

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

<b>In re: VIOXX</b>	*	<b>MDL Docket No. 1657</b>
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<b>PRODUCTS LIABILITY LITIGATION</b>	*	<b>SECTION L</b>
	*	
<b>This document relates to All Cases</b>	*	<b>JUDGE FALLON</b>
	*	
	*	<b>MAGISTRATE JUDGE KNOWLES</b>
	*	
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**CURATOR’S STATUS REPORT NO. 8**

Curator, Robert M. Johnston, Esq., submits this Status Report No. 8, in accordance with the Court’s Order, dated February 12, 2008.

**I. MAILINGS TO *PRO SE* CLAIMANTS**

Since the filing of Curator’s Status Report No.1, my office continues to receive numerous inquiries from *pro se* claimants. As instructed in the Court’s Order appointing *Pro Se* Curator, we continue to assist potential claimants in navigating the settlement program. As discussed in prior reports, the number and complexity of inquiries received by my office has increased, and the average call has appreciably lengthened. In addition, we continue to assist callers, whether pure *pro se*, or who have been instructed to contact the curator by their current counsel, by accessing the caller’s claimant information through the Claims Administrator’s *Pro Se* Curator’s portal. Through this

portal, we can assist the caller by advising the documents which have been processed and appear on the claimant's information page, and can view the documents themselves if the claimant has questions regarding deficiency notices. We will continue to assist all callers in this manner.

As noted in prior reports, we continue to receive calls requesting duplicate claim forms or records on deposit with the Litigation Records Repository. As these requests are made, we are either providing the requested document, if within our possession, or forwarding those requests to the Claims Administrator for processing. The Claims Administrator has been extremely efficient in accommodating these requests. We thank them for their continued efforts to assist these callers.

In light of the upcoming deadline for claim package submissions, the Curator has sent an additional mailing to 238 individuals identified by the Claims Administrator as having enrolled (or having deficient enrollment), but who have not yet completed submission of the claims package required under the settlement agreement. This mailing included the following:

- A cover letter informing the recipient of the November 30, 2008 deadline for submission of claims packages and/or Requests for Relief From Deadline form V2033; and
- Form V2033 - Request for Relief from Deadline.

This correspondence also advised the recipient of the mailing and delivery address for the Claims Administrator, and provided contact information for both the Claims Administrator and Curator's offices, should the claimant need assistance in completing their claim package submission.

We will continue to assist these claimants in taking part in the settlement program, or attempt to confirm that they do not wish to take part in the settlement. We will keep all parties, the court, and the Claims Administrator apprised of any new information or documents received from this additional mailing.

We anticipate additional mailings in the future as the extended deadline for claims package submission nears, for those *pro se* claimants who obtain a good cause extension from the Claims Administrator until December 30, 2008, as well as to assist claimants in curing any outstanding deficiencies in enrollment or claim materials timely submitted.

## **II. RETURNED AND UNDELIVERABLE MAIL**

As discussed in prior reports, we continue to monitor returned and undeliverable mailings sent to both unregistered and registered potential *pro se* claimants. As of the date of this status report, no additional original Curator mailings have been returned undeliverable. We will continue to monitor any returned or undeliverable mail, in light of the additional mailings outlined above, and will keep the parties, Court, and Claims Administrator apprised of any new information or documents received.

## **III. LEGAL NOTICE PUBLICATIONS**

All of the legal notices have been completely published and we continue to receive affidavits of publication from the publisher, both certifying the dates of publication, and providing a copy of the notice published. These affidavits are maintained in the *Pro Se* Curator's file and will be submitted to the Court as part of the Curator's Certification.

For claimants, or their heirs, for whom new contact information has been received as a result of the publication of these legal notices, we have forwarded that information to both the Claims Administrator and counsel for Merck, so that future communications can be sent directly. If new information is received in the future, we will continue to act accordingly. Similarly, we have received requests from counsel for Merck and withdrawing attorneys seeking information regarding claimants that they have been unable to reach. As these inquiries are received, we review our records

and provide the requested information.

#### **IV. CURATOR'S COMMUNICATIONS**

My firm continues to receive numerous telephone calls, emails, facsimiles, and correspondence from potential claimants in the Settlement Program who have received notices of deficiencies in either enrollment or claim materials submitted, or who have questions regarding the status of their claims package review. These communications continue to be logged in an internal communications log, and are also being entered into the online communications log, previously described, on a rolling basis. This communications log is available through the Claims Administrator's portal, and reports are available by date, by caller, or by Curator taking the call. At the conclusion of this process, we will submit the entire communications log to the Court. At this point, approximately 90% of the communications log is available through the secure portal.

In the meantime, upon information and belief, this information is currently available and searchable to everyone possessing a valid login and password to the Claims Administrator's Vioxx Portal. We defer to the Claims Administrator as to the requirements to access this information, as well as maintenance of appropriate data back-up services.

With regard to written communications and documents forwarded by potential *pro se* claimants via U.S. Mail, facsimile, electronic mail, and private shipping companies (Federal Express, DHL, and UPS), we continue to forward all documents received by my office, on a rolling basis, to the Claims Administrator, both via electronic mail as a PDF attachment, and via overnight delivery, in order to assist in compliance with the deadlines set forth in the Settlement Agreement, and extensions agreed to by the parties. A copy of these communications and documents is also maintained in the Curator's file.

When requested, we have provided assistance in reestablishing communications between a potential claimant and his or her attorney who had difficulty reaching the claimant. As these requests carry on, we will continue to provide this assistance.

Additionally, we have seen a continued increase in callers seeking a regular, or weekly “status check” of their claims. These callers’ claimant information page, on the Curator’s portal, generally shows that the claimant is enrolled and that no deficiency was found (NDF) after Merck’s review of their documents. For those claimants whose information page indicated any deficiency, we provide the claimant with the deficiency description and advise how to remedy same. The Claims Administrator has been of great assistance in helping these claimants correct deficiencies by re-sending the required documents, or by verifying that the database reflects any corrective action taken. As these calls continue, we will assist and coordinate efforts with the Claims Administrator to assure *pro se* claimants have every opportunity to comply with the requirements and deadlines of the settlement agreement.

The Curator’s office has received an increased number of inquiries from claimants having difficulties in obtaining medical records, or seeking relief from unreasonable costs of duplication of medical records needed to complete the claims package submissions. As the court has provided assistance in the form of show cause orders and pretrial orders, we have been able to assist these callers in obtaining their requested records for a reasonable duplication fee. As these inquiries continue, we will provide such assistance so long as it is necessary.

## **V. REFERRAL ATTORNEY LIST**

As part of the Court’s February 12, 2008 Order, the Curator has the responsibility of advising “the *Pro Se* Claimants of the name and contact information for counsel handling Vioxx matters in

the jurisdiction where the *Pro Se* Claimant resides.” See Document No. 13365, Page 3. As previously reported, we have been provided with information from the PLC regarding attorneys handling Vioxx matters in various jurisdictions, have reorganized this information into a list, sorted by location, of attorneys handling Vioxx matters, and continue to provide this information, as required by the Court’s Order, to *Pro Se* Claimants requesting same.

**VI. PRESENTATION AT NEXT STATUS CONFERENCE**

Curator, through associate attorneys, presented the above report to the court, parties, and callers listening via telephone conference, as well as being available to address any questions, at the monthly status conference which occurred on November 21, 2008. Additionally, we will be available for the next scheduled status conference on December 19, 2008, as well as all future status conferences, as dates are selected by the Court.

**VI. NOTICE OF CHANGE OF ADDRESS**

The Curator’s physical and mailing address has changed, effective December 1, 2008. The new address is:

400 Poydras Street  
Suite 2450  
New Orleans, Louisiana 70130

The telephone, facsimile, and electronic mail information all remain unchanged. This information has been updated on the Eastern District’s ECF system for this and all cases in which the Curator is an attorney of record.

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Respectfully submitted,

**JOHNSTON, HOEFER, HOLWADEL  
& ELDRIDGE**

/s/ Robert M. Johnston

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*Pro Se Curator*

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Curator's Status Report No. 8 has been electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing in accord with the procedures established in MDL 1657, on this 25th day of November, 2008.

/s/ Robert M. Johnston

**ROBERT M. JOHNSTON (#7339)**