

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: VIOXX PRODUCTS  
LIABILITY LITIGATION

MDL DOCKET NO. 1657  
NEW ORLEANS, LOUISIANA  
WEDNESDAY, SEPTEMBER 21, 2011, 9:20 A.M.

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

APPEARANCES:

FOR THE PLAINTIFFS: HERMAN HERMAN KATZ & COTLAR  
BY: RUSS M. HERMAN, ESQUIRE  
LEONARD A. DAVIS, ESQUIRE  
820 O'KEEFE AVENUE  
NEW ORLEANS, LA 70113

BEASLEY ALLEN CROW METHVIN  
PORTIS & MILES  
BY: ANDY D. BIRCHFIELD, JR., ESQUIRE  
P. LEIGH O'DELL, ESQUIRE  
234 COMMERCE STREET  
POST OFFICE BOX 4160  
MONTGOMERY, AL 36103

LEVIN, FISHBEIN, SEDRAN & BERMAN  
BY: FRED S. LONGER, ESQUIRE  
510 WALNUT STREET, SUITE 500  
PHILADELPHIA, PENNSYLVANIA 19106

SEEGER WEISS  
BY: CHRISTOPHER A. SEEGER, ESQUIRE  
ONE WILLIAM STREET  
NEW YORK, NY 10004

1 APPEARANCES CONTINUED:

2

3

GAINSBURGH BENJAMIN DAVID MEUNIER AND  
WARSHAUER

4

BY: GERALD E. MEUNIER, ESQUIRE  
2800 ENERGY CENTRE

5

1100 POYDRAS STREET, SUITE 2800  
NEW ORLEANS, LA 70163

6

7

BARRIOS, KINGS DORF & CASTEIX  
BY: DAWN M. BARRIOS, ESQUIRE  
701 POYDRAS STREET, SUITE 3650  
NEW ORLEANS LA 70139

8

9

10

LEVIN, PAPANTONIO, THOMAS,  
MITCHELL, ECHSNER & PROCTOR  
BY: TROY RAFFERTY, ESQUIRE  
316 SOUTH BAYLEN STREET, SUITE 600  
PENSACOLA, FL 32502

11

12

13

14

BLIZZARD MCCARTHY & NABERS  
BY: EDWARD BLIZZARD, ESQUIRE  
LYRIC CENTRE BUILDING  
440 LOUISIANA, SUITE 1710  
HOUSTON, TX 77002

15

16

17

RANIER LAW FIRM  
BY: DREW A. RANIER, ESQUIRE  
1419 RYAN STREET  
POST OFFICE BOX 1890  
LAKE CHARLES, LA 70602

18

19

20

OLDFATHER LAW FIRM  
BY: ANN B. OLDFATHER, ESQUIRE  
MEGAN J. HASTINGS, ESQUIRE  
1330 SOUTH THIRD STREET  
LOUISVILLE, KY 40208

21

22

23

24

25

1 APPEARANCES CONTINUED:

2

3

LIEFF CABRASER HEIMANN & BERNSTEIN  
BY: ELIZABETH J. CABRASER, ESQUIRE  
EMBARCADERO CENTER WEST  
275 BATTERY STREET, SUITE 3000  
SAN FRANCISCO, CA 94111

6

DUGAN LAW FIRM  
BY: JAMES R. DUGAN, ESQUIRE  
ONE CANAL PLACE, SUITE 1000  
365 CANAL STREET  
NEW ORLEANS, LA 70130

7

8

9

10

LAW OFFICE OF DANIEL BECNEL, JR.  
BY: DANIEL E. BECNEL, ESQUIRE  
106 SEVENTH STREET  
RESERVE, LA 70084

11

12

13

SANFORD LAW FIRM  
BY: SHELLY A. SANFORD, ESQUIRE  
16225 PARK TEN PLACE, SUITE 500  
HOUSTON, TX 77084

14

15

16

BEIRNE MAYNARD & PARSON  
BY: JACK URQUHART, ESQUIRE  
1300 POST OAK BOULEVARD, SUITE 2500  
HOUSTON, TX 77056

17

18

19

MARGARET E. WOODWARD  
ATTORNEY AT LAW  
3701 CANAL STREET, SUITE C  
NEW ORLEANS, LA 70119

20

21

22

WILLIAMS KHERKHER  
BY: JOHN EDDIE WILLIAMS, JR., ESQUIRE  
8441 GULF FREEWAY, SUITE 600  
HOUSTON, TX 77017-5051

23

24

25

1 APPEARANCES CONTINUED:

2

3

STRATTON FAXON  
BY: MICHAEL A. STRATTON, ESQUIRE  
59 ELM STREET  
NEW HAVEN, CT 06510

5

6

7 FOR THE DEFENDANT:

WILLIAMS & CONNOLLY  
BY: DOUGLAS R. MARVIN, ESQUIRE  
M. ELAINE HORN, ESQUIRE  
725 TWELFTH STREET, N.W.  
WASHINGTON, DC 20005

8

9

10

STONE PIGMAN WALTHER WITTMANN  
BY: DOROTHY H. WIMBERLY, ESQUIRE  
546 CARONDELET STREET  
NEW ORLEANS, LA 70130

11

12

13

SKADDEN ARPS SLATE MEAGHER & FLOM  
BY: JOHN H. BEISNER, ESQUIRE  
1440 NEW YOUR AVENUE NW  
WASHINGTON, DC 20005

14

15

16

SKADDEN ARPS SLATE MEAGHER & FLOM  
BY: THOMAS E, FOX, ESQUIRE  
FOUR TIMES SQUARE  
NEW YORK, NEW YORK 10036

17

18

19

HUGHES HUBBARD & REED  
BY: THEODORE V. H. MAYER, ESQUIRE  
ONE BATTERY PARK PLAZA  
NEW YORK, NY 10004

20

21

22

23

KING KREBS & JURGENS  
BY: HENRY A. KING, ESQUIRE  
PLACE ST. CHARLES  
201 ST. CHARLES AVENUE  
45TH AVENUE  
NEW ORLEANS, LA 70170

24

25

1 APPEARANCES CONTINUED:

2

3 *PRO SE* CURATOR: LAW OFFICES OF ROBERT M. JOHNSTON  
4 BY: HEATHER E. REZNICK, ESQUIRE  
5 400 POYDRAS STREET, SUITE 2450  
6 NEW ORLEANS, LA 70130

5

6

7 SPECIAL MASTER: JUNEAU DAVID  
8 BY: PATRICK A. JUNEAU, ESQUIRE  
9 THE HARDING CENTER  
10 1018 HARDING STREET, SUITE 202  
11 P.O. DRAWER 51268  
12 LAFAYETTE, LA 70505

10

11

12 OFFICIAL COURT REPORTER: CATHY PEPPER, CCR, RPR, CRR  
13 500 POYDRAS STREET, ROOM B406  
14 NEW ORLEANS, LOUISIANA 70130  
15 (504) 589-7779  
16 Cathy\_Pepper@laed.uscourts.gov

15 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT  
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**P-R-O-C-E-E-D-I-N-G-S**

WEDNESDAY, SEPTEMBER 21, 2011

M O R N I N G   S E S S I O N

(COURT CALLED TO ORDER)

09:19AM 7           THE DEPUTY CLERK: All rise.

09:19AM 8           THE COURT: Be seated, please. Good morning, ladies and  
09:19AM 9 gentlemen.

09:20AM 10           Call the case, please.

09:20AM 11           THE DEPUTY CLERK: MDL Number 1657, *In re: Vioxx*.

09:20AM 12           THE COURT: Would counsel make their appearances for the  
09:20AM 13 record, please. Please use the microphone because we have a  
09:20AM 14 number of people on the phone.

09:20AM 15           MR. HERMAN: May it please the Court, good morning,  
09:20AM 16 Judge Fallon, Russ Herman for plaintiffs.

09:20AM 17           MR. MARVIN: Good morning, Your Honor, Douglas Marvin  
09:20AM 18 for Merck.

09:20AM 19           THE COURT: We're here today for our monthly status  
09:20AM 20 conference. I met with the lead liaison counsel in advance of  
09:20AM 21 the conference to discuss the agenda. I'll take them in the  
09:20AM 22 order in which they are listed. Settlement program first.  
09:20AM 23 Anything on that?

09:20AM 24           MR. HERMAN: Your Honor, a point of personal privilege:  
09:20AM 25 There is a young lady who is 45 years old, who has been working

09:20AM 1 in this court for 40 years. Gaylyn, would you stand up. Stand  
09:21AM 2 up. I want to tell you, it's been a pleasure to be in this  
09:21AM 3 federal courthouse. You have made every lawyer and every  
09:21AM 4 litigant feel like it's their home. We can't thank you enough,  
09:21AM 5 and I would like everybody to stand while we give Gaylyn a hand.  
09:21AM 6 Gaylyn, we wish you well, and we hope retirement brings you all  
09:21AM 7 the happiness and all the pleasure in life.

09:21AM 8 THE DEPUTY CLERK: Thank you.

09:21AM 9 THE COURT: I'm sure she'll do well. We're going to  
09:21AM 10 miss her around here. She's given us wise counsel and good  
09:21AM 11 advice, as well as handled all the many, many cases that we've  
09:21AM 12 handled, both civil, criminal, multidistrict, class actions,  
09:21AM 13 everything. She's really truly the expert, and we look forward  
09:22AM 14 to her retirement.

09:22AM 15 We've got a person who is going to take her shoes  
09:22AM 16 or take her job. He's got big shoes to fill but I know he'll be  
09:22AM 17 able to do it. He's been with us a while as a docket clerk, and  
09:22AM 18 now he's moving up in the world. It's Dean Oser; he'll do a fine  
09:22AM 19 job, I know.

09:22AM 20 Okay. Settlement program.

09:22AM 21 MR. HERMAN: Your Honor, there is nothing new under  
09:22AM 22 Roman numeral I.

09:22AM 23 The Special Master is here, Roman numeral II. I do  
09:22AM 24 not think that Mr. Juneau has anything new, but why don't you  
09:22AM 25 step forth.

09:22AM 1 SPECIAL MASTER JUNEAU: Your Honor, for the record,  
09:22AM 2 Patrick Juneau, the Special Master. Just one short report I have  
09:22AM 3 for Your Honor. It has to do with the matter involving the  
09:22AM 4 attorney generals. There has been a constant communication,  
09:22AM 5 including on the electronic devices through the conference this  
09:23AM 6 morning. I can tell you, Your Honor, that of the litigating  
09:23AM 7 states, and I've talked to Mr. Patton, he may be on the phone,  
09:23AM 8 I've talked to everybody involved in the litigating states. We  
09:23AM 9 know that Kentucky is -- will not be in the NAMFCU process.  
09:23AM 10 Louisiana is. New York, yes. Utah, no. Pennsylvania, no. I  
09:23AM 11 have not confirmed with Arkansas -- I mean with Alaska, so I  
09:23AM 12 don't want to confirm that yet, Your Honor. Montana is no.  
09:23AM 13 Florida, I've talked to Mr. Young. He may be on the phone. They  
09:23AM 14 are dealing with that now and we'll instantly have that report  
09:23AM 15 from them. Mississippi and Oklahoma, I think Oklahoma is no, but  
09:23AM 16 I do not have that confirmation.

09:23AM 17 I've spoken to Mr. Beisner and we're going to  
09:23AM 18 decide very, very quickly what process, if any, would be  
09:24AM 19 beneficial with regard to those states that we're dealing with,  
09:24AM 20 the "No's" at this time. But I intend to address that within the  
09:24AM 21 next two or three days, and I'll report directly to the Court  
09:24AM 22 whether it will be fruitful to go forward with discussions or not  
09:24AM 23 in that regard. So that's precisely where we are.

09:24AM 24 THE COURT: When you get to that point, let me know and  
09:24AM 25 then I'll convene a status conference with those who are in the

09:24AM 1 "No" category and we'll talk about where we go from here.

09:24AM 2 SPECIAL MASTER JUNEAU: Thank you, Your Honor.

09:24AM 3 THE COURT: Anything on class actions?

09:24AM 4 MR. HERMAN: Nothing new, Your Honor.

09:24AM 5 On State-Federal Coordination, Roman numeral IV,  
09:24AM 6 Ms. Barrios has a report.

09:24AM 7 MS. BARRIOS: Thank you, Mr. Herman. Your Honor, just a  
09:24AM 8 side note before -- I'm sorry, Dawn Barrios for the State Liaison  
09:24AM 9 Committee. Oklahoma has definitely rejected the NAMFCU  
09:24AM 10 settlement. We have outstanding issues as to South Carolina as  
09:25AM 11 well, and I hope to get that before our 11:30 conference. If  
09:25AM 12 anyone is listening, I'm reminding all of the attorneys general  
09:25AM 13 we have a special conference and a call-in number at 11:30.

09:25AM 14 With regard to Roman numeral III on the class  
09:25AM 15 actions, on the consumer classes, I've been working with  
09:25AM 16 Ms. Cabraser and Mr. Beisner to try to make a complete list of  
09:25AM 17 those cases. And I honestly forgot it at my office, so we're  
09:25AM 18 e-mailing it to Lexy, ask her to print it out for us so that we  
09:25AM 19 would have it and share with everyone to see if we collectively  
09:25AM 20 have our arms around the exact number of consumer cases.

09:25AM 21 THE COURT: All right.

09:25AM 22 MS. BARRIOS: With regard to remands, we have one new  
09:25AM 23 remand from the Southern District of Georgia, *Pools versus*  
09:25AM 24 *Eichholz Law Firm*. We continue to update the database. We now  
09:25AM 25 have 88 cases with pending remands with 130 plaintiffs. And

09:25AM 1 nothing has changed with regard to those since the last status  
09:26AM 2 conference, but most of those cases are the government action  
09:26AM 3 TPP, private TPP cases.

09:26AM 4 And lastly, Your Honor, there were some cases that  
09:26AM 5 we noted last status conference that are open only because the  
09:26AM 6 derivative claimant is still a plaintiff. And I'm going to  
09:26AM 7 provide to Joe that list to see if we could administratively  
09:26AM 8 close those because the whole case has been settled.

09:26AM 9 THE COURT: Yes, I think that's what we're going to have  
09:26AM 10 to do. I have some that are working through the succession  
09:26AM 11 proceedings in the various states. And now I have the money.  
09:26AM 12 It's a little over a million or maybe \$2 million, I think, that  
09:26AM 13 we have in the registry of the Court. So it's going to be either  
09:26AM 14 dismissed or sent over here.

09:26AM 15 MS. BARRIOS: Yes, Your Honor. Thank you, Your Honor.

09:26AM 16 THE COURT: Thank you. Anything on the *pro se*  
09:26AM 17 claimants?

09:26AM 18 MS. REZNIK: Good morning, Your Honor, Heather Reznik  
09:27AM 19 for the *pro se* claimants office. We continue to receive several  
09:27AM 20 calls a week; it's remained pretty consistent throughout the last  
09:27AM 21 few months and we help them as best we can.

09:27AM 22 THE COURT: Good. Thank you very much. Governmental  
09:27AM 23 actions, anything on that that we haven't covered? Anything,  
09:27AM 24 John?

09:27AM 25 MR. BEISNER: No, Your Honor. I think Mr. Juneau

09:27AM 1 covered current status.

09:27AM 2 THE COURT: All right. Pending personal injury cases,  
09:27AM 3 PTOs 28, 29 and 43.

09:27AM 4 MR. HERMAN: Yes, Your Honor. Ms. Oldfather, Mr. Marvin  
09:27AM 5 and Mr. Birchfield have issues that will be addressed, as I  
09:27AM 6 understand it, following a conference.

09:27AM 7 THE COURT: Yes, I have some motions. I'll take the  
09:27AM 8 motions and then following the motions I'll do the hearing that  
09:27AM 9 we have set for today on the question of common benefit fees.

09:27AM 10 Fee allocation committee, anything on that?

09:28AM 11 MR. HERMAN: All briefing is now complete. Your Honor  
09:28AM 12 now has those matters under advisement.

09:28AM 13 THE COURT: Yes, I have some pending motions, as I  
09:28AM 14 mentioned.

09:28AM 15 What about the appeals? Anything on appeals?

09:28AM 16 MR. HERMAN: No, Your Honor.

09:28AM 17 THE COURT: All right. That's in connection with the  
09:28AM 18 fee allocation. We'll deal with that.

09:28AM 19 Any other matters?

09:28AM 20 MR. HERMAN: Not at this time.

09:28AM 21 THE COURT: Ann, do you --

09:28AM 22 MS. OLDFATHER: Your Honor, may I just say a little  
09:28AM 23 something on the personal injury for the benefit of the persons  
09:28AM 24 who are auditing the status conference?

09:28AM 25 THE COURT: Right.

09:28AM 1 MS. OLDFATHER: The parties have discussed methods of  
09:28AM 2 bringing the remaining personal injury cases through preparation  
09:28AM 3 and to a conclusion, and I believe the Court is going to schedule  
09:28AM 4 a specific time for liaison counsel to get together with Merck to  
09:28AM 5 do that. I believe the Court may want to announce that at some  
09:28AM 6 point.

09:28AM 7 Merck has, at this point, taken 74 depositions in  
09:29AM 8 the various personal injury cases. We are in the process of  
09:29AM 9 identifying cases that we would like to focus on for trial  
09:29AM 10 preparation.

09:29AM 11 We also have asked all of the remaining personal  
09:29AM 12 injury claimants to provide us with written consents, us meaning  
09:29AM 13 me, the Oldfather Law Firm, and we have provided those consents  
09:29AM 14 to Merck. And Merck has provided us with the medical records and  
09:29AM 15 the *Lone Pine* reports on those cases.

09:29AM 16 There are about four people, and that will come up  
09:29AM 17 later, that have not provided their consents. And I believe the  
09:29AM 18 Court is going to address that as part of the Motion to Dismiss  
09:29AM 19 for failure to prosecute.

09:29AM 20 THE COURT: We really need those consents because Merck  
09:29AM 21 can't give the material without the consent because of some  
09:29AM 22 federal regulations and laws. But Ms. Oldfather needs the  
09:29AM 23 material in order to pursue the claims.

09:29AM 24 So if anybody is on the phone that hasn't submitted  
09:29AM 25 that consent, please do so. Because if not, I then assume that

09:30AM 1 you're not interested in pursuing your claim and we have to  
09:30AM 2 dismiss it.

09:30AM 3 She's got her hands full with the claims that she's  
09:30AM 4 pursuing, and she needs everybody to cooperate with her in that  
09:30AM 5 regard.

09:30AM 6 MS. OLDFATHER: Thank you, Your Honor.

09:30AM 7 THE COURT: With regard to those cases, I've asked  
09:30AM 8 counsel to get the census together. We have between 100 and 102,  
09:30AM 9 or thereabouts, of those cases.

09:30AM 10 I've asked them to group the cases in accordance  
09:30AM 11 with some logical grouping. And there are a couple from heart  
09:30AM 12 attacks, maybe a couple from strokes, a couple from other  
09:30AM 13 vascular problems, and there are a host of others. So they are  
09:30AM 14 in the process now of doing that.

09:30AM 15 They are going to be taking depositions in all of  
09:30AM 16 the cases to get a feel for what's out there, both from the  
09:30AM 17 standpoint of paper discovery as well as perhaps a disposition or  
09:30AM 18 so.

09:30AM 19 And then they will be able to hone in on some cases  
09:31AM 20 from each of those groups and then recommend to me which cases  
09:31AM 21 are ready for trial. And I'll try those cases in that specific  
09:31AM 22 group to see whether or not the case that is tried can inform  
09:31AM 23 some of the other cases in that particular group and be able to  
09:31AM 24 resolve it in that way.

09:31AM 25 In short, we'll try some bellwether cases,

09:31AM 1 bellwether that process to see how it goes, rather than just do  
09:31AM 2 110 trials. We might wind up doing that 110, but hopefully the  
09:31AM 3 first couple of cases will inform us about the other cases in  
09:31AM 4 that group. At least that's my current thinking.

09:31AM 5 MS. OLDFATHER: We look forward to suggesting to the  
09:31AM 6 Court perhaps some alternate avenues when we have our conference  
09:31AM 7 on November 4th. Thank you, Your Honor.

09:31AM 8 THE COURT: Thank you. The next formal status  
09:32AM 9 conference is when? Friday November 4th. That seems to be the  
09:32AM 10 best time for everyone.

11 (WHEREUPON, at 9:32 a.m., the proceedings were  
12 concluded.)

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16 REPORTER'S CERTIFICATE

17  
18 I, Cathy Pepper, Certified Realtime Reporter, Registered  
19 Merit Reporter, Certified Court Reporter of the State of  
20 Louisiana, Official Court Reporter for the United States District  
21 Court, Eastern District of Louisiana, do hereby certify that the  
22 foregoing is a true and correct transcript, to the best of my  
23 ability and understanding, from the record of the proceedings in  
24 the above-entitled and numbered matter.

25  
s/Cathy Pepper  
Cathy Pepper, CRR, RMR, CCR  
Certified Realtime Reporter  
Official Court Reporter  
United States District Court  
Cathy\_Pepper@laed.uscourts.gov



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