

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

ORDER

In November of 2005, the Court ordered Merck to submit for *in camera* review all documents as to which it claimed privilege in this multidistrict litigation. In response to that Order, Merck produced 81 boxes containing approximately 30,000 documents, amounting to nearly 500,000 pages. The Court reviewed these documents, document by document, and determined which documents were privileged and which documents were not. Merck sought review of the Court's privilege rulings. On May 26, 2006, the United States Court of Appeals for the Fifth Circuit issued a ruling suggesting that this Court (or its designee) re-examine 2,000 documents that Merck would select pursuant to a different review protocol. *See In re Vioxx Prods. Liab. Litig.*, 2006 WL 1726675 (5th Cir. May 26, 2006). The Fifth Circuit did not rule on the merits of any privilege ruling, but simply concluded that this Court should devise a new procedure to review the documents. *Id.* at *3.

Pursuant to the Fifth Circuit's direction, Merck provided this Court with 10 additional boxes containing approximately 2,000 documents that Merck believes are representative of all

the documents in question. On April 25, 2007, after allowing the parties an opportunity to be heard, the Court appointed Professor Paul Rice of the Washington College of Law at American University as Special Master pursuant to Rule 53 of the *Federal Rules of Civil Procedure* to review the 2,000 representative documents, as well as approximately 600 additional documents selected by the PSC and believed to be relevant to upcoming trial preservation depositions. On May 1, 2007, the Court also appointed Mr. Brent Barriere as Special Counsel to manage the Special Master's operating account and to provide logistical support and local facilities for the Special Master.

Special Master Rice has now completed his review of the initial representative documents. The Special Master has delivered to the Court his Report, his Recommendations for each individual document (Appendix I), and the full record created during his review (Appendix II).

The Court now issues this Order (1) to relieve the Special Master of his duty under Rule 53(f) to serve copies of his Report and Recommendations on the parties; (2) to file the attached Report and Recommendations (Appendix I) into the record; (3) to ORDER that Appendix II shall be filed into the record UNDER SEAL; and (4) to provide that, pursuant to Rule 53(g)(2), the parties shall file any objections to the report no later than **fifteen (15) days** from today's date, that is, by July 18, 2007.

New Orleans, Louisiana, this 3rd day of July, 2007.

A handwritten signature in black ink, appearing to read "D. E. Fallon", written over a horizontal line.

UNITED STATES DISTRICT JUDGE