed an Opposition to Merck's use of *Lone Pine* reports as a basis for summary judgment (Rec. Doc. 63676). On February 24, 2012, counsel for Ms. Kuykendall filed a response, adopting the Opposition of Ms. Oldfather (Rec. Doc. 63687), and Merck filed a response to Ms. Oldfather's Opposition (Rec. Doc. 63689). Merck also indicates that it intends to file a reply in support of its motion in the Kuykendall matter.

On February 23, 2012, Ron Benjamin filed a Motion to Exclude Movant from the Requirements of PTO 19 With Regard to the Settlement of 16 Cases (Rec. Doc. 63680), which is noticed for submission on March 14, 2012. These are MI and Stroke cases that Mr. Benjamin is in the process of settling. Ms. Oldfather indicates that she intends to file an Opposition.

VIII. OTHER PENDING MOTIONS

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 claimant, Louise Young, Case No. 08-0882. The Court will defer the motion as to Ms. Young to the next Monthly Status Conference. A separate Order will follow.

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. The motion is fully briefed, including a recently filed Notice of Supplemental Authority (Rec. Doc. 63320), and remains pending.

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). The matter was heard by the Court on September 21, 2011 and taken under submission.

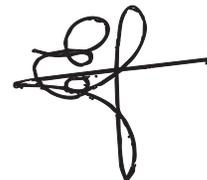
Ms. Oldfather's Motion for Order Requiring Escrow and Disclosures of Common Benefit Fee and Cost Withholdings from Settlement of Ineligible and Non-Enrolled Cases (Rec. Doc. 63154) remains under submission.

I X. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the United States Court of Appeals for the Fifth Circuit.

X. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Friday, April 27, 2012, at **8:30 a.m.**, Central Standard Time. **This is half an hour earlier than the regular Conference start time.** This conference will be held in the courtroom of Judge Eldon E. Fallon, Room C-468. Any interested persons unable to attend in person may listen in via telephone by dialing (800) 260-0712. The participant access code is 240337.

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a horizontal line extending to the right.