

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

In re: Vioxx

PRODUCTS LIABILITY  
LITIGATION

This document relates to  
**Cases listed on Exhibits A, B and C**

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

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**PRETRIAL ORDER NO. 58**  
**(Case Management Order for Remaining Personal Injury Actions )**

Approximately 70 personal injury cases remain in this MDL proceeding, out of tens of thousands of cases that were previously resolved. The cases can largely be categorized into three groups – (1) cases alleging a myocardial infarction (“MI”) or stroke injury; (2) cases alleging venous thromboembolism injuries (“VTEs”); and (3) cases alleging all other injuries (“Other Injuries”)<sup>1</sup>.

This Order governs the management of cases that allege VTE injuries, Other Injuries, and Heart Attack/Stroke/TIA injuries.

Accordingly, it is hereby **ORDERED**:

**I. REMAINING DISCOVERY IN VTE AND “OTHER INJURY” CASES**

All remaining generic discovery and case specific factual discovery shall take place in accordance with Pretrial Orders issued by this Court. All fact and expert discovery will be completed by the parties in the MDL prior to consideration of any motions to remand/transfer. As this Court has indicated previously, it is the intention of this Court that, if any individual

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<sup>1</sup> The characterization of individual injuries is for the purposes of the scheduling order only.

cases are remanded back to transferor courts, the case will be remanded in a “trial ready” posture. At this late juncture of the proceedings, it would not be the most efficient use of limited judicial resources to require other judges to essentially start anew with these cases.

A significant benefit of MDL coordination arises from the conservation of judicial resources, and the ability of a judge who is knowledgeable about the extensive history of the litigation to address and manage discovery issues and motions practice more efficiently. The continued centralized management of pretrial proceedings under the supervision of this Court will assist the parties to ready cases for trial in the most just and efficient manner. In short, continued MDL coordination will “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.” *In re Heritage Bonds Litig.*, 217 F. Supp. 2d 1369, 1370 (J.P.M.L. 2002) (citing 28 U.S.C. § 1407).

## **II. GENERAL CAUSATION FOR VTE CASES**

The largest group of cases remaining in this MDL consists of venous thromboembolism injuries, such as pulmonary embolisms and deep vein thromboses.

Merck has a pending motion for summary judgment (filed November 2, 2011) that essentially asserts that plaintiffs cannot produce legally sufficient evidence to establish that Vioxx usage causes VTE injuries. Plaintiffs were given until **May 7, 2012** to produce an expert report on general causation. Due to unexpected problems encountered with the Plaintiffs’ Document Depository, Liaison Counsel has sought an extension of that deadline.

Further proceedings in the VTE Cases (*listed on Exhibit A*) shall take place as follows:

- Plaintiffs produce generic expert report(s) on general causation by **August 15, 2012**;

- Defendant produces any supplemental/rebuttal reports by **August 31, 2012**.
- Completion of expert depositions in *VTE* cases – **October 15, 2012**.

**Daubert Motions in PE/DVT Cases**

*Daubert* motions due – **November 21, 2012**

Opposition to *Daubert* motions due – **December 21, 2012**

*Daubert* Reply briefs due – **January 7, 2013**

*Daubert* hearing – *T/B/A*

**III. DISCOVERY IN “OTHER INJURY” CASES**

Further proceedings in the **Other Injury Cases** (*listed on Exhibit B*), which comprise 13 in number, shall proceed in accordance with the following schedule:

- Completion of All Fact Discovery– **November 1, 2012**
- Designation of Experts and Submission of Written Expert Reports by Plaintiffs – **November 16, 2012**
  - Written reports must fully comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure, and the designated experts must be willing and prepared to provide sworn testimony admissible in a court of law.
- Designation of Experts and Submission of Written Expert Reports by Defendant – **December 14, 2012**
  - Written reports must fully comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure, and the designated experts must be willing and prepared to provide sworn testimony admissible in a court of law.
- Completion of Expert Depositions – **February 18, 2013**
- *Daubert* and Dispositive Motions due – **March 11, 2013**

- Opposition to *Daubert* and Dispositive Motions due – **April 11, 2013**
- Reply briefs due – **May 20, 2013**
- *Daubert* hearing – T/B/A

**Dispositive Motions**

Dispositive motions in individual cases may be filed at any time. The opposing party will have 21 days to respond. The moving party will have 10 days to reply.

**IV. GENERAL CAUSATION AND DISCOVERY IN HEART ATTACK/STROKE/TIA CASES**

A significant benefit of prior MDL coordination efforts includes *Daubert* hearings and expert reports that have been previously reviewed by the Court or prepared as a result of coordinated effort of various Plaintiffs’ counsel. Taking advantage of these efforts will “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.” *Id.*

Further proceedings in the **Heart Attack/Stroke/TIA Cases** (*listed on Exhibit C*), which comprise 28 in number, shall proceed in accordance with the following schedule:

- Plaintiffs produce generic expert report(s) on general causation by **June 15, 2012**, for the purpose of preliminarily establishing general causation as to the event and sufficiency of Vioxx usage in Heart Attack/Stroke/TIA cases in general, not with regard to individual cases
- Defendant shall notify Plaintiffs’ Lead Counsel which of the Heart Attack/Stroke/TIA cases will require a *Daubert* hearing on general causation as to the event and/or Vioxx usage – **September 17, 2012**
- Completion of All Fact Discovery– **February 1, 2013**

- Designation of Experts and Submission of Written Expert Reports by Plaintiffs – **February 18, 2013**
  - Written reports must fully comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure, and the designated experts must be willing and prepared to provide sworn testimony admissible in a court of law.
  
- Designation of Experts and Submission of Written Expert Reports by Defendant – **March 18, 2013**
  - Written reports must fully comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure, and the designated experts must be willing and prepared to provide sworn testimony admissible in a court of law.
  
- Completion of Expert Depositions – **May 6, 2013**
- *Daubert* and Dispositive Motions due – **June 3, 2013**
- Opposition to *Daubert* and Dispositive Motions due – **July 1, 2013**
- Reply briefs due – **July 15, 2013**
- *Daubert* hearing – T/B/A

**Dispositive Motions**

Dispositive motions in individual cases may be filed at any time. The opposing party will have 21 days to respond. The moving party will have 10 days to reply.

NEW ORLEANS, LOUISIANA, this 15<sup>th</sup> day of May, 2012.



ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

**Exhibit A**  
**(VTE Cases)**

	<b>Plaintiff</b>	<b>Plaintiff Counsel</b>	<b>Case Caption</b>	<b>Docket Number Current</b>
1.	Albertson, Beverly A	Cory, Watson, Crowder & DeGaris	Albertson, Beverly v. Merck & Co., Inc.	2:06-cv-06236-EEF-DEK
2.	Amiss, Louise H	Oldfather Law Firm	D'Angelo, Mary v. Merck & Co., Inc.	2:06-cv-09755-EEF-DEK
3.	Bland, Violet M	Oldfather Law Firm	Popp, Jennifer M. v. Merck & Co., Inc.	2:06-cv-01926-EEF-DEK
4.	Brown, Dianne	Pro Se	Banks, Mary v. Merck & Co., Inc.	2:06-cv-02214-EEF-DEK
5.	Byrd, Deborah A	Pro Se	Banks, Mary v. Merck & Co., Inc.	2:06-cv-02214-EEF-DEK
6.	Carver, Gail F.	Oldfather Law Firm	Carver, Roger v. Merck & Co., In	2:05-cv-04981-EEF-DEK
7.	Demoski, James J	Law Office of Ronald R. Benjamin	Agard, David v. Merck & Co., Inc.	2:05-cv-01089-EEF-DEK
8.	Dumbell, Mabel C	Fibich, Hampton & Leebron	Barker, Rita B. v. Merck & Co., Inc.	2:05-cv-06535-EEF-DEK
9.	Eddy, Judith	Oldfather Law Firm	Albright, Ann M. G. v. Merck & Co., Inc.	2:06-cv-02204-EEF-DEK
10.	Fulton, Rebeka K	Cory, Watson, Crowder & DeGaris	Fulton, Arthur v. Merck & Co., Inc.	2:05-cv-00436-EEF-DEK
11.	Garner, Elizabeth A	Robert L. Salim	Black, Bill v. Merck & Co., Inc.	2:05-cv-04452-EEF-DEK
12.	Gasio, Dane B	Oldfather Law Firm	Gasio, Dane v. Merck & Co., Inc.	2:07-cv-01054-EEF-DEK
13.	Graham, Larry N	Federman & Sherwood	Graham, Larry v. Merck & Co., Inc.	2:07-cv-01055-EEF-DEK
14.	Heisey-DeWolf, Deborah A	Oldfather Law Firm	Heisey DeWolf v. Merck & Co., Inc.	2:06-cv-09810-EEF-DEK
15.	Hench, Edwin C	Oldfather Law Firm	Hench, Edwin C. v. Merck & Co., Inc.	2:06-cv-09811-EEF-DEK
16.	Jelden, Todd	Oldfather Law Firm	Atkinson, Allen v. Merck & Co., Inc.	2:05-cv-04130-EEF-DEK
17.	Knifley, Thelma M	Cory, Watson, Crowder & DeGaris	Knifley, Welby R. v. Merck & Co., Inc.	2:05-cv-05635-EEF-DEK
18.	Kollin, Jean M	Pro Se	Allen, Marie v. Merck & Co., Inc.	2:06-cv-02220-EEF-DEK
19.	Mack, Timothy F	Law Office of Ronald R. Benjamin	Dier, Glenn L v. Merck & Co., Inc.	2:05-cv-01088-EEF-DEK
20.	Major, Lynell	Robert L. Salim	Black, Bill v. Merck & Co., Inc.	2:05-cv-04452-EEF-DEK
21.	Martin, Kristen M	Fibich, Hampton & Leebron	Martin, Kristen v. Merck & Co., Inc.	2:06-cv-06808-EEF-DEK
22.	Osiecki, Marilyn J	Oldfather Law Firm	Osiecki, Marilyn J. v. Merck & Co., Inc.	2:06-cv-09814-EEF-DEK
23.	Painter, Gladys R	Oldfather Law Firm	Gibson, Kathy v. Merck & Co., Inc.	2:06-cv-09812-EEF-DEK
24.	Reilly, James A	Oldfather Law Firm	Ballantyne, Arthur W. v. Merck & Co., Inc.	2:06-cv-02195-EEF-DEK

	<b>Plaintiff</b>	<b>Plaintiff Counsel</b>	<b>Case Caption</b>	<b>Docket Number Current</b>
25.	Silva, Valerie A	James, Vernon & Weeks, P.A.	Silva, Valerie A. v. Merck & Co., Inc.	2:05-cv-01768-EEF-DEK
26.	Slembarski, John C	Oldfather Law Firm	Slembarski, John C. v. Merck & Co., Inc.	2:06-cv-09809-EEF-DEK
27.	Vecchio, Teresa M	Pro Se	Daluiso, Anna v. Merck & Co., Inc.	2:06-cv-01197-EEF-DEK
28.	Weese, Roxana	Pro Se	Banks, Mary v. Merck & Co., Inc.	2:06-cv-02214-EEF-DEK
29.	Woodcock, Christine	Pro Se	Adams, Mary E. v. Merck & Co., Inc.	2:06-cv-02200-EEF-DEK

**Exhibit B**  
*(“Other Injury” cases)*

	<b><u>Plaintiff</u></b>	<b><u>Plaintiff’s Counsel</u></b>	<b><u>Case Caption</u></b>	<b><u>Case Number</u></b>
1.	Baum, Janice M	Pro Se	Van Jelgerhuis v. Merck	2:05-cv-0458-EEF-DEK
2.	Butterfield, Myrtle	Oldfather Law Firm	Allen, Marie v. Merck & Co., Inc.	2:06-cv-02220-EEF-DEK
3.	Dunn, Velma	Bennie L Jones, Jr. & Associates	Singleton v. Merck	2:09-cv-02413-EEF-DEK
4.	Eldridge, Joanne	Savage Bowersox Supperstein LLP	Eldridge, Joanne v. Merck & Co., Inc.	2:05-cv-04447-EEF-DEK
5.	Elliott, Sandra	Oldfather Law Firm	Elliott, Sandra v. Merck & Co., Inc.	2:06-cv-10987-EEF-DEK
6.	Harrison, Dennis R	Pro Se	Harrison. v. Merck	2:07-cv-00905-EEF-DEK
7.	Hudnut, Lynn D	Pro Se	Jenkins, Ruth v. Merck	2:05-cv-04054-EEF-DEK
8.	King, LaDonna	Oldfather Law Firm	King, LaDonna v. Merck & Co., Inc	2:06-cv-10270-EEF-DEK
9.	Laviner, Rebecca	Federman & Sherwood	Laviner, Rebecca v. Merck	2:06-cv-06932-EEF-DEK
10.	Long, Stanley	Getty & Childers	Long, Stanley v. Merck	2:05-cv-06510-EEF-DEK
11.	Nolan, Maryann G	Getty & Childers	Nolan, Mary A. v. Merck.	2:05-cv-06146-EEF-DEK
12.	Rarick, Kenneth	Oldfather Law Firm	Amie, Vernon v. Merck & Co., Inc.	2:06-cv-02219-EEF-DEK
13.	Sanjanwala, Smita	Oldfather Law Firm	Smita, Sanjanwala v. Merck & Co., Inc.	2:05-cv-01011-EEF-DEK



**Exhibit C**  
**(MI/Stroke/TIA Cases)**

	<u>Plaintiff</u>	<u>Plaintiff's Counsel</u>	<u>Case Caption</u>	<u>Case Number</u>
1.	Akyaamaa, Akosua	Pro Se	Akyaamaa, Akosua v. Merck & Co., Inc.	2:07-cv-08080-EEF-DEK
2.	Butcher, Lawrence K	Oldfather Law Firm	Butcher, Lawrence K. v. Merck & Co., Inc.	2:06-cv-01901-EEF-DEK
3.	DeRose, Gary A	Stratton Faxon	Whittaker, Denise v. Merck & Co., Inc.	2:05-cv-01257-EEF-DEK
4.	Donaldson, William J	Stratton Faxon	Whittaker, Denise v. Merck & Co., Inc.	2:05-cv-01257-EEF-DEK
5.	Escamilla, Robert	Law Offices of Chambers, Noronha & Kubota	Escamilla, Rosie v. Merck & Co., Inc.	2:08-cv-03573-EEF-DEK
6.	Flewellen, Neil	Lopez, Hodes, Restaino, Milman & Skikos // Stratton Faxon	Flewellen, Neil v. Merck & Co., Inc.	2:08-cv-04165-EEF-DEK
7.	Gros, Cheryl D	Law Offices of Donald J. Melancon	Gros, Cheryl D. v. Merck	2:08-cv-05128-EEF-DEK
8.	Hess, Denise R	Stratton Faxon	Hess, Denise R. v. Merck & Co., Inc.	2:05-cv-05893-EEF-DEK
9.	Knotts, Jerrlyn Kay S	Law Office of Robert L. Salim	Black, Bill v. Merck & Co., Inc.	2:05-cv-04452-EEF-DEK
10.	Levitt, Jo	Pro Se	Levitt, Jo v. Merck & Co., Inc.	2:06-cv-09757-EEF-DEK
11.	Lewis, Barbara J	Pro Se	Lewis, Barbara v. Merck & Co., Inc.	2:08-cv-04925-EEF-DEK
12.	Lockhart, Dolena	Paul A. Weykamp Law	Lockhart, Jimmy v. Merck & Co., Inc.	2:08-cv-00876-EEF-DEK
13.	Lynch, Judith A	Stratton Faxon	Lynch, Judith v. Merck & Co., Inc.	2:05-cv-05072-EEF-DEK
14.	Mannino, Ann M	Pro Se	Holobosky, Rosemary v. Merck & Co., Inc.	2:05-cv-01091-EEF-DEK
15.	Moxter, Bobby L	Fibich, Hampton & Leebron, LLP	Barker, Rita B. v. Merck & Co., Inc.	2:05-cv-06535-EEF-DEK
16.	Nestor, James	Law Offices of Douglas T. Sachse	Nestor, James v. Merck & Co. Inc.	2:09-cv-07648-EEF-DEK
17.	Novick, Kenneth A	Oldfather Law Firm	Novick, Kenneth v. Merck & Co., Inc.	2:07-cv-07756-EEF-DEK
18.	Perry, Samuel C	Stratton Faxon	Chambers, Marianne v. Merck & Co., Inc.	2:05-cv-01997-EEF-DEK
19.	Pickett, Virginia G	Pro Se	Pickett, Virginia v. Merck Sharp & Dohme, Corp.	2:10-cv-00043-EEF-DEK
20.	Roach, Joanne I	Emmanuel Guyon	Roach, Walter J. Jr. v. Merck & Co., Inc.	2:10-cv-00868-EEF-DEK
21.	Rodriguez, Marjorie	Stratton Faxon	Whittaker, Denise v. Merck & Co., Inc.	2:05-cv-01257-EEF-DEK
22.	Russel, Donna C	Oldfather Law Firm	Russel, Donna C. v. Merck & Co., Inc.	2:06-cv-00781-EEF-DEK
23.	Schnepf, James K	Harding & Moore	Schnepf, James K. v. Merck & Co., Inc.	2:06-cv-00321-EEF-DEK

	<b><u>Plaintiff</u></b>	<b><u>Plaintiff's Counsel</u></b>	<b><u>Case Caption</u></b>	<b><u>Case Number</u></b>
24.	Smith, Larry L	Trenam, Kemker, Scharf, Barkin, Frye	Smith, Larry L. v. Merck & Co., Inc.	2:08-cv-04639-EEF-DEK
25.	Strujan, Elena	Pro Se	Strujan, Elena v. Merck & Co., Inc.	2:07-cv-00906-EEF-DEK
26.	Valencia-Bernal, Susana	Pro Se	Valencia Bernal, Susana v. Merck & Co., Inc.	2:07-cv-01049-EEF-DEK
27.	White, Jackie K	Oldfather Law Firm	White, Jackie v. Merck & Co., Inc.	2:10-cv-00504-EEF-DEK
28.	Wodowski, Michael	The Miserendino Law Firm	Wodowski, Michael v. Merck & Co., Inc.	2:08-cv-04559-EEF-DEK