

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

In re: VIOXX * **MDL Docket No. 1657**
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PRODUCTS LIABILITY LITIGATION * **SECTION L**
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* **JUDGE FALLON**
This document relates to All Cases *
* **MAGISTRATE JUDGE KNOWLES**
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CURATOR’S STATUS REPORT NO. 1

Curator, Robert M. Johnston, Esq., submits this Status Report No. 1, in accordance with the Court’s Order, dated February 12, 2008.

I. MAILINGS TO *PRO SE* CLAIMANTS

Since appointment as Curator, Plaintiffs’ Liaison Counsel (“PLC”) and Defendants’ Liaison Counsel (“DLC”) provided to undersigned lists of all known potential *pro se* claimants, as well as agreed-upon correspondence and attachments to be forwarded to potential *pro se* claimants. Additionally, the Claims Administrator, Brown Greer, PLC, provided to undersigned an updated list of registered *pro se* claimants. After confirming approval by both the PLC and DLC of correspondence, attachments and forms addressed to the potential *pro se* claimants, mailings were sent via United States Mail, beginning on March 19, 2008 and completed on March 24, 2008. These mailings consisted of two main groups: non-registered potential *pro se* claimants (totaling nine

hundred thirteen (913)) and Registered *pro se* claimants (totaling three hundred eighty-two (382)). The letter and attachments sent to non-registered potential *pro se* claimants is attached hereto as Exhibit A. Additionally, the letter and attachments sent to registered *pro se* claimants is attached hereto as Exhibit B.

II. RETURNED AND UNDELIVERABLE MAIL

As of the date of this status report, sixty-one (61) mailings have been returned undeliverable. For all returned mail, I am preparing legal notices to be published in the local newspaper of the individual's last known address for three days, subject to the limitations set forth below.

Of the lists of claimants, there are eleven (11) potential claimants for which the address information is incomplete, and an additional eleven (11) potential claimants for which we have no address information whatsoever. In order to assure appropriate legal notification is made to these potential claimants, I propose that legal notices be placed in a state or regional publication, if the last known address includes city, state or zip code information; or in a national publication, such as USA Today, if this is acceptable to the parties and the Court.

Of the returned mail, thirteen (13) mailings were returned because of a known, but expired request to forward mail. These materials will be sent to the forwarding address for each individual, and if returned undeliverable from the forwarding address, a legal notice will be published in the local newspaper of the individual's last known address, and forwarding address, for three days.

Lastly, with regard to the returned mail, two mailings have been returned with a notation that the addressee is deceased. We will prepare a legal notice requesting information regarding the heirs or legal representatives of these individuals, to be published in the local newspaper of the individual's last known address for three days.

III. CURATOR'S COMMUNICATIONS

My firm has received numerous telephone calls, emails, facsimiles, and correspondence from potential claimants in the Settlement Program. These communications have been logged in an internal communications log, and will soon be entered into an online communications log, recently created by Brown Greer. Once the current call log is uploaded, this communications log will be available through the Claims Administrator's portal, and will be updated on a rolling basis as new communications occur. Upon information and belief, this information will be available and searchable to everyone with a valid log in to the Vioxx Portal. We defer to the Claims Administrator as to the requirements to access this information, as well as maintenance of appropriate data back up services.

With regard to the written communications and documents forwarded by potential *pro se* claimants, all documents are being forwarded, on a rolling basis, to the Claims Administrator, both via electronic mail as a PDF attachment, and via overnight delivery, in order to assist in compliance with the deadlines set forth in the Settlement Agreement, and extensions agreed to by the parties.

In addition to those potential claimants included on lists received from the PLC, DLC, and/or Claims Administrator, we have been contacted by fourteen (14) potential *pro se* claimants requesting information regarding the Settlement Program. As none of these individuals had previously registered with the Claims Administrator, they have been provided information and documents necessary to complete their registration, and advised that they need to complete the enrollment documents which will be sent by the Claims Administrator after their registration can be processed. Two of these individuals were Spanish-speaking, and as our firm employs a bi-lingual attorney, we were able to provide information to assist them navigating the Settlement Program despite their

inability to speak English.

In addition to communications directly from claimants, we have received communications from several attorneys whose clients received mailings because they were included in the lists of potential *pro se* claimants. These communications have also been logged, and no further contact will be made to represented claimants. Where the attorney requested information regarding registering his clients in the Settlement Program, they were provided with contact information, including web addresses, for both the Claims Administrator and PLC.

IV. REFERRAL ATTORNEY LIST

As part of the Court's February 12, 2008 Order, the Curator has the responsibility of advising "the *Pro Se* Claimants of the name and contact information for counsel handling Vioxx matters in the jurisdiction where the *Pro Se* Claimant resides." See Document No. 13365, Page 3. We are coordinating with the PLC, who has maintained contact information regarding attorneys handling Vioxx matters in various jurisdiction, and will be able to provide this information shortly.

V. ADDITIONAL ASSISTANCE TO CURATOR

A Motion to Enroll additional counsel to act as associate curators has been filed as Document No. 13860. This Motion requests that the Curator's two associates, Ira J. Rosenzweig and Claudia Patricia Santoyo, be enrolled as additional curators. A proposed order has been provided, and no objection has been received from any counsel or party. These additional enrollments are required in light of the large number of *pro se* claimants, filings with the Court, and to assure complete compliance with the Court's Order appointing Curator.

Additionally, I have requested approval from the Negotiating Plaintiffs' Counsel "NPC" and Merck, through DLC and Defense Steering Committee, for approval to hire a contract paralegal to

assist in the administration of my duties as curator. Specifically, this assistance is required in communicating with the various newspapers to complete publication of legal notices as outlined above, as well as to assist in maintaining the integrity of the communications log. We have proposed the rate of \$95/hour for the services of the paralegal. This rate is based upon the usual and customary rate for similar work in other matters where I have been appointed curator, as well as market value for the necessary skill and experience required of the paralegal to perform this work.

Hiring of this paralegal will reduce the necessity for associate attorneys to complete tasks, at a higher rate, that can be capably accomplished by a skilled paralegal, with appropriate supervision. No opposition has been received from any party or counsel to the proposed hiring and rate, and I hereby request approval to proceed.

VI. PRESENTATION AT NEXT STATUS CONFERENCE

Curator, and associate attorneys, will be available to discuss the above, as well as to address any questions, at the monthly status conference, currently scheduled for April 17, 2008. Additionally, we will be available for the next status conference, on a date selected by the Court.

Respectfully submitted,

**JOHNSTON, HOEFER, HOLWADEL
& ELDRIDGE**

/s/ Robert M. Johnston
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Curator

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Curator's Status Report No. 1 has been 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 16th day of April, 2008.

/s/ Robert M. Johnston
ROBERT M. JOHNSTON (#7339)