

MINUTE ENTRY
FALLON, J.
JULY 19, 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX	:	MDL NO. 1657
PRODUCTS LIABILITY LITIGATION	:	SECTION: L (3)
	:	JUDGE FALLON
	:	MAG. JUDGE KNOWLES
.....	:	

THIS DOCUMENT RELATES TO ALL CASES

The monthly pretrial conference was held on this date by Judge Eldon E. Fallon. The Court first met with members of the Plaintiffs' Steering Committee ("PSC") and the Defendants' Steering Committee ("DSC") to discuss agenda items for the pretrial conference. Present at the Steering Committee meeting on behalf of the Plaintiffs were Russ Herman, Leonard Davis, Andy Birchfield, Chris Seeger, Arnold Levin, and Thomas Kline. Present on behalf of the Defendants were Phillip Wittman, Doug Marvin, John Beisner, and Ben Barnett. Following the monthly pretrial conference, the Court met with members of the PSC and DSC, along with Joe Escobedo, Kathryn Snapka, Mauro Ruiz, and Anita Aditi Shahani on behalf of the Plaintiffs in *Felicia Garza, et al. v. Merck & Co., Inc.*, CA No. 05-2586, to discuss the Plaintiffs' request for expedited hearing on their remand motion.

At the monthly pretrial conference, counsel reported to the Court on the topics set forth in

JS10 2:35

Joint Report No. 5 of Plaintiffs' and Defendants' Liaison Counsel. This conference was transcribed by Toni Tusa, Official Court Reporter. Counsel may contact Toni Tusa at (504) 589-7778 to request a copy of the transcript. A summary of the monthly pretrial conference follows.

I. LexisNexis File & Serve

LexisNexis met with the Court on June 29, 2005 to discuss a number of issues regarding the LexisNexis File & Serve system. In response to the Court's Minute Entry dated June 29, 2005, LexisNexis updated the Court with respect to several issues raised by the PSC and DSC (see Minute Entry dated July 8, 2005). Effective July 15, 2005, LexisNexis activated a File & Serve feature known as Case & Party management. This feature allows registered users in this litigation to submit electronically change requests involving their cases.

PLC and DLC continue to provide LexisNexis with a current service list of counsel in the MDL. PLC and DLC also continue to provide LexisNexis with a list of all new cases transferred to, removed to, or filed in the MDL on a weekly basis. As a courtesy, PLC continues to serve the Plaintiffs' service list of attorneys.

DLC provided a statistical update on cases that have been filed in the MDL and those awaiting transfer to the MDL.

II. Trial Settings

DLC reported that several cases are set for trial in various state courts. The *Ernst* case, set for trial in Texas District Court, Brazoria County, commenced on July 11, 2005.

III. Selection of Cases for Early Trial

IT IS ORDERED that PLC and DLC will notify the Court of cases suggested for early trial no

later than July 26, 2005. The Court indicated that it is available to try an MDL case the week of November 28, 2005. Further, the Court suggested that a heart attack or stroke case be tried first. The Court also emphasized the importance of setting trials in cases that actually are ready to be tried and that will be instructive. The parties continue to meet and discuss a trial plan for cases to be tried in the MDL.

IV. Class Actions

The PSC is continuing its review of the one hundred nineteen (119) filed class action complaints in order to group the complaints in appropriate categories. PLC will furnish to DLC prior to the conference a proposed Master Complaint(s) relating to class actions. The Master Complaint(s) is due to be filed August 1, 2005.

V. Master Discovery Directed to Merck

Members of the PSC and DSC have had several teleconferences concerning the discovery requests directed to Merck by PLC. DLC advises that Merck is currently reviewing the discovery requests and identifying documents for production requested by the PSC that have not previously been produced in the New Jersey Vioxx litigation.

IT IS ORDERED that no later than July 29, 2005, DLC shall notify the Court of the progress of this discovery request review, including any outstanding objections or disputes, as well as agreements regarding what documents will be produced by Merck.

VI. Pretrial Order Governing Individual Cases

On June 21, 2005, the Court issued Pretrial Order Nos. 17 and 17A regarding discovery and motion practice in individual cases.

VII. PSC Request for Production of FACTS Database

On July 8, 2005, the Court entered a Minute Entry scheduling a feasibility hearing regarding Merck's production of the Vioxx-related information from the FACTS database. The hearing is currently scheduled for Tuesday, August 2, 2005 at 1:30 p.m.

VIII. Discovery Directed to FDA

The FDA has begun its preliminary rolling production of certain "redacted" documents on a rolling basis. DLC and PLC have signed the Protective Order requested by the FDA and it is anticipated that the FDA production of the first wave of actual production will occur within the next few weeks. The Court again expressed its appreciation to the Director of the FDA and the U.S. Attorney's Office for the Eastern District of Louisiana for cooperating in the discovery process.

IX. Discovery Directed to Third Parties

PLC has issued third party discovery to thirteen (13) people or entities and responses are due at various times in August 2005.

X. Vioxx Professional Representatives

Upon July 7, 2005, DLC advised that Merck had approximately 9,803 professional representatives who had recorded calls on doctors with respect to Vioxx. PLC suggested the immediate in camera production of a list of these professional representatives for the Court's review. The Court advised that it considers the list of representatives is not burdensome for Merck to produce and that the names of the professional representatives are relevant to the defenses that have or will be asserted by Merck. The Court first suggests that counsel agree on a method of trimming down the list. However, if a shortened list cannot be agreed upon, the Court will consider the production of the longer

list.

IT IS ORDERED that PLC and DLC will contact the Court for a conference call on this matter on Wednesday, July 20, 2005.

XI. Deposition Scheduling

PLC and DLC reported on depositions that have been scheduled in the consolidated New Jersey proceedings and cross-noticed in the MDL pursuant to Pretrial Order No. 12.

XII. Plaintiff Profile Form and Merck Profile Form

The Plaintiff Profile Form (“PPF”) and Merck Profile Form are finalized. PLC and DLC have met to discuss outstanding issues regarding an Order for individual cases with reference to the profile forms.

XIII. Medical Records from Healthcare Providers

The Parties have reached an agreement on posting of medical records received by Merck in response to the authorization forms attached to PPFs. That procedure is part of Pretrial Order No. 17.

XIV. Contact with Claimants’ Healthcare Providers

A hearing on the Plaintiffs’ motion to modify the Court’s June 6, 2005 Order took place on June 29, 2005. The Court granted Plaintiffs’ motion and written reasons are forthcoming.

XV. Plaintiffs’ Depository

On June 29, 2005, Judge Fallon visited the depository and his staff toured the facility. Reviewers/coders have been actively reviewing documents at the depository.

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. The State Liaison Committee (“SLC”) and DLC will cooperate to compile lists of pending remand motions, grouped by state. Further, PLC explained that the PSC is not taking a position that healthcare providers should not be joined as defendants in the Plaintiffs’ cases.

XVII. Tolling Agreement

On June 9, 2005, Liaison Counsel 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 DSC gave an update on the number of Exhibits that have been received from Plaintiffs’ counsel.

XVIII. Louisiana Master Complaint

Since the enforceability of a tolling agreement is questionable under Louisiana law, the PSC has proposed a procedure whereby Vioxx claimants in Louisiana can interrupt or suspend the statute of limitations without the expense and inconvenience of filing individual civil actions in the MDL. The DLC has proposed a procedure to permit joint filing of cardiovascular event cases that would mirror the procedure in place under the Tolling Agreement and that makes clear that the contemplated Louisiana Master Complaint is not intended as a vehicle for joint multi-plaintiff trials.

XIX. State/Federal Coordination - State Liaison Committee

Representatives of the PSC and the SLC have had several communications.

XX. Direct Filing Into the MDL

Since May 18, 2005 when the Court entered Pretrial Order No. 11, several issues have been raised regarding the procedure for the direct filing of federal cases into the MDL. The PSC has made

itself available to answer questions on this issue. The Clerk's Office reported that it has been averaging 7 - 10 direct filings each day for the last three weeks.

XXI. Pro Se Claimants

The Court has issued additional Orders directing PLC to take appropriate action regarding filings made by various *pro se* individuals. PLC has continued to communicate with the various *pro se* claimants and advised them of attorneys in their respective states and other pertinent information regarding the MDL. The Court informed counsel that the easiest way to handle *pro se* individuals in this litigation is for the PSC to represent them.

XXII. MDL Assessment

The PSC's Petition for an Order Securing an Equitable Allocation of Counsel Fees and Costs for MDL Administration and Common Benefit Work was heard today.

XXIII. Next Conference

The next monthly pretrial conference shall be held on Thursday, August 25, 2005, at 9:30 a.m. in the Courtroom of Judge Eldon E. Fallon.

/s/ Eldon E. Fallon