

**MINUTE ENTRY  
FALLON, J.  
SEPTEMBER 7, 2005**

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

**IN RE VIOXX \* CIVIL ACTION  
PRODUCTS LIABILITY LITIGATION \* MDL 1657  
\*\*\*\*\* SECTION L**

**THIS DOCUMENT RELATES TO ALL CASES**

A telephone status conference was held on this date in the Chambers of Judge Eldon E. Fallon in Houston, Texas. Russ Herman and Leonard Davis participated on behalf of the Plaintiffs, and Phil Wittmann participated on behalf of the Defendants. David Bradley and Mark Wells of the Clerk of Court of the Southern District of Texas also participated in the conference.

The following matters were discussed:

**1. Filing of New Complaints**

The Court indicated that an Order shall issue shortly that will designate the Southern District of Texas, Houston Division, as the filing court for the Vioxx MDL. The Houston Clerk's office shall only act as the filing court, and the MDL shall not be transferred from the Eastern District of Louisiana.

The Court further indicated that there are three areas of concern regarding the filing of new complaints. First, there are cases in paper format located in New Orleans which have not been processed into the Eastern District's CM/ECF system. The U.S. Marshals are working to

retrieve those cases so that they may be processed. Second, there are cases in paper format which were en route to New Orleans when Hurricane Katrina struck the city. The Court is working to locate these cases as well. Third, a system is required in Houston for the filing of new cases. The Houston Division will accept electronic filings. The Court intends to establish a system whereby the transferor court will open a new case electronically on its CM/ECF server, and then transfer the case to the Southern District of Texas.

Counsel discussed the impact of the new system upon the service list of attorneys. Mark Wells of the Houston Clerk's office (telephone (713) 250-5147) shall supply Plaintiffs' and Defendants' liaison counsel with instructions on how to retrieve the names of new counsel from the Houston CM/ECF server. Until September 21, 2005, Mark Wells will deliver lists of new counsel daily to liaison counsel. During that period, liaison counsel will familiarize themselves with the system and begin retrieving these lists themselves. After September 21, liaison counsel shall be responsible for retrieving these lists on their own.

## **2. Service**

Plaintiffs' and Defendants' liaison counsel shall confer to devise a plan for how to file and serve the remaining Vioxx cases. The Court shall issue an Order once this plan is established. Liaison counsel agreed that the existing service process can remain unchanged.

## **3. Prescription and the Louisiana Master Class Action Complaint**

Counsel and the Court discussed the impact of the Louisiana Fourth Circuit Court of Appeal case, *Katz v. Allstate Insurance Company*, 2005 WL 1661816 (La. App. 4<sup>th</sup> Cir. Feb. 2, 2005). In that case, the Louisiana Fourth Circuit appears to hold that, under Louisiana Civil Code article 596, a plaintiff who is otherwise eligible for a class action opts out of the class

whenever he or she files an individual suit. This may negate the tolling of prescription that the filing of a class action would otherwise cause. Louisiana attorneys involved in the Vioxx MDL are concerned that this case may affect the Louisiana Master Class Action Complaint. Moreover, Plaintiffs' liaison counsel are concerned that this may affect the plaintiffs whose cases are to be set for trial in the coming year: liaison counsel intends to file individual suits on behalf of these plaintiffs so that their cases may be tried individually. The Court suggested a joint stipulation stating that the filing of an individual suit prior to class certification does not act as a waiver or opt-out. Liaison counsel are to confer on this issue.

#### **4. Privilege Log**

Phil Wittmann reported that Merck is working to compile the privilege log. Counsel have been selected by the Plaintiffs' and Defendants' committees to meet over the coming weeks to resolve issues involving the nature and specificity of the privilege log. Defendants' liaison counsel shall report the dates and times of these meetings to the Court, and the counsel involved with the privilege log shall schedule meetings with the Court to update the Court regarding the privilege log.

#### **5. Document Discovery**

Counsel reported that document discovery is ongoing. Defendants filed a memorandum on August 24 regarding the conference held on that date, and Defendants' point-by-point response to discovery requests was due on August 29, the date of the hurricane. Plaintiffs agreed to extend the deadline for this response, and counsel are conferring to establish a new deadline.

#### **6. Motion to Produce Foreign Discovery**

Defendants informed the Court that they need additional time to respond to this motion.

Accordingly, IT IS ORDERED that Defendants response to the motion to compel shall be due on or before Monday, September 19, 2005.

**7. Tolling Agreements**

Defendants' liaison counsel reported that they are receiving tolling agreements in their Baton Rouge office. Currently, Defendants have thirty days to respond to these agreements. Plaintiffs agreed to extend deadlines for Defendants' response, and counsel are conferring regarding the length and effects of the extension. Liaison counsel shall inform the Court regarding the new deadlines on or before Friday, September 9, 2005. Despite the extension for Defendants' response, all counsel are encouraged to file tolling agreements as soon as possible.

**8. Detailer List**

The Detailer List is currently in Chambers in New Orleans. The Court will retrieve this list as soon as possible. Defendants shall send a duplicate copy under seal to the Chambers of Judge Eldon E. Fallon, U.S. District Court, 515 Rusk Street, Room 8613, Houston, Texas 77002. Plaintiffs' liaison counsel may arrange to review the list at a location in Lafayette or Baton Rouge.

**9. Class Action Schedule**

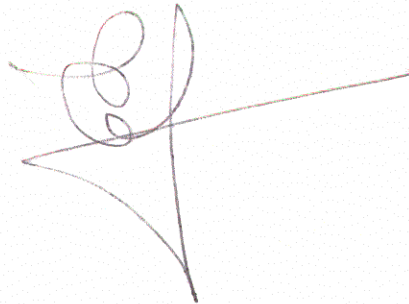
Phil Wittmann shall confer with Arnold Levin regarding the class action schedule, including the filing of motions to dismiss, and shall report to the Court on this schedule on or before Friday, September 9, 2005.

**10. Location for November Trial**

The Court consulted counsel regarding the potential location for the November trial. The Court emphasized that the jury pool is the primary concern, considering the difficulty in calling a

representative pool from southeast Louisiana at this time. Liaison counsel and the Court are researching the potential constitutional and logistical implications of a change in venue.

The next Vioxx telephone status conference shall be held on Friday, September 9, 2005, at 10:00 a.m.

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