

1 F350JONC
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
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4 MARY K. JONES, et al ,
5 Plaintiff,
6 v. 10 CV 3864
7 PFIZER, INC. , et al ,
8 Defendant.

9 -----x
10 New York, N. Y.
11 March 5, 2015
12 2: 30 p. m.

13 Before:
14 HON. ALVIN K. HELLERSTEIN,
15 District Judge

16 APPEARANCES

17 ROBBINS GELLER RUDMAN & DOWD, LLP
18 Attorney for Plaintiff
19 BY: MICHAEL DOWD
20 WILLIAMS & CONNOLLY LLP
21 Attorney for Defendant Pfizer
22 BY: STEVEN FARINA
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1 (In open court)

2 THE COURT: All right, this is the recess date by
3 which I'm considering the preliminary fairness of the
4 settlement arrived at by the parties in this case, Jones vs.
5 versus Pfizer.

6 I want to commend counsel. I think you have answered
7 all of the points that we have discussed in very effective
8 ways. And the questions I have left are small, and are easily
9 resolved.

10 I would like to be better informed as to the mechanics
11 of giving notice, in a number of respects. One, is that it
12 seems to be a roll-forward kind of provision, that it begins to
13 be given by the claims administrator 10 days after I signed the
14 order. Which suggests that it is going to be over a period of
15 time. And I don't know over what period of time, what
16 practical problems there are, and why it may be necessary not
17 to have a fixed determinative date. It affects the period for
18 opt-outs fixed at 50 less 10, and maybe less or more. And
19 that's one particular point of issue in question.

20 The second, there are two paragraphs that fix the date
21 by which opt-outs are to be judged, either by the postmark or
22 the date received. And I don't think there is consistency, and
23 I would like to explore the difference.

24 Let me stop there.

25 Mr. Dowd?

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1 MR. DOWD: It's Mr. Dowd, your Honor.

2 Your Honor, I think that the notice timing, I think
3 it's done that way, first, you know the initial notice that

4 goes out, you know that went out in December basically of last
5 year, they send, Gilardi, the claims administrator, sends
6 letters to the brokers and nominees, many of whom hold street
7 names. And they depend on the brokers and nominees to get back
8 to them with addresses. And they either direct mail or,
9 sometimes, the brokers want them to send packages, you know
10 10,000 packages. And that's why it takes longer up on the
11 first notice. Now, they --

12 THE COURT: And why you can't assign a fixed date.

13 MR. DOWD: For the initial notice. I mean that's why
14 some of them went out slow, because the brokers don't give back
15 to the claims administrator in a timely fashion.

16 Right now, they have a data base, as I understand it,
17 of 2.7 million potential class members. So that's in a data
18 base.

19 I think the reason that they ask for it, or we ask for
20 it to be on a rolling basis, is because, first of all, you have
21 to take 2.7 million pieces of mail to a post office. And I
22 don't think you can do that just in one day. I think it takes
23 several days to get that out. And then the other issue that
24 comes back is you have returned undelivered mail that they call
25 RUM in their class administrator speak. And so as those come

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1 back, they remain to the new address.

2 And so that's why, you know, some of the people, even
3 if they have an address for them now that's believed to be
4 good, you will still get returned, undelivered mail.

5 THE COURT: Does that roll-forward provision, it does

6 affect the time for opt-outs?

7 MR. DOWD: Yes, your Honor.

8 THE COURT: So you have a 40-day period, is that
9 sufficient?

10 MR. DOWD: It should be, your Honor. I mean the
11 notice should go out in that time. We can extend it and make
12 it longer.

13 THE COURT: I don't want to extend it if I don't have
14 to extend it.

15 MR. DOWD: I think that's a fair amount of time. And
16 in that time, we shouldn't have as many problems with lateness,
17 because we already have the vast overwhelming majority of the
18 addresses.

19 We also do the publication notice. So people do get
20 constructive notice, as well. And that is viewed as the
21 equivalent of someone getting a piece of mail at their house.
22 Obviously, we prefer that they get a piece of mail at their
23 house, but we also do publish and it goes out on a business
24 wire, as well.

25 THE COURT: I noticed that.

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1 Can there be a web page?

2 MR. DOWD: Yes, your Honor. Gilardi has a web page
3 right now that has the original notice on it. And it has the
4 complaint. They will put the new notice on there, the proof of
5 claim forms, and anything else you want us to put on there, we
6 can.

7 THE COURT: Can the company have web page devoted to
8 this?

9 MR. DOWD: That's up to company, your Honor.

10 THE COURT: Mr. Farina?

11 MR. FARINA: That may present some problems how the
12 company communicates to its investors.

13 Traditionally, the notice -- and the plaintiffs can
14 speak to this. The notice and the administration, the
15 defendants play no role, whatsoever, in that. There is
16 actually tax reasons for the class, and for defendants, why the
17 defendants are not supposed to be involved in the claims
18 administration procedures. So I would prefer not to have the
19 company involved.

20 Obviously, a separate website could be set up for
21 purposes of this, and that could be included in the notice.
22 But to have the company directly involved, I think, could
23 present potential issues.

24 THE COURT: I raise the issue because the first place
25 that someone would look would be associated with the company.

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1 And so if, by order of the Court, the company could provide a
2 link, that would be appropriate.

3 MR. FARINA: I just don't want to trip over issues
4 that I know are potential issues.

5 THE COURT: What would be the problem. It is not
6 going to have tax consequence, if it is pursuant to order.

7 MR. FARINA: The defendants are not supposed to be
8 involved in claims administration.

9 The way it works under the tax code, when we give our
10 money up, it goes into an escrow account, we are not supposed

11 to have anything to do with the claims administration process.
12 That is all over the settlement papers.

13 THE COURT: I want a place where people can look and
14 see pleadings. The reference to the clerk's office is not good
15 enough.

16 MR. FARINA: How about the Robbins Geller website?

17 MR. DOWD: Your Honor, we can -- our firm can set up a
18 website, and try to put links to some of the pleadings. I mean
19 I have done that in another case. And I think it's a great
20 website. I'm not sure how long it takes us to get that up and
21 running. We could have something up, and then supplement it as
22 time goes forward. I mean I don't know if it is something we
23 can do in two weeks but, you know, I have a website for one of
24 my other cases. And it has all of the case information on
25 there. It has all of the pleadings on there so that people can

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1 click on it and see whatever they want. And we can put on
2 Gilardi's --

3 THE COURT: I think you should do that. No one is
4 going to look for Gilardi.

5 Mr. Farina, you are going to have to disclose this
6 settlement, but that disclosure could have a link.

7 MR. FARINA: Well, the disclosure that was made was
8 that the company had taken a reserve, because we have an
9 agreement in principle. That was in the Form 100. And the
10 next Form 100 is not going to be filed for some time.

11 THE COURT: That 100 could be amended to provide a
12 link, no?

13 MR. FARINA: Your Honor, that would create all sorts
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14 of problems. That is an SEC filing. We cannot amend our Form
15 100.

16 THE COURT: In the past, Mr. Farina, I have asked and
17 the companies have acceded to having some kind of a link or
18 some kind of a page that describes the lawsuit.

19 MR. FARINA: I'm unfamiliar. It has never happened in
20 any of my cases. but I don't know the potential issues that
21 that may raise, so I can't -- I'm not in a position, today, to
22 agree to that.

23 THE COURT: Let me ask you to look into it.

24 MR. FARINA: I will.

25 THE COURT: And if it's a substantive objection, I'll

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1 defer to you.

2 MR. FARINA: Okay, thank you, your Honor. I will look
3 into it.

4 THE COURT: If it is not a substantive objection. I
5 think it is easy enough to do to have a link, a court order,
6 and the court papers. We don't need more than that.

7 MR. FARINA: Right. I will look into it with the
8 investor relations people.

9 THE COURT: Okay, thank you.

10 The measure opt-outs, you have one section postmarked
11 date, another one a receipt date. I think it should be
12 uniform, and it should be the postmark date.

13 You have pages of the definitions. Do we really need
14 them?

15 MR. DOWD: We shortened the definitions, but I think

16 some of the information there is kind of important. We thought
17 some of it we had to leave. Some of it we moved so that people
18 can see the release language where the releases were. But we
19 took out many of the definitions. I think there were
20 originally over 30, or maybe 28 or 29.

21 THE COURT: Not going to press my concern. I think
22 it distracts from the -- it makes clear, but if you want them,
23 you may have them.

24 Those are all my comments.

25 So, let me put it this way. You don't need another

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1 conference. I don't need to waste your time. Fix up the
2 remaining points and submit it to me with some dates. And if
3 you can get a reference over to a link to the company's web
4 page, that would be good. Or, vice versa, link from the
5 company's web page to Robbins Geller would also satisfy me.
6 Just something where someone sitting at a desk in Iowa can look
7 up and get more sense of allegations and what's happening.

8 MR. DOWD: Yes, your Honor.

9 MR. FARINA: Yes, your Honor.

10 THE COURT: All right. So when could I look for
11 having your final papers?

12 MR. DOWD: I would think I would like to have until
13 Tuesday, just because I want to talk to the web people and see
14 how long --

15 THE COURT: That's okay, take until Friday of next
16 week.

17 MR. DOWD: Pardon me?

18 THE COURT: Take until Friday of next week.

19 MR. DOWD: Thank you, your Honor.

20 THE COURT: That would be the 13th.

21 MR. DOWD: And, your Honor, do you want us to fill in
22 the dates --

23 THE COURT: I do.

24 MR. DOWD: So if we submit it on a week from Friday,
25 do you want us to run the dates off of maybe Monday of the next

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1 week?

2 THE COURT: Yes. Whatever you want of that is okay.

3 MR. DOWD: Okay. Just all of the dates click off of
4 when the preliminary approval order is entered. So if we file
5 on Friday, if you want us to run the dates off of Monday, we
6 would do that.

7 THE COURT: The only thing I need to give you is the
8 final approval day.

9 MR. DOWD: Yes, your Honor.

10 THE COURT: Let's go off the record.

11 (Discussion off the record)

12 THE COURT: After discussion, we fixed July 30 at
13 2:30 as the hearing date for final approval of the settlement.

14 MR. DOWD: Thank you, your Honor.

15 THE COURT: That date can be inserted into the order
16 that was submitted.

17 All right, I don't have anything else.

18 ALL: Thank you, your Honor.

19 THE COURT: Thank you very much.

20 (Adjourned)

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