

**MINUTE ENTRY
FALLON, J.
FEBRUARY 26, 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
	*	
* * * * *		

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. 74 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 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. The parties discussed these matters further at the February 26, 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 November 30, 2012, Merck filed a motion to compel in the *Jim Hood (State of Mississippi)* proceeding. (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 shortly.

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). On February 22, 2013, the Plaintiffs' Steering Committee and Government Action Liaison Counsel filed a Motion for Leave to File a Reply (Rec. Doc. 64265) and Motion to Set a Hearing (Rec. Doc. 64266) on the underlying motion. The Court has granted the latter two motions and will hear oral argument on

March 20, 2013 at 9:00 a.m.

The parties discussed these issues further at the February 26, 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 parties discussed these matters further at the February 26, 2013 Monthly Status Conference. Specifically, the Court indicated that it would appoint Patrick Juneau as a Special Master to conduct further review of the two remaining groups of objectors. A separate order on this matter is forthcoming.

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 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. (Rec. Doc. 64262).

The number of pending personal injury cases continues to decrease with dismissals and settlements. The parties discussed this further at the February 26, 2013 Monthly Status Conference.

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 parties discussed the motion at the monthly status conference on February 26, 2013. The Court indicated it would dismiss the Manninos' claims, but would give them 10 days to contact the Court regarding the dismissal. A separate order on this motion will follow.

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 Heard on September 21, 2011." (Rec. Doc. 64064).

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

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 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.

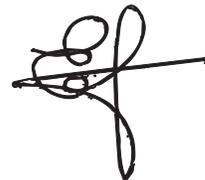
On March 21, 2012, Plaintiff Emmanuel Iwobi filed a Notice of Appeal. (Rec. Doc. 63746). On January 31, 2013, the Fifth Circuit Court of Appeals issued its opinion affirming dismissal of Plaintiff's case.

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

The parties discussed these matters further at the February 26, 2013 Monthly Status Conference.

VII. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Tuesday, April 23, 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 (800) 260-0702. The participant access code is 284394.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'E. Fallon', written in a cursive style.