

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

THE ESTATE OF PAULETTE GARCIA-PHINN, CHARLENE PHINN AS PERSONAL REPRESENTATIVE, Plaintiff, v. ORGANON, USA, INC., ORGANON PHARMACEUTICALS USA, INC., ORGANON INTERNATIONAL, INC., SCHERING PLOUGH CORPORATION and MERCK & CO., INC., Defendants. Civil Action No. 1:13-01357-JMC ORDER APPROVING SETTLEMENT

This matter is before the court on a Petition for Approval of Wrongful Death Settlement (the "Petition") pursuant to S.C. Code Ann. §§ 15-51-41 to -42 (2013) filed by Plaintiff/Petitioner Charlene Phinn ("Plaintiff"), as Personal Representative of the Estate of Paulette Garcia-Phinn. (ECF No. 51.) Upon review and consideration of the Petition and supporting documents, the Settlement Agreement and Release executed by the Petitioner, the Certificate of Plaintiff's Counsel and the facts and circumstances surrounding this action, the court finds that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and the Estate of Paulette Garcia-Phinn.

RELEVANT BACKGROUND TO THE PETITION

In the subject action, Plaintiff asserted twelve (12) causes of action including claims for wrongful death, negligence, strict liability, unfair trade practices, and fraud related to Ms. Garcia-Phinn's use of Cyclessa®. (ECF No. 1.) Following the expiration of the discovery deadline, Defendants filed a Motion for Summary Judgment on March 31, 2014, along with

supporting affidavits, other exhibits and a memorandum of law. (ECF No. 31.) On April 17, 2014, Plaintiff filed a Memorandum in Opposition to Defendants' Motion for Summary Judgment and a Motion for Extension of Time to Supplement Rule 26(a)(2)(B) Disclosures to Provide Expert's Conclusions. (ECF Nos. 34, 35.) Defendants filed their Reply to Plaintiff's Opposition to Motion for Summary Judgment and their Opposition to Plaintiff's Motion for Extension on April 29, 2014. (ECF Nos. 37, 38.)

In their Motion for Summary Judgment, Defendants noted that the risk of VTE has long been associated with all combined hormonal birth control pills such as Cyclessa® since the introduction of the first birth control pills in the 1960s. (ECF No. 31-1 at 9.) Defendants argued, *inter alia*, that summary judgment was warranted because: (1) the warnings of the risk of venous thromboembolism ("VTE") in the FDA-approved Cyclessa® label were adequate, (2) Ms. Garcia-Phinn's healthcare provider – the learned intermediary to whom the legal duty to warn is owed – was clearly warned about the risk of VTE associated with Cyclessa®, (3) there is no evidence that a different warning would have changed the healthcare provider's decision to provide Cyclessa® to Ms. Garcia-Phinn, and (4) there is no evidence that Ms. Garcia-Phinn's injury would have been avoided had she used a different combined oral contraceptive. Accordingly, Defendants argued that Plaintiff could not sustain her claim of failure to warn or any of the causes of action asserted. (ECF No. 31 at 1–2.)

In support of the Motion for Summary Judgment, Defendants submitted an affidavit from Ms. Garcia-Phinn's healthcare provider and affidavits and accompanying reports from Defendants' medical and regulatory experts. (ECF Nos. 31-3, 31-4, 31-5, 31-6.) In support of her Motion for Extension of Time to designate an expert, Plaintiff filed a belated expert "affidavit/report," which Defendants opposed on the grounds that the purported designation was

untimely and unduly prejudicial to Defendants and that no good cause existed to modify the court's scheduling order. (ECF No. 35-1.) A hearing on the parties' respective motions was set for July 2, 2014. On or about June 19, 2014, the parties notified the court that an agreement had been reached to resolve the case. The subject Petition for Approval of Wrongful Death Settlement followed.

#### FINDINGS AND CONCLUSION

The court finds that the parties arrived at this settlement in good faith and after extensive negotiations and with the advice of counsel. As required by S.C Code Ann. §15-51-41 (2013), the court reviewed the Petition and received into evidence those facts necessary and proper to evaluate the settlement proposal, pursuant to S.C. Ann. §15-51-42 (2013). The court finds that the Petition meets the requirements of S.C. Code Ann. §§ 15-51-41 to -42 (2013). The court further finds that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and the Estate of Paulette Garcia-Phinn. Accordingly, it is hereby **ORDERED** that the Petition for Approval of Settlement Agreement be, and the same is hereby **GRANTED**; and it is further

**ORDERED** that the Settlement Agreement and Release executed by the Personal Representative in this matter is hereby **APPROVED**; and it is further

**ORDERED** that Plaintiff Charlene Phinn, as Personal Representative of the Estate of Paulette Garcia-Phinn, is hereby authorized to conclude the settlement; and it is further

**ORDERED** that Defendants Organon USA, Inc., Organon Pharmaceuticals USA, Inc., Organon International, Inc. and Merck & Co., Inc. (f/k/a Schering-Plough Corporation) and all those on whose behalf payment is made and any other persons who could be responsible because of the actions on whose behalf the settlement proceeds are being paid as resulting from claims in

this action, are relieved and discharged from further liability and shall have no obligation or legal duty to see to the appropriate or proper distribution of the settlement proceeds among either the wrongful-death beneficiaries or any persons entitled to proceeds of the settlement; and it is further

**ORDERED** that once payment has been made to Plaintiff Charlene Phinn, as Personal Representative of the Estate of Paulette Garcia-Phinn, the obligations of Defendants as resulting from claims in this action and those on whose behalf payment is made, and all those who could be responsible for the actions of these persons, are fully and completely released and finally and forever discharged from any further responsibility in connection with this action.

**IT IS SO ORDERED.**

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

August 28, 2014  
Columbia, South Carolina