

INTRODUCTION

Shortly prior to the May 2, 2006 Monthly Status Conference, Ingram was notified by the Defendant that it had found several alleged deficiencies in their quality control evaluation of 226 of Ingram's administrative "double pharmacy" claims. Ingram reviewed those claims alleged to be deficient by the Defendants and found that nearly all were indeed not deficient. At the close of the May 2, 2006 Monthly Status Conference, the Parties had opportunity to address the Court as to the process of the settlement agreement between the Defendant and Ingram. Unfortunately, the Defense addressed the Court first and reported to the Court that during its quality control evaluation of 226 of Ingram's double pharmacy administrative claim submissions it had found that 55% to 60% of the claims to be deficient. Ingram adamantly disputed the Defense's allegations as it strongly believed that such findings were incorrect and informed the Court that intervention by the Court may be needed to resolve not only that issue but possibly the whole settlement agreement regarding Ingram's administrative non-qualifying claims utilizing a pharmacy record to indicate both claimants' use of Propulsid and claimants' attributed condition that had been submitted under the short form process.

After the May 2, 2006 Status Conference, the Defense attorneys contacted Ingram to review the alleged deficiencies of the 107 claims the Defendant had flagged. A conference call was scheduled for May 8, 2006. From the beginning of that conference call the Defendant began retracting its deficiency allegations for several claims. During the claim by claim review, the Defendants retracted their allegations of deficiency for all but 10 of the 107 claims it had flagged as deficient, and Ingram withdrew 12 of its claim submissions, meaning that of the 226 claims reviewed, legitimate deficiency allegations were only attributed to 22 of the 226 claims (less than

10% of the claims). When subtracting the 12 claims withdrawn by Ingram, there remains only 10 deficiency allegations in 214 claims (less than 5% of the claims).

Such numbers should allow the Defendant to “conclude that they are reasonably satisfied with the results of that quality control examination,” as termed by the Stipulation. The Defendant represented to Ingram during the conference call and in following correspondence that it was indeed satisfied with the results of the quality control examination. However, Defendant has failed to comply with the terms of the Stipulation wherein it states that upon achieving such satisfaction it would instruct payment to be made equal to “one-half of the \$250 reimbursement fee contemplated under Section 5(C) of the Term Sheet for *each* of the two pharmacy record claims *submitted* by the undersigned attorney for plaintiffs and claimants (Ingram)” *emphasis added*.

BACKGROUND

On or about June 20, 2005 this Honorable Court entered an Order approving the “short form” administrative claim program to process the claims of claimants who were ineligible for the Settlement Program. Ingram began submitting administrative claims under the “short form” process pursuant to the Court’s order and under the terms of the Settlement Agreement. The pertinent language of the Term Sheet regarding submission requirements for the “short form” process is as follows:

It is understood that the only medical records required to be submitted for the \$250 reimbursement is a single medical or pharmacy prescription record indicating Propulsid use and a medical condition or injury which the claimant has attributed to Propulsid in Section 5A.

After Ingram submitted administrative claims utilizing a pharmacy record to indicate both claimant's usage of Propulsid and claimant's attributed condition, dispute arose over whether the "double pharmacy" record submissions satisfied the requirements of the Term Sheet and the Court's June 20, 2005 Order.

A teleconference hearing was scheduled and arguments were heard. The August 12, 2005 Minute Entry reflected the Court's ruling on the issue. The Court found that indeed the "submission of a pharmacy record is sufficient to satisfy the evidentiary standard under Section 5C of the Term Sheet." However, the Court additionally required that the claimant submit an additional affidavit or declaration attesting that he or she visited a physician after ingestion of Propulsid, and that the affidavit or declaration should also provide the approximate date of the visit, the physician's name, the general diagnosis, and the prescription received. The Court also required in this additional affidavit or declaration that the claimant attribute the condition to Propulsid use.

Ingram filed its *Motion to Clarify the August 12, 2005 Minute Entry and Memorandum in Support of Said Motion and Request for Additional Relief* on September 19, 2005. The reason for the delay in filing was due to the effects of Hurricane Katrina on the region. In their motion, Ingram argued that the terms of the Settlement Agreement required only a "single medical or pharmacy prescription record" and did not contemplate the submission of an additional affidavit or declaration. Ingram also argued that the "short form itself constitutes the only necessary 'declaration'" as to the claimants' attribution of a condition or injury resultant of Propulsid use. Further, Ingram argued that the requirement to produce an additional affidavit or declaration was unduly burdensome in both cost and time, and that this new requirement conflicted with the

purpose and intent of the "short form" process -- to quickly, efficiently and finally dispose of non-qualifying claims. Such requirement would only frustrate the process.

On October 11, 2005, the Defendant filed its opposition memorandum to Ingram's motion and memorandum and request.

This Honorable Court scheduled for hearing this issue of clarification of the August 12, 2005 Minute Entry at the October 18, 2005 Monthly Status Conference, which was held in Houston, Texas due to the effects of Hurricane Katrina. However, prior to any arguments being made, the Defendant addressed the Court assuring that it believed a resolution could be reached without the need for the Court's intervention on this issue and asked that time be granted to the Parties to resolve this issue. Ingram advised the Court that it was certainly willing and would in good faith negotiate a resolution to the dispute.

On or about March 9, 2006, Ingram and the Defendant agreed to and entered into a Stipulation, which would resolve the dispute that arose concerning "double pharmacy" administrative claim submissions and the requirement of an additional affidavit. Pertinent language of the Stipulation is as follows:

1. Before any payment on two pharmacy record claims will be made from the Administrative Fund under the First or Second MDL Programs, the defendants shall have the opportunity to conduct certain quality control measures respecting those claims which the parties to the Stipulation have agreed upon.
2. Once the quality control measures described in Section 1 of this Stipulation have been conducted and assuming the defendants conclude that they are reasonably satisfied with the results of that quality control examination and any continuation of that quality control, and upon the entry of an Order approving the Stipulation, the Special Master shall process for payment and pay from the administrative fund one-half of the \$250 reimbursement fee contemplated under Section 5(C) of the Term Sheet for each of the two pharmacy record claims submitted by the undersigned attorney for plaintiffs and claimants.

3. Payment for those applications made under the Second MDL Fund shall not be paid unless the minimum enrollments required by the December 15, 2005 Term Sheet for activation of the Second MDL Program have been achieved.
4. Upon entry by this Court of an Order approving this Stipulation, the plaintiffs' pending motion for reconsideration and the defendants' opposition to that motion shall both be withdrawn.

On March 10, 2006, your Honor entered an order accepting the Stipulation and made the Stipulation part of both the First and Second MDL Resolution Programs.

After the Court's order, the Defendant represented to Ingram that a sampling of the submitted double pharmacy administrative claims would be obtained and reviewed for its quality control. 126 claims were selected. After the review had begun on those selected claims another 100 claims were selected by the Defendant, totaling 226 claims selected for quality control review.

Shortly prior to the May 2, 2006 Monthly Status Conference, the Defendant informed Ingram that it had determined that 107 of the 226 were deficient. Ingram reviewed these 107 claims and found the allegations to be incorrect for nearly all of the claims and so informed the Defendant prior to the Status Conference.

However, at the May 2, 2006 Monthly Status Conference, the Defendant represented to the Court that 55% to 60% of the claims selected for quality control were found to be deficient. Ingram disputed those statements and informed the Court that its intervention may be required.

On May 8, 2006, the Defendant informed Ingram that it no longer maintained allegations of deficiencies for all but 10 of the reviewed claims. Ingram had withdrawn 12 claims that were among those disputed. Therefore, only 10 of 214 claims were deficient according to the Defendant's review. Ingram has since further challenged that 1 of those 10 claims is not

deficient and should be approved. Nevertheless, the percentages of claims that meet the Defendant's criteria to satisfy its quality control exercise exceeds 90%, which is certainly contrary to its representation to the Court that nearly 60% of Ingram's submission were deficient.

Since the Defendant's quality control exercise found that greater than 90% of the claims met the necessary requirements, the Defendant represented to Ingram that it was "reasonably satisfied" with the results of quality control examination, which should therefore require their instruction to the Special Master to "pay from the administrative fund one-half of the \$250 reimbursement fee contemplated under Section 5(C) of the Term Sheet for *each* of the two pharmacy record claims *submitted* by the undersigned attorney for plaintiffs and claimants (Ingram)," as termed by the Stipulation, *emphasis added*. However, the Defendant has failed to direct the Special Master to pay \$125.00 for *each* of Ingram's *submitted* double pharmacy record administrative claims as contemplated in the spirit and the terms of this Stipulation. To the contrary, the Defendant has only directed the Special Master to pay \$125.00 for the 204 approved claims, and then further requested that the Special Master send via overnight delivery to them for the same review process the remaining submitted double pharmacy administrative claims of Ingram. A "quality control" review for each and every claim submitted under the "short form" process utilizing a pharmacy record to indicate both claimant's use of Propulsid and claimant's attributed condition is not an action agreed to by the Parties, and certainly is not what was intended by the spirit and the terms of the Stipulation between Ingram and the Defendant. Attached, as Exhibit "A", is a copy of an electronic mail transmission submitted March 1, 2006 from Defense Counsel to Ingram, which outlines the Defendant's quality control plan. Clearly a 100% audit of Ingram's two pharmacy claims was not contemplated, nor was payment of only

those claims determined non-deficient after review. The pertinent language of the electronic mail transmission is as follows:

As to quality control, we plan the following. We will have someone from the Irwin firm go to the Special Master's office and pick out at random and copy 100 or more of the Enrollment Forms your office filed on behalf of persons for whom only "administrative claims" are being processed ... We will then undertake quality control of those submissions and advise you of the results. If the QC is satisfactory, if the Stipulation is signed and if the Order is entered, the payments can begin *as set forth in the Stipulation.* (emphasis added)

The Stipulation sets forth that upon Defendant's conclusion that they are reasonably satisfied with the results, the "Special Master shall process for payment and pay from the administrative fund one-half of the \$250 reimbursement fee contemplated under Section 5(C) of the Term Sheet for *each* of the two pharmacy record claims *submitted* by the undersigned attorney for plaintiffs and claimants," *emphasis added*. As to the other conditions referenced in the electronic mail transmission, the Defendant has represented that it is reasonably satisfied with the results of the quality control, the Stipulation was executed on March 9, 2006, and an Order was entered by this Honorable Court accepting and adopting the Stipulation on March 10, 2006. All conditions have been met. To comply with the spirit and terms of the Stipulation, the Defendant should now make payment "as set forth in the Stipulation" to Ingram for all of Ingram's two pharmacy non-qualifying administrative claims. Instead, the Defendant has elected to abuse its opportunity for quality control examination, and delay payment to Ingram. The Defendant has already exercised its quality control examination and concluded that it was reasonably satisfied with the results. Therefore, the Defendant should be required to fulfill its obligation under the Stipulation to direct the Special Master to pay \$125.00 for *each* of the two

pharmacy record claims *submitted* by Ingram in the First MDL Settlement Program. Paragraph 3 of the Stipulation addresses payment of such claims in the Second MDL Settlement Program.

The intent and purpose of the Stipulation was to efficiently, expeditiously and finally dispose of non-qualifying claims. A lessened reimbursement fee for Ingram's "double pharmacy" administrative claims was agreed upon between the Parties as a compromise to the Defendant's desire to not pay the administrative reimbursement fee for claims utilizing a pharmacy record to indicate both claimant's use of Propulsid and claimant's attributed condition or injury, and the Claimants' desire to avoid the burden of time and expense in obtaining an additional declaration as instructed in the August 12, 2005 Minute Entry. The Defendant has breached the spirit of the agreement with Ingram, and seeks to avoid payment for *each* of the *submitted* double pharmacy claims, and is abusing the quality control exercise.

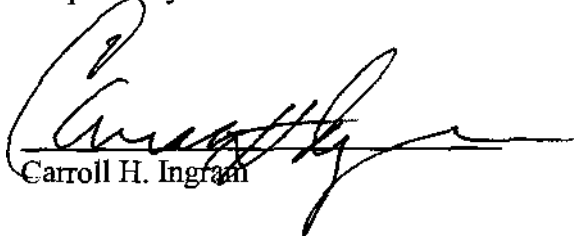
REQUEST FOR RELIEF

The Defendant has incorrectly reported deficiencies to Ingram and to the Court. The Defendant is delaying payment as contemplated in the spirit and terms of the Stipulation. Ingram believes that the Court's intervention is now required. Therefore, Ingram requests the Court require the Defendant to fulfill its obligation as to the spirit, intent and terms of the Stipulation in requiring that the Defendant immediately direct the Special Master to pay from the administrative fund \$125.00 for *each* of the two pharmacy record claims *submitted* by Ingram under the First MDL Resolution Program, which totals approximately 1300 claims and equals approximately \$162,500.00, or in the alternative, if this Honorable Court determines that the Defendant has breached the agreement reached between Ingram and the Defendant, to order the Defendant to pay the full \$250 reimbursement fee for each of the approximately 1300 two

pharmacy record claims submitted by Ingram in the First MDL Settlement Program, and/or order such other relief as deemed appropriate by the Court.

This the 9th day of June 2006

Respectfully Submitted



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