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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS * Docket MDL 1657-L
LIABILITY LITIGATION *
 * December 14, 2006
 *
 * 10:00 a.m.
* * * * *

PROCEEDINGS BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Herman Herman Katz & Cotlar
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For the Defendant: Hughes Hubbard & Reed
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Also Present: DENNIS R. HARRISON (pro se)
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PROCEEDINGS

(December 14, 2006)

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3 **THE COURT:** We had a conference in this matter that
4 was scheduled to begin at 9:00 and the matter proceeded. I got
5 word from Mr. Harrison that his luggage was either lost or
6 delayed and that he was doing his best to get here as promptly
7 as possible. Counsel were kind enough to wait around. We are
8 now a little after 10:00. I'm happy that Mr. Harrison is
9 present here today.

10 Mr. Harrison.

11 **MR. HARRISON:** Thank you very much. I have handouts.
12 Do you want to see them?

13 **THE COURT:** Well, why don't we give them to counsel.

14 **MR. HARRISON:** It's not as long as it looks. I'm
15 trying to streamline the presentation. This is for the Judge.
16 I just can't tell you how much I appreciate you doing this for
17 me. I was in such a panic over you not getting it.

18 **THE COURT:** Where did you come from, Mr. Harrison?

19 **MR. HARRISON:** New York. I took a bus. 36 hours on
20 a bus, it's not a pleasant ride. I'm not doing that again.
21 The airplane only next time.

22 **THE COURT:** Right. That's a tough thing. I'm
23 delighted you could be with us.

24 **MR. HARRISON:** I'm very happy everybody was patient
25 enough. That's very professional. I appreciate it.

1 Now, I do have, like I said, some handouts, one
2 to Merck's counsel and one to the PSC. I tried to streamline
3 it, so in one minute I'll tell you what I'm going to do. I'll
4 do a one-minute summary and then a five-minute summary type of
5 thing. The approximate presentation time, for your timing on
6 things, is for 15 minutes.

7 I'm looking at the "Vioxx Bone/Spine
8 Repair/Healing Litigation Issues." I'm looking at that one
9 now. I think the quickest way -- if somebody feels different,
10 let me know -- would be to go over it quickly, the whole thing,
11 so everybody sees the big picture, and then go into discussion.
12 It's tempting to stop me, you know, but then when I stop and
13 halt, stop and halt, it will take everybody longer and they
14 won't see the big picture as easy. The goal of me coming here
15 is basically awareness and education of the very significant
16 bone repair/healing problem of COX-2 inhibitors, Vioxx in this
17 case in particular.

18 I was sent by Merck to the MDL. The PSC, I
19 thought I better make sure that they could handle my interests
20 because it's really mostly about heart. The PSC didn't know,
21 but finally after a few weeks -- I don't know the reasons, but
22 they can't and said -- nicely. Any conversation I ever get
23 into, when I say "can't" or "won't," it's meant to be
24 professional. I'm just trying to explain.

25 Being the case that the PSC cannot in my view

1 represent the bone/spine problems, what I would like to do --
2 and I may be wrong on some things, you just can't do it -- is
3 to request a separate class of lawsuit with a different PSC,
4 making a new PSC; because like I said, I was rejected outright,
5 actually, and actually would be quite nervous about going to
6 the PSC at this time because of that. Again, you know, I've
7 had good talks. I'm not saying anything negative about the
8 PSC. I'm just explaining the facts.

9 I believe, as I have researched as diligently as
10 I can -- I am somewhat limited physically, but a few hours a
11 day I'm able to look on the Internet, anywhere I can,
12 newspapers, anything. I believe there are reasons why the
13 general legal field across the country and the public, too, are
14 not knowledgeable about the bone problem. I'll just say "bone
15 problem" rather than "bone/spine," blah, blah, blah. They are
16 not motivated. The legal representatives across the country in
17 my view are not interested in the bone cases. I believe I know
18 some of the reasons why.

19 I was rejected at least 15 times. I have
20 proof -- not with me, but I have proof of all those rejections,
21 the letters from the lawyers. I did have several lawyers say
22 verbally that they felt I had a very good case, but they
23 couldn't represent me because it would cost about \$100,000,
24 things like that. What I have come to understand is I believe
25 it's much, much -- it's less risky and much less money for a

1 legal firm to put at risk if they are into the heart
2 litigation. The bone litigation is just something that would
3 require a lot of work, have more risk, be much more expensive,
4 and from what I can tell so far is that given a heart case --
5 and I'll shorten that. I won't say "heart/cardiovascular."
6 Given a heart case and given a bone case, the lawyers across
7 the country want the heart case because they can cut and paste
8 on the Internet the generic lawsuit that there is.

9 Actually, I did that, too, a little bit because
10 I'm pro se, I think as we all know. I could do a hundred a
11 day, lawsuits, with that cut and paste if I had people's names,
12 then get my lawsuit started; especially, as I'm finding now,
13 since you really don't get into big discovery issues for a long
14 time. I feel lawyers across the country are just -- there are
15 so many suits out there because it's so easy, too -- not
16 acknowledging the very significant bone problem. I'll show you
17 some evidence on that later. So I'll be asking for a separate
18 class and a separate PSC. I also have a feeling that the PSC
19 is quite challenged with the workload and that could very well
20 be one of the issues why they really did not want to represent
21 me.

22 I also believe strongly that, should we create
23 the separate class, that the statute of limitations -- from
24 what perspective it can be. I'm not a lawyer and I don't know
25 exactly what can be done, but I've seen and read some things.

1 It looks like that there is the ability to formally extend the
2 statute of limitations. I feel for bone cases it should be
3 because when Merck announced the problem and withdrew the
4 drug -- which I stopped immediately, never took one after
5 that -- that they did not acknowledge any problem with bone and
6 spine and almost exclusively people just were not -- I know the
7 clock theoretically started ticking, for the most part, at that
8 time. I know different states have different rules and as to
9 discovery, when did this thing happen, when was it
10 discovered -- not "discovery discovery," but discovered that
11 there was a problem.

12 So I have a feeling that the statuses of people
13 across the country that have had a problem like mine and have
14 not done anything because the lawyers are not motivated to do
15 so -- because of the reasons I gave before -- and they don't
16 know about it. I also believe that many of the cases really
17 would actually be for the elderly because elderly are more
18 likely to break a bone, so they are also more likely to -- even
19 if they did know anything, they may go to a lawyer, get turned
20 down like I did and stop pursuing it. I don't think too many
21 people would have pursued it after 15 or 20 rejections like I
22 had.

23 I mean, I did have hints that they thought it
24 was a good case. I have reasons to believe I should continue
25 it. I have the Internet access, and a lot of elderly are just

1 not going to have some of the resources I had to even start it.

2 I'll try to go a little quicker. On the second
3 page on the first handout there -- I'm not going to discuss any
4 detail here, just tell you what I want to discuss after I'm
5 done with this. I want to discuss the heart, which I have
6 already done some of this, the heart discovery versus the bone
7 discovery needs. I have some material -- and it's only maybe
8 one percent of what's out there -- on statements from
9 orthopedic surgeons or R&D people all over the place on the
10 Internet about the bone problem.

11 I would estimate, from what I saw, there's a
12 hundred pro articles that say there is a problem for every one
13 that says there isn't a problem. Even the ones -- when I say
14 there isn't a problem, it's not really the case. The ones that
15 say there isn't a problem say they doubt there's a problem.
16 They don't firmly say it like probably half of the studies,
17 independent R&D studies, some of them very strong in believing
18 that this definitely is an issue. So I would like to discuss
19 can the heart PSC -- is that okay to refer to it like that --

20 **THE COURT:** Sure.

21 **MR. HARRISON:** -- to make it easier to keep on the
22 same wavelength? Can they represent the bone issues
23 effectively and fairly, not only for myself? As I continued
24 through this process, I began to understand that there's a
25 public problem here, public awareness, acceptance by the legal

1 field that this is a real problem. So I felt there's this
2 bigger issue, much bigger issue than just Dennis Harrison
3 versus Merck. There's a major public awareness issue that's
4 not being addressed in my view. Everything I say, of course,
5 is alleged or in my view. I put that anywhere I write
6 something. I try to be as good on that as I can.

7 So, then, being everything I have said is
8 hopefully the case -- I mean, people understand it, relate to
9 it -- should a new lawsuit class be created with concentrations
10 on heart now and should one for bone be created? I don't know
11 what the PSC does relative to cases that are nonheart, if
12 there's a miscellaneous. I don't know. The bone issue in my
13 view is so serious that I don't think it could be put in a
14 miscellaneous category and I don't think it could be
15 represented by the PSC.

16 For example, in the discovery process, if a
17 letter is written to Merck requesting information and they
18 don't mention "bone/spine," then the answers aren't going to be
19 relative to bone and spine. It's just going to be for heart.
20 Theoretically, as I take the evidence back to New York --
21 that's how it works, I believe. Pretrial discovery would be
22 here. If I were to have the PSC at today's forum represent me,
23 when I go back to New York it doesn't really help because they
24 never specifically would ask about bone problems. It all would
25 be heart. Again, that's my view. I believe the public needs

1 to be made aware of this in a formal manner.

2 I talked about the statute of limitations. This
3 whole issue has more problems in it than would even first be to
4 me obvious in that there's new COX-2 inhibitor drugs coming to
5 the market and they are not even addressing anything with bone
6 problems, not even testing that I could find. I can't say
7 definitive because I'm not there. It's not even being
8 addressed. So at the same time I see hundreds of articles
9 expressing the problem and I just don't understand why Merck
10 would not or could not -- or whatever -- investigate this
11 issue, let alone the fact that it's an issue Merck is a subject
12 matter expert on the issue, assumedly. Merck has done great
13 things, by the way, but there's a problem here. Again, I'm not
14 meaning to --

15 **THE COURT:** No, I understand. You have stated your
16 position, Mr. Harrison. As I understand it, you're a pro se
17 litigant. You have filed a suit against Merck. You indicate
18 in your suit that as a result of your taking a COX-2 inhibitor,
19 namely Vioxx, that that has either caused or increased a
20 bone/spine problem. You are concerned that your case is not
21 represented adequately in the litigation by the plaintiff
22 committee because their focus is mainly on cardiovascular and
23 stroke and other circulatory issues, and you want to bring that
24 to the Court's attention and you seek some discussion on that
25 issue.

1 **MR. HARRISON:** Yes, sir.

2 **THE COURT:** Let me ask Merck if they have any
3 response first. We'll let Merck respond.

4 **MR. HARRISON:** Can I sit and rest right here?

5 **THE COURT:** Sure. Please do.

6 **MR. HARRISON:** Thank you very much.

7 **MR. HERMAN:** Your Honor, while Merck is discussing
8 it, first of all, we appreciate Mr. Harrison being here. In
9 September 2006, Chris Seeger received an inquiry from
10 Mr. Harrison regarding discovery of bone issues in the MDL.
11 Mr. Seeger replied in September, thanking Mr. Dennis Harrison
12 for his e-mails, and indicated that the PSC was not pursuing
13 discovery on this type injury and that he should contact
14 Leonard Davis for any Web site information as to what orders
15 had been issued by the Court, et cetera.

16 It was also discussed in the PSC inasmuch as, in
17 the numbers of cases which were MDL'd that the PSC had reviewed
18 and according to plaintiff profile forms, there did not appear
19 initially and there still does not appear a significant number
20 of these types of claims. It may be through ignorance or other
21 circumstance, but to begin the discovery process all over in
22 September of 2006, after a number of trials had been conducted
23 and serious discovery for 18 months, the PSC did not feel it
24 was in a position to conduct the type of intensive discovery
25 that would be necessary.

1 In the 40 years of experience that I have had
2 generally representing injured folks, sometimes the potential
3 claimant is a better lawyer than the lawyers are, and certainly
4 the amount of research and investigation Mr. Harrison has done
5 is significant. I represent to Your Honor the PSC did have a
6 discussion in early September about this issue and did not
7 undertake to proceed with this type of discovery.

8 **MR. DAVIS:** If I may, Your Honor. Leonard Davis from
9 Herman, Herman, Katz & Cotlar. Just to supplement what my
10 partner Russ has said, following the discussions that
11 Mr. Harrison had with Chris Seeger, our office was contacted by
12 Mr. Harrison. We spoke with him on several occasions. I
13 believe we have also written Mr. Harrison and conveyed to him
14 we had PSC meetings and that, in fact, the PSC was not going to
15 pursue or undertake the bone-type issues and that we were more
16 focused on other types of issues, but that he was welcome at
17 any time to get information from the PSC and that we would
18 freely communicate with him. We have had continuing
19 discussions with Mr. Harrison. They have been very cordial,
20 and hopefully they have been helpful.

21 **THE COURT:** Anything from Merck? Any comments?

22 **MR. MAYER:** Your Honor, Ted Mayer for Merck. We
23 certainly respect Mr. Harrison's right to assert claims in this
24 Court and to pursue those to the best of his ability. We do
25 believe strongly that there needs to be just one PSC in this

1 litigation with the authority from the Court to speak on behalf
2 of the plaintiffs, their own clients and others, as the PSC has
3 been very forceful advocates for all of the plaintiffs in this
4 litigation. We believe it's very important to the management
5 of the litigation that there be a single PSC.

6 With regard to the discovery, I want to point
7 out that Merck has produced over 20 million pages of
8 Vioxx-related documents. These are not just heart documents.
9 These are all the Vioxx clinical trials regardless of the
10 particular condition that was being studied in those trials.
11 These are the Vioxx-related custodial trials of hundreds of
12 witnesses regardless of whether they concern the heart or the
13 GI system or the bones or other issues. So that there has been
14 very extensive, very broad discovery, and discovery continues
15 to be ongoing in this Court, but there has already been an
16 extraordinary amount of information produced regarding the
17 science on Vioxx and the marketing of Vioxx.

18 With regard to the statute of limitations, I
19 think the impressive compendium of material that the litigant
20 has brought to this Court shows that, to the extent there is a
21 debate over bone healing issues, it's been a very public debate
22 for many years, very widely written about, and very much out in
23 the public domain and in the literature and in the press for
24 several years. We don't see any basis whatsoever for any
25 relief from the statute of limitations on that.

1 Finally, I would note that there are various
2 other categories of injury where we have a handful or more than
3 a handful of claims that are not CV-type injuries. In this
4 litigation, among the pool of cases before Your Honor, we do
5 intend to pursue discovery in those cases, bring appropriate
6 motions as part of the whittling process, and bring some of
7 those issues before Your Honor in the coming year.

8 **THE COURT:** Mr. Harrison, I understand the issue.
9 Presently, I don't see any issue of creating another plaintiffs
10 steering committee because I don't see any lawyers who want to
11 be on the plaintiffs steering committee for a bone case. I
12 can't force them to be on it. You have a right to represent
13 yourself. Do you know the Court's Web site?

14 **MR. HARRISON:** Oh, yes.

15 **THE COURT:** You have access to that?

16 **MR. HARRISON:** Yes.

17 **THE COURT:** I've been putting everything on the Web
18 site so that you can keep in touch with it. You know what's
19 being discovered. If you have any issues or need any
20 documentation, I want you to feel free to get in touch with the
21 plaintiff liaison counsel and ask them any questions that you
22 need to ask them.

23 You have protected your rights. You have filed
24 a suit. You have interrupted prescription. What's going to
25 happen later on is there's going to be some discovery probably

1 in your specific case. Depositions will be taken of you and of
2 your treating doctor and any expert that you may have. You'll
3 have an opportunity to take any depositions, if you need to
4 take any depositions, and then I'll deal with the matter.

5 I wish that you had had some success in getting
6 counsel because I've tried six of these cases now and I know
7 how complex they can be. I mean legally complex; not
8 necessarily only factually complex but legally complex. It's
9 going to be hard, from your standpoint, to navigate through
10 some of those legal issues without competent counsel to
11 represent you. I'm concerned about that.

12 I don't know what I can do in the civil system.
13 In the criminal system, I can appoint counsel, and they are
14 reimbursed for their time from assets that are created for that
15 purpose, but there are no similar assets available for civil
16 litigation. The Constitution of the United States has not been
17 interpreted by the courts to require representation of people
18 in a civil matter, so the Court doesn't have the same either
19 authority or responsibility.

20 It's more a voluntary basis that either lawyers
21 do it for compensation or they do it for pro bono reasons and
22 they appear as counsel, but it's not going to be possible for
23 me to appoint somebody to represent you at this stage. The
24 best I can do for you is to give you access to the material and
25 see whether there's any additional discovery. If you need any

1 additional discovery, I'll at least consider it. I don't know
2 how I'll rule on it, but I will consider it.

3 **MR. HARRISON:** Yes, Your Honor, but what you're
4 implying -- which makes sense, too. I do understand that the
5 legal field doesn't want the case and I know why, I believe.
6 I'm talking about the legal field across the country. I would
7 like to show you some of the briefs on some of the articles.
8 This all really started -- my lawsuit was filed in the state of
9 New York in the Supreme Court, Ulster County. I would also be
10 fine with going back to the state. That's no issue. Actually,
11 my first preference would be a PSC to properly and fully
12 represent me. That's actually my first choice. My second
13 choice would be to go back to the state.

14 I'm very, very concerned that if I were to
15 co-exist with the PSC, as it stands today, we could create an
16 environment of fingerpointing. Merck could say, "Well, we gave
17 you that," and the PSC could say, "No. We don't have it.
18 Mr. Harrison needs it," and there would be too much chaos.

19 **THE COURT:** I understand.

20 **MR. HARRISON:** That's a little bit dramatic.
21 Although there has been a lot of study that's gone on in
22 journals and it has been published, it perplexes me as to why
23 Merck doesn't have studies themselves -- I don't understand
24 that -- to either firmly and fully deny it, agree, or say they
25 don't know; and then, if they don't know, explain how they will

1 find out about the problem. There may be articles, but I've
2 talked to my doctors and none of them -- none of them -- were
3 aware of this issue. These are surgeons and physicians, and
4 some pretty good surgeons, too. In all cases they said, "Oh,
5 let me see that. Could you send it to me?" I have a surgeon
6 that I saw last week as a checkup and I'll be sending him one,
7 too. I've got several surgeons, as it turned out.

8 Again, I surely don't mind going back to the
9 state if I can't really be represented for whatever reasons in
10 the federal arena. Actually, I do have a brief to vacate the
11 conditional transfer. It might seem confusing to the Court why
12 would Mr. Harrison try to get out of the system and on the
13 other hand try to make the system work better for him on the
14 federal arena. That's simply because of timing. I need to do
15 it concurrently. So if it's rejected, I'm trying to go back to
16 the state. If proper representation, in my view, is rejected,
17 I can go lean on the paperwork, the conditional transfer to
18 vacate that I have done.

19 **THE COURT:** Mr. Harrison, I don't mean to interrupt
20 you. I do understand your position. I'll make this a part of
21 the record. I'll attach to the discussion the material that
22 you gave me. I do have other matters that I have to get to.
23 You understand.

24 **MR. HARRISON:** Sure. Sure. I just would request
25 offline -- it doesn't have to be now -- that everybody, if they

1 could look at the excerpts on the supplemental list, just some
2 example excerpts from virtually hundreds of articles on the Web
3 indicating the same problem. So these are very meaningful, and
4 please understand this is maybe one percent, at most, of what's
5 out there. Of course, there's many articles sometimes for one
6 study, so the next day there's a thousand of these that
7 probably refer to 50 studies, but there are multiple studies.

8 **THE COURT:** Okay.

9 **MR. HARRISON:** Again, my view is definitely if you
10 take the intersection of people that have broken bones or spine
11 problems, the intersection of that with people on Vioxx -- the
12 surgeons actually like to give Vioxx because it is an effective
13 pain-reliever, which is a part of the COX-2 inhibition whole
14 problem. I'm fine with that. I would just request that my
15 brief to vacate stays -- somehow this influences the brief to
16 vacate, gets me back to the state, if necessary.

17 **THE COURT:** Okay. Thank you very much. Thank you
18 for coming down.

19 **MR. HARRISON:** My pleasure. Thank you very much.

20 **THE COURT:** Have a good holiday season.

21 Court will stand in recess.

22 **THE DEPUTY CLERK:** All rise.

23 (WHEREUPON, the Court was in recess.)

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the 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.

Toni Doyle Tusa, CCR, FCRR
Official Court Reporter