

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

In re: VIOXX	*	MDL Docket No. 1657
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PRODUCTS LIABILITY LITIGATION	*	SECTION L
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This document relates to All Cases	*	JUDGE FALLON
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	*	MAGISTRATE JUDGE KNOWLES
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**JOINT REPORT NO. 65 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") submit this Joint Report No. 65.

I. THE SETTLEMENT PROGRAM

On November 9, 2007, the parties announced the establishment of a Vioxx Resolution Program that encompasses all claims that allege a heart attack, sudden cardiac death, or stroke. The Court has posted on its website, <http://vioxx.laed.uscourts.gov>, information regarding the Resolution Program, as well as the Pre-Trial Orders entered by the Court. The full text of the Master Settlement Agreement and exhibits, together with registration and enrollment forms and instructions can be found at Claims Administrator's website at www.browngreer.com/vioxxsettlement. BrownGreer, the Claims Administrator appointed under the Agreement, has advised that all claims under the Program have now been processed.

II. SPECIAL MASTER AND DEPUTY SPECIAL MASTERS

On January 14, 2008, Mr. Patrick A. Juneau was appointed to serve as Special Master. At the status conference on August 4, 2011, Mr. Juneau will report on his work.

III. CLASS ACTIONS

The only remaining, pending class actions involve Purchase Claims.¹ Merck's Rule 12 Motion to Dismiss the Purchase Claims has been briefed and submitted to the Court. On February 22, 2010, Merck filed a Motion for Case Management Order Governing Economic Loss Cases and submitted a proposed Order. As requested by the Court at the status conference regarding these cases held on April 7, 2010, the parties conferred and agreed on how to proceed in addressing these cases.

On June 30, 2010, Merck filed its Motion for Judgment on the Pleadings or to Strike the Class Allegations in Purchase Claims Master Complaint. The motion has been fully briefed, and the Court has heard oral argument and taken the matter under submission.

IV. STATE/FEDERAL COORDINATION -- STATE LIAISON COMMITTEE

Representatives of the PSC and the State Liaison Committee have had several communications. The State Liaison Committee, together with Plaintiffs' Liaison Counsel, also has worked on coordinating the discovery efforts of the Government Action cases currently pending before the Court. The parties will be prepared to discuss these issues further at the status conference on August 4, 2011.

¹ Counsel in *Deckowitz v. Merck*, No. 2:05-cv-02102, has noted that the complaint in that action contains not only purchaser claims, but also securities claims brought on behalf of owners of Merck stock. Merck's counsel will be prepared to discuss this situation at the status conference on August 4, 2011.

V. PRO SE CLAIMANTS

On December 10, 2007, the Court issued Pre-Trial Orders 33 and 34 regarding *Pro Se* Plaintiff Registration and Enrollment Re: Settlement and *Pro Se* Tolling Claimant Registration and Enrollment Re: Settlement. Issues regarding the MDL Settlement Program are discussed in Section I, *infra*. By Order entered February 12, 2008, the Court appointed Robert M. Johnson of Johnson, Hoefler, Holwadel & Eldridge, 601 Poydras Street, Suite 2490, New Orleans, Louisiana, as Curator for *Pro Se* plaintiffs and tolling claimants (collectively, the "*Pro Se* Claimants"). The PLC and Curator will be prepared to discuss this further at the status conference on August 4, 2011.

VI. GOVERNMENT ACTIONS

A. Louisiana Attorney General Action

On June 29, 2010, the Court issued its Findings of Fact & Conclusions of Law, ruling in favor of defendant Merck and dismissing the Louisiana AG's case redhibition claim with prejudice and costs. A Notice of Appeal was filed by plaintiffs on July 28, 2010. The parties will be prepared to discuss these issues further at the status conference on August 4, 2011.

B. Other Government Actions

Plaintiffs in the Government Actions other than Louisiana and Merck exchanged formal master discovery requests on June 5, 2009 and served written objections and responses thereto on August 5, 2009. Document productions in these Government Actions have begun and continue on a rolling basis. Representatives of the Government Actions Plaintiffs' Case Management Committee and Merck's counsel have participated in several meet-and-confers to discuss master discovery in these cases. On June 29, 2010, the Court entered Pre-Trial Order

No. 39A, which establishes a scheduling order for discovery and ultimate remand/transfer of the remaining Government Action cases.

On August 26, 2010, the Court heard argument on certain discovery disputes between Merck and the Group I plaintiffs, and issued an Order addressing those disputes on September 13, 2010. On September 28, 2010, the Court heard argument by telephone on disputes concerning Florida's and New York's witness lists and issued a Minute Order later that day.

The Oklahoma Attorney General filed an amended complaint in late November, and Merck moved to dismiss that complaint on December 3. Plaintiff's counsel and Merck are discussing the briefing schedule with Special Master Juneau.

On November 22, 2010, the Court stayed discovery in the Governmental Actions in order to explore global resolution of the AG cases. The Court will supervise the negotiations with the assistance of Special Master Patrick A. Juneau. On December 7, 2010, the Court met with the Special Master, the parties, and a representative from the Department of Justice to discuss parameters of a possible global resolution. Thereafter, the Special Master has met with Merck's counsel and with counsel for each Government Action plaintiff. The parties continue to meet and confer.

During the stay, the parties have engaged in an information exchange of discovery related to resolution issues under the supervision of Special Master Juneau. Special Master Juneau continues to be in contact with all the parties, as well as representatives from the Department of Justice and the National Association of Medicaid Fraud Control Units. The NAMFCU agreements were forwarded to the states on Tuesday, July 12, 2011. On July 15,

2011 the Special Master brought Merck and all the governmental agencies (the vast majority of whom personally attended) to New Orleans for a two (2) day mediation.

The parties will be prepared to discuss these issues further at the status conference on August 4, 2011.

VII. PENDING PERSONAL INJURY CASES SUBJECT TO PTOS
28, 29 AND 43

On March 16, 2011, the Court entered an Order lifting the stay of litigation proceedings provided by Pre-Trial Order No. 30 for all purposes for those cases subject to Pre-Trial Order Nos. 28, 29, and 43. Discovery has proceeded in certain cases since then. Numerous discussions have taken place between Ann Oldfather, counsel for Merck and the PSC. On June 30, 2011, Ms. Oldfather filed a report regarding the status of consents from *pro se* Personal Injury claimants and/or counsel permitting Merck to provide *Lone Pine* reports, court pleadings pursuant to PTOs 28, 29 and 43 and medical records. Merck has provided such records where permission has been received by Merck. An update to the report was filed on July 28, 2011 [Rec. Doc. 63167]. Merck filed a response to the report on July 29, 2011 [Rec. Doc. 63168]. The parties will be prepared to discuss these issues further at the status conference on August 4, 2011.

VIII. FEE ALLOCATION COMMITTEE

Pursuant to Pretrial Order 6D and an Order entered February 28, 2011, the Special Master conducted hearings on allocations and the objections to the recommended allocation of the Fee Allocation Committee during the week of May 9, 2011. The Special Master issued a Report and Recommendation of Special Master on Allocation of Common Benefit Attorney Fees on June 27, 2011 [Rec. Doc. 63093]. Objections to the Report and Recommendation of Special

Master on Allocation of Common Benefit Attorney Fees have been filed by Daniel Becnel, The Branch Law Firm, Escobedo, Tippit & Cardenas, LLC, and Kathryn Snapka. The PSC has filed a reply to those objections. The parties will be prepared to discuss this further at the status conference on August 4, 2011.

In addition to the foregoing, there is remaining an allocation of attorney's fees from third party payor settlements.

IX. PENDING MOTIONS

Two motions filed by Merck are currently scheduled for hearing immediately following the status conference on August 4, 2011 and will be argued: Merck's Motion, Rule and Incorporated Memorandum to Show Cause Why Remaining Settlement Program Releases and Stipulations Should Not Be Tendered to Merck [Rec. Doc. 63015]; and Merck's Motion and Incorporated Memorandum in Support of Motion to Remove Duplicative Case From Docket as to plaintiff Jamaal Bilal [Rec. Doc. 63115]. Merck's Motion and Rule to Show Cause Why Case Should Not Be Dismissed With Prejudice Under Rule 25(a)(1) as to plaintiff Stanley Long [Rec. Doc. 63116] will be continued, by consent, to the next status conference. Merck's Motions and Rules to Show Cause Why Cases Should Not Be Dismissed With Prejudice Under Rule 25(a)(1) as to plaintiffs Mary Jackson and Violet Blanton [Rec. Docs. 63109 and 63107], originally set for hearing on August 4, 2011, are moot.

On March 23, 2011, Merck filed its Motion for Judgment on the Pleadings Under Rule 12(C) in the Ronald Quackenbush matter [Rec. Doc. 62720]. The motion was fully briefed and submitted for decision on April 13, 2011. The motion remains pending.

On May 31, 2011, plaintiff Emmanuel Iwobi filed a Motion for Reconsideration [Rec. Doc. 63006], and on June 7, 2011, the Court entered an order requiring Merck to file a

memorandum stating its position regarding plaintiff Iwobi's motion on or before June 22, 2011 [Rec. Doc. 63052]. Merck filed its response on June 21, 2011 [Rec. Doc. 63078], and plaintiff filed a Reply on June 29, 2011 [Rec. Doc. 63095]. The motion has not yet been set for hearing, but as it is now fully briefed, Merck requests that the matter be deemed submitted.

On July 22, 2011, a Motion to Supplement Paragraph Twelve of PreTrial Order No. 8(B) was filed [Rec. Doc. 63136]. No opposition has been filed. At the status conference, the parties will address with the Court a schedule for the hearing of this matter.

On July 26, 2011, a Motion for Order Requiring Escrow and Disclosures of Common Benefit Fee and Cost Withholdings from Settlement of Ineligible and Non-Enrolled Cases [Rec. Doc. 63154] was filed. No opposition has been filed. At the status conference, the parties will address with the Court a schedule for the hearing of this matter.

X. APPEALS

Several appeals have been filed by pro se plaintiffs and are pending before the United States Court of Appeals, Fifth Circuit. The parties will be prepared to discuss these matters further at the status conference on August 4, 2011.

XI. OTHER MATTERS

Three pending matters also need to be addressed by the Court. Defendant Merck & Co., Inc.'s Motion to Dismiss with Prejudice for Failure to Comply With Pre-Trial Order No. 28 as to plaintiff Dennis Harrison [Rec. Doc. 61683] was scheduled for hearing on June 1, 2011. At that time, the parties agreed to reschedule the motion for August 4, 2011, immediately following the monthly status conference. The Order rescheduling the motion was never entered. Accordingly, Merck intends to ask the Court for a special setting within the next few weeks.

Merck's Motion and Rule to Show Cause Why Case Should Not Be Dismissed With Prejudice Under Rule 25(a)(1) as to plaintiff Michael Wodowski [Rec. Doc. 62926] was heard on June 1, 2011. Although the Court orally granted the motion and dismissed the claims, the Order of Dismissal was never entered. Several weeks later, Mr. Wodowski's counsel uploaded to Lexis Nexis File & Serve a motion to reinstate the case. Despite several requests, Mr. Wodowski's counsel has never filed the motion with the Court. Merck intends to ask the Court to enter the signed Order of Dismissal of Mr. Wodowski's claim, confirming the oral dismissal of June 1, 2011.

Also on June 1, 2011, the Court orally granted the pending motions by plaintiffs counsel to withdraw from representation in the Kenneth Novick, No. 07-7756, and Richard Garcia, No. 07-0902, matters. At that conference, the Court stated that Merck's pending *Lone Pine* motions as to these plaintiffs [Rec. Doc. 40199] would be reset for hearing on August 4, 2011, immediately following the monthly status conference. The Order rescheduling the motion was never entered. Accordingly, Merck intends to ask the Court for a special setting within the next few weeks.

XII. NEXT STATUS CONFERENCE

Plaintiffs' Liaison Counsel and DLC will be prepared to schedule the next status conference, on a date to be selected by the Court.

Respectfully submitted,

/s/ Leonard A. Davis

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**Liaison and Lead Counsel for Ineligible or Non-Enrolled
Cases and Certain Other Remaining PI Claims**

CERTIFICATE

I hereby certify that the above and foregoing Joint Status Report No. 65 of Plaintiffs' and Defendants' Liaison Counsel has been served upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8B, and that the foregoing was 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 2nd day of August, 2011.

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