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66,000

June 22, 2005

BY HAND

Honorable Eldon E. Fallon
United States District Court
Eastern District of Louisiana
500 Camp Street, C456
New Orleans, LA 70130

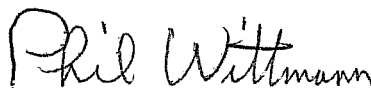
Re: In re: VIOXX MDL 1657

Dear Judge Fallon:

I enclose two copies of Joint Report No. 4 of Plaintiffs' and Defendants' Liaison Counsel which we are filing with the Court this date.

With kind regards, I remain

Sincerely,



Phillip A. Wittmann

PAW/dlm

Enclosures

cc: Defense Counsel (via e-mail)
Russ M. Herman, Esq. (via e-mail)
Plaintiffs' Steering Committee

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

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|---|---|---------------------------------|
| In re: VIOXX | * | MDL Docket No. 1657 |
| | * | |
| PRODUCTS LIABILITY LITIGATION | * | SECTION L |
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| | * | JUDGE FALLON |
| This document relates to All Cases | * | |
| | * | MAGISTRATE JUDGE KNOWLES |
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**JOINT REPORT NO. 4 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC")
submit this Joint Report No. 4.

I. LEXIS/NEXIS FILE & SERVE

Lexis/Nexis File & Serve was activated and utilized for all service in this litigation on May 11, 2005. From May 11 through May 31, 2005, PLC and DLC continued to serve documents on the non-registered attorneys on their respective lists to accommodate late registrants. In accordance with Pre-trial Order No. 14, effective June 1, 2005 DLC discontinued such service and all service in this litigation now is by Lexis/Nexis File & Serve. However, PLC continues to serve the plaintiffs' service list of attorneys as a courtesy due to some claimant's counsel who have a filed case, but the transfer to MDL is not yet complete; and therefore, they

do not yet have access to Lexis/Nexis File & Serve. See Pre-trial Order No. 14, located at <http://vioxx.laed.uscourts.gov>.

PLC and DLC continue to provide Lexis/Nexis with a current service list of counsel in the Vioxx MDL. PLC and DLC also continue to provide Lexis/Nexis with a list of all new cases transferred to, removed to, or filed in the MDL on at least a weekly basis. The parties will be prepared to discuss this further at the monthly status conference on June 23, 2005.

II. TRIAL SETTINGS

DLC advises that the *Ernst* case is set for trial in Texas District Court, Brazoria County, on July 11, 2005; 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 September 19, 2005; the *Zajicek* case is set for trial in Texas District Court, Jackson County, on September 26, 2005;¹ and, the *Tomlin* case is set for trial in Florida Circuit Court, St. Lucie County, during the period commencing October 3 to December 30, 2005. A hearing is scheduled in the *Engineers* case for June 30, 2005 in the New Jersey proceedings for the purpose of determining whether to certify a nationwide class of third-party payors.

III. SELECTION OF CASES FOR EARLY TRIAL

DLC has furnished PLC and Plaintiffs' Lead Counsel with a proposed Pre-trial Order dealing with selection of cases for trial, including a Case Management Plan for the cases selected. The parties continue to meet and confer to discuss a trial plan for cases to be tried in

¹ Plaintiffs' counsel has agreed to continue this trial date until the first quarter of 2006, although a formal motion has not yet been submitted.

the MDL and will be prepared to discuss this issue further at the monthly status conference on June 23, 2005.

IV. CLASS ACTIONS

Following a conference held on June 1, 2005, the Court issued Pre-trial Order No. 16 which applies to all class action cases. *See* Pre-trial Order No. 16, located at <http://vioxx.laed.uscourts.gov>. Pursuant to the Order, the Court appointed the PSC as interim class counsel pursuant to Fed. R. Civ. P. 23(g)(2)(A), on behalf of each type of purported class which governs the class claims made in the MDL.

The PSC is continuing their review of the one hundred eighteen (118) filed class action complaints in order to group the complaints by certain categories, which include geography, class definitions, legal issues and similarity in claims. The parties will be prepared to discuss this further at the monthly status conference on June 23, 2005.

V. DISCOVERY DIRECTED TO MERCK

On June 7, 2005, PLC served upon DLC a First Set of Interrogatories and Requests for Production of Documents directed to defendant Merck & Co., Inc. ("Merck"). DLC has reviewed the served discovery and has advised the PLC that it believes the discovery is of a duplicative nature. PLC does not believe the discovery is duplicative. Defendants have requested an additional seven (7) days to respond to the discovery and PSC has no objection. The parties continue to meet and confer to resolve these matters and will be prepared to discuss this further at the monthly status conference on June 23, 2005.

VI. PRE-TRIAL ORDER GOVERNING INDIVIDUAL CASES

By letter dated June 16, 2005, DLC delivered to the Court a proposed Pre-trial Order Regarding Discovery and Motion Practice in Individual Cases which has been agreed to by PLC and DLC. The Court has not yet entered the proposed Pre-trial Order.

VII. MERCK EMPLOYEE INFORMATION

PLC and DLC have submitted to the Court briefs regarding their respective positions on this issue.

VIII. DISCOVERY DIRECTED TO THE FDA

On June 1, 2005, the parties met with counsel for the FDA. Following extensive discussion, the FDA agreed to make a production of certain documents on a rolling basis. Following resolution of the Protective Order issues, the FDA indicated that the first wave of production would likely be done in four to five weeks. The PSC accepted this projected delivery date. Timing for the subsequent waves is subject to further discussion between the PSC and the FDA.

IX. DISCOVERY DIRECTED TO THIRD PARTIES

PLC has advised the Court and DLC that the PSC anticipates third party discovery will be forthcoming.

X. DEPOSITION SCHEDULING

Pre-trial Order No. 12 was entered by the Court on May 23, 2005. It reserves the first and third weeks of each month for depositions. In accordance with Pre-trial Order No. 12, DLC has written to counsel for plaintiffs in the *Merrit* case, No. 2:05-CV-00473, requesting to

schedule depositions of the plaintiffs for the first and third weeks of July. No agreement has yet been reached on scheduling.

XI. PLAINTIFF PROFILE FORM AND MERCK PROFILE FORM

The parties have agreed on the form for the Plaintiff Profile Form and the DLC has submitted to the Court a proposed Pre-Trial Order governing the timing for production of Plaintiff Profile Forms on a staggered basis.

The parties have been unable to agree on a format for a Merck Profile Form and PLC and DLC have submitted their respective versions of this document for consideration by the Court. The PLC has proposed that the Merck Profile Form be submitted in all cases in which a Plaintiff Profile Form is required, and the DLC has proposed that the Merck Profile Form be required, at this stage of the proceeding, only for trial eligible cases, that is, those cases that are selected for a pool of cases out of which cases will be chosen for trial.

XII. MEDICAL RECORDS FROM HEALTHCARE PROVIDERS

The parties have reached agreement on posting of medical records received by Merck in response to the authorization forms attached to Plaintiff Profile Forms. That procedure is part of the Pre-Trial Order governing the procedure for the Individual Cases.

XIII. CONTACT WITH CLAIMANTS' HEALTHCARE PROVIDERS

By Order and Reasons entered June 6, 2005, the Court set forth the guidelines which will govern all contact or communications with claimants' healthcare providers. Plaintiffs have filed with the Court a motion to modify the June 6 Order. Defendants' opposition to that motion was filed with the Court on June 22, 2005.

XIV. PLAINTIFFS' DEPOSITORY

The Plaintiffs' New Orleans Depository located at Place St. Charles, 201 St. Charles Avenue, Suite 4310, New Orleans, Louisiana, is up and running and reviewers/coders are actively working. PLC will be prepared to discuss this further at the monthly status conference on June 23, 2005.

XV. CONFIDENTIALITY AGREEMENT

On May 24, 2005, the Court entered Pre-trial Order No. 13, the Confidentiality Order agreed to by PLC and DLC.

XVI. REMAND ISSUES

Several remand motions have been filed with the Court. The Court has indicated that it will deal with remand motions as a group in accordance with procedures to be established in the future.

XVII. TOLLING AGREEMENT

On June 9, 2005, PLC and DLC filed with the Court a Notice of Filing of Tolling Agreement. Attached to the Notice are the Tolling Agreement and Exhibits A, B, and C. The Tolling Agreement and Exhibits A, B, and C are available on the Court's website located at <http://vioxx.laed.uscourts.gov>. DLC has received several executed Notices (Exhibit C) from plaintiffs' counsel.

XVIII. STATE/FEDERAL COORDINATION -- STATE LIAISON COMMITTEE

DLC suggests that this committee be prohibited from filing briefs that address the same issues as briefs filed by the PLC. The parties will be prepared to discuss this further at the monthly status conference on June 23, 2005.

XIX. WAIVER OF SERVICE

On May 31, 2005, the Court entered Pre-trial Order No. 15 which provides for waiver of service for new lawsuits filed in the MDL and establishes response dates. A copy is available on the Court's website located at <http://vioxx.laed.uscourts.gov>.

XX. DIRECT FILING INTO THE MDL

On May 18, 2005, the Court entered Pre-trial Order No. 11 which provides for direct filing of federal cases into the MDL. A copy is available on the Court's website located at <http://vioxx.laed.uscourts.gov>. Several issues regarding the procedure for filing these cases have been raised. The parties will be prepared to discuss this further at the monthly status conference on June 23, 2005.

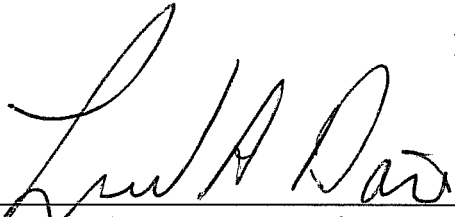
XXI. PRO SE CLAIMANTS

The Court has issued Orders directing PLC to take appropriate action regarding filings made by various *pro se* individuals. PLC has communicated with the various *pro se* claimants and advised them of attorneys in their respective states and other pertinent information regarding the MDL. PLC will be prepared to discuss this further at the monthly status conference on June 23, 2005.

XXII. NEXT STATUS CONFERENCE

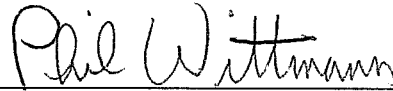
PLC and DLC will be prepared to schedule the status conference in July on a date to be selected by the Court.

Respectfully submitted,



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Plaintiffs' Liaison Counsel

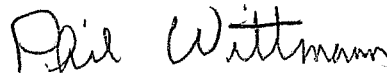


Phillip A. Wittmann (Bar No. 13625)
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Defendants' Liaison Counsel

CERTIFICATE

I hereby certify that the above and foregoing Notice of Filing of Tolling Agreement has been served upon all parties by uploading the same to Lexis/Nexis File & Serve Advanced in accordance with Pre-trial Order No. 8, on this 22nd day of June, 2005.



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

In re: VIOXX * MDL Docket No. 1657
*
PRODUCTS LIABILITY LITIGATION * SECTION L
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* JUDGE FALLON
This document relates to All Cases *
* MAGISTRATE JUDGE KNOWLES
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MONTHLY STATUS CONFERENCE

JUNE 23, 2005

SUGGESTED AGENDA

- I. Lexis/Nexis File & Serve
- II. Trial Settings
- III. Selection of Cases for Early Trial
- IV. Class Actions
- V. Discovery Directed to Merck
- VI. Pre-Trial Order Governing Individual Cases
- VII. Merck Employee Information
- VIII. Discovery Directed to the FDA
- IX. Discovery Directed to Third Parties
- X. Deposition Scheduling

- XI. Plaintiff Profile Form and Merck Profile Form
- XII. Medical Records From Healthcare Providers
- XIII. Contacts with Claimants' Healthcare Providers
- XIV. Plaintiffs' Depository
- XV. Confidentiality Agreement
- XVI. Remand Issues
- XVII. Tolling Agreement
- XVIII. State/Federal Coordination -- State Liaison Committee
- XIX. Waiver of Service
- XX. Direct Filing into the MDL
- XXI. *Pro Se* Claimants
- XXII. Next Status Conference