

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: VIOXX PRODUCTS  
LIABILITY LITIGATION

MDL No. 1657  
Section: "L"  
New Orleans, Louisiana  
Thursday, August 24, 2006

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TRANSCRIPT OF MONTHLY STATUS CONFERENCE PROCEEDINGS  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(FRIDAY, JUNE 16, 2006)

(MONTHLY STATUS CONFERENCE)

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5 THE COURT: Call the case, please.

6 THE DEPUTY CLERK: MDL No. 1657, in re: Vioxx.

7 THE COURT: Counsel, make their appearance for the record.

8 MR. SEEGER: Good morning, your Honor, Chris Seeger  
9 handling it for plaintiffs this is morning.

10 MR. WITTMANN: Good morning, your Honor, Phil Wittmann for  
11 Merck.

12 THE COURT: This is our monthly status conference. I have  
13 had an opportunity to receive from the parties their agenda, and  
14 I've met earlier with liaison counsel. I will take them in the  
15 order that they appear on the agenda. The Lexis-Nexis File & Serve  
16 is No. I.

17 MR. WITTMANN: There is only one issue on that, Judge, and  
18 that is that some plaintiff lawyers are not serving liaison counsel  
19 and trial counsel in the MDL cases with notices and deposition  
20 notices and motions and so forth. They're simply uploading directly  
21 to File & Serve. That slows down the process enormously because we  
22 can't really review every Lexis-Nexis file that comes across our  
23 computer screen. The order requires that counsel serve both liaison  
24 counsel -- it works both ways, when we file we have to serve liaison  
25 counsel for the plaintiffs and counsel in the MDL case so we get

1 immediate notification instead of waiting to peruse the Lexis-Nexis  
2 material. So if people can keep that in mind.

3 THE COURT: How do we deal with that, what's the answer?

4 MR. WITTMANN: Just a reminder, perhaps in the order you  
5 issue in connection with this status conference today we could give  
6 you some suggested language to put in that order.

7 THE COURT: I'll do that and I'll also post it on the web;  
8 but if we don't get any compliance, then we will have to do  
9 something else with it. I will just have to provide that if it's  
10 not given it won't be taken.

11 MR. WITTMANN: Okay.

12 THE COURT: Okay. The State Court Trial Settings, any  
13 information there?

14 MR. WITTMANN: The *Rigby* case is set in Harris County,  
15 Texas for trial on November the 8th, 2006. The *Albright* case is set  
16 for trial on the circuit court for Jefferson County, Alabama on  
17 November the 27th, 2006; the *Schwaller* case is set for trial in  
18 Madison County, Illinois on February 20th, 2007. And those cases  
19 are the only cases that are set at this point in state court.

20 I was told this morning, I think maybe Mr. Seeger has some  
21 more information on some cases in New Jersey that may be coming up  
22 in January.

23 MR. SEEGER: Yes. Judge, after the last hearing before  
24 Judge Higbee where she vacated the Humeston verdict, she indicated  
25 she wanted to try five to ten cases together in January.

1           One other thing we would ask liaison counsel for defendant  
2 for the list of trials that the defendants are aware through 2007  
3 identifying the case, where it's pending and the trial counsel.

4           THE COURT: I think that's helpful, because depending upon  
5 what happens by the end of this year from the standpoint of  
6 finishing these cases and then taking a look at, as I've mentioned  
7 that I intend to do with the state court judges and the litigants,  
8 we have to start thinking about the next year.

9           And from the standpoint of the MDL, I've got to begin  
10 focussing on the trials and numbers of cases and how we deal with it  
11 and whether there's any opportunity or suggestion that we ought to  
12 maybe try issues and try those issues globally. I am not quite sure  
13 that can be done, but I would like to at least think about it and  
14 see whether or not there are potential global issues that can be  
15 tried in the next settings.

16           The next one is the Federal Court Trials.

17           MR. WITTMANN: Yes, your Honor. The *Smith* case is set for  
18 trial next month September 11th, 2006 in this court; followed by the  
19 *Mason* case, which is set for October 30th, 2006; and the *Dedrick*  
20 case, which is set for November the 27th, 2006.

21           THE COURT: I talked to counsel in the conference about  
22 getting together some cases that we can at least get a pool of cases  
23 that we can deal with for next year.

24           MR. WITTMANN: We're starting that, we have one case we've  
25 agreed on, *Persica*, we've already taken Ms. *Persica*'s deposition and

1 got the treaters scheduled for deposition next month. And I  
2 understand the plaintiffs are working on some other cases that they  
3 are going to submit, and we will work with them as we indicated this  
4 morning.

5 THE COURT: The cases, we are trying to focus on some  
6 bellwether cases, cases that are indicative of a number of cases,  
7 cases that can give the litigants some information as opposed to  
8 just going through from A to Z and trying every case. If we had 15  
9 or 20 cases to try, it wouldn't matter which ones come first because  
10 you would be trying all of them and everybody would be aware of  
11 that. But we've got thousands and thousands of cases, so it's  
12 helpful, I think, and this is what I tried to do, to provide  
13 categories that the entire census of the litigation fits into and  
14 then to give the parties an opportunity to select cases from those  
15 various categories, with the understanding that they are cases that  
16 are ready for trial, prepared for trial, that all of the medical has  
17 been produced and all of the depositions are either ready, have been  
18 taken or can be taken in the near future.

19 But those cases are ready and also representative of a  
20 group of cases, that to me makes sense to go about trying those  
21 cases. So that requires some organization, some funnel through  
22 which the cases get sifted so that they can be on that track so that  
23 you don't try the same case, literally the same case or the same  
24 issue over and over and over, and ignore four or five of the other  
25 issues that are significant in litigation.

1           So if anybody on the committee or outside of the committee  
2 has cases that are ready for trial, you have to talk with the  
3 committee, the plaintiffs committee so that you can get in this  
4 grouping of cases so that we can deal with it.

5           MR. SEEGER: Judge, just a couple of things. The Persica  
6 case that Mr. Wittmann mentioned, I am not aware that we've actually  
7 got an agreement on a trial date.

8           MR. WITTMANN: Oh, no, it's not schedule for a trial, this  
9 is one we proposed.

10          MR. SEEGER: You proposed it. From our perspective I  
11 think the cases to be worked up for trial, as we proposed to you  
12 back there, we are going to meet with the defendants on it to get a  
13 pool of cases for your Honor to work off, 25 or 30 or some number  
14 that you're comfortable with, so at the change of the year we can --

15          THE COURT: That's fine. In those cases you have to  
16 understand that if they are filed in the State of Louisiana in the  
17 Eastern District of Louisiana, then I don't need anybody's consent  
18 to try the case because they're before me and I'll try them.

19          If they've been filed in other areas, particularly if  
20 they've been filed in state court and you want them to be in this  
21 number, then we are going to have to do some appropriate filings to  
22 get them in the number; because I don't want to be in a position  
23 where I believe that a case is in the grouping and then at the last  
24 moment the client or whatever says it can't be there and so then we  
25 have to upset the whole apple cart.

1           So they either need to be filed in this court or they need  
2 to have some stipulations in some filings that permanently place  
3 them in the list as opposed to just temporarily placing them in the  
4 list.

5           MR. SEEGER: And as part of our proposal I think to  
6 Mr. Wittmann and his colleagues would also be to get cases worked up  
7 that your Honor may want to consider next year or sometime after for  
8 remanding back to the district.

9           THE COURT: That's what it's going to be. I'm getting to  
10 the point, after I finish trying some cases, that I am getting to  
11 the point where I am going to be focussing on the issue of remand.  
12 And we will do the remand in waves, I'll send 1,000 back at a time  
13 or thereabouts so we can deal with them.

14           MR. SEEGER: Your Honor, just one other point while  
15 Mr. Wittmann is up here. We do get requests from lawyers throughout  
16 the country to get a read on how many cases are filed in the MDL, in  
17 New Jersey. I wonder if Mr. Wittmann can share some of that  
18 information for the record.

19           THE COURT: Do we have any of that?

20           MR. WITTMANN: I do, your Honor. As of June 30th, your  
21 Honor, the company has been served and named as defendant in  
22 approximately 14,200 lawsuits nationwide. There are a total of that  
23 number 5,700 in the MDL and approximately 7,100 in the New Jersey  
24 coordinate proceeding in New Jersey Superior Court, and the balance  
25 of the cases are in California and elsewhere throughout the country.

1 But that's the rough numbers we had as of June 30th.

2 THE COURT: Okay.

3 MR. SEEGER: And, your Honor, if we could just, my  
4 understanding is that represents about 27,000 claimants or  
5 plaintiffs?

6 MR. WITTMANN: 27,000 plaintiff groups are represented in  
7 total.

8 THE COURT: Class actions is the next item on the agenda.  
9 I know Judge Higbee has that certified national class is now before  
10 the Supreme Court in New Jersey. Anything on that, do we have any  
11 dates?

12 MR. WITTMANN: You've got under submission, your Honor,  
13 the plaintiff's motion to certify personal injury class and our  
14 motion to dismiss the plaintiffs' purchase claims. I think we're  
15 all current in terms of filing.

16 MR. SEEGER: Judge, I am getting hit by spitballs by my  
17 colleagues. I'm asked to get Mr. Wittmann to define what a  
18 plaintiff group is for people reading the transcript.

19 MR. WITTMANN: I think a plaintiffs group would be, for  
20 example, the spouse, surviving spouse, children, that type of  
21 situation.

22 THE COURT: I see. So you're grouping those 27,000 or  
23 thereabouts survivors, not individual survivors?

24 MR. WITTMANN: Not individuals, that's my understanding,  
25 your Honor. Mr. Marvin is nodding his head, so I got it right.

1 THE COURT: Discovery Directed to Merck is the fifth item  
2 on the agenda.

3 MR. WITTMANN: I think we are pretty current, there is  
4 nothing much to report other than what's in the report.

5 MR. SEEGER: And we are just awaiting the ruling on the  
6 privilege which is before your Honor now.

7 THE COURT: I have the privilege material, I've been  
8 working on it, I have a magistrate working with me, been fairly busy  
9 on some other matters involving this case, but I am working on it.

10 Discovery Directed to the FDA, anything there?

11 MR. SEEGER: Nothing to report on the FDA at this point.

12 THE COURT: Discovery Directed to Third Parties is the  
13 seventh item on the agenda.

14 MR. WITTMANN: Yes, your Honor. Other than what's in the  
15 report we are going to prepare a disc and furnish that to the  
16 plaintiffs of the documents we've gotten from third parties, and I  
17 think that'll be worked out without any further need for the court  
18 to intervene.

19 THE COURT: All right. Anything from the plaintiffs on  
20 that?

21 MR. SEEGER: We just want to make sure that we get the  
22 documents well in advance for the trial that's set for September  
23 11th.

24 THE COURT: When can that be done?

25 MR. WITTMANN: That would be turned over to Mr. Barnett,

1 who is the master of that information.

2 THE COURT: Okay. Ben, what's your input?

3 MR. BARNETT: Ben Barnett on behalf of Merck. We are  
4 working on it right now. We hope to have it out in the next couple  
5 of days. It's merely just making sure we have copies of all of the  
6 documents and the data that have come from the third party. We will  
7 simply copy the discs and get them out to both the PLC as well as  
8 trial counsel of the upcoming case.

9 THE COURT: Can you do that by Wednesday of next week?

10 MR. BARNETT: Yes, sir.

11 MR. SEEGER: Judge, we should take note of Mr. Barnett's  
12 tan because he's been pretty pale the last couple of years, just  
13 wanted to note you look really good.

14 MR. BARNETT: I think that should have been off the  
15 record.

16 MR. SEEGER: No, we want that on the record.

17 THE COURT: Deposition Scheduling is No. VIII.

18 MR. WITTMANN: I don't think we have any problems at this  
19 point on deposition scheduling, your Honor.

20 MR. SEEGER: We have a few issues but we are working them  
21 out, we may have to come back at some point.

22 THE COURT: If you do, let's get it to me and I will deal  
23 with them.

24 Plaintiff Profile Form and Merck Profile Forms.

25 MR. WITTMANN: Your Honor, we just filed this week two

1 rules to show cause why cases should not be dismissed for failure to  
2 file profile forms. Mr. Davis says he is communicating with the  
3 lawyers who have failed to file them. It's a total of about 13  
4 cases and it's a long time with no filing, so we had to follow the  
5 rules so we are waiting to hear from them.

6 THE COURT: File the rule and I'll set it and give the  
7 parties an opportunity to respond to it. If they don't  
8 notwithstanding contacts by the defendants, notwithstanding contacts  
9 by the plaintiff committee, if they still haven't answered I have to  
10 assume that they've abandoned their claim and I'll dismiss them with  
11 prejudice.

12 I don't do this willy-nilly, I give them an opportunity to  
13 respond. I take precaution to give them several notices and also  
14 insist that the plaintiff committee try to contact them, but we have  
15 to move the litigation. If they're not coming in and participating  
16 I have to assume that they've abandoned the claim and I'll clean the  
17 docket.

18 MR. SEEGER: Your Honor, just for the record, PSC is  
19 objecting to the dismissals and we would be opposing this motion.

20 THE COURT: Right. The committee objects on two grounds:  
21 One, they object that it shouldn't be done; and secondly, they  
22 object that it should not be done with prejudice. I've heard that  
23 argument, I've overruled it, and will dismiss with prejudice after  
24 appropriate notice however.

25 State/Federal Coordination, do we have anything from the

1 state?

2 MR. SEEGER: Just to inform the court is that we filed a  
3 motion to compel in the last category on the Merck fact sheets,  
4 that's before your Honor.

5 THE COURT: All right.

6 MS. BARRIOS: Good morning, your Honor, Dawn Barrios for  
7 the State Liaison Committee. We continue to provide your Honor with  
8 all of the information with regard to the remands. I've handed your  
9 law clerk the disc that is cumulative, so all prior discs can be  
10 thrown away. We also stand ready to issue a newsletter at the  
11 conclusion of the status conference bringing issues to the public  
12 such as what Mr. Wittmann raised about the Lexis/Nexis file and  
13 serve, we can seek additional information on other cases that may be  
14 ready for trial for cases around the country.

15 And to let your Honor know, I think this afternoon there  
16 is a conference call coordinated with Merck and the PSC for the  
17 deposition schedule. So everything is going good.

18 THE COURT: How about with the depositions, are you able  
19 to participate to the extent you're interested in participating?

20 MS. BARRIOS: Yes, your Honor, there have been no  
21 problems. We have been able to work everything out.

22 THE COURT: Okay. Anything on the Pro Se Claimants?  
23 That's No. XI.

24 MR. SEEGER: Nothing, your Honor.

25 THE COURT: Twelve is the Motion to Dismiss Foreign Class

1 Actions, we'll take that up after this, and I'll hear argument on  
2 those areas.

3 Thirteen is General Trial Performance, Rule 702 and  
4 Motions in Limine Issues.

5 MR. SEEGER: Nothing new there from us.

6 THE COURT: Next item is IMS Data.

7 MR. SEEGER: Nothing new, your Honor.

8 THE COURT: And XIV is Discovery in Non-trial Cases.

9 MR. WITTMANN: I mentioned the Persica case, we've been  
10 going forward with discovery there, and that will continue next  
11 month with the depositions of the doctors.

12 THE COURT: And these are primarily stroke cases?

13 MR. WITTMANN: This is a stroke case, yes, your Honor.

14 THE COURT: The issue there is whether we should go  
15 forward with discovery. I think we should go forward with discovery  
16 on those cases, and we will deal with those at the appropriate time  
17 from the trial standpoint. We ought to move on those cases even  
18 though they're not being tried.

19 Merck's Motion For Summary Judgment.

20 MR. WITTMANN: That's been filed, your Honor, and the Lene  
21 Arnold and Alicia Gomez cases on grounds of preemption, and the  
22 plaintiff's opposition brief is due September 15th, 2006; our reply  
23 brief is due October 6th, and the argument will take place at the  
24 October MDL status conference.

25 MR. LEVIN: He said it well, your Honor.

1 MR. WITTMANN: I got it right this time?

2 MR. LEVIN: Yes, this time.

3 THE COURT: How about the Tolling Agreements? That's the  
4 next item.

5 MR. WITTMANN: Your Honor, we've been getting them. We  
6 continue to get them, we had about 5,800 agreements as of this  
7 morning.

8 MR. SEEGER: Nothing new on our side.

9 THE COURT: All right. New items, Motion For  
10 Clarification of Pre-Trial Order No. 9. Anything on that?

11 MR. WITTMANN: I think we've worked that out, there is a  
12 minor language change we suggested and plaintiffs accept it and I  
13 think that's done.

14 MR. SEEGER: And I know you have the motion on it, your  
15 Honor, but do you want at this point to set another date for the  
16 next conference?

17 THE COURT: What's a good date? What about the 28th of  
18 September, will that work for you all? 29th, 28th, 27th, something  
19 like that?

20 THE DEPUTY CLERK: 28th is a Thursday.

21 THE COURT: Thursday the 28th.

22 MR. SEEGER: That's fine.

23 THE COURT: Let's do it at 9 and 9:30. I'll meet with  
24 liaison at 9 and the status at 9:30.

25 MR. DAVIS: What time is the conference?

1 THE COURT: Nine o'clock liaison, 9:30 open court.

2 Any other issues anybody wishes to bring up? The reason I  
3 have it in open court is if we haven't touched on something that  
4 counsel wishes to discuss, needs to discuss, has on their mind,  
5 they're able to do it.

6 Okay. All right. Well, let's go into the motions then.  
7 I have before me a motion to dismiss foreign class actions. I  
8 understand the parties wish to speak only on the issues involving  
9 the Italian and the French class actions. Do we have people on the  
10 phone, too, that are listening?

11 MS. BERNAL: Genevieve Bernal with the firm of Kenneth B.  
12 Moll.

13 THE COURT: I have had an opportunity, of course, to study  
14 your briefs and the cases that you cited to me, and they have been  
15 very helpful in educating me. I will hear from the parties at this  
16 time.

17 MR. BEISNER: Your Honor, John Beisner for the movant  
18 Merck on this motion, just to highlight several points on our  
19 motion. We think that the premise of this motion is quite simple,  
20 and that is that this court should not divert resources from  
21 absolving thousands of U.S. claims on the docket presently to deal  
22 with class actions that are brought by plaintiffs who were  
23 prescribed Vioxx by foreign doctors in foreign countries, took Vioxx  
24 with labels approved by foreign governments and written in foreign  
25 languages and allege that they suffered heart attacks and other

1 injuries in those foreign countries.

2 We think that to accept these cases here, your Honor,  
3 would result in the court having to manage much more than it should  
4 at this point with the other obligations, discovery of documents in  
5 at least seven foreign languages, interpret the laws of at least 11  
6 foreign countries when the court obviously should be devoting  
7 attention to the claims that are here from U.S. claimants.

8 And I think that the PSC recognized this problem that  
9 litigating these cases here would be a questionable use of scarce  
10 resources when they decided not to include these foreign cases in  
11 the body of class actions that they thought should go forward, and  
12 Merck certainly agrees with that.

13 THE COURT: The plaintiffs take the position that they  
14 don't have appropriate forum in either Italy or France to hear this  
15 case, they say that the class actions are not available and the only  
16 way to try a case of this sort is through class actions. How do you  
17 see it?

18 MR. BEISNER: Well, your Honor, I guess I would start with  
19 the proposition that there have been a number of times where the  
20 question of the adequacy of French and Italian forums in product  
21 liability cases and in mass tort situations has been litigated.  
22 Plaintiffs have not cited any case in which a federal district court  
23 has found either forum to be an inadequate forum. On footnote 2 of  
24 our reply brief we cite a large number of cases, including a lot of  
25 product liability cases, where the court found those forums to be

1 adequate.

2 I think the key point here is that if you look at the  
3 Piper Aircraft case and the Fifth Circuit's most recent  
4 pronouncement from this Vasquez case, the test is whether the  
5 parties will be deprived of all remedies or create unfairly, even  
6 though they may not enjoy the same benefits as they would get in a  
7 U.S. court. I don't think there is any debate here that there is no  
8 remedy in these foreign countries.

9 What plaintiffs are saying is there is no class device. A  
10 class device isn't a remedy, that's a procedural device. The  
11 remedies are available there. The fact that the cases might be  
12 tried differently there is not a basis on which the Fifth Circuit or  
13 any other federal court has found that this adequacy of the forum  
14 shouldn't be found.

15 And I think the basics, your Honor, if the class action --  
16 most courts in foreign countries don't recognize class actions. And  
17 if that's going to be the test, then you have to scrape U.S.  
18 District Court off the front of the building and put up World Court  
19 because that would be the result, product liability claims like this  
20 would all be heard here as opposed to in foreign countries.

21 THE COURT: Let me hear from your opponent, I want to ask  
22 a couple of questions on that.

23 The problem that I have is that the cases, it seems to me  
24 that the primary thrust of these cases is not improper manufacturer,  
25 really I don't see much on design either. The warning is where it

1 seems that most of the litigation is focused on or at least it's a  
2 big issue in the case even if it's all not focused there.

3           When you deal with warning you deal with where it was  
4 sold, where it was marketed, what the learned intermediary or doctor  
5 knew, what they were told. And those are so localized, I am not  
6 saying that you wouldn't have some discovery here or in New Jersey,  
7 but it would be like 10 percent and 90 percent; 90 percent in Italy  
8 or France and 10 percent here in this country. How do you deal with  
9 that fact pattern?

10           MS. BERNAL: Well, this litigation is really looking at  
11 what Merck knew and when. And it's also looking at the testing and  
12 the manufacturing and development and design, and what decision they  
13 made on how to market this drug. And that's also part of this  
14 litigation.

15           And the warnings, the foreign countries are going to be  
16 relying on what the defendant told them in their testing, and the  
17 testing is a big part of this litigation as well.

18           THE COURT: The testing is significant but it's  
19 significant from the standpoint of the argument that they knew or  
20 should have known or could have known and what they did with that  
21 information.

22           What about the argument that counsel raises that you say  
23 that you don't have an appropriate forum in Italy or France, that  
24 they are not good jurisdictions. In a civil law jurisdiction, which  
25 we are in Louisiana, you have difficulty with that argument because

1 we look at Justinian and we care about his Institutes, and we look  
2 at the Code of Napoleon and study what Pothier and Planiol say about  
3 the various legal concepts, and I am taken aback at your saying that  
4 they're just not good enough. They're sort of the basis of how we  
5 think about legal issues in this state.

6 MS. BERNAL: We are looking at the fact that there are no  
7 contingency fees, there are no class actions, there is a fee  
8 shifting rule. When you put all of these issues together, it's  
9 really impractical that the plaintiffs are going to be bringing  
10 their suit in France or Italy. It's just really -- it's almost  
11 impossible that they are going to be bringing the suit. And the  
12 reality is if these cases are dismissed, most likely they are not  
13 going to refile in France or Italy.

14 THE COURT: Well, we've got a situation where I agree that  
15 the class action vehicle is not as pronounced or not as defined  
16 there, but they do have some. Italy doesn't, of course, have any  
17 class legislation; but they do have, they allow some consumer  
18 associations to file claims on behalf of groups with various types  
19 of claims from what I've been looking at on the internet, in any  
20 event, this is increasing. There has also been an introduction in  
21 2004 of class actions in the new government's agenda in parliament.  
22 I couldn't find any law that has been passed but it's pending.

23 France, the president of the French Supreme Court, I  
24 picked up recently, declared that class actions are inescapable in  
25 that country. They also allow some associations to file collective

1 interests for consumers. I picked up a comment by the President  
2 Chirac that indicates that he believes that greater consumer  
3 protection is necessary and that some laws ought to be passed. So  
4 they're moving in that direction, if they're not there yet.

5 They do have some vehicles. It seems to me you don't like  
6 the vehicle they have; but they have a vehicle that gets them  
7 around, you want the American made vehicle, as I read you.

8 MS. BERNAL: The Italian do have joint action, but as our  
9 expert stated they are not very effective. And looking at the  
10 Sevesco case, which was the explosion at the Icmesa Plant. It took  
11 almost 15 to 20 years to resolve. The defendants brought up  
12 Catalina (PHONETIC), which was a blood products case, and that case  
13 actually took nine years to adjudicate.

14 THE COURT: No, I am aware of that. We look at the Union  
15 Carbide case in the '80s involving Union Carbide in India, took a  
16 long time, but the court sent it back to India because that's where  
17 a lot of it happened. Now, I know it's different in that case  
18 because that's where the explosion took place. Here your argument  
19 is the manufacturer of Vioxx and the design of Vioxx and the testing  
20 of Vioxx took place here.

21 But the drugs were ingested there, the plaintiffs bought  
22 the product there, they bought it from Merck's subsidiary there or  
23 independent companies there, the advertisement was in that country.  
24 The treaters are all there, the people as I say live there. It's  
25 just difficult to grab that litigation and move it over here because

1 the drug was manufactured here when the thrust of the litigation is  
2 moving in the direction of warning which occurred there.

3 MS. BERNAL: Well, it's our contention that the most  
4 critical evidence is the evidence relating to the design,  
5 development, testing, manufacturing, and how they marketed the drug,  
6 the decision to recall, that all occurred in the United States.  
7 That's what we feel is the most critical evidence in this case.

8 THE COURT: I do understand the issue. I am going to be  
9 granting the motion, but I do want to write it so that you have an  
10 opportunity to get my views on it. I think when you look at the  
11 fact that particularly in Italy and France they do have a legal  
12 structure dealing with these issues, may not be as formidable as the  
13 class action structure here; but then when I go to the public  
14 factors and then when I analyze the private interest factors also,  
15 it's very difficult to justify moving all of those cases over here.  
16 We are having enough difficulty dealing with the American cases.

17 And dealing with the world cases -- I don't know, does  
18 Merck sell in China, too? I hope not.

19 All right. But I appreciate your brief, it was well done,  
20 and it helped me on that. Both of your briefs.

21 THE DEPUTY CLERK: May I have your appearance for the  
22 record.

23 MS. BERNAL: Genevieve Bernal with Kenneth Moll &  
24 Associates.

25 THE COURT: Thank you very much. Anything further?

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MR. WITTMANN: No, your Honor.

THE COURT: The court will stand in recess.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

\* \* \* \* \*

REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

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Karen A. Ibos, CCR, RPR  
Official Court Reporter