

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

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION L
	*	
This document relates to All Cases	*	JUDGE FALLON
	*	
	*	MAGISTRATE JUDGE KNOWLES
* * * * *	*	

**JOINT REPORT NO. 85 OF PLAINTIFFS'
AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") submit this Joint Report No. 85.

I. CLASS ACTIONS

By Order and Reasons entered January 3, 2014, following a fairness hearing on December 13, 2013, the Court granted the motion for final approval of the Vioxx consumer class settlement and entered final judgment dismissing with prejudice all Released Claims of the Class against all Released Persons as described in the order [Rec. Doc. 64784].

The class notice program, as ordered by the Court was completed and claims were submitted. BrownGreer advises that the claims review process is now complete and that they will be in a position to pay approved claims in short order now that the Fifth Circuit has ruled on objector Geneva Meloy's motion to voluntarily dismiss her appeal. *See infra* Section IV. BrownGreer will be available to address the status of their efforts at the February 26, 2015 status conference.

The parties will be prepared to discuss these matters further at the monthly status conference on February 26, 2015.

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

The only matters relating to pending personal injury cases subject to PTOs 28, 29 and 43 are the following:

On April 25, 2012, the Court issued its Order & Reasons addressing the PSC's Motion to Amend Pre-Trial Order No. 19 [Rec. Doc. 63585] and Ms. Oldfather's 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]. The Order required certain further steps by the PSC and directed the parties to meet and confer, after which Ms. Oldfather's Motion could be revisited if appropriate. The parties continue to exchange information in this regard.

On October 24, 2013, Merck filed motions for summary judgment in six cases. Since then, five of the cases have been resolved or are on the verge of being resolved, leaving a motion pending only in the *Val Silva* case [Rec. Doc. 64662]. The motion is fully briefed.

On March 28, 2014, Merck filed a Motion for Summary Judgment in the *Jo Levitt* case [Rec. Doc. 64878]. At the same time, Merck filed a Motion to Stay Expert Discovery pending a ruling on its motion for summary judgment [Rec. Doc. 64879]. By Order entered April 15, 2014, the Court granted the motion and stayed all remaining expert discovery pending resolution of Merck's motion for summary judgment [Rec. Doc. 64903]. Merck's motion for summary judgment was set with oral argument on December 3, 2014 [Rec. Doc. 64878], but was continued based upon Merck's intent to file a second dispositive motion [Rec.Doc. 65068]. On December 22, 2014, Merck filed a Motion for Summary Judgment Regarding Proximate

Causation [Rec. Doc. 65087]. The motion was noticed for submission on February 25, 2015. On January 20, 2105, plaintiff filed a Motion for Extension of Time to oppose Merck's motion [Rec. Doc. 65136]. By Order entered January 21, 2015, the Court granted plaintiff's motion, ordered that her opposition be filed by February 20, 2015, and set the motion for summary judgment for submission on February 26, 2015 [Rec. Doc. 65138]. On February 16, 2015, plaintiff filed a Second Motion for Extension of Time [Rec. Doc. 65151]. By Order entered February 18, 2015, the Court granted plaintiff until February 24, 2015 to file her opposition [Rec. Doc. 65153]. The matter is noticed for submission on February 26, 2015 and the parties will be prepared to discuss this matter further at the status conference on February 26, 2015.

On August 20, 2014, Merck filed a Motion to Dismiss With Prejudice Under Rule 25(a)(1) in the *Byrd* case [Rec. Doc. 65012]. On September 2, 2014, decedent's husband filed a suggestion of death and motion for substitution of parties [Rec. Doc. 65019], and also filed an opposition to Merck's motion [Rec. Doc. 65020]. The motion was noticed for submission on September 17, 2014. The parties subsequently resolved the case and on February 5, 2015 filed a Stipulation of Dismissal With Prejudice [Rec. Doc. 65149].

Since the status conference on December 16, 2014, Merck has filed a number of motions designed to close-out cases still remaining on the docket. These include:

1. On December 9, 2014, Merck filed a Supplemental Motion to Dismiss Regarding Estate Representative Plaintiffs [Rec. Doc. 65072]. By Order entered December 10, 2014, the Court granted the motion [Rec. Doc. 65079].

2. On December 19, 2014, Merck filed a Motion to Dismiss Plaintiffs Excluded from Amended Complaints [Rec. Doc. 65084]. By Order entered December 23, 2014, the Court granted the motion [Rec. Doc. 65100].

3. On December 22, 2014, Merck filed an Omnibus Motion to Supplement Prior Orders of Dismissal Regarding Derivative Plaintiffs [Rec. Doc. 65097]. By Order entered January 5, 2015, the Court granted the motion [Rec. Doc. 65123].

4. On December 22, 2014, Merck filed a Second Motion for Supplemental Order of Dismissal Addressing Plaintiff Name Discrepancies [Rec. Doc. 65098]. By Order entered January 6, 2015, the Court granted the motion [Rec. Doc. 65126].

5. On December 23, 2015, Merck filed a Second Motion to Dismiss Regarding Orders on Stipulations of Dismissal [Rec. Doc. 65101]. The motion is under submission.

6. On December 23, 2015, Merck filed a Third Motion for Supplemental Order of Dismissal Regarding Estate Representative Plaintiffs [Rec. Doc. 65102]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65127].

7. On December 23, 2014, Merck filed a Motion to Dismiss Claims of Plaintiffs Named Only in Case Captions [Rec. Doc. 65103]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65128].

8. On December 23, 2014, Merck filed a Motion to Dismiss Duplicative Actions [Rec. Doc. 65104]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65130].

9. On December 29, 2014, Merck filed a Motion to Dismiss for Failure to Prosecute or Based on Previous Orders of Dismissal [Rec. Doc. 65110]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65131].

10. On January 6, 2015, Merck filed a Motion to Dismiss Involuntary Plaintiffs [Rec. Doc. 65112]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65129].

11. On January 6, 2015, Merck filed a Second Motion to Dismiss Plaintiffs Solely Asserting Celebrex and/or Bextra Claims [Rec. Doc. 65113]. By Order entered January 7, 2015, the Court granted the motion [Rec. Doc. 65132].

12. On January 26, 2015, Merck filed a Motion to Dismiss Duplicative Actions [Rec. Doc. 65141]. By Order entered January 27, 2015, the Court granted the motion [Rec. Doc. 65145].

13. On January 26, 2015, Merck filed a Motion for Supplemental Order of Dismissal Addressing Case Number Discrepancies [Rec. Doc. 65142]. By Order entered January 27, 2015, the Court granted the motion [Rec. Doc. 65146].

14. On February 4, 2015, Merck filed a Third Omnibus Motion to Supplement Prior Orders of Dismissal Regarding Derivative Plaintiffs [Rec. Doc. 65147]. By Order entered February 9, 2015, the Court granted the motion [Rec. Doc. 65150].

On December 9, 2014, Merck filed a Motion and Rule to Show Cause why the Claims of Plaintiff Dianne Brown (no. 06-2214) Should Not be Dismissed with Prejudice for Failure to Prosecute [Rec. Doc. 65071]. On December 10, 2014, the Court issued an Order that Ms. Brown file any opposition by January 15, 2015, and that Merck file any reply by January 19, 2015 [Rec. Doc. 65076]. On January 14, 2015, Merck filed a Withdrawal of its motion as moot [Rec. Doc. 65133]. The case has since been resolved.

On January 23, 2015, Merck filed a Motion, Rule and Incorporated Memorandum to Show Cause Why Case Should Not Be Dismissed With Prejudice for Failure to Comply With

the Requirements of PTO 29 in the *Andrea Cordel* case [Rec. Doc. 65140]. By Order entered January 26, 2015, the Court ordered that any opposition to the motion be filed by February 18, 2015 [Rec. Doc. 65144]. Plaintiff has not filed any opposition. The motion is noticed for submission on February 26, 2015 [Rec. Doc. 65148].

The parties will be prepared to discuss these matters further at the status conference on February 26, 2015.

III. OTHER PENDING MOTIONS/MATTERS

On September 15, 2011, Ms. Oldfather filed a Motion and Supporting Memorandum to Require Court Approval of Liaison Counsel's Fee of Michael A. Stratton [Rec. Doc. 63389]. That matter was argued on September 21, 2011. No response had been filed by Mr. Stratton. On June 6, 2012, the Court entered an Order [Rec. Doc. 63900] adding this matter to the agenda of the status conference on June 14, 2012, where it was further discussed. On August 15, 2012, Mr. Stratton filed a "Status Conference Memorandum regarding the Liaison Counsel Objection Heard on September 21, 2011" [Rec. Doc. 64064]. The parties will be prepared to discuss this matter further at the status conference on February 26, 2015. The parties are consulting with the Clerk to address issues regarding the docket.

IV. APPEALS

On February 7, 2014, an appeal was docketed with the Fifth Circuit Court of Appeals in the matter of *Geneva Meloy, Plaintiff/Appellant v. Merck and Company, Incorporated, Defendant/Appellee*, Fifth Circuit No. 14-30109, from the Order giving final approval of the consumer class action settlement. On February 25, 2014, Merck filed a Motion to Dismiss Appeal for Lack of Jurisdiction. On March 7, 2014, Objector/Appellant filed an Opposition to the Motion to Dismiss Appeal for Lack of Jurisdiction. On March 10, 2014, Merck filed a Reply to the Opposition to the Motion to Dismiss Appeal for Lack of Jurisdiction.

On May 15, 2014, the Fifth Circuit ordered that the motion be carried with the case and entered a briefing schedule. Briefing was completed and the case was set for oral argument on March 3, 2015. On February 18, 2015, Objector/Appellant filed a Motion to Voluntarily Dismiss Appeal [Doc. 005129369615]. By Order entered February 23, 2015, the appeal was dismissed [Doc. 00512944455].

V. NEXT STATUS CONFERENCE

Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel 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. 85 of Plaintiffs' and Defendants' Liaison Counsel and Ann Oldfather, Liaison Counsel for certain pending personal injury cases, has been served upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8C, 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 24th day of February, 2015.

/s/ Dorothy H. Wimberly _____

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

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PRODUCTS LIABILITY LITIGATION * **SECTION L**
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* **JUDGE FALLON**
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* **MAGISTRATE JUDGE KNOWLES**
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SUGGESTED AGENDA FEBRUARY 26, 2015 STATUS CONFERENCE

- I. Class Actions
- II. Pending Personal Injury Cases Subject to PTOs 28, 29 and 43
- III. Other Pending Motions/Matters
- IV. Appeals
- V. Next Status Conference