

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1657
Section "L"
New Orleans, Louisiana
Thursday, February 26, 2015

TRANSCRIPT OF THE STATUS CONFERENCE
BEFORE THE HONORABLE ELDON E. FALLON,
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For Plaintiffs:

Leonard Davis, Esq.
Andy Birchfield, Esq.
Anne Oldfather, Esq.
Elizabeth Cabraser, Esq.

For Merck:

Douglas Marvin, Esq.
John Beisner, Esq.

REPORTED BY:

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Okay. Be seated, please.

All right. Do you want to call the case.

19:08:30 THE CASE MANAGER: MDL No. 1657, *In Re: Vioxx Products Liability Litigation.*

THE COURT: Counsel make your appearances for the record.

19:08:42 MR. DAVIS: Morning, Your Honor. Lenny Davis on behalf of plaintiffs.

MS. CABRASER: Elizabeth Cabraser for the PSC and consumer class.

THE COURT: Okay.

19:08:54 MR. MARVIN: Morning, Your Honor. Douglas Marvin for Merck.

THE COURT: We still have several people on the phone, but this is getting to the point where for our future meetings we should do them on the phone. And I'll give you a call-in number so that we can deal with that.

19:09:07 We're getting to the end of the line here. As I mentioned a moment ago, I met with liaison lead counsel and you mentioned that we've had some case now since February 16th of, what, 2005?

19:09:28 The good news is that we had -- originally we had 50- or 60,000 cases throughout the United States. Every state

1 had a case; every district had a case. We've got 94 districts
2 in the United States, and every one of them had one.

3 In addition, we had something like 20 or 25 class
4 actions.

09:09:48

5 In addition to that, we had a couple of dozen states
6 that had made claims for reimbursement of their Medicare
7 claims and Medicaid claims.

8 And then the consumer class and a number of other
9 matters.

09:10:07

10 So with the help of excellent counsel in these
11 matters, we've been able to resolve most of the cases. We've
12 got just a couple left to try, and we've got some housekeeping
13 matters, but the agenda has gone quite a ways down.

14 Anything on the class actions?

09:10:34

15 MS. CABRASER: Your Honor, Elizabeth Cabraser for
16 the consumer class.

09:10:52

17 As Your Honor is aware from the claims administrator
18 BrownGreer's report, we're at the end of the claims period,
19 and the checks to the first approximately 7300 currently
20 payable claimants will go out in a week or so with other
21 payments to follow as the final formalities are completed,
22 which is set forth completely in the BrownGreer report.

09:11:15

23 On behalf of the consumer class, we simply wanted to
24 thank Your Honor, thank the claims administrator, BrownGreer,
25 and thank Merck for an extremely high level of cooperation

1 throughout the settlement approval and notice and claims
2 administration process.

3 THE COURT: Okay. And the consumer class, those are
4 the class of individuals who did not have any adverse reaction
5 from Vioxx. In fact, many of them wanted to continue Vioxx
6 and blamed the Court for taking it off of the market. Of
7 course, I didn't have anything to do with that. It was taken
8 off of the market before the MDL was even filed.

9 But, in any event, these individuals did not have
10 any adverse action, but they indicated that, had they known
11 there was potential dangers to Vioxx -- to taking Vioxx, they
12 would not have purchased Vioxx in the first place so they
13 wanted their money back for purchasing the Vioxx.

14 And the consumer class was formed, and the parties
15 began discovery and motion practice and eventually the case
16 was resolved. And that, in effect, gave the parties their
17 money back for purchasing Vioxx. In addition, it gave them
18 something -- payment for any doctors that helped them get
19 other medications.

20 The claims were made and notices were sent out in
21 several different media forms -- because these days the old
22 idea of putting things in the paper -- fewer and fewer people
23 seem to be reading the newspapers these days, and fewer and
24 fewer papers are still around, so counsel had to come up with
25 creative ways of notifying everybody through social media and

1 other sources. And the word got out, and people made claims,
2 and we are now in the process of paying out those claims.

3 Anything else on pending personal injury cases?

4 MR. MARVIN: Your Honor, there are a number of
5 motions that have been filed in the past several months. Many
6 of those are housekeeping motions to clean up the docket. The
7 joint status report lists all of those. It goes on for four
8 page of the motions.

9 THE COURT: We had one motion set today for a rule
10 to so cause --

11 MR. MARVIN: Yes.

12 THE COURT: -- so I'm going to grant that motion
13 because no one has shown up.

14 MR. MARVIN: That's correct, Your Honor.

15 There are only three motions pending. One is the
16 one that you just mentioned, the *Corde1* case, where there was
17 a failure to comply with the show cause order.

18 The *Silva* case, and that is something that Anne and
19 I have been talking about and so we'll ask you to withhold any
20 ruling on that case pending those discussions.

21 And then the *Levitt* case where there is a motion for
22 summary judgment pending, and my understanding is that is
23 going to be set for a special setting on March 17th, I think
24 it was.

25 THE COURT: Right.

1 With regard to the first motion, I'll grant the
2 motion and dismiss that case.

3 MR. MARVIN: Thank you, Your Honor.

4 THE COURT: Okay. What about the personal injury
5 cases that are still outstanding?

6 MS. OLDFATHER: Thank you, Your Honor. Good
7 morning. Ann Oldfather, liaison counsel for certain
8 ineligible cases.

9 Your Honor, just to follow up on Mr. Marvin's
10 comments, there are 11 personal injury cases still pending.
11 One of those is the heart attack, and the other ten are BTE
12 cases. The *Levitt* case is the heart attack case, and you've
13 just heard the status of that.

14 In terms of the BTE cases, all of those are actively
15 under discussion between the plaintiffs and Merck, and they
16 are in various stages of negotiation and/or resolution. Some
17 of them may or may not be successfully resolved, and we will
18 be approaching the Court with regard to further appropriate
19 motions in those cases.

20 THE COURT: Okay. Okay. All right.

21 I would like to at least finish this whole
22 litigation up certainly this year. Maybe by the summer we can
23 deal with it, but certainly by the end of the year.

24 MS. OLDFATHER: Thank you, Your Honor.

25 THE COURT: Okay. Any appeals -- reports on appeal?

1 MR. BEISNER: John Beisner on behalf of Merck.

2 The only appeal that we had out there was the appeal
3 of Your Honor's order approving the terms of the settlement.
4 That appeal, within the last week, was voluntarily dismissed,
5 and the Fifth Circuit has taken that off calendar for oral
6 argument next week and entered a dismissal so that is
7 complete.

8 THE COURT: Okay. All right. Anything that we
9 haven't covered?

10 MR. DAVIS: Yes, Your Honor. I just want to report
11 on the status of the depository that we've been maintaining.

12 That depository has had less and less use over time,
13 and we're basically mothballing it right now. But the
14 information is accessible. We recently renewed the license
15 for the software for an additional year.

16 And so if there is anyone -- including the Attorney
17 Generals or if there are individuals -- or any other
18 individuals that may want access to the information, I would
19 suggest that they contact us as soon as possible, because we
20 are gearing towards shutting it down hopefully in the next
21 year.

22 THE COURT: Okay. Dawn, contact the Attorney
23 Generals, particularly the ones that still have the cases
24 outstanding.

25 And if Merck knows of anybody.

1 MS. BARRIOS: Yes, Your Honor.

2 THE COURT: Because it gets very costly. It's
3 costly initially to create these kinds of virtual websites and
4 depositories. And then keeping them up is an added expense,
5 input into them and just the maintenance of them. And even in
6 mothballing it, there's still some expense for the software
7 primarily. And sometimes the space also, computer space and
8 whatever.

9 So I don't want to just crash it or anything, but we
10 may have to shift some costs. So if somebody has any need for
11 it, they should come forward.

12 MR. DAVIS: And we still have leased space and the
13 material is there, so if somebody does want it, we need to
14 know. Otherwise we're going to try to box it up and shut it
15 down.

16 THE COURT: At least let's keep it -- you have it
17 for a year so let's keep it that way.

18 MR. DAVIS: Yes.

19 MS. OLDFATHER: Your Honor, just for the record,
20 there are -- I think each of these plaintiffs have reason to
21 want to use those materials. And all of the comments that
22 have been made are certainly appropriate. I do think there's
23 probably a way to maintain it that is not at a significant
24 cost given the amount of common benefit that is discussed, but
25 it is premature to discuss it.

09:18:39

1 THE COURT: Right. I think so.

2 Okay. Anything further that we need to talk about
3 that I haven't talked about?

4 Our next status conference will be by telephone
5 April 23rd at 9:00, and I'll be giving you a call-in number so
6 that we can call in.

7 . Okay. All right. Folks, I have a telephone
8 conference with the Attorney Generals in some other case.

9 Thank you. Court will stand in recess.

10 (Proceedings adjourned.)

11

12 * * * *

13 **CERTIFICATE**

14

15 I hereby certify this 2nd day of March, 2015, that the
16 foregoing is, to the best of my ability and understanding, a
17 true and correct transcript of the proceedings in the
18 above-entitled matter.

19

20

/s/ Mary V. Thompson

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Official Court Reporter

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