

**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. 4

Curator, Robert M. Johnston, Esq., submits this Status Report No. 4, 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. 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. We continue to receive calls from claimants who have received notice that their attorneys are seeking to withdraw from their representation, as well as callers who received the Vioxx Consortium letter attached to Curator’s Status Report No. 3. In addition, we continue to

assist callers, whether pure *pro se*, or who have been instructed to contact the curator by their current counsel, by accessing the caller's claimant information through the Claims Administrator's *Pro Se* Curator's portal. Through this portal, we can assist the caller by advising the documents which have been processed and appear on the claimant's information page, and can view the documents themselves if the claimant has questions regarding a possible deficiency. We will continue to assist all callers in this manner.

As noted in Report No. 3, the Claims Administrator has forwarded to all eligible *pro se* claimants, and those represented claimants who have requested, the *pro se* claims forms and all LMRD records available, after receipt of the appropriate medical authorization. As we continue to receive calls from claimants seeking these form, we are forwarding those requests to the Claims Administrator for processing.

II. RETURNED AND UNDELIVERABLE MAIL

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

After seeking guidance and consultation with counsel for Merck, for those tolling termination letters returned as "unclaimed" or "refused," we have not published legal notices, but have completed forwarding a copy of both the envelope and enclosure via regular mail to the last known address of the claimant. If any communication is received from these claimants, we will attempt to confirm the claimant(s)' contact information is correct and will report to the parties and Claims Administrator.

III. LEGAL NOTICE PUBLICATIONS

We have identified and made contact with a nearly all of the newspapers in which legal notices will be published. As the publications occur, we have requested, and are receiving affidavits of publication from the newspaper, 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 upon completion of all legal notice publication as part of the Curator's Certification.

Despite the fact that approximately 200 legal notices have been published, as of the date of this report, we have only received a small number of communications from persons claiming to have knowledge of the whereabouts of any potential claimant for whom we have incomplete, inaccurate, or non-existent contact information. We continue to receive letters and calls from incarcerated persons, however, no new contact information has been gleaned from same. Nonetheless, the legal notice publications appear to be reaching potential claimants, or their legal representatives where the claimant is now deceased. Approximately 60 additional legal notice publications are in the process of publication, or scheduled to run as of the date of this report. We anticipate all publications will be completed no later than July 31, 2008.

For both claimants for which 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 future, we will continue to act accordingly.

IV. CURATOR'S COMMUNICATIONS

My firm continues to receive numerous telephone calls, emails, facsimiles, and correspondence from potential claimants in the Settlement Program. These communications have been 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.

Upon information and belief, this information will be available and searchable to everyone possessing a valid login and password to the Claims Administrator's Vioxx Portal. 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.

We have received calls from two (2) additional potential claimant who is Spanish-speaking, for a total of three (6) Spanish-speaking contacts. As previously reported, our firm employs a bilingual attorney, and thus, we continue to provide information and assistance to these potential claimants to allow them comply with the requirements of the Settlement Program, despite their inability to speak English. All other calls have been from English-speaking persons.

V. VIOXX LITIGATION CONSORTIUM AND SIMILAR LETTERS

As previously reported, we continue to receive a significant number of inquiries from claimants who have received letters from their attorneys seeking either to withdraw from representation, or cease work on their claim. We continue to advise callers of the provisions of the Settlement Agreement, as supplemented and amended, which provide additional time to complete the claims submission process. Also, we continue to provide these callers with *pro se* forms, upon request, as well as assisting the callers in contacting their attorneys and attempting to comply with the requirements of the settlement program.

As these calls keep on, we will continue to take note of callers who have received these letters who request that the Claims Administrator forward the *pro se* claims forms, and will forward said requests accordingly.

VI. 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.

VII. INDIVIDUAL PORTAL ACCESS TO CLAIMS ADMINISTRATOR WEBSITE

In response to the Court's July 8, 2008 Order (Document 15216) regarding a request for individual access to the Claims Administrator's portal, we have conferred with the Claims Administrator regarding this letter and the possible implications regarding the requests therein. First, it should be noted that the Curator's office has not been directly contacted by Mr. Cokefield. After review of Mr. Cokefield's requests, it is the Curator's recommendation that individual portal access through the Claims Administrator's should not be ordered by the Court for several reasons:

1. The technical aspects of setting up individual portals would be extremely burdensome, as each portal would need to be self contained for security and confidentiality purposes. In other words, each portal would need to be limited to that single claimant's materials and information only, as any additional access could violate other claimants' privacy rights, such as by allowing access to medical records.
2. The Curator's office is currently equipped to assist both *pro se* and represented callers who are seeking information available on the Claims Administrator's portal. In fact, these types of requests are included in nearly every call received by our office.
3. Lastly, if individual access is allowed, it may actually prejudice *pro se* claimants, as they may choose not to contact the Curator regarding the status of their claim. This would prevent our office from assuring that the *pro se* claimant is fully aware of the terms of the settlement agreement, and the rights and responsibilities regarding same.

In addition to the above, we defer to the Claims Administrator to further describe the complications regarding allowing individual portal access.

VIII. PRESENTATION AT NEXT STATUS CONFERENCE

Curator and associate attorneys, will be available to discuss the above, as well as to address any questions, at the monthly status conference, currently scheduled for July 17, 2008. 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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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Curator's Status Report No. 3 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 17th day of July, 2008.

/s/ Robert M. Johnston
ROBERT M. JOHNSTON (#7339)