

**MINUTE ENTRY
FALLON, J.
APRIL 27, 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
	*	
* * * * *		

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. 70 of Plaintiffs' and Defendants' Liaison Counsel. This monthly status conference was transcribed by Ms. Toni Tusa, Official Court Reporter. Counsel may contact Ms. Tusa at (504) 589-7778 to request a copy of the transcript. A summary of the monthly status conference follows.

I. CLASS ACTIONS

The only remaining, pending class actions involve Purchase Claims.¹ On June 30, 2010,

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.

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).

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 discussed these issues further at the Monthly Status Conference.

III. *PRO SE* CLAIMANTS

By Order entered February 12, 2008, the Court appointed Robert M. Johnston of Adams, Hoefler, 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's representative discussed the status of communications with *pro se* individuals at the Monthly Status Conference on April 27, 2012.

IV. GOVERNMENT ACTIONS AND CONSUMER CLASS CLAIMS

On September 1, 2011, Judge Fallon held a telephone conference with counsel for Merck and counsel for Santa Clara County. Following the conference, the Court issued a Minute Entry (Rec. Doc. 63335) regarding the conference. On September 26, 2011, Merck filed a Motion for Judgment on the Pleadings (Rec. 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 issued an Order and Reasons granting Merck's Motion for Judgment on the Pleadings. (Rec. Doc. 63741).

The Court held a telephonic status conference on October 12, 2011 to identify the states that would be continuing to litigate and 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, but at the present time have been unable to craft the order. The parties discussed this matter at the Government Entities' status conference following the Monthly Status Conference on April 27, 2012.

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 is to meet and confer with Merck to determine what discovery is still outstanding and to make suggestions as to 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.

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. The Court has the matter under advisement.

The Government Entities prepared a letter to the Court on April 20, 2012 discussing issues each Government Entity believes pertinent at this point in the proceedings. The parties discussed these issues further at the Government Entities' status conference following the April 27, 2012 Monthly Status Conference.

V. 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 April 27, 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).

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

A. General Matters Relating to Remaining Personal Injury Cases

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).

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). These motions are addressed in Section C, *infra*.

B. Matters Noticed for Hearing on April 27, 2012

No new matters were noticed for hearing at the April 27, 2012 Monthly Status Conference.

C. 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. The Court issued an Order and Reasons granting the motion. (Rec. Doc. 63798).

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). The motion was argued at a hearing following the March 1, 2012 status conference. At that conference, the Court indicated that it intended to issue a scheduling order and directed Ms. Oldfather to submit an alternative proposed schedule. Ms. Oldfather and Merck each filed a Proposed Scheduling Order before the status conference. (Rec. Docs. 63799, 63800). The parties discussed this matter further at the status conference on April 27, 2012.

On February 15, 2012, Merck filed a Motion for Summary Judgment in the *Escamilla* case, No. 08-3573 (Rec. Doc. 63662). 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). Responses and oppositions were filed and the matters were taken under submission on March 14, 2012. On April 23, 2012, the Court entered its Order and Reasons granting summary judgment in the *Kuykendall* case and denying summary judgment in the *Escamilla* case (Rec. Doc. 63783). At the Monthly Status Conference, Merck reported that it had not been properly served with the supplemental report in the *Escamilla* case, and that Merck would have moved to withdraw its motion for summary judgment had it been served. Accordingly, no additional steps need to be taken with respect to the *Escamilla* motion for

summary judgment at this time.

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). These are MI and Stroke cases that Mr. Benjamin is in the process of settling. Ms. Oldfather filed an Opposition (Rec. Doc. 63724). The Court issued an Order and Reasons denying the motion. (Rec. Doc. 63798).

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 are noticed for submission on May 23, 2012.

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.

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) was addressed by the Court's Order and Reasons of April 25, 2012 (Rec. Doc. 63798).

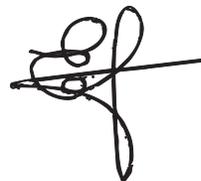
On April 20, 2012, a Motion for Disbursement of Funds on behalf Kathryn Snapka was filed (Rec. Doc. 63780) and is noticed for submission on May 9, 2012.

VIII. APPEALS

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

IX. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Thursday, June 14, 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) 260-0718. The participant access code is 247438.

A handwritten signature in black ink, appearing to be the initials 'EF' with a stylized flourish extending to the right.