

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

**In re: VIOXX**

**PRODUCTS LIABILITY LITIGATION**

**This document relates to All Cases**

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**MDL Docket No. 1657  
SECTION L  
JUDGE FALLON  
MAGISTRATE KNOWLES**

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**PRE-TRIAL ORDER NO.: 21  
(PRODUCTION OF FACTS DATABASE)**

This matter comes before the Court on a Motion filed by the Plaintiffs' Steering Committee ("PSC") to compel production of a database known as the Field Activity and Customer Tracking System ("FACTS") created, owned, operated and under the control of Merck & Co., Inc. ("Merck"). Merck filed an opposition to the PSC's Motion. Following this briefing, the Court conferred with counsel on the PSC and Defense Steering Committee ("DSC") and determined that the information in FACTS was relevant discovery and scheduled a feasibility hearing for August 2, 2005. The objective of the scheduled hearing was for the Court to assess the feasibility of producing the relevant data sought by the PSC from the FACTS database.

The PSC and DSC have resolved issues related to the production of data from the FACTS database and the Court has concluded that the feasibility hearing scheduled for August 2, 2005, is no longer necessary. Accordingly, the Court will enter the following Order that embodies the agreement between the PSC and DSC:

IT IS ORDERED, that:

1. Merck shall produce to the PSC repository in New Orleans, LA within fourteen (14) days from the date of this Order all of the data from FACTS produced to date to Plaintiffs' Liaison Counsel in *In Re: Vioxx Litigation*, Case No. 619, Civil Action, pending in the Superior Court of New Jersey, Law Division: Atlantic County ("New Jersey Coordinated Litigation") and any other VIOXX case in which Merck has previously made a production from FACTS.

2. Merck shall produce to the PSC repository in New Orleans, LA any subsequent production of data from FACTS to Plaintiffs' Liaison Counsel in the New Jersey Coordinated Litigation or other VIOXX cases outside of MDL 1657, within fourteen (14) days from the date of such production in the New Jersey Coordinated Litigation or other VIOXX case.

3. Merck shall produce FACTS data for the prescribing physician and officemates to the PSC pursuant to the protocol that governs the production of such data for the New Jersey Coordinated Litigation for each MDL plaintiff and fore each claimant on a Tolling Agreement.

4. The production required in Paragraph 3 above shall be produced to the PSC on a rolling basis as follows. First, MDL plaintiffs shall serve a Plaintiff Profile Form and Tolling Agreement claimants shall serve a Claimant Profile Form on Merck

with sufficient information to permit Merck to produce the FACTS information called for by this Order. Second, Merck shall produce FACTS data responsive to the served Plaintiff Profile Forms and Claimant Profile Forms on a bi-monthly basis. For example, a FACTS production by Merck on October 15, 2005 shall include FACTS information for the Plaintiff Profile Forms and Claimant Profile Forms served on or before August 15, 2005. The next FACTS production by Merck shall occur on December 15, 2005 and shall include FACTS information for the Plaintiff Profile Forms and Claimant Profile Forms served on or before October 15, 2005. Merck FACTS productions will follow every two months thereafter (i.e., February 15th, April 15th, etc.).

5. Merck shall make an additional production of FACTS call-related data of approximately five hundred thousand (500,000) randomly selected VIOXX detail call notes from FACTS which will be a national sample from all fifty (50) states and the District of Columbia using sampling methodology agreed to by the parties. Production of this data to plaintiffs shall be substantially completed by October 15, 2005.

6. Merck shall produce the relevant FACTS data, including detail call notes for physicians with offices in Boyton Beach, FL in *Evelyn Irvin, As Personal Representative of the Estate of Richard Irvin v. Merck & Co., Inc.*, currently filed in the Circuit Court of Palm Beach County, such production to be completed on or about October 1, 2005. The PSC and DSC shall meet and confer about timely FACTS productions for future test cases and shall notify the Court if this issue cannot be resolved by counsel.

7. The production required in Paragraph 6 shall reduce the total number of the sample of VIOXX detail call notes to be produced pursuant to by

Paragraph 5 on a one-for-one basis, such that, for example, if Merck produces 10,000 call notes under paragraph 6, the total sample size of FACTS data under Paragraph 5 shall be reduced to 490,000.

8. The PSC and DSC shall confer and reach agreement regarding the form of productions to the PSC, provided that each Merck production from FACTS shall be cumulative, i.e. will include the previously produced FACTS data.

New Orleans, Louisiana, this 25<sup>th</sup> day of August, 2005.

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**ELDON E. FALLON**  
**JUDGE, U.S. DISTRICT COURT**