

**MINUTE ENTRY
FALLON, J.
NOVEMBER 4, 2011**

**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. 67 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) 589-7779 to request a copy of the transcript. A summary of the monthly status conference follows.

I. THE SETTLEMENT PROGRAM

On November 9, 2007, the parties announced the establishment of a Vioxx Resolution Program that encompasses all claims that allege a heart attack, sudden cardiac death, or stroke. The Court has posted on its website, <http://vioxx.laed.uscourts.gov>, information regarding the

Resolution Program, as well as the Pre-Trial Orders entered by the Court. The full text of the Master Settlement Agreement and exhibits, together with registration and enrollment forms and instructions can be found at Claims Administrator's website at www.browngreer.com/vioxxsettlement. BrownGreer, the Claims Administrator appointed under the Agreement, has advised that all claims under the Program have now been processed.

II. SPECIAL MASTER

On January 14, 2008, Mr. Patrick A. Juneau was appointed to serve as Special Master under the terms of the Settlement Agreement. At the monthly status conference, Mr. Thomas Juneau reported on the completion of that work.

III. 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.

IV. 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.

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. *PRO SE* CLAIMANTS

On December 10, 2007, the Court issued Pre-Trial Orders 33 and 34 regarding *Pro Se* Plaintiff Registration and Enrollment Re: Settlement and *Pro Se* Tolling Claimant Registration and Enrollment Re: Settlement. Issues regarding the MDL Settlement Program are discussed in Section I, *infra*. By Order entered February 12, 2008, the Court appointed Robert M. Johnston of Adams, Hoefler, Holwadel & Eldridge, 601 Poydras Street, Suite 2490, 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 November 4, 2011.

VI. GOVERNMENT ACTIONS

A. Louisiana Attorney General Action

On June 29, 2010, the Court issued its Findings of Fact & Conclusions of Law, ruling in favor of defendant Merck and dismissing the Louisiana AG’s redhibition claim with prejudice and costs. A Notice of Appeal was filed by plaintiffs on July 28, 2010. At Louisiana’s request, briefing on that appeal has been stayed several times. However, in response to the last request, the Fifth Circuit dismissed the appeal, noting that it could be reinstated upon request.

B. Other 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. Representatives of the Government Actions Plaintiffs’ Case Management Committee and Merck’s counsel have participated in several meet-and-confers to discuss master discovery in these cases, and they continue to engage in good faith discussions regarding same.

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 August 26, 2010 the Court heard argument on certain discovery disputes between Merck and the Group I plaintiffs, and issued an Order addressing those disputes on September 13, 2010. On September 28, 2010, the Court heard argument by telephone on disputes concerning Florida's and New York's witness lists and issued a Minute Order later that day.

The Oklahoma Attorney General filed an amended complaint in late November, 2010, and Merck moved to dismiss that complaint on December 3, 2010. Briefing on that motion has not been completed.

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. The Court will supervise the negotiations with the assistance of Special Master Patrick A. Juneau. 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. The NAMFCU agreements were forwarded to the states on Tuesday, July 12, 2011. 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. The deadline for each

state's response to the NAMFCU agreement was September 12, 2011.

On August 8, 2011, the Commonwealth of Kentucky filed a motion to remand. (Rec. Doc. 63194). The Court heard oral argument on the motion on August 31, 2011 and has taken the matter under submission.

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).

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, and to discuss the County of Santa Clara's request for additional time to file an opposition to Merck's dispositive motion. 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. As to Santa Clara's request, the Court granted a three-week extension of the deadline for opposing Merck's dispositive motion.

The parties discussed these issues at the Monthly Status Conference on November 4, 2011 and at an additional status conference held after the Monthly Status Conference.

VII. THIRD PARTY PAYOR

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 has extended the October 10, 2011 and October 20, 2011 deadlines set forth in Section IV of PTO 57. The Fee Allocation Committee reported on this matter at the Monthly Status Conference on November 4, 2011.

VIII. 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 census and plans for the remaining personal injury cases at the Monthly Status Conference on November 4, 2011.

B. Matters Noticed for Hearing on November 4, 2011

Separate Orders will follow on the matters noticed for hearing at the Monthly Status Conference, including Merck's Motion, Rule and Incorporated Memorandum to Show Cause Why Cases Should Not Be Dismissed for Failure to Prosecute (Rec. Doc. 63268) as to Lerene Campbell and Patricia Kelly; Merck's Motion, Rule and Incorporated Memorandum to Show Cause Why Case Should Not Be Dismissed With Prejudice for Failure to Prosecute as to plaintiff Smita Sanjanwala (Rec. Doc. 63522); and Plaintiff Immanuel Iwobi's Motion for Reconsideration (63066), which was taken under submission.

IX. FEE ALLOCATION COMMITTEE

Pursuant to Pre-Trial Order 6D and the Court's Order of February 28, 2011, the Special Master conducted hearings on allocations and objections to the Fee Allocation Committee's recommended allocation during the week of May 9, 2011. The Special Master issued a Report and Recommendation of Special Master on Allocation of Common Benefit Attorney Fees on

June 27, 2011. (Rec. Doc. 63093). The Court posted the Special Master's Report and Recommendation on its website. Objections to the Special Master's Report and Recommendations have been filed by Daniel E. Becnel, Jr., the Branch Law Firm, Escobedo, Tippit & Cardenas, and Kathryn Snapka. The FAC filed a reply to those objections. On August 5, 2011, the Court issued an Order and Reasons ruling on a number of issues relating to the common benefit fee, including denying motions for reconsideration regarding the 6.5% common benefit assessment and objections to the Special Master's evidentiary and discovery rulings. (Rec. Doc. 63188). On August 9, 2011, the court issued its Order and Reasons allocating the common benefit attorneys' fees. (Rec. Doc. 63195). On September 27, 2011, the Court issued a Judgment awarding common benefit fees. (Rec. Doc. 63433).

X. OTHER PENDING MOTIONS

A separate Order will follow regarding 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. 63015) as to Louise Young. Additionally, the Court heard from the parties regarding Ms. Oldfather's Motion to Require Court Approval of Liaison Counsel's Fee of Michael A. Stratton (Rec. Doc. 63389) and 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) which remain under submission.

XI. APPEALS

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

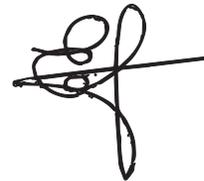
XII. OTHER MATTERS

The Court granted Merck's request to reset the Kenneth Novick, No. 07-7756, and Richard Garcia, No. 07-0902, matters (Rec. Doc. 40199) for the next Monthly Status conference.

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 submitted for decision in July 2009. The motion remains pending.

XIII. NEXT STATUS CONFERENCE

The next monthly status conference will be held on Thursday, January 5, 2012, at 9:00 a.m., Central Standard 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) 260-0702. The participant access code is 224135.

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