

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

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION L
	*	
This document relates to All Cases	*	JUDGE FALLON
	*	
	*	MAGISTRATE JUDGE KNOWLES
	*	

CURATOR’S STATUS REPORT NO. 10

Curator, Robert M. Johnston, Esq., submits this Status Report No. 10, in accordance with the Court’s Order, dated February 12, 2008.

I. MAILINGS TO *PRO SE* CLAIMANTS

Since the filing of Curator’s Status Report No.1, my office continues to receive numerous inquiries from *pro se* claimants/litigants. As instructed in the Court’s Order appointing *Pro Se* Curator, we continue to assist potential claimants in navigating the settlement program. As discussed in prior reports, the number and complexity of inquiries received by my office has increased, and the average call has appreciably lengthened. In addition, we continue to assist callers, whether pure *pro se*, those who have been instructed to contact the curator by their current or former counsel, or those who were instructed to contact the curator by counsel for Merck, by accessing the

caller's claimant information through the Claims Administrator's *Pro Se* Curator's portal, or their litigation status if they are part of a member case consolidated in the MDL. Through these means, we can assist the caller by advising the documents which have been processed and appear on the claimant's information page, can view the documents themselves if the claimant has questions regarding deficiency notices, and can advise regarding Motions to Dismiss filed by Merck, some of which have been granted by the court and some of which remain for future hearing. We will continue to assist all callers in this manner.

As noted in prior reports, we continue to receive calls requesting assistance in obtaining medical or other records on deposit with the Litigation Records Repository or that remain in the possession of prior counsel for the claimant or litigant. As these requests are made, we provide assistance by contacting prior counsel and facilitating receipt of any records available for the claimant or litigant, or that exist on LMI, and providing an electronic and hard copy to the claimant/litigant, the claims administrator, and to counsel for Merck, as appropriate. We will continue to assist in this manner. We also receive inquiries regarding deficiency notifications and claimants wishing to check on the status of their claim package review. We will continue to work with the claims administrator to advise callers of review status, as well as to clear any remaining deficiencies.

As previously reported, the curator's office sent two mailings to claimants and litigants who had not yet completed the requirements for claim package submission and/or enrollment. As information, documents, or questions arose, the curator's office assisted these claimants with inquiries as to the requirements of the settlement program, as well as confirming whether litigants desire to take part in the settlement, continue with their suit, or wish to dismiss it. We will keep all

parties, the court, and the Claims Administrator apprised of any new information or documents as they are received.

Since the Monthly Status Conference held on January 22, 2009, the Curator has been asked to provide an additional mailing to all “Merck-deems-eligible” claimants, notifying them of the Private Lien resolution Program available to claimants through the Lien Administrator. Specifically, the Lien Administrator has provided the Curator with a ten (10) page document that sets forth to *pro se* claimants the Private Lien Resolution Program, its requirements, and an HIPPA compliant acceptance form. Through our open line of communication with the Claims Administrator, we have been provided with a detailed mailing list to assure that all eligible *pro se* claimants receive the notice and have an opportunity to review the materials and make an informed decision regarding the program. We defer to the Lien Administrator as to the content of this package of information, created especially to assist *pro se* claimants. This mailing will roll out the week beginning February 9, 2009. Any mailings which are returned, or communications received in response to this mailing, will be appropriately logged and handled in the same manner as other inquiries received by the Curator’s office.

The Curator’s office has been advised that the secure portal will soon allow access to any potential lien information, such that the Curator can assist any *pro se* caller with specific questions regarding the caller’s specific situation. The Curator defers to the Lien Administrator and Claims Administrator as to the precise date upon which this access will be available.

II. RETURNED AND UNDELIVERABLE MAIL

As discussed in prior reports, we continue to monitor returned and undeliverable mailings sent to potential *pro se* claimants. As of the date of this status report, no additional original Curator

mailings have been returned undeliverable. We will continue to monitor any returned or undeliverable mail and will keep the parties, Court, and Claims Administrator apprised of any new information or documents received.

III. LEGAL NOTICE PUBLICATIONS

All of the legal notices have been completely published and we continue to receive affidavits of publication from the publisher, both certifying the dates of publication, and providing a copy of the notice published. These affidavits are maintained in the *Pro Se* Curator's file and will be submitted to the Court as part of the Curator's Certification.

For claimants, or their heirs, for whom new contact information has been received as a result of the publication of these legal notices, we have forwarded that information to both the Claims Administrator and counsel for Merck, so that future communications can be sent directly. If new information is received in the future, we will continue to act accordingly. Similarly, we have received requests from counsel for Merck and withdrawing attorneys seeking information regarding claimants that they have been unable to reach. As these inquiries are received, we review our records and provide the requested information.

IV. CURATOR'S COMMUNICATIONS

My firm continues to receive numerous telephone calls, emails, facsimiles, and correspondence from potential claimants in the Settlement Program who have received notices of deficiencies in either enrollment or claim materials submitted, or who have questions regarding the status of their claims package review. These communications continue to be logged in an internal communications log, and are also being entered into the online communications log, previously described, on a rolling basis. This communications log is available through the Claims

Administrator's portal, and reports are available by date, by caller, or by Curator taking the call. At the conclusion of this process, we will submit the entire communications log to the Court. At this point, all completed outgoing mailings and curator communications as of the date of this report have now been uploaded to the secure portal. Future mailings will be similarly logged.

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 written communications and documents forwarded by potential *pro se* claimants via U.S. Mail, facsimile, electronic mail, and private shipping companies (Federal Express, DHL, and UPS), we continue to forward all documents received by my office, 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. A copy of these communications and documents is also maintained in the Curator's file.

When requested, we have provided assistance in reestablishing communications between a potential claimant and his or her attorney who had difficulty reaching the claimant. As these requests carry on, we will continue to provide this assistance.

Additionally, we have seen a continued increase in callers seeking a regular, or weekly "status check" of their claims. These callers' claimant information page, on the Curator's portal, generally shows that the claimant is enrolled and that no deficiency was found (NDF) after Merck's review of their documents. For those claimants whose information page indicated any deficiency, we provide the claimant with the deficiency description and advise how to remedy same. The Claims Administrator has been of great assistance in helping these claimants correct deficiencies by

re-sending the required documents, or by verifying that the database reflects any corrective action taken. As these calls continue, we will assist and coordinate efforts with the Claims Administrator to assure *pro se* claimants have every opportunity to comply with the requirements and deadlines of the settlement agreement.

The Curator's office has received an increased number of inquiries from claimants having difficulties in obtaining medical records, or seeking relief from unreasonable costs of duplication of medical records needed to complete the claims package submissions. As the court has provided assistance in the form of show cause orders and pretrial orders, we have been able to assist these callers in obtaining their requested records for a reasonable duplication fee. As these inquiries continue, we will provide such assistance so long as it is necessary.

MERCK'S MOTIONS TO DISMISS

The curator's office has received a number of communications from *pro se* and represented litigants who are subject to a Motion to Dismiss filed, pending, or granted on behalf of Merck. We are working with counsel for Merck to assure that all communications and documents received by the curator's office are forwarded to counsel for Merck, as well as to the claims administrator. We would like to thank the Court's staff for assuring that the Curator has received copies of correspondence forwarded directly to the Court. Additionally, where a claimant or litigant expresses a desire not to proceed with their pending suit, we are also making note of that communication and passing along to the parties and the claims administrator. Despite the expiration of the deadline for the curator to receive this type of communication, our office continues to receive calls, even as of the date of this report, from litigants who do not wish their claims to be dismissed or who have expressed confusion regarding their status or whether they are currently represented. We will

continue to assist these callers, as well as any litigant corresponding with the Curator, and will continue to advise that we cannot act as counsel of record for any litigant, but can be a resource for the litigant. We defer to Counsel for the parties as to the status of any remaining motions to dismiss.

V. 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. As previously reported, we have been provided with information from the PLC regarding attorneys handling Vioxx matters in various jurisdictions, have reorganized this information into a list, sorted by location, of attorneys handling Vioxx matters, and continue to provide this information, as required by the Court's Order, to *Pro Se* Claimants requesting same.

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VI. PRESENTATION AT NEXT STATUS CONFERENCE

The curator will be prepared to address the items in this report to the court, parties, and callers listening via telephone conference, as well as being available to address any questions, at the monthly status conference scheduled for February 10, 2009. Additionally, we will be available for all future status conferences, as dates are selected by the Court.

Respectfully submitted,

**JOHNSTON, HOEFER, HOLWADEL
& ELDRIDGE**

/s/ Robert M. Johnston

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Pro Se Curator

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Curator's Status Report No. 10 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 9th day of February, 2009

/s/ Robert M. Johnston

ROBERT M. JOHNSTON (#7339)