

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

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

CURATOR’S STATUS REPORT NO. 7

Curator, Robert M. Johnston, Esq., submits this Status Report No. 7, 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. 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 deficiency notices. 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.

In light of the upcoming deadline for enrollment, the Curator has sent an additional mailing to 127 individuals identified by counsel for Merck and State/Federal Liaison Counsel as having potentially eligible claims, but who have not yet completed enrollment. This mailing included the following:

- A cover letter informing the recipient of the October 30, 2008 deadline for enrollment;
- The instructional cover letter sent in the Curator's original mailing to potential *pro se* claimants;
- A description of the settlement agreement;
- Instructions for completing registration;
- The registration affidavit;
- The registration checklist; and
- Instructions for completing enrollment.

Of the list of potential claimants received from counsel for Merck, two did not have complete address information available: John Walton McGruder and Linda Waddell. As neither of these

individuals are claimants for which we have published a legal notice, we are attempting to locate a viable address for these potential claimants so that the packets can be received in time to allow them to complete enrollment.

We will continue to assist these claimants in taking part in the settlement program, or attempt to confirm that they do not wish to take part in the settlement. We will keep all parties, the court, and the Claims Administrator apprised of any new information or documents received from this additional mailing.

We anticipate additional mailings in the future as the deadline for claims package submission nears, and if any *pro se* claimants obtain a good cause extension from the Claims Administrator until December 30, 2008. We will advise further as these deadlines approach.

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, one (1) additional original Curator mailing has been returned undeliverable. We have placed a legal notice publication seeking this person and will make every effort to provide the documents previously discussed. Additionally, we will continue to monitor any returned or undeliverable mail, in light of the additional mailings outlined above, 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, or are scheduled to run within the next seven (7) days. As publications are completed and processed by each newspaper, 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 upon completion of all legal notice publications as part of the Curator's Certification.

The increased response to these publications first noted in Report No. 5 has continued. As new information is received, we carry on providing settlement program materials and information regarding deadlines to same.

We continue to receive letters and calls from incarcerated persons, however, no new contact information for any potential claimant has been gleaned from these calls.

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 yet to register but are a party to the Tolling Agreement, who have attempted enrollment and received notices of deficiencies, or who have claims 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, approximately 85% of the communications log is available through the secure portal.

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 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.

Lastly, we have seen a marked increase in callers seeking assistance in obtaining appropriate documentation of their capacity to represent deceased claimants, as well as documentation to support derivative claims. As the documentation required differs from state to state, we have contacted counsel for Merck performing the deficiency review of representative and derivative claimant documentation to seek guidance as to the type of documentation which is being accepted by Merck as sufficient to establish representative or derivative capacity. As this request necessarily seeks production by counsel for Merck of information contained in attorney-work product documents, we have asked counsel for Merck to determine if the information, rather than the policy documents themselves, can be provided to the Curator's office so that we may assist callers attempting to clear deficiencies in their proof of representative or derivative claimant status documentation. In the

meantime, we are assisting these callers through performing legal research regarding the particular state's legal requirements for proof of representative or derivative status. We will keep the court and the parties apprised of the Curator's progress in this regard.

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. CURATOR PARTICIPATION IN ADDITIONAL COURT CONFERENCES

On October 8, 2008, the Court ordered counsel representing un-enrolled claimants, and the un-enrolled claimants in proper person, to appear at one of three conferences with the Court, to occur on Friday, October 17, 2008 in New Orleans, Louisiana, October 20, 2008 in New York, New York, and October 21, 2008 in Chicago, Illinois, for the purpose of advising of the October 30, 2008 deadline to enroll and to determine the intentions of counsel and clients. The Curator's office will participate in these conferences in order to assist with any claimants who are or become *pro se* litigants, and to the extent otherwise helpful to the parties and the Court. Participation during the conference in New Orleans will be in person. At this time, it is anticipated that the Curator's participation during the conferences in New York and Chicago will be via video-conference.

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 October 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. 6 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 16th day of October, 2008.

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