

P-44
ENTX

MASTER DOCKET NO. 2005-59499

In Re:
Texas State Vioxx Litigation
This Document Relates to All Cases

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
157TH JUDICIAL DISTRICT

PRETRIAL ORDER No. 8
Rules and Procedures Relating to
All Cases Filed or Transferred On or After November 9, 2007

This Order applies to all plaintiffs who file personal injury claims directly in, or whose claims are transferred into this Texas Coordinated Proceeding, Case No. 2005-59499 (“Proceeding”), on or after November 9, 2007 (“Post 11.09 Plaintiffs”). Persons who represent themselves *pro se* in this Proceeding shall comply fully with all obligations required of counsel by this Order, unless otherwise stated.

I. PRESERVATION NOTICE REQUIREMENT

- A. Within ten (10) days of the transfer of a case into this Proceeding, counsel -- or if a plaintiff is proceeding *pro se*, the plaintiff -- shall be responsible for ensuring that all records in the possession of the plaintiffs’ pharmacies and healthcare providers as described in paragraph (B) below have been preserved, collected and reviewed. Within ten (10) days of the transfer into this Proceeding, counsel shall notify the individuals or entities listed below in Paragraph B, by registered mail, that they may have records relevant to the putative plaintiff’s (“Plaintiff or Plaintiff’s”) claim (“Claim”) in the In Re Vioxx® Litigation (“Litigation”) and that any records relating to the Plaintiff must be preserved pursuant to Case Management Order No. 2 entered by this Court on October 19, 2005 (the “Notice”), pending collection by the Plaintiff. Plaintiffs proceeding *pro se* must notify the individuals or entities listed below in Paragraph 2 within ten (10) days of the transfer into this Proceeding.

FILED
Theresa Chang
District Clerk

NOV 09 2007

Time: _____
Harris County, Texas
By _____
Deputy

- B. The following individuals or entities must be notified pursuant to Paragraph 1 above:
1. All Pharmacies that dispensed any medications to the Plaintiff for the period from January 1, 1995 to the present;
 2. All Physicians, Medical Facilities, other Healthcare Providers and/or others persons (“other Providers”) who Plaintiff claims provided any samples of Vioxx to the Plaintiff;
 3. All Physicians, Medical Facilities and/or other Healthcare Providers who prescribed Vioxx for the Plaintiff;
 4. All Physicians and/or other Healthcare Providers who treated Plaintiff for the period from January 1, 1995 to the present; and
 5. If Plaintiff is seeking lost wages, all of his employers for the period from three years prior to the date for which he is seeking lost wages through the last day for which Plaintiff is seeking lost wages.
- C. A copy of Case Management Order No. 2 shall be attached to the Notice and all copies of the Notice shall be preserved by Counsel for Plaintiff for so long as the claim remains pending in this Proceeding.
- D. Within ten (10) days of the transfer of the case into this Proceeding, Plaintiff shall serve a statement listing the names and addresses of all individuals or entities to which Notices were sent, along with copies of the Notices and a signed certification that the Notices were sent as required by this Order. Service by Plaintiffs shall be made in accordance with the service procedures of Case Management Order No. 2.
- E. Plaintiffs who fail to fully comply with the requirements of this Order shall be given notice by e-mail or fax from Defendants’ Liaison Counsel or his designee and shall be provided thirty (30) additional days to cure such deficiency (“Cure Period”). No other extensions will be granted, except for good cause shown. If Plaintiff fails to cure the deficiency within the Cure Period, Defendant’s Liaison Counsel shall file a Motion to Show Cause why the claim should not be dismissed with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the Notice to Show Cause. Any failure to respond to the Motion within the required period of time shall lead to the dismissal of the claim with prejudice, except for good cause shown.
- F. Plaintiff may not seek to introduce into evidence at trial any document or information asserting that Vioxx was dispensed by a pharmacy or that Vioxx was provided to the Plaintiff as a sample if a Notice were not sent to the Plaintiff’s pharmacy, physician, other healthcare provider and/or Other Provider as required by this Order, except upon leave of court for good cause shown. A Plaintiff who fails to comply with this Order may also be subject to other sanctions or orders.

II. DISCOVERY REQUIREMENTS

- A. Within forty-five (45) days of the transfer of his or her case into this Proceeding, all Post 11.09 Plaintiffs who claim to have suffered an injury as a result of the use of Vioxx must produce the following information:
1. All pharmacy records regarding the dispensing of drugs to the Plaintiff for the period from January 1, 1995 to the present, along with a signed certification from the respective pharmacy or pharmacies indicating that the production is complete.
 2. If any death is claimed, a statement to that effect along with a copy of the death certificate and autopsy report, if one was performed;
 3. All medical records relating to the Plaintiff from all healthcare providers requested in the Amended and Supplemental Plaintiff Profile Form for the period from January 1, 1995 to the present, along with a signed certification from each Healthcare Provider who has records relating to the Plaintiff indicating that all records in the possession, custody or control of the Provider have been produced.
 4. An Amended Plaintiff Profile Form (attached as Exhibit A), records requested therein, and executed Authorizations for Release of Records pursuant to Case Management Order No. 2. Service by Plaintiffs shall be made in accordance with the service procedures of Case Management Order No. 2.
 5. Answers to the Interrogatories set out in Exhibit B. Service by Plaintiffs shall be made in accordance with the service procedures of Case Management Order No. 2.
 6. An affidavit signed by the Plaintiff (i) attesting that records have been collected from all pharmacies that dispensed drugs to, or for, the plaintiff; (ii) attesting that all medical records described in paragraph (3) above have been collected; and (iii) attesting that all records collected pursuant to paragraphs (1), (2) and (3) have been produced pursuant to the Order, along with an index or list identifying the source of the records. Service by Plaintiffs shall be made in accordance with the service procedures of Case Management Order No. 2.
 7. A Rule 195.5 case-specific expert report from a medical expert attesting (i) that the Plaintiff suffered an injury and (ii) that Vioxx caused the injury. The case specific expert report must include (i) an explanation of the basis of the attestation that Vioxx caused the plaintiff to suffer the injury; (ii) an identification of any other causes that were considered in formulating the opinion; (iii) a description of the specific injuries allegedly suffered; and (iv) an identification of all documents relied on by the expert

in forming his opinions. Service by Plaintiffs shall be made in accordance with the service procedures of Case Management Order No. 2.

- B. If any of the documents described in paragraphs A (1), (2) and (3) do not exist, the Plaintiff shall state that fact in his or her affidavit and the reason why they do not exist and provide a certified “No Records Statement” from the pharmacy or healthcare provider.
- C. Plaintiffs who fail fully to comply with the requirements of the Order shall be given notice by e-mail or fax from Defendants’ Liaison Counsel or his designee and shall be provided thirty (30) additional days to cure such deficiency (“Cure Period”). No other extensions will be granted, except for good cause shown. If Plaintiff fails to cure the deficiency within the Cure Period, Defendant’s Liaison Counsel shall file a Motion to Show Cause why the claim should not be dismissed with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the Notice to Show Cause. Any failure to respond to the Motion within the required period of time shall lead to the dismissal of the claim with prejudice.
- D. Nothing in this Order abrogates or replaces each Plaintiff’s obligation to submit the Plaintiff Profile Form, authorizations, and other materials required under Case Management Order No. 2. The Plaintiff need not re-submit a Plaintiff Profile Form if one has already been submitted with respect to his or her claim.

III. ATTORNEYS FEES FOR POST 11.09 PLAINTIFFS

This Court finds that:

- A. The Status of the Litigation:
 - 1. Prior to September 30, 2004, approximately 400 lawsuits had been filed against Merck & Co. by plaintiffs alleging various injuries from the use of Vioxx. In New Jersey, an Order had been entered on May 20, 2003 establishing a coordinated proceeding for Vioxx litigants and, on September 30, 2002, an Order was entered in California for the same purpose.
 - 2. On September 30, 2004, Merck withdrew Vioxx from the market. The withdrawal of Vioxx led to extensive publicity nationwide in newspapers and magazines, on television and radio, and across the Internet. While plaintiffs’ counsel had extensively advertised seeking clients to pursue claims against Merck relating to the use of Vioxx before September 30, 2004, that advertising increased markedly throughout the country after the withdrawal. Like the publicity relating to the withdrawal, the advertising apprised the public of possible claims they might have against Merck in connection with the use of Vioxx.

3. By December 31, 2004, three months after the withdrawal of Vioxx, approximately 923 lawsuits were on file, encompassing approximately 3291 plaintiffs.
4. On August 25, 2005, the Multidistrict Litigation Panel for Texas ruled that cases alleging injury from the use of Vioxx filed in Texas were to be transferred to one district court for coordination. The Panel decided that the cases should be transferred to the 157th District Court of Harris County and appointed the undersigned to conduct the consolidated and coordinated proceedings.
5. By the first year anniversary of the withdrawal of Vioxx, more than 8,900 Vioxx lawsuits had been filed involving more than 18,500 plaintiffs. As of the date of this Order, there are more than 26,800 active Vioxx cases on file in various courts throughout the country, involving more than 47,500 plaintiffs and an additional 13,000 claims on tolling agreements for a total of more than 60,500 claimants. By any measure, the scale of this litigation is large.
6. Discovery in this litigation has also been extensive. More than 54 million pages of documents and a terabyte of data have been produced by Merck pursuant to various requests from plaintiffs' counsel along with another 86 million pages of data from Merck Profile Forms. More than 1,800 depositions have also been taken in the litigation and depositions have consumed more than 2,000 days and comprise more than 380,000 pages of testimony. Also, more than fifteen trials have been conducted, including two in Texas.

B. Pharmaceutical Tort Litigation and Contingent Fees.

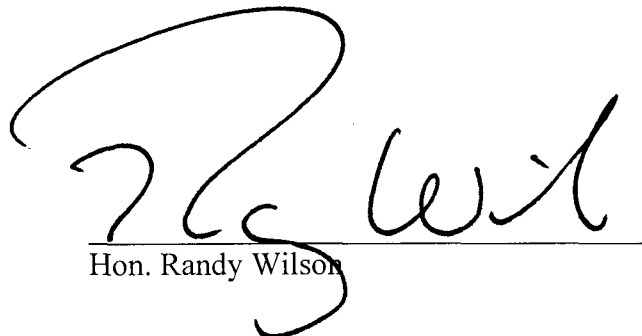
1. It is the practice in the United States for lawyers bringing claims on behalf of clients in personal injury actions to be compensated pursuant to contingent fee agreements. That is, the lawyer's fee is contingent on the lawyer's success in the recovery of compensation from another party for his client.
2. In large-scale pharmaceutical tort litigation, it is particularly commonplace for lawyers representing plaintiffs to be compensated through contingent fees.
3. Large-scale pharmaceutical tort litigation (which can be similar to traditional mass tort litigation in scale) can be, and usually is, extraordinarily expensive, particularly in the early stages. It is well understood that proving cases in mass tort litigation, at least at first, is expensive. Experts of various kinds may be needed and discovery from the defendants may take a long time and much effort.

4. However, the cost and risk inherent in prosecuting the first series of claims in a large-scale pharmaceutical tort is not the same throughout the litigation.
 5. Because of the extensive publicity and extensive advertising that followed the withdrawal of Vioxx, users of Vioxx (and their lawyers) have had ample notice of the possibility that they may have a claim against Merck in connection with their use of the drug. The uncertainty of the number of potential claims in a litigation of this magnitude makes the management of this proceeding exceedingly difficult both for the parties and the Court.
- C. The Vioxx Litigation is an extremely mature litigation. To date, MDL and state court lawyers have tried 17 cases, taken over 1,800 depositions, more than 50 million pages of documents have been produced plus an enormous volume of electronic data, and substantial Third Party discovery has occurred. Because of this extensive work done by the Federal Multidistrict Litigation Plaintiffs' Steering Committee ("PSC") and certain state court lawyers, the cost of litigation Vioxx claims has been substantially reduced.
- D. Given the extensive amount of discovery and trial preparation that has been undertaken and already achieved -- as well as the work on, and lessons learned from, bellwether trials conducted in Courts over the last several years -- counsel filing new claims can reasonably expect to expend much less time and resources prosecuting those cases than counsel who have been involved in those proceedings from the beginning, and I encourage counsel to consider such disparity in negotiating attorneys' fees.

IV. PENALTIES FOR FRAUD AND DECEPTION

Any Plaintiff (and his or her attorneys) who submits false or intentionally misleading information, or otherwise attempts to satisfy the documentation requirements of this Order through any form of deception, dishonesty or fraud shall be subject to appropriate sanctions (including monetary sanctions and costs) and dismissal with prejudice pursuant to Texas Rule of Civ. Proc. 215.3.

Signed November 9, 2007



Hon. Randy Wilson

EXHIBIT A

**AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS PURSUANT TO
45 C.F.R. § 164.508 (HIPAA)**

Name: _____

Date of Birth: _____

Social Security Number: _____

I hereby authorize _____

to release all existing medical records and information regarding the above-named person's medical care, treatment, physical condition, and/or medical expenses revealed by observation or treatment past, present and future to the law firms of **Fulbright & Jaworski L.L.P., and Baker Botts L.L.P., and/or their designated agent, Litigation Management, Inc.** These records shall be used solely in connection with the currently pending litigation involving the person named above. This authorization shall cease to be effective as of the date on which that litigation concludes.

I understand that the health information being used/disclosed may include information relating to the diagnosis and treatment of Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS), sexually transmitted disease and drug and alcohol disorders.

This authorization also may include x-ray reports, CT scan reports, MRI scans, EEGs, EKGs, sonograms, arteriograms, fetal monitor strips, discharge summaries, photographs, surgery consent forms, informed consent forms regarding family planning, admission and discharge records, operation records, doctor and nurses notes (excluding psychotherapy notes maintained separately from the individual's medical record that document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session by referring to something other than medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress), prescriptions, medical bills, invoices, histories, diagnoses, narratives, and any correspondence/memoranda and billing information. It also includes, to the extent such records currently exist and are in your possession, insurance records, including Medicare/Medicaid and other public assistance claims, applications, statements, eligibility material, claims or claim disputes, resolutions and payments, medical records provided as evidence of services provided, and any other documents or things pertaining to services furnished under Title XVII of the Social Security Act or other forms of public assistance (federal, state, local, etc.). This listing is not meant to be exclusive.

I understand that I have the right to revoke in writing my consent to this disclosure at any time, except to the extent that the above-named facility or provider already has taken action in reliance upon this authorization, or if this authorization was obtained as a condition of obtaining insurance coverage. I further understand that the above-named facility or provider cannot condition the provision of treatment, payment, enrollment in a health plan or eligibility for benefits on my provision of this authorization. I further understand that information disclosed pursuant to this authorization may be subject to redisclosure by the recipient to its clients, agents, employees, consultants, experts, the court, and others deemed necessary by the recipient to assist in this litigation.

Any photostatic copy of this document shall have the same authority as the original, and may be substituted in its place. Copies of these materials are to be provided at the expense of Fulbright & Jaworski L.L.P. or Baker Botts LLP.

Dated this ____ day of _____, 2005

If a representative, please describe your relationship to the plaintiff and your authority to act on his/her behalf:

**AUTHORIZATION FOR RELEASE OF PSYCHOLOGICAL/PSYCHIATRIC RECORDS
PURSUANT TO 45 C.F.R. § 164.508 (HIPAA)**

Name: _____

Date of Birth: _____

Social Security Number: _____

I hereby authorize _____

to release all existing records and information regarding the above-named person's psychological or psychiatric care, treatment, condition, and/or expenses revealed by observation or treatment past, present and future to the law firms of **Fulbright & Jaworski L.L.P. and Baker Botts L.L.P. and/or their designated agent, Litigation Management, Inc.** These records shall be used solely in connection with the currently pending litigation involving the person named above. This authorization shall cease to be effective as of the date on which that litigation concludes.

I understand that this authorization includes information regarding the diagnosis and treatment of psychiatric and psychological disorders, and that the health information being used/disclosed may include information relating to the diagnosis and treatment of Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS), sexually transmitted disease and drug and alcohol disorders.

This authorization also may include x-ray reports, CT scan reports, MRI scans, EEGs, EKGs, sonograms, arteriograms, fetal monitor strips, discharge summaries, photographs, surgery consent forms, informed consent forms regarding family planning, admission and discharge records, operation records, doctor and nurses notes (excluding psychotherapy notes maintained separately from the individual's medical record that document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session by referring to something other than medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress), prescriptions, medical bills, invoices, histories, diagnoses, psychiatric treatment and counseling records, psychological treatment and counseling records, narratives, and any correspondence/memoranda and billing information. It also includes, to the extent such records currently exist and are in your possession, insurance records, including Medicare/Medicaid and other public assistance claims, applications, statements, eligibility material, claims or claim disputes, resolutions and payments, medical records provided as evidence of services provided, and any other documents or things pertaining to services furnished under Title XVII of the Social Security Act or other forms of public assistance (federal, state, local, etc.). This listing is not meant to be exclusive.

I understand that I have the right to revoke in writing my consent to this disclosure at any time, except to the extent that the above-named facility or provider already has taken action in reliance upon this authorization, or if this authorization was obtained as a condition of obtaining insurance coverage. I further understand that the above-named facility or provider cannot condition the provision of treatment, payment, enrollment in a health plan or eligibility for benefits on my provision of this authorization. I further understand that information disclosed pursuant to this authorization may be subject to redisclosure

by the recipient to its clients, agents, employees, consultants, experts, the court, and others deemed necessary by the recipient to assist in this litigation.

Any photostatic copy of this document shall have the same authority as the original, and may be substituted in its place. Copies of these materials are to be provided at the expense of Fulbright & Jaworski L.L.P. or Baker Botts LLP.

Dated this ____ day of _____, 2005

If a representative, please describe your relationship to the plaintiff and your authority to act on his/her behalf:

**AUTHORIZATION FOR RELEASE OF PSYCHOTHERAPY NOTES PURSUANT TO
45 C.F.R. § 164.508 (HIPAA)**

Name: _____

Date of Birth: _____

Social Security Number: _____

I hereby authorize _____

to release all existing psychotherapy notes regarding the above-named person's medical care, treatment, physical/mental condition, and/or medical expenses revealed by observation or treatment past, present and future to the law firms of **Fulbright & Jaworski L.L.P. and Baker Botts L.L.P. and/or their designated agent, Litigation Management, Inc.** These records shall be used solely in connection with the currently pending litigation involving the person named above. This authorization shall cease to be effective as of the date on which that litigation concludes.

I understand that this authorization includes all psychotherapy notes maintained separately from the above-named person's medical record that document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session by referring to something other than medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress.

I understand that the health information being disclosed by these psychotherapy notes may include information relating to the diagnosis and treatment of Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS), sexually transmitted disease and drug and alcohol disorders.

I understand that I have the right to revoke in writing my consent to this disclosure at any time, except to the extent that the above-named facility or provider already has taken action in reliance upon this authorization, or if this authorization was obtained as a condition of obtaining insurance coverage. I further understand that the above-named facility or provider cannot condition the provision of treatment, payment, enrollment in a health plan or eligibility for benefits on my provision of this authorization. I further understand that information disclosed pursuant to this authorization may be subject to redisclosure by the recipient to its clients, agents, employees, consultants, experts, the court, and others deemed necessary by the recipient to assist in this litigation.

Any photostatic copy of this document shall have the same authority as the original, and may be substituted in its place. Copies of these materials are to be provided at the expense of Fulbright & Jaworski L.L.P. or Baker Botts LLP.

Dated this _____ day of _____, 2005

If a representative, please describe your relationship to the plaintiff and your authority to act on his/her behalf:

AUTHORIZATION FOR RELEASE OF RECORDS

Name: _____

Date of Birth: _____

Social Security Number: _____

I hereby authorize _____

to release all existing records and information in its possession regarding the above-named person's employment, income and education to the law firms of **Fulbright & Jaworski L.L.P. and Baker Botts L.L.P. and/or their designated agent, Litigation Management, Inc.** These records shall be used solely in connection with the currently pending litigation involving the person named above. This authorization shall cease to be effective as of the date on which that litigation concludes.

I understand that this authorization includes the above-named person's complete employment personnel file (including attendance reports, performance reports, W-4 forms, W-2 forms, medical reports, workers' compensation claims), and also includes all other records relating to employment, past and present, all records related to claims for disability, and all educational records (including those relating to courses taken, degrees obtained, and attendance records). This listing is not meant to be exclusive.

Any photostatic copy of this document shall have the same authority as the original, and may be substituted in its place. Copies of these materials are to be provided at the expense of Fulbright & Jaworski L.L.P. or Baker Botts LLP.

Dated this _____ day of _____, 2005

AUTHORIZATION FOR RELEASE OF RECORDS

Name: _____

Date of Birth: _____

Social Security Number: _____

I hereby authorize _____

to release all existing records and information in its possession regarding the above- named person's employment and education (with the exception of W-4 and W-2 forms) to the law firms of **Fulbright & Jaworski L.L.P. and Baker Botts L.L.P. and/or their designated agent, Litigation Management, Inc.** These records shall be used solely in connection with the currently pending litigation involving the person named above. This authorization shall cease to be effective as of the date on which that litigation concludes.

I understand that this authorization includes the above-named person's complete employment personnel file with the exception of W-4 and W-2 forms (including attendance reports, performance reports, medical reports, workers' compensation claims), and also includes all other records relating to employment, past and present, all records related to claims for disability, and all educational records (including those relating to courses taken, degrees obtained, and attendance records). This listing is not meant to be exclusive.

Any photostatic copy of this document shall have the same authority as the original, and may be substituted in its place. Copies of these materials are to be provided at the expense of Fulbright & Jaworski L.L.P. or Baker Botts LLP.

Dated this _____ day of _____, 2005

IN RE: VIOXX[®] PRODUCTS
LIABILITY LITIGATION

MDL Docket No. 1657

THIS RELATES TO:

Plaintiff: _____
(name)

Civil Action No:

PLAINTIFF PROFILE FORM

Other than in Sections I, those questions using the term “You” should refer to the person who used VIOXX[®]. Please attach as many sheets of paper as necessary to fully answer these questions.

I. CASE INFORMATION

- A. Name of person completing this form: _____
- B. If you are completing this questionnaire in a representative capacity (e.g., on behalf of the estate of a deceased person or a minor), please complete the following:
1. Social Security Number: _____
 2. Maiden Or Other Names Used or By Which You Have Been Known: _____
 3. Address: _____
 4. State which individual or estate you are representing, and in what capacity you are representing the individual or estate? _____
 5. If you were appointed as a representative by a court, state the:
Court: _____ Date of Appointment: _____
 6. What is your relationship to deceased or represented person or person claimed to be injured? _____
 7. If you represent a decedent's estate, state the date of death of the decedent and the address of the place where the decedent died: _____

C. Claim Information

1. Are you claiming that you have or may develop bodily injury as a result of taking VIOXX®? Yes _____ No _____ *If "yes,"*

a. What is your understanding of the bodily injury you claim resulted from your use of VIOXX®? _____

b. When do you claim this injury occurred? _____

c. Who diagnosed the condition? _____

d. Did you ever suffer this type of injury prior to the date set forth in answer to the prior question? Yes _____ No _____ *If "yes,"* when and who diagnosed the condition at that time? _____

e. Do you claim that that your use of VIOXX® worsened a condition that you already had or had in the past? Yes _____ No _____ *If "yes,"* set forth the injury or condition; whether or not you had already recovered from that injury or condition before you took VIOXX®; and the date of recovery, if any. _____

D. Are you claiming mental and/or emotional damages as a consequence of VIOXX®? Yes _____ No _____

If "yes," for each provider (including but not limited to primary care physician, psychiatrist, psychologist, counselor) from whom have sought treatment for psychological, psychiatric or emotional problems during the last ten (10) years, state:

a. Name and address of each person who treated you: _____

b. To your understanding, condition for which treated: _____

c. When treated: _____

d. Medications prescribed or recommended by provider: _____

II. PERSONAL INFORMATION OF THE PERSON WHO USED VIOXX®

A. Name: _____

B. Maiden or other names used or by which you have been known: _____

C. Social Security Number: _____

D. Address: _____

E. Identify each address at which you have resided during the last ten (10) years, and list when you started and stopped living at each one:

Address	Dates of Residence

F. Driver's License Number and State Issuing License: _____

G. Date of Place and Birth: _____

H. Sex: Male Female

I. Identify the highest level of education (high school, college, university or other educational institution) you have attended (even if not completed), the dates of attendance, courses of study pursued, and diplomas or degrees awarded:

Institution	Dates Attended	Course of Study	Diplomas or Degrees

J. Employment Information.

1. Current employer (if not currently employed, last employer):

Name	Address	Dates of Employment	Occupation/Job Duties

2. List the following for each employer you have had in the last ten (10) years:

Name	Address	Dates of Employment	Occupation/Job Duties

3. Are you making a wage loss claim for either your present or previous employment? Yes No

If "yes," state your annual income at the time of the injury alleged in Section I(C): _____

K. Military Service Information: Have you ever served in the military, including the military reserve or national guard? Yes No

If "yes," were you ever rejected or discharged from military service for any reason relating to your physical, psychiatric or emotional condition? Yes No

L. Insurance / Claim Information:

1. Have you ever filed a worker's compensation and/or social security disability (SSI or SSD) claim? Yes ___ No ___ *If "yes,"* to the best of your knowledge please state:

a. Year claim was filed: _____

b. Nature of disability: _____

c. Approximate period of disability: _____

2. Have you ever been out of work for more than thirty (30) days for reasons related to your health (other than pregnancy)? Yes ___ No ___ *If "yes,"* set forth when and the reason. _____

3. Have you ever filed a lawsuit or made a claim, other than in the present suit, relating to any bodily injury? Yes ___ No ___ *If "yes,"* state to the best of your knowledge the court in which such action was filed, case name and/or names of adverse parties, and a brief description for the claims asserted. _____

M. As an adult, have you been convicted of, or plead guilty to, a felony and/or crime of fraud or dishonesty? Yes ___ No ___ *If "yes,"* set forth where, when and the felony and/or crime. _____

III. FAMILY INFORMATION

A. List for each marriage the name of your spouse; spouse's date of birth (for your current spouse only); spouse's occupation; date of marriage; date the marriage ended, if applicable; and how the marriage ended (e.g., divorce, annulment, death): _____

B. Has your spouse filed a loss of consortium claim in this action? Yes ___ No ___

C. To the best of your knowledge did any child, parent, sibling, or grandparent of yours suffer from any type of cardiovascular disease including but not limited to: heart attack, abnormal rhythm, arteriosclerosis (hardening of the arteries), murmur, coronary artery disease, congestive heart failure, enlarged heart, leaking valves or prolapse, heart block, congenital heart abnormality, Scarlet Fever, Rheumatic Fever, atrial fibrillation, stroke? Yes ___ No ___ Don't Know ___ *If "yes,"* identify each such person below and provide the information requested.

Name: _____

Current Age (or Age at Death): _____

Type of Problem: _____

If Applicable, Cause of Death: _____

D. If applicable, for each of your children, list his/her name, age and address: _____

E. If you are claiming the wrongful death of a family member, list any and all heirs of the decedent. _____

IV. VIOXX® PRESCRIPTION INFORMATION

A. Who prescribed VIOXX® for you? _____

B. On which dates did you begin to take, and stop taking, VIOXX®? _____

C. Did you take VIOXX® continuously during that period?
Yes ___ No ___ Don't Recall ___

D. To your understanding, for what condition were you prescribed VIOXX®? _____

E. Did you renew your prescription for VIOXX®? Yes ___ No ___ Don't Recall ___

F. If you received any samples of VIOXX®, state who provided them, what dosage, how much and when they were provided: _____

G. Which form of VIOXX® did you take (check all that apply)?

- _____ 12.5 mg Tablet (round, cream, MRK 74)
- _____ 12.5 mg Oral Suspension
- _____ 25 mg Tablet (round, yellow, MRK 110)
- _____ 25 mg Oral Suspension
- _____ 50 mg Tablet (round, orange, MRK 114)

H. How many times per day did you take VIOXX®? _____

I. Did you request that any doctor or clinic provide you with VIOXX[®] or a prescription for VIOXX[®]? Yes ____ No ____ Don't Recall __

J. Instructions or Warnings:

1. Did you receive any written or oral information about VIOXX[®] before you took it? Yes __ No ____ Don't Recall ____

2. Did you receive any written or oral information about VIOXX[®] while you took it? Yes ____ No ____ Don't Recall ____

3. *If "yes,"*

a. When did you receive that information? _____

b. From whom did you receive it? _____

c. What information did you receive? _____

K. What over-the-counter pain relief medications, if any, were you taking at the same time you were taking VIOXX[®]? _____

V. MEDICAL BACKGROUND

A. Height: _____

B. Current Weight: _____

Weight at the time of the injury, illness, or disability described in Section I(C):

C. Smoking/Tobacco Use History: *Check the answer and fill in the blanks applicable to your history of smoking and/or tobacco use.*

___ Never smoked cigarettes/cigars/pipe tobacco or used chewing tobacco/snuff.

___ Past smoker of cigarettes/cigars/pipe tobacco or used chewing tobacco/snuff.

a. Date on which smoking/tobacco use ceased: _____

b. Amount smoked or used: on average _____ per day for _____ years.

___ Current smoker of cigarettes/cigars/pipe tobacco or user of chewing tobacco/snuff.

a. Amount smoked or used: on average _____ per day for _____ years.

___ Smoked different amounts at different times.

D. Drinking History. Do you now drink or have you in the past drank alcohol (beer, wine, whiskey, etc.)? Yes ___ No ___ *If "yes," fill in the appropriate blank with the number of drinks that represents your average alcohol consumption during the period you were taking VIOXX[®] up to the time that you sustained the injuries alleged in the complaint:*

_____ drinks per week,
 _____ drinks per month,
 _____ drinks per year, *or*

Other (describe): _____

E. Illicit Drugs. Have you ever used (even one time) any illicit drugs of any kind within one (1) year before, or any time after, you first experienced your alleged VIOXX[®]-related injury?" Yes ___ No ___ Don't Recall ___

If "yes", identify each substance and state when you first and last used it. _____

F. Please indicate to the best of your knowledge whether you have ever received any of the following treatments or diagnostic procedures:

1. Cardiovascular surgeries, including, but not limited to, the following, and specify for what condition the surgery was performed: open heart/bypass surgery, pacemaker implantation, vascular surgery, IVC filter placement, carotid (neck artery) surgery, lung resection, intestinal surgery:

Surgery	Condition	When	Treating Physician	Hospital

2. Treatments/interventions for heart attack, angina (chest pain), or lung ailments:

Treatment/Intervention	When	Treating Physician	Hospital

3. To your knowledge, have you had any of the following tests performed: chest X-ray, CT scan, MRI, angiogram, EKG, echocardiogram, TEE (trans-esophageal echo), bleeding scan, endoscopy, lung bronchoscopy, carotid duplex/ultrasound, MRI/MRA of the head/neck, angiogram of the head/neck, CT scan of the head, bubble/microbubble study, or Holter monitor?

Yes ___ No ___ Don't Recall ___ *If "yes," answer the following:*

Diagnostic Test	When	Treating Physician	Hospital	Reason

--	--	--	--	--

VI. DOCUMENTS

Please indicate if any of the following documents and things are currently in your possession, custody, or control, or in the possession, custody, or control of your lawyers by checking “yes” or “no.” Where you have indicated “yes,” please attach the documents and things to your responses to this profile form.

- A. Records of physicians, hospitals, pharmacies, and other healthcare providers identified in response to this profile form. Yes ____ No ____
- B. Decedent’s death certificate (if applicable). Yes ____ No ____
- C. Report of autopsy of decedent (if applicable). Yes ____ No ____

VII. LIST OF MEDICAL PROVIDERS AND OTHER SOURCES OF INFORMATION

List the name and address of each of the following:

- A. Your current family and/or primary care physician:

Name	Address

- B. To the best of your ability, identify each of your primary care physicians for the last ten (10) years.

Name	Address	Approximate Dates

- C. Each hospital, clinic, or healthcare facility where you have received inpatient treatment or been admitted as a patient during the last ten (10) years.

Name	Address	Admission Dates	Reason for Admission

D. Each hospital, clinic, or healthcare facility where you have received outpatient treatment (including treatment in an emergency room) during the last ten (10) years.

Name	Address	Admission Dates	Reason for Admission

E. Each physician or healthcare provider from whom you have received treatment in the last ten (10) years.

Name	Address	Dates of Treatment

F. Each pharmacy that has dispensed medication to you in the last ten (10) years.

Name	Address

G. If you have submitted a claim for social security disability benefits in the last ten (10) years, state the name and address of the office that is most likely to have records concerning your claim.

Name	Address

H. If you have submitted a claim for worker's compensation, state the name and address of the entity that is most likely to have records concerning your claim.

Name	Address

CERTIFICATION

I declare under penalty of perjury subject to 28 U.S.C. § 1746 that all of the information provided in this Profile Form is true and correct to the best of my knowledge, that I have completed the List of Medical Providers and Other Sources of Information appended hereto, which is true and correct to the best of my knowledge, that I have supplied all the documents requested in part VI of this declaration, to the extent that such documents are in my possession, custody, or control, or in the possession, custody, or control of my lawyers, and that I have supplied the authorizations attached to this declaration.

Signature

Print Name

Date

EXHIBIT B

MASTER DOCKET NO. 2005-59499

In Re:

Texas State Vioxx Litigation

**This Document Relates to All
Cases**

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

**DEFENDANT MERCK & CO., INC.'S
FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant Merck & Co., Inc. ("Merck"), by and through counsel, propounds on Plaintiff the following First Set of Interrogatories pursuant to Texas Rule of Civil Procedure 197. Plaintiff shall answer fully in writing and under oath within the applicable deadlines.

The following Definitions and Instructions are applicable and are expressly incorporated into these Interrogatories:

DEFINITIONS AND INSTRUCTIONS

1. “Merck & Co., Inc.” and “Merck” means any of the subsidiaries, divisions, departments, affiliates, predecessors, successors or offices of the defendant and by whatever name known, and all present and former officers, directors, employees, trustees, principals, agents, and representatives of Merck, as well as any person acting or purporting to act on its behalf.

2. “Plaintiff” or “you” or “your” or “yourself” means Plaintiff(s), any of his or her agents, representatives or assigns, as well as any person acting or purporting to act on his or her behalf.

3. “Vioxx®” means the prescription drug with the chemical name rofecoxib which is the subject of this lawsuit.

4. “Document” means any writing or record of any type, however produced and whatever the medium on which it was produced or reproduced, and includes, without limitation, the original and any non-identical copy (whether different from the original because of handwritten notes or underlying on the copy or otherwise) and all drafts of papers, letters, telegrams, telexes, notes, notations, memoranda of conversations or meeting, calendars, diaries, minutes of meetings, interoffice communications, electronic mail, message slips, notebooks, agreements, reports, articles, books, tables, charts, schedules, memoranda, medical records, x-rays, advertisements, pictures, photographs, films, accounting books or records, billings, credit card records, electrical or magnetic recordings or tapes, or any other writings, recordings, or pictures of any kind or description.

5. The term “communications” means all occasions on which information was conveyed from one person to another (a) by means of a document, or (b) verbally, including by means of a telephone or other mechanical or electronic device.

6. A response to a request contained in these Interrogatories to “identify” a document shall be sufficient if the individual having custody of the document is identified by name and address, and the document is identified or described by (a) the date, (b) the author, (c) the addressee(s), (d) the type of document (i.e., letter, memorandum, note, etc.), (e) the subject matter, and (f) the number of pages. In lieu of identifying a document, you may attach a copy of such document or documents to your answers to these Interrogatories.

7. A request to “identify” a person shall be construed as a request for (a) the full name of such person, (b) all other names which such person has used for him or herself, (c) the social security number of such person, (d) the date and place of birth of such person, (e) the present employer of such person, (f) the present office or business address and business telephone number of such person, (g) the present residential address and residential telephone number of such person, (h) the nature of the relationship between the plaintiff and such person, (i) the dates of commencement and termination of that relationship, and (j) the reason for the termination of that relationship. If you do not know or cannot determine the present address, telephone number or present employer of any person referred to in your answers to these Interrogatories, please give the last known address, telephone number or employer.

8. Throughout these interrogatories, including the definition of terms, words used in the masculine gender include the feminine; and words used in the singular

include the plural. Where the word “or” appears herein, the meaning intended is the logical inclusion “or” i.e., “and/or.” Where the word “include” or “including” appears, the meaning intended is “including, but not limited to.”

9. When requested to “state each fact” or the “facts upon which you rely” relating to any allegation, fact, legal theory, contention or denial, please furnish a full and complete statement of the factual basis of any such allegation, fact, legal theory, contention or denial, the reason or rationale that such facts so relate or pertain and how such facts so relate or pertain.

INTERROGATORIES

INTERROGATORY NO. 1

Please identify, for the present civil action, the title of the action, the civil action number, the name of the court in which this action was filed, the name of the court in which this action is currently pending, and the full name, address, telephone number, and facsimile number of the principal attorney representing you in this action.

ANSWER:

INTERROGATORY NO 2:

Please identify each person having knowledge or information regarding the facts, circumstances, injuries, damages, or allegations contained in your Complaint.

ANSWER:

INTERROGATORY NO. 3:

Provide the factual basis and a computation for each category of damages you claim and identify all documents upon which you will rely in support of each category of damages.

ANSWER:

INTERROGATORY NO. 4:

Please state whether you have been reimbursed or filed a claim under an insurance policy with respect to alleged injuries that form the basis of this action. If so, for each claim, identify the person with whom you filed a claim, the insurer, the policyholder, the policy number, and the claim number.

ANSWER:

INTERROGATORY NO. 5:

State whether you have undergone a physical examination in connection with any application for life insurance since January 1, 1990. If so, state the date of any such examination, where it was conducted, who conducted the examination, whether there is a report of such physical examination and the life insurance company on whose behalf the examination was conducted. If a report was made, attach a true copy. If any such physical examination resulted in denial of your application, please describe such action.

ANSWER:

INTERROGATORY NO. 6:

Identify all information, instructions, warnings, or precautions about Vioxx obtained by you from any source. For each item of information, instruction, warning, or precaution, identify the source, the date you received it, and if you relied upon it in any manner, describe what action you took or did not take as a result.

ANSWER:

INTERROGATORY NO. 7:

State whether you have ever filed a claim (including a worker's compensation or a social security disability claim) or instituted a legal proceeding for any personal, economic or other injury. If so, state the date and nature of the injuries and damages claimed, the date and place of filing for each such claim or legal proceeding, the full names and addresses of all parties to the action and their attorneys, if any, the name of the court or other forum, the title of the action and the case number, and the present status of each claim or legal proceeding. If terminated, give the final result of each such claim or legal proceeding, including any monetary judgment, settlement or award.

ANSWER:

INTERROGATORY NO 8:

Please identify whether you are in possession of any unused Vioxx. If so, please identify the number of tablets or amount of oral suspension in your possession, the date of the prescription to which the unused Vioxx relates, and the current location of the unused Vioxx.

ANSWER:

INTERROGATORY NO. 9:

Please identify all communications, whether oral, written or electronic (including email, communications as part of internet “chat rooms” or e-mail groups), with others not including your counsel, regarding Vioxx or your alleged injuries.

ANSWER:

INTERROGATORY NO 10:

Please identify whether you conducted any research on your computer regarding Vioxx, the current location of your computer, whether you ever sent and/or received any emails relating to Vioxx or your alleged injuries (other than those from your attorney), and whether you are in possession of the emails sent or received relating to Vioxx or your alleged injuries.

ANSWER:

DATE: _____

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By _____

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**ATTORNEYS FOR DEFENDANT
MERCK & CO., INC.**

MASTER DOCKET NO. 2005-59499

In Re:

Texas State Vioxx Litigation

**This Document Relates to All
Cases**

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

**DEFENDANT MERCK & CO., INC.'S
FIRST SET OF INTERROGATORIES TO LOSS OF CONSORTIUM PLAINTIFF**

Defendant Merck & Co., Inc. ("Merck"), by and through counsel, propounds on Plaintiff the following First Set of Interrogatories pursuant to Texas Rule of Civil Procedure 197. Plaintiff shall answer fully in writing and under oath within the applicable deadlines.

The following Definitions and Instructions are applicable and are expressly incorporated into these Interrogatories:

DEFINITIONS AND INSTRUCTIONS

1. "Merck & Co., Inc." and "Merck" means any of the subsidiaries, divisions, departments, affiliates, predecessors, successors or offices of the defendant and by whatever name known, and all present and former officers, directors, employees, trustees, principals, agents, and representatives of Merck, as well as any person acting or purporting to act on its behalf.

2. “Plaintiff” or “you” or “your” or “yourself” means Plaintiff(s) any of his or her agents, representatives or assigns, as well as any person acting or purporting to act on his or her behalf.

3. “Vioxx®” means the prescription drug with the chemical name rofecoxib which is the subject of this lawsuit.

4. “Document” means any writing or record of any type, however produced and whatever the medium on which it was produced or reproduced, and includes, without limitation, the original and any non-identical copy (whether different from the original because of handwritten notes or underlying on the copy or otherwise) and all drafts of papers, letters, telegrams, telexes, notes, notations, memoranda of conversations or meeting, calendars, diaries, minutes of meetings, interoffice communications, electronic mail, message slips, notebooks, agreements, reports, articles, books, tables, charts, schedules, memoranda, medical records, x-rays, advertisements, pictures, photographs, films, accounting books or records, billings, credit card records, electrical or magnetic recordings or tapes, or any other writings, recordings, or pictures of any kind or description.

5. The term “communications” means all occasions on which information was conveyed from one person to another (a) by means of a document, or (b) verbally, including by means of a telephone or other mechanical or electronic device.

6. A response to a request contained in these Interrogatories to “identify” a document shall be sufficient if the individual having custody of the document is identified by name and address, and the document is identified or described by (a) the date, (b) the author, (c) the addressee(s), (d) the type of document (i.e., letter,

memorandum, note, etc.), (e) the subject matter, and (f) the number of pages. In lieu of identifying a document, you may attach a copy of such document or documents to your answers to these Interrogatories.

7. A request to “identify” a person shall be construed as a request for (a) the full name of such person, (b) all other names which such person has used for him or herself, (c) the social security number of such person, (d) the date and place of birth of such person, (e) the present employer of such person, (f) the present office or business address and business telephone number of such person, (g) the present residential address and residential telephone number of such person, (h) the nature of the relationship between the plaintiff and such person, (i) the dates of commencement and termination of that relationship, and (j) the reason for the termination of that relationship. If you do not know or cannot determine the present address, telephone number or present employer of any person referred to in your answers to these Interrogatories, please give the last known address, telephone number or employer.

8. Throughout these interrogatories, including the definition of terms, words used in the masculine gender include the feminine; and words used in the singular include the plural. Where the word “or” appears herein, the meaning intended is the logical inclusion “or” i.e., “and/or” Where the word “include” or “including” appears, the meaning intended is “including, but not limited to.”

9. When requested to “state each fact” or the “facts upon which you rely” relating to any allegation, fact, legal theory, contention or denial, please furnish a full and complete statement of the factual basis of any such allegation, fact, legal theory,

contention or denial, the reason or rationale that such facts so relate or pertain and how such facts so relate or pertain.

INTERROGATORIES

INTERROGATORY NO. 1:

With respect to your current marriage, please state the date and place of your marriage, whether you and/or your spouse have ever separated, legally or otherwise, for any period of time, and if so, please set forth the dates of separation and the reasons.

ANSWER:

INTERROGATORY NO. 2:

Please describe in detail each and every injury and damages (economic or otherwise) that you claim to have suffered in connection with your claim for loss of consortium. If you claim economic loss, please set forth the basis for your calculation of such loss.

ANSWER:

INTERROGATORY NO 3:

State all facts that support the computation of damages that you claim to have incurred as a result of your spouse's ingestion of Vioxx, and specifically identify all testimony, documents, and things that you rely upon for these computations.

ANSWER:

INTERROGATORY NO. 4:

Please identify all communications, whether oral, written or electronic (including email, communications as part of internet "chat rooms" or e-mail groups), with others not including your counsel, regarding Vioxx, your spouse's alleged injuries, your alleged injuries.

ANSWER:

INTERROGATORY NO 5:

Please identify whether you conducted any research on your computer regarding Vioxx, the current location of your computer, whether you ever sent and/or received any emails relating to Vioxx or your alleged injuries (other than those from your attorney) and whether you are in possession of the emails sent or received relating to Vioxx or your alleged injuries.

ANSWER:

INTERROGATORY NO. 6:

With respect to your current marriage, please state whether you and/or your spouse has ever sought counseling for marital problems or marital difficulties and if so, please identify the person from whom each of you sought counseling, the dates counseling was obtained, and the location where counseling was obtained. Please also provide a detailed description of the reasons for seeking counseling.

ANSWER:

November ____, 2007

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By _____

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**ATTORNEYS FOR DEFENDANT
MERCK & CO., INC.**



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this _____

Certified Document Number: _____

THERESA CHANG, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com