

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.

The parties will be prepared to discuss these issues further at the Government Entities' status conference on December 11, 2012.

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]. Numerous objections have been filed to the TPP Fee Allocation Committee's Recommendation. The TPP Fee Allocation Committee is in the process of re-reviewing its recommendation, as well as all of the objections, and expects to be able to report back to the Court in due course.

On November 9, 2012, a motion to produce or alternatively for access to Phil Garrett's Records was filed by Eric Weinberg [Rec. Doc. 64165]. By Order entered December 4, 2012, the Court granted in part the motion to produce [Rec. Doc. 64165] and further ordered that the parties requesting the materials shall pay the costs of their production, including reasonable compensation for Mr. Garrett's time [Rec. Doc. 64183].

The TPP Fee Allocation Committee will be prepared to discuss these matters further at the status conference on December 11, 2012.

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

A. General Matters Relating to Remaining Personal
Injury Cases & Pending Motions

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 will be prepared to discuss 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 [Rec. Doc. 64146], the *Nolan* case was dismissed with prejudice.

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.

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, entered certain subsequent orders, culminating 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 which addresses case management deadlines in all remaining personal injury

actions. 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 will be prepared to discuss these matters further at the status conference on December 11, 2012.

The number of pending personal injury claims continues to decrease with dismissals and settlements. Liaison and Lead counsel for Certain Cases will tender an updated Case Census and the parties will be prepared to discuss this further at the status conference on December 11, 2012.

B. Matters Noticed for Submission on December 11, 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] is noticed for submission on December 11, 2012.

V. OTHER PENDING MOTIONS/MATTERS

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]. That matter was argued on September 21, 2011. No response had been filed by Mr. Stratton. On June 6, 2012, the Court entered an Order [Rec. Doc. 63900] adding this matter to the agenda of the status conference on June 14, 2012, where it was further 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]. The parties will be prepared to discuss this matter further at the status conference on December 11, 2012.

VI. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the United States Court of Appeals, 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 will be prepared to discuss these matters further at the status conference on December 11, 2012.

VII. 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, L.L.C.
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. 74 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 10th day of December, 2012.

/s/ Dorothy H. Wimberly
Dorothy H. Wimberly, 18509
STONE PIGMAN WALTHER
WITTMANN L.L.C.
546 Carondelet Street
New Orleans, Louisiana 70130
Phone: 504-581-3200
Fax: 504-581-3361
dwimberly@stonepigman.com