

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

IN RE ORTHO EVRA PRODUCTS) MDL Docket No. 1742
LIABILITY LITIGATION)
_____)

This Document applies to the following)
Plaintiffs:) JUDGE DAVID KATZ
) CASE NO. 1:06-40000

TOBIE ASHLEY, JULIA BOUTOT, APRIL)
BURROWS, CHRISTINA CECILIA,)
MONICA CAPPS, MARGARETTA COOPER,)
MARILYN CURRINGTON, ARRIN CVAR,)
LISA DICKERSON as Personal Representative)
of the Estate of LUCY STAPLETON,)
MARISOL DOMINGUEZ, MARY DOWIE,)
KAREN HATFIELD, ELIZABETH)
WILLIAMS as Personal Representative of the)
Estate of MAHOGANY JOHNSON, SHANELL)
JONES, DEBBIE KROGSTAD, ELLEN)
MARTINEZ, GABRIELA NUNEZ, ERIN)
OLANDER, ERICKA ROSS, MAXINE)
SENGE, SHAREE THOMPSON, ANGIE)
WALTON, REGINA WATKINS-ALLEN,)
ALICIA WILBANKS and PATRICIA)
YOUNG.)

**UNOPPOSED MOTION TO APPOINT THE HON. JOHN K. TROTTER (RET.)
AS SPECIAL SETTLEMENT MASTER**

Pursuant to Fed. R. Civ. P. 53(a)(1)(A) Plaintiffs TOBIE ASLEY, JULIA BOUTOT, APRIL BURROWS, MONICA CAPPS, CHRISTINA CECILIA, MARGARETTA COOPER, MARILYN CURRINGTON, ARRIN CVAR, LISA DICKERSON as Personal Representative of the Estate of LUCY STAPLETON, MARISOL DOMINGUEZ, MARY DOWIE, KAREN HATFIELD, ELIZABETH WILLIAMS as Personal Representative of the Estate of MAHOGANY JOHNSON, SHANELL JONES, DEBBIE KROGSTAD, ELLEN MARTINEZ, GABRIELA NUNEZ, ERIN OLANDER, ERICKA ROSS, MAXINE SENGE, SHAREE

THOMPSON, ANGIE WALTON, REGINA WATKINS-ALLEN, ALICIA WILBANKS and PATRICIA YOUNG (hereinafter collectively “Settling Plaintiffs”) respectfully request this Court appoint The Hon. John K. Trotter (Ret.) as Special Master and to oversee the implementation of an aggregate settlement reached between the parties.

BACKGROUND AND FACTS

Plaintiffs file this motion pursuant to Fed. R. Civ. P. 53(a)(1)(A) and an agreement reached by the parties. The Settling Plaintiffs named have agreed to participate in a settlement program involving an aggregate settlement reached with the defendants (hereinafter “Aggregate Settlement”) pursuant to a written confidential settlement agreement (hereinafter “Master Settlement Agreement”) with Johnson & Johnson Pharmaceutical Research & Development, LLC, Johnson & Johnson, Ortho-McNeil Pharmaceutical, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC and ALZA Corporation (hereinafter collectively referred to as “OMP”).

The parties have consented to the appointment of Justice Trotter as special settlement master/referee to oversee the aggregate settlement reached between Robinson Calcagnie Robinson Shapiro Davis, Inc., Jensen & Associates PLLC (hereinafter Plaintiffs’ Counsel) and Defendants that settles 36 California JCCP Ortho Evra cases, these 22 cases filed in this MDL and made subject of this motion, and 3 non-filed participants. Plaintiffs’ Counsel have obtained authority from their all of the participants to enter the settlement program which will be overseen by Justice Trotter as Special Master.

The Hon. John K. Trotter (Ret.) does not have a relationship to the parties, attorneys, case, or court that would require disqualification under 28 U.S.C. § 455 if he were a judge. Attached to this memorandum as Exhibit A is the affidavit of Justice Trotter. Fed. R. Civ. P. 53(b)(3)(A). The Hon. John K. Trotter (Ret.) has provided his consent to the appointment pursuant to California Rule of Court 3.904(a) and has agreed to abide by the Canons of Judicial Ethics. *See attached Exhibit B.*

Hundreds of Plaintiffs have participated in various aggregate settlements overseen and implemented by the Hon. John K. Trotter (Ret.) to date as the Court-appointed special settlement referee in Ortho Evra cases. Justice Trotter's previous appointments have been made in California by the California Courts pursuant to *California Code of Civil Procedure* § 638 on an ex parte basis with no objections by the defendants. Similarly, in this case, the parties negotiated an aggregate settlement whereby the Hon. John K. Trotter (Ret.) would be appointed as the special settlement referee to perform an allocation of the aggregate settlement fund among the participating plaintiffs via binding settlement awards. Hence, Settling Plaintiffs bring this motion and request the Court to appoint the Hon. John K. Trotter (Ret.) pursuant to the parties' agreement and the applicable rules.

The parties' agreement and Plaintiffs' proposed order provides the enumerated powers of the Special Master consist of the following:

1. Jurisdiction over all matters relating to the Aggregate Settlement, including the allocation process and oversight of all aspects of the settlement program from the Plaintiffs' perspective;
2. Implementation, review and approval of both the allocation process and all allocations within the settlement program;
3. Review and execution of appropriate documentation in cases involving wrongful death claims in California and other states where appropriate;
4. Adjudication of all allocation issues, including issues between plaintiffs, heirs, co-plaintiffs and/or counsel; and
5. Review and recommendation of approval of minor's compromise petitions where applicable.

In addition, the parties' agreement provides that the Hon. John K. Trotter (Ret.) will be privately compensated by the Settling Plaintiffs and that he parties do not request the use of Court facilities or personnel.

ARGUMENT

A court may appoint a special master to perform duties consented to by the parties. Fed. R. Civ. P. 53(a)(1)(A).

Plaintiffs further submit:

The use of settlement masters to reach global settlements in large-scale tort litigation dates back at least to the Dalkon Shield litigation and Agent Orange litigation beginning in the late 1980s. Courts have come to realize that the appointment of a neutral third-party who is granted quasi-judicial authority to act as a buffer between the court and the parties can provide a useful approach to reaching a settlement. This is especially true in complex litigation involving numerous parties, or when the dispute has matured and individual settlements become repetitive and time-consuming.

See Appointing Special Masters and Other Judicial Adjuncts, A Handbook for Judges and Lawyers (2nd Edition, 2009), p. 4. Plaintiffs submit this is precisely the type of complex litigation that has matured and where individual settlements have become repetitive and time consuming.

Further, it is the policy of the federal courts to encourage coordination of pending state and federal cases concerning the same and closely related transactions. *See, e.g., In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 262 (E.D.N.Y.2006) (“Cooperation with state courts will continue to be stressed.”); *In re Zyprexa Prod. Liab. Litig.*, No. 04–MD–1596, 2006 WL 898105, at *1 (E.D.N.Y. Apr. 6, 2006) (“Coordination and cooperation between state and federal courts has been encouraged.”). State and federal court utilization of a single special settlement master permits termination of litigation, on the merits, with minimal transaction costs. *In re MetLife Demutualization Litigation*, 689 F.Supp.2d 297, 306 (E.D.N.Y. 2010). The parties’ agreement and request to appoint Justice Trotter as the single special settlement master seeks to terminate this litigation, on the merits, with minimal transaction costs.

CONCLUSION

The parties have reached an agreement to terminate this litigation involving cases filed in

both state and this federal court. The parties' agreement provides that Justice Trotter serve as settlement master/referee. The federal rules provide for parties to reach such an agreement related to the appointment of a settlement master. Federal courts encourage such appointment in this type of case where individual settlements are repetitive and time consuming, and where a settlement master can resolve the cases on the merits with minimal transactional costs. For these reasons, Plaintiffs ask the Court to appoint the Hon. John K. Trotter (Ret.) as special settlement master.

Respectfully Submitted,

DATED: July 10, 2012

By: _____/s/
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NORTHERN DISTRICT OF OHIO

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YOUNG.)

ORDER OF APPOINTMENT OF SPECIAL SETTLEMENT MASTER

THE COURT, having reviewed the Plaintiffs’ motion, the nature of any relationship between The Hon. John K. Trotter and the parties, attorneys, case, and court, and the arguments of the parties, the court GRANTS motion and appoints The Hon. John K. Trotter to this case.

1. The appointment of the special master is appropriate because the Plaintiffs, TOBIE ASLEY, JULIA BOUTOT, APRIL BURROWS, MONICA CAPPS, CHRISTINA

CECILIA, MARGARETTA COOPER, MARILYN CURRINGTON, ARRIN CVAR, LISA DICKERSON as Personal Representative of the Estate of LUCY STAPLETON, MARISOL DOMINGUEZ, MARY DOWIE, KAREN HATFIELD, ELIZABETH WILLIAMS as Personal Representative of the Estate of MAHOGANY JOHNSON, SHANELL JONES, DEBBIE KROGSTAD, ELLEN MARTINEZ, GABRIELA NUNEZ, ERIN OLANDER, ERICKA ROSS, MAXINE SENGE, SHAREE THOMPSON, ANGIE WALTON, REGINA WATKINS-ALLEN, ALICIA WILBANKS and PATRICIA YOUNG (hereinafter “Settling Plaintiffs”), and Defendants, Johnson & Johnson Pharmaceutical Research & Development, LLC, Johnson & Johnson, Ortho-McNeil Pharmaceutical, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC and ALZA Corporation (hereinafter collectively referred to as “OMP”) consent to the performance of specific duties by a special master, as authorized by Federal Rule of Civil Procedure 53(a)(1)(A).

2. The appointment of Justice Trotter shall not grant the special settlement master jurisdiction to adjudicate any dispute between Defendants and any plaintiff.

3. For all matters relating to the aggregate settlement of the Settling Plaintiffs, including the allocation process, Justice Trotter will have jurisdiction over the individual Plaintiffs, their heirs and assigns and their counsel who have agreed to participate in the settlement process.

4. The special master’s duties will include, but will not necessarily be limited to:
- i. Oversight of all aspects of the settlement program from the Plaintiffs’ perspective;
 - ii. Review and approval of both the allocation process and all allocations within the settlement program;
 - iii. Review and execution of appropriate documentation in cases involving wrongful death claims where appropriate;

- iv. Adjudication of all allocation issues, including issues between Plaintiffs, heirs, co-plaintiffs and/or counsel; and
- v. Review and recommendations re approval of minor's compromise petitions and petitions for appointment of guardians ad litem and all related matters involving minors' participation in the settlement program.

5. The special master/referee shall maintain jurisdiction over the Settling Plaintiffs that agreed to participate in the settlement process.

6. The parties may have *ex parte* communications with the Special Master as to all matters related in any way to the settlement process. The Special Master may communicate *ex parte* with the Court as he and the Court deem necessary concerning the status of the settlement process, but shall not disclose to the Court the specifics of any party's settlement position without the consent of that party.

7. The special master/referee shall preserve all materials received file a report with the Court at the conclusion of the work.

8. The parties have agreed that findings of the Special Master will be final.

9. The special master/referee shall be privately compensated by the Settling Plaintiffs.

10. The master must proceed with reasonable diligence.

11. The name, business address and telephone number of the Referee is as follows:

Hon. John K. Trotter (Ret.)
Judicial Arbitration and Mediation Services - JAMS
500 N. State College Blvd., 14th Floor
Orange, CA 92868
T: 714-939-1300
F: 714-939-8710

12. The name and telephone number of the person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse is as follows:

Tricia Lunceford, ADR Specialist
JAMS, The Resolution Experts
500 N. State College Blvd., 14th Floor
Orange, CA 92868
Email: tlunceford@jamsadr.com
714.937.8251 (Direct Dial)
714.939.8710 (Facsimile)

SO ORDERED

DATED: _____

U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2012 a true copy of the foregoing was filed electronically. Notice of this filing was sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM / ECF system. .

Respectfully submitted,

By: _____/s/
Keith M. Jensen
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