

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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In re: VIOXX PRODUCTS  
LIABILITY LITIGATION

Docket No. 05-MD-1657  
Section "L"  
New Orleans, Louisiana  
Wednesday, November 4, 2015

THIS DOCUMENT RELATES TO:

12-CV-2406 LINDA ISNER V.  
SEEGER WEISS, LLP, ET AL

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TRANSCRIPT OF MOTION PROCEEDINGS  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

HERMAN, HERMAN & KATZ  
BY: LEONARD A. DAVIS, ESQ.  
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P R O C E E D I N G S

(WEDNESDAY, NOVEMBER 4, 2015)

(MOTION PROCEEDINGS)

(OPEN COURT.)

10:05:17 6 THE COURT: Lastly we have an argument involving Vioxx.  
10:05:27 7 Call the case, please.

10:05:30 8 THE DEPUTY CLERK: MDL-1657, *in re: Vioxx Products*  
10:05:32 9 *Liability Litigation.*

10:05:33 10 THE COURT: Counsel make their appearance for the record.

10:05:38 11 MR. DAVIS: Good morning, your Honor, Leonard Davis, I'm  
10:05:46 12 here with Patrick Busby from my office.

10:05:48 13 THE COURT: Anybody from the defendant?

10:05:51 14 MR. DAVIS: Your Honor, I have not seen -- it's actually  
10:05:53 15 the plaintiff in this matter, I'm the defendant.

10:05:57 16 THE COURT: I am familiar with the case, it's an outgrowth  
10:06:08 17 of the Vioxx litigation. The individual filed a claim in the Vioxx  
10:06:16 18 litigation and enrolled in the settlement program. She was to  
10:06:21 19 receive, or has received \$1,573,602.19, an award under the program;  
10:06:35 20 plus an additional EI award of \$5,359,316.74, so it's about  
10:06:51 21 \$7 million thereabouts. And she indicates that Mr. Seeger, who was  
10:07:00 22 a member of the negotiation team for the plaintiffs committee, made  
10:07:05 23 certain representations to her that led her to believe that she  
10:07:13 24 would receive more than that.

10:07:16 25 But she signed a release in the case. The release signed

10:07:20 1 by the plaintiff provided that entering into this release she freely  
10:07:26 2 and voluntarily, without being induced, pressured, or influenced by  
10:07:31 3 and without relying on any representation or other statement made by  
10:07:35 4 or on behalf of Merck or any other person she indicates that. And  
10:07:41 5 then she acknowledges that I understand this release and the  
10:07:45 6 settlement agreement, and there's no guarantee that I will receive  
10:07:49 7 any settlement payment or in any settlement payment even if it's  
10:07:57 8 made.

10:07:58 9 So I have a difficulty understanding her position that,  
10:08:06 10 notwithstanding the fact that she read the release, had an attorney,  
10:08:10 11 this is not somebody who was pro se, sophisticated litigant, she was  
10:08:17 12 a doctor as I remember, very well educated and knowledgeable.

10:08:25 13 And I confronted this case once before when she filed  
10:08:31 14 suit against some other people involved in the litigation, and I  
10:08:35 15 treated it seriously because she's obviously sustained significant  
10:08:41 16 injuries, but I also think she's received significant compensation  
10:08:47 17 for those injuries, had an opportunity to review the contract, had  
10:08:54 18 the advice of counsel in reviewing the contract, and voluntarily  
10:08:59 19 signed the contract.

10:09:01 20 Has she received the money, do you know?

10:09:03 21 MR. DAVIS: Yes, your Honor.

10:09:06 22 THE COURT: Now takes the position that she is entitled to  
10:09:08 23 more, not from Merck but from Mr. Seeger for saying certain things  
10:09:15 24 that she interpreted to indicate that she was entitled to more EI  
10:09:23 25 payments. But the EI payments were very difficult to ascertain

10:09:29 1 because there was a certain amount of EI total and it had to be  
10:09:38 2 proportioned so that it took into consideration everybody's claim,  
10:09:46 3 but everybody had to understand that it would be increased or  
10:09:48 4 decreased depending upon how much was left in the pot. That's the  
10:09:55 5 way it is.

10:09:56 6 I'll issue something on it and we'll see where we go.  
10:10:00 7 But I am going to take the same position that I did with the claim  
10:10:06 8 against Orran Brown's firm for the same reasons.

10:10:15 9 But I also am disappointed that I set the matter for oral  
10:10:20 10 argument, everybody had an opportunity to appear, and the plaintiff,  
10:10:22 11 notwithstanding notice, didn't show up and made no attempt to  
10:10:27 12 contact the Court to indicate what their position was other than  
10:10:31 13 filing a brief.

10:10:33 14 MR. DAVIS: Your Honor, I appreciate that you set it for  
10:10:38 15 oral argument. My client appreciates it as well.

10:10:43 16 And I will tell you that counsel for the plaintiff reached  
10:10:50 17 out to us sometime ago and asked for an extension on the briefing,  
10:10:54 18 which we provided to them. We did push back the briefing times. I  
10:11:00 19 had every expectation that counsel would be here for oral argument,  
10:11:04 20 and I am prepared to make oral argument; because, as your Honor  
10:11:10 21 noted prior in Record Doc. 64996 an order was issued as to  
10:11:20 22 BrownGreer and Hughs, Hubbard & Reed and Ted Mayer. This is a  
10:11:26 23 similar type argument on Chris Seeger. You did note that Chris  
10:11:30 24 Seeger and the Seeger Weiss firm, who are the named defendants, were  
10:11:34 25 part of the negotiating committee, which they were.

10:11:38 1 I also point out that Mr. Seeger was lead counsel and part  
10:11:42 2 of the Plaintiff Steering Committee.

10:11:46 3 And as your Honor pointed out, this was, in fact, an award  
10:11:49 4 of approximately 6.9 or \$7 million, which was the highest award in  
10:11:55 5 the program. And at all times the plaintiff had a voluntary choice,  
10:12:02 6 and that was a voluntary choice to be in the program. And as your  
10:12:06 7 Honor is aware, claimants had an opportunity to opt out even during  
10:12:11 8 as they went through gates at different stages depending upon the  
10:12:14 9 terms of the Master Settlement Agreement.

10:12:19 10 The claim here revolves around alleged statements that  
10:12:28 11 were made by Ted Mayer and Chris Seeger. And as your Honor is well  
10:12:36 12 aware, there were multiple meetings throughout the country with  
10:12:42 13 judges, because there were a number of judges the Court brought in,  
10:12:45 14 state court as well as the federal court, as well as individuals  
10:12:50 15 from both sides, to explain items in settlement. But no  
10:12:56 16 representations were to be relied upon.

10:12:58 17 And, in fact, this individual claimant had their own  
10:13:03 18 counsel. And, in fact, specifically, the MSA, as well as the  
10:13:09 19 release, provided that there were no reliances and that the  
10:13:17 20 individual claimant had the opportunity to enter freely after having  
10:13:22 21 discussions with their own individual counsel.

10:13:28 22 It was understood, it was entered freely, there was no  
10:13:33 23 guarantee, there was no pressure, it was voluntary, and there were  
10:13:36 24 no representations.

10:13:38 25 I will not go into the argument, the full argument, your

