Neutral Citation Number: [2022] EWHC 670 (QB)

Claim No: (1) F90LV055
Claim No: (2) H90LV010

IN THE HIGH COURT OF JUSTICE
LIVERPOOL DISTRICT REGISTRY
QUEEN'S BENCH DIVISION

Manchester Civil Justice Centre,
1, Bridge Street West,
Manchester M60 9DJ

Date: 23/03/2022

Before :

THE HON. MR JUSTICE TURNER

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Between :

SARAH JANE WILSON & OTHERS **(2) ANDREW FORSHAW** **(A protected party proceeding by his mother and litigation friend SUSAN LESLEY FORSHAW) & OTHERS**	**Claimants**
- and -	
BAYER PHARMA AG **(2) SCHERING HEALTH CARE LIMITED** **(3) AVENTIS PHARMA LIMITED** **(4) SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**	**Defendant**

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- -

Mr Craig Ralph for the **First Claimant**
Lesley Anderson QC (instructed by **PGMBM Law Ltd**)

Hearing dates: 21 March 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. Primodos, a hormone based pregnancy test ("HPT"), first became available in the UK in 1959. It was very different from the simple home pregnancy tests now widely available. The user took two pills the combination of which induced menstruation in those who were not pregnant but not in those who were.
2. Over time, concern grew that Primodos may have been responsible in some cases for causing congenital malformations, miscarriages and stillbirth. It was eventually withdrawn from the market in 1978.
3. Proceedings were brought by plaintiffs alleged to have suffered injury caused by Primodos against the first and second defendants in September 1977 as manufacturers and UK marketers of the drugs respectively. Those proceedings, however, were discontinued in July 1982 with the leave of the court. It was left open to the plaintiffs to apply subsequently for leave to bring further actions but only in the event of a scientific revolution or marked change in circumstances.
4. The present proceedings comprise two tranches of claims in which the lead claimants are Sarah Wilson and Andrew Forshaw respectively. The Wilson claim form was issued on 23 December 2019 and the Forshaw claim form on 2 July 2021. Altogether, 231 claimants have brought their claims under one or other of these claim forms.
5. The firm of solicitors representing the claimants was PGMBM Law Limited ("PGMBM"). Their initial enthusiasm for pursuing the litigation was evident and the firm's website stated:

> "PGMBM is committed to making sure all victims are compensated for the avoidable pain and suffering they have been forced to endure."

6. This initial enthusiasm has since waned and as from 21 January 2022 PGMBM terminated the retainers of a cohort of 183 claimants who wished to continue with their claims. Their retainers with remaining 48 claimants, who now wish to discontinue their claims, persist solely for the purpose of applying for and achieving such discontinuance.
7. PGMBM now apply to this court (i) to come off the record and (ii) for permission for the 48 claimants to discontinue. The circumstances in which these developments have taken place are covered by legal professional privilege and so I will make no reference to such matters in this judgment. This also explains why I ordered that the hearing should take place in private and in the absence of the defendants.
8. The managing judge in this litigation is Yip J who must also remain uninformed of the contents of the privileged material.

9. It also follows that no-one must share or discuss such privileged material with any third parties including but not limited to journalists and politicians and on social media.

REPRESENTATION

10. PGMBM appeared before me represented by leading and junior counsel. Sarah Wilson was represented by Mr Ralph of counsel. About 50 or so claimants appeared who were now representing themselves. Each was given the opportunity to make his or her representations to the Court; and I am grateful to those who accepted my invitation for the dignity and restraint with which they expressed their views.

THE APPLICATION TO COME OFF THE RECORD

11. CPR 42 governs the procedure to be adopted when a solicitor seeks an order that he has ceased to act for a party. It provides:

> "**Order that a solicitor has ceased to act**
>
> **42.3**
>
> (1) A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.
>
> (2) Where an application is made under this rule –
>
> (a) notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise; and
>
> (b) the application must be supported by evidence.
>
> (3) Where the court makes an order that a solicitor has ceased to act –
>
> (a) a copy of the order must be served on every party to the proceedings; and
>
> (b) if it is served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service."

12. It is to be noted that the Rule gives no guidance on the principles to be applied by the Court when considering such an application. An important distinction, however, falls to be drawn between the contractual termination of the retainer and the court's declaration that the solicitor in question has ceased to act.

13. A solicitor may terminate his or her retainer on a number of grounds. In order to preserve privilege, I will not identify the grounds relied upon for the

purposes of these applications. Indeed, it is quite unnecessary for me to do so. It is simply not open to this Court to adjudicate on the merits of those grounds. Many individual claimants expressed acute and well-articulated disappointment; perceiving that they had been positively encouraged to join in the litigation by PGMBM only to be let down and abandoned at a late stage. PGMBM, on the other hand, contended that they have behaved with propriety throughout. The bottom line, however, is that a court cannot normally (if at all) require a solicitor to continue to act for a party whose retainer he or she has terminated. In circumstances in which the termination of the retainer is unjustified then the individual claimant may seek a seek a remedy in damages, indemnity or costs against the solicitor. I repeat that I make no relevant finding on that issue.

14. It is unnecessary for me to adjudicate upon whether there are any circumstances in which a court may properly decline to make an order under CPR 42.3 where the solicitor has unequivocally terminated his or her retainer. In this case, I can see no advantage and every disadvantage if I were to perpetuate the fiction that PGMBM and the claimants are acting as solicitors and clients respectively when they are clearly not.
15. Notwithstanding these observations, I must bear in mind that, whatever the rights and wrongs of the actions of PGMBM, the claimants (some of whom suffer from a range of disabilities which are liable to present real challenges to their ability to conduct litigation) now find themselves in the invidious position of facing the challenge of progressing their claims in person unless and until alternative representation can be found and funded.
16. A further potential problem arises from the application of the principles set out in ***Lewis and Another v Daily Telegraph Ltd. (No. 2)*** [1964] 2 Q.B. 601. In that case, decided under the old Rules of Court, the Court of Appeal ruled that co-plaintiffs in a consolidated action were not entitled to separate legal representation without leave of the court. It remains generally the case that claimants must justify representation by more than one firm of solicitors (see ***Ong v Ping*** [2015] EWHC 3258 (Ch)).
17. In this case, I struggle to see how Yip J could continue to exercise case management discipline unless and until the 183 individual claimants are able to agree and retain alternative solicitors to represent their common interests. The best I can do at this stage is to give permission to these claimants to continue unrepresented until further order of the court. The matter may then be reviewed by Yip J, before whom a CMC has been listed tomorrow. It is not for me to trespass into areas which go beyond the strict parameters of the applications immediately before me and I resist the temptation to identify various options which may be open to Yip J in determining the preferred way forward.
18. One consequence of being on the record is that the solicitor's business address remains its client's address for service. In order to mitigate to some

extent the procedural chaos which would otherwise be liable to ensue in the event of coming off the record forthwith, PGMBM have offered to undertake to continue acting as a post-box for those clients who wish to take advantage of the offer until the end of this year without imposing a fee. They have also indicated that they will not pursue any of the claimants in respect of costs incurred to date. These concessions must be incorporated into the terms of the order of this Court.

THE APPLICATIONS TO DISCONTINUE

19. By letter to all the claimants dated 19 January 2020, PGMBM indicated that its retainer would be terminated at 5:00pm 21 January save in respect of those claimants who wished to discontinue in respect of whom the retainer would continue until after permission to discontinue had been granted.
20. The applications to discontinue are governed by CPR 38.2 which provides in so far as is relevant:

> "**Right to discontinue claim**
>
> 38.2
>
> (1) A claimant may discontinue all or part of a claim at any time.
>
> (c) where there is more than one claimant, a claimant may not discontinue unless –
>
> (i) every other claimant consents in writing; or
>
> (ii) the court gives permission."

21. In this case, the 183 claimants who wish to proceed have not consented in writing. Indeed, PGMBM have not requested such consents arguing that it would not be practical to obtain them.
22. Nevertheless, the usual position is that no party can be made to litigate against their will. In my view, refusing or even postponing the applications to discontinue would seriously hamper the manageability of these. proceedings with little or no clear advantage either to the group of claimants who wish to carry on or those who do not. The challenge of dealing with this case justly and at proportionate cost will be hard enough with 182 litigants in person presently at the helm. How much harder would it be to cope with 231 litigants in person 48 of whom want to play no further part in the proceedings?
23. It follows that I grant the applications to come off the record and for discontinuance subject to the formal concession made by PGMBM to act as a post box and with respect to any claims for costs against the claimants.

24. In addition there are a small number of bespoke applications with respect to individual cases which I am prepared to grant in accordance with the drafts with which I have been provided and without further analysis.