

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE: BAYER CORP. COMBINATION
ASPIRIN PRODUCTS MARKETING AND
SALES PRACTICES LITIGATION

09-md-2023 (BMC)(JMA)

THIS PLEADING RELATES TO:

COGAN, District Judge

ALL CASES

DECLARATION OF MELANIE H. MUHLSTOCK
IN SUPPORT OF ALLOCATION TO BAYER HEART ADVANTAGE CLASS

I, Melanie H. Muhlstock, hereby declare as follows:

1. I am a Managing Attorney at the law firm of Parker Waichman, LLP.
2. I graduated from the University of Wisconsin at Madison where I received a Bachelor of Arts degree in 1994, followed by a Juris Doctorate from Loyola University – Chicago School of Law in 1997.
3. I am a member of the Bars of the State of New Jersey (1997) and the State of New York (1998), and I am additionally admitted to practice in the United States District Court for the Southern, Eastern, Western and Northern Districts of New York as well as the District of New Jersey. I also have been admitted pro hac to various federal district courts throughout the United States. I am a member in good standing of the New York and New Jersey Bars and have never been the subject of any disciplinary proceeding.
4. I joined Parker Waichman LLP in 2005, and am currently the Managing Attorney of the firm’s Mass Torts Department. After spending the beginning of my legal career

representing pharmaceutical companies and manufacturers of medical devices and consumer products, I now focus my practice on the representation of plaintiffs in complex and serious litigation including multidistrict litigation and class action matters. In that capacity, and during my tenure at Parker Waichman LLP, I have facilitated the resolution of thousands of serious injury and other claims.

5. I have been appointed as a member of various discovery, science and law and briefing sub-committees of the Plaintiffs' Steering Committees in *In Re: Denture Cream Products Liability Litigation* (MDL No. 2051); *In Re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* (MDL No. 2100) (where she also serves as Co-Chair of the Non-Party Discovery Committee); *In re: Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation* (MDL No. 2023); *In Re: Ortho Evra Products Liability Litigation* (MDL No. 1742); *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation* (MDL No. 1708); as well as the New York Coordinated Proceeding involving the contact lens solution, ReNu with MoistureLoc.

6. On or about March 13, 2012, Class Counsel requested that I serve as allocation counsel on behalf of Bayer Aspirin with Heart Advantage ("Bayer Heart Advantage") consumers in connection with the settlement reached in this litigation. I agreed to serve as allocation counsel representing Bayer Heart Advantage consumers. I was informed at that time that attorney Dan Mogin agreed to serve as allocation counsel representing Bayer Women's Low Dose Aspirin + Calcium ("Bayer Women's") consumers ("Bayer Women's Allocation Counsel").

7. Prior to this time numerous attorneys and paraprofessionals at my firm spent a considerable amount of time rendering services on behalf of the plaintiffs in the normal course of

this litigation, including, but not limited to, reviewing and analyzing documents produced by the defendants, conducting several significant depositions involving both fact and expert witnesses.

8. Soon after I agreed to serve as allocation counsel, I also reviewed and re-reviewed several relevant and significant documents pertaining to this litigation and the \$15,000,000 settlement agreed to by Class Counsel and Defendants. These documents included: (a) the Master Complaint; (b) Confidential Memorandum of Understanding dated March 12, 2012; (c) Expert Jeffrey E. Harris MD PhD's Expert Report in Connection with Plaintiffs' Motion for Class Certification; (d) Deposition of Jeffrey E. Harris, MD PhD dated March 11, 2011; (e) Plaintiffs' Motion for Class Certification.

9. Once I completed my review of the above documents, Bayer Women's Allocation Counsel and I engaged in nearly four weeks of vigorous arm's length negotiation to arrive at an agreed-to allocation of the \$15,000,000 settlement between the Bayer Heart Advantage consumers and the Bayer Women's consumers. Class Counsel and Counsel for the Defendants were not involved in these negotiations.

10. As a result of these negotiations, Bayer Women's Allocation Counsel and I jointly recommended to Class Counsel that 60% of the distributable settlement amount be allocated to the Bayer Women's class and that 40% be allocated to the Bayer Heart Advantage class.

11. During this process, Class Counsel was available to answer questions that I or Bayer Women's Allocation Counsel had about the case. As explained above, however, Class Counsel did not participate in these negotiations and was not informed at any time of the course of those negotiations, until Bayer Women's Allocation Counsel and I told them of the results of our negotiations.


12. Bayer Women's Allocation Counsel and I had several telephone conversations during which we discussed various proposed allocations. We traded multiple proposals and

ultimately agreed to the allocation described above in paragraph 10. The agreed upon allocation was based upon my factual and legal investigation, as well as what I learned about the damage models from my review of expert Jeffrey E. Harris MD PhD's Expert Report in Connection with Plaintiffs' Motion for Class Certification and the Deposition of Jeffrey E. Harris, MD PhD dated March 11, 2011.

13. I believe the allocation agreed to by Bayer Women's Allocation Counsel and me is fair and reasonable, is supported by the evidence that was available to us, and represents a fair compromise.

I declare under penalty of perjury under the laws of the United States and the laws of the State of New York that the foregoing is true and correct.

This 11th day of January, 2013.


By: Melanie H. Muhlstock
Parker Waichman LLP