

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

OTTO MALONE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-cv-01325

ACTAVIS TOTOWA, LLC,

Defendants.

MEMORANDUM OPINION & ORDER

Pending is plaintiffs' verified motion to reinstate dismissed case to the court's active docket [Docket 29].

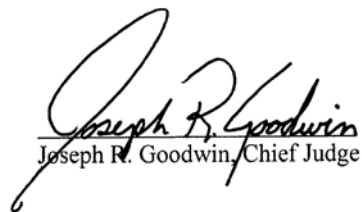
This civil action was transferred to MDL 1968 from the Southern District of Texas on December 9, 2009. Counsel for the plaintiff claims that neither he nor the plaintiff received notice of the Settlement Agreement entered September 1, 2010, until counsel received a copy of the court's PTO #84. The purpose of PTO #84, entered August 22, 2011, was to remove from the active docket of MDL 1968 those cases subject to the Settlement Agreement. Counsel contacted attorney Meghan Johnson Carter of the Law Firm of Motley Rice LLC after receiving PTO #84 and requested a copy of Settlement Agreement. Counsel asserts that the plaintiff was unaware that he was required to submit a claim form seeking an award under the Settlement Agreement until he received a copy of the Settlement Agreement and the Claim Form from Ms. Carter on August 24, 2011. Counsel for the plaintiff was advised by Ms. Carter on August 25, 2011, that defense counsel agreed to allow

the plaintiff to submit a claim form if done so immediately with all of the required medical records. Plaintiff was also informed that the Special Master was close to completing review of all of the claims.

Plaintiff requests that his case be reinstated to the court's active docket so that he will have adequate time to obtain his deceased wife's medical records and submit a Claim Form in order to have an opportunity to participate in the Settlement Agreement. Given that the plaintiff has been given consent to participate in the Settlement Agreement claims process and is taking the necessary actions to do so, there is no good cause to reinstate the case on the active docket of MDL 1968. Accordingly, the motion is **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: September 21, 2011


Joseph R. Goodwin, Chief Judge