

Serve within several days of the actual docketing of their cases. Counsel are requested to notify Dorothy Wimberly at dwimberly@stonepigman.com if a case is not available on Lexis/Nexis File & Serve. Notice should include the case name and Eastern District of Louisiana case number. PLC and DLC continue 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 December 1, 2005.

II. STATE COURT TRIAL SETTINGS

On November 3 2005, the jury returned with a verdict in favor of Merck & Co., Inc. in the *Humeston* case in New Jersey Superior Court, Atlantic County. The *Zajicek* case is set for trial in Texas District Court, Jackson County, on March 20, 2006. The *Guerra* case is set for trial on April 17, 2006 in Texas District Court, Hidalgo County. The *Kozic* case is set for trial in Florida Circuit Court, Hillsborough County, on May 1, 2006. Additionally, and subject to briefing on whether the Court should hold consolidated trials, the New Jersey Superior Court, Atlantic County has scheduled consolidated trials of the following cases: *Cona* and *McDarby* on February 27, 2006; *Hatch*, *McFarland*, and *LoPresti* on April 24, 2006; and *Doherty* and *Klug* on June 5, 2006. A trial of one or more plaintiffs is set for June 21, 2006 in the California Coordinated Proceeding, California Superior Court, Los Angeles County.¹ Finally, the *Anderson* case is set for trial in the Tribal Court of the Mississippi Band of Choctaw Indians on August 7, 2006.

¹ Selection of the case or group of plaintiffs for trial will be finalized during a court conference in February 2006.

III. SELECTION OF CASES FOR EARLY FEDERAL COURT TRIAL

PSC and DSC previously selected the *Irvin* case, a heart attack case, for trial in the MDL. That trial commenced on November 29, 2005 and is ongoing at the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002. Although, PSC and DSC had previously agreed to try the *Abrams* case second, at a telephone status conference on November 23, 2005, the PSC informed the Court that this case could not be tried. By Minute Entry dated November 23, 2005, the Court determined that it would go forward with trials of cases filed in the Eastern District of Louisiana and ordered that unless the parties can agree, the DSC shall pick a case from those initially filed in the Eastern District of Louisiana to be tried as the second MDL trial. The parties will be prepared to discuss this issue further at the monthly status conference on December 1, 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 filed Rule 12 Motions on the Medical Monitoring Complaint and the Purchase Claims Complaint which were opposed by plaintiffs. Briefing on those motions will be complete with the filing of defendant's reply brief on December 8. Plaintiffs also moved for a Stay of Class Briefing on the Personal Injury Complaint and also moved to Amend the Master Class Action Complaints for Medical Monitoring and Personal Injury by adding class representatives for some previously headless classes. Defendant responded to these motions and also moved to dismiss the state classes that have no named plaintiffs. On November 10, 2005, the Court heard argument on the motion to amend, motion to strike and motion to stay. As a result of the hearing, the parties submitted the Second Amendment to Pretrial Order No. 16 which was entered by the Court on November 23, 2005.

The order sets certain briefing deadlines and sets a deadline of January 23, 2006 for filing any additional motions to amend the existing three class action master complaints. The Second Amendment to Pretrial Order No. 16 is located at <http://vioxx.laed.uscourts.gov>. The PSC also filed a Motion for Suggestion of Remand in connection with Class Certification Briefing to which Merck has filed its response. A Reply Brief will be filed shortly by PSC. The parties will be prepared to discuss this further at the monthly status conference on December 1, 2005.

V. DISCOVERY DIRECTED TO MERCK

Merck advises that it will continue to make productions of documents, as identified by members of the PSC as priorities, on a rolling basis. Plaintiffs and Defendants have met and conferred to address prioritization. PLC has advised that he shall coordinate and resolve any conflicting requests for VIOXX documents and data requested from Merck. The parties will be prepared to discuss this further at the monthly status conference on December 1, 2005.

On November 4, 2005, Merck produced to the Court and PSC a revised Privilege Log. Thereafter, pursuant to the Court's order, Merck produced to the Court for *in camera* inspection all documents identified on its privilege log. PSC continues to challenge the privilege log provided by Defendants and has submitted letters to the Court stating its position. Merck maintains that its revised privilege log is sufficient and has responded to plaintiffs' arguments.

On November 22, 2005, PSC served upon DLC Plaintiffs Steering Committee's Second Set of Interrogatories and Requests for Production of Documents Directed to Defendant, Merck & Co., Inc.

The parties will be prepared to discuss these issues further at the monthly status conference on December 1, 2005.

VI. DISCOVERY DIRECTED TO THE FDA

The FDA production of documents responsive to the PSC subpoena continues to occur in waves. On November 8, 2005, FDA requested reimbursement for the cost of copying and bates numbering the congressional document wave of production. PLC has written counsel for the FDA regarding this invoice. The parties will be prepared to discuss this further at the monthly status conference on December 1, 2005.

VII. DISCOVERY DIRECTED TO THIRD PARTIES

PLC has advised the Court and DLC that the PSC continues to issue numerous third-party notices of depositions 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.

VIII. DEPOSITION SCHEDULING

The parties continue to notice and cross-notice depositions in the MDL. In response to the PSC's request for depositions of sales representatives in Florida, the DSC has scheduled five of the six depositions and is opposing the scheduling of the remaining deposition due to health reasons. As for depositions requested in Texas, the DSC is providing dates to the PSC for scheduling depositions of sales representatives located in that state. These matters, as well as any other deposition scheduling issues, will be addressed with the Court at the monthly status conference on December 1, 2005. Further, if and when any other issues arise regarding the scheduling of depositions, the Court will be advised and motions will be requested on an expedited basis.

IX. PLAINTIFF PROFILE FORM AND MERCK PROFILE FORM

On September 14, 2005, the Court entered Pre-Trial Order 18B 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 Orders 18 and 18A. As reported at the October 27, 2005 monthly status conference, due to a delay between final entry of Conditional Transfer Orders and the actual docketing of some transferred cases in the Eastern District of Louisiana, counsel in the delayed cases were unable to access File & Serve to timely serve the Plaintiff Profile Forms, Authorizations, and Medical Records. Accordingly, DLC agreed that counsel without access to File & Serve could temporarily serve the Plaintiff Profile Forms, Authorizations, and Medical Records by sending copies to DLC and Will Coronato. The parties disagree as to the whether this agreement has any effect on the date by which Merck is to serve a responsive Merck Profile Form. The parties will address this issue with the Court and will be prepared to discuss this further at the monthly status conference on December 1, 2005.

X. STATE/FEDERAL COORDINATION -- STATE LIAISON COMMITTEE

Representatives of the PSC and the State Liaison Committee have had several communications. By letter dated November 18, 2005, the PSC recommended additional members for appointment to the State Liaison Committee. The parties will be prepared to discuss this further at the monthly status conference on December 1, 2005.

XI. 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

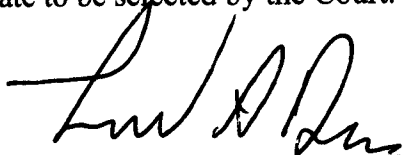
pertinent information regarding the MDL. PLC will be prepared to discuss this further at the monthly status conference on December 1, 2005.

XII. MOTION FOR CLARIFICATION OF PRE-TRIAL ORDER NO. 19

On November 16, 2005, Motley Rice, LLC filed a Motion for Clarification of Pre-Trial Order No. 19. This motion is not set for hearing at the present time. The PLC will be prepared to discuss scheduling of briefing and hearing on this motion and any other issues the Court may have regarding such motion at the monthly status conference held on December 1, 2005.

XIII. NEXT STATUS CONFERENCE

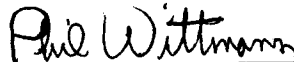
PLC and DLC will be prepared to schedule the status conference in January on a date to be selected by the Court.



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Respectfully submitted,

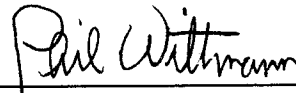


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Defendants' Liaison Counsel

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 9 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 29th day of November, 2005.



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

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

**MONTHLY STATUS CONFERENCE
DECEMBER 1, 2005
SUGGESTED AGENDA**

- 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. Discovery Directed to the FDA
- VII. Discovery Directed to Third Parties
- VIII. Deposition Scheduling
- IX. Plaintiff Profile Form and Merck Profile Form

- X. State/Federal Coordination -- State Liaison Committee
- XI. *Pro Se* Claimants
- XII. Motion for Clarification of Pre-Trial Order No. 19
- XIII. Next Status Conference