

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION L
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	*	JUDGE FALLON
This document relates to All Cases	*	
	*	MAGISTRATE JUDGE KNOWLES
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**JOINT REPORT NO. 6 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC")
submit this Joint Report No. 6.

I. LEXIS/NEXIS FILE & SERVE

Effective July 15, 2005, Lexis/Nexis activated a File & Serve feature known as Case & Party management. The feature allows registered users in this litigation to submit electronically change requests involving their cases. Specifically, registered users now have the ability to add a party (if a party is added to the case), remove a party (if a party is dismissed), add an additional attorney or staff member from a registered firm, or substitute an attorney. This is only an electronic change request. At the end of the request, the registered user must attach any supporting documentation that confirms the request. For example, to substitute an attorney, the

Court order permitting the substitution must be attached. PLC and DLC encourage all counsel to take advantage of the Case & Party Management feature.

In early August, 2005, Lexis/Nexis began electronically pulling all new MDL cases from the database of the Clerk of Court's Office. This electronic pull is done nightly and cases are uploaded to File & Serve every Monday, Wednesday, and Friday, thereby providing quicker access to the new cases on File & Serve. PLC and DLC continue, however, to provide Lexis/Nexis with a current service list of counsel in the Vioxx MDL. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

II. STATE COURT TRIAL SETTINGS

On August 19, 2005, the jury returned with a verdict in favor of the plaintiff in the *Ernst* case in Texas State Court. Merck has indicated that it intends to file an appeal. DLC further advises that the *Humeston* case is set for trial in New Jersey Superior Court, Atlantic County, on September 12, 2005; the *Guerra* case is set for trial in Texas District Court, Hidalgo County, on October 24, 2005; and the *Zajicek* case is set for trial in Texas District Court, Jackson County, on March 20, 2006.

III. SELECTION OF CASES FOR EARLY FEDERAL COURT TRIAL

PSC and DSC have selected the *Irvin* case, a heart attack case, for trial commencing November 28, 2005. PSC and DSC have agreed on and furnished to the Court a Scheduling Order for *Irvin*. The parties also have agreed on the *Hofmann* case, a stroke case, for early trial. The parties disagree whether the *Pikal* case, a case proposed by the PSC, should be selected for an early trial. PSC objects to *Hofmann* being set for trial at this time. The parties

continue to meet and confer to discuss what type of case should be the second case tried in the MDL and a trial plan for that case. The parties will be prepared to discuss this issue further at the monthly status conference on August 25, 2005.

IV. CLASS ACTIONS

On or about August 1, 2005, and pursuant to Pre-trial Order No. 16, the PSC filed three Master Class Action Complaints. DSC is reviewing the complaints and advises that it will be filing motions and responsive pleadings in accordance with Pre-trial Order No. 16. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

V. DISCOVERY DIRECTED TO MERCK

On June 7, 2005, PLC served upon DLC a First Set of Interrogatories and Requests for Production of Documents directed to defendant Merck & Co., Inc. ("Merck"). Members of the PSC and representatives of Merck have had several conferences concerning these master discovery requests. Pursuant to PTO 17, Merck advises that it has made a full production of non case-specific discovery, depositions, and document responses.

At a status conference held on August 16, 2005, the Court discussed issues relating to master discovery and ordered that it would schedule a weekly telephone status conference concerning discovery issues. PLC and DLC are to attend, in person. The first of these conferences is scheduled for August 24, 2005 at 2:00 p.m. and thereafter will occur each Thursday afternoon. On August 23, 2005, PLC and DLC met and conferred on discovery

disputes preparatory to the weekly discovery conference scheduled at 2:00 p.m. on August 24, 2005.

All discovery issues will be discussed at the Discovery Status Conference scheduled for August 24, 2005.

On August 22, 2005, DLC provided to PLC the first Privilege Log produced in this matter relating to Merck's production of initial documents. PLC contends that the Privilege Log is not in compliance with the Federal Rule of Civil Procedure 26(b)(5). Merck disagrees. The parties continue to meet and confer to resolve these and other discovery matters and will be prepared to discuss them further at the monthly status conference on August 25, 2005.

VI. PSC REQUEST FOR PRODUCTION OF FACTS DATABASE

The feasibility hearing regarding Merck's production of the Vioxx-related information from the FACTS database was cancelled pursuant to an agreement between the parties. The parties anticipate providing to the Court a proposed Pre-Trial Order governing production of this information prior to the status conference on August 25, 2005. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

VII. VIOXX PROFESSIONAL S REPRESENTATIVES

On August 4, 2005, the Court entered Pre-Trial Order No. 20. The Pre-Trial Order is located at <http://vioxx.laed.uscourts.gov>. On August 8, 2005, in accordance with Pre-Trial Order No. 20, DLC submitted to the Court a listing of the names, addresses and dates of employment of Merck's professional representatives who were involved in promoting sales of

Vioxx. This list was submitted *in camera*, and under seal and is subject to the provisions of Pre-Trial Order No. 20. PLC has reviewed the list pursuant to PTO #20.

VIII. DISCOVERY DIRECTED TO THE FDA

During the August 16, 2005 status conference, PLC discussed continuing issues with the FDA's preliminary production of documents. The Court has scheduled a telephone status conference on Tuesday, August 23, 2005, to further discuss these problems. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

IX. DISCOVERY DIRECTED TO THIRD PARTIES

PLC has advised the Court and DLC that the PSC has issued numerous third-party notices of deposition for the production of documents. If and when any issues arise regarding these discovery requests, the Court will be advised and motions will be requested on an expedited basis.

X. DEPOSITION SCHEDULING

DLC has noticed the depositions of the three plaintiffs and the treating physician in the *Irvin* case. The deposition of Dr. Jerome Avorn scheduled on September 8, 2005 in the consolidated New Jersey proceedings has been cross-noticed in the MDL pursuant to Pre-Trial Order No. 12. Additionally, PLC and DLC have communicated regarding the setting of seven depositions requested by plaintiffs. Presently the following depositions are scheduled: Dr. Eliav Barr; Dr. Gilbert Block; and Thomas Cannell. PSC is waiting on defendants to provide available dates for the depositions of Dr. Greg Geba and Marty Carroll. The parties are continuing to discuss the depositions of James Richard Dunn and Susan Baumgartner, which have been

objected to by defendants. By letter dated August 19, 2005, DLC objected to two of the requested depositions. The PSC will be responding to the objections.

On August 5, 2005, Plaintiff filed a Motion for Protective Order Regarding Unilateral Cross-Noticing of New Jersey Depositions in the MDL. The Motion is set for hearing at the status conference on August 25, 2005.

XI. PLAINTIFF PROFILE FORM AND MERCK PROFILE FORM

On August 16, 2005, the Court entered Pre-Trial Order 18A which governs the timing for production of Plaintiff Profile Forms, Authorizations, and Merck Profile Forms on a staggered basis. The Pre-Trial Order is located at <http://vioxx.laed.uscourts.gov> and supersedes Pre-Trial Order 18.

XII. MEDICAL RECORDS FROM HEALTHCARE PROVIDERS

The parties have reached agreement on posting of medical records received by Merck in response to the authorization forms attached to Plaintiff Profile Forms. That procedure is part of the Pre-Trial Order No. 17 governing the procedure for the Individual Cases.

XIII. CONTACT WITH CLAIMANTS' HEALTHCARE PROVIDERS

By Order and Reasons entered July 21, 2005, the Court granted plaintiffs' motion to modify the Court's June 6, 2005 Order and set forth the guidelines which will govern all contact or communications with claimants' healthcare providers. The Order can be found on the Court's website located at <http://vioxx.laed.uscourts.gov>.

XIV. REMAND ISSUES

Several remand motions have been filed with the Court. The Court has indicated that it will deal with remand motions as a group in accordance with procedures to be established in the future.

XV. TOLLING AGREEMENT

On June 9, 2005, PLC and DLC filed with the Court a Notice of Filing of Tolling Agreement. Attached to the Notice are the Tolling Agreement and Exhibits A, B, and C. The Tolling Agreement and Exhibits A, B, and C are available on the Court's website located at <http://vioxx.laed.uscourts.gov>.

XVI. LOUISIANA MASTER COMPLAINT

The parties continue to negotiate and exchange drafts of a proposed Pre-Trial Order whereby Vioxx claimants in Louisiana can interrupt or suspend the statute of limitations on myocardial infarct and ischemic stroke cases without the expense and inconvenience of filing individual civil actions in the MDL. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

XVII. STATE/FEDERAL COORDINATION -- STATE LIAISON COMMITTEE

Representatives of the PSC and the State Liaison Committee have had several communications. The parties will be prepared to discuss this further at the monthly status conference on August 25, 2005.

XVIII. PRO SE CLAIMANTS

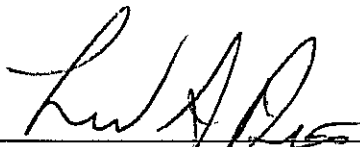
The Court has issued additional Orders directing PLC to take appropriate action regarding filings made by various *pro se* individuals. PLC has continued to communicate with the various *pro se* claimants and advised them of attorneys in their respective states and other pertinent information regarding the MDL. PLC will be prepared to discuss this further at the monthly status conference on August 25, 2005.

XIX. MDL ASSESSMENT

On August 4, 2005, the Court entered Pre-Trial Order No. 19 to establish plaintiffs' litigation expense fund and to compensate and reimburse attorneys for services performed and expenses incurred for MDL administration and common benefit. The Pre-Trial Order is located at <http://vioxx.laed.uscourts.gov>.

XX. NEXT STATUS CONFERENCE

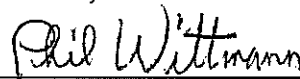
PLC and DLC will be prepared to schedule the status conference in September on a date to be selected by the Court.



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Respectfully submitted,



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Defendants' Liaison Counsel

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 6 of Plaintiffs' and Defendants' Liaison Counsel has been served upon all parties by uploading the same to Lexis/Nexis File & Serve Advanced in accordance with Pre-trial Order No. 8, on this 23rd day of August, 2005.



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

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PRODUCTS LIABILITY LITIGATION	*	SECTION L
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	*	JUDGE FALLON
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	*	MAGISTRATE JUDGE KNOWLES
* * * * *		

**MONTHLY STATUS CONFERENCE
AUGUST 25, 2005
SUGGESTED AGENDA**

- Preliminary issues -- Report on Case Statistics
- I. Lexis/Nexis File & Serve
- II. State Court Trial Settings
- III. Selection of Cases for Early Federal Court Trial
- IV. Class Actions
- V. Discovery Directed to Merck
- VI. PSC Request for Production of FACTS Database
- VII. Vioxx Sales Representatives
- VIII. Discovery Directed to the FDA
- IX. Discovery Directed to Third Parties

- X. Deposition Scheduling
- XI. Plaintiff Profile Form and Merck Profile Form
- XII. Medical Records From Healthcare Providers
- XIII. Contact with Claimants' Healthcare Providers
- XIV. Remand Issues
- XV. Tolling Agreement
- XVI. Louisiana Master Complaint
- XVII. State/Federal Coordination -- State Liaison Committee
- XVIII. *Pro Se* Claimants
- XIX. MDL Assessment
- XX. Next Status Conference