

**MINUTE ENTRY
FALLON, J.
DECEMBER 11, 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. 74 of Plaintiffs' and Defendants' Liaison Counsel. This monthly status conference was transcribed by Ms. Susan Ziele, Official Court Reporter. Counsel may contact Ms. Pepper 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. 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.

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 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 motion is noticed for submission on January 16, 2013 at 9:00 a.m.

III. 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. 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 final recommendation on June 13, 2012. (Rec. Doc. 63928). Numerous objections have been filed to the TPP Fee Allocation Committee's Recommendation. The TPP Fee Allocation Committee re-reviewed its recommendation, as well as all of the objections, and filed a Proposed Decision Distributing TPP Common Benefit Fund on December 11, 2012. (Rec. Doc. 64193). The parties discussed this matter at the Monthly Status Conference on December 11, 2012.

Counsel for the Law Offices of Eric H. Weinberg, an objector to the TPP Fee Allocation Committee's Recommendation, appeared at the Monthly Status Conference on December 11, 2012. On December 4, 2012, the Court issued an Order (Rec. Doc. 64183) granting in part Weinberg's Motion to Produce, Or Alternatively, for Access to Garrett Records (Rec. Doc. 64165). The parties discussed the matter, and the Fee Allocation Committee indicated that it would produce the records to Weinberg soon. The Court ordered that Weinberg file any response to the records within one week of receiving them.

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), 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. On July 27, 2012, the PSC forwarded to Ms. Oldfather information regarding common benefit fee and expenses pertaining to non-settlement program cases. The parties discussed this matter further at the status conference on December 11, 2012.

On July 9, 2012, Mr. Benjamin filed a Motion to Be Assessed as to the Percentages of Common Benefit Attorney Fees and Expenses (Rec. Doc. 63968). Merck and Ms. Oldfather filed responses (Rec. Docs. 63997, 63999, and 64003). The motion was denied by the Court by Order entered October 29, 2012. (Rec. Doc. 64157).

On June 4, 2012, Merck filed a motion for summary judgment relating to the claims of plaintiff MaryAnn Nolan. (Rec. Docs. 63898). Plaintiff Nolan filed two motions for extension of time to respond. (Rec. Docs. 63979 and 64023). By Order entered August 9, 2012, the Court granted a 14 day extension of time. (Rec. Doc. 64049). On August 14, 2012, Merck filed a Motion, Rule and Order to Show Cause Why the *Nolan* case should not be dismissed with prejudice for failure to prosecute (Rec. Doc. 64054) which was noticed for submission on September 5, 2012. On August 22, 2012, plaintiff's counsel moved to withdraw. (Rec. Doc. 64080). That motion was granted by the Court by Order entered September 10, 2012. (Rec. Doc. 64103). In its Order, the Court rescheduled the show cause motion for October 11, 2012. Plaintiff Nolan failed to respond to the motion as ordered. By Order entered October 15, 2012,

the *Nolan* case was dismissed with prejudice. (Rec .Doc. 64146).

On July 17, 2012, Merck filed a motion for summary judgment as to plaintiff *LaDonna King*. (Rec. Doc. 63995). Subsequent to the filing of Merck's summary judgment motion in *King*, Counsel moved to withdraw as counsel and to remand Merck's motion for summary judgment. (Rec. Doc. 64006). In response, Merck filed a motion to dismiss for lack of prosecution. (Rec. Doc. 64013). At the status conference on October 11, 2012, the Court granted counsel's motion to withdraw and ordered that Plaintiff LaDonna King show cause why her case should not be dismissed with prejudice at the December 11, 2012 status conference. (Rec. Doc. 64143). The parties discussed the matter at the December 11, 2012 Monthly Status Conference. A separate order will follow.

On September 28, 2012, Merck filed a motion for summary judgment as to plaintiff *Susanna Valencia Bernal*. (Rec Doc 64119). The motion was subsequently withdrawn by Merck. (Rec. Docs. 64158, 64160). Thereafter, the parties entered a stipulation and the claims of Plaintiff were dismissed with prejudice. (Rec. Docs. 64164, 64169).

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 entered certain subsequent orders, culminating in Pre-Trial Order No. 58, Case Management Order for Remaining Personal Injury Actions (Rec. Doc. 63842), which this Court issued on May 15, 2012

and which addresses case management deadlines in all remaining personal injury cases. Certain deadlines in Pre-Trial Order No. 58 were further extended by the Court by Orders entered November 5, 2012 (Rec. Doc. 64161) and December 5, 2012 (Rec. Doc. 64187). The parties discussed these matters further at the December 11, 2012 Monthly Status Conference.

The number of pending personal injury cases continues to decrease with dismissals and settlements. The parties discussed this further at the December 11, 2012 Monthly Status Conference.

B. Matters Noticed for Hearing on August 16, 2012

Merck's Motion, Rule and Order to Show Cause Why the *LaDonna King* case should not be dismissed with prejudice for failure to prosecute (Rec. Doc. 64013) was noticed for submission on October 11, 2012.

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).

Plaintiff James Schneller, whose prior case was dismissed with prejudice and the dismissal was upheld on appeal, filed a second suit against Merck, *James D. Schneller, et al. v. Merck & Co., Inc.*, No. 12-703. By Order entered June 12, 2012, the Court dismissed the suit with prejudice. (Rec. Doc. 63913). Plaintiff Schneller filed a notice of appeal (Rec. Doc.

63984) and a motion for leave to appeal *in forma pauperis* (Rec. Doc. 63985). By Order entered August 2, 2012, the Court denied the motion for leave to appeal *in forma pauperis*. (Rec. Doc. 64033). On August 7, 2012, plaintiff Schneller filed a motion for reconsideration, to open judgment and for amendment (Rec. Doc. 64040). The motion was denied by Order entered September 6, 2012. (Rec. Doc. 64093).

VI. APPEALS

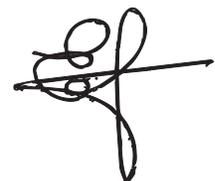
Several appeals have been filed by pro se plaintiffs and are pending before the United States Court of Appeals for the Fifth Circuit. On August 13, 2012, Merck filed with the Fifth Circuit Court of Appeals a motion for summary affirmance in the *Schneller* case. (No. 12-30732). The motion was granted. (rec. Doc. 64178). Mr. Schneller has moved for rehearing *en banc*, and the matter remains pending.

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.

The parties discussed these matters further at the December 11, 2012 Monthly Status Conference.

VII. NEXT STATUS CONFERENCE

The next Monthly Status Conference will be held on Tuesday, February 26, 2013, at **2:00 p.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 275980.

A handwritten signature in black ink, appearing to be the initials 'J.R.' followed by a stylized flourish.