

On November 9, 2007 and thereafter, the Court entered the following Pre-Trial Orders which are available on the Court's website:

- Pre-Trial Order 28 (November 9, 2007), with accompanying Exhibits A and B, requires certain plaintiffs with claims pending or tolled as of November 9, 2007 to produce certain information within a specified time period. Revised versions of Exhibits A and B subsequently were made available and can be edited and completed electronically.
- Pre-Trial Order 29 (November 9, 2007), with accompanying Exhibits A and B, requires plaintiffs whose claims are filed in or transferred to the MDL on or after November 9, 2007 to produce certain information within a specified time period. Revised versions of Exhibits A and B subsequently were made available and can be edited and completed electronically.
- Pre-Trial Order 30 (November 9, 2007) temporarily stays activity in the MDL with certain exceptions.
- Pre-Trial Order 31 (November 9, 2007), with accompanying Exhibits A and B, requires the registration of claims. Revised versions of Exhibits A and B subsequently were made available and can be edited and completed electronically. Pre-Trial Order 31A (December 4, 2007) amends and supplements Pre-Trial Order 31 by clarifying that the Registration Affidavits and Registration of Claims Spreadsheet need not be filed with the Court and provides addresses where the registration affidavits should be served.

- Pre-Trial Order 32 (November 20, 2007) provides for the appointment of a committee of plaintiffs' attorneys to be responsible for recommending to the Court the allocation to be made by the Court of awards of attorneys' fees from the Settlement Fee and Cost Account.
- Finally, Pre-Trial Orders 33 and 34 (December 10, 2007) direct Plaintiffs' Liaison Counsel to contact *pro se* plaintiffs and *pro se* tolling claimants regarding the settlement package.

On December 10, 2007, attorney Ronald Benjamin filed a Notice of Appeal from Pre-Trial Orders 28 and 31. The parties will be prepared to discuss these issues further at the monthly status conference on December 14, 2007.

II. STATE COURT TRIAL SETTINGS

The following is the updated current listing provided by Merck of state court cases set for trial through March 31, 2008: In February, the *Zajicek* case is set for February 11, 2008 in the Texas District Court, Jackson County, Texas.. The *Frederick* case is set for March 10, 2008 in the Alabama Circuit Court, Jefferson County, Alabama.

III. CLASS ACTIONS

The Court has under advisement Defendants' Rule 12 Motions to Dismiss the Master Complaints for Medical Monitoring and Purchase Claims. The matter has been briefed and submitted to the Court.

Defendants filed a Motion to Strike Class Allegations in Plaintiffs' Medical Monitoring Master Class Action Complaint. The matter has been fully briefed. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

IV. DISCOVERY DIRECTED TO MERCK

On August 14, 2007, the Court entered an Order and Reasons regarding Special Master Paul R. Rice's Report and Recommendations on a representative sampling of documents as to which Merck has asserted privilege and Merck's motion to adopt in part the Special Master's Report and Recommendations and Merck's objections that were filed under seal. Documents that are discoverable were being produced to plaintiffs in accordance with an agreed schedule, with the production scheduled to conclude on or about November 30, 2007. The motions and production deadline are subject to the stay set forth in Pre-Trial Order 30. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

V. DISCOVERY DIRECTED TO THIRD PARTIES

Prior to the issuance of Pre-Trial No. 30, PLC advised the Court and DLC that the PSC intended to continue to issue third-party notices of depositions for the production of documents.

On July 31, 2007, the Court issued an Order regarding Special Master Rice's Second Report regarding the DDB and Ogilvy documents which were the subject of the letter from the PSC dated March 16, 2006 requesting intervention by the Court on whether Merck should have the right to review documents produced by Ogilvy and DDB in response to discovery requests by the PSC. On August 17, 2007, Merck filed objections to the Court's Order; the PSC filed a response; and Merck filed a reply. By Order dated September 21, 2007, the Court instructed Special Master Rice to issue rulings with respect to individual documents subject to Merck's objections to the Special Master's recommendations regarding the

DDB/Ogilvy privileged documents. The Special Master issued a Fourth Report and Recommendation to the Court, and on November 1, 2007, the Court issued an Order providing that the parties had until November 11, 2007 to file objections to the Fourth Report. The Special Master issued an Amended Fourth Report and Recommendation to the Court on November 8, 2007. Subsequently, the Court issued Pre-Trial Order No. 30 which stayed all deadlines related to this report. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

On October 19, 2007, the PSC issued a Notice of Records Deposition and Subpoena for documents and testimony from the Food and Drug Administration ("FDA"). Further, on October 23, 2007, the PSC issued a Subpoena and Notice of Deposition for Randall Lutter, and for a designee of the FDA pursuant to FRCP 30(b)(6). Counsel for FDA and PLC have been in communication regarding these subpoenas and the FDA has been advised that the Court issued Pre-Trial Order No. 30 which stayed this issue. The PSC will seek to have the stay lifted as to this issue. The parties have continued to discuss the subpoenas and production, and the PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

On December 12, 2007, the PSC filed with the Court an Emergency Motion to Lift Stay for Purposes of Conducting Discovery Regarding the Website Known as "OfficialVioxSettlement.Com". The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

On December 12, 2007, the PSC filed with the Court an Emergency Motion to Lift Stay for Purposes of Conducting Discovery Regarding Certain Medical Records In The

Possession of Express Scripts, Inc. The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

VI. DEPOSITION SCHEDULING

Merck previously noticed the *de bene esse* depositions of the following current Merck employees: Alise Reicin, Briggs Morrison, and Eliav Barr. These depositions, as well as certain discovery depositions, were postponed by agreement. These depositions are not subject to the temporary stay set forth in Pre-Trial Order 30 and will be rescheduled at a mutually agreeable time at a later date. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

VII. STATE/FEDERAL COORDINATION -- STATE LIAISON

COMMITTEE

Representatives of the PSC and the State Liaison Committee have had several communications. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

VIII. PRO SE CLAIMANTS

On December 10, 2007, the Court issued Pre-Trial Orders 33 and 34 regarding *Pro Se* Plaintiff Registration and Enrollment Re: Settlement and *Pro Se* Tolling Claimant Registration and Enrollment Re: Settlement. Issues regarding the MDL Settlement Program are discussed in Section I, *infra*. Letters to *pro se* individuals were sent on December 12, 2007 advising them of the Settlement Program and Registration Procedure.

IX. MERCK'S MOTIONS

On November 8, 2007, the Court granted in part and denied in part Merck's three Motions for Summary Judgment in the *Ramon Alvarado, et al* (Case No. 06-7150), *Matthew Devito, et al* (Case No. 07-0562), *Ronald Pales* (Case No. 07-1389), *Philip Dawson* (Case No. 07-1259), *Timothy R. Watson* (Case No. 05-5545), *Donald R. Preuninger, et al* (Case No. 06-10305), *Viet Tran* (Case No. 07-0368), *Pamela Tribby, et al* (Case No. 07-4118), and *David Wyser* (Case No. 07-2695) matters. Certain plaintiffs have moved for reconsideration of these judgments, and Merck has filed its opposition to these motions. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

On July 3, 2006, the Court denied Merck's Motion for Summary Judgment in the *Lene Arnold* and *Alicia Gomez* in which Merck asserted that plaintiffs' claims were preempted by federal law. On July 12, 2007, Merck filed a Motion to Alter or Amend the Court's July 3, 2007 Order Denying Merck's Motion for Summary Judgment to Include Certification for Interlocutory Review Pursuant to 28 U.S.C § 1292(b). Oral argument was held on August 9, 2007, and the Court took the matter under advisement. The parties will be prepared to discuss this matter further at the monthly status conference on December 14, 2007.

X. ISSUES RELATING TO PRE-TRIAL ORDER NO. 9

On February 9, 2007, the PSC received an Agreement letter with the State of Texas MDL PSC regarding the right of state court litigants to cross-notice expert depositions in Federal MDL 1657 proceedings or use MDL 1657 depositions in trial or in Motion practice. The PSC is attempting to secure agreements from other states similar to the agreement reached with

the State of Texas MDL PSC. The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

XI. VIOXX SUIT STATISTICS

As of October 9, 2007, Merck had been served or was aware that it had been named as a defendant in approximately 26,600 lawsuits filed on or before September 30, 2007, which include approximately 47,000 plaintiff groups alleging personal injuries resulting from the use of VIOXX, and approximately 264 putative class actions alleging personal injuries and/or economic loss. Of these lawsuits, approximately 8,800 lawsuits representing approximately 25,800 plaintiff groups are or are slated to be in the federal MDL and approximately 15,850 lawsuits representing approximately 15,850 plaintiff groups are included in a coordinated proceeding in New Jersey Superior Court. In addition, as of September 30, approximately 14,100 claimants had entered into Tolling Agreements with Merck, which halt the running of applicable statutes of limitations for those claimants who seek to toll claims alleging injuries resulting from a thrombotic cardiovascular event that results in a myocardial infarction or ischemic stroke.

In addition to the VIOXX Product Liability Lawsuits discussed above, the claims of more than 5,550 plaintiff groups have been dismissed as of September 30. Of these, there have been more than 1,625 plaintiff groups whose claims were dismissed with prejudice either by plaintiffs themselves or by the courts. More than 3,925 additional plaintiff groups have had their claims dismissed without prejudice.

Merck advises that it defines a "plaintiff group" as one user of the product and any derivative claims emanating from that user (such as an executor, spouse, or other party).

Further, Merck advises that there are more Plaintiffs identified than lawsuits because many lawsuits include multiple Plaintiffs in the caption.

XII. MOTION TO CONDUCT CASE SPECIFIC DISCOVERY

Prior to the issuance of Pre-Trial Order No. 30, on May 29, 2007, the PSC filed a Motion to Conduct Case Specific Discovery in 250 cases to be designated by Plaintiffs to be completed within the next six (6) months. The matter is not yet set for hearing. Merck has not yet filed responsive pleadings. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

XIII. DR. FARQUAR

On October 18, 2007, Defense Liaison Counsel communicated with the Court regarding a chart that it desired to obtain in electronic version to be used in connection with the cross-examination testimony of Dr. Farquar. Plaintiffs' Liaison Counsel requested further information from defendants regarding the request. The parties will be prepared to discuss this further at the monthly status conference on December 14, 2007.

XIV. PSC MDL TRIAL PACKAGE

On September 27, 2007, the Court issued PTO 27 regarding submission of the PSC's trial package. On October 3, 2007, the trial package was presented to the Court for review. The PSC continues to explore, develop and investigate security issues in connection with the preparation and presentation of the trial package to reasonably protect confidential and/or work product that may be contained in the trial package. The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

On November 28, 2007, attorney Michael Stratton filed a Motion for Release of Trial Package in the *Perry* (06-03581), *Christie* (05-02973), *Lynch* (05-05072), *Sokoloff* (05-06107), *Whittaker* (05-01257), *Chambers* (05-01997), *Pagani* (07-01384), *Barnett* (06-08320) and *Boyer* cases. This motion was filed in violation of Pre-Trial Order No. 30. Notwithstanding the foregoing, on December 10, 2007, the PSC filed a Response. On December 11, 2007, Stratton's Reply to PSC's Response was filed with the Court. The matter is not set for hearing. The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

Additionally, on December 3, 2007, Stratton-Faxon filed a Complaint for Declaratory Judgment in the United States District Court, District of Connecticut relating to the registration of claims and ethical duties in connection with the Global Resolution Program announced on November 9, 2007. On December 7, 2007, the Plaintiffs' Negotiating Committee filed a Notice of Tag-Along Action with the Judicial Panel on Multi-District Litigation. The United States District court, District of Connecticut, has set the matter for a status conference telephone call on December 13, 2007 at 2:30 p.m. The PSC will be prepared to discuss this further at the monthly status conference on December 14, 2007.

XV. NEXT STATUS CONFERENCE

PLC and DLC will be prepared to schedule the next status conference, on a date to be selected by the Court.

Respectfully submitted,

/s/ Leonard A. Davis

Russ M. Herman (Bar No. 6819)
Leonard A. Davis (Bar No. 14190)
Herman, Herman, Katz & Cotlar, LLP
820 O'Keefe Avenue
New Orleans, LA 70113
PH: (504) 581-4892
FAX: (504) 561-6024

Plaintiffs' Liaison Counsel

/s/ Dorothy H. Wimberly

Phillip A. Wittmann (Bar No. 13625)
Dorothy H. Wimberly (Bar No. 18509)
Carmelite M. Bertaut (Bar No. 3054)
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet Street
New Orleans, LA 70130-3588
PH: (504) 581-3200
FAX: (504) 581-3361

Defendants' Liaison Counsel

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 30 of Plaintiffs' and Defendants' Liaison Counsel has been served upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8B, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing in accord with the procedures established in MDL 1657, on this 12th day of December, 2007.

/s/ Leonard A. Davis
Leonard A. Davis (#14190)
Herman, Herman, Katz & Cotlar, LLP
820 O'Keefe Ave.
New Orleans, LA 70113
PH: (504) 581-4892
FAX: (504) 561-6024
ldavis@hhkc.com
Plaintiffs' Liaison Counsel

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In re: VIOXX * **MDL Docket No. 1657**
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PRODUCTS LIABILITY LITIGATION * **SECTION L**
*
* **JUDGE FALLON**
This document relates to All Cases *
* **MAGISTRATE JUDGE KNOWLES**
* * * * *

**MONTHLY STATUS CONFERENCE
DECEMBER 14, 2007
SUGGESTED AGENDA**

- I. Settlement Agreement
- II. State Court Trial Settings
- III. Class Actions
- IV. Discovery Directed to Merck
- V. Discovery Directed to Third Parties
- VI. Deposition Scheduling
- VII. State/Federal Coordination -- State Liaison Committee
- VIII. *Pro Se* Claimants

- IX. Merck's Motions
- X. Issues Relating to Pre-Trial Order No. 9
- XI. Vioxx Suit Statistics
- XII. Motion to Conduct Case Specific Discovery
- XIII. Dr. Farquar
- XIV. PSC MDL Trial Package
- XV. Next Status Conference