

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

<b>In re: VIOXX</b>	*	<b>MDL Docket No. 1657</b>
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<b>PRODUCTS LIABILITY LITIGATION</b>	*	<b>SECTION L</b>
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<b>This document relates to All Cases</b>	*	<b>JUDGE FALLON</b>
	*	
	*	<b>MAGISTRATE JUDGE KNOWLES</b>
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**CURATOR’S STATUS REPORT NO. 5**

Curator, Robert M. Johnston, Esq., submits this Status Report No. 5, 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 prior reports, we continue to receive calls requesting duplicate enrollment or claims forms. As these requests are made, we are either providing the requested document, if within our possession, or forwarding those requests to the Claims Administrator for processing. The Claims Administrator has been very efficient in turning around such requests—sometimes within mere minutes of our request. We thank them for their continued efforts to assist these callers.

## **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, an additional 6 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 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 publications as part of the Curator's Certification.

We have begun to receive an increased response to these publications. In particular, we have been successful in locating the heirs or derivative claimants for several deceased claimants, and have provided registration materials to same.

The total number of legal notice publications which have either been published, are currently running, or scheduled to run before the end of this month is 269. We continue to receive letters and calls from incarcerated persons, however, no new contact information has been gleaned from same.

For both 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.

#### IV. CURATOR'S COMMUNICATIONS

My firm continues to receive numerous telephone calls, emails, facsimiles, and correspondence from potential claimants in the Settlement Program, or who have yet to register but are a party to the Tolling Agreement. 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.

In the meantime, upon information and belief, this information is currently 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.

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

**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.

**VI. INDIVIDUAL INQUIRIES REGARDING INFORMATION AVAILABLE ON THE CLAIMS ADMINISTRATOR'S WEBSITE**

In response to the Court's order denying individual access to the Claims Administrator's Portal, we have received numerous ongoing requests for status updates of deficiencies noted on the portal. Through our open line of communication with the Claims Administrator, we have been able to provide these callers with up-to-date information regarding the status of their claim, specific descriptions of any deficiencies, as well as assistance in correcting any deficiencies noted. The Claims Administrator, and in particular Ms. Diann Bates, has been extremely helpful and responsive to our inquiries, as well as pulling hard copies of the deficient documents to assure that a scanning or other error was not the cause of the deficiency. We continue to monitor deficiencies attributed to pure *pro se* claimants and assist those persons in correcting same.

## VII. 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 August 20, 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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*Pro Se Curator*

## 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 19th day of August, 2008.

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