

**MINUTE ENTRY
FALLON, J.
JANUARY 5, 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. 68 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. 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. Juneau reported on the completion of that work.

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.

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, 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 discussed the status of communications with *pro se* individuals at the Monthly Status Conference on January 5, 2012.

V. GOVERNMENT ACTIONS

A. Louisiana Attorney General Action

On June 29, 2010, the Court issued its Findings of Fact & Conclusions of Law, ruling in

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.

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. 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.

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. 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.

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 recently granted the motion to remand.

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 Court will hear oral argument on the motion on January 18, 2012 at 9:00 a.m.

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.

At the last governmental action status conference 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 January 5, 2012 and at an additional status conference held after the Monthly Status Conference.

On November 10, 2011, the PSC filed an Emergency Motion for Order Establishing Escrow Fund for Common Benefit Fees in the Government Action cases (Rec. Doc. 63560). The Court recently issued an Order and Reasons denying the motion.

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.

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 November 4, 2011.

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 January 5, 2012.

On November 10, 2011, the Court held a conference with counsel for Merck and Ronald Benjamin who represents a significant number of the remaining personal injury claimants in order to discuss how and where Mr. Benjamin's cases should be tried. Following submissions by the parties, the Court entered an Order establishing the procedure for selection of cases and pretrial discovery. (Rec. Doc. 63596).

B. Matters Noticed for Hearing on January 5, 2012

On April 21, 2010, Merck filed its Fifth Motion, Rule and Incorporated Memorandum to Show Cause Why Cases Should Not Be Dismissed With Prejudice for Failure to Comply with the *Lone Pine* Requirements of PTO 43 (Rec. Doc. 40199). The motion was deferred as to plaintiffs Kenneth Novick and Richard Garcia until the Court ruled on pending motions to withdraw, which has now been completed. A separate Order will follow.

On November 2, 2011, Merck filed a Motion for Summary Judgment in VTE Cases (Rec. Doc. 63539). The motion is noticed for submission on January 18, 2012. In response, certain plaintiffs filed a Motion to Strike and Alternative Motion to Remand Motion for Summary Judgment (Rec. Doc. 63603). Merck filed its opposition on December 30, 2011 (Rec. Doc. 63609). The Court heard oral argument on the motion to strike at the Monthly Status Conference on January 5, 2012. A separate Order will follow.

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 Court discussed the motion with the parties at the initial meeting and did not require oral argument on the motion.

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 March 23, 2011, Merck filed a Motion for Judgment on the Pleadings Under Rule 12(c) in the Ronald Quackenbush matter (Rec. Doc. 62720). The motion has been fully briefed, was submitted to the Court on April 13, 2011, and remains pending.

On May 31, 2011, Plaintiff Emmanuel Iwobi, filed a Motion for Reconsideration (Rec. Doc. 63006). Merck filed a response on June 21, 2011 [Rec. Doc. 63078] and the Plaintiff filed a reply on June 29, 2011 (Rec. Doc. 63095). The motion was taken under advisement

following the November 4, 2011 status conference.

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.

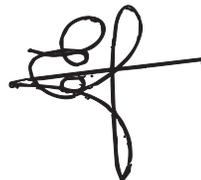
Ms. Oldfather's Motion for Order Requiring Escrow and Disclosures of Common Benefit Fee and Cost Withholdings from Settlement of Ineligible and Non-Enrolled Cases (Rec. Doc. 63154) remains under submission and was discussed by the parties at the meeting before the Monthly Status Conference on January 5, 2012.

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 Thursday, March 1, 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 232234.

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