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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

In Re: VIOXX PRODUCTS \* MDL Docket No. 1657  
LIABILITY LITIGATION \*  
\* Section L  
\*  
\* April 27, 2012  
This Document Relates to All Cases \*  
\* 9:00 a.m.  
\* \* \* \* \*

MONTHLY STATUS CONFERENCE BEFORE  
THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Herman Herman Katz & Cotlar, LLP  
BY: LEONARD A. DAVIS, ESQ.  
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New Orleans, Louisiana 70113

For the Defendant: Williams & Connolly  
BY: DOUGLAS R. MARVIN, ESQ.  
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Also Participating: Dawn Barrios, Esq.  
Heather Reznik, Esq.

Official Court Reporter: Toni Doyle Tusa, CCR, FCRR  
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(504) 589-7778

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computer-aided transcription software.



1           **MR. DAVIS:** No, Your Honor. There's nothing new to  
2 report.

3           **THE COURT:** State/federal coordination, anything on  
4 that?

5           **MS. BARRIOS:** Your Honor, I can tell we are  
6 continuing to wind down because I say the same thing every  
7 time. With your permission, I won't make a report the next  
8 status conference unless there's something different.

9           **THE COURT:** Okay.

10          **MS. BARRIOS:** There's been no CTOs filed since the  
11 last status conference. Just one new remand motion was filed.  
12 We continue to update databases and remove cases. There are 95  
13 cases open with pending remands and that constitutes 148  
14 plaintiffs. There are 5 cases that we believe should be closed  
15 because the actual plaintiff ingestor settled its case but the  
16 derivative claimant is still open. I spoke with Mr. Marvin  
17 today and he said he would take care of that.

18          **THE COURT:** Well, we started out with about 50,000  
19 claims from every state in the union and every district court  
20 in the union, 94 districts we have. Close to 50,000 have been  
21 resolved. In addition, we are dealing with less than 100 now,  
22 many of whom are *pro se's*, and the various injuries that are  
23 being claimed. We started with about 26 attorneys general  
24 seeking relief for citizens of their states. We are down now  
25 to 5 attorneys general. We are at the final end of this case.

1 Hopefully we will see the end of it this year.

2 The next item is *pro se* claimants. Anything on  
3 that?

4 **MS. REZNIK:** Good morning, Your Honor. Heather  
5 Reznik for *pro se* curator Bob Johnston. Not much new to  
6 report. We receive occasional calls on a weekly basis, and we  
7 just assist *pro se's* the best we can.

8 **THE COURT:** In cases of this sort, as we all know, we  
9 have individuals who don't have lawyers and don't want to have  
10 lawyers, so they need to have somebody to at least call and  
11 talk to to find out information. I post everything on the Web  
12 site for them, but they like to pick up the phone and talk to  
13 someone.

14 I appointed a *pro se* liaison counsel who is  
15 available for their call. The *pro se* counsel explains all of  
16 the information, tries to answer all of their questions and  
17 keep them updated. That's what's been done. It's been very  
18 helpful, and I appreciate your work on that.

19 **MS. REZNIK:** Thank you.

20 **THE COURT:** Government actions and consumer claims?

21 **MR. DAVIS:** Yes, Your Honor. We have combined these  
22 two in this report. The consumer class claims, we put that  
23 topic in.

24 There have been a number of discussions since  
25 the last conference between Dawn, myself, what I'll call the

1 AGs, as well as Ben Barnett to further the issues. I know  
2 there's a conference that's scheduled after this where we can  
3 address those matters.

4 **THE COURT:** Third-party payors?

5 **MR. DAVIS:** On the third-party payors, the only  
6 remaining issue is the fee allocation. We have had continuing  
7 discussions on that and hopefully will present something to the  
8 Court very shortly on that.

9 **THE COURT:** Pending personal injury cases subject to  
10 PTOs 28, 29, and 43?

11 **MR. MARVIN:** Yes, Your Honor. I can address that.  
12 There are 70 cases that remain, as Your Honor noted, out of  
13 more than 50,000. Of those 70 cases, about 30 are subject to a  
14 motion that we filed sometime ago in cases that allege a venous  
15 thromboembolism, VTE cases.

16 Ms. Oldfather and I have spoken, and I believe  
17 that there is an agreement that on August 15 the expert  
18 reports, if any, that would be filed in connection with the  
19 VTEs on general causation to address our motion, that date  
20 would be set. So I think that, though, there is an agreement  
21 for the entry of that order.

22 As for the other cases and beyond the VTEs, I  
23 understand that Your Honor would like to set a conference with  
24 Ms. Oldfather and myself and the PSC to discuss the disposition  
25 of those cases and a further schedule.

1           **THE COURT:** Yes. I have scheduled that for this  
2 Monday at 3:30 to talk about a scheduling order. I would like  
3 to get a scheduling order in place that's consistent with  
4 resolving these matters by this year.

5           **MR. MARVIN:** Your Honor, one additional point there.  
6 In the *Escamilla* case, Your Honor entered an order there. In  
7 that case, we were not served with the papers filed by  
8 Escamilla. If we had been, we would have withdrawn the motion  
9 because it included an expert report that we believe would have  
10 satisfied your *Lone Pine* requirement. Plaintiff counsel there  
11 has graciously offered to vacate the judgment and to allow us  
12 time to submit the opposition; but in light of the fact we are  
13 satisfied with the expert report that they submitted, there's  
14 no need to do that.

15           **THE COURT:** Okay. I got an expert report. I don't  
16 make any judgment on the *Daubert* evaluation of it or  
17 significance of that particular expert, but it certainly passes  
18 the *Lone Pine* requirement, so I feel that that's been  
19 satisfied.

20                           Other pending motions, anything?

21           **MR. MARVIN:** No, Your Honor. There are no motions  
22 set to be heard today.

23           **THE COURT:** How about appeals, anything on that?

24           **MR. MARVIN:** Nothing new, Your Honor.

25           **THE COURT:** We have a meeting following this meeting

1 with the AGs. Anything other than that?

2 Dorothy, do you have anything today?

3 **MS. WIMBERLY:** No, Your Honor.

4 **THE COURT:** The next meeting is June 14. I have on  
5 that date *Chinese Drywall*, which is another MDL case that I am  
6 dealing with. In this case, I have one defendant. In  
7 *Chinese Drywall*, I have only 26,000 plaintiffs but 1,000  
8 defendants. The interesting thing, there's 1,000 lawyers in  
9 this case; I have 1,400 lawyers in that one. It just keeps  
10 moving up. I will work this in some kind of way. The meeting  
11 on the 14th, we will just probably follow the *Chinese Drywall*  
12 meeting.

13 Anything further in open court? We will get the  
14 AGs on the line soon and I'll talk to them. Thank you very  
15 much.

16 (Proceedings adjourned.)

17 \* \* \*

18 **CERTIFICATE**

19 I, Toni Doyle Tusa, CCR, FCRR, Official Court  
20 Reporter for the United States District Court, Eastern District  
21 of Louisiana, do hereby certify that the foregoing is a true  
22 and correct transcript, to the best of my ability and  
23 understanding, from the record of the proceedings in the  
24 above-entitled matter.

24 s/ Toni Doyle Tusa  
25 Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter