

**MINUTE ENTRY
FALLON, J.
JUNE 25, 2013**

**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. 76 of Plaintiffs' and Defendants' Liaison Counsel. This monthly status conference was transcribed by Ms. Arlene Movahed, Official Court Reporter. Counsel may contact Ms. Movahed at (504) 589-7777 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. 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). 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.

At the February 26, 2013 Monthly Status Conference, Plaintiff's Liaison Counsel announced the consumer settlement, which should resolve all pending consumer claims. The Court indicated that it would conduct a hearing on the parties' forthcoming motion for preliminary approval of the settlement on March 14, 2013. On March 4, 2013, plaintiff James Ratliff filed a Preliminary Notice of Objection to the referenced settlement. (Rec. Doc. 64289). Merck filed an initial response to the preliminary notice of objection (Rec. Doc. 64290), and the Court has held multiple status conferences on the pending consumer settlement. The parties discussed these matters further at the June 25, 2013 Monthly Status Conference.

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 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). On February 25, 2013, the Plaintiffs' Steering Committee and Government Action Liaison Counsel filed a Reply (Rec. Doc. 64270), and the Court set a hearing date on the motion (Rec. Doc. 64271). On March 20, 2013, the Commonwealth of Pennsylvania filed a sur-reply. (Rec. Doc. 64315). On April 29, 2013, the Court issued an Order and Reasons. (Rec. Doc. 64364).

On April 29, 2013, Merck filed a Motion for Protective Order and Entry for Order for Production in the *State of Utah* case. (Rec. Doc. 64362). The motion was noticed for submission on May 15, 2013. Plaintiff filed its response (Rec. Doc. 64393). By Order entered May 22, 2103, the Court granted the motion in part (Rec. Doc. 64417), and entered a separate Order for Production and Protective Order (Rec. Doc. 64418).

On April 29, 2013, the *State of Mississippi* filed a Motion for Protective Order (Rec. Doc. 64365). The motion was noticed for submission on June 12, 2013.

On May 3, 2013, Merck filed Motions for Judgment on the Pleadings in the Alaska, Mississippi, Montana, and Utah actions (Rec. Docs. 64372, 64373, 64374, and 64375). Thereafter, the *State of Utah* filed a Motion to Remand and a Motion to Stay (Rec. Docs. 64382 and 64383), and, on May 16, 2013, filed a Motion for Summary Judgment on Judicial Estoppel (Rec. Doc. 64399).

On May 17, 2013, Merck filed a Motion to Compel 30(b)(6) Depositions in the Alaska, Mississippi, and Montana cases (Rec. Doc. 64407). On May 29, 2013, Merck filed a Motion to Compel in the Utah case (Rec. Doc. 64427). These motions are noticed for submission on June 25, 2013, immediately following the monthly status conference.

On May 31, 2013, the *State of Mississippi* filed a Supplemental Motion to Remand (Rec. Doc. 64430). The motion is noticed for submission on October 2, 2013. Also on May 31, 2013, the Court conducted a telephonic status conference to discuss Merck's motions for judgment on the pleadings (Rec. Docs. 64372, 64373, 64374, and 64375). The Court ordered that the submission dates on Merck's motions be continued, with dates to be reset following the resolution of plaintiffs' motions to remand in accordance with Pre-Trial Order 39C (Rec. Doc. 64432).

On June 5, 2013, Merck filed a Motion for Protective Order in the Alaska, Mississippi, and Montana cases (Rec. Doc. 64436). The motion is noticed for submission on June 25, 2013, immediately following the monthly status conference. On June 14, 2013, the *State of Alaska* and the *State of Montana* filed motions for protective order (Rec. Docs. 64441 and 64442). On June 21, 2013, Merck filed a memorandum in further support of its Motion to Compel 30(b)(6) Depositions and in opposition to the state's motions for protective order (Rec. Doc. 64457).

These motions are noticed for submission on June 25, 2013, immediately following the monthly status conference. Because Merck's Motion to Compel 30(b)(6) Depositions in the Alaska, Mississippi, and Montana cases (Rec. Doc. 64407) and the state's Motions for Protective Order (Rec. Docs. 64441 and 64442) address similar issues, the parties have agreed to treat the state's Motions for Protective Order as oppositions to Merck's Motion to Compel. The Court heard oral argument on the motions immediately following the June 25, 2013 Monthly Status Conference.

The parties discussed these issues further at the June 25, 2013 Monthly Status Conference.

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 also filed (Rec. Doc. 64046). On December 11, 2012, the Fee Allocation Committee filed a final Proposed Decision allocating the common benefit fund. (Rec. Doc. 64193). On December 20, 2012, Weinberg filed an additional memorandum in support of his objection. (Rec. Doc. 64206). On February 1, 2013, the TPP Fee Allocation Committee filed a Response. (Rec. Doc. 64238). On February 7, 2013, the Weinberg Objectors filed a Reply to the

TPP FAC's Response. (Rec. Doc. 64246). On February 12, 2013, W. Mark Lanier of The Lanier Law Firm, P.C. forwarded correspondence to Judge Fallon withdrawing its objection, but requesting additional review of its proposed allocation. 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, but requesting additional review of their proposed allocations. The Court appointed Patrick A. Juneau to serve as Special Master under the terms of Section 4.1.6 of the TPP Common Benefit Attorneys Fee agreement (Rec. Doc. 64304).

On May 15, 2013, Eric Weinberg filed a Memorandum for the Special Master Regarding Allocation of TPP Common Benefits (Rec. Doc. 64396); the Central States Law Firms filed a Memorandum and Joint Objection to the TPP Fee Allocation Committee's Recommendation (Rec. Doc. 64397); and the TPP Fee Allocation Committee filed its Pre-Trial Memorandum (Rec. Doc. 64398). On May 17, 2013, Eric Weinberg filed a Witness List (Rec. Doc. 64406); the TPP Fee Allocation Committee filed a Witness List (Rec. Doc. 64405); and the TPP Fee Allocation Committee filed a Supplemental Witness List (Rec. Doc. 64408). On May 28, 2013, Eric Weinberg filed a Reply to Memorandum by the TPP FAC (Rec. Doc. 64422); and the TPP FAC filed a Reply to Eric Weinberg's Memorandum for the Special Master Regarding Allocation of TPP Common Benefit Fees (Rec. Doc. 64424). A Revised Scheduling Protocol for Third Party Payor Common Benefit Fees (Rec. Doc. 64439) was filed on June 10, 2013, setting a hearing before the Special Master on June 20, 2013 at 9:00 a.m. at Courtroom C468 at the Federal Courthouse in New Orleans, Louisiana. On June 19, 2013, the TPP FAC filed a Motion for Contempt, or Alternatively to Strike against the Law Offices of Eric Weinberg (Rec. Doc.

64448) and the Law Offices of Eric Weinberg filed an Opposition (Rec. Doc. 64452). On June 19, 2013, the Court issued an Order granting the motion in part and directing that the Law Office of Eric Weinberg produce the subpoenaed documents at the hearing before the Special Master on June 20, 2013. The Special Master conducted his hearing on June 20, 2013. On June 20, 2013, the TPP FAC filed a Motion to Set Hearing to Find the Law Firm of Eric Weinberg in Contempt, or Alternatively to Strike (Rec. Doc. 64454). On June 21, 2013, the Court issued an Order that Eric Weinberg appear on July 1, 2013 at 3:30 p.m. to show cause why he should not be held in contempt. (Rec. Doc. 64459).

The parties discussed these matters further at the June 25, 2013 Monthly Status Conference.

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

A. General Matters Relating to Remaining Personal Injury Cases

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). 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).² The matters were heard by the Court on March 8, 2013 and were taken under submission. By Order and Reasons entered April 9, 2013 (Rec. Doc. 64341), the Court denied Merck's motion to exclude, denied Plaintiffs' motion to exclude, and granted Plaintiffs' motion to continue the submission date on Merck's motion for summary judgment. On June 3, 2013, Merck filed a Motion for Reconsideration of the Court's April 9, 2013 Order and Reasons (Rec. Doc. 64435). The motion is noticed for submission on July 24, 2013 at 9:00 a.m.

The parties discussed these matters further at the June 25, 2013 Monthly Status Conference.

B. Matters Noticed for Submission on June 25, 2013

None.

V. OTHER PENDING MOTIONS

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. The Court added this matter to the agenda of the status conference on June 14, 2012, where it was discussed. On August 15, 2012, Mr. Stratton filed a "Status Conference Memorandum regarding the Liaison Counsel Objection

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

Heard on September 21, 2011.” (Rec. Doc. 64064). The parties discussed this matter further at the status conference on June 25, 2013.

On March 20, 2013, Merck filed a Motion for Appointment of Janis L. Ferguson *Nunc Pro Tunc* Pursuant to Rule 28(a)(1)(B) (Rec. Doc. 64310). The motion was originally submitted as an *ex parte* motion. When Merck's counsel learned that the motion was opposed by plaintiff, Merck notified the Court and requested that it be noticed for submission. By Order entered April 25, 2013, the Court set briefing deadlines and scheduled a telephonic hearing on the motion for May 9, 2013 (Rec. Doc. 64360). Plaintiff did not file an opposition. Accordingly, by Order entered May 9, 2013, the Court cancelled the telephonic hearing and granted Merck's motion (Rec. Doc. 64387).

On May 9, 2013, Merck filed a Motion to Dismiss Certain Duplicative Claims (Rec. Doc. 64386) and a Motion to Dismiss by Entering a Comprehensive Order on Certain Stipulations of Dismissal (Rec. Doc. 64388). The motions were noticed for submission on May 29, 2013 at 9:00 a.m. By Orders entered June 18, 2013, the motions were granted and the claims dismissed (Rec. Docs. 64446 and 64447).

On May 9, 2013, Merck also filed a Motion, Rule and Incorporated Memorandum to Show Cause Why Case Should Not be Dismissed With Prejudice for Failure to Prosecute in the *Percy Harris* case (Rec. Doc. 64390). The motion was noticed for submission on May 29, 2013. The parties discussed the motion during the June 25, 2013 Monthly Status Conference, and the Court granted the motion. A separate Order will follow.

On May 17, 2013, Merck filed under seal a Motion for Summary Judgment in the *Wodowski* case (Rec. Doc. 64402). The motion is noticed for submission on July 10, 2013.

The parties discussed these matters further at the June 25, 2013 Monthly Status Conference.

VI. APPEALS

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

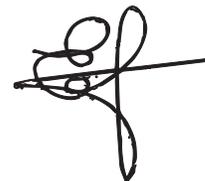
On August 31 and September 19, 2012, Plaintiff Joanne Roach filed a Notice of Appeal and an Amended Notice of Appeal (Rec. Docs. 64089 and 64115) of the Court's dismissal of her case. On June 18, 2013, the Fifth Circuit issued a *per curiam* opinion affirming this Court's order granting summary judgment.

On February 27, 2013, the appeal record in the *Strujan* case, No. 07-906, was transmitted to the Clerk of the Fifth Circuit Court of Appeals. (Rec. Doc. 64282).

The parties discussed these matters further at the June 25, 2013 Monthly Status Conference.

VII. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Wednesday, August 14, 2013, 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 (877) 336-1839. The participant access code is 4227405, and the security code is 081413.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a vertical line extending downwards.