

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

In re: VIOXX

PRODUCTS LIABILITY LITIGATION

This document relates to
All Private Third-Party Payor
Cases

MDL No. 1657

Section L

Judge Fallon

Magistrate Judge Knowles

**PRETRIAL ORDER NO. 41
Appointment of Private Third Party Payor Bellwether Trial Committee**

Counsel for plaintiffs in the bellwether trial proceedings under PTO 38 have conferred and submit this agreed proposal for the appointment of a committee to direct, coordinate, and conduct the bellwether process. This Order shall govern all proceedings in the actions which have been or will be included in the bellwether process described in and initiated by PTO 38.

I. COMMITTEE CO-CHAIRS AND MEMBERS

1. The Court designates and appoints the following counsel to act on behalf of Third Party Payors as set forth herein:

A. Committee Co-Chairs

2. The Court designates the following counsel as Co-Chairs of the Private Third Party Payor Bellwether Trial Committee:

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B. Committee Members

3. The Court designates the following counsel, in addition to the above co-chair

firms, as members of the Private Third Party Payor Bellwether Trial Committee:

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II. RESPONSIBILITIES OF PRIVATE THIRD PARTY PAYOR BELLWETHER TRIAL COMMITTEE

4. Co-Chairs and Members of the Committee shall have the following duties and responsibilities:

A. Co-Chairs

5. Co-Chairs shall have day-to-day responsibility for supervising and coordinating the conduct of the litigation subject to PTO 38; shall obtain and implement decisions regarding the prosecution of the bellwether cases and shall initiate, coordinate and supervise the efforts of

Plaintiffs' counsel in the areas of discovery, briefing, trial and resolution, reserving to counsel of record in the individual bellwether cases appropriate case-specific trial and settlement decisions.

6. Co-Chairs or their designees shall (a) maintain and distribute to co-counsel and to Defendants' counsel an up-to-date service list; (b) receive and, as appropriate, distribute to co-counsel orders from the Court and documents from Defendants and, as necessary, third parties.

7. Co-Chairs will maintain a litigation assessment and expense fund.

B. Committee Members

8. At the request and authorization of the Co-Chairs, the members of the Private Third Party Payor Bellwether Trial Committee, or designees within their firms, shall have the following responsibilities.

- a. Initiate, coordinate, and conduct all pretrial discovery;
- b. File briefs and pleadings as necessary and appropriate in, or in connection with, the bellwether cases;
- c. Examine witnesses and introduce evidence at hearings;
- d. Act as spokespersons for Third Party Payors at pretrial proceedings and in response to any inquiries by the Court;
- e. Submit and argue any motions to the Court, and file any briefs in opposition to motions, on behalf of all Third Party Payors, which involve matters within the sphere of the responsibilities of the Private Third Party Payor Bellwether Trial Committee;
- f. Develop and enhance the document depository as it relates to Third Party Payor claims for the use and benefit of all MDL Third Party Payor counsel or their associated attorneys;

- g. Perform any task necessary and proper for the Private Third Party Payor Bellwether Trial Committee to accomplish its responsibilities as defined by this Court's orders, including organizing sub-committees or working groups comprised of Committee members or others, and assigning them tasks consistent with the duties of the Committee;
- h. Explore and develop, at an appropriate time, the potential and options for settlement of Third Party Payors claims;
- i. Maintain contemporaneous time and expense records in accordance with PTO 6 and any amendments thereto;
- j. Perform such other functions as may be expressly authorized or directed by further orders of this Court.

C. Relationship Between Counsel and Third Party Payors

9. Each bellwether Third Party Payor is represented by retained counsel, who have been appointed to the Private Third Party Payor Bellwether Trial Committee. This order does not eviscerate the relationship between any Third Party Payor and their retained counsel, nor does it expand the obligation of each committee member to other lawyers' Third Party Payor clients. All retained counsel, notwithstanding the creation of, and their appointment to, the Private Third Party Payor Bellwether Trial Committee, shall continue to discharge their obligations to their clients as retained counsel.

D. Responsibilities of Plaintiffs' Liaison Counsel

10. Plaintiffs' Liaison Counsel shall continue to serve and perform duties as outlined in Pre-Trial Order No. 2 in connection with the Private Third Party Payor matters.

III. MODIFICATION OF THIS ORDER

This order may be modified or supplemented by the Court or on motion by any party for good cause shown.

New Orleans, Louisiana, this 19th day of May, 2009.

A handwritten signature in black ink that reads "Eldon E. Fallon". The signature is written in a cursive style with a horizontal line underneath it.

Honorable Eldon E. Fallon
United States District Court Judge