

OCT 04 2013

TONY R. MOORE, CLERK

BY

DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

IN RE: ACTOS (PIOGLITAZONE)
PRODUCTS LIABILITY LITIGATION

MDL No. 6:11-md-2299

JUDGE DOHERTY

This Document Applies To:
All Cases

MAGISTRATE JUDGE HANNA

SUPPLEMENTAL CASE MANAGEMENT ORDER: JOINT EXPENSES

With agreement of the parties, this Court previously established a Joint Expense Account and ordered the parties to make quarterly deposits into the Joint Expense Account.¹ At that time, the parties were advised the amount of the quarterly deposits would be adjusted (either increased or decreased), as necessary. With regard to the quarterly deposits, this Court makes the following findings.

- The Joint Expense Account has, in large part, been operating at a surplus; as the bellwether trials approach, the increased rhythm of litigation necessitates a review and adjustment.
- The appointment of the Special Masters has been extraordinarily helpful to this Court and to the parties, yielding palpable benefits and significant cost savings. For instance, the Special Masters' management of discovery and other pre-trial issues, together with their role as liaison between the Court and counsel, has led to the successful resolution of numerous disputes informally, such that only two discovery motions have been filed during the past 17 months. This is a rare accomplishment in large multi-district litigation.
- This Court is on track to commence the first pilot bellwether trial in January, 2014, a date that comes only some 25 months after the initial order was issued by the Judicial Panel on

¹ See Case Management Order: Joint Expenses (Rec. Doc. 1906).

Multidistrict Litigation transferring these proceedings to this Court and only some 21 months from the appointment of the Plaintiffs' Steering Committee and the Special Masters. This Court is informed that, historically, the commencement of a bellwether trial in such a short time frame is a rare feat in cases of this size. More importantly, this is not a feat that could have been accomplished by this Court without the assistance of the Special Masters.

- Furthermore – as has been discussed with counsel on several occasions – this Court made an early decision to use an innovative and creative approach to this litigation, using certain traditional and time-tested procedures, while, also, remaining committed to considering innovative alternatives, and testing and modifying assumptions and choices against the best way to accomplish the statutory goal of promoting the just and efficient conduct of these proceedings.² This Court (and these proceedings) have benefitted greatly from both the willing and professional participation of counsel in this creative process, and the presence and work of the Special Masters, who have provided invaluable oversight, guidance, and instruction to counsel, and who, also, have consulted with the Court to provide feedback on which innovations were working well, which are working less well, and why.

- Because the early appointment of Special Masters was one of the innovations selected, this Court established a periodic yearly review process initiated in January, 2013, to evaluate the Special Masters' performance and validity, as well as their evolving role in this litigation. This Court elicited reports and evaluations from counsel, and, also, conducted in person interviews with counsel for both parties, at length, and outside the presence of the Special Masters. Details of that Review remained confidential. Counsel provided glowing reports about the Special Masters and the benefits they have brought and bring to this large and complex litigation. Moreover,

² 28 U.S.C. § 1407(a).

it was clear, as this case has progressed, the interaction with the Special Masters and the parties has, by the parties' choice and by necessity, increased. As the case has progressed, this Court has begun meeting with the Special Masters, generally, once a week and continues to conduct a monthly status conference with all counsel (which the Special Masters attend). During the course of these meetings, it has become and remains abundantly clear the Special Masters are invaluable to the efficient progress of this litigation and their efforts have and continue to yield palpable benefits, not the least of which is illustrated by the absence of formal disputes and contested discovery motions and the amicable resolution of almost all discovery disputes and related issues. Furthermore, the parties agree, the guidance provided to counsel about how best to move toward the pilot bellwether trials is of significant value and has and continues to result in significant cost savings to the parties; also, the forewarning provided to this Court as to issues and disputes that can be expected to arise, and thus, can be addressed early, has been and continues to be of great value to this Court and the parties. Thus, this Court's actual experience over these 17 months reinforces the positive information and responses received from counsel during the Periodic Review Process.

- In short, this Court's conclusion – based on its own insight, comparison of statistics in these proceedings with other multi-district proceedings of comparable size, and feedback received from counsel – is that the appointment of Special Masters early in these proceedings has been an important, successful innovation that has benefitted the parties, this Court, and the efficient operation of justice, and has resulted in significant savings in time and money to the parties.

- As this matter approaches trial in the first bellwether trials, the Special Masters' time commitment has increased, just as has counsels'; the parties are engaged in ever-more intense preparation and discovery for the upcoming bellwether trials, and thus, the resultant involvement of the Special Masters, also, has become more intense; the vigorous motions' phase of pre-trial

proceedings, also, has begun, along with the intense discovery, all triggering increased Special Master involvement. Consequently, this Court finds:

As this litigation approaches the commencement of the first set of pilot bellwether trials, the role of the Special Masters has, appropriately, expanded, per the desire of the parties, as well as by necessity;

This expansion, likely, will continue into the foreseeable future as three sets of bellwether trials are, at present, scheduled.³

Consequently, this Court expects the role of the Special Masters will expand as we approach trial and could be expected to remain at that increased level, for at the very least, the next three quarters, triggering the need for an increase in contribution to the Joint Expense Fund.

Pursuant to Federal Rules of Civil Procedure, Rule 53(g)(3), this Court must allocate payment among the parties after considering the following factors: (1) the nature and amount of the controversy; (2) the parties' means; and (3) the extent to which any party is more responsible than other parties for the reference to the master. Looking to these factors in making the required allocation, first, this Court notes that this is a multidistrict litigation with over 2500 cases, where a life threatening, if not fatal, injury is alleged and certain cases have multiple plaintiffs, consequently, the potential amounts in controversy are significant. Second, both parties are of ample means to allow for use of the Special Masters; the plaintiffs are a conglomerate of hundreds of attorneys and over 2500 cases; the defendants are a multinational corporation with extremely significant dollar sales in the U.S. alone, which represent a small percentage of global sales revenue. Finally, during

³First bellwether trial - January 27, 2014, second bellwether trial - April 14, 2014, third bellwether trial - November 3, 2014.

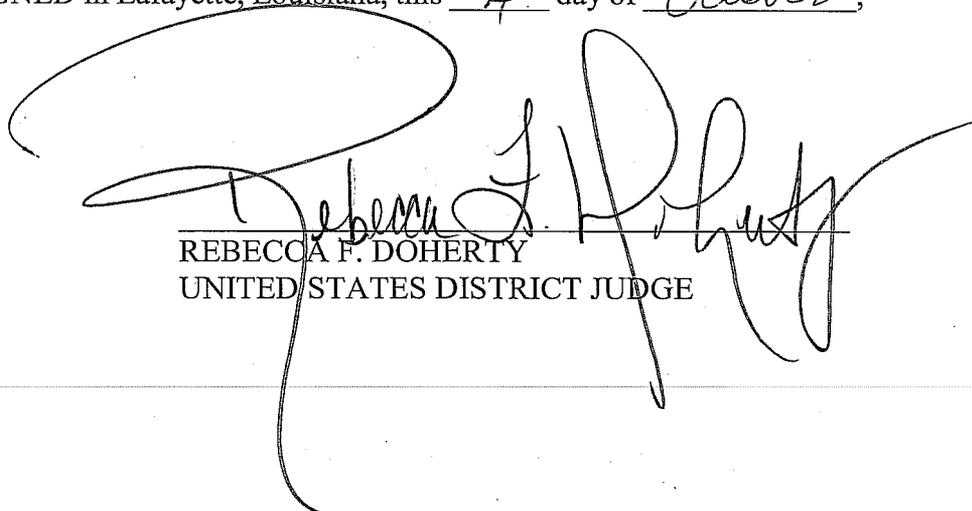
this Court's in depth review of the Special Masters billings, this Court found neither party utilized the masters in such a manner so as to create an inequity; both parties utilized the masters when desired and the time dedicated exclusively to interaction with the Court was exceedingly small when compared to the whole. Consequently pursuant to Federal Rules of Civil Procedure 53(g)(3), this Court finds the requisite factors support this Court's actions,⁴ consequently,

IT IS HEREBY ORDERED, in light of the foregoing findings, that the Case Management Order: Joint Expenses shall be and is AMENDED AS FOLLOWS:

Each party will deposit \$200,000 per quarter into the Joint Expense Account, beginning with the October quarterly payment, rather than the \$100,000 per party reflected in Document 1906, dated October 9, 2012.

This Court will continue to review the status of these proceedings and the expectations for the Special Masters' further involvement in this case and any and all necessary adjustments (either an increase or a decrease) will be made by the Court when, or if, deemed necessary or appropriate.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 4 day of October, 2013.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

⁴It is further noted, this Court's analysis was conducted under the Special Masters' original billable rate. On August 2, 2013, by way of Document 3089, this Court increased the hourly rate of the Special Masters. All analysis and billings reviewed for purpose of the findings made in the ruling now being issued are/were conducted at the original hourly rate, as the Special Masters voluntarily chose not to implement the new rate on their most recent billings.