

MINUTE ENTRY
FALLON, J.
August 25, 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX	:	MDL NO. 1657
PRODUCTS LIABILITY LITIGATION	:	SECTION: L (3)
	:	JUDGE FALLON
	:	MAG. JUDGE KNOWLES
.....	:	

THIS DOCUMENT RELATES TO ALL CASES

The monthly pretrial conference was held on this date by Judge Eldon E. Fallon. The Court first met with members of the Plaintiffs' Steering Committee ("PSC") and members of the Defendants' Steering Committee ("DSC") to discuss agenda items for the pretrial conference. Present at the Steering Committee meeting on behalf of the Plaintiffs were Andy Birchfield, Lenny Davis, Troy Rafferty, Arnold Levin, and Thomas Kline. Present on behalf of the Defendants were Phil Wittman, Doug Marvin, and Ted Mayer.

At the monthly pretrial conference, counsel reported to the Court on the topics set forth in Joint Report No. 6 of the Plaintiffs' and Defendants' Liaison Counsel. This conference was transcribed by Toni Tusa, Official Court Reporter. Counsel may contact Toni Tusa at (504) 589-7778 to request a copy of the transcript. A summary of the monthly pretrial conference follows.

JS10(02:00)

I. Lexis/Nexis File & Serve

On July 15, 2005, Lexis/Nexis activated a File & Serve feature known as Case & Party management. This feature allows registered users in this litigation to submit electronic change requests involving their cases. Specifically, registered users now have the ability to add a party, remove a party, add an additional attorney or staff member from a registered firm, or substitute an attorney. Since this is only an electronic change request, however, the registered user must attach any supporting documentation that confirms the request, such as Court orders.

In early August, 2005, Lexis/Nexis began electronically pulling all new MDL cases from the database of the Clerk of Court's Office. This electronic pull is conducted nightly and the cases are uploaded every Monday, Wednesday, and Friday. The Plaintiffs' and Defendants' Liaison Counsel will continue to provide Lexis/Nexis with a current service list of counsel in the MDL.

II. State Court Trial Settings

Defendants' Liaison Counsel ("DLC") reported that the jury returned a verdict in the *Ernst* case on August 19, 2005. Merck intends to file an appeal. DLC further reports that the *Humeston* case is set for trial in New Jersey Superior Court, Atlantic County, on September 12, 2005; the *Guerra* case is set for trial in Texas District Court, Hidalgo County, on October 24, 2005; and the *Zajicek* case is set for trial in Texas District Court, Jackson County, on March 20, 2006.

III. Selection of Cases for Early federal Court Trial

The PSC and DSC have selected *Evelyn Irvin Plunkett v. Merck & Co., Inc.*, a heart attack case, for trial commencing on November 28, 2005. The Court has reserved the following dates for other MDL trials: February 13, 2006, March 13, 2006, and April 3, 2006.

IV. Class Actions

At the beginning of August, the PSC filed three Master Class Action Complaints pursuant to Pretrial Order 16. DSC has advised the Court that it is reviewing the complaints and will file responsive pleadings in accordance with Pretrial Order 16.

V. Discovery Directed to Merck

The PSC and DSC have resolved several issues pertaining to discovery directed to Merck. The resolution of these issues is contained in a Minute Entry dated August 24, 2005. The Plaintiffs' Liaison Counsel ("PLC") and DLC will meet with the Court on August 26, 2005, to discuss more issues.

In addition, weekly discovery status conferences are scheduled for each Thursday at 3:00 p.m. The PSC and DSC participate in these weekly conferences to resolve any pending discovery disputes.

VI. PSC Request for Production of Facts Database

Pretrial Order 21 governs the production of Vioxx-related information from the Facts Database.

VII. Vioxx Professional Representatives

On August 8, 2005, DLC submitted to the Court a listing of the names, addresses, and dates of employment of Merck's professional representatives who were involved in promising sales of Vioxx pursuant to Pretrial Order 20. The list was submitted in camera and under seal. PLC has reviewed the list.

VIII. Discovery Directed to the FDA

PSC and DSC conducted a discovery status conference with the FDA and United States Attorney's Office for the Eastern District of Louisiana on August 23, 2005. PSC and DSC have

agreed to share any documents they receive from the FDA.

IX. Discovery Directed to Third Parties

PLC advised the Court and DSC that the PSC has issued numerous third-party notices of deposition for the production of documents. If any issues arise, the Court will be notified.

X. Deposition Scheduling

The PSC and DSC will continue discussing the scheduling of depositions and report back to the Court.

XI. Plaintiff Profile Forms and Merck Profile Form

On August 16, 2005, the Court entered Pretrial Order 18A, which governs the timing of production of Plaintiff Profile Forms, Authorizations, and Merck Profile Forms on a staggered basis.

Pretrial Order 18A supersedes Pretrial Order 18.

XII. Medical records from Healthcare providers

PSC and DSC have reached an agreement on posting medical records received by Merck in response to the authorization forms attached to Plaintiff Profile Forms. That procedure is part of Pretrial Order 17 governing the procedure for the Individual Cases.

XIII. Contact with Claimants' Healthcare Providers

On July 21, 2005, the Court granted plaintiffs' motion to modify the Court's June 6, 2005 Order and set forth guidelines which will govern all contact or communications with claimants' healthcare providers.

XIV. Remand Issues

The Court will deal with remand motions as a group in accordance with procedures to be

established in the future.

XV. Tolling Agreements

On June 9, 2005, PLC and DLC filed a Notice of Filing of Tolling Agreement along with Exhibits A, B, and C.

XVI. Louisiana Master Complaint

The PSC and DSC are continuing to negotiate and exchange drafts of a proposed Pretrial Order whereby Vioxx claimants in Louisiana can interrupt or suspend the statute of limitations on myocardial infarct and ischemic stroke cases without the expense and inconvenience of filing individual civil actions in the MDL.

XVII. State/Federal Coordination–State Liaison Committee

The State Liaison Committee reported that they have been working on the coordination of state and federal cases. In addition, Len Fodera was appointed by the Court to the State Liaison Committee.

XVIII. Pro Se Claimants

PLC reported that there are still various filings by *pro se* claimants.

XIX. MDL Assessment

PLC reported that the MDL Assessment has been received very well.

XX. Next Status Conference

The next monthly pretrial conference shall be held on Thursday, September 29, 2005, at 9:30 a.m. in the Courtroom of Judge Eldon E. Fallon.

