

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

IN RE PRADAXA)	MDL No. 2385
(DABIGATRAN ETEXILATE))	3:12-md-02385-DRH-SCW
PRODUCTS LIABILITY)	Judge David R. Herndon
LITIGATION)	

This Document Relates to:

All Cases

CASE MANAGEMENT ORDER NO. 91

**Regarding Motion to Clarify and Amend, and Alternatively, Stay and Amend,
CMO 88**

On January 13, 2015, Todd Mathews of Gori Julian & Associates, P.C., (counsel of record for certain plaintiffs with actions pending in this MDL) filed a Motion to Clarify and Amend, and Alternatively, Stay and Amend, CMO 88 (Doc. 615).¹

On December 29, 2014, the Court entered CMO 88, Phase One Payment Allocations (Doc. 611). In relevant part, CMO 88 states as follows:

In addition, the Phase One Payments account for a reserve of certain funds as indicated on Exhibit A. If the reserve funds are not expended to potential claimants, then the funds shall be distributed pro rata based upon the previous Phase One Payments at the same time as any excess Common Benefit Expense is distributed to Phase One Participating Claimants

¹ Although the motion relates to "all cases," it was not filed in the Master Docket because attorney Mathews is not lead or liaison counsel and cannot file motions on behalf of all plaintiffs in the master docket. Accordingly, attorney Mathews filed the subject motion in certain member actions. Thereafter, the Court docketed the motion in the Master Docket and directed the PSC and defendants to respond. Responsive pleadings were filed on January 22 and January 23, 2015 (Doc. 620 and Doc. 621).

(Doc. 611, p. 5). Exhibit A notes that, “\$3,315,438.81 is being held in reserve per Court Order” (Doc. 611-1, p. 1 n. 1.).

The subject motion asks the Court to provide clarification regarding the above referenced reserve. Specifically, counsel asks the Court to clarify whether the specified funds are being held in reserve for plaintiffs, such as certain plaintiffs represented by attorney Matthews, who are presently appealing with prejudice dismissals associated with the Pradaxa Product Liability Litigation Master Settlement Agreement. Alternatively, if CMO 88’s reserve of \$3,315,438.81 is not intended to maintain the status quo pending appeal, attorney Matthews requests that the Court stay CMO 88 until such time as CMO 88 is amended to specifically set-aside and reserve an amount of funds to be determined by the Court to account for such appeals.

Defendants have responded to the motion (Doc. 620). In light of the pending appeals on behalf of certain plaintiffs represented by attorney Matthews, the defendants believe that it is appropriate to reserve funds. However, the defendants object to staying the implementation of CMO 88. The defendants note that settlement funds have been and are being paid, and a stay of CMO 88 would needlessly interrupt the settlement process.

The PSC has also responded to the motion (Doc. 619). The PSC is opposed to the request to clarify and to the request to stay. The PSC states that the subject cases are clearly not entitled to recovery from the settlement fund, regardless of

the outcome of any appeal (citing to paragraph 7.6 of the Master Settlement Agreement).

Having considered the subject motion and the responses, **the Court provides the following clarification:**

CMO 88's reserve of \$3,315,438.81 is not reserved for any particular claimant or group of claimants (*i.e.* the funds are not specifically reserved for claimant's represented by attorney Matthews who are presently appealing a with prejudice dismissal associated with the Pradaxa Product Liability Litigation Master Settlement Agreement). The funds have been set aside for *any* possible claims against the settlement agreement. The funds will be held in reserve until such time as potential claims can reasonably be deemed exhausted in the discretion of the Court.

FURTHER, the motion to stay and/or to amend CMO 88 are DENIED as MOOT.

SO ORDERED.

Date: January 26, 2015

Digitally signed by
David R. Herndon
Date: 2015.01.26
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**District Judge
United States District Court**