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APR 27 2005

CHAMBERS OF
U.S. DISTRICT JUDGE
ELDON E. FALLON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX
PRODUCTS LIABILITY LITIGATION

MDL NO. 1657
SECTION: L
JUDGE FALLON
MAG. JUDGE KNOWLES

THIS DOCUMENT RELATES TO ALL CASES

**JOINT REPORT No. 2 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC")
jointly submit this Joint Report No. 2.

I. Service Lists of Counsel/Lexis-Nexis Electronic Service Application

Since the last status conference on March 18, 2005, PLC and DLC have continued discussions with the Court and Lexis-Nexis to have the Lexis-Nexis Electronic Service Application up and running. Pretrial Order No. 8 was entered by the Court on April 8, 2005. Pursuant to that order, PLC and DLC provided Lexis-Nexis with the current service lists of counsel in the Vioxx MDL. Since then, the service list has been updated jointly by PLC and DLC and provided to Lexis-Nexis on a weekly basis. Meanwhile, PLC and DLC continue to serve documents on their respective service lists in accordance with Pretrial Orders No. 2 and No. 4.

On April 21, 2005, PLC and DLC sent to counsel on their respective service lists the Lexis-Nexis File and Serve "welcome kit" and registration/training information, together with a file and serve brochure. A pricing sheet with respect to the cost of this service is being revised by Lexis-Nexis and will be sent to all counsel shortly. Counsel in MDL 1657 were advised that they must complete the registration process prior to May 6, 2005 since implementation of electronic service is expected to become effective on May 9, 2005. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.

II. Trial Settings/Class Actions

DLC has furnished to PLC and to the Court a list of all Vioxx lawsuits that are set for trial including the *Rogers* case, currently set for trial in Alabama on May 23, 2005 and the *Ernst* case currently set for trial in Texas on May 31, 2005, both of which cases involve, as counsel of record, members of the PSC. The parties have agreed to postpone the *Rogers* case. There is no agreement on the *Ernst* case. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.

III. Plaintiffs' Steering Committee

The Court has now appointed the Plaintiffs' Steering Committee and the PSC has held meetings and conferred to assign committees to carry out the responsibilities of the PSC.

IV. Defendants' Steering Committee

The Court has also appointed Defendants' Steering Committee and initial discussions among committee members have taken place. The DSC is scheduled to meet with Judge Fallon at 4:00 p.m. on Wednesday, April 27, 2005.

V. Master Complaint(s) and Master Answer(s)

PLC has advised the Court that the PSC is considering filing three or four master complaint(s) in the MDL proceeding limited to class issues only. DLC will also be filing master answer(s). PLC has requested and DLC has agreed to provide to it copies of all class action complaints that are or will be in the MDL so that the PSC can group the complaints by certain categories, including geography, issues asserted and types of claims. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.

VI. Discovery Directed to Merck

PLC has advised the Court and DLC that the PSC will be filing a first set of master interrogatories and requests for production of documents directed to Merck within thirty (30) days. PLC and DLC will meet in advance of filing this written discovery to attempt to reach agreement on the scope of such discovery.

PLC has advised DLC that with respect to documents to be produced in response to requests for production issued by the PSC to Merck, the PSC anticipates that when Merck responds it will identify any documents that are responsive to a particular request by bates number and the date the document was produced in the New Jersey state action. Assuming such documents were produced, the PSC does not anticipate that Merck will need to produce duplicates of documents already produced in the New Jersey state action provided the identification of particular documents that are responsive to particular requests are made by Merck.

Merck has already produced in excess of 7,000,000 pages of documents. Given the format of production, which includes both objective coding and text files, the documents

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are fully searchable so that plaintiffs should be able to identify documents responsive to their requests. Given the significant flexibility afforded to plaintiffs' to conduct their own searches, Merck does not believe it is necessary -- and it surely would be very costly and time consuming -- to correlate each document with a particular document request. To address the PSC's request, Merck will identify, by category, the documents produced in the New Jersey proceedings. The parties will continue to meet and confer to reach agreement on this issue prior to the next conference.

VII. Discovery Directed to FDA

PLC has advised the Court and DLC that within thirty (30) days the PSC will serve an additional subpoena on the FDA requesting the production of documents. Further, Plaintiffs have sought documents from the FDA by a FRCP 45 subpoena issued on September 22, 2004 in the case of *Walson v. Merck & Co.*, Case No. 04-CV-0027 (GPM)(S.D. Ill.) and a request on December 2, 2004 was made under the Freedom of Information Act, 21 CFR, Part 20 (FOIA). The FDA through its counsel, Carmelina Allis, objected to the production of documents responsive to the subpoena and stated that "the amount of time for the FDA to respond is unreasonable," even after counsel for plaintiff agreed that the FDA did not need to review, duplicate or produce certain voluminous new drug applications and investigational new drug applications with the exception of memoranda of FDA/Merck contacts. The PSC reports that, despite repeated attempts, the FDA refuses to produce documents requested in the subpoena. In response to the FOIA request, Harold Streeper, paralegal specialist to the FDA, advised that "another office within the [FDA] Center for Drug Evaluation and Research" would respond to the request when only a small portion of information which was non-

substantive was provided. PLC has advised DLC that it will be filing a Motion to Compel directed to the FDA for the documents previously requested in the *Walson* and/or FOIA request. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005 .

VIII. Discovery Directed to Third Parties

PLC has advised the Court and DLC that the PSC anticipates third party discovery will be forthcoming.

IX. Deposition Guidelines and Scheduling

PLC and DLC negotiated the protocol for the taking of depositions in MDL 1657, resulting in the issuance of Pretrial Order No. 9. No depositions have as yet been scheduled in MDL 1657. The PLC will make reasonable efforts to coordinate state court depositions with the DLC in state court cases previously set for trial. The parties will meet and confer to address the scheduling of depositions.

X. Plaintiff Profile Form

PLC and DLC met on Tuesday, April 26, 2005 to discuss a Plaintiff Profile Form ("PPF") and Defendant Profile Form ("DPF"). The parties will continue to meet and confer in an attempt to agree on a PPF and DPF, and the medical authorizations that will be required in cases. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.



XI. Medical Records from Healthcare Providers

PLC has requested that Defendants make available to the claimant and their respective counsel any medical or pharmacy records obtained from any healthcare provider or pharmacy at plaintiffs' cost. PLC and DLC have discussed the establishment of a depository for such medical records obtained from healthcare providers. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.

XII. Defendants' Contacting or Communicating with Claimants Healthcare Providers

PLC has discussed with the Court and DLC a prohibition by Defendants from any communication *ex parte* with healthcare providers for claimants. The PSC has requested that no interviews, discussions or communications with such healthcare providers take place with Defendants directly or indirectly through their representatives, employees, agents or counsel without motions being filed with the Court or by consent of the claimant. The DSC requests that the Court allow briefing on this issue. In any event, the parties agree that discussions required to obtain medical records or to schedule depositions are permissible.

XIII. Plaintiffs' and Defendants' Depositories

The PSC has begun establishing a depository for use by Plaintiffs in New Orleans, Louisiana. Numerous sites have been looked at and the PSC has chosen a location at Place St. Charles, Suite 4310, which is the same location as the Propulsid MDL 1355 depository. Computers have been ordered and it is anticipated that the depository will be up and running within the next thirty (30) days. PLC will be prepared to discuss this further at the monthly status conference on April 28, 2005.

XIV. Confidentiality Agreement

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The parties will meet and confer regarding a confidentiality agreement. PLC and DLC do not anticipate any problems reaching an agreed order on this issue.

XV. Remand Issues

PLC advised the Court and DLC that a remand motion set in the *Stallworth* case before Judge Fallon for May 11, 2005 would be removed from the docket and that all briefing deadlines would be suspended. The Court has indicated that it will deal with remand motions as a group in accordance with procedures to be established in the future.

XVI. Class Action Cases

The Court has discussed with PLC and DLC the procedure for dealing with the class action cases. The parties will continue to meet and confer regarding procedures and schedules for addressing these cases.

XVII. Tolling Agreement

The parties will be prepared to discuss this at the monthly status conference on April 28, 2005.

XVIII. Proposed CMO

PLC and DLC met on April 26, 2005 to preliminarily discuss a proposed Case Management Order for the individual cases, as distinguished from class action cases. The parties continue to meet and confer on that subject.

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XIX. Proposed Case Management Order Regarding Motion Practice

PLC and DLC met on April 26, 2005 to discuss a proposed Case Management Order Regarding Motion Practice. The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005.

XX. State/Federal Coordination

The parties will be prepared to discuss this further at the monthly status conference on April 28, 2005. The Court has advised that it will appoint a Plaintiffs State/Federal Coordination Committee.

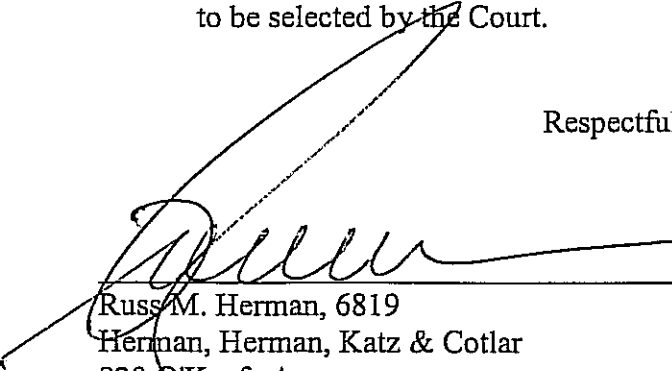
XXI. Esquire/Courtroom Connect

With the Court's assistance, PLC and DLC have arranged with Esquire Deposition and Courtroom Connect for a presentation to take place on April 28, 2005. This presentation will demonstrate logistics for taking depositions, including internet depositions and a repository for all depositions.

XXII. Next Status Conference

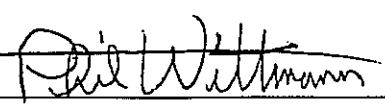
PLC and DLC will be prepared to schedule the status conference in May 2005 on a date to be selected by the Court.

Respectfully submitted,



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Defendants' Liaison Counsel

EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

* MDL NO. 1657
*
* SECTION: "L"
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* JUDGE FALLON
* MAG. JUDGE KNOWLES

Monthly Status Conference
April 28, 2005- 9:00 a.m.

SUGGESTED AGENDA

Current Matters:

1. Service List of Counsel/Lexis-Nexis Electronic Service Application
2. Trial Settings/Class Actions
3. Plaintiffs' Steering Committee
4. Defendants' Steering Committee
5. Master Complaint(s) and Master Answer(s)
6. Discovery Directed to Merck
7. Discovery Directed to FDA
8. Discovery Directed to Third Parties
9. Deposition Guidelines and Scheduling
10. Plaintiff Profile Form and Defendant Profile Form
11. Medical Records for Healthcare Providers
12. Defendants' Contacting or Communicating with Claimants' Healthcare Providers
13. Plaintiffs' and Defendants' Depositories
14. Confidentiality Agreement

15. Remand Issues
16. Class Action Cases
17. Tolling Agreement
18. Proposed CMO
19. Proposed Case Management Order Regarding Motion Practice
20. State/Federal Coordination
21. Esquire/Courtroom Connect
22. Next Status Conference