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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

In re: Actos (Pioglitazone)
Products Liability Litigation

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6:11-md-02299-RFD-PJH

JUDGE DOHERTY

Applies to:
All Actions

MAGISTRATE JUDGE HANNA

ORDER APPOINTING SPECIAL MASTERS

The parties having had notice that the Court was considering the appointment of special masters in this matter, and having had an opportunity to be heard and make suggestions and objections concerning the naming of the special masters; with the advice and consent of the parties, the Court now APPOINTS:

- Gary J. Russo as Special Master, with overall responsibility for the case management duties described below;
- Kenneth W. DeJean as Deputy Special Master, with responsibility solely for management and oversight of matters related to the Plaintiffs' Steering Committee, especially the assignment of duties and tasks that inure to the common benefit of all plaintiffs, making adjudicative reports and recommendations to Special Master Russo for approval of claims for those attorneys seeking credit for costs incurred and work performed for the common benefit of all plaintiffs, submitting periodic motions to the Court seeking review and approval or denial of summary descriptions of allocations of work, distribution of fees and reimbursement of costs incurred since the previous motion, and performing such other duties as might be requested of him by the Court or by the Special Master; and
- Carmen M. Rodriguez as Deputy Special Master, with primary responsibility for matters related to the law and legal analysis, especially considering contested motions and issuing reports and recommendations on same, as well as drafting orders and minute entries as might be requested by the Court, together with responsibility for any and all matters delegated by Special Master Russo.

These appointments are made pursuant to Fed. R. Civ. P. 53 and the inherent authority of the Court. The duties and terms of service the Special Masters and reasons for their appointment are set forth below.

BACKGROUND

This Court was appointed as the transferee court in these proceedings on December 29, 2011. Since that time, this Court has initially received over 200 transferred cases. Moreover, a number of cases, also, have been filed directly in Western District of Louisiana and are being consolidated with these proceedings. This Court has been informed by counsel that the number of claims which will be included could reach into the thousands. In addition to its size, now and in the future, this MDL presents many difficult issues, including international involvement, and will require an inordinate amount of attention and oversight from the Court.

Other MDL courts, facing similar challenges, have easily concluded that appointment of Special Masters was appropriate to help the Court with various pretrial, trial, and post-trial tasks. Indeed, the appointment of a Special Master or Masters in cases such as this is common. As this Court will continue to carry a full docket of civil cases, this Court has concluded that it is necessary to appoint three individuals, each to assist the Court with certain aspects of case management, collectively which will include all aspects of case management, including the claims process, discovery, experts, legal issues, contested motions, bellwether trials, settlement efforts, etc. The 2003 amendments to Rule 53 specifically recognize the pretrial, trial, and post-trial functions of masters in contemporary litigation. Thus, the Court has concluded it is essential to appoint Special Masters to assist the Court in both effectively and expeditiously moving these disputes toward their final resolution.

I. Masters' Duties.

The Special Masters will generally be assigned to (1) assist the Court with managing the litigation, including the claims process, discovery, experts, legal analysis, settlement efforts, communication with counsel, and any and all pretrial and post-trial matters that cannot be

addressed effectively and timely by an available district judge or magistrate judge of the district, as well as (2) perform any and all other duties assigned to them by the Court (as well as any ancillary acts required to fully carry out those duties) as permitted by both the Federal Rules of Civil Procedure and Article III of the Constitution. However, the Court retains sole authority to issue final rulings on all decisions made by the Special Masters, specifically including all matters formally submitted for adjudication.

This Court has reviewed recent legal authority addressing the duties of a Special Master that are permitted under the “Federal Rules of Civil Procedure and Article III of the Constitution.” Consonant with the foregoing findings and these general parameters, the currently-anticipated needs of the court, and the parties’ broad consent, the Court states that the Special Masters in these proceedings shall have the authority to:

- A. assist with preparation for attorney conferences (including formulating agendas), court scheduling, and negotiating changes to orders of this Court, including case management orders;
- B. establish discovery and other schedules, review and attempt to resolve informally any discovery conflicts (including, but not limited to, issues related to privilege, confidentiality, redactions, and access to medical and other records), and supervise discovery;
- C. oversee management of docketing, including the identification and processing of matters requiring court rulings;
- D. compile data and assist with, or make findings and recommendations with regard to, interpretation of scientific and technical evidence;
- E. assist with legal analysis of the parties’ motions or other submissions, whether made before, during, after, or in place of, trials, hearings, or oral argument, and make recommended findings of fact and conclusions of law;
- F. assist with responses to media inquiries;
- G. help to coordinate federal, state and international aspects of this litigation;

- H. direct, supervise, monitor, and report upon implementation and compliance with this Court's orders, and make findings and recommendations on remedial action if required;
- I. interpret any agreements reached by the parties;
- J. propose structures and strategies for settlement negotiations on the merits, and on any subsidiary issues, and evaluate parties' class and individual claims, as may become necessary;
- K. propose structures and strategies for attorneys fee issues and fee settlement negotiations, review fee and cost applications, and evaluate parties' individual claims for fees, as may become necessary;
- L. administer, allocate, and distribute funds and other relief, as may become necessary;
- M. adjudicate eligibility and entitlement to funds and other relief, as may become necessary;
- N. monitor compliance with structural injunctions, as may become necessary;
- O. make formal or informal recommendations and reports to the parties, and make recommendations and reports to the Court, regarding any matter pertinent to these proceedings; and
- P. communicate with parties and attorneys as needs may arise in order to permit the full and efficient performance of these duties.

The Court shall retain sole authority to issue final rulings on matters formally submitted for adjudication, unless otherwise agreed by the parties, and subject to waiver of objection to written orders or recommendations.

II. Communications with the Parties and the Court

The Special Masters may communicate *ex parte* with the Court at their discretion, without providing notice to the parties, as necessary in order to fulfill their duties pursuant to this order. Moreover, the Special Masters may communicate *ex parte* with any party or attorney, as the Special Masters deem appropriate, for the purpose of ensuring the efficient administration and management of these proceedings. However, the Special Masters may not engage in *ex*

parte communications with any party or attorney concerning any substantive legal issue filed and pending before the Court.

III. Masters' Record

The Special Masters shall maintain normal billing records of their time spent on this matter, with reasonably detailed descriptions of their activities and matters worked upon. With regard to any contested motion, or upon any other special request by the Court, the Special Masters shall (i) submit such report or recommendation to the Court in writing, as well as (ii) filing such report and recommendation into the record electronically. The Special Masters shall preserve for the record any document received from counsel or parties to this case that are not docketed in this or another court, but need not preserve for the record any document (whether created by a Special Master or anyone else) that is docketed in this or any other court.

IV. Review of the Special Masters' Orders

The Special Masters shall either: (1) reduce any formal order, finding, report, or recommendation to writing and file it electronically on the case docket via Electronic Case Filing ("ECF"); or (2) issue any formal order, finding, report, or recommendation on the record, before a court reporter. The Special Master shall submit to the Court a proposed order adopting the report and recommendation. Any party may file an objection to an order, finding, report, or recommendation by a Special Master within *14 calendar days* of the date it was electronically filed, or within the time frame authorized by Fed. R. Civ. P. 6(d). **The failure to meet this deadline or to timely request an extension of the deadline shall result in permanent waiver of any objection to a Special Master's orders, findings, reports, or recommendations.**

A. Recommended conclusions of law.

The Court shall decide *de novo* all objections to conclusions of law made or recommended by a Special Master.

B. Procedural rulings.

The Court shall set aside a ruling by a Special Master on a procedural matter only for an abuse of discretion.

C. Recommended factual findings.

To the extent a Special Master enters an order, finding, report, or recommendation regarding an issue of fact, the Court shall review such issue *de novo*.

V. Compensation

The Special Masters shall be compensated at the following rates:

- \$375 per hour for the Special Masters' services;
- \$275 per hour for service provided by firm partners;
- \$200 per hour for service provided by firm associates;
- \$95.00 per hour for paralegal services.

With regard to the services provided by, and on behalf of, Deputy Special Master DeJean, the plaintiffs shall bear the cost of his fees and expenses, unless agreed or ordered otherwise. With regard to all other fees and expenses incurred by the Special Masters, the parties shall bear this cost equally (50% by the plaintiffs and 50% by the defendants). The Special Masters shall incur only such fees and expenses as may be reasonably necessary to fulfill their duties under this order, or such other orders as the Court may issue.

From time to time, on approximately a monthly basis, the Special Masters shall submit to the Court itemized statements of fees and expenses, which the Court will inspect carefully for

regularity and reasonableness. As the duties of the Special Masters include assisting the Court with management of the litigation as well as certain threshold legal analyses of the parties' submissions, the Court expects these itemized statements might reflect confidential communications between the Special Masters and the Court or between the Special Masters and counsel or parties. Accordingly, the Special Masters are ordered to submit, together with their itemized statements, summary statements which shall not reflect any confidential information and shall contain two signature lines for the Court (one for Magistrate Judge Hanna and one for Judge Doherty), accompanied by the statement "Approved for Disbursement." Additionally, the Special Masters are ordered not to include within their itemized statement any authorized *ex parte* information unless notified to the contrary by the Court to address specific issues.

The Court shall review the itemized statements *in camera* for the purpose of determining the reasonableness of the Special Masters' fees and costs. The itemized statements shall not be made available to the public or counsel. If the Court determines the Itemized Statement is regular and reasonable, the Court will sign the corresponding Summary Statement and transmit it to the plaintiffs' co-lead counsels, and defendants' lead counsel, who shall have five (5) calendar days to submit objections, if any, to the Court. The Court will review any objections and will make its final authorization and submission for payment thereafter. Once payment of a statement has been authorized, the Court will return the original itemized statements to the Special Masters, who shall preserve those originals until this matter has been fully and finally resolved for all purposes.

VI. Other Matters

A. Affidavits

Attached to this order are affidavits earlier submitted to the Court by the Special Masters.

B. Cooperation

The Special Masters shall have the full cooperation of the parties and their counsel. As agents and officers of the Court, the Special Masters shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions. The parties will make readily available to the Special Masters any and all facilities, files, databases, and documents necessary to fulfill the duties and functions described in this order.

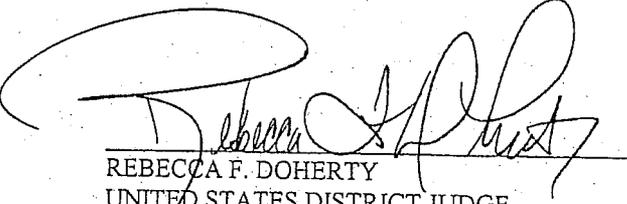
C. Effective Date

The Court notified the Special Masters they would be appointed, and requested they commence work on this matter, on Friday, March 16, 2012, which shall be the effective date of their appointment.

D. Reasonable Diligence

The Special Masters appointed herein are ordered to proceed with all reasonable diligence in fulfilling their duties.

THUS DONE AND SIGNED this 11 day of April, 2012.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

In re: Actos (Pioglitazone)
Products Liability Litigation

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JUDGE DOHERTY

MAGISTRATE JUDGE HANNA

AFFIDAVIT OF GARY RUSSO
TENDERED PURSUANT TO FED. R. CIV. P. 53

STATE OF LOUISIANA

PARISH OF LAFAYETTE

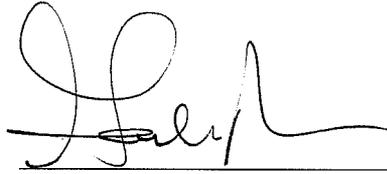
Gary J. Russo, being first duly sworn according to law, states the following:

I am an attorney at law, duly licensed to practice law in the States of Louisiana and Texas. My bar admissions are as follows:

- Louisiana State Bar Association –1979
- Texas State Bar Association – 1992
- Western District of Louisiana
- Eastern District of Louisiana
- Middle District Of Louisiana
- 5th Cir. of Appeals
- 11th Cir. of Appeals

I have thoroughly familiarized myself with the issues involved in the Multi-District Litigation captioned In Re: Actos (Pioglitazone) Products Liability Litigation 6:11-md-02299-RFD-PJH. As a result of my knowledge of that case, I can attest and affirm that there are no non-

disclosed grounds for disqualification under 28 U.S.C. §455 that would prevent me from serving as the Special Master in the captioned matter.



GARY J. RUSSO

SWORN TO AND SUBSCRIBED before me, Notary Public, this 16th day of March, 2012.



NOTARY PUBLIC

Name: Rachel D. Chance

Notary Number: 31358

My Appointment Expires: death

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

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* JUDGE DOHERTY
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* MAGISTRATE JUDGE HANNA

AFFIDAVIT OF CARMEN RODRIGUEZ
TENDERED PURSUANT TO FED. R. CIV. P. 53

STATE OF LOUISIANA

PARISH OF LAFAYETTE

Carmen M. Rodriguez, being first duly sworn according to law, states the following:

I am an attorney at law, duly licensed to practice law in the State of Louisiana. My bar admissions are as follows:

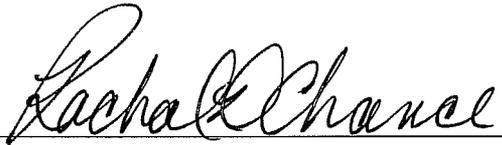
- Louisiana State Bar Association: Oct 08, 1993
- Western District of Louisiana: Dec 09, 1993
- Eastern District of Louisiana: July 29, 1998
- Middle District Of Louisiana: Jan 20, 1994
- 5th Cir. of Appeals: Jun 03, 2010
- U.S. Supreme Court: Dec 05, 2011

I have thoroughly familiarized myself with the issues involved in the Multi-District Litigation captioned In Re: Actos (Pioglitazone) Products Liability Litigation 6:11-md-02299-RFD-PJH. As a result of my knowledge of that case, I can attest and affirm that there are no non-

disclosed grounds for disqualification under 28 U.S.C. §455 that would prevent me from serving as the Special Master in the captioned matter.


CARMEN M. RODRIGUEZ

SWORN TO AND SUBSCRIBED before me, Notary Public, this 16th day of March, 2012.



NOTARY PUBLIC

Name: Rachel D. Chance

Notary Number: 31358

My Appointment Expires: death

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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* 6:11-md-02299-RFD-PJH
*
* JUDGE DOHERTY
*
* MAGISTRATE JUDGE HANNA

AFFIDAVIT OF KENNETH W. DEJEAN
TENDERED PURSUANT TO FED. R. CIV. P. 53

STATE OF LOUISIANA

PARISH OF LAFAYETTE

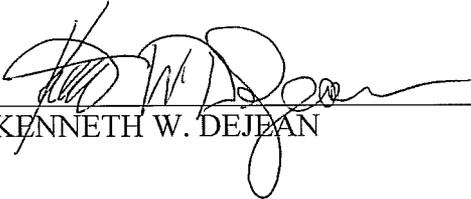
Kenneth W. DeJean, being first duly sworn according to law, states the following:

I am an attorney at law, duly licensed to practice law in the States of Louisiana and Colorado. My bar admissions are as follows:

- Louisiana State Bar Association –1976
- Colorado State Bar Association – 1989
- U.S. District Court Eastern District of Louisiana, 1976
- U.S. District Court Western District of Louisiana, 1976
- U.S. Court of Appeals 5th Circuit, 1982
- U.S. Court of Appeals 11th Circuit, 1983
- U.S. Supreme Court, 1987

I have thoroughly familiarized myself with the issues involved in the Multi-District Litigation captioned In Re: Actos (Pioglitazone) Products Liability Litigation 6:11-md-02299-RFD-PJH. As a result of my knowledge of that case, I can attest and affirm that there are no non-

disclosed grounds for disqualification under 28 U.S.C. §455 that would prevent me from serving as the Special Master in the captioned matter.


KENNETH W. DEJEAN

SWORN TO AND SUBSCRIBED before me, Notary Public, this 16th day of March, 2012.


NOTARY PUBLIC
Name: Carmen M. Rodriguez
Notary Number: 22573
My Appointment Expires: at death