Newsletter No.: 21 February 14, 2014

DEADLINE MONDAY MARCH 10, 2014

TO OPT INTO SETTLEMENT PLAN

Once you have read through the important details in this report and attachments you should promptly follow the directions about letting us know if you are opting in to the settlement since we have to prepare a form for you to sign.
Timelines under this plan are very short!

This letter follows the one just sent which gave you general information about the NuvaRing settlement. The plan itself (MSA) has virtually no details on how the money is to be divided among the many cases (this is unlike most plans where there is a grid or series of factors). The way in which it will be divided is left up a committee of plaintiffs' attorneys from various firms. Fortunately for us, one of the members of the committee is Shelly Leonard from our two combined firms.

As we noted in the first newsletter, while we know the numerator ($100 million), the denominator counts. If there are 3800 valid claims obviously each claim gets less than if the number of 2000. We know that some of the recently listed claims (which were never put into suit) are for minor injuries, not covered by the plan.

Still, there has to be relative ranking of injuries. Some tentative sums have been advanced which might be paid, per type of injury. These are set forth in the attachment called "Summary." Note: this is not cumulative; if you had more than one, you would get paid on the higher line.

The Summary also states that if there is money left over after paying this “base” sum, there will be additions made based on a long list of factors (p. 4). For the most part these factors relate to larger than usual consequences of injuries, such as long use of Coumadin. Other factors are the positive side of what in other litigation amount to deductions: ie, if were not a smoker, you would get a bonus point (if there are dollars available). In our opinion, these tables should be regarded as tentative and subject to change.

Yet to be decided are what factors might reduce a payment within each injury catgegory—eg smoking, obesity, or statute of limitations problems (as to the last see postscript).

If after payments were worked up on a scale like this there was money left over, then there could be adds on to each.

You should also keep in mind that if after you opt in, the claims administration denied your claim (and after any appeal), your case is automatically dismissed. You can’t decide then to “opt out.”

The plaintiffs’ team which negotiated this settlement with Merck have prepared a summary of the settlement plan and a “history” of events leading up the settlement. These are attached.

YOUR DECISION

To sum up, it seems a claimant has little choice but to opt in plan, even though you do not know what sum you will get offered. The procedure of opting in is set for the below, which we will supervise. (Note: it is an affirmative act to opt in; if you take no action, you are not in the plan.)

Once the time has passed for Merck to walk away from this plan, there then is a procedure to present claims, with its own deadlines. This will involve completing a form and providing records showing that you used the NuvaRing and had the injury complained of. For the most part we have all of this information already.

There are a lot of details in the MSA about the claims will be processed. Merck is using a Virginia company well known to

us as claims administrator. They have an online site: Brown Greer. Also, in case of disputes or appeals, a special master has been appointed.

LIENS

The issue of liens (claims by anyone who paid for your health care for the NuvaRing clots—government or private insurance) is going to be a tremendously complex problem here, and will have the effect for most of you of reducing what you end up with. The MSA makes it clear that any liens are your responsibility (as compared to other recent settlements where the supervising judge took control and got them reduced; or where the defendant paid the liens). Merck will not allow any payments to you until it has crystal clear proof that there are no liens or that all lien holders have been paid.

Any government payor (e.g., Medicaid) has right to get reimbursed in full. In a worst case example, your bills might have been $30,000—and that is what the committee awards you! Many private insurance plans, especially where the employer provided the plan, have the same rights. It is impossible for us to now know whether your private insurance plan has a lien right (let alone what it is), although you can make inquiries.

We are going through these headaches in the current Yaz settlement. It is taking months to find out if there is a claim of lien; if it is valid; if the amount is right; if you are in a state that bans private insurance company liens, etc. We and all the other law firms there have hired a specialist firm to deal with these lien holders. We propose to use a firm like that here, too. Since they handle cases in volumes, their rates are low but whatever they are, that will be at your expense. (In some instances, even if there are valid liens, they have gotten them substantially reduced.)

FEE AND EXPENSES

Pursuant to the contract you signed with us, we get our fee for our services, and also a return of expenses. This consists of 3 types of expenses. The first is case specific expenses for such matters as starting suit and obtaining medical records. Second is general firm expenses. We intend to put in this

category certain expenses we incurred in preparing the bellwether cases for trial (which per case may have exceeded what those people will get by way of settlement).

The third of expenses are those incurred by the national group of lawyers who did the years of work to bring the first case to trial—and lead to the settlement. This is set at 4% of your total recovery—though a judge can later reduce that. (We also surrender part of our fees to this group.)

THE PROCEDURE FOR OPTING IN

As we noted in the newsletter just sent out, are dividing our cases between our two firms. Women (or cases) with surnames A-K, will be handled by the Rheingold firm. Those from L-Z will be the Blau firm. (There are few minor exceptions, as where a firm had close contact on a bellwether case.) The firm names and numbers are at the end of this letter.

You have three ways to communicate your decision to the firm handling your case.

1—Email (and this includes clients who got this letter by mail; find a place we can email with you, not only for this phase but the actual workout of the settlement)

2—If we mailed this to you, and you don't have email, return the stamped card, addressing it to the appropriate firm.

3— If issues arise, phone 1 (800) 349 0004, and ask for Jay or Stella.

Once we know you are opting in, we will fill out the form. The law firm has to fill it out—and get it in by the March 10 deadline. You have to sign the form, but this has to be done in an on-line procedure not yet finalized.

A-K

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Postscript re Statute of Limitations (SOL). There may well be some sort of reduction if your suit was started too late—beyond the time permitted under state law to sue a manufacturer. The problem is now to determine when the SOL ran in any particular case. Before this settlement, Merck had been moving aggressively to throw out cases, and had succeeded in some. Appendix J in the plan lists the SOL for each state, but it is inaccurate. For example, in NJ you have to sue within two years of your injury but this time is extended until you learn you can sue for it.

We got a hint at the meeting for counsel that a crude and seemingly unfair method may be used to determine of the SOL had run out in a case—use the set time in the appendix, no matter if in fact the suit was timely under applicable law (as in the NJ example above). If on the face of it, the time has run, the committee may cut the award in half! See furher discussion in the attached Summary.

Summary of NuvaRing Settlement Program

I. Administration of the Settlement Program

The NuvaRing Settlement Program will be administered by evaluating objective data regarding each claim that is submitted by individual Claimants or their counsel to Plaintiffs' Claim Review Committee (PCRC). The PCRC will consist of six members; Roger Denton, Kristine Kraft, and Hunter Shkolnik, who are the Court-appointed lead counsel and Plaintiffs' Negotiating Committee (PNC) as defined in the Master Settlement Agreement (MSA), as well as Shelly Leonard, Greg McEwen, and Carmen Scott.

All final allocations of the claim categorizations and settlement amounts determined by the PCRC will be reviewed by the Special Master.

By participating in the NuvaRing Settlement Program, a Claimant agrees to be bound by the decision of the PCRC as to her claim categorization and Settlement Amount, unless a Claimant exercises her right to appeal such determination to the Special Master. In the event a Claimant exercises her right to appeal to the Special Master, then Claimant agrees to be bound by the final decision of the Special Master with respect to her Settlement Amount. The determination made by the PCRC, or the Special Master after appeal, shall be final and shall not be subject to any further review or appeal.

II. Eligibility

Only Claimants who have received verification pursuant to Section 3.05 (C) of the Master Settlement Agreement by the Claims Administrator that they have submitted a complete Claim Package and that the Claimant's status has changed to "Program Participant" are eligible to participate in the NuvaRing Settlement Program. The Claimant must also meet the following objective criteria establishing Claimant's (1) Proof of NuvaRing use contemporaneous with (2) a diagnosis by a healthcare professional of one or more "Qualifying Injuries" as defined below. Specifically, Claimants must satisfy the requirements set forth below in order to meet these two threshhold requirements and thereby qualify for a Settlement Payment under the Allocation Process.

A. Proof of NuvaRing Use

Acceptable proof of NuvaRing use requires documentary evidence of NuvaRing use that is:

(1) Contemporaneous with a diagnosis by a healthcare professional of one or more Qualifying Injuries; or

(2) Contemporaneous with the Claimant reporting symptoms to a healthcare professional that (a) are associated with one or more Qualifying Injuries and (b) which also subsequently results in a healthcare professional making a diagnosis of one or more Qualifying Injuries within forty-eight (48) hours of Claimant's last documented use of NuvaRing.

Acceptable documentary evidence of Proof of NuvaRing use shall include one or more of the following records:

(1) Contemporaneous NuvaRing prescription records from a pharmacy or medical facility reflecting Claimant was prescribed NuvaRing;

(2) Contemporaneous medical records from a prescribing physician showing that Claimant was prescribed NuvaRing or was provided samples by the physician;

(3) Hospital event records documenting the prescription or use of NuvaRing at or near the time of a Qualifying Injury, and/or;

(3) Other documentation, such as an Affidavit by a Healthcare Professional, attesting to the prescription of NuvaRing within the timeframes defined above.

As used herein, "Contemporaneous prescription records" refers to records that were created at, or about, the time the prescription was written or NuvaRing was provided to the Claimant. "Contemporaneous medical records" refers to records that were created at, or about, the time of a Qualifying Injury.

B. Qualifying Injuries

Claimants must submit proof of diagnosis of one or more of the following conditions by a healthcare professional that is supported by medical records. As stated above, the diagnosis must be made contemporaneous with the use of NuvaRing or within 48 hrs. of Claimant reporting symptoms associated with a Qualifying Injury to a healthcare provider.

(1) Deep Vein Thrombosis (DVT), regardless of where the clot arises in the body;

(2) Pulmonary Embolism (PE);

(3) Other venous thrombotic event;

(4) Death occurring as a result of one or more of the injuries described in 1-3 above.

(5) Arterial clot and prescription and use of anti-coagulant therapy for a minimum period of three months;

(6) Superficial thrombophlebitis and prescription and use of anti-coagulant therapy for a minimum period of three months.

Exclusions: Injuries that do not involve a thrombotic or arterial clot do not qualify for compensation under the terms of the Settlement Program. Examples of such excluded injuries include, but are not limited to, seizures, headaches, transient ischemic attack, heavy bleeding, and vaginal clots.

III. Settlement Amounts

The NuvaRing Settlement Program is intended to provide a minimum base amount to all enrolled Claimants who receive verification by the Claims Administrator that their status has changed to "Program Participant" and who present proof of NuvaRing use and one or more Qualifying Injuries as set forth above. Claimants will be placed into one or more of the six (6) injury categories identified in Section IV. Initial categorization will be made by the Claims Administrator as described in the MSA, but subject to modification by the PCRC, after review of the Claim Packages. The Base Settlement Amount will be paid to each Claimant based on their category of injury. In the event, a Claimant has received a medical diagnosis of more than one Qualifying Injury, the Claimant's Settlement Amount will be the one associated with the Qualifying Injury that provides the greatest compensation.

After the total number of Claimants in each category has been determined by the PCRC with approval of the Special Master, the PCRC will determine whether there are additional funds available for distribution to the Claimants. In the event there are additional settlement funds available, then Claimants may also qualify for an "Enhanced Payment" in addition to their Base Payment. In order to qualify for an Enhanced Payment, Claimants must present proof of one or more additional factors as set forth in Section IV. Claimants who are eligible for an "Enhanced Payment" may provide additional information to the PCRC for consideration.

Base Settlement Amounts

Eligible Claimants will receive the amount set forth below in accordance with the categorization of their claim. However, claims that have been determined by the PCRC to be procedurally barred based on the applicable Statute of Limitations shall be reduced by at least 50% and no more than 75%.

Injury Category	Base Settlement Amount
DVT	16,250
PE	26,000
Venous Stroke (SVT and CVT)	26,000
Other VTE[1]	10,000
Death	75,000
Arterial Clot[2]	7,500
Superficial Thrombophlebitis[3]	5,000

[1] Must be a medically diagnosed thrombosis of some nature in order to qualify.
[2] Provided prescriptions are produced showing anticoagulation for a minimum period of three months after diagnosis.
[3] Provided prescriptions are produced showing anticoagulation for a minimum period of three months after diagnosis.

Note: *The Base Settlement Amount is the gross settlement amount from which will be deducted attorneys' fees and expenses (including the Common expense assessment in the sum of 4.5% of the gross amount, as required by Amended CMO 3 entered by the Honorable Judge Rodney Sippel in the Nuvaring MDL: 1964 on 11/15/2011), and any medical liens.*

IV. Enhanced Settlement Payments

Upon reconciliation of the total settlement fund based on the number of Eligible Claimants who will receive the Base Settlement Amount for each injury category, the PCRC will determine whether additional funds are available for making Enhanced Settlement Payments. In the event there are additional funds available, Enhanced Settlement Payments will be considered and evaluated only for those Claimants who provide documentary proof of one or more of the factors set out below applicable to their Category of Injury.

The value of the Enhanced Settlement Payment will be based exclusively on the Damages and Causation Factors described below:

Hospitalization of greater than 5 days but less than 10 days - 1 point

Hospitalization between 10 and 30 days – 2 points

Hospitalization in excess of 31 days – 3 points

Surgical procedures, including but not limited to placement of a filter - 2 points

Post injury anticoagulation of greater than 12 months – 2 points

Permanent physical disabilities or documented cognitive deficits – 1 to 5 points

Death cases involving single women with dependents – 2 points

Death cases involving married women without dependents – 3 points

Death cases involving married women with dependents – 4 points

Non-smoker - 1 point

BMI of 30 or less at the time of injury - ½ point

Proof of negative genetic testing for Factor V – 1 point

Age of 26 or older at the time of the event – 1 point

Age of less than 25 at the time of the event – 2 points

Once the total points awarded to all Eligible Claimants is known, that total will be divided into the total settlement funds remaining after all Base Settlement Amounts are paid in order to determine the dollar value of each point.

HISTORY OF THE NUVARING® LITIGATION

The NuvaRing® Multidistrict Litigation (MDL 1964), began in 2008. A few cases were filed prior to this time, as early as 2007. Starting before the filing of these cases and continuing through the present, Plaintiffs' Counsel across the country dedicated years to this litigation, working to build a case against Merck in order to help women and families of decedents recover for the injuries they have suffered.

The Plaintiffs' Leadership Counsel (PLC) within the MDL and attorneys across the country have devoted significant time to developing the plaintiffs' liability case, spending well in excess of 25,000 hours collectively on this task. In addition, millions of dollars have been advanced by the PLC over the last six plus years in order to prosecute this case against Merck. Examples of the work performed include:

- Taking over 60 depositions of fact and expert witnesses, both in the United States and Europe;
- Working with over 15 expert witnesses involved in various disciplines in evaluating the medical and scientific literature related to NuvaRing;
- Retaining nine (9) experts on behalf of all plaintiffs in a multitude of medical and scientific disciplines, who were designated to testify on general liability and causation issues, and also working with these experts in connection with their expert reports and depositions;
- Evaluating the reports of Merck's expert witnesses, totaling fifteen (15), and ultimately deposing these experts about their opinions;
- Reviewing over 2.5 million pages of documents that have been produced by Merck's company files during discovery;
- Preparing briefs in connection with nine (9) Daubert motions, which are motions to preclude experts from giving opinions at trial based on their qualifications and/or the methodology used in their scientific studies;
- Preparing briefs in connection with sixteen (16) Summary Judgment Motions;
- Representing the plaintiffs in approximately sixty (60) MDL status conferences and hearings that have been held before The Honorable Judge Rodney W. Sippel in the United States District Court for the Eastern District of Missouri, where the MDL has been pending;
- Representing the plaintiffs in approximately sixty (60) additional status conferences held in front of The Honorable Judge Brian Martinotti in the New Jersey state court.

Some of the pivotal events in this litigation that resulted in the current Settlement Program are detailed below.

- The first group of NuvaRing® cases was scheduled to go to trial in the spring of 2013. These trials are known as "Bellwether Trials" and the cases are selected in consultation with the court in order to identify cases with injuries that are representative of other cases pending in the litigation. These cases are then worked up and prepared for trial. As part of the trial preparation, many depositions were taken, including depositions of general liability experts, case specific experts, treating physicians, plaintiffs, and others. A few months before the scheduled trial, the Defendants made a motion to dismiss all of the Bellwether cases, claiming that the Plaintiffs could not prove NuvaRing® caused the Plaintiffs' blood clots.

After extensive motion practice and a hearing in the New Jersey Superior Court, Judge Martinotti ruled in favor of the defendants in each case and dismissed every Bellwether case. This was a very significant loss for the Plaintiffs, with wide-ranging negative implications for the litigation as a whole.

- Judge Martinotti also ruled that the NuvaRing® labeling was adequate under New Jersey law and thus any claims pursued under New Jersey law could not proceed. This was another very significant loss with serious adverse effects for the Plaintiffs in this litigation. In short, any case filed in New Jersey would have a similar outcome and result in dismissal before trial and therefore no compensation.

- Similarly, in the MDL, Merck sought to have the court dismiss the Bellwether case. However, Judge Sippel rejected Merck's Motion and allowed one case to be set for trial. Additionally, Judge Sippel rejected Merck's attempt to exclude all of the Plaintiffs' experts from giving their opinions at trial, and issued Orders finding that Plaintiffs could testify at trials about each of the opinions in their expert reports.

- In 2013, the FDA took various actions which severely hurt the Plaintiffs' cases. In January 2013, the FDA issued a comprehensive scientific report rejecting a Public Citizen's Petition seeking to strengthen the warnings on third generation birth control products, including NuvaRing®. The Petition sought FDA action requiring the stronger blood clot warning for this class of drugs. This report was immediately seized upon by Merck to further support their position that NuvaRing® is no more dangerous than second generation pills which have been on the market for decades. Merck's experts were allowed by Judge Martinotti to supplement their reports before trial to include this FDA information in further support of their claim that NuvaRing® does not have an increased risk of Venous Thrombotic Events ("VTE" also referred to in this Summary as "venous blood clots") in comparison to second generation birth control products.

- In addition, on October 3, 2013, the FDA approved an updated NuvaRing® label in which the FDA decided not to reference or take into account the key epidemiology study conducted by Dr. Lidegaard on users of NuvaRing® in comparison to second generation birth control pills. The Lidegaard study, which was the first published epidemiological study on NuvaRing®, was critical to our case because it formed the basis of our experts' opinions that NuvaRing® has a higher risk of venous blood clots in comparison to the traditional second generation birth control products. As a result, this study also formed the basis of our experts' opinions that the original NuvaRing® label inadequately warned of the risk of venous thrombotic events.

- However, as noted above, the FDA rejected the findings in Dr. Lidegaard's study which reported a near doubling of the risk of blood clots in NuvaRing® users in comparison to users of second generation products and found a much higher risk compared to persons not using any type of birth control. Unfortunately, this was unlike the action the FDA took with respect to the Yaz®/Yasmin® labels in which the FDA required the reference to the Lidegaard study on Yaz®/Yasmin® and therefore Bayer/FDA strengthened the warning about the risk of venous blood clots. Instead, with respect to NuvaRing®, the FDA accepted

the results of the epidemiological study funded by Merck, which found that there was no increased risk of venous blood clots with NuvaRing®.

- In addition, in the October 2013 label change, the FDA referenced certain findings of a study that the FDA had conducted based on data collected from Kaiser Permanente and two state Medicaid agencies on users of certain birth control products, including NuvaRing®. However, the FDA decided to only reference the portion of the Study results which found that there was no increased risk of venous blood clots in new users of NuvaRing® and chose not to reference the portion of the study that found there was an increased risk in women who switched from using certain birth control products to NuvaRing®. The results of this Study had become available in October 2011, but when the Study was finally published in 2013, only the portion of the Study results finding no increased risk of venous blood clots became part of the published Study.

- Moreover, the FDA allowed Merck to remove the original language in the label that implied NuvaRing® was as safe as other birth control products. The original label was misleading in the view of our experts because it stated that some studies had concluded that the risk of venous blood clots was greater in third generation products compared to second generation, while other studies found that third generation products were not any more risky than second generation products and therefore, it was unknown whether NuvaRing® presented a higher risk of venous blood clots. However, in the October 2013 label, the FDA not only cited the study funded by Merck, but also removed the following language, "It is unknown if the risk of blood clots is different with NuvaRing® use than the use of certain birth control pills."

As the above litigation history shows, the nationwide litigation climate for the NuvaRing® cases is not a good one. In particular, in the view of Plaintiffs' counsel, the various actions by the FDA have created an insurmountable burden to having these cases proceed to, or succeed in, trial.