

INSTRUCTIONS: REQUESTS FOR RELIEF FROM DEADLINES

A. INTRODUCTION

The Claims Administrator receives few requests from Counsel or unrepresented Claimants to accept as timely materials submitted after a deadline has passed, or for additional time to submit materials before a deadline has passed. The deadlines affected by such requests include:

- (a) **Settlement Agreement Deadlines:** A submission deadline established by the terms of the Settlement Agreement; and
- (b) **Claims Administration Deadlines:** A deadline for submission of materials established by the Claims Administrator for materials during the administration of the Settlement Agreement, of which the Claimant has been previously notified.

These deadlines are essential to the orderly administration of the Settlement Program. Claims will progress much more quickly through the Program if all deadlines are met. As a result, requests for relief from any deadline should be the exception and occur rarely. Nonetheless, the Parties and the Claims Administrator have adopted a process for the handling of these requests to promote the uniform treatment of all Claimants. These Instructions explain how timeliness is determined under the Settlement Agreement and the process for requesting relief from any deadline. These Instructions apply to requests to extend, or to accept as timely materials submitted after the expiration of any type of submission deadline:

B. DETERMINING THE DATE OF SUBMISSION

Section 16.2 of the Settlement Agreement prescribes how the date of submission is measured for purposes of compliance with deadlines:

- (a) Mailed documents must be postmarked on or before the deadline date.
- (b) Documents delivered by overnight delivery must be placed in the hands of a carrier on or before the deadline date.
- (c) Emailed documents must be sent on or before the deadline date, but only if the email is sent and is capable of being received by the Claims Administrator prior to midnight sender's local time on the deadline date.

C. CALCULATION OF TIME

The Claims Administrator will follow the provisions of Fed.R.Civ.P. 6 regarding the manner of calculating time in the assessment of the timeliness of materials submitted.

D. TIMING OF REQUEST FOR RELIEF FROM A DEADLINE

A request for relief from a SA Deadline or CA Deadline ("Request for Relief") must be presented to the Claims Administrator within 60 days after the later of: (a) June 26, 2008, which was the date of the posting of these Instructions on the Vioxx Settlement website maintained by the Claims Administrator; or (b) the applicable deadline date. The Claims Administrator shall reject any Request for Relief made after such time expires.

E. CRITERIA FOR ASSESSING EXCUSE FROM DEADLINES

The Claims Administrator shall consider these factors when assessing a Request for Relief:

- (a) The danger of prejudice to Merck;
- (b) The length of the delay;
- (c) The impact on the Settlement Program if the request were granted, including the impact upon Claimants whose submissions were timely;
- (d) The reason for the delay, including whether it was within the reasonable control of the requesting party; and
- (e) To the extent information on this factor is available, whether the requesting party acted in good faith.

These criteria are based on the excusable neglect analysis under Fed.R.Civ.P. 60(b).

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F. INFORMATION REQUIRED FROM CLAIMANTS REQUESTING RELIEF FROM A DEADLINE

Each *pro se* Claimant (or Representative Claimant) or Primary Counsel for a Represented Claimant (or Representative Claimant) who seeks relief from any deadline shall complete and submit to the Claims Administrator a Request for Relief from Deadline (Form V2033). This Form V2033 is available in a Word fillable format that you can download to your computer or network at www.browngreer/vioxxsettlement.com. Go to the Forms section of that website to get the Form. Fill it out, attach your statement of reasons, and sign it. Then email or upload a pdf image of your signed Form V2033 to the Claims Administrator, or mail, fax, or deliver it. An electronic image or fax is sufficient.

G. DETERMINATIONS ON REQUESTS FOR RELIEF FROM DEADLINES

- (a) Within 20 days after receipt of the completed the Form V2033, the Claims Administrator will review the Request for Relief and issue a written determination to the Requesting Party either: (1) notifying the Requesting Party of the Claims Administrator’s decision on the Request for Relief (“Initial Determination”); or (2) directing the Requesting Party to submit within ten days any additional information the Claims Administrator deems necessary to determine the Request for Relief (“Information Request”). The Initial Determination or Information Request shall also notify the Requesting Party that if no response is timely made: (1) the Initial Determination shall become the Final Determination on the Request for Relief; or (2) the Claims Administrator will issue an Initial Determination based on the information submitted.
- (b) Within ten days after the date of an Initial Determination, the Requesting Party may submit to the Claims Administrator a Second Review Request asking that the Claims Administrator review the determination with a representative of Merck and the representative of the NPC designated for such purpose. If no timely Second Review Request is made, the Initial Determination shall be the Final Determination. The Requesting Party may not submit any additional information in connection with a Second Review Request that was not submitted to the Claims Administrator before issuance of the Initial Determination. If a Second Review Request is timely made, the Claims Administrator shall prepare the record on the Request for Relief, consisting of: (a) the Form V2033; (b) any additional information submitted by the Requesting Party to the Claims Administrator in response to an Information Request; and (c) the Initial Determination, and forward it to the designated representatives of Merck and the NPC for consideration. Within ten days after the date of transmission of the record, the Merck and NPC representatives shall notify the Claims Administrator of their determination on the Second Review Request. If Merck and the NPC are unable to agree to overrule the Initial Determination, the Initial Determination shall become the Final Determination and the Claims Administrator shall issue such Final Determination.

H. FINAL DETERMINATION

After the Initial Determination becomes the Final Determination, the Claims Administrator shall not conduct any further review of the Request for Relief and shall adjudicate the claim on the basis of the Final Determination, unless Merck and the NPC direct otherwise.