

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]. On September 12, 2012, the Court entered a judgment of dismissal [Rec. Doc. 64101]. Plaintiff has filed a motion to alter judgment [Rec. Doc. 63980], which Merck opposed [Rec. Doc. 64020]. Plaintiff filed a reply [Rec. Doc. 64052], and the Court has the matter under submission.

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 time period for completion of discovery and timing of remands was extended by joint motion in Pre-Trial Order No. 39C [Rec. Doc. 64223] on January 17, 2013. The parties are engaged in ongoing discovery.

On November 30, 2012, Merck filed a motion to compel in the *Jim Hood (State of Mississippi)* proceeding regarding responses to certain interrogatories and document requests. [Rec. Doc. 64181]. The Court heard argument on the motion by phone on February 14, 2013 and reconvened the parties for further consultation on the issues on February 19, 2013. The

Court has taken the matter under advisement and will be issuing a formal ruling. *See* Rec. Doc. 64260.

On January 30, 2013, counsel for the Government Action Plaintiffs submitted a letter brief seeking to compel additional productions by Merck of custodial files and data from the FACTs database. Merck submitted a letter brief opposing this additional discovery on February 12, 2013, and counsel for the Government Action Plaintiffs replied on February 14, 2013. The Court heard argument on these issues on February 20, 2013, and a Minute Entry was entered [Rec. Doc. 64261].

On December 19, 2012 the Plaintiffs' Steering Committee and Government Action Liaison Counsel filed a Motion for an Order Imposing a Common Benefit Obligation Upon the Recovery of the Commonwealth of Pennsylvania Attorney General's Claims Asserted Against Merck, Sharp & Dohme Corp., in this MDL [Rec. Doc. 64205]. On January 9, 2013, the Commonwealth of Pennsylvania filed an Opposition [Rec. Doc. 64216]. The Plaintiffs' Steering Committee and Government Action Liaison Counsel intend on filing a reply and requesting a hearing date.

The parties will be prepared to discuss these issues further at the Government Entities' status conference on February 26, 2013.

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. 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]. On August 10, 2012, Eric H. Weinberg filed an Objection [Rec. Doc. 64044] and a Joint Objection of Audet & Partners, LLP; Hovde Dassow & Deets, LLC; The Lanier Law Firm, P.C.; Ewing, McMillin & Willis, PLLC; and Gary Franke Co., LPA, was filed [Rec. Doc. 64046]. On February 1, 2013, the TPP Fee Allocation Committee filed a Response to General Statements made by the Weinberg Objectors [Rec. Doc. 64235 and 64238]. On February 7, 2013, the Weinberg Objectors filed a Reply to the TPP FAC's Response [Rec. Doc. 64242 and 64246]. On February 12, 2013, W. Mark Lanier of The Lanier Law Firm, P.C. forwarded correspondence to Judge Fallon withdrawing its objection. On February 14, 2013, Robert T. Dassow forwarded correspondence to Judge Fallon withdrawing the objections of Hovde Dassow & Deets, LLC.; Ewing, McMillin & Willis, PLLC; and Gary Franke Co., LPA.

The TPP Fee Allocation Committee will be prepared to discuss these matters further at the status conference on February 26, 2013.

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] and 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]. The Order 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 December 24, 2012, the VTE plaintiffs filed a Motion to Preclude Testimony of Mark A. Crowther, M.D., and the Testimony of John P. Kress, M.D. [Rec. Doc. 64210], and Merck filed a Consolidated Motion to Exclude Opinion Testimony on General Causation and Renewed Motion for Summary Judgment in VTE Cases [Rec. Doc. 64211]². On January 31, 2013, opposition memoranda were filed by the VTE plaintiffs [Rec. Doc. 64232] and Merck [Rec. Doc. 64234]. On February 15, 2013, reply memoranda were filed by the VTE plaintiffs [Rec. Doc. 62450] and Merck [Rec. Doc. 64233]. On January 31, 2013, the VTE plaintiffs also filed a Motion for Continued Remand of Merck's Renewed Motion for Summary Judgment in VTE Cases [Rec. Doc. 64233]. Merck filed an opposition to that motion on February 22, 2013 [Rec. Doc. 64263]. The parties have held several phone conferences with the Court and the matters have been set for hearing on March 6, 2013 at 2:30 p.m.

B. Matters Noticed for Submission on February 26, 2013

On February 5, 2013, Merck filed a Motion, Rule, and Incorporated Memorandum to Show Cause Why Case Should Not Be Dismissed With Prejudice for Failure to Prosecute as to the claims of plaintiffs Ann Marie Mannino and Joseph Mannino [Rec. Doc. 64240]. The matter is noticed for submission following the monthly status conference on February 26, 2013.

² Merck had previously filed Merck filed a Motion for Summary Judgment in VTE Cases [Rec. Doc. 63539].

On February 19, 2013, *pro se* plaintiff Dennis Harrison filed a Motion to Compel Defendant Merck to Provide Initial Disclosure to Plaintiff [Rec. Doc. 64257]. Merck filed its opposition on February 22, 2013 [Rec. Doc. 64259]. The matter will be submitted to the Court on February 26, 2013 following the monthly status conference scheduled for 2:00 p.m.

The number of pending personal injury claims continues to decrease with dismissals and settlements. Liaison and Lead counsel for Certain Cases be prepared to discuss this further at the status conference on February 26, 2013.

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 February 26, 2013.

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]. The motion was granted [Rec. Doc. 64178]. Mr. Schneller moved for rehearing *en banc*, which

was denied by the Court on January 9, 2013.

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. Plaintiff's appeal brief was filed and Merck's brief is due on March 18, 2013.

On March 21, 2012, plaintiff Emmanuel Iwobi filed a Notice of Appeal [Rec. Doc. 63746]. On January 31, 2013, the Fifth Circuit Court of Appeals issued its opinion affirming dismissal of plaintiff's case.

On March 30, 2011, plaintiff Jamaal Bilal filed a Notice of Appeal [Rec. Doc. 62740] of the Court's dismissal of his case. The judgment of dismissal was affirmed by the Fifth Circuit Court of Appeals [Rec. Doc. 64227].

The parties will be prepared to discuss these matters further at the status conference on February 26, 2013.

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. 75 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 22nd day of February, 2013.

/s/ Leonard A. Davis _____
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