

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: REMICADE ANTITRUST : CIVIL ACTION
LITIGATION :
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 : NO. 17-CV-4326

MEMORANDUM

Joyner, J.

January 22, 2018

Before the Court are Plaintiff National Employees Health Plan's ("NEHP") and Plaintiff Local 295 IBT Employer Group Welfare Fund's ("Local 295") Motion to Appoint Robbins Geller Rudman & Dowd LLP as Interim Class Counsel and Jayne A. Goldstein of Shepherd, Finkelman, Miller & Shah, LLP as Interim Liaison Counsel (Doc. Nos. 36 & 37), Plaintiff UFCW Local 1500 Welfare Fund's Application to Appoint Gregory S. Ascioffa of Labatton Sucharow LLP to Plaintiffs' Steering Committee (Doc. No. 35), Plaintiff City of Providence, Rhode Island's Application to Appoint Whitney E. Street of Block & Leviton LLP to Plaintiffs' Steering Committee (Doc. No. 40), Plaintiff Twin Cities Pipe Trades Welfare Fund's Application to Appoint Heidi M. Siltan of Lockridge Grindal Nauen P.L.L.P. to Plaintiffs' Steering Committee and Dianne Nast of NastLaw LLC as Interim Liaison Counsel (letter dated Dec. 12, 2017), and the parties' responses thereto (Doc. Nos. 43 and 44). For the following reasons, the Court GRANTS Plaintiffs NEHP and Local 295's Motion to Appoint

Robbins Geller Rudman & Dowd LLP as Interim Class Counsel and Jayne A. Goldstein of Shepherd, Finkelman, Miller & Shah, LLP as Interim Liaison Counsel and DENIES the remaining Applications.

I. Background

Multiple plaintiffs appear before the Court asserting claims as direct-purchasers against Janssen Biotech, Inc. ("Janssen") and its parent, Johnson & Johnson. Each of these plaintiffs have asserted individual claims on behalf of themselves and class action claims on behalf of those similarly situated. The plaintiffs contend that Defendants Janssen and Johnson & Johnson have violated state and federal antitrust laws by undertaking anticompetitive conduct with regard to their pharmaceutical medication, Remicade. The Court has since consolidated these class action lawsuits into this single action. The Court then provided plaintiffs' counsel the opportunity to organize and seek the appointment as interim class counsel. As discussed below, the Court now has two competing applications for such appointment.

II. Legal Standard

Under Rule 23 of the Federal Rules of Civil Procedure, a court "may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23(g)(3). The same factors enumerated in Rule 23(g)(1) that govern the appointment of class

counsel apply when appointing interim class counsel. In re Shop-Vac Mktg. & Sales Practices Litig., No. 4:12-md-2380, 2013 WL 183855, at *1 (M.D. Pa. Jan. 17, 2013); see also Santos v. Carrington Mortgage Services, LLC, No. 2:15-cv-864, 2017 WL 215969, at *1 (D.N.J. Jan. 18, 2017). Rule 23(g)(1) provides that, in making such an appointment, the Court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law;
and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions

about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

Fed. R. Civ. P. 23(g) (1). When more than one adequate applicant seeks appointment as interim class counsel, the Court must "appoint the applicant best able to represent the interests of the class." Fed. R. Civ. P. 23(g) (2).

III. Discussion

There are two competing applications before the Court. Plaintiffs NEHP and Local 295 propose that attorneys from Robbins Geller Rudman & Dowd LLP ("Robbins Geller") act as interim class counsel, representing the proposed class under a single-firm structure. Plaintiffs UFCW Local 1500 Welfare Fund, City of Providence, and Twin Cities Pipe Trades Welfare Fund propose the creation and appointment of a Plaintiffs' Steering Committee ("PSC"), whereby three attorneys would lead a coordinated multi-firm effort to represent the proposed class.

The applications demonstrate, to the Court's satisfaction, that Robbins Geller and the members of the proposed PSC are adequate to serve as interim counsel under the factors set forth in Rule 23(g) (1). Both groups of attorneys have worked diligently in identifying and investigating potential claims. Both groups have significant experience in handling complex

antitrust class action litigation. Both groups appear to have a strong grasp on the applicable law. Lastly, both groups appear to have more than adequate resources at their disposal to represent the proposed class. Because there are two competing applications, both of which we find adequate under the factors listed in Rule 23(g)(1), we must now determine which application is "best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2).

At this point in the litigation, we believe the proposed class is best served under a single-firm structure advanced by NEHP and Local 295. The PSC applicants are correct that a multi-firm structure may, at times, promote effective representation of the class's interests. However, this is not such a case. With attorneys from three firms working on behalf of the proposed class, the PSC naturally runs a greater risk of increased costs, difficulties in managing the litigation, and efficiently delegating tasks. See In re Milestone Scientific Sec. Litig., 187 F.R.D. 165, 181 (D.N.J. 1999). The PSC has not demonstrated how the possible benefits derived from a multi-firm structure outweigh these inherent risks. We will therefore not burden the proposed class with the litigation-by-committee approach. Accordingly, we find in favor of NEHP and Local 295's proposal and approve Robbins Geller as the interim class counsel and Jayne A. Goldstein of Shepherd, Finkelman, Miller & Shah, LLP as

Interim Liaison Counsel.¹

IV. Conclusion

For the foregoing reasons, the Court GRANTS Plaintiffs NEHP and Local 295's Motion and DENIES the remaining Applications. An appropriate order will follow.

¹ Should this litigation significantly increase in scope, or upon any other showing of good cause, this Court is willing to reconsider this ruling.

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ORDER

AND NOW, this 22nd day of January, 2018, upon consideration of Plaintiff National Employees Health Plan's ("NEHP") and Plaintiff Local 295 IBT Employer Group Welfare Fund's ("Local 295") Motion to Appoint Robbins Geller Rudman & Dowd LLP as Interim Class Counsel and Jayne A. Goldstein of Shepherd, Finkelman, Miller & Shah, LLP as Interim Liaison Counsel (Doc. Nos. 36 & 37), Plaintiff UFCW Local 1500 Welfare Fund's Application to Appoint Gregory S. Ascioffa of Labatton Sucharow LLP to Plaintiffs' Steering Committee (Doc. No. 35), Plaintiff City of Providence, Rhode Island's Application to Appoint Whitney E. Street of Block & Leviton LLP to Plaintiffs' Steering Committee (Doc. No. 40), Plaintiff Twin Cities Pipe Trades Welfare Fund's Application to Appoint Heidi M. Siltan of Lockridge Grindal Nauen P.L.L.P. to Plaintiffs' Steering Committee and Dianne Nast of NastLaw LLC as Interim Liaison Counsel (letter dated Dec. 12, 2017), and the parties' responses thereto (Doc. Nos. 43 and 44), it is hereby ORDERED that:

- 1) Pursuant to Rule 23(g) (3) of the Federal Rules of Civil

Procedure, the Court hereby appoints Robbins Geller Rudman & Dowd LLP as Plaintiffs' Interim Class Counsel and Jayne A. Goldstein of Shepherd, Finkelman, Miller & Shah, LLP as Interim Liaison Counsel.

2) Plaintiffs' Interim Class Counsel shall be responsible for performing work to advance the litigation for the common benefit of all Plaintiffs and proposed class members, including all Plaintiffs and proposed class members in related actions subsequently filed in or transferred to this District (collectively, "Plaintiffs"). Plaintiffs' Interim Class Counsel's responsibilities for coordinating and organizing Plaintiffs in the conduct of this litigation shall:

- (a) Organize and conduct pretrial law and motion practice, including class certification;
- (b) Organize and conduct discovery, including the conduct of all discovery on behalf of Plaintiffs consistent with Rule 26 of the Federal Rules of Civil Procedure;
- (c) Act as spokesperson at pretrial conferences;
- (d) Enter into stipulations with opposing counsel, as necessary, for the conduct of the litigation;
- (e) Consult with and retain experts, as

necessary;

- (f) Conduct trial and post-trial proceedings;
- (g) Encourage cooperation and efficiency among all Plaintiffs' counsel;
- (h) Call meetings of Plaintiffs' counsel, when appropriate;
- (i) Make all work assignments for Plaintiffs' counsel;
- (j) Monitor the activities of all Plaintiffs' counsel to ensure that the litigation is conducted effectively, orderly, efficiently and economically;
- (k) Ensure that schedules are met, and that unnecessary, duplicative, or unproductive expenditures of time and expense are avoided;
and
- (l) Negotiate with defense counsel with respect to settlement and other matters, if and as appropriate.

- 3) Liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group, and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison

group. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request.

- 4) Plaintiffs' Interim Class Counsel shall also be the contact between Plaintiffs' counsel and counsel for Defendants, as well as the spokespersons for Plaintiffs' counsel, including Plaintiffs' counsel in related actions subsequently filed in or transferred to this District.
- 5) No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any Plaintiff except through Interim Class Counsel.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.