

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
THURSDAY, OCTOBER 11, 2012, 9:00 A.M.

THIS DOCUMENT RELATES TO
ALL CASES

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

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AGENDA ITEMS

PAGE

CLASS ACTIONS.....	6
GOVERNMENTAL ACTIONS.....	6
THIRD-PARTY PAYORS.....	7
PENDING PERSONAL INJURY CASES.....	10
OTHER ISSUES.....	14
DECEMBER 11TH, 2012, AT TWO O'CLOCK IS THE NEXT STATUS CONFERENCE.....	22

09:12AM

09:12AM

P-R-O-C-E-E-D-I-N-G-S

THURSDAY, OCTOBER 11, 2012

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

09:12AM 1

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THE DEPUTY CLERK: All rise.

09:12AM 8

THE COURT: Be seated, please. Good morning, ladies

09:12AM 9

and gentlemen. Call the case.

09:12AM 10

THE DEPUTY CLERK: MDL 1657, *In re: Vioxx Products*

09:12AM 11

Liability Litigation.

09:12AM 12

THE COURT: Ladies and gentlemen, counsel, make your

09:12AM 13

appearance for the record, please.

09:12AM 14

MR. BIRCHFIELD: Andy Birchfield here for the

09:12AM 15

plaintiffs.

09:12AM 16

MR. MARVIN: Good morning, Your Honor. Douglas Marvin

09:12AM 17

for Merck.

09:12AM 18

THE COURT: This is our bimonthly meeting of the Vioxx

09:12AM 19

litigation matter, MDL 1657. I received a proposed agenda. I

09:13AM 20

met with liaison and lead counsel, discussed it a moment ago.

09:13AM 21

We'll take it in the order presented.

09:13AM 22

Class actions. Anything on the class actions?

09:13AM 23

MR. BIRCHFIELD: Nothing to report on class actions,

09:13AM 24

Your Honor.

09:13AM 25

THE COURT: What about the governmental actions?

09:13AM 1 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios
09:13AM 2 for the governmental action liaison counsel.

09:13AM 3 Mr. Juneau reports that there is progress on
09:13AM 4 the mediation front. He's continuing to work with both sides
09:13AM 5 on trying to have a successful mediation this time.

09:13AM 6 The only other issue that we have is that
09:13AM 7 discovery is feverishly ongoing, and we may have a couple of
09:13AM 8 discovery disputes that we need to bring to Your Honor. We
09:13AM 9 would like to just do it by telephone as we have done in the
09:13AM 10 past.

09:13AM 11 THE COURT: Yes, let's do that so that it can minimize
09:13AM 12 travel, particularly from the attorney generals.

09:13AM 13 As we all know, this case involved about 50,000
09:13AM 14 claims of individuals and also about 26 states through their
09:14AM 15 attorney generals have filed claims seeking to receive
09:14AM 16 reimbursement for Medicaid expense by their states.

09:14AM 17 We are finished with the 50,000 claims. We
09:14AM 18 still have several of them that are set for trial, but the
09:14AM 19 attorney generals, many of those have settled but we still have
09:14AM 20 now about five or six states that are in the process of
09:14AM 21 finishing either their discovery or engaging in settlement
09:14AM 22 discussions. So that part of the case has been focused on at
09:14AM 23 this point.

09:14AM 24 All right. Third-party payors.

09:14AM 25 MR. BIRCHFIELD: Yes, Your Honor. At our last status

09:14AM 1 conference, the Court recalls the Court had entered a
09:14AM 2 scheduling order. We have posted the fee allocation
09:14AM 3 committee's recommendation, and you set a schedule for
09:14AM 4 objectors.

09:14AM 5 There were six objections that were filed. We
09:15AM 6 currently have one objector, and we received -- in fact, I was
09:15AM 7 just handed a copy of a letter requesting some information from
09:15AM 8 that objector. We asked the Court to allow us to reply to that
09:15AM 9 letter and then perhaps set a status conference as it pertains
09:15AM 10 to the one remaining objector.

09:15AM 11 THE COURT: Yes, this issue involves the allocation of
09:15AM 12 fees for those individuals who have filed, who are involved in
09:15AM 13 third-party payor claims. Yesterday or the day before I
09:15AM 14 received a letter from Robert Arceneaux, who indicates that he
09:15AM 15 represents the objector, and that in order to pursue and
09:15AM 16 evaluate his client's claim, he asks that he be given access to
09:15AM 17 material that may be relevant to the claim.

09:16AM 18 The material was sealed just for reasons of
09:16AM 19 privacy because some of the issues have that issue involved in
09:16AM 20 it, but it does seem to me that the committee has had access to
09:16AM 21 that material, and if they base their opinion on what they have
09:16AM 22 seen, Mr. Arceneaux ought to have access to the same material
09:16AM 23 so he can either rebut or agree or disagree with the parties.

09:16AM 24 So it may just be a devil in the details of how
09:16AM 25 we go about it, but I just got the letter, and I found that the

09:16AM 1 lead counsel hadn't had an opportunity to receive it so that I
09:16AM 2 made a copy of it and gave it to him; so, I'll give him an
09:16AM 3 opportunity to look it over.

09:16AM 4 My thinking is that at least it just seems to
09:17AM 5 me everybody ought to have access to the same material. When
09:17AM 6 you do, then we'll get together and talk about what issues you
09:17AM 7 all see in the case and how I can be of help to you in
09:17AM 8 resolving those issues.

09:17AM 9 MR. BIRCHFIELD: Yes, sir. Thank you.

09:17AM 10 MS. WOODWARD: If I may be heard momentarily,
09:17AM 11 Your Honor.

09:17AM 12 THE COURT: Sure.

09:17AM 13 MS. WOODWARD: Good morning, Your Honor.
09:17AM 14 Margaret Woodward. I also represent Mr. Weinberg with
09:17AM 15 Robert Arceneaux and Mr. Calogero, who is here today, and also
09:17AM 16 here is Mr. Dassow, who represents a number of other objectors.

09:17AM 17 We have all had some interest in the same
09:17AM 18 material. I appreciate the Court's indication of its ruling.
09:17AM 19 There are some confidentiality issues with respect to this
09:17AM 20 material. We've entered into agreements with the FAC before
09:17AM 21 about that. I'm sure we can craft an appropriate order to
09:18AM 22 protect the material again. Thank you.

09:18AM 23 THE COURT: Sure. That's what I see. You all need to
09:18AM 24 be sensitive to the fact that some of the material may be
09:18AM 25 confidential, so we just may have to enter into some kind of

09:18AM 1 agreement so that you both are satisfied of that requirement,
09:18AM 2 but we ought to be able to get through it.

09:18AM 3 MR. DAVIS: Your Honor, Leonard Davis on behalf of my
09:18AM 4 partner Russ Herman, and I just want to point out a few things.
09:18AM 5 Certainly we'll deal with the confidentiality matters, and
09:18AM 6 we'll continue to do that.

09:18AM 7 As a matter of courtesy, I just want to let
09:18AM 8 folks know that Russ is out of town right now, so if you could
09:18AM 9 copy me on the correspondence, that would be very helpful. I
09:18AM 10 noticed on the letter that Russ got it by e-mail, but he is not
09:18AM 11 checking his e-mail as we speak, and so, just so if you would
09:18AM 12 please do that.

09:18AM 13 THE COURT: Okay.

09:18AM 14 MR. DAVIS: I'll circulate it to those.

09:18AM 15 MS. WOODWARD: He actually responded to me about it;
09:18AM 16 so, I was unaware that the rest of the group had not received
09:18AM 17 it because we had some communication about the content of the
09:19AM 18 letter.

09:19AM 19 MR. DAVIS: Thank you.

09:19AM 20 THE COURT: All right. The next item then is pending
09:19AM 21 personal injury cases.

09:19AM 22 MS. OLDFATHER: Good morning, Your Honor.
09:19AM 23 Ann Oldfather, liaison and lead counsel for certain personal
09:19AM 24 injury cases.

09:19AM 25 Just a brief report, Your Honor, to track what

09:19AM 1 we've got in the joint status report. The parties are still
09:19AM 2 discussing and hope to not necessarily have to involve the
09:19AM 3 Court in my motion that deals with the common benefit expenses,
09:19AM 4 how they have been spent and what's remaining that might be
09:19AM 5 available for application toward the expenses that we've
09:19AM 6 incurred on the same issues that were investigated by the PSC
09:19AM 7 and for which members of the PSC were paid, so that's pending.

09:19AM 8 We are also in the midst of discussions
09:19AM 9 regarding the escrow of common benefit fees and expenses from
09:20AM 10 the nonsettlement cases.

09:20AM 11 In that regard, Your Honor, Mr. Ronald Benjamin
09:20AM 12 settled I believe it was 16 cases several months ago, and he
09:20AM 13 first asked the Court to waive any assessment of common benefit
09:20AM 14 fee, which the Court overruled. He now has a motion pending to
09:20AM 15 be assessed at the very favorable two percent rate rather than
09:20AM 16 at the four or six percent rate that's been charged to many
09:20AM 17 other counsel, and that's before the Court for resolution.

09:20AM 18 We are in the process of taking discovery from
09:20AM 19 the seven experts who have been disclosed on the VTE general
09:20AM 20 causation issue, five disclosed by the plaintiffs and two
09:20AM 21 disclosed by Merck. Those depositions started on
09:20AM 22 September 25th, and the last one right now is scheduled for
09:20AM 23 October 26th.

09:20AM 24 In addition, Your Honor, to the other items
09:20AM 25 that are adequately discussed in the joint status report, we

09:20AM 1 have had discussions with Merck about extending the deadline
09:21AM 2 under PTO 58 applicable to the other injury cases. Right now
09:21AM 3 there are six other injury cases -- *Butterfield, Harrison,*
09:21AM 4 *King, Nolan, Rarick* and *Sanjanwala*. The deadline for fact
09:21AM 5 discovery under PTO 58 is November 1st; experts is
09:21AM 6 November 16th.

09:21AM 7 Merck has already entered into an agreed
09:21AM 8 extension with Mr. Harrison, and I'm not totally conversant on
09:21AM 9 those dates, but it's consistent with what we are now
09:21AM 10 discussing, which is an extension of the fact deadline to
09:21AM 11 January 1st -- fact discovery deadline to January 1st, and the
09:21AM 12 expert discovery deadline to January 16th.

09:21AM 13 We also have asked the Court to consider and
09:21AM 14 sustain the ex parte motions of Mr. Preuss and Mr. Foster to
09:21AM 15 withdraw from and to be allowed to withdraw from their
09:21AM 16 leadership responsibilities under PTO 45.

09:22AM 17 I'll pause there for a moment to see if there
09:22AM 18 is any input from Merck.

09:22AM 19 THE COURT: Okay. No, the personal injuries that are
09:22AM 20 still there, we have seven heart attack cases, we have about
09:22AM 21 eight stroke cases, and we have about 29 VTE, which is venous
09:22AM 22 thrombosis, and other injuries; we have six other injuries.

09:22AM 23 The way I see it proceeding is that perhaps
09:22AM 24 some of those, particularly the heart attack cases, when you
09:22AM 25 get enough information, maybe you can take a look at those and

09:22AM 1 see whether or not there is common ground in those areas. The
09:22AM 2 stroke may also lend themselves to evaluation. Some of the
09:22AM 3 others may not, so the discovery is proceeding.

09:22AM 4 I expect that at a particular point we may then
09:23AM 5 take a look at some *Daubert* motions and then proceed through
09:23AM 6 the motions, and then if any survive *Daubert*, we proceed to
09:23AM 7 trial in those.

09:23AM 8 I've got to get with you to see where the trial
09:23AM 9 should be held. I can either hold them here or I can move the
09:23AM 10 Court to other areas if that's necessary to do so.

09:23AM 11 MR. MARVIN: Three quick points, Your Honor. As to the
09:23AM 12 schedule we agree to the extension, and Ms. Oldfather proposed
09:23AM 13 to January 1st. Then I understand that the plaintiff's expert
09:23AM 14 reports will be due January 16th or thereabouts. I think we
09:23AM 15 probably would need at least 14 days for defendants, so we'll
09:23AM 16 work on those dates.

09:23AM 17 MS. OLDFATHER: We can just track what's already there.

09:23AM 18 MR. MARVIN: We can. That would be fine.

09:23AM 19 There are two cases that are part of the other
09:23AM 20 injuries on the list there. One is the *Nolan* case, Your Honor.
09:24AM 21 We have the plaintiff's counsel withdrew from that case. There
09:24AM 22 is an order to show cause why the case should not be dismissed.
09:24AM 23 That time has now run and there has been no response.

09:24AM 24 THE COURT: Anybody here on *Nolan*?

09:24AM 25 All right. I'll grant the motion because we've

09:24AM 1 tried every opportunity, everything. This has been now
09:24AM 2 10 years; so, it's time to move the case one way or the other.

09:24AM 3 We don't do that Willy-nilly. I give them
09:24AM 4 opportunity to present information. I order them to present
09:24AM 5 information. I give them an opportunity to show cause why they
09:24AM 6 shouldn't be dismissed. We do it two or three or four times,
09:24AM 7 and after a period of time, I just assume that they have given
09:24AM 8 up on pursuing their case, so I have to dismiss it.

09:24AM 9 MR. MARVIN: Your Honor, in the *King* case another one
09:25AM 10 of the other injury cases, Counsel has filed a motion to
09:25AM 11 withdraw in that case and it's the same situation, so we would
09:25AM 12 ask that an order to show cause be entered in that case as to
09:25AM 13 why that case --

09:25AM 14 THE COURT: I'll grant the motion to withdraw and then
09:25AM 15 file a motion to --

09:25AM 16 MS. OLDFATHER: We've done the motion to withdraw. I
09:25AM 17 think it's submitted.

09:25AM 18 THE COURT: Yes, you have. I'll grant that.

09:25AM 19 MR. MARVIN: Thank you, Your Honor.

09:25AM 20 THE COURT: Thanks. Let's see. Any other issues? I
09:25AM 21 notice Mr. Denson, are you present, sir?

09:25AM 22 MR. DENSON: Yes. Good morning, sir.

09:25AM 23 THE COURT: Come forward, Mr. Denson. I know that you
09:25AM 24 have some issues with your brother. How is he doing, by the
09:25AM 25 way?

09:25AM 1 MR. DENSON: Good morning, Your Honor. I was lucky
09:25AM 2 enough to have Mr. Leonard Fischer to represent Antonio. I'm
09:26AM 3 going to leave everything in his hands.

09:26AM 4 THE COURT: Okay. Fine.

09:26AM 5 MR. FISCHER: Actually it's probably better in y'all's
09:26AM 6 hands, but I was just contacted last night, and I was coming
09:26AM 7 more as a friend of the court or whatever, but if I'm competent
09:26AM 8 enough to deal with it I surely will.

09:26AM 9 THE COURT: Sure. Mr. Denson, let me tell you, since
09:26AM 10 you visited with us last time -- by the way, how is your
09:26AM 11 brother doing?

09:26AM 12 MR. DENSON: Just pray for him, Your Honor. He's still
09:26AM 13 trying to get a transplant -- heart transplant and monies to
09:26AM 14 pay for it. We were hoping by some type of settlement with
09:26AM 15 Merck or Celebrex, some of the drugs that he did take, that it
09:26AM 16 would be some compensation to get some healthcare for him,
09:26AM 17 but --

09:26AM 18 THE COURT: I'm not sure about that but I know that
09:26AM 19 everybody in the room is concerned about him and wish him well.

09:26AM 20 MR. DENSON: We pray for him and we would welcome
09:26AM 21 prayer.

09:26AM 22 THE COURT: Let me mention this to you, Mr. Denson.
09:26AM 23 Your brother is represented by counsel in New Jersey, and he
09:26AM 24 filed a suit in New Jersey. He didn't file a suit in federal
09:27AM 25 court. It was in New Jersey. As I understand it, the

09:27AM 1 requisite statutes have been interrupted so that his case is
09:27AM 2 pursued or, at least as I understand it, is still alive in
09:27AM 3 New Jersey.

09:27AM 4 It was stayed because he expressed an interest
09:27AM 5 in being in the settlement program, and not only as an MDL
09:27AM 6 judge but I was the administrator of the settlement program, so
09:27AM 7 I did have some jurisdiction in the sense of my administration
09:27AM 8 of that program, so he participated in the program.

09:27AM 9 Ordinarily when you participate in a program,
09:27AM 10 there is various stages in the program, but you reach a stage
09:27AM 11 where there is a fork in the road and if you take one, that
09:28AM 12 means you can't come back and take the other. So when he took
09:28AM 13 that one fork in the road and pursued that avenue, he was
09:28AM 14 denied recovery on that avenue. Now, technically, once you do
09:28AM 15 that, you can't come back and pursue any other claim because
09:28AM 16 that's part of the program. You commit to doing that.

09:28AM 17 The problem with your brother is that it looks
09:28AM 18 like that his injury was such that he didn't qualify to even
09:28AM 19 participate in the program. He just didn't satisfy the
09:28AM 20 requirements of the program. That was for a specific type of
09:28AM 21 injury, and he didn't have that type of injury, but he wanted
09:28AM 22 to join and he did join.

09:28AM 23 What I think I can do for you is to, as the
09:28AM 24 administrator of the program, indicate that he wasn't qualified
09:29AM 25 to be in the program; therefore, when he wasn't qualified to be

09:29AM 1 in the program, he didn't give up his rights to pursue his
09:29AM 2 state court case.

09:29AM 3 So if he does have a right and he does have an
09:29AM 4 interest, it looks like that it is preserved but it's preserved
09:29AM 5 in state court. It's in New Jersey presently. That's where
09:29AM 6 the suit was filed. It was a state court suit.

09:29AM 7 It's before Judge Higbee, a very fine judge.
09:29AM 8 I've worked with Judge Higbee over the years, and I'm very
09:29AM 9 familiar with her work, and she is an excellent judge. So
09:29AM 10 you're lucky to that extent. You've got somebody who is very
09:29AM 11 competent to look at the case.

09:29AM 12 That's the best I can do from my standpoint, my
09:29AM 13 seat in the bus, so to speak. You can pursue the claim, as I
09:30AM 14 see it, and I'll so issue an order on that that you can pursue
09:30AM 15 that claim to the extent that you have a claim to the extent
09:30AM 16 that New Jersey law allows you to pursue the claim, but that's
09:30AM 17 where it has to be.

09:30AM 18 Counsel, I'm not sure, you've had an
09:30AM 19 opportunity to read the voluminous materials. We have been
09:30AM 20 here now since 2005, so a lot has passed down. Luckily most of
09:30AM 21 the cases were settled in three years, which was unusual, but
09:30AM 22 because of the quality of the lawyers in this case, they were
09:30AM 23 able to get it resolved in that short of time, but we do have
09:30AM 24 some issues with cases that have not been able to be resolved.
09:30AM 25 One of those is Mr. Denson, who is a very fine person, and I

09:30AM 1 hope you are able to help him.

09:31AM 2 MR. FISCHER: Exactly, Your Honor. Basically what I'm
09:31AM 3 here for is basically get them to understand what's going on.
09:31AM 4 So essentially what you're saying is they filed a claim within
09:31AM 5 the class, they didn't qualify, so now they need to pursue
09:31AM 6 their state law claims.

09:31AM 7 THE COURT: That's it. He's in state court. You see,
09:31AM 8 I don't have jurisdiction over him. He's sued in state court
09:31AM 9 and he sued the state interests in New Jersey. New Jersey is
09:31AM 10 the location of this defendant, so there is no diversity to get
09:31AM 11 here.

09:31AM 12 How did he get into the settlement program?
09:31AM 13 Well, he got in because when I saw that every state in the
09:31AM 14 Union was involved in this particular litigation, I had cases
09:31AM 15 from every state in the Union, and there was diversity with
09:31AM 16 everybody except New Jersey because New Jersey is basically the
09:31AM 17 headquarters of Merck. That's where they are located.

09:31AM 18 So I started working with many of the state
09:32AM 19 court judges, one of whom was Judge Higbee, and so we agreed
09:32AM 20 that her cases could come in the settlement program, those who
09:32AM 21 wanted to come in the settlement program or those who were
09:32AM 22 eligible to come in the settlement program, because the
09:32AM 23 settlement program just dealt with heart attack and a couple of
09:32AM 24 other areas.

09:32AM 25 It wasn't a settlement program of everybody

09:32AM 1 who's taken Vioxx and feels they have a claim come in to the
09:32AM 2 settlement program. That wasn't it. It was a specific injury,
09:32AM 3 that target injury that the parties agreed to settle.
09:32AM 4 Mr. Denson really didn't have that target injury. He just
09:32AM 5 didn't have it, but he felt that he wanted to still take a shot
09:32AM 6 at it, so he came into the settlement program.

09:32AM 7 The deal is if you come into the settlement
09:32AM 8 program, there are various stages, but once you pass certain
09:33AM 9 gates and you continue to pursue it, you give up your claims in
09:33AM 10 that program, but as I say, technically, I can see an argument
09:33AM 11 that he has foreclosed his right to pursue a claim. That's an
09:33AM 12 argument. That's an argument that Merck may well use.

09:33AM 13 It seems to me from my standpoint as the
09:33AM 14 administrator of the program, Mr. Denson probably didn't even
09:33AM 15 deserve to be in the program, so that means that he has a right
09:33AM 16 or an opportunity or certainly an argument to pursue his claim
09:33AM 17 in New Jersey. It's on file. It's there. It just needs to be
09:33AM 18 moved.

09:33AM 19 MR. FISCHER: Let me ask is there an order or judgment
09:33AM 20 about denying him from the claim, or is there a letter or
09:34AM 21 anything he has saying why he wasn't allowed?

09:34AM 22 THE COURT: Yes, several. Several steps. He was
09:34AM 23 denied, I think, three times, maybe four from the various
09:34AM 24 steps.

09:34AM 25 MR. FISCHER: For the specific injury he didn't have

09:34AM 1 qualified?

09:34AM 2 THE COURT: Yes.

09:34AM 3 MR. FISCHER: That's why. Okay.

09:34AM 4 THE COURT: That was the reason. There is no question
09:34AM 5 that he had an injury. I don't know whether it's related or
09:34AM 6 not, but he's had an injury.

09:34AM 7 Just like some of these other injury cases,
09:34AM 8 there are injuries that are claimed. One of them, I think, has
09:34AM 9 a broken foot or something of that sort. Now, that may not be
09:34AM 10 related to taking Vioxx unless, I guess, you dropped it on your
09:34AM 11 foot or something. There are various claims that it didn't
09:34AM 12 cover.

09:34AM 13 MR. FISCHER: So basically I just need to explain to
09:34AM 14 them that basically y'all found that he doesn't qualify to be
09:35AM 15 into the claims program, and if he has state court claims he
09:35AM 16 could pursue that.

09:35AM 17 THE COURT: Yes.

09:35AM 18 MR. DENSON: Let me just say one more thing, Judge.
09:35AM 19 Really, I have the utmost respect for you and thanks again for
09:35AM 20 hearing me without being counseled, but we had spoke basically
09:35AM 21 with Judge Higbee, and she has been found to be a nice,
09:35AM 22 competent judge and everybody is well thought of, but Antonio
09:35AM 23 had suffered congestive heart failure after taking Vioxx for
09:35AM 24 nine months, and then in '06 when Mr. Christopher Seeger
09:35AM 25 received Antonio's case from Parker & Waichman, who also sued

09:35AM 1 Celebrex, which Antonio ingested that also, so I know it's not
09:35AM 2 a Celebrex litigation, but you being a federal judge and me
09:35AM 3 just being a layman, it just looked like to me it's a lot of
09:35AM 4 stuff been happening whereas Mr. Seeger could qualify for
09:35AM 5 common benefits of \$32 million and Antonio get a defibrillator
09:36AM 6 and on hospice.

09:36AM 7 So, Judge, you know, some injustice somewhere
09:36AM 8 been done, and it just seemed like to me if nothing more, it's
09:36AM 9 either been some incompetent lawyering and probably some
09:36AM 10 malpractice as it relate to him not getting, you know,
09:36AM 11 something from him ingesting the Celebrex and ingesting Vioxx
09:36AM 12 and only coming out with a defibrillator and winding up on
09:36AM 13 hospice.

09:36AM 14 THE COURT: I don't know about that, Mr. Denson.

09:36AM 15 MR. DENSON: Well, I know about it because I live with
09:36AM 16 him.

09:36AM 17 THE COURT: I know Mr. Seeger did very fine work in
09:36AM 18 this court.

09:36AM 19 MR. DAVIS: Your Honor, if I may, I represent the
09:36AM 20 Seeger firm, and I just need to respond to that, if I may. The
09:36AM 21 Seeger firm disputes that.

09:36AM 22 MR. DENSON: Sure.

09:36AM 23 MR. FISCHER: Your Honor, I'll explain to him how he
09:36AM 24 still has opportunities. He's asking for a remedy here and
09:36AM 25 there still is a remedy and I'll explain that to him.

09:37AM 1 THE COURT: I appreciate your help, Mr. Fischer, and I
09:37AM 2 hope you can help Mr. Denson.

09:37AM 3 MR. FISCHER: I hope so too. Thank you, Your Honor.

09:37AM 4 THE COURT: Thanks for coming again, Mr. Denson.

09:37AM 5 MR. DENSON: Thank you very much. Just pray for my
09:37AM 6 brother.

09:37AM 7 THE COURT: Okay, sir.

09:37AM 8 What's the next date? December 11th, 2012, at
09:37AM 9 two o'clock is the next status conference.

09:37AM 10 Andy, let me get with you all. You and Marvin
09:37AM 11 ought to get together while you're here and talk about what you
09:37AM 12 need to talk about, and if you are able to ferret out some
09:37AM 13 issues, rather than set a status conference, and put some
09:37AM 14 structure into it.

09:37AM 15 MR. BIRCHFIELD: Yes, sir.

09:37AM 16 THE COURT: Thanks very much. Court will stand in
09:37AM 17 recess.

09:37AM 18 THE DEPUTY CLERK: All rise.

19 (WHEREUPON, at 9:37 a.m. the proceedings were
20 concluded.)

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REPORTER'S CERTIFICATE

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I, Cathy Pepper, Certified Realtime Reporter, Registered Merit Reporter, Certified Court Reporter of the State of Louisiana, 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.

s/Cathy Pepper

Cathy Pepper, CRR, RMR, CCR
Certified Realtime Reporter
Registered Merit Reporter
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09:51AM
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\$	4	access [4] - 8:16, 8:20, 8:22, 9:5 action [1] - 7:2 ACTION [1] - 3:15 actions [4] - 6:22, 6:23, 6:25 ACTIONS [1] - 3:10 ACTIONS [1] - 5:6 ACTIONS [1] - 5:5 addition [1] - 11:24 adequately [1] - 11:25 administration [1] - 16:7 administrator [3] - 16:6, 16:24, 19:14 AGENDA [1] - 5:3 agenda [1] - 6:19 ago [2] - 6:20, 11:12 agree [2] - 8:23, 13:12 agreed [3] - 12:7, 18:19, 19:3 agreement [1] - 10:1 agreements [1] - 9:20 AJUBITA [1] - 2:12 AL [1] - 1:20 alive [1] - 16:2 ALL [1] - 1:7 ALLEN [1] - 1:18 allocation [2] - 8:2, 8:11 allow [1] - 8:8 allowed [2] - 12:15, 19:21 allows [1] - 17:16 ALSO [1] - 3:23 AND [1] - 1:22 Andy [2] - 6:14, 22:10 ANDY [1] - 1:19 ANN [1] - 2:3 Ann [1] - 10:23 ANTHONY [1] - 3:23 Antonio [4] - 15:2, 20:22, 21:1, 21:5 ANTONIO [1] - 3:23 Antonio's [1] - 20:25 appearance [1] - 6:13 APPEARANCES [4] - 1:13, 2:1, 3:1, 4:1 applicable [1] - 12:2 application [1] - 11:5 appreciate [2] - 9:18, 22:1 appropriate [1] - 9:21 Arceneaux [3] - 8:14, 8:22, 9:15 ARCENEUX [1] - 2:9 ARCH [1] - 2:23	3:11, 3:16, 3:19, 4:7, 4:7
\$32 [1] - 21:5	400 [1] - 3:20 40208 [1] - 2:5 4160 [1] - 1:20 45 [1] - 12:16 46290 [1] - 2:17 47 [1] - 2:10	access [4] - 8:16, 8:20, 8:22, 9:5 action [1] - 7:2 ACTION [1] - 3:15 actions [4] - 6:22, 6:23, 6:25 ACTIONS [1] - 3:10 ACTIONS [1] - 5:6 ACTIONS [1] - 5:5 addition [1] - 11:24 adequately [1] - 11:25 administration [1] - 16:7 administrator [3] - 16:6, 16:24, 19:14 AGENDA [1] - 5:3 agenda [1] - 6:19 ago [2] - 6:20, 11:12 agree [2] - 8:23, 13:12 agreed [3] - 12:7, 18:19, 19:3 agreement [1] - 10:1 agreements [1] - 9:20 AJUBITA [1] - 2:12 AL [1] - 1:20 alive [1] - 16:2 ALL [1] - 1:7 ALLEN [1] - 1:18 allocation [2] - 8:2, 8:11 allow [1] - 8:8 allowed [2] - 12:15, 19:21 allows [1] - 17:16 ALSO [1] - 3:23 AND [1] - 1:22 Andy [2] - 6:14, 22:10 ANDY [1] - 1:19 ANN [1] - 2:3 Ann [1] - 10:23 ANTHONY [1] - 3:23 Antonio [4] - 15:2, 20:22, 21:1, 21:5 ANTONIO [1] - 3:23 Antonio's [1] - 20:25 appearance [1] - 6:13 APPEARANCES [4] - 1:13, 2:1, 3:1, 4:1 applicable [1] - 12:2 application [1] - 11:5 appreciate [2] - 9:18, 22:1 appropriate [1] - 9:21 Arceneaux [3] - 8:14, 8:22, 9:15 ARCENEUX [1] - 2:9 ARCH [1] - 2:23	C
'06 [1] - 20:24	5	areas [3] - 13:1, 13:10, 18:24 argument [4] - 19:10, 19:12, 19:16 assessed [1] - 11:15 assessment [1] - 11:13 assume [1] - 14:7 AT [3] - 2:7, 2:10, 5:10 attack [3] - 12:20, 12:24, 18:23 ATTORNEY [2] - 2:7, 2:10 attorney [3] - 7:12, 7:15, 7:19 available [1] - 11:5 AVENUE [1] - 1:16 avenue [2] - 16:13, 16:14	CA [1] - 3:13 CABRASER [2] - 3:11, 3:11 CALLED [1] - 6:4 Calogero [1] - 9:15 CALOGERO [1] - 2:13 CANAL [1] - 2:7 CARONDELET [1] - 3:4 case [18] - 6:9, 7:13, 7:22, 9:7, 13:20, 13:21, 13:22, 14:2, 14:8, 14:9, 14:11, 14:12, 14:13, 16:1, 17:2, 17:11, 17:22, 20:25 CASES [1] - 1:7 cases [16] - 10:21, 10:24, 11:10, 11:12, 12:2, 12:3, 12:20, 12:21, 12:24, 13:19, 14:10, 17:21, 17:24, 18:14, 18:20, 20:7 CASES - [1] - 5:8 CASTIEX [1] - 3:15 Cathy [2] - 23:3, 23:13 CATHY [1] - 4:3 Cathy_Pepper@laed.uscourts.gov [1] - 23:15 causation [1] - 11:20 CCR [2] - 4:3, 23:13 Celebrex [4] - 15:15, 21:1, 21:2, 21:11 CENTER [1] - 3:12 CENTRE [2] - 1:23, 2:23 certain [2] - 10:23, 19:8 certainly [2] - 10:5, 19:16 CERTIFICATE [1] - 23:1 CERTIFIED [1] - 4:3 Certified [3] - 23:3, 23:4, 23:13 certify [1] - 23:7 charged [1] - 11:16 checking [1] - 10:11 Christopher [1] - 20:24 CIRA [1] - 2:23 circulate [1] - 10:14
1	6	B	
10 [2] - 5:8, 14:2 103RD [1] - 2:16 11 [2] - 1:6, 6:2 1100 [2] - 1:24, 2:13 11TH [1] - 5:10 11th [1] - 22:8 1330 [1] - 2:4 14 [2] - 5:9, 13:15 16 [1] - 11:12 1657 [3] - 1:5, 6:10, 6:19 16th [3] - 12:6, 12:12, 13:14 19104 [1] - 2:24 1st [4] - 12:5, 12:11, 13:13	50,000 [2] - 7:13, 7:17 500 [2] - 2:16, 4:4 504 [1] - 4:5 546 [1] - 3:4 58 [2] - 12:2, 12:5 589-7779 [1] - 4:5	B406 [1] - 4:4 BARNETT [1] - 2:22 Barrios [1] - 7:1 BARRIOS [3] - 3:15, 3:16, 7:1 base [1] - 8:21 BATTERY [1] - 3:12 BEASLEY [1] - 1:18 BEFORE [1] - 1:11 behalf [1] - 10:3 benefit [3] - 11:3, 11:9, 11:13 benefits [1] - 21:5 Benjamin [1] - 11:11 BENJAMIN [2] - 1:22, 2:22 BERNSTEIN [1] - 3:11 best [2] - 17:12, 23:8 better [1] - 15:5 BEVERLY [1] - 2:10 bimonthly [1] - 6:18 BIRCHFIELD [6] - 1:19, 6:14, 6:23, 7:25, 9:9, 22:15 Birchfield [1] - 6:14 BOX [1] - 1:20 brief [1] - 10:25 bring [1] - 7:8 broken [1] - 20:9 brother [5] - 14:24, 15:11, 15:23, 16:17, 22:6 bus [1] - 17:13 Butterfield [1] - 12:3 BY [15] - 1:15, 1:19, 1:23, 2:3, 2:13, 2:16, 2:19, 2:22, 3:3, 3:7,	
2	7		
20005 [1] - 2:20 2005 [1] - 17:20 201 [1] - 2:16 2012 [4] - 1:6, 5:10, 6:2, 22:8 2150 [1] - 3:7 22 [1] - 5:10 234 [1] - 1:19 2450 [1] - 3:20 25th [1] - 11:22 26 [1] - 7:14 26th [1] - 11:23 275 [1] - 3:12 2800 [2] - 1:23, 1:24 29 [1] - 12:21 2929 [1] - 2:23	6 [2] - 5:5, 5:6 650 [1] - 3:7		
3	8		
3000 [1] - 3:12 36103 [1] - 1:20 3650 [1] - 3:16 3701 [1] - 2:7	7 [1] - 5:7 70001 [1] - 2:11 701 [1] - 3:16 70113 [1] - 1:16 70119 [1] - 2:8 70130 [4] - 3:4, 3:8, 3:21, 4:5 70139 [1] - 3:17 70163 [2] - 1:24, 2:14 725 [1] - 2:20		
	9		
	A		
	820 [1] - 1:16		
	94111 [1] - 3:13 9:00 [1] - 1:6 9:37 [1] - 22:19		
	A.M [1] - 1:6 a.m [1] - 22:19 ability [1] - 23:8 able [5] - 10:2, 17:23, 17:24, 18:1, 22:12 above-entitled [1] - 23:9		

<p>claim [12] - 8:16, 8:17, 16:15, 17:13, 17:15, 17:16, 18:4, 19:1, 19:11, 19:16, 19:20 claimed [1] - 20:8 claims [9] - 7:14, 7:15, 7:17, 8:13, 18:6, 19:9, 20:11, 20:15 CLASS [1] - 5:5 class [4] - 6:22, 6:23, 18:5 CLERK [3] - 6:7, 6:10, 22:18 client's [1] - 8:16 coming [3] - 15:6, 21:12, 22:4 COMMERCE [1] - 1:19 commit [1] - 16:16 COMMITTEE [1] - 3:11 committee [1] - 8:20 committee's [1] - 8:3 common [5] - 11:3, 11:9, 11:13, 13:1, 21:5 communication [1] - 10:17 compensation [1] - 15:16 competent [3] - 15:7, 17:11, 20:22 COMPUTER [1] - 4:7 concerned [1] - 15:19 concluded [1] - 22:20 CONFERENCE [1] - 1:10 conference [4] - 8:1, 8:9, 22:9, 22:13 CONFERENCE..... [1] - 5:11 confidential [1] - 9:25 confidentiality [2] - 9:19, 10:5 congestive [1] - 20:23 CONNOLLY [1] - 2:19 consider [1] - 12:13 consistent [1] - 12:9 contacted [1] - 15:6 content [1] - 10:17 continue [2] - 10:6, 19:9 CONTINUED [3] - 2:1, 3:1, 4:1 continuing [1] - 7:4 conversant [1] - 12:8 copy [3] - 8:7, 9:2, 10:9 correct [1] - 23:7 correspondence [1] - 10:9</p>	<p>COUNSEL [1] - 3:15 Counsel [1] - 14:10 counsel [9] - 6:12, 6:20, 7:2, 9:1, 10:23, 11:17, 13:21, 15:23, 17:18 counseled [1] - 20:20 couple [2] - 7:7, 18:23 COURT [34] - 1:1, 4:3, 6:4, 6:8, 6:12, 6:18, 6:25, 7:11, 8:11, 9:12, 9:23, 10:13, 10:20, 12:19, 13:24, 14:14, 14:18, 14:20, 14:23, 15:4, 15:9, 15:18, 15:22, 18:7, 19:22, 20:2, 20:4, 20:17, 21:14, 21:17, 22:1, 22:4, 22:7, 22:16 court [11] - 15:7, 15:25, 17:2, 17:5, 17:6, 18:7, 18:8, 18:19, 20:15, 21:18, 22:16 Court [14] - 8:1, 8:8, 11:3, 11:13, 11:14, 11:17, 12:13, 13:10, 23:4, 23:5, 23:6, 23:14, 23:15 Court's [1] - 9:18 courtesy [1] - 10:7 cover [1] - 20:12 craft [1] - 9:21 CROW [1] - 1:18 CRR [2] - 4:3, 23:13 CURATOR [1] - 3:19</p>	<p>19:7 deals [1] - 11:3 dealt [1] - 18:23 December [1] - 22:8 DECEMBER [1] - 5:10 DECHERT [1] - 2:22 DEETS [1] - 2:15 DEFENDANT [1] - 2:19 defendant [1] - 18:10 defendants [1] - 13:15 defibrillator [2] - 21:5, 21:12 denied [2] - 16:14, 19:23 DENSON [10] - 3:23, 14:22, 15:1, 15:12, 15:20, 20:18, 21:15, 21:22, 22:5 denson [1] - 19:4 Denson [9] - 14:21, 14:23, 15:9, 15:22, 17:25, 19:14, 21:14, 22:2, 22:4 denying [1] - 19:20 depositions [1] - 11:21 DEPUTY [3] - 6:7, 6:10, 22:18 deserve [1] - 19:15 details [1] - 8:24 devil [1] - 8:24 disagree [1] - 8:23 disclosed [3] - 11:19, 11:20, 11:21 discovery [8] - 7:7, 7:8, 7:21, 11:18, 12:5, 12:11, 12:12, 13:3 discussed [2] - 6:20, 11:25 discussing [2] - 11:2, 12:10 discussions [3] - 7:22, 11:8, 12:1 dismiss [1] - 14:8 dismissed [2] - 13:22, 14:6 disputes [2] - 7:8, 21:21 DISTRICT [3] - 1:1, 1:1, 1:11 District [3] - 23:6, 23:15 diversity [2] - 18:10, 18:15 DOCKET [1] - 1:5 DOCUMENT [1] - 1:7 done [3] - 7:9, 14:16, 21:8</p>	<p>DOROTHY [1] - 3:3 Douglas [1] - 6:16 DOUGLAS [1] - 2:19 down [1] - 17:20 DRIVE [1] - 2:10 dropped [1] - 20:10 drugs [1] - 15:15 due [1] - 13:14 DUGAN [1] - 3:7</p>	<p>12:10, 13:12 extent [3] - 17:10, 17:15</p>
F				
	D		E	
			<p>e-mail [2] - 10:10, 10:11 Eastern [1] - 23:6 EASTERN [1] - 1:1 eight [1] - 12:21 either [4] - 7:21, 8:23, 13:9, 21:9 ELDON [1] - 1:11 eligible [1] - 18:22 ELIZABETH [1] - 3:11 EMBARCADERO [1] - 3:12 EMILY [1] - 3:24 ENERGY [1] - 1:23 engaging [1] - 7:21 enter [1] - 9:25 entered [4] - 8:1, 9:20, 12:7, 14:12 entitled [1] - 23:9 escrow [1] - 11:9 ESQUIRE [17] - 1:15, 1:19, 1:23, 2:3, 2:4, 2:13, 2:16, 2:19, 2:22, 3:3, 3:7, 3:11, 3:16, 3:19, 3:20, 3:23, 3:24 essentially [1] - 18:4 evaluate [1] - 8:16 evaluation [1] - 13:2 ex [1] - 12:14 exactly [1] - 18:2 excellent [1] - 17:9 except [1] - 18:16 EXECUTIVE [1] - 3:10 expect [1] - 13:4 expense [1] - 7:16 expenses [3] - 11:3, 11:5, 11:9 expert [2] - 12:12, 13:13 experts [2] - 11:19, 12:5 explain [3] - 20:13, 21:23, 21:25 expressed [1] - 16:4 extending [1] - 12:1 extension [3] - 12:8,</p>	<p>FAC [1] - 9:20 fact [5] - 8:6, 9:24, 12:4, 12:10, 12:11 failure [1] - 20:23 FALLON [1] - 1:11 familiar [1] - 17:9 favorable [1] - 11:15 federal [2] - 15:24, 21:2 fee [2] - 8:2, 11:14 fees [2] - 8:12, 11:9 felt [1] - 19:5 ferret [1] - 22:12 feverishly [1] - 7:7 few [1] - 10:4 file [3] - 14:15, 15:24, 19:17 filed [7] - 7:15, 8:5, 8:12, 14:10, 15:24, 17:6, 18:4 fine [5] - 13:18, 15:4, 17:7, 17:25, 21:17 finished [1] - 7:17 finishing [1] - 7:21 FIRM [2] - 2:3, 3:6 firm [2] - 21:20, 21:21 first [1] - 11:13 FISCHER [9] - 3:23, 15:5, 18:2, 19:19, 19:25, 20:3, 20:13, 21:23, 22:3 Fischer [2] - 15:2, 22:1 five [2] - 7:20, 11:20 focused [1] - 7:22 folks [1] - 10:8 foot [2] - 20:9, 20:11 FOR [5] - 1:15, 2:19, 3:6, 3:10, 3:23 foreclosed [1] - 19:11 foregoing [1] - 23:7 fork [2] - 16:11, 16:13 forward [1] - 14:23 Foster [1] - 12:14 four [3] - 11:16, 14:6, 19:23 FRANCISCO [1] - 3:13 friend [1] - 15:7 front [1] - 7:4</p>

G	14:9, 14:19, 15:1, 15:12, 18:2, 21:19, 21:23, 22:3	item [1] - 10:20 items [1] - 11:24 ITEMS [1] - 5:3	leave [1] - 15:3 LEFTWICH [1] - 2:12 lend [1] - 13:2	19:15 MECHANICAL [1] - 4:7
GAINSBURGH [1] - 1:22 GARDEN [1] - 2:10 gates [1] - 19:9 general [1] - 11:19 generals [3] - 7:12, 7:15, 7:19 gentlemen [2] - 6:9, 6:12 GERALD [1] - 1:23 given [2] - 8:16, 14:7 GOVERNMENT [1] - 3:10 governmental [2] - 6:25, 7:2 GOVERNMENTAL [2] - 3:15, 5:6 grant [3] - 13:25, 14:14, 14:18 ground [1] - 13:1 group [1] - 10:16 guess [1] - 20:10	HONORABLE [1] - 1:11 hope [4] - 11:2, 18:1, 22:2, 22:3 hoping [1] - 15:14 hospice [2] - 21:6, 21:13 HOVDE [1] - 2:15	J	Leonard [2] - 10:3, 15:2 LEONARD [2] - 1:15, 3:23 letter [7] - 8:7, 8:9, 8:14, 8:25, 10:10, 10:18, 19:20 Liability [1] - 6:11 LIABILITY [1] - 1:5 LIAISON [1] - 3:15 liaison [3] - 6:20, 7:2, 10:23 LIEFF [1] - 3:11 list [1] - 13:20 LITIGATION [1] - 1:5 Litigation [1] - 6:11 litigation [3] - 6:19, 18:14, 21:2 live [1] - 21:15 located [1] - 18:17 location [1] - 18:10 look [4] - 9:3, 12:25, 13:5, 17:11 looked [1] - 21:3 looks [2] - 16:17, 17:4	mediation [2] - 7:4, 7:5 Medicaid [1] - 7:16 meeting [1] - 6:18 MEGAN [1] - 2:4 members [1] - 11:7 mention [1] - 15:22 Merck [8] - 6:17, 11:21, 12:1, 12:7, 12:18, 15:15, 18:17, 19:12 Merit [2] - 23:4, 23:14 MERIT [1] - 4:4 met [1] - 6:20 METAIRIE [1] - 2:11 METHVIN [1] - 1:18 MEUNIER [2] - 1:22, 1:23 midst [1] - 11:8 might [1] - 11:4 MILES [1] - 1:18 million [1] - 21:5 minimize [1] - 7:11 moment [2] - 6:20, 12:17 momentarily [1] - 9:10 monies [1] - 15:13 MONTGOMERY [1] - 1:20
H	I	JAMES [1] - 3:7 January [5] - 12:11, 12:12, 13:13, 13:14 Jersey [11] - 15:23, 15:24, 15:25, 16:3, 17:5, 17:16, 18:9, 18:16, 19:17 JOHNSTON [2] - 3:19, 3:19 join [2] - 16:22 joint [2] - 11:1, 11:25 JR [2] - 1:19, 2:13 JUDGE [1] - 1:11 Judge [6] - 17:7, 17:8, 18:19, 20:18, 20:21, 21:7 judge [5] - 16:6, 17:7, 17:9, 20:22, 21:2 judges [1] - 18:19 judgment [1] - 19:19 Juneau [1] - 7:3 jurisdiction [2] - 16:7, 18:8	LOUISIANA [4] - 1:1, 1:6, 3:6, 4:5 Louisiana [2] - 23:5, 23:6 LOUISVILLE [1] - 2:5 luckily [1] - 17:20 lucky [2] - 15:1, 17:10	most [1] - 17:20 motion [7] - 11:3, 11:14, 13:25, 14:10, 14:14, 14:15, 14:16 motions [3] - 12:14, 13:5, 13:6 move [2] - 13:9, 14:2 moved [1] - 19:18 MR [30] - 6:14, 6:16, 6:23, 7:25, 9:9, 10:3, 10:14, 10:19, 13:11, 13:18, 14:9, 14:19, 14:22, 15:1, 15:5, 15:12, 15:20, 18:2, 19:19, 19:25, 20:3, 20:13, 20:18, 21:15, 21:19, 21:22, 21:23, 22:3, 22:5, 22:15 MS [7] - 7:1, 9:10, 9:13, 10:15, 10:22, 13:17, 14:16 MURRAY [1] - 3:6
handed [1] - 8:7 hands [2] - 15:3, 15:6 Harrison [2] - 12:3, 12:8 HASTINGS [1] - 2:4 headquarters [1] - 18:17 healthcare [1] - 15:16 heard [1] - 9:10 HEARD [1] - 1:11 hearing [1] - 20:20 heart [5] - 12:20, 12:24, 15:13, 18:23, 20:23 HEATHER [1] - 3:20 HEIMANN [1] - 3:11 held [1] - 13:9 help [4] - 9:7, 18:1, 22:1, 22:2 helpful [1] - 10:9 hereby [1] - 23:6 HERMAN [2] - 1:15 Herman [1] - 10:4 Higbee [4] - 17:7, 17:8, 18:19, 20:21 hold [1] - 13:9 Honor [22] - 6:16, 6:24, 7:1, 7:8, 7:25, 9:11, 9:13, 10:3, 10:22, 10:25, 11:11, 11:24, 13:11, 13:20,	information [4] - 8:7, 12:25, 14:4, 14:5 ingested [1] - 21:1 ingesting [2] - 21:11 injuries [5] - 12:19, 12:22, 13:20, 20:8 INJURY [1] - 5:8 injury [15] - 10:21, 10:24, 12:2, 12:3, 14:10, 16:18, 16:21, 19:2, 19:3, 19:4, 19:25, 20:5, 20:6, 20:7 injustice [1] - 21:7 input [1] - 12:18 interest [3] - 9:17, 16:4, 17:4 interests [1] - 18:9 interrupted [1] - 16:1 investigated [1] - 11:6 involve [1] - 11:2 involved [4] - 7:13, 8:12, 8:19, 18:14 involves [1] - 8:11 IS [1] - 5:10 issue [5] - 7:6, 8:11, 8:19, 11:20, 17:14 issues [9] - 8:19, 9:6, 9:8, 9:19, 11:6, 14:20, 14:24, 17:24, 22:13 ISSUES..... [1] - 5:9	K	M	
		L	mail [2] - 10:10, 10:11 malpractice [1] - 21:10 MARGARET [1] - 2:6 Margaret [1] - 9:14 MARVIN [6] - 2:19, 6:16, 13:11, 13:18, 14:9, 14:19 Marvin [2] - 6:16, 22:10 material [9] - 8:17, 8:18, 8:21, 8:22, 9:5, 9:18, 9:20, 9:22, 9:24 materials [1] - 17:19 matter [3] - 6:19, 10:7, 23:9 matters [1] - 10:5 MDL [4] - 1:5, 6:10, 6:19, 16:5 means [2] - 16:12,	
		KATZ [1] - 1:15 kind [1] - 9:25 King [2] - 12:4, 14:9 KINGSDORF [1] - 3:15 KY [1] - 2:5		

N	<p>2:3, 10:22, 13:17, 14:16</p> <p>Oldfather [2] - 10:23, 13:12</p> <p>once [2] - 16:14, 19:8</p> <p>one [12] - 8:6, 8:10, 11:22, 13:20, 14:2, 14:9, 16:11, 16:13, 17:25, 18:19, 20:8, 20:18</p> <p>ongoing [1] - 7:7</p> <p>opinion [1] - 8:21</p> <p>opportunities [1] - 21:24</p> <p>opportunity [7] - 9:1, 9:3, 14:1, 14:4, 14:5, 17:19, 19:16</p> <p>ORDER [1] - 6:4</p> <p>order [9] - 6:21, 8:2, 8:15, 9:21, 13:22, 14:4, 14:12, 17:14, 19:19</p> <p>ordinarily [1] - 16:9</p> <p>ORLEANS [10] - 1:6, 1:16, 1:24, 2:8, 2:14, 3:4, 3:8, 3:17, 3:21, 4:5</p> <p>OTHER [1] - 5:9</p> <p>ought [4] - 8:22, 9:5, 10:2, 22:11</p> <p>overruled [1] - 11:14</p>	<p>payor [1] - 8:13</p> <p>payors [1] - 7:24</p> <p>PAYORS.....</p> <p>..... [1] - 5:7</p> <p>pending [3] - 10:20, 11:7, 11:14</p> <p>PENDING [1] - 5:8</p> <p>Pepper [3] - 23:3, 23:12, 23:13</p> <p>PEPPER [1] - 4:3</p> <p>percent [2] - 11:15, 11:16</p> <p>perhaps [2] - 8:9, 12:23</p> <p>period [1] - 14:7</p> <p>person [1] - 17:25</p> <p>personal [3] - 10:21, 10:23, 12:19</p> <p>PERSONAL [1] - 5:8</p> <p>pertains [1] - 8:9</p> <p>PHILADELPHIA [1] - 2:24</p> <p>PIGMAN [1] - 3:3</p> <p>PISTILLI [1] - 3:24</p> <p>plaintiffs [2] - 13:13, 13:21</p> <p>PLAINTIFFS [1] - 1:15</p> <p>plaintiffs [2] - 6:15, 11:20</p> <p>point [3] - 7:23, 10:4, 13:4</p> <p>points [1] - 13:11</p> <p>PORTIS [1] - 1:18</p> <p>POST [1] - 1:20</p> <p>posted [1] - 8:2</p> <p>POYDRAS [6] - 1:24, 2:13, 3:7, 3:16, 3:20, 4:4</p> <p>pray [3] - 15:12, 15:20, 22:5</p> <p>prayer [1] - 15:21</p> <p>PRESENT [1] - 3:23</p> <p>present [3] - 14:4, 14:21</p> <p>presented [1] - 6:21</p> <p>presently [1] - 17:5</p> <p>preserved [2] - 17:4</p> <p>Preuss [1] - 12:14</p> <p>privacy [1] - 8:19</p> <p>PRO [1] - 3:19</p> <p>problem [1] - 16:17</p> <p>proceed [2] - 13:5, 13:6</p> <p>proceeding [2] - 12:23, 13:3</p> <p>PROCEEDINGS [3] - 1:10, 4:7, 6:1</p> <p>proceedings [2] - 22:19, 23:9</p>	<p>process [2] - 7:20, 11:18</p> <p>PRODUCED [1] - 4:7</p> <p>PRODUCTS [1] - 1:4</p> <p>Products [1] - 6:10</p> <p>program [25] - 16:5, 16:6, 16:8, 16:9, 16:10, 16:16, 16:19, 16:20, 16:24, 16:25, 17:1, 18:12, 18:20, 18:21, 18:22, 18:23, 18:25, 19:2, 19:6, 19:8, 19:10, 19:14, 19:15, 20:15</p> <p>progress [1] - 7:3</p> <p>proposed [2] - 6:19, 13:12</p> <p>protect [1] - 9:22</p> <p>PSC [2] - 11:6, 11:7</p> <p>PTO [3] - 12:2, 12:5, 12:16</p> <p>pursue [11] - 8:15, 16:15, 17:1, 17:13, 17:14, 17:16, 18:5, 19:9, 19:11, 19:16, 20:16</p> <p>pursued [2] - 16:2, 16:13</p> <p>pursuing [1] - 14:8</p> <p>put [1] - 22:13</p>	<p>received [5] - 6:19, 8:6, 8:14, 10:16, 20:25</p> <p>recess [1] - 22:17</p> <p>recommendation [1] - 8:3</p> <p>record [2] - 6:13, 23:8</p> <p>RECORDED [1] - 4:7</p> <p>recovery [1] - 16:14</p> <p>regard [1] - 11:11</p> <p>regarding [1] - 11:9</p> <p>REGISTERED [1] - 4:4</p> <p>Registered [1] - 23:3</p> <p>registered [1] - 23:14</p> <p>reimbursement [1] - 7:16</p> <p>relate [1] - 21:10</p> <p>related [2] - 20:5, 20:10</p> <p>RELATES [1] - 1:7</p> <p>relevant [1] - 8:17</p> <p>remaining [2] - 8:10, 11:4</p> <p>remedy [2] - 21:24, 21:25</p> <p>reply [1] - 8:8</p> <p>report [4] - 6:23, 10:25, 11:1, 11:25</p> <p>REPORTER [3] - 4:3, 4:3, 4:4</p> <p>Reporter [7] - 23:3, 23:4, 23:5, 23:13, 23:14, 23:14</p> <p>REPORTER'S [1] - 23:1</p> <p>reports [2] - 7:3, 13:14</p> <p>represent [3] - 9:14, 15:2, 21:19</p> <p>represented [1] - 15:23</p> <p>represents [2] - 8:15, 9:16</p> <p>requesting [1] - 8:7</p> <p>requirement [1] - 10:1</p> <p>requirements [1] - 16:20</p> <p>requisite [1] - 16:1</p> <p>resolution [1] - 11:17</p> <p>resolved [2] - 17:23, 17:24</p> <p>resolving [1] - 9:8</p> <p>respect [2] - 9:19, 20:19</p> <p>respond [1] - 21:20</p> <p>responded [1] - 10:15</p> <p>response [1] - 13:23</p> <p>responsibilities [1] - 12:16</p> <p>rest [1] - 10:16</p>
O	<p style="text-align: center;">P</p> <p>PA [1] - 2:24</p> <p>PAGE [1] - 5:3</p> <p>paid [1] - 11:7</p> <p>Parker [1] - 20:25</p> <p>part [3] - 7:22, 13:19, 16:16</p> <p>parte [1] - 12:14</p> <p>participate [2] - 16:9, 16:19</p> <p>participated [1] - 16:8</p> <p>particular [2] - 13:4, 18:14</p> <p>particularly [2] - 7:12, 12:24</p> <p>parties [3] - 8:23, 11:1, 19:3</p> <p>partner [1] - 10:4</p> <p>PARTY [1] - 5:7</p> <p>party [2] - 7:24, 8:13</p> <p>PASCAL [1] - 2:13</p> <p>pass [1] - 19:8</p> <p>passed [1] - 17:20</p> <p>past [1] - 7:10</p> <p>pause [1] - 12:17</p> <p>pay [1] - 15:14</p>	<p>PA [1] - 2:24</p> <p>PAGE [1] - 5:3</p> <p>paid [1] - 11:7</p> <p>Parker [1] - 20:25</p> <p>part [3] - 7:22, 13:19, 16:16</p> <p>parte [1] - 12:14</p> <p>participate [2] - 16:9, 16:19</p> <p>participated [1] - 16:8</p> <p>particular [2] - 13:4, 18:14</p> <p>particularly [2] - 7:12, 12:24</p> <p>parties [3] - 8:23, 11:1, 19:3</p> <p>partner [1] - 10:4</p> <p>PARTY [1] - 5:7</p> <p>party [2] - 7:24, 8:13</p> <p>PASCAL [1] - 2:13</p> <p>pass [1] - 19:8</p> <p>passed [1] - 17:20</p> <p>past [1] - 7:10</p> <p>pause [1] - 12:17</p> <p>pay [1] - 15:14</p>	Q	<p>qualified [3] - 16:24, 16:25, 20:1</p> <p>qualify [4] - 16:18, 18:5, 20:14, 21:4</p> <p>quality [1] - 17:22</p> <p>quick [1] - 13:11</p>
<p>O'CLOCK [1] - 5:10</p> <p>o'clock [1] - 22:9</p> <p>O'KEEFE [1] - 1:16</p> <p>objections [1] - 8:5</p> <p>objector [4] - 8:6, 8:8, 8:10, 8:15</p> <p>objectors [2] - 8:4, 9:16</p> <p>OCTOBER [2] - 1:6, 6:2</p> <p>October [1] - 11:23</p> <p>OF [4] - 1:1, 1:10, 3:6, 3:19</p> <p>OFFICE [1] - 1:20</p> <p>OFFICES [1] - 3:19</p> <p>Official [2] - 23:5, 23:14</p> <p>OFFICIAL [1] - 4:3</p> <p>OLDFATHER [5] - 2:3,</p>	<p>PA [1] - 2:24</p> <p>PAGE [1] - 5:3</p> <p>paid [1] - 11:7</p> <p>Parker [1] - 20:25</p> <p>part [3] - 7:22, 13:19, 16:16</p> <p>parte [1] - 12:14</p> <p>participate [2] - 16:9, 16:19</p> <p>participated [1] - 16:8</p> <p>particular [2] - 13:4, 18:14</p> <p>particularly [2] - 7:12, 12:24</p> <p>parties [3] - 8:23, 11:1, 19:3</p> <p>partner [1] - 10:4</p> <p>PARTY [1] - 5:7</p> <p>party [2] - 7:24, 8:13</p> <p>PASCAL [1] - 2:13</p> <p>pass [1] - 19:8</p> <p>passed [1] - 17:20</p> <p>past [1] - 7:10</p> <p>pause [1] - 12:17</p> <p>pay [1] - 15:14</p>	<p>PA [1] - 2:24</p> <p>PAGE [1] - 5:3</p> <p>paid [1] - 11:7</p> <p>Parker [1] - 20:25</p> <p>part [3] - 7:22, 13:19, 16:16</p> <p>parte [1] - 12:14</p> <p>participate [2] - 16:9, 16:19</p> <p>participated [1] - 16:8</p> <p>particular [2] - 13:4, 18:14</p> <p>particularly [2] - 7:12, 12:24</p> <p>parties [3] - 8:23, 11:1, 19:3</p> <p>partner [1] - 10:4</p> <p>PARTY [1] - 5:7</p> <p>party [2] - 7:24, 8:13</p> <p>PASCAL [1] - 2:13</p> <p>pass [1] - 19:8</p> <p>passed [1] - 17:20</p> <p>past [1] - 7:10</p> <p>pause [1] - 12:17</p> <p>pay [1] - 15:14</p>	R	<p>Rarick [1] - 12:4</p> <p>rate [2] - 11:15, 11:16</p> <p>rather [2] - 11:15, 22:13</p> <p>RE [1] - 1:4</p> <p>re [1] - 6:10</p> <p>reach [1] - 16:10</p> <p>read [1] - 17:19</p> <p>really [2] - 19:4, 20:19</p> <p>REALTIME [1] - 4:3</p> <p>Realtime [2] - 23:3, 23:13</p> <p>reason [1] - 20:4</p> <p>reasons [1] - 8:18</p> <p>rebut [1] - 8:23</p> <p>receive [2] - 7:15, 9:1</p>

<p>REZNIK [1] - 3:20 rights [1] - 17:1 rise [2] - 6:7, 22:18 RMR [2] - 4:3, 23:13 road [2] - 16:11, 16:13 Robert [2] - 8:14, 9:15 ROBERT [4] - 2:9, 2:16, 3:19, 3:19 Ronald [1] - 11:11 room [1] - 15:19 ROOM [1] - 4:4 ruling [1] - 9:18 run [1] - 13:23 Russ [3] - 10:4, 10:8, 10:10</p>	<p>short [1] - 17:23 shot [1] - 19:5 show [3] - 13:22, 14:5, 14:12 sides [1] - 7:4 situation [1] - 14:11 six [5] - 7:20, 8:5, 11:16, 12:3, 12:22 somewhere [1] - 21:7 sort [1] - 20:9 SOUTH [1] - 2:4 specific [3] - 16:20, 19:2, 19:25 spent [1] - 11:4 ST [1] - 2:20 stage [1] - 16:10 stages [2] - 16:10, 19:8 stand [1] - 22:16 standpoint [2] - 17:12, 19:13 started [2] - 11:21, 18:18 STATE [1] - 3:6 state [11] - 17:2, 17:5, 17:6, 18:6, 18:7, 18:8, 18:9, 18:13, 18:15, 18:18, 20:15 State [1] - 23:4 states [3] - 7:14, 7:16, 7:20 States [2] - 23:5, 23:15 STATES [2] - 1:1, 1:11 status [6] - 7:25, 8:9, 11:1, 11:25, 22:9, 22:13 STATUS [2] - 1:10, 5:11 statutes [1] - 16:1 stayed [1] - 16:4 STENOGRAPHY [1] - 4:7 steps [2] - 19:22, 19:24 still [9] - 7:18, 7:19, 11:1, 12:20, 15:12, 16:2, 19:5, 21:24, 21:25 STONE [1] - 3:3 STREET [13] - 1:19, 1:24, 2:4, 2:7, 2:13, 2:16, 2:23, 3:4, 3:7, 3:12, 3:16, 3:20, 4:4 stroke [2] - 12:21, 13:2 structure [1] - 22:14 stuff [1] - 21:4 submitted [1] - 14:17 successful [1] - 7:5</p>	<p>sued [3] - 18:8, 18:9, 20:25 suffered [1] - 20:23 suit [4] - 15:24, 17:6 SUITE [7] - 1:24, 2:7, 2:16, 3:7, 3:12, 3:16, 3:20 surely [1] - 15:8 survive [1] - 13:6 sustain [1] - 12:14</p>	<p>1:10, 4:7 transplant [2] - 15:13 travel [1] - 7:12 trial [3] - 7:18, 13:7, 13:8 tried [1] - 14:1 true [1] - 23:7 trying [2] - 7:5, 15:13 TWELFTH [1] - 2:20 two [5] - 11:15, 11:20, 13:19, 14:6, 22:9 TWO [1] - 5:10 type [3] - 15:14, 16:20, 16:21</p>	<p>WHEREUPON [1] - 22:19 WILLIAMS [1] - 2:19 Willy [1] - 14:3 Willy-nilly [1] - 14:3 WIMBERLY [1] - 3:3 winding [1] - 21:12 wish [1] - 15:19 withdraw [5] - 12:15, 14:11, 14:14, 14:16 withdrew [1] - 13:21 WITTMANN [1] - 3:3 Woodward [1] - 9:14 WOODWARD [4] - 2:6, 9:10, 9:13, 10:15</p>
S		T	U	Y
<p>s/Cathy [1] - 23:12 SALZER [1] - 2:12 SAN [1] - 3:13 Sanjanwala [1] - 12:4 satisfied [1] - 10:1 satisfy [1] - 16:19 saw [1] - 18:13 schedule [2] - 8:3, 13:12 scheduled [1] - 11:22 scheduling [1] - 8:2 SE [1] - 3:19 sealed [1] - 8:18 seat [1] - 17:13 seated [1] - 6:8 see [10] - 9:7, 9:23, 12:17, 12:23, 13:1, 13:8, 14:20, 17:14, 18:7, 19:10 Seeger [5] - 20:24, 21:4, 21:17, 21:20, 21:21 seeking [1] - 7:15 seem [1] - 8:20 sense [1] - 16:7 sensitive [1] - 9:24 September [1] - 11:22 set [4] - 7:18, 8:3, 8:9, 22:13 settle [1] - 19:3 settled [3] - 7:19, 11:12, 17:21 settlement [13] - 7:21, 15:14, 16:5, 16:6, 18:12, 18:20, 18:21, 18:22, 18:23, 18:25, 19:2, 19:6, 19:7 seven [2] - 11:19, 12:20 several [4] - 7:18, 11:12, 19:22</p>	<p>target [2] - 19:3, 19:4 technically [2] - 16:14, 19:10 telephone [1] - 7:9 THE [40] - 1:11, 1:15, 2:19, 3:6, 3:10, 5:10, 6:7, 6:8, 6:10, 6:12, 6:18, 6:25, 7:11, 8:11, 9:12, 9:23, 10:13, 10:20, 12:19, 13:24, 14:14, 14:18, 14:20, 14:23, 15:4, 15:9, 15:18, 15:22, 18:7, 19:22, 20:2, 20:4, 20:17, 21:14, 21:17, 22:1, 22:4, 22:7, 22:16, 22:18 themselves [1] - 13:2 thereabouts [1] - 13:14 therefore [1] - 16:25 thinking [1] - 9:4 third [2] - 7:24, 8:13 THIRD [2] - 2:4, 5:7 THIRD-PARTY [1] - 5:7 third-party [2] - 7:24, 8:13 THIS [1] - 1:7 three [4] - 13:11, 14:6, 17:21, 19:23 thrombosis [1] - 12:22 THURSDAY [2] - 1:6, 6:2 TO [2] - 1:7, 6:4 today [1] - 9:15 together [2] - 9:6, 22:11 took [1] - 16:12 totally [1] - 12:8 toward [1] - 11:5 town [1] - 10:8 track [2] - 10:25, 13:17 transcript [1] - 23:7 TRANSCRIPT [2] -</p>	<p>unaware [1] - 10:16 under [3] - 12:2, 12:5, 12:16 Union [2] - 18:14, 18:15 United [2] - 23:5, 23:15 UNITED [2] - 1:1, 1:11 unless [1] - 20:10 unusual [1] - 17:21 up [4] - 14:8, 17:1, 19:9, 21:12 utmost [1] - 20:19</p>	<p>unaware [1] - 10:16 under [3] - 12:2, 12:5, 12:16 Union [2] - 18:14, 18:15 United [2] - 23:5, 23:15 UNITED [2] - 1:1, 1:11 unless [1] - 20:10 unusual [1] - 17:21 up [4] - 14:8, 17:1, 19:9, 21:12 utmost [1] - 20:19</p>	<p>y'all [1] - 20:14 y'all's [1] - 15:5 years [3] - 14:2, 17:8, 17:21 yesterday [1] - 8:13</p>
S		T	U	Y
			<p>various [4] - 16:10, 19:8, 19:23, 20:11 venous [1] - 12:21 Vioxx [6] - 6:10, 6:18, 19:1, 20:10, 20:23, 21:11 VIOXX [1] - 1:4 visited [1] - 15:10 voluminous [1] - 17:19 VTE [2] - 11:19, 12:21</p>	
S		T	U	Y
			<p>Waichman [1] - 20:25 waive [1] - 11:13 WALTHER [1] - 3:3 WARSHAUER [1] - 1:22 WASHINGTON [1] - 2:20 Weinberg [1] - 9:14 welcome [1] - 15:20 WEST [2] - 2:16, 3:12 whereas [1] - 21:4</p>	
S		T	U	Y