

MINUTE ENTRY
FALLON, J.
MARCH 18, 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 initial pretrial conference was held on this date by Judge Eldon E. Fallon. The Court first met with Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) to discuss agenda items for the pretrial conference. Present at the Liaison Counsel meeting were Russ Herman and Leonard Davis for the Plaintiffs and Phillip Wittman and Anthony DiLeo for the Defendants. A list of those individuals present at the initial pretrial conference is attached. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 1 of Plaintiffs' and Defendants' Liaison Counsel. This conference was transcribed by Karen Ibos, Official Court Reporter. Counsel may contact Karen Ibos at (504) 589-7776 to request a copy of the transcript. A summary of the initial pretrial conference follows.

I. Service List of Counsel/Lexis-Nexis Electronic Service Application

PLC and DLC met with LexisNexis (which has acquired Verilaw Technologies, Inc.) to discuss cost, security, work product, and privacy issues, master service list and other items relating to electronic service. PLC and DLC have agreed that a service list of counsel in MDL

1657 will be prepared by DLC and provided to PLC on an ongoing monthly basis. While PLC and DLC await further information from LexisNexis regarding cost for implementation, costs on an ongoing basis, and the time frame for setup, LexisNexis has agreed to waive the first-time registration fee and to reduce the filing fee.

II. Trial Settings

DLC has agreed to provide a master list of all Vioxx lawsuits that are set for trial, which list shall contain the name of the parties, the court identification, docket number and an identification of all counsel of record. DLC reported that there are currently eleven (11) Vioxx lawsuits set for trial in various state courts. The Court indicated that it will put forth an effort to coordinate the pretrial process in MDL 1657 with state court judges handling Vioxx cases, to the extent possible.

III. Plaintiffs' Steering Committee

The Court advised counsel of the time and energy that shall be required of counsel appointed to the Plaintiffs' Steering Committee (PSC). The Court further advised Counsel that any agreements made between PSC members and other parties to leave the PSC once appointed will not be honored by the Court and sanctions may be imposed. The Court also instructed applicants for the PSC to focus the Court on any area of expertise that the applicant may have. Those applicants who have already submitted applications may file a brief supplement to his/her application indicating his/her area of expertise.

IV. Defendants' Steering Committee

IT IS ORDERED that no later than April 8, 2005, DLC shall provide to the Court the names of counsel who DLC recommends be appointed Defendants' Steering Committee

(DSC).

V. Master Complaint(s) and Master Answer(s)

PLC and DLC have agreed to report to the Court, following the formation of the PSC and DSC, whether a Master Complaint or Master Complaints will be drafted.

VI. Tolling Agreement

PLC and DLC had discussed the applicability of a master Tolling Agreement to be used in MDL 1657. DLC expressed that the Defendants have some concern regarding tolling agreements, but indicated that the Defendant is still open to the possibility of a master Tolling Agreement. PLC reserved comment on tolling agreements until the PSC has been formed. The Court advised counsel that tolling agreements will not be preventative of discovery. PLC and DLC will continue to meet and confer in this issue.

VII. Deposition Guidelines

PLC and DLC have met and conferred to discuss an initial protocol for the taking of depositions in MDL 1657. PLC indicated that he will not be able to agree to all of DLC's suggested deposition guidelines until the PSC has been formed. The Court advised PLC and DLC that there are certain procedural aspects of the deposition guidelines that can be agreed to by PLC and DLC before a PSC or DSC has been established. The Court will meet with Liaison Counsel with a view toward fashioning deposition guidelines before the next monthly meeting.

Further, DLC has agreed to provide to PLC, at plaintiffs' cost, copies of all depositions so that PLC can maintain copies in a depository.

VIII. Plaintiffs' Document Depository

PLC reported that, to date, Merk has produced, in various state and federal Vioxx

litigation throughout the country, between seven (7) million and eight (8) million pages of documents that are Bates numbered. Virtually all documents have been produced electronically and are fully searchable. PLC is in communication with DLC so that these documents can be made available to PLC and an electronic depository can be established that will be available to all plaintiffs' counsel in MDL 1657. The Court suggested to counsel that a common depository with common numbers be established. DLC advised the Court that, due to the fact that the Defendants already have a separate document depository, he does not anticipate the creation of a joint depository.

IX. Plaintiff Profile Form

DLC has provided to PLC a proposed Plaintiff Profile Form (PPF). PLC indicated that certain plaintiffs' counsel have expressed objections to a burdensome and/or overly intrusive PPF. Consequently, PLC feels that the parties may need assistance from the Court in finalizing a PPF. Further discussions regarding a PPF, together with medical authorizations and HIPAA related issues, will occur following the creation of the PSC.

The Court advised counsel that, after a reasonable amount of time has elapsed, those parties who have not completed the PPF may be dismissed from MDL 1657 with prejudice.

X. Plaintiff Time and Billing Guidelines

PLC is preparing time and billing guidelines to be submitted to the Court for consideration. In connection with the creation of such guidelines, PLC has had communications with certified public accountants who are independent from the firms involved in this litigation. The Court explained that it will want to receive forms indicating plaintiffs' counsel's time and expenditures every two months. The Court will treat this information as plaintiffs' counsel's

work product and will not disclose that information to any other parties. PLC indicated that counsel working on committees formed by the PSC will also submit time and billing information.

XI. Position Papers

PLC and DLC each submitted to the Court his respective position paper on March 11, 2005, pursuant to Pretrial Order #2. The Court advised counsel that either side can supplement their position paper in the future as necessary.

XII. Third-Party Payor Claims/Defendants Other than Merk

The Court indicated that it has been made aware of various claims asserted by third-party payors and non-tort claims asserted by consumers. Several counsel reported to the Court concerning the number of third-party payor claims and consumer claims that have been filed thus far and suggested to the Court methods of handling the various categories of claims. The Court advised counsel that it will not allow double discovery in this matter and, further, that only one PSC will be created. The Court explained that the various groups of claims will be represented on the PSC. The Court also indicated that it has not yet decided whether class certification will be handled by this Court.

XIII. Next Status Conference

The next pretrial status conference shall be held on Thursday, April 28, 2005, at 9:00 a.m. in the Courtroom of Judge Eldon E. Fallon.

/s/ Eldon E. Fallon

Attachment

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2 *****

3
IN RE: VIOXX PRODUCTS MDL No. 1657
4 LIABILITY LITIGATION Section: "L"
New Orleans, Louisiana
5 Friday, March 18, 2005

6 *****

7

8 INITIAL PRETRIAL CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
9 UNITED STATES DISTRICT JUDGE

10

11 APPEARANCES:

12 FOR THE PLAINTIFFS

LIAISON COMMITTEE: HERMAN, HERMAN, KATZ & COTLAR
13 BY: RUSS M. HERMAN, ESQ.
LEONARD A. DAVIS, ESQ.
14 820 O'Keefe Avenue
New Orleans, LA 70113

15

16 SEEGER WEISS LLP
BY: CHRISTOPHER A. SEEGER, ESQ.
17 DAVID R. BUCHANAN, ESQ.
One William Street
18 New York, NY 10004

19

LEVIN, FISHBEIN, DEDRAN & BERMAN
20 BY: ARNOLD LEVIN, ESQ.
510 Walnut Street, Suite 500
21 Philadelphia, PA 19106-3697

22

BEASLEY, ALLEN, CROW, METHVIN,
23 PORTIS & MILES
BY: ANDY D. BIRCHFIELD, JR., ESQ.
24 218 Commerce Street
Montgomery, AB 36104

25

1 FOR THE DEFENDANTS

LIAISON COMMITTEE: STONE, PIGMAN, WALTHER, WITTMANN

2 BY: PHILLIP A. WITTMANN, ESQ.
ANTHONY M. DiLEO, ESQ.
3 546 Carondelet Street
New Orleans, LA 70130

4

5 O'MELVENY & MYERS
BY: JOHN H. BEISNER, ESQ.
6 1625 Eye Street, N.W.
Washington, D.C. 20006

7

HUGHES HUBBARD & REED, LLP
8 BY: THEODORE V.H. MAYER, ESQ.
One Battery Park Plaza
9 New York, NY 10004-1482

10

WILLIAMS & CONNOLLY
11 BY: DOUGLAS R. MARVIN, ESQ.
725 12th Street, N.W.
12 Washington, D.C. 20005

13

14 ATTORNEYS:

15 Joey Langston Langston Law Firm
16 Dianne Nast RodaNast, P.C.
Erin Burns
17 Will Kemp Harrison, Kemp & Jones
18 Pat Morrow Morrow, Morrow, Ryan & Bassett
19 Sara J. Gourley Sidley, Austin, Brown & Wood
20 H. Blair Hahn Richardson Patrick Law Firm
21 Leonard V. Fodera Silverman & Fodera
22 Eduardo L. Morales Plunkett & Gibson, Inc.
23 Val P. Exnicios Liska, Exnicios & Nungesser
24 Amy Fontenot
25 Harold J. Lamy Barker Boudreaux Lamy Foley

1	Rachel Jensen	Lerach Coughlin Stoia Geller
2	Frank J. Janecek, Jr.	Rudman & Robbins
3	Gerald Meunier	Gainsburgh, Benjamin
4	Joseph Jevic	St. Martin & Williams
5	Calvin Fayard	Fayard Honeycutt
6	Stephen B. Murray, Sr.	Murray Law Firm
	Robert Diliberto	
7	Kenneth B. Moll	Kenneth B. Moll & Associates
8	Pamela G. Sotoodeh	
9	Jack W. Harang	Law Office of Jack W. Harang
10	Michael Hingle	Michael Hingle & Associates
11	Salvador Longoria	Gaudin & Longoria
12	John D. Sileo	Allan Berger & Associates
13	Eulis Simien	Simien & Simien
14	Michael J. Ryan	Krupnick Campbell
15	Tom Kline	Kline & Specter
16	Eberhard Garrison	Jones, Verras & Freiberg
	Lynn Swanson	
17	Scott Levensten	Beasley Law Firm
18	Woody Falgoust	
19	Callis L. Childs	Callis L. Childs, P.A.
20	Brian K. Balsler	Brian K. Balsler Co., LPA
21	Elizabeth Dudley	Hutton & Hutton
22	Price Ainsworth	Law Office of Price Ainsworth
23	Scott Allen	Cruse, Scott, Henderson & Allen
24	Dawn Barrios	Barrios, Kingsdorf & Casteix
25	Richard Arsenault	Neblett, Beard & Arsenault

1	Ben Barnow	Barnow & Associates
2	Elizabeth Cabraser	Lieff Cabraser Heimann &
3		Bernstein
4	Charles W. Cohen	Hughes Hubbard & Reed
5	Kent Jarrell	
	Theodore V.H. Mayer	
6	James F. Corway, III	Johnson & Perkins
7	Peter W. Burg	Burg Simpson Eldredge
8	Michael Burg	Hersh & Jardine
9	Blake Bailey	Bailey Law Firm
10	John A. Childers	Johnson & Bell
11	Daniel E. Becnel, Jr.	Law Office of Daniel Becnel, Jr.
12	Bradley D. Becnel	
	Matt Moreland	
	Daila Sanderson	
13		
	Raul R. Bencomo	Bencomo & Associates
14		
	Thomas P. Anzelmo	McCranie Sistrunk Anzelmo
15		
	Bryan F. Aylstock	Aylstock Witkin & Sasser
16	Justin Witkin	
17	John W. (Don) Barrett	Barrett Law Office
18	Salvadore Christina	Law Office of Salvadore Christina
19	Geri Broussard Baldney	Broussard Bradney Law Firm
20	Allan Berger	Allan Berger & Associates
21	James R. Dugan, II	Dugan & Browne
22	Vance Andrus	Andrus Boudreaux
23	Leslie J. Bryan	Doffermyre Shields Canfield
		Knowles & Devine
24		
	Benjamin R. Barnett	Dechert LLP
25		
	John K. Weston	Sacks & Weston

1	Walter J. Leger	Leger & Mestayer
2	Christine DeSue	
3	John Andry	Andry Law Firm
4	Stephen Burrow	Williams Heidelberg
5	Margaret Branch	Branch Law Firm
	Turmen W. Branch	
6	Richard A. Sandoval	
7	Stephen F. Dryden	Robinson, Grayson & Dryden
8	Eric C. Conn	Eric C. Conn, PSC
9	Ike Gulas	Cochran Firm
10	Walter J. Leger	Leger & Mestayer
11	Walter C. Dumas	Dumas & Associates
12	John Norris	Davis & Norris
13	Frank Janecek, Jr.	Lerch, Coughlin, Stora, Geller Ridman & Robbins
14	Jose Escobedo	Hockema, Tippit & Escobedo
15	Barbara Hart	Goddkind Labaton, LLP
16	Avram C. Herman	
17	Carlene Rhodes Lewis	Goforth Lewis Sanford, LLP
18	Shelly Sanford	
19	William R. Kane	Miller Faucher & Cafferty, LLP
20	Lee Howell	Copeland Cook Taylor & Bush, PA
21	Amy DeBrotta	Price Waicukauski Riley & DeBrotta
	William N. Riley	
22	J. Franklin Long	Law Office of J. Franklin Long
23	Joseph L. McNamara	Copeland Cook Taylor & Bush
24	Maura Kolb	The Lanier Law Firm
25	Michael Landon	Douglas & Landon

1	Tina B. Nieves	Gancedo & Nieves, LLP
2	Grant Kaiser	The Kaiser Firm
3	Mark Hodges	Wise Carter Attorneys
4	Carroll H. Ingram	Ingram & Associates
5	Shelby Kirk Milam	Hickman Goza & Spragins
6	Andy McCullough	Markow Walker
7	Richard Laminack	O'Quinn, Laminack & Pirtle, LLP
8	Buffy K. Martines	
9	Dennis Johnson	Johnson & Perkinson
10	Jason Myrk	Parker & Waichman
11	Charles Merkel, III	Merkel & Cocke
12	Tobias Millrood	Schiffrin & Barroway
13	Jerry Kristal	Weitz & Luxenberg
14	Nancy A. Mismash	DeBry & Associates
15	Kevin P. Klibert	Law Offices of Kevin Klibert
16	Allan Kanner	Allan Kanner & Associates
17	David Lietz	Coale Cooley Lietz, PC
18	Bradley D. Honnold	Goza & Honnold, LLC
19	Lewis Kahn	Kahn Gauthier Law Group, LLC
20	Joey K. James	Bunch & James
21	John R. Climaco	Climaco Lefkowitz
22	J. Burton LeBlanc	LeBlanc & Waddell
23	Peter Connick	Connick & Connick, LLC
24	Matt Lundy	Lundy & Davis
25	Jonathon Shub	Sheller, Ludwig & Badey

1	Ronnie Penton	Law Office of Ronnie Penton
2	Lionel Sutton, III	Sutton Law Firm
3	Charles O'Brien	Blue Cross of Louisiana
4	Robert S. Schwartz	Ballou Stoll Bader & Nadler
5	T. Taylor Townsend	Kelly, Townsend & Thomas
6	Christine B. Tatum	Daniel Coker Horton & Bell
7	Charles S. Zimmerman	Zimmerman Reed
8	Sol Weiss	Anapol Schwartz
9	Robert H. Schmolke	Robert H. Schmolke, APLC
10	Conrad Williams, III	St. Martin & Williams
11	Mark Zamora	P.C. Parker & Associates
12	Eric Quetglas	Quetglas Law Office
13	Daila Sanderson	
14	Bob F. Wright	Domengeaux Wright Roy & Edwards
15	Richard J. Plezia	Abraham Watkins Nichols Sorrels
	Jason B. Ostram	Matthews & Friend
16	Jason C. Webster	
17	Rick Stanley	Stanley, Flanagan & Reuter, LLC
18	Robert L. Salim	
19	Ellen Presby	Baron & Budd
20	Jeffrey Robinson	Robinson & Sheen, SLC
21	Drew Ranier	Ranier Gayle Elliot
22	Edward J. Parr, Jr.	Ury & Moskow
23	Mark P. Robinson, Jr.	Robinson, Calcagnie & Robinson
24	D'Juana Parks	Provost & Umphrey Law Firm, LLP
	Matthew R. Willis	
25	W. James Singleton	The Singleton Law Firm

1	Michelle A. Parfit	
2	Arthur Sherman	Sherman, Salkow & Hewkirk
3	Robert E. Piper	Piper & Associates
4	Douglas Plymale	Dugan & Browne
5	Kathryn Snapka	Snapka Turman & Waterhouse
6	Robert A. Schwartz	Bailey Galyen & Gold
7	Tara D. Sutton	Robins, Kaplan, Miller & Ciresi
8	Roberta B. Walburn	
9	Thomas M. Sobol	Hagens Berman Sobol Shapiro
10	Chris J. Walker	Markow, Walker
11	Donni E. Young	Brent Coon & Associates
12	John E. Williams	Williams Bailey
13	Quentin F. Urquhart	Irwin, Fritchie, Urquhart & Moore
14	Russell Thornton	Stinnett Thiebaud & Remington
15	Christopher V. Tisi	Ashcraft & Gerel
16	Sheila M. Bossier	
17	Joseph M. Bruno	Bruno & Bruno
18	Michael T. Bell	Fields Law Firm
19	Louis Clayton Burgess	
20	Frank C. Dudenhefer, Jr.	
21	Mindy L. Coleman	Law Office of Mindy L. Coleman
22	Jay Stroble	Watkins Eager
23	Soren Gisleson	Herman, Herman, Katz & Cotlar
24	Richard Kopelman	Orlando & Kopelman
25	R. Larry Morris	Levin, Papantonio

- 1 Troy Rafferty
- 2 Summer Bishop The Spence Law Firm
- 3 Deborah M. Sulzer Gauthier, Houghtaling, Williams &
Sulzer
- 4
- 5 Richard Freese Sweet & Freese
- 6 Patrick W. Pendley Pendley Law Firm

7

8

9

PRESS APPEARANCES:

- 10 Theresa Agovino Associated Press
- 11 Michael Depp Reuters
- 12 John Pope Times-Picayune
- 13

14

15

16

INTERESTED PARTIES APPEARANCES:

- 17 Michelle R. Hithorn Eric C. Conn Law Complex
- 18 Jeanna Newsome Paralegals
- 19 Julien Tatum Husband
- 20 Matt Livingston Duncan Courington & Rydberg
Paralegal
- 21 Jeff Childress Lifeline Consultants
- 22 Heather Hughes RLS Legal Solutions
- 23 Wendy Hill
- 24 Michael Orey Ziff Brothers
- 25 John Chaillot Stone Pigman
Catherine Molony

- 1 Gary Cosgrove Omni Litigation Support
- 2 Regina Westenfeld Herman, Herman, Katz & Cotlar
- 3 Paralegal
- 4 Peter Buckley Lexis/Nexis
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25