



Court Doubles Down on *Lone Pine* Order Requiring Plaintiffs To Come Forward With Basic Information Or Risk Dismissal

by Carter F. Thurman

An [earlier WLF Legal Pulse post](#) discussed the increasingly common feature that plagues multidistrict litigations (“MDLs”)—plaintiffs’ counsel’s attempt to inflate inventories with weak or unsubstantiated claims that can clog the judicial process and unfairly burden defendants. The U.S. District Court for the Eastern District of Louisiana recently reaffirmed a key Case Management Order that goes to the heart of this issue. The recent court ruling in *In re Taxotere (Docetaxel) Prods. Liab. Litig.*, No. 16-2740, 2024 WL 4362982 (E.D. La. Oct. 1, 2024), reinforces the idea that plaintiffs in mass tort cases must be prepared to substantiate their claims early on or risk dismissal.

In February 2024, the district court entered a *Lone Pine* order requiring plaintiffs to provide expert declarations confirming the diagnosis of permanent chemotherapy-induced alopecia (“PCIA”)—basic “information which plaintiffs should have had before filing their claims pursuant to Fed. R. Civ. P. 11(b)(3).” *In re Taxotere (Docetaxel) Prods. Liab. Litig.*, No. 16-2740, 2024 WL 718698, at *3 (E.D. La. Feb. 21, 2024). The order required, among other things, that plaintiffs obtain proof of the alleged injury via expert declaration. *In re Taxotere*, 2024 WL 4362982, at *1. Regarding deceased plaintiffs, the order required plaintiffs to “file an affidavit from a qualified expert certifying that the expert physically examined the deceased and that, on any occasion prior to death, the deceased was diagnosed with permanent chemotherapy-induced alopecia.” *Id.*

After securing several extensions from the court-ordered deadline to comply with the *Lone Pine* order, plaintiffs moved the court to reconsider and/or amend the *Lone Pine* order as it relates to deceased plaintiffs. *Id.* *2. Plaintiffs argued that the court’s order imposed “an unfair burden on the families and representatives of deceased plaintiffs” as its effect would result in the dismissal of claims because it requires an in-person examination and pre-death diagnosis of PCIA. *Id.* Plaintiffs also argued that the order subverts the protections of the Federal Rules of Civil Procedure, including Rule 56, because product liability law does not *per se* require such an evaluation. *Id.*

The district court denied plaintiffs’ motion for reconsideration. The district court first found that the requirements of the *Lone Pine* order did not impose an unfair burden because the order “simply requires” that a plaintiff show that she was, “at some point, diagnosed with the injury that she alleged in her complaint.” *Id.* *3. The court reiterated that “[t]he basic purpose of a *Lone Pine* order” is “to identify and cull potentially meritless claims and streamline litigation in complex cases.” *Id.* *Lone Pine* orders, after all, “are designed to handle the complex issues and potential burdens on defendants and the court in mass tort litigation.” *Id.* Considering the advanced stage of the

litigation, the court was attempting to “strike a balance between efficiency and equity[.]” *Id.* The court noted that all parties agreed that eighty percent of plaintiffs were never diagnosed with PCIA and that many plaintiffs “when called upon to prove causation, have dismissed their claims in lieu of proceeding.” *Id.*

The court also rejected plaintiffs’ argument that the order subverts the protections of the Federal Rules of Civil Procedure. *Id.* *2. Unsurprisingly, plaintiffs conceded that expert testimony is needed to prove a diagnosis of PCIA. *Id.* at *4. In fact, plaintiffs’ own expert “opined that a diagnosis of PCIA requires a physical examination and cannot be made through photos.” *Id.* Notwithstanding plaintiffs’ admission, plaintiffs argued that “there is likely sufficient anecdotal or circumstantial evidence” for deceased plaintiffs’ physicians or experts to satisfy the *Daubert* gatekeeping test. *Id.* at *5. But plaintiffs neither offered any viable alternatives to an in-person diagnosis of PCIA nor identified specific experts in support of their arguments. *Id.* Without such evidence, the court concluded that reconsideration was not warranted. *Id.*

The court’s reasoning was grounded in the practicalities of mass litigation. As the court recognized, even though such orders place a burden on plaintiffs, that burden is justified to prevent meritless claims from proceeding. More courts should require plaintiffs to provide basic claim information from the beginning to ensure only viable cases move forward. Amended Rule 16.1 will help. But litigation efficiency and judicial fairness require that courts closely examine plaintiffs’ inventory and require plaintiffs to provide the information that Rule 11 requires they have before filing claims.