

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

2005 MAY 20 PM 3:43

MDL NO. 1657

IN RE: VIOXX
PRODUCTS LIABILITY LITIGATION

SECTION: L

JUDGE FALLON
MAG. JUDGE KNOWLES

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THIS DOCUMENT RELATES TO ALL CASES

**JOINT REPORT No. 3 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC")
submit this Joint Report No. 3.

I. Lexis Nexis File & Serve

Lexis Nexis File & Serve went "live" on Wednesday, May 11, 2005 at 9:00 a.m. As of that date, all service is to be accomplished by uploading filings to File & Serve in accordance with Pretrial Order No.8. The PLC and DLC met with the Court and Lexis Nexis on May 17, 2005 to discuss the status of File & Serve, the failure of numerous counsel to timely register, and the procedures necessary to insure timely registration of attorneys who have cases transferred to the MDL in the future. Following the meeting, PLC and DLC again notified counsel on their respective lists of the Lexis Nexis File & Serve "welcome kit" and registration/training information, together with a File & Serve brochure and a pricing sheet detailing costs of service. PLC and DLC expect that all counsel will register promptly with Lexis Nexis.

PLC and DLC will continue to provide Lexis Nexis with a current service list of counsel in the Vioxx MDL on a weekly basis. PLC and DLC also will provide Lexis Nexis with a list of all new cases transferred to, removed to, or filed in the MDL on a weekly basis. Because many lawyers in this MDL have not yet registered as users with Lexis Nexis, and to insure an orderly transition, the PLC and DLC will continue to serve documents on their respective service lists in accordance with Pretrial Orders No. 2 and No. 4 until June 1, 2005. Effective June 1, 2005, PLC and DLC will discontinue such service and all service shall be by Lexis Nexis File & Serve. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

II. Trial Settings

The *Rogers* case that was set for trial in Alabama on May 23, 2005 has been postponed. The *Ernst* case that was set for trial in Texas on May 31, 2005 has been postponed and reset for trial on July 11, 2005. Further, a New Jersey case, *Humeston v. Merck*, has been set for trial on August 1, 2005.

III. Selection of Cases for Early Trial

During a May 16, 2005 conference between the Court and Liaison Counsel, DLC advised the Court of defendants' desire to select a number of cases for early trial within the MDL. Defendants plan to provide the Court with a proposed trial plan that will allow for early trial of a number of cases. Although there is still a substantial amount of discovery to be completed by the PSC, including the FDA, third parties and various insurance issues, the PSC is also interested in conducting trials as soon as possible. However, it is difficult at this time to commit to a case selection process in the MDL and trial dates, since many cases are still being filed by PSC members and many are awaiting transfer to this MDL

Court. At this point, the PSC believes it would be productive to make case selection and trial dates part of future agendas with the Court and that the parties should begin the meet and confer process on a case selection process and trial dates to be submitted to the Court at some future date. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

IV. Class Actions

On May 2, 2005, DLC provided to PLC copies of seventy (70) class action complaints that were pending in the MDL as of that date. Since that time, DLC has advised that there are one hundred ten (110) filed class action complaints. The additional class actions are class actions that have been filed and are still pending in state courts or are pending in federal courts, awaiting transfer to the MDL. DLC will provide to PLC copies of these additional class actions. The PSC is reviewing the complaints in order to group the complaints by certain categories, which include geography, class definitions, legal issues and similarity in claims.

Since the last status conference, the parties have been unable to agree on a case management order for class actions. Accordingly, on May 16, 2005, DLC provided the Court and PLC a copy of defendants' proposed draft case management order for class actions. On May 17, 2005, the PLC provided the Court and DLC a copy of plaintiffs' proposed single case management order for all cases. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

V. Individual Cases

On May 16, DLC provided the Court and PLC a copy of defendants' proposed case management order for individual cases. On May 17, 2005, the PLC provided the Court and DLC a copy of plaintiffs' proposed single case management order for all cases. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

VI. Document Discovery Directed to Merck

On May 17, 2005, PLC provided the Court and DLC a copy of plaintiffs' proposed Pre-Trial Order relating to the protocol for production of documents by Merck. Although the parties are negotiating, agreement has not been reached on this subject. PLC has advised the Court and DLC that the PSC will be filing a first set of master interrogatories and requests for production of documents directed to Merck by May 30, 2005. PLC and DLC will meet in advance of filing this written discovery to attempt to reach agreement on the scope of such discovery.

VII. Merck Employee Information

At the April status conference, Plaintiffs requested complete information on all detail persons nationwide who were employed by Merck during certain periods of time, which include the names, addresses, including dates of employment and other information, of every detail person employed by Merck since the inception of the drug through today. On May 5, 2005, DLC wrote the Court and advised that Merck will provide the names and addresses of sales representatives who called on doctors who actually prescribed VIOXX® once case-specific discovery commences, proceeding on the same protocol as in the New Jersey coordinated proceedings. The PLC has requested information on ALL

detailers, distributors and other marketing information and is not agreeable to a limitation to specific filed cases. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

VIII. Insurance Information

At the April status conference, Plaintiffs requested insurance and indemnity information issued in favor of Merck. By letter dated May 12, 2005, PLC requested immediate production of all policies of insurance issued in favor of Merck, its directors, officers and management personnel from 1994 to date, which may insure or provide any indemnity or coverage to Merck, its officers, directors and employees against any liability made the subject of litigation in any filed MDL 1657 lawsuit. On May 20, 2005, DLC provided to PLC 21 Merck Insurance Declaration Pages, in hard copy and electronic format, for the relevant time period.

IX. Discovery Directed to FDA

PLC has communicated with the FDA and its counsel to address the FDA's reply for documents responsive to a FRCP 45 subpoena issued on September 22, 2004 in the case of *Walson v. Merck & Co.*, Case No. 04-CV-0027 (GPM)(S.D.Ill.) and a request on December 2, 2004 was made under the Freedom of Information Act, 21 CFR, Part 20 (FOIA). On May 17, 2005, a conference call took place between FDA and its counsel and representatives of the PSC to discuss the outstanding subpoena and FOIA requests. An additional conference took place on May 18, 2005. The FDA was ordered by the Court to appear at the Status Conference on May 23, 2005. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

X. Discovery Directed to Third Parties

PLC has advised the Court and DLC that the PSC anticipates third party discovery will be forthcoming.

XI. Deposition Guidelines and Scheduling

On April 15, 2005, Pre-Trial Order No. 9 regarding deposition guidelines was entered by the Court. No depositions have as yet been scheduled in MDL 1657. The parties have agreed to meet and confer to address the scheduling of depositions. PLC and DLC have, by agreement, reserved the first and third week of each month for the taking of depositions and have requested that the Court issue an appropriate Order.

XII. Plaintiff Profile Form and Defendant Profile Form

Representatives of the PSC and Defendants have met and conferred a number of times to discuss a Plaintiff Profile Form ("PPF") and Defendant Profile Form ("DPF"). The parties will continue to meet and confer in an attempt to agree on a PPF and DPF, and the medical authorizations that will be required in these cases. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XIII. Medical Records from Healthcare Providers

PLC and DLC continue to discuss a master repository for medical records. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XIV. Contact or Communication With Claimants Healthcare Providers

PLC and DLC each filed briefs with the Court relating to communications *ex parte* with healthcare providers for claimants. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XV. Plaintiffs' Depository

The PSC continues to work on establishing a depository for use by Plaintiffs in New Orleans, Louisiana, located at Place St. Charles, 201 St. Charles Avenue, Suite 4310, New Orleans, Louisiana. It is anticipated that the depository will be up and running very soon. In the interim, depositories are established at the Seeger Weiss law firm in New York and the Beasley Allen firm in Alabama. PLC will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XVI. Confidentiality Agreement

The parties have agreed on a confidentiality agreement which will be submitted to the Court at the status conference.

XVII. Remand Issues

Several remand motions have been filed with the Court. The Court has indicated that it will deal with remand motions as a group in accordance with procedures to be established in the future. PLC received a request from plaintiff's counsel in the *Linda Johnson, et al v. Narendrea Dabhade, M.D.* case, Docket No. 05-1005, transferred to the MDL from the Northern District of Illinois. That matter has been briefed and counsel has requested a hearing date.

XVIII. Tolling Agreement

PLC and DLC have continued discussions regarding a Tolling Agreement and DLC has submitted a proposal to PLC. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XIX. State/Federal Coordination – State Liaison Committee

On May 16, 2005, Pre-Trial Order No. 10 was entered by the Court appointing a State Liaison Committee. PLC was provided on May 5, 2005 a listing of VIOXX® Products Liability Cases Pending in State Court Except for California and New Jersey That Were Served as of March 23, 2005 and That are Still in State Court as of March 30, 2005. The parties will be prepared to discuss this further at the monthly status conference on May 23, 2005.

XX. PTO Regarding Waiver of Service

On May 16, 2005, the PLC and DLC presented to the Court a proposed Pre-Trial Order which provides for waiver of service for new lawsuits filed in the MDL and established response dates.

XXI. PTO Regarding Direct Filing of Cases into the MDL

On May 17, 2005, the PLC and DLC presented to the Court a proposed Pre-Trial Order which provides for direct filing of federal cases into the MDL.

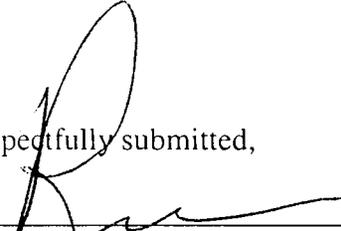
XXII. Pro Se Claimants

The Court has issued Orders directing PLC to take appropriate action regarding filings made by various *pro se* individuals. PLC is in the process of complying with the Orders. Four (4) *pro se* communications have been received by PLC and *pro se* claimants will be notified of the Court's website, provided a limited fact sheet and directed to a lawyer(s) in the state of their current residence.

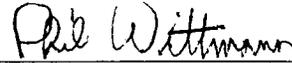
XXIII. Next Status Conference

PLC and DLC will be prepared to schedule the status conference in June 2005 on a date to be selected by the Court.

Respectfully submitted,



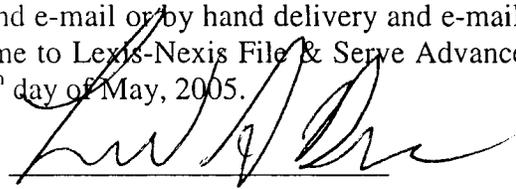
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Joint Report No. 3 has been served on Liaison Counsel, Phillip Wittmann, by U.S. Mail and e-mail or by hand delivery and e-mail and upon all parties by electronically uploading the same to Lexis-Nexis File & Serve Advanced in accordance with Pre-Trial Order No. #8, on this 20th day of May, 2005.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

* MDL NO. 1657
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* SECTION: "L"
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* JUDGE FALLON
* MAG. JUDGE KNOWLES

Monthly Status Conference
May 23, 2005- 9:00 a.m.

SUGGESTED AGENDA

Current Matters:

1. Lexis Nexis File & Serve
2. Trial Settings
3. Selection of Cases for Early Trial
4. Class Actions
5. Individual Cases
6. Document Discovery Directed to Merck
7. Merck Employee Information
8. Insurance Information
9. Discovery Directed to FDA
10. Discovery Directed to Third Parties
11. Deposition Guidelines and Scheduling
12. Plaintiff Profile Form and Defendant Profile Form
13. Medical Records from Healthcare Providers

14. Contact or Communication with Claimants' Healthcare Providers
15. Plaintiffs' Depository
16. Confidentiality Agreement
17. Remand Issues
18. Tolling Agreement
19. State/Federal Coordination – State Liaison Committee
20. PTO Regarding Waiver of Service
21. PTO Regarding Direct Filing of Cases into the MDL
22. *Pro Se* Claimants
23. Next Status Conference