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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS, LOUISIANA

IN RE: VIOXX PRODUCTS \* Docket MDL 1657-L  
LIABILITY LITIGATION \*  
\* August 25, 2005, 9:30 a.m.  
\* \* \* \* \*

STATUS CONFERENCE BEFORE THE  
HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Beasley, Allen, Crow, Methvin,  
PORTIS & MILES  
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For the Defendants: Stone Pigman Walther Wittmann  
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1 can be done electronically and should help expedite adding to  
2 the service list.

3           Also, in early August 2005 Lexis/Nexis began a  
4 nightly pull from the clerk's office to get cases into the  
5 system quickly. The cases are uploaded every Monday,  
6 Wednesday, and Friday so that the parties will have quick  
7 access via File & Serve to new cases as they come on line.  
8 Other than that, Judge, that's about all to report. I don't  
9 have any problems working with the system. I haven't heard any  
10 reported from plaintiffs' counsel either.

11           MR. BIRCHFIELD: Your Honor, we do not have any  
12 problems to report. Everything seems to be working fine. I  
13 would like to encourage the lawyers to take advantage of the  
14 new features that have been added to Lexis/Nexis. It will  
15 greatly increase the efficiency of that program.

16           THE COURT: I met, as you know, with their  
17 representatives, as well as liaison counsel, and I'm glad  
18 things have worked out. If we get any hitches again, you've  
19 got to get me involved early on so we can deal with it before  
20 it becomes a crisis. I'm happy that it's up and running now.  
21 State court trial settings is the next item on the agenda.

22           MR. WITTMANN: Yes, Your Honor. I can give you a  
23 report of the case statistics generally as of August 15. There  
24 are currently 1,811 cases in the MDL. Some haven't been served  
25 yet, but they have all been transferred and are here and are

1 being docketed by the clerk. There are approximately 290  
2 additional cases served and pending in federal courts not yet  
3 in the MDL, but they will be on the way shortly. So we will be  
4 over the 2,000 mark in cases in the MDL by the end of this  
5 month.

6 There are 200 cases served and pending in state  
7 courts other than New Jersey and California. There are 2,400  
8 cases served and pending in the New Jersey coordinated  
9 proceeding. Finally, there are 250 cases served and pending in  
10 California in state court. Those cases involve about 1,650  
11 plaintiffs. Included in those numbers, Your Honor, are 148  
12 class actions. That's an increase in the number of class  
13 actions from last month. I have agreed to give Arnold Levin a  
14 copy of the new cases that we received since our last status  
15 conference report. As to the trial settings, as Your Honor --

16 THE COURT: Before we get into that, let me discuss  
17 numbers with you. Numbers are important because of our clerk's  
18 office, particularly. We need to be thinking about increasing  
19 the personnel to handle the matter, and I know the clerk's  
20 office has been doing it. As I understand it, you all  
21 anticipate either double or triple what we have now in the MDL  
22 in the next six months or thereabouts. I know, in addition, we  
23 have what I suspect to be several thousand cases on tolling  
24 agreements, so that will not necessitate filing at this time.

25 MR. WITTMANN: The estimate I heard from the

1 plaintiffs' counsel this month is they anticipate a doubling of  
2 the number in the MDL. I would not disagree with that.

3 THE COURT: It may be a little early to tell. I know  
4 at one time we were anticipating something like approximately  
5 100,000 individual cases. I don't know whether that will show  
6 up in tolling agreements or whether it will show up in  
7 individual filings, but we will have to take that a step at a  
8 time. The state court settings.

9 MR. WITTMANN: As to the settings, Your Honor, there  
10 was a verdict returned last week in Texas in the Ernst case.  
11 Merck has indicated it intends to file an appeal. The Humeston  
12 case is set for trial in the New Jersey superior court on  
13 September 12, 2005. The Guerra case is set for trial in the  
14 Texas district court in Hidalgo County on October 24, 2005.  
15 Our case, the Irvin case, is set in the MDL on November 28,  
16 2005. The Zajicek case is set for trial in Texas in Jackson  
17 County on March 20, 2006. Those are the only settings I'm  
18 aware of at this time.

19 THE COURT: Let's segue into the federal court  
20 litigation. As you mentioned, the Irvin case is set for trial  
21 to commence on November 28. I met with counsel to discuss a  
22 program for setting additional trials. I would like counsel to  
23 meet and talk about categories of cases. One category, of  
24 course, is the MIs and then we are dealing with both long-term  
25 use and short-term use. In addition, there's a category of

1 strokes and a couple of other categories. You know best.  
2 Select the categories, and then I'm interested in trying a case  
3 in each of those categories. I have given counsel dates in  
4 February, March, April, and May on which those cases will be  
5 tried. What are the dates, again?

6 MR. BIRCHFIELD: Your Honor, February 13, March 13,  
7 and April 10. I'm not sure of the date in May.

8 THE COURT: We'll discuss which cases are to be set.  
9 My thinking is to have a case per category if we can possibly  
10 do it. It would be best if both sides could coordinate that  
11 and pick a particular case. You know the best cases from the  
12 standpoint of which cases are ready for trial and would be  
13 helpful to you in getting a feel for this type of category in  
14 this type of litigation. I hope you can join together and pick  
15 a case that will be instructive in each of those categories.  
16 If that cannot be done, then the Court will pick the case. I  
17 will allow you to first attempt to agree upon a case that will  
18 be most instructive to each side in those particular  
19 categories. The next item on the agenda is class actions.  
20 Anything on the class actions?

21 MR. BIRCHFIELD: Your Honor, Arnold Levin would like  
22 to address that on behalf of the plaintiffs.

23 MR. LEVIN: Your Honor, as we explained to you in the  
24 liaison committee meeting this morning, first we would like to  
25 have the complaints -- which we are getting additional

1 complaints -- because they may present class representatives  
2 for subclasses that are headless at the present time. We are  
3 going to meet with defense counsel next week via telephone to  
4 see if we can streamline the proceedings by maybe staging and  
5 determining whether Rule 12 motions are being filed. I'm happy  
6 to report that we have an agreement on one thing. Both sides  
7 need more pages.

8 THE COURT: I do think it's important to see if there  
9 can be some meeting of the minds on how to handle the class  
10 actions. There are various issues in the class actions, issues  
11 that are complicated by the law of where the class actions are  
12 to be tried and, if they are to be tried here, which court of  
13 appeals handles the appellate review for that particular class  
14 action. It can be done in several ways. It's best if counsel  
15 present me with something that is agreeable to both sides.  
16 It's a question of whether I go to a particular place and try  
17 the case or have the trials here, with the understanding that  
18 the law applicable to that case will be the law of another  
19 area. I may have to be designated judge for that particular  
20 district or that particular circuit, so that a different  
21 circuit will handle different class actions depending on where  
22 they emanate from. Discovery directed to Merck is the next  
23 item.

24 MR. BIRCHFIELD: Your Honor, yesterday we held the  
25 weekly conference to address the discovery issues, and out of

1 that conference it was agreed that Merck would provide us with  
2 specific answers to requests for production of documents and  
3 interrogatories on September 15. There were a couple of items  
4 that will be taken up tomorrow, in a conference with the Court,  
5 on the privilege log and on the depositions that will be  
6 scheduled that are in dispute at this time.

7 THE COURT: I have had some telephone conversations  
8 and conferences with the parties since our last conference  
9 here, over the past month, and there were a number of discovery  
10 disputes. It seemed to me that the most efficient way of  
11 handling this aspect of the case is to set a discovery meeting  
12 every Thursday with the Court. At that time I will handle any  
13 discovery disputes that have come up for that week or the week  
14 hence. I'll give each side an opportunity to discuss it with  
15 me, I'll listen, but then I will rule on it so we can move on.

16 I think it's essential that we move quickly on  
17 discovery in this case. We can't be bogged down in discovery.  
18 So rather than do it by way of filing interrogatories and  
19 objections and noticing the objections for hearing, we should  
20 be able to cut through that. You just say what you need. If a  
21 party doesn't want to give it, that Thursday we will talk about  
22 it and I will tell you whether or not they need to give it or  
23 not give it and we will move to the next issue.

24 We are going to have a meeting every Thursday  
25 with counsel. I can do it over the phone or in person,



1 whichever is convenient with counsel. It's not necessary for  
2 us to have this big of a meeting. I'm just interested in the  
3 discovery issue and the people who will handle those issues,  
4 either the liaison committee, a liaison person, or somebody  
5 that they select who knows that particular issue. We'll get  
6 them on the line and I'll handle it. Hopefully, when we get  
7 further along, we may not need the every-Thursday meeting, but  
8 until further notice we will have a meeting every Thursday.

9 MR. WITTMANN: If I could just clarify one thing on  
10 the discovery, Your Honor, what we agreed to yesterday was we  
11 would answer or object to specific interrogatories or requests  
12 for production. I would also just like to add, Your Honor,  
13 that production of documents from Merck has been ongoing. We  
14 have produced a million documents just last week. Another two  
15 million is scheduled to go in addition to the nine million we  
16 have already produced. I want to make it clear that we are  
17 continuing to produce and discuss with plaintiffs' steering  
18 committee members what we are doing, even though we are  
19 discussing the specific answers that we are going to respond to  
20 by September 15.

21 THE COURT: No, I have a feeling that matters are  
22 moving. It's just that we have to move the pace up a little  
23 bit because we are setting some trials. We just have to cut  
24 through some of this. I do think that Merck is doing yeoman  
25 work in producing the material. I recognize that. Also, in

1 these matters, occasionally you hit a bump in the road and you  
2 need to be moved over that. I'm prepared to do that.

3 MR. BIRCHFIELD: Your Honor, also on that issue,  
4 there were two matters that will need to be brought to the  
5 Court by a motion to compel, the Arcoxia and the foreign label  
6 issue. We are prepared to file that motion and request an  
7 expedited hearing on those matters.

8 THE COURT: Set it for Thursday. PSC request for  
9 production of FACTS database.

10 MR. BIRCHFIELD: Yes, Your Honor. You had scheduled  
11 a feasibility hearing. However, we were able to get together  
12 and we have now negotiated an agreed-upon order that is ready  
13 to be submitted to the Court.

14 MR. WITTMANN: Actually, it should be submitted to  
15 you today. I figured out where in Florida that city was,  
16 Your Honor.

17 THE COURT: The next item is Vioxx professional  
18 representatives.

19 MR. BIRCHFIELD: Your Honor, as the Court instructed,  
20 Merck produced a list of Vioxx professional representatives to  
21 the Court in camera. Plaintiffs' liaison counsel has reviewed  
22 those.

23 THE COURT: That was an issue. The way we resolved  
24 it is to have Merck produce a list of all of their  
25 representatives, with their addresses, in camera. I've

1 reviewed them. The PSC has had an opportunity to review them,  
2 also.

3           The next item is discovery directed to the FDA.  
4 Any report on that? I had a conference with the FDA and  
5 liaison counsel to discuss some issues that they were having  
6 some difficulty on. Hopefully we have overcome those issues.  
7 I understand that you are beginning now to get boxes of  
8 material. I understand that there has been three boxes that  
9 have been received and several hundred thousand documents that  
10 are being reviewed. I would like to continue to interface with  
11 the FDA, so counsel should keep me plugged into that situation.  
12 I'll have periodic meetings with the FDA and counsel and we'll  
13 see if we can expedite the receipt of some of that material.

14           MR. BIRCHFIELD: The meeting with the FDA and the  
15 Court was very helpful, Your Honor, and the FDA is producing  
16 documents. They are continuing to produce those on a rolling  
17 basis. We are reviewing and coding those documents.

18           THE COURT: I should also express my appreciation to  
19 the FDA. I know they have a lot on their plate these days.  
20 They have given us access to documents that have been submitted  
21 in congressional inquiries, and some of the security that they  
22 have to go through has been expedited. I appreciate their  
23 efforts in that regard. The discovery directed to third  
24 parties, anything to report on that? How is that coming along?

25           MR. BIRCHFIELD: That's moving along quite well,

1 Your Honor. We are receiving some documents in response to the  
2 third-party subpoenas. We have an agreement with the  
3 defendants that we will scan and provide them with all the  
4 documents that we receive and they will do the same thing. Any  
5 documents that are received in response to third-party  
6 subpoenas are going to be shared by the parties by agreement.  
7 We are working out an arrangement, but that's the most  
8 efficient way of doing it, by scanning and providing an  
9 electronic copy.

10 THE COURT: Anything further on that?

11 MR. WITTMANN: No. That's correct, Your Honor.

12 THE COURT: The next item is deposition scheduling.

13 MR. WITTMANN: Yes, Your Honor. The plaintiffs have  
14 noticed three depositions which are scheduled, Dr. Barr,  
15 Dr. Block, and Thomas Cannell. We are trying to get dates for  
16 two former employees that the plaintiffs want to depose,  
17 Dr. Geba and Marty Carroll. We have objected to the  
18 redeposition of James Dunn and Susan Baumgartner. Your Honor  
19 set argument tomorrow to discuss that issue. We will be in  
20 court with Your Honor tomorrow to talk about that. The  
21 deposition of Dr. Avorn, scheduled on September 8 in the  
22 New Jersey proceeding, has been cross-noticed in the MDL. I  
23 think that pretty well covers what our deposition schedules are  
24 at this point from our standpoint.

25 THE COURT: With regard to the case that we have set

1 for trial, the Irvin case, I met with trial counsel and I'll be  
2 meeting with them shortly again to discuss some of the  
3 logistics. Any discovery that you need, I want to meet and  
4 talk with you about it. The same way from the defendants'  
5 standpoint. Any discovery that they need, we have to put that  
6 on an extra-fast track.

7 I talked to the parties about the number of  
8 jurors we will need for that particular case and talked to the  
9 parties about whether or not we would get some help from a jury  
10 questionnaire. We talked about some advance summary of jury  
11 charges being given to the jury before they begin to hear the  
12 case so they will understand what some of the legal principles  
13 are before they process the facts and other issues such as use  
14 of technology in the courtroom, what they will need. I will be  
15 talking to the trial counsel in that particular case both on  
16 discovery and some other aspects of the trial.

17 MR. BIRCHFIELD: Your Honor, in the Irvin case, we  
18 actually have some depositions that have been scheduled and  
19 have actually taken place this week. There's an additional  
20 deposition tomorrow and then depositions next week, as well.  
21 We are moving forward on the discovery in that case. As far as  
22 the depositions that are scheduled, Mr. Wittmann is correct.  
23 We do have depositions we do need dates for, Dr. Geba and  
24 Dr. Marty Carroll. I understand we will get those today.

25 MR. WITTMANN: Hopefully. They are no longer

1 employed by Merck. That's why it's difficult to arrange.

2 MR. BIRCHFIELD: Also, Your Honor, there had been a  
3 motion for protective order with regards to the unilateral  
4 cross-noticing of the MDL depositions. We have worked out an  
5 agreement on that. We will communicate and the PSC will be  
6 involved in the scheduling as much as we can be on those  
7 depositions. I don't think that there's any reason for the  
8 Court to rule on that. I think we have worked that out among  
9 the parties.

10 THE COURT: That's important because the depositions  
11 that are been taken in state court ought to be able to be used  
12 in the MDL. The depositions in the MDL ought to be able to be  
13 used in state court. To give everybody comfort on that  
14 situation, they ought to have notice of it. They ought to know  
15 what's coming up so they can deal with it and protect their  
16 interests. I'm glad you have been able to get together on  
17 that. Plaintiff profile form and Merck profile form, anything  
18 on that?

19 MR. BIRCHFIELD: Your Honor, the profile forms, that  
20 process seems to be working smoothly. If I could just go back,  
21 Your Honor, to the scheduling of the depositions and to avoid  
22 issues with cross-noticing, it's just important from our  
23 perspective that we be involved in the scheduling of those.

24 THE COURT: I do want both sides to be involved in  
25 the scheduling of those depositions, both state and federal. I

1 want everybody to know what depositions are coming up before  
2 they come up and have some input on it. We talked about the  
3 profile forms. That's on our web site. If anybody has any  
4 interest in them, they can pull them down and look at them.  
5 Medical records from healthcare providers is the next item on  
6 the agenda.

7 MR. WITTMANN: That's working as it's supposed to,  
8 Your Honor, in accordance with Pretrial Order 17. We have had  
9 no problems with that.

10 THE COURT: Contact with claimants' healthcare  
11 providers. I issued another order on that. It's on the web  
12 site. It shouldn't present a problem any longer. Remand  
13 issues. Ms. Barrios, do you have anything on that?

14 MS. BARRIOS: Yes, Your Honor. Good morning,  
15 Your Honor. Dawn Barrios for the state liaison committee. On  
16 behalf of the entire committee, we would like to extend our  
17 appreciation to the Court for reaching out to us to assist with  
18 substantive issues. We stand ready, willing, and able to help  
19 in anything else, with regards to remands or any other issues.

20 After you handed down your order, we were in  
21 touch with Merck and we learned that Merck did not keep a list  
22 of cases with motions to remand, so we felt we had a yeoman's  
23 task ahead of us. We reached out to all plaintiffs' counsel  
24 across the country in a special newsletter which was  
25 electronically sent to about 800 people and hard copies to

1 about 200. We got a tremendous response from that. We then  
2 turned to the PACER system and reviewed the PACER records for  
3 each district court in the United States. With that  
4 information, we were able to amass a list of approximately 250  
5 cases with pending motions to remand.

6 Last evening, after the close of business, we  
7 received Merck's list. They were simultaneously putting a list  
8 together. A quick comparison that we were able to do under the  
9 time restraints yielded an additional 130 cases that Merck had.  
10 We are working now from an inventory that should be  
11 substantially complete of approximately 380 cases that are  
12 pending before Your Honor with remand motions.

13 I beg the Court's indulgence for some extra time  
14 until tomorrow. I've spoken with Ms. Wimberly. Both of our  
15 offices are going to compare each other's lists. I'm going to  
16 present to you a comprehensive list of all those cases. I'm  
17 prepared to give you one that we have today. We have an  
18 electronic copy as well as a hard copy. You will see,  
19 Your Honor, on this disk we have two lists of cases. We have  
20 the cases that are pending remand, the 250 that the plaintiffs  
21 were able to find. We have grouped them by state. The second  
22 list are those cases which have orders on the remand motion. I  
23 know it's not authoritative for Your Honor, but I thought it  
24 would be beneficial for you to see those additional cases.

25 With Your Honor's permission, I indicated to



1 Mr. Wynne when I spoke with him that within approximately a  
2 week or 10 days we will present Your Honor with a CD-ROM that  
3 will have all the cases that defense and plaintiffs have been  
4 able to put together. We will hyperlink all the motions, the  
5 memos in support and the opposing memos, for ease of  
6 Your Honor's work when you go to look at this issue.

7           In reviewing this material over the past month,  
8 it's come to light that Your Honor is absolutely correct there  
9 are different nuggets and threads throughout all of these  
10 motions. If the Court would like, we are willing to undertake  
11 a second project to begin to group those under the state's law  
12 to provide you with a chart of what we would recommend would be  
13 the issues that Your Honor would address in looking at the  
14 remand motions.

15           THE COURT: Let's do that within 10 days. I do  
16 appreciate the offer to do the second. I would be interested  
17 in your input. You are closer to the states. I would like to  
18 have your views about some grouping, and in that grouping there  
19 are going to be some common issues. I can take up a particular  
20 case and focus on those common issues, then apply that ruling  
21 to the other cases. I won't have to deal with the same issues  
22 200 times. Hopefully I can get it down to less numbers than  
23 that.

24           MS. BARRIOS: Exactly. Your Honor, the response from  
25 the state attorneys around the country has been incredibly

1 positive and complimentary to Your Honor looking at this issue  
2 so early on in the MDL litigation, and so many of them have  
3 asked me to express that appreciation to you.

4 THE COURT: I'm aware that this case has been going  
5 on for some period of time in the states. It's different than  
6 in some of the other MDLs where the states get their cases  
7 about the same time that the MDL transferee gets its case and  
8 so it doesn't present a problem. This is a little more  
9 complicated by the fact that some of the states have been  
10 working on these cases for some three or four years now. That  
11 needs to be plugged in and taken into consideration. I  
12 appreciate your work, Ms. Barrios.

13 MS. BARRIOS: Thank you, Your Honor. Your Honor,  
14 Ms. Kathryn Snapka of Texas is here. She is prepared to  
15 address the Court, either formally now or informally after, on  
16 her Garza remand.

17 THE COURT: On the what?

18 MS. BARRIOS: The Garza remand.

19 THE COURT: Okay.

20 MS. BARRIOS: Your Honor, if I may, I would like to  
21 approach the bench with your copy. I have provided copies  
22 already to plaintiff and defense.

23 THE COURT: Fine.

24 MS. SNAPKA: Your Honor, Kathryn Snapka, plaintiff's  
25 attorney for the Garza case. The Court graciously heard this

1 matter in chambers after the last status hearing. We had an  
2 emergency motion for remand. To remind the Court, this is the  
3 case that was filed in early 2003, removed, remanded back to  
4 the state court, and then removed again immediately before the  
5 February 14, 2005 trial setting. We had filed an emergency  
6 motion to remand with this Court.

7           The one thing I wanted to bring up to the Court  
8 that is slightly different than the last status conference is  
9 the Texas legislature, after trying valiantly in special  
10 session to accomplish some goals, failed to do so. It is no  
11 longer in special session. Therefore, any legislative  
12 impediments would be out of the way. We would respectfully  
13 again request the Court to return this case -- the doctors, as  
14 well, which has already been remanded to the state court by  
15 federal court -- back. It was trial ready when it was removed  
16 and remains trial ready to this day. If the Court wishes to  
17 hear additional argument, we stand ready at any time to present  
18 that to the Court.

19           THE COURT: I'm reviewing that now. If I do need  
20 argument, I will let both of you all know and will give each  
21 side an opportunity to address it.

22           MR. WITTMANN: We would like to have an opportunity  
23 to do that, Judge.

24           THE COURT: Yes. Anything on tolling agreements?

25           MR. BIRCHFIELD: I'm not aware of any issues with the

1 tolling agreement. We would just like to remind all the  
2 attorneys that the forms for the tolling agreement are  
3 available on the Court's web site.

4 THE COURT: We talked about this several times. The  
5 question that's raised in the tolling agreements is whether  
6 there is an effective way of tolling the cases so that expense  
7 does not have to be incurred in filing particular cases. There  
8 are certain agreements that can be entered into. Our state  
9 does not because it's a civil law jurisdiction perhaps. In any  
10 event, the state law doesn't really clearly approve tolling  
11 agreements, so you may have to do that by a different method.  
12 The concept is that the cases are suspended and do not have to  
13 be filed at the current time. This helps, hopefully, both  
14 sides and also helps the clerk's office wherever these cases  
15 go.

16 MR. WITTMANN: I would just like to ask, Judge, that  
17 the lawyers who have clients who are using the tolling  
18 agreements pay particular attention to get the authorizations  
19 attached to the plaintiff profile forms, get those completed  
20 properly, take a few minutes to do it and try and get the forms  
21 completed as much as they can. We are getting some in that are  
22 really not very well done. Most of them are okay, but some are  
23 coming in kind of sloppily done.

24 THE COURT: Yes. That's essential because the  
25 tolling agreement, while it's good for some aspects of the

1 case, the problem is it sometimes interferes with the accurate  
2 census of the case because you don't know who's out there, so  
3 to speak. So we have tried to bridge that gap by having a form  
4 filled out by anyone who is interested in partaking of the  
5 tolling agreement. This at least alerts everyone as to your  
6 whereabouts. That will help you, also, because as the case  
7 goes on everyone will know of your interest and your presence.  
8 I urge it be done. If you have any problems with it, then  
9 bring it to the Court's attention and I will require it to be  
10 done within a certain period of time or the case will be  
11 dismissed.

12 MR. WITTMANN: I will, Your Honor.

13 THE COURT: Louisiana master complaint.

14 MR. WITTMANN: I've drafted the Pretrial Order  
15 governing the Louisiana master complaint. Mr. Meunier has  
16 given me his comments. I have given him my comments on his  
17 comments. I think we are pretty close to a final version.

18 THE COURT: Would you tell us why we need a master  
19 complaint and what's involved.

20 MR. MEUNIER: Jerry Meunier for the PSC. As you  
21 alluded to, there is at least an argument that can be made that  
22 Louisiana claimants would not be protected by a tolling  
23 agreement. For that reason, we have been negotiating with  
24 Merck for the filing of a Louisiana joint complaint, which will  
25 set forth by name each plaintiff who is eligible to be in that

1 complaint. We intend to put these plaintiffs on the same  
2 footing as those non-Louisiana plaintiffs will be protected by  
3 the tolling agreement.

4 I do want to emphasize and as Mr. Wittmann  
5 indicated, we should have a Pretrial Order submitted to the  
6 Court within the next couple days to govern this, but we will  
7 be sending to Louisiana counsel a letter that alerts them to  
8 the availability of this vehicle. We are aware of the late  
9 September anniversary date for the withdrawal of Vioxx, which  
10 has potential implications on the statute of limitations in  
11 Louisiana. I do want to emphasize, though, for those who are  
12 here that like the tolling agreement -- and, again, pursuant to  
13 the equivalent footing idea -- the plaintiffs who are eligible  
14 to be in the Louisiana joint complaint must have a  
15 cardiovascular event, that is, a heart attack or ischemic  
16 stroke.

17 There is going to be the same process that's in  
18 place with the tolling agreement. After their name, they will  
19 be required to fill out a profile form. Merck will have an  
20 opportunity to review the records. If Merck feels that they  
21 are not cardiovascular event cases, there will be some motion  
22 practice. During that period of time, Your Honor, the time  
23 limit on the statute of limitations will not be running, but  
24 there may be some opportunity then for Merck to delete certain  
25 people from the joint complaint, which just like the tolling

1 agreement they will have to be filing separately.

2 THE COURT: We ought to have some kind of notice that  
3 goes out. I'll put it on the web site so that everybody has  
4 knowledge of that so that they know the advantages and  
5 potential problems they might have.

6 MR. WITTMANN: We will do a proposed Pretrial Order,  
7 Your Honor.

8 MR. MEUNIER: In addition, Judge, we can submit a  
9 proposed notice for you to put on your web site.

10 THE COURT: I think that's a good idea. The next  
11 item is state/federal coordination, state liaison committee.

12 MR. BIRCHFIELD: Your Honor, when do you want that on  
13 the Louisiana --

14 THE COURT: Can you get the notice to me within 10  
15 days? We have a short fuse on that prescriptive period, and I  
16 would like everybody to know it.

17 MS. BARRIOS: Yes, Your Honor. Dawn Barrios again.  
18 We will be more than happy to put that information, also, out  
19 in the state liaison committee newsletter that we send. Since  
20 the last status conference, we have sent out two newsletters  
21 and, as I indicated earlier, had a tremendous response. We  
22 have been invited to speak at the Mealey's conference to  
23 present the MDL status, and we are actively seeking out all  
24 different professional conferences so that we can make a  
25 presentation on the status here.

1                   We have had regular communications with the  
2 plaintiffs' steering committee through Mr. Davis and  
3 Mr. Arsenault and with Mr. Wittmann's office. Your Honor, if I  
4 might ask Mr. Wittmann when he provides the plaintiffs'  
5 steering committee with a list of all these class actions that  
6 he provide our committee with it, as well, particularly the  
7 state class actions. We have been getting inquiries from  
8 different states to see if there's a pending class action for  
9 statute of limitation purposes. If we could get that  
10 information, we would appreciate it.

11                   THE COURT: Let's do that, Mr. Wittmann.

12                   MR. WITTMANN: We will.

13                   MS. BARRIOS: Thank you.

14                   THE COURT: The state liaison committee is very  
15 significant in a litigation like this. One of the challenges  
16 in MDL is that it's a dual-tracked situation. In a federal  
17 court, there's the MDL. All of the cases in federal court are  
18 assigned to a transferee judge and the transferee judge handles  
19 them in a coordinated matter. In addition to that, there are  
20 numbers of cases that are filed in state court. It seems to me  
21 that there's an opportunity for coordination so that the states  
22 can have the benefit of the MDL and the MDL can have the  
23 benefit of the states. It only works if the people who are on  
24 the state committee and the MDL committee are willing and  
25 interested in working together to help each other process the



1 cases.

2 I'm particularly appreciative and congratulatory  
3 of the state committee. We have appointed some excellent folks  
4 on it. They have risen to the challenge and done a great job.  
5 I have increased the membership on it by Mr. Leonard Fodera.  
6 Mr. Fodera, would you stand up. I'm going to be issuing an  
7 order appointing Mr. Fodera to the committee. He is from  
8 Philadelphia. He is very well-qualified and highly  
9 recommended. I look forward to working with you on it, sir.

10 MR. FODERA: Thank you, Your Honor.

11 THE COURT: Again, thanks to the committee, and I  
12 urge you to continue to work together.

13 MR. BIRCHFIELD: Your Honor, on behalf of the  
14 plaintiffs' steering committee, I would also like to extend our  
15 appreciation to Ms. Barrios and the entire state liaison  
16 committee for the tremendous work they have done on the remand  
17 issues and on coordination and communication. It's been a  
18 tremendous help and we appreciate that.

19 THE COURT: I think it works if the committees  
20 coordinate with each other. If the committees get out of sync  
21 or one resists some of the movement of the other, I think it  
22 then breaks down and presents problems. It only works if you  
23 coordinate and work together. If you have any difficulties,  
24 bring it to me. I will resolve it. Any pro se claimants?

25 MR. BIRCHFIELD: Your Honor, we are not aware of any

1 new requests, but the PLC continues to handle those claims as  
2 they come in, directing them to attorneys in their appropriate  
3 state.

4 THE COURT: The next come is the MDL assessment. How  
5 is that being received?

6 MR. BIRCHFIELD: It has been received very well,  
7 Your Honor, from all the feedback that we are aware of. I  
8 would also like to remind everyone that the full participation  
9 option agreements are on the Court's web site and can be  
10 accessed that way. We have gotten a tremendous response and  
11 it's been well-received nationwide.

12 THE COURT: These cases are very expensive to handle.  
13 I think it is to the benefit of everybody if they participate  
14 in the expense and also have an opportunity to participate in  
15 the work. The case has to be run by committee, but the  
16 committee ought to have an opportunity to tap people who are  
17 outside of the committee so that they can work through the  
18 committee on the MDL. Anybody out there who is interested in  
19 working, you need to contact the committee. They are willing  
20 to give you an assignment to work. It has to be funneled  
21 through the committee, but I'm interested in your work. Your  
22 work will be compensated for. It will be to the advantage of  
23 everyone and also to your own advantage. I urge anybody who is  
24 not on the committee who is interested in working to let the  
25 committee know and you will be put to work. There's enough

1 work out there for a lot of folks.

2 MR. HERMAN: Thank you, Your Honor.

3 MR. BIRCHFIELD: Your Honor, before you set the next  
4 status conference, I would like to offer my apologies. I see  
5 there is a large audience. For those who came expecting a  
6 Shakespeare quote from the plaintiffs' spokesperson, I humbly  
7 apologize for disappointing them.

8 THE COURT: The next meeting is Thursday,  
9 September 29, 9:30. I will be meeting with liaison counsel at  
10 8:00 that day. Anything from anybody? Any other comments?  
11 Thank you very much. The Court will stand in recess.

12 THE DEPUTY CLERK: Everyone rise.

13 (WHEREUPON, the Court was in recess.)

14 \* \* \*

15 CERTIFICATE

16 I, Toni Doyle Tusa, CCR, Official Court Reporter,  
17 United States District Court, Eastern District of Louisiana, do  
18 hereby certify that the foregoing is a true and correct  
19 transcript, to the best of my ability and understanding, from  
20 the record of the proceedings in the above-entitled and  
21 numbered matter.

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Toni Doyle Tusa, CCR  
Official Court Reporter