

**MINUTE ENTRY
FALLON, J.
JUNE 14, 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. 71 of Plaintiffs' and Defendants' Liaison Counsel. This monthly status conference was transcribed by Ms. Susan Zielie, Official Court Reporter. Counsel may contact Ms. Zielie at (504) 589-7781 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. On February 22, 2012, Merck filed a Notice of Supplemental Authority regarding the motion (Rec. Doc. 63678).

On December 12, 2011 the Court held a telephonic conference with the District of Columbia, Merck and an Assistant Attorney General for the District of Columbia to discuss the status of the District of Columbia's consumer class claim brought on behalf of a taxpayer and the effect of the DOJ settlement on that claim. 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"). Plaintiff filed an opposition (Rec. Doc. 63694), and Merck filed a reply. Plaintiff also moved for leave to amend his complaint (Rec. Doc. 63713). On May 9, 2012, the Court issued its Order & Reasons (Rec. Doc. 63822), allowing the parties to file supplemental memoranda regarding the legal sufficiency of the proposed Second Amended Complaint. Plaintiff and Merck filed their supplemental memoranda on May 29, 2012 (Rec. Docs. 63876, 63877). On June 13, 2012, the Court issued an Order and Reasons addressing these motions. (Rec. Doc. 63924).

II. 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.

III. *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’s representative discussed the status of communications with *pro se* individuals at the Monthly Status Conference on June 14, 2012.

IV. GOVERNMENT ACTIONS AND CONSUMER CLASS CLAIMS

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 parties discussed this matter at the Monthly Status Conference on June 14, 2012.

V. 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 Fee

Allocation Committee filed its recommendation on June 13, 2012. (Rec. Doc. 63928).

On April 23, 2012, the Court entered an Order enjoining Plaintiffs and Plaintiffs' counsel in *Mary Plubell, et al. v. Merck*, pending in the Circuit Court of Jackson County, Missouri, from offering any evidence that does not sufficiently exclude damages attributable to claims already settled through the personal injury and Third Party Payor settlements achieved in this MDL and from executing any judgment obtained through admission of such evidence. (Rec. Doc. 63782).

On May 17, 2012, the *Plubell* Plaintiffs filed a Notice of Appeal (Rec. Doc. 63844). That appeal will be heard on an expedited basis by the United States Court of Appeal for the Fifth Circuit.

The parties discussed these matters at the Monthly Status Conference on June 14, 2012.

VI. 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), 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) and Mr. Benjamin's Motion to Exclude Movant from the Requirements of PTO 19 with regard to certain cases (Rec. Doc. 63680). The Order denied Mr. Benjamin's Motion, 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. The parties discussed this matter further at the Monthly Status Conference on June 14, 2012.

On November 2, 2011, Merck filed a Motion for Summary Judgment in VTE Cases (Rec. Doc. 63539). In response, Ms. Oldfather filed a Motion to Strike or in the Alternative to Remand Merck & Co., Inc.'s Motion for Summary Judgment in VTE Cases (Rec. Doc. 63606); Merck

filed an opposition (Rec. Doc. 63609). The Court heard argument on the motion to strike following the January 5, 2012 monthly status conference. The Court denied the motion to strike, continued Merck's motion for summary judgment in VTE cases generally, and ordered that "any expert reports on general causation in VTE cases that any party intends to submit in opposition to Merck's motion for summary judgment shall be produced on or before May 7, 2012." (Rec. Doc. 63623). The deadline of May 7, 2012 was subsequently extended on Plaintiffs' motion, and the deadline of August 15, 2012 was set forth in Pre-Trial Order No. 58 (Case Management Order for Remaining Personal Injury Actions) (Rec. Doc. 63842) which the Court issued on May 15, 2012, and can be found on the Court's website.

A dispute has arisen between the parties concerning discovery relating to Merck's Motion for Summary Judgment in VTE Cases. Plaintiffs seek to depose the two experts who provided Merck's affidavits submitted in support of its Motion prior to submitting their own expert reports. The Court heard from the parties at the June 14, 2012 Monthly Status Conference and advised them on the matter.

On April 18, 2012, Merck filed two motions for summary judgment, one relating to plaintiff Joanne I. Roach (Rec. Doc. 63776) and one relating to plaintiff Stanley Long (Rec. Doc. 63777). Both motions were noticed for submission on May 23, 2012. By Order & Reasons entered June 5, 2012, the Court granted summary judgment and dismissed with prejudice the claims of plaintiff Joanne Roach (Rec. Doc. 63893). On May 23, 2012, plaintiff Stanley Long moved for an extension of time to respond. By Order entered May 29, 2012, the Court ordered Mr. Long to file any opposition on or before June 12, 2012 and ordered that Merck's motion for summary judgment will be taken under submission, without oral argument, on June 20, 2012

(Rec. Doc. 63880). On June 13, 2012, the Court issued an Order continuing submission of Merck's motion as to Mr. Long until July 11, 2012, to permit Mr. Long's counsel additional time to contact him or, failing that, file a motion to withdraw. (Rec. Doc. 63925).

From May 23, 2012 through June 7, 2012, Merck filed motions for summary judgment relating to the claims of plaintiff Elena Strujan (Rec. Doc. 63872), plaintiff MaryAnn Nolan (Rec. Docs. 63891, 63898), Lynn Hudnut (Rec. Doc. 63903), and Janice Baum (Rec. Doc. 63896). All of these motions are noticed for submission on July 11, 2012.

B. Matters Noticed for Hearing on June 14, 2012

No new matters were noticed for hearing at the June 14, 2012 Monthly Status Conference.

C. Other Pending Motions

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 motion was heard following the Monthly Status Conference on January 5, 2012. The Court issued an Order and Reasons granting the motion. (Rec. Doc. 63798).

On January 12, 2012, Merck filed a Motion for Entry of a Comprehensive Scheduling Order for "Other Injury" and "PTO 29" Cases (Rec. Doc. 63640). An Opposition was filed by Ms. Oldfather as Liaison Counsel (Rec. Doc. 63649), and multiple responses were filed by affected plaintiffs (Rec. Docs. 63651, 63653, 63654, 63655, 63657, 63658, 63659, 63665,

63666, 63679, 63691). The PSC also filed a response (Rec. Doc. 63652). Merck filed a reply (Rec. Doc. 63684). The motion was argued at a hearing following the March 1, 2012 status conference. At that conference, the Court indicated that it intended to issue a scheduling order and directed Ms. Oldfather to submit an alternative proposed schedule. Ms. Oldfather and Merck each filed a Proposed Scheduling Order before the status conference. (Rec. Docs. 63799, 63800). The parties discussed this matter further at the status conference on June 14, 2012.

On February 15, 2012, Merck filed a Motion for Summary Judgment in the *Escamilla* case, No. 08-3573 (Rec. Doc. 63662). On February 22, 2012, Merck filed under seal a Motion for Summary Judgment relating to the claims of plaintiff Cheryl Kuykendall, No. 05-4991 (Rec. Doc. 63674). Responses and oppositions were filed and the matters were taken under submission on March 14, 2012. On April 23, 2012, the Court entered its Order and Reasons granting summary judgment in the *Kuykendall* case and denying summary judgment in the *Escamilla* case (Rec. Doc. 63783). At the Monthly Status Conference, Merck reported that it had not been properly served with the supplemental report in the *Escamilla* case, and that Merck would have moved to withdraw its motion for summary judgment had it been served. Accordingly, no additional steps need to be taken with respect to the *Escamilla* motion for summary judgment at this time.

On February 23, 2012, Ron Benjamin filed a Motion to Exclude Movant from the Requirements of PTO 19 With Regard to the Settlement of 16 Cases (Rec. Doc. 63680). These are MI and Stroke cases that Mr. Benjamin is in the process of settling. Ms. Oldfather filed an Opposition (Rec. Doc. 63724). The Court issued an Order and Reasons denying the motion. (Rec. Doc. 63798).

On April 18, 2012, Merck filed two motions for summary judgment, one relating to plaintiff Joanne I. Roach (Rec. Doc. 63776) and one relating to plaintiff Stanley Long (Rec. Doc. 63777). Both motions are noticed for submission on May 23, 2012.

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. At the Monthly Status Conference, the parties informed the Court that the matter has been resolved and that Merck's Motion (Rec. Doc. 63105) is now moot. 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. On June 6, 2012, the Court entered its Order and Reasons on the motion (Rec. Doc. 63899).

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 at the Monthly Status Conference on June 14, 2012, where it was discussed. A telephone status conference on the matter will be scheduled shortly.

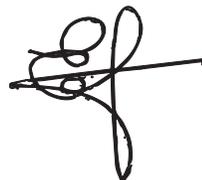
VIII. APPEALS

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

IX. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Thursday, August 16, 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 251813.

A handwritten signature in black ink, consisting of several loops and a horizontal line extending to the right.