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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA
AT NEW ORLEANS

IN RE: VIOXX PRODUCTS) Case No. MDL 1657
LIABILITY LITIGATION) December 11, 2012
) Status Conference
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

SUSAN A. ZIELIE, RPR, RMR, FCRR
Official Court Reporter
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:42:01 1 NEW ORLEANS, LOUISIANA; TUESDAY, DECEMBER 11, 2012

:42:19 2 2:00 P.M.

:05:38 3 THE COURT: Be seated, please.

:05:40 4 Let's call the case.

:05:41 5 CASE MANAGER: MDL 1657, in re: VIOXX Products
:05:47 6 Liability litigation.

:05:48 7 THE COURT: Counsel, please state your appearances for
:05:49 8 the record.

:05:49 9 MR. HERMAN: After you.

:05:51 10 MR. MARTIN: Good morning, Your Honor. May it please
:05:54 11 the Court, Douglas Martin for Merck.

:05:57 12 MR. HERMAN: Afternoon, Judge Fallon. Russ Herman for
:06:02 13 the Plaintiffs' Steering Committee.

:06:03 14 THE COURT: All right. We have several people on the
:06:05 15 line.

:06:06 16 I met with counsel for liaison and lead counsel,
:06:10 17 and discussed with them the agenda for this monthly meeting.
:06:15 18 I'll take it in the order given.

:06:17 19 Class actions, any report on that?

:06:19 20 MR. MARTIN: Your Honor, the class actions, there are
:06:21 21 no new developments since the last conference.

:06:25 22 THE COURT: Governmental actions.

:06:25 23 MR. HERMAN: Ms. Barrios is here.

:06:30 24 MS. BARRIOS: Good afternoon, Your Honor.

:06:30 25 THE COURT: Good afternoon.

:06:32 1 MS. BARRIOS: If you recall, in one of your last
:06:34 2 orders, you asked that the government action cases be put on a
:06:37 3 triple track, and one of those tracks is mediation. Mr. Juneau
:06:41 4 has been mediating.

:06:42 5 He has successfully mediated with the State of
:06:44 6 Pennsylvania on October 22nd.

:06:47 7 He had a mediation with Montana that did not
:06:50 8 result in a settlement, but he's going to try again.

:06:53 9 And, today, there's mediation with Mississippi.

:06:56 10 So, all told, we will have five left in the MDL.

:06:59 11 THE COURT: All right. Well, that's some progress.

:07:02 12 Good. Thank you.

:07:02 13 MR. HERMAN: On other pending motions. Ms. Wimberly is
:07:07 14 here, as is Ms. Oldfather, Your Honor.

:07:09 15 THE COURT: All right. We have one pending motion on
:07:14 16 the LaDonna King matter.

:07:17 17 MS. WIMBERLY: Yes, Your Honor. Dorothy Wimberly on
:07:21 18 behalf of Merck.

:07:22 19 Would you like to hear that now?

:07:23 20 THE COURT: Sure. Why don't we do that.

:07:26 21 MS. WIMBERLY: Yes, Your Honor.

:07:27 22 Merck had filed a motion for summary judgment in
:07:29 23 the LaDonna King case on July 17th of 2012, and that's record
:07:33 24 document No. 63995.

:07:36 25 After that motion was filed, counsel moved to

:07:39 1 withdraw.

:07:42 2 In response to that, Merck filed a motion to
:07:44 3 dismiss for lack of prosecution, which is record document 64013.

:07:50 4 At the last status conference, on October 11th,
:07:53 5 the Court granted the motion to withdraw and ordered that Ms.
:07:56 6 King show cause why her case should not be dismissed with
:07:59 7 prejudice at today's conference.

:08:02 8 Since the filing of the original motion in July
:08:05 9 and the subsequent motion in I believe it was early August, and
:08:09 10 since the Court's order, we have had absolutely no contact from
:08:13 11 Ms. King. And we would ask that her case be dismissed with
:08:16 12 prejudice for lack of prosecution.

:08:19 13 THE COURT: They've had enough time for her to respond.
:08:24 14 I've given her several times to respond. She has not done so.
:08:28 15 So I'm going to dismiss it. Over the objection of counsel,
:08:33 16 liaison counsel, I'm going to dismiss it with prejudice.

:08:37 17 MS. WIMBERLY: Thank you, Your Honor.

:08:38 18 MR. HERMAN: Your Honor, I apologize, I went out of
:08:42 19 order.

:08:43 20 THE COURT: That's all right.

:08:44 21 MR. HERMAN: With regard to third party payers, we're
:08:46 22 making our final report today. It will be filed. We're going
:08:50 23 to hand-deliver to counsel for Mr. Weinberg a copy.

:08:57 24 Your Honor's issued an order for us to produce
:09:00 25 certain records for inspection. We're gathering those records,

:09:04 1 and they will be given in a way that counsel can -- for Mr.
:09:12 2 Weinberg -- can review them and your order.

:09:15 3 THE COURT: Before that, let's have Mr. Weinberg -- and
:09:21 4 I'll put this in a minute entry -- to review them within a week.
:09:25 5 I'll give them a week to review them. That should be enough
:09:29 6 time for them.

:09:29 7 MR. HERMAN: Yes, Your Honor.

:09:30 8 And we will notify the Court when those records
:09:33 9 have been delivered. And I assume the week will run from that
:09:37 10 date.

:09:39 11 THE COURT: From the time he gets them, yes.

:09:41 12 MR. HERMAN: Your Honor, the next issue, there's
:09:44 13 pending personal injury cases subject to PTOs. And I believe
:09:48 14 that Ms. Oldfather has a report on pending injury cases. And
:09:54 15 Mr. Martin may wish to respond.

:10:00 16 MS. OLDFATHER: Thank you, Mr. Herman.

:10:03 17 Good morning, Your Honor. Ann Oldfather, liaison
:10:06 18 counsel for certain cases.

:10:07 19 Your Honor, the joint status report contains an
:10:09 20 update of the developments since the last status conference in
:10:13 21 October.

:10:14 22 And I'll just mention to you briefly, we are in
:10:17 23 continued conversations with the original PSC regarding the
:10:20 24 common benefit expense account and various information on
:10:23 25 settled cases.

:10:24 1 And also the BTE cases are in the process of being
:10:29 2 submitted to the Court on briefs in connection with *Daubert*
:10:33 3 motions with regard to the general causation issues.

:10:37 4 We anticipate that the first brief will be
:10:39 5 submitted on December 21st, and that the briefing should be
:10:43 6 finished by the end of January.

:10:45 7 Everything else is contained in the joint status
:10:47 8 report.

:10:48 9 Other than that, Your Honor, I'll simply report
:10:50 10 that the case census shows that we are down to 44 cases. Six
:10:56 11 cases have been settled since April, and several more have been
:11:01 12 resolved but are in the process of final preparation.

:11:04 13 I would encourage anyone on the phone conference
:11:08 14 to have discussions with Merck with regard to resolution of
:11:11 15 heart attack or stroke cases.

:11:14 16 And the only remaining case in the other injury
:11:18 17 category, since the LaDonna King case has just been dismissed
:11:22 18 for lack of prosecution, is Mr. Harrison's bone healing claim.

:11:28 19 So we expect that Merck will be very open to
:11:32 20 conversations regarding resolution, and we would encourage all
:11:35 21 of the plaintiffs to engage in those conversations.

:11:38 22 Thank you, Your Honor.

:11:39 23 THE COURT: It's important from the standpoint of the
:11:42 24 plaintiffs, particularly the pro se plaintiffs, to respond to
:11:45 25 the information requests. Because, if Merck indicates that they

:11:52 1 need some material, that's a good sign, from your standpoint.

:11:57 2 And you ought to deliver the material, so that they will at

:12:01 3 least have some basis for discussing the matter with you. So I

:12:05 4 urge you to do so.

:12:07 5 If not, then I'll have to act accordingly.

:12:12 6 But it should be taken seriously by you.

:12:17 7 This is a good indication. I mean, we had 50,000

:12:21 8 individual claims. And so now we're down to 40 or so. And

:12:28 9 they're dwindling because of the work of the lawyers. So we've

:12:32 10 been able to move this case.

:12:34 11 MR. HERMAN: Your Honor, I'm advised by Ms. Wimberly,

:12:39 12 there's no further issue need discussion under appeals.

:12:45 13 I'd note that Mr. Robert Johnston, who is well

:12:49 14 schooled in professionalism and general advocacy, and he may

:12:54 15 have something as we approach the holidays to say.

:12:57 16 THE COURT: All right.

:12:59 17 MR. JOHNSTON: You know, you get nervous when you get

:13:01 18 that kind of a lead-in.

:13:03 19 THE COURT: Introduction.

:13:06 20 MR. JOHNSTON: Your Honor, the last month, I just was

:13:08 21 talking to Jenette McKernan, the paralegal who fields some

:13:12 22 calls. But we are down to a half dozen or less, and there's

:13:20 23 some that we talked to more than once.

:13:23 24 So I think the only thing that I would advise the

:13:24 25 Court is consistent with what we're all hearing here, all quiet

:13:32 1 on the waterfront.

:13:33 2 THE COURT: Good. That's fine.

:13:34 3 And you rendered a good service to the Court, as
:13:37 4 well as to the litigants. Because, in these particular cases,
:13:39 5 as I mentioned, a lot of people either don't wish to have a
:13:44 6 lawyer or they can't find a lawyer to handle their case, and
:13:48 7 they need somebody with legal experience and ability to be able
:13:53 8 to talk to. And they've looked to you. And I know sometimes
:13:59 9 it's been rather challenging from your standpoint. But I think
:14:03 10 you've rendered a good service and I appreciate all your
:14:06 11 efforts.

:14:07 12 MR. JOHNSTON: Thank you, Your Honor.

:14:09 13 And Doug Martin and I have had a couple of
:14:11 14 instances where I've been able to get into the dialog with pro
:14:16 15 ses, and I think that they resolved -- that helped resolve the
:14:20 16 cases.

:14:20 17 THE COURT: Great.

:14:21 18 MR. JOHNSON: So I feel good about it.

:14:23 19 And thank you so much.

:14:25 20 MR. HERMAN: You didn't wish everybody happy holidays,
:14:28 21 though.

:14:31 22 MR. JOHNSON: I will do that individually.

:14:33 23 MR. MARTIN: Your Honor, I just do want to again thank
:14:36 24 Mr. Johnston, because, as you indicated, Your Honor, he's been
:14:39 25 of help to Merck as well as to the Court. And there have been a

:14:45 1 number of instances where we're dealing with a pro se that we've
:14:49 2 called Mr. Johnston, and he has in turn spoken to the pro se,
:14:52 3 and we've been able to resolve cases. Because he is someone who
:14:57 4 has been appointed by you, Your Honor, and that's been very
:15:01 5 helpful in the discussions. So we appreciate greatly the
:15:05 6 services he's rendered.

:15:07 7 THE COURT: Yes. I think I mentioned that to my
:15:11 8 colleagues around the country, too. I think that that's a good
:15:14 9 aspect to put in play in an MDL case, because you do have
:15:19 10 individuals who just want to ask questions and they don't know
:15:24 11 who to ask the questions to. And I think that this is a way of
:15:26 12 dealing with that.

:15:27 13 MR. MARTIN: Thank you.

:15:29 14 MR. HERMAN: Your Honor, I think Ms. Oldfather would
:15:32 15 like to address the Court.

:15:34 16 MS. OLDFATHER: Your Honor, I neglected to mention a
:15:37 17 sad note. We understand that Antonio Dennison passed away. The
:15:42 18 gentleman had come in here with his brother.

:15:44 19 And, while that is very sad, I did want to point
:15:49 20 out that he did have the heartening news of knowing that Your
:15:53 21 Honor had listened to his claim, to be able to pursue his action
:15:57 22 in New Jersey. So I think it was great that the Court acted so
:16:00 23 promptly on that, and he at least had that recognition of
:16:04 24 justice before he left us.

:16:07 25 THE COURT: Good.

:16:08 1 I'm sorry to hear that, but I hope matters work
:16:13 2 out for the family.

:16:16 3 Anything further?

:16:17 4 MR. HERMAN: Your Honor, I believe that concludes the
:16:21 5 status conference today.

:16:25 6 THE COURT: One moment.

:16:29 7 MS. WOODWEDGE: If Your Honor please, I just would
:16:31 8 request a point of clarification.

:16:32 9 Margaret Woodwedge on behalf of Eric Weinberg.

:16:35 10 I feel confident we can review the records within
:16:38 11 a week of the time that we receive them.

:16:40 12 But, at the end of the week, what is it that we
:16:42 13 are to do?

:16:43 14 THE COURT: I think, if you need to respond to their
:16:45 15 material, just give me -- I think you needed to look at it to
:16:50 16 make some sense out of it. So, if you have a response, give me
:16:54 17 a response. And then we'll deal with it from there.

:16:59 18 MS. WOODWEDGE: Thanks.

:17:00 19 THE COURT: Thank you very much.

:17:01 20 What's the next date?

:17:04 21 February 26th at 2:00 o'clock. And I will meet
:17:07 22 with the committees at 1:30.

:17:09 23 Thank you very much. The court stands in recess.

:17:12 24 (2:15 p.m., proceedings concluded.)

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CERTIFICATE

I, Susan A. Zielie, Official Court Reporter, do hereby
certify that the foregoing transcript is correct.

/S/ SUSAN A. ZIELIE, FCRR

Susan A. Zielie, FCRR