

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 in Support of Merck's Motion for Judgment on the Pleadings or to Strike the Class Allegations in Purchase Claims Master Complaint [Rec. Doc. 63678].

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 will be prepared to discuss these issues further at the status conference on March 1, 2012.

IV. PRO SE CLAIMANTS

By Order entered February 12, 2008, the Court appointed Robert M. Johnston of Johnston, Hoefer, Holwadel & Eldridge, 400 Poydras Street, Suite 2450, New Orleans, Louisiana 70130, as Curator for *Pro Se* plaintiffs and tolling claimants (collectively, the "*Pro Se* Claimants"). The PLC and Curator will be prepared to discuss this further at the status conference on March 1, 2012.

V. 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.

On November 22, 2010, the Court stayed discovery in the Government Actions 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 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 representatives from the Department of Justice and the National Association of Medicaid Fraud Control Units. On July 15, 2011, the Special Master convened representatives of Merck and the governmental agencies (the vast majority of whom attended in person) for a two (2) day mediation in New Orleans.

On September 1, 2011, Judge Fallon held a telephone conference with counsel for Merck and counsel for Santa Clara County. Following the conference, the Court issued a Minute Entry [Rec. Doc. 63335] regarding the conference. On September 26, 2011, Merck filed a Motion for Judgment on the Pleadings [Rec. 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 motion was heard on January 18, 2012 and was taken under advisement by the Court. [Rec. Doc. 63644].

The Court held a telephonic status conference on October 12, 2011 to identify the states that would be continuing to litigate and 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.

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 will be prepared to address this issue at the status conference on March 1, 2012.

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 intends to file a reply. The parties have requested that the motion be heard on March 14, 2012 during the regular motion docket.

At the January 5, 2012 status conference, the parties informed the Court of the progress on the discovery project to narrow issues between the AGs and Merck. On February 13, 2012, a status report on the progress of discovery and the draft scheduling order was provided to the Court in a conference call. The parties have exchanged a discovery chart to

narrow the outstanding issues on discovery, and are working to submit a joint scheduling order to the Court before or at the March 1, 2012 status conference. Merck will obtain from IMS individual proposed protective orders for each entity for the entities to obtain material from IMS.

The parties will be prepared to discuss these issues further at the status conference on March 1, 2012.

VI. 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. Numerous applicants have submitted submissions pursuant to Section III of the Order and the 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 has extended the October 10, 2011 and October 20, 2011 deadlines set forth in Section IV of the Order. 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]. The Fee Allocation Committee will be prepared to discuss the matter further at the status conference on March 1, 2012.

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

A. General Matters Relating to Remaining Personal
Injury Cases

Liaison Counsel has substantially completed a census of the remaining personal injury cases and the parties will be prepared to discuss the census and plans for the remaining personal injury cases at the status conference on March 1, 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].

B. Matters Noticed for Hearing on March 1, 2012

On January 11, 2012, Merck filed a Cross-Motion, Rule and Incorporated Memorandum to Show Cause Why Case Should Not Be Dismissed With Prejudice for Failure to Prosecute in the *Gerald Wagganer* case, No. 05-3125 [Rec. Doc. 63639].² The motion is noticed for hearing immediately following the monthly status conference.

² On January 4, 2012, counsel for plaintiff filed a motion to withdraw asserting that Mr. Wagganer "has not responded to efforts of the undersigned counsel at contact." [Rec. Doc. 63615].

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], and the motion will be heard immediately following the monthly status conference.

On February 16, 2012, Ms. Oldfather filed a Motion for Extension of Time to Disclose General Causation Experts and Motion to Compel Delivery of the Vioxx Concordance Database [Rec. Docs. 63667 and 63668]. The PSC filed a response [Rec. Doc. 63690]. Merck also filed a response [Rec. Doc. 63695]. Ms. Oldfather intends to file a Reply. The motion will be heard immediately following the monthly status conference.

C. Other Pending Motions

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 submission following the November 4, 2011 status conference.

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 and was taken under submission. [Rec. Doc. 63624].

On February 15, 2012, Merck filed a Motion for Summary Judgment in the *Escamilla* case, No. 08-3573 [Rec. Doc. 63662]. The motion is noticed for submission on March 14, 2012 at 9:00 a.m. 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]. The motion is noticed for submission on March 14, 2012 at 9:00 a.m. On February 22, 2102, Ms Oldfather filed an Opposition to Merck's use of *Lone Pine* reports as a basis for summary judgment [Rec. Doc. 63676]. On February 24, 2012, counsel for Ms. Kuykendall filed a response, adopting the Opposition of Ms. Oldfather [Rec. Doc. 63687], and Merck filed a response to Ms. Oldfather's Opposition [Rec. Doc. 63689]. Merck also intends to file a reply in support of its motion in the Kuykendall matter.

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], which is noticed for submission on March 14, 2012. These are MI and Stroke cases that Mr. Benjamin is in the process of settling. Ms. Oldfather intends to file an Opposition and intends to ask that the motion be continued. Merck objects to any action being taken on March 1, 2012 because the motion is not noticed for hearing until March 14, 2012 and the movant (Mr. Benjamin) has not been provided an opportunity to comment.

VIII. OTHER PENDING MOTIONS/MATTERS

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 plaintiff, Louise Young, No. 08-0882. It is noticed for hearing immediately following the monthly status conference [Rec. Doc. 63636].

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], was submitted for decision in July 2009, and remains pending.

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] was discussed by Ms. Oldfather, Mr. Davis and Mr. Marvin at the September 21, 2011 status conference and an agreement was made for production of information that may satisfy the request. Ms. Oldfather's attempts to receive the promised information since then have been partially successful. The parties will be prepared to discuss the matter further at the status conference on March 1, 2012.

Merck noticed the deposition of Briggs Morrison, M.D. for March 8-9, 2012 at 9:00 o'clock a.m. in New York. On February 6, 2012, Merck provided a Notice of Withdrawal of Notice of Videotaped Deposition of Dr. Briggs Morrison.

IX. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the

United States Court of Appeals, Fifth Circuit. The parties will be prepared to discuss these matters further at the status conference on March 1, 2012.

X. NEXT STATUS CONFERENCE

Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel will be prepared to schedule the next status conference, on a date to be selected by the Court.

Respectfully submitted,

/s/ Leonard A. Davis
Russ M. Herman (Bar No. 6819)
Leonard A. Davis (Bar No. 14190)
Herman, Herman, Katz & Cotlar, LLP
820 O'Keefe Avenue
New Orleans, LA 70113
PH: (504) 581-4892
FAX: (504) 561-6024
Plaintiffs' Liaison Counsel

/s/ Dorothy H. Wimberly
Phillip A. Wittmann (Bar No. 13625)
Dorothy H. Wimberly (Bar No. 18509)
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet Street
New Orleans, LA 70130-3588
PH: (504) 581-3200
FAX: (504) 581-3361
Defendants' Liaison Counsel

/s/ Ann B. Oldfather
Ann B. Oldfather (KY Bar No. 52553)
OLDFATHER LAW FIRM
1330 South Third Street
Louisville, KY 40208
PH: (502) 637-7200
FAX: (502) 637-3999
**Liaison and Lead Counsel for Ineligible or Non-Enrolled
Cases and Certain Other Remaining PI Claims**

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 69 of Plaintiffs' and Defendants' Liaison Counsel and Ann Oldfather, Liaison Counsel for certain pending personal injury cases, has been served upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8C, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing in accord with the procedures established in MDL 1657, on this 28th day of February, 2012.

/s/ Leonard A. Davis
Leonard A. Davis, 14190
Herman, Herman, Katz & Cotlar, LLP
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Phone: 504-581-4892
Fax: 504-561-6024
ldavis@hhkc.com

Plaintiffs' Liaison Counsel