

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF LOUISIANA

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5 IN RE: VIOXX PRODUCTS * MDL No. 1657
6 * SECTION "L"
7 *
8 PRODUCTS LIABILITY *
9 *
10 * NEW ORLEANS, LOUISIANA
11 * April 29, 2009
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9 TRANSCRIPT OF THE MONTHLY STATUS CONFERENCE
10 HEARD BEFORE THE HONORABLE ELDON E. FALLON
11 UNITED STATES DISTRICT JUDGE

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1 First, I will cover very briefly where we are on the
2 enrollment cleanup stage, with which the Court, I know, is very
3 familiar because we've had some proceedings on that recently.
4 And then some brief remarks about our Extraordinary Injury
5 Program and its status, and then Lynn will update us all on
6 where we are on claims review and on our payment schedule.

7 On the enrollment front, Your Honor, we have been
8 working with the parties and all the counsel for claimants to
9 get this finished. We are near the end of the enrollment road.
10 We're still trying to get all the claimants safely in the
11 program, the paperwork in order so that they can -- their claims
12 can be processed, and we will not keep anything off track.

13 The parties set this March 6th deadline and really fix
14 up everything that was wrong in any of the release or
15 stipulations of dismissal that was necessary to enroll in the
16 program. And then Merck's counsel has been working on forcing
17 the issue out by filing these motions. The first six were filed
18 about -- well, for 880 claimants, and we had the hearing here on
19 April 15th, and that process is working to really force
20 resolution of these numbers. We, after that April 15 hearing, I
21 think there were 82 claims that were closed out. Dismissed --
22 cases dismissed or claims distinguished that were Tolling
23 Agreement claims. And a number of them, I think about 330 that
24 were carried over to the hearing, further hearing today, I think
25 after this session. And then there were about 400 people who

1 got resolved, who fixed the problem in their documents or
2 otherwise that claimed issues, they became compliant with the
3 CAP 2008-1, the procedure that allows certain estate
4 deficiencies to be taken care of for the time being. And so the
5 process is working to try to clean this up.

6 Merck's counsel, is still working to identify anyone
7 else who has still a lingering problem, because as people
8 continue to submit materials to us, they might submit a release
9 that still has a problem, and so there are still things that
10 we're still working down to get to the final word on this.

11 Merck filed two additional motions on the 21st for
12 about 180 people with release problems, and the Court has set
13 them for hearing May 8th. And, again, the goal is to get these
14 documents clean, get the claimants in the program. And we're
15 working with counsel in pro se, that as they submit materials
16 and as they cure their problems, they come off the motions. And
17 many, many claimants have done that.

18 THE COURT: And these are deficiencies, frankly, that
19 are just type deficiencies that really need and should be
20 cleaned up. There are deficiencies such as, an attorney fails
21 to sign the release or a notary fails to sign a release, or they
22 put the wrong claimant's name on a release, things of that sort.
23 I mean, we -- you know, these are matters that, after we give
24 them two and three notices to do something about this and they
25 still don't do it, you know, I just -- I have to dismiss the

1 case, because it's not a question of something that can't be
2 cured, it's just somebody's attention has to be directed to it.

3 MR. BROWN: Yes, Your Honor, that is what we're
4 seeing, and these motions are really helping to focus that
5 attention and the Court's rulings on this. This slide here
6 shows us that of the over 50,000 claimants who are in this
7 program and who enroll in the program, these are the only
8 numbers we're still dealing with on that issue. And we see
9 2,342 people still have a release question, but over 1700 of
10 them have taken advantage of this procedure, the CAP 2008-1,
11 that allows them to sort of work around estate-related problems
12 to get the claim all the way up to the point of payment. And
13 for some claimants, payment, even though the estate hasn't been
14 opened. So we're down to only 590 people that have problems
15 unrelated to estates, and only 448 of them who have the problems
16 that you mentioned, where there are signature problems and
17 notary problems. I mean, this is really the end of the road on
18 this. And with the Court's assistance and a lot of work by
19 Merck and its counsel and claimants and their counsel, we're
20 going to finish this. And eventually we will have one of these
21 status conferences where we never mention the word "enrollment."
22 I promise that that day will eventually come.

23 A few brief remarks about our Extraordinary Injury
24 Funds, the two funds that are set up in the Settlement Agreement
25 to provide further compensation for catastrophic or

1 extraordinary injury situations, one for heart attack claimants
2 and one for the stroke claimants. We announced that program on
3 March 2nd by email blast to all primary counsel about the
4 existence of the program, that it was ready to receive claims.
5 We sent letters to unrepresented claimants to tell them about
6 the program. We've been working with the parties on this. We
7 originally announced a deadline of June 1 for claimants to
8 submit their Extraordinary Injury Claims. The parties decided
9 to move that deadline to September 1st from June 1.

10 We announced that by email blast to counsel and
11 letters to the unrepresented claimants on April 14. The
12 reasoning behind that is that we and the parties realize that a
13 lot of the counsel are focused on getting their underlying
14 claims in order, finishing out this enrollment and getting their
15 Claims Packages all complete with no further deadline
16 extensions, and we're focused really on making that happen.

17 The Extraordinary Injury Program does not have the
18 extreme time sensitivity, our goal of making final MI payments
19 by September 30th, so the deadline was moved. Plus, the idea is
20 that, to submit an EI claim, you have to fill out a claim form.
21 It's available online. And there is a list of documentation
22 that you have to submit to us, much of which has not been
23 submitted before, because to show economic losses, medical
24 expenses and loss wages or income requires those kind of
25 documents, tax returns, W-2s, that have not been in the program

1 before. And the parties and we want to have those packages
2 together. We want the EI claim form. To fill that out
3 correctly it requires going through those documents to get the
4 numbers and the losses and put them in the form. And the goal
5 is to have that form and their documentation together, all
6 submitted at one time rather than people submitting just a claim
7 form to try to hold a place in line and then fill in with the
8 documents later.

9 So the party extended the deadline to September 1st
10 with the instruction that you have to have a claim form and your
11 documentation together by September 1st. You can submit them in
12 piecemeal until then, but we have to have by September 1st the
13 form filled out and the documentation that we have specified in
14 the list is necessary for the type of claim you're submitting.
15 You need the whole package. And the goal is, is that we'll have
16 all those claims then and can processed them quickly rather than
17 documentation filling in after September 1st. So we wanted the
18 message out to counsel and unrepresented claimants that that
19 needs to be a complete package by September 1st not just sending
20 in a claim form to try to hold a place in line.

21 And, again, Your Honor, we mentioned this last time.
22 We have a lengthy, detailed instruction manual that we have
23 posted to each counsel on their portal. It's on our general
24 website, and a manual for unrepresented claimants. It explains
25 the whole program and all the provisions, the documentation, the

1 damages that are recoverable. We update that regularly. We
2 will be updating it. We've been working with Ms. Snapka on the
3 issue, or the question she raised at our last conference about
4 whether there is any sort of appeal process from decisions made
5 on claims. And I think Ms. Snapka is going to report on that
6 today when we finish our report. That will eventually be in
7 this manual, so we're urging everyone continually to check the
8 manual that's available on the website because there are
9 updates, and they're very clear which version is posted, what
10 the date of it is. We want everyone to see how this program is
11 working, what's required, and that manual is the best place to
12 look.

13 Your Honor, that takes us to the last mention about
14 the EI Program. We do not have a lot of these claims yet. This
15 slide shows us how many we've gotten so far. We've received 35
16 forms, claim forms so far, but a little over half of them do not
17 pass the basic eligibility. And of that 18, 17 of them are pro
18 se claimants.

19 To be able to seek Extraordinary Injury Payments, you
20 have to have qualified at some level on your underlying heart
21 attack or stroke claim. And these 18 people have sent in an EI
22 claim, but did not qualify on their underlying claim. And the
23 program is not designed to be sort of a second chance, it's for
24 catastrophic injuries. And the purpose of this slide is just to
25 show, this is what we've gotten so far. We do not expect to

1 have many claims at this stage, particularly now with the
2 deadline being moved to September 1st. But as we get these
3 claims, we're sorting through them. We're getting ready to
4 process them. We'll be ready to go on them, but this all we
5 have on that front so far.

6 Your Honor, that takes us up to the claims section of
7 our report, and Lynn will cover that.

8 THE COURT: I think it is important with the
9 Catastrophic Injury Claims to recognize that it is not a
10 second bite in the apple, and I think that's the part that
11 the Court has to reinforce. It's a special type fund for
12 special circumstances, and not a reevaluation of what
13 Points have been given.

14 MS. GREER: Good Morning, Your Honor. Lynn Greer
15 from Brown Greer, and I'm going to provide the Court with
16 an update today of where we are on our claims review and
17 the payments of both the MI and the stroke claims to date.

18 This slide shows -- and this has not varied much since
19 last month or prior months. We now have over 48,000 claims who
20 are in the program. Those roughly breakdown to 62 percent heart
21 attack claims and 37 percent stroke claims. There is still 1
22 percent where we are working with the firms and the claimants to
23 tell us what injury it is that they are asserting. We've
24 continued to work with firms to try to get them to complete
25 their claims form to let us know which injury it is that they're

1 seeking.

2 I'd like to focus first on our progress with the heart
3 attack claims, because as the Court knows, we are on progress
4 and working towards the final payment at the end of the third
5 quarter of this year. We are on pace to be able make that final
6 payment.

7 This slide shows that for the Gates process, we're
8 down almost 2000 claims from where we were last month in our
9 initial Gate review, and this is when the -- our claims
10 reviewers pull the claims and review them for the first time.
11 We have only 213 remaining. Many of these are ones that we have
12 had to place on hold to seek clarification from the firms about
13 various aspects of the claim. But we expect for both rows one
14 and two by the end of this week -- which was our goal, the end
15 of in April -- to finish our Claim Administrator Gates Review,
16 that those rows should be down to zero.

17 Row two shows that since last month we have reviewed
18 and quality control checked almost 3000 heart attack claims.
19 And this is when we do one final review before we issue a Notice
20 of Ineligibility or a Passing Notice for the claimant or before
21 a claim goes to the Gate Committee. The 1,094 that remain in
22 that que, many of those are claims that have failed initially,
23 but the firm has submitted additional documentation and we are
24 reviewing that. And so it's the second time through for the
25 review of those claims. But as I said, we expect for those rows

1 to be down to zero by the end of this week, which will put the
2 ball in the court of the claimants to be able to see what it is
3 that their claim is doing, whether it's passing or failing. And
4 if there is additional documentation that needs to be submitted,
5 they can submit that, or the claim will go to the Gate Committee
6 if the firm has already submitted documentation.

7 We have moved almost 2,500 claims to the point of
8 being able to be evaluated for Points Review. Ten Thousand of
9 those 15,000 have already been paid. We have issued 11,967 Gate
10 failure notices to claimants, and we've issued 3,000 more of
11 those in the last month.

12 There are currently 1,744 heart attack claims pending
13 on the Gate Committee portal. That number that shows a decrease
14 of 394 since last month is a little bit misleading, simply
15 because claims go in and out of Gate Committee so quickly. And
16 my last slide of this presentation will actually show the great
17 progress that the Gate Committee has made voting on more than a
18 1000 claims a week since February.

19 The Points Review Status, as I mentioned, there are
20 15,000 claims that have advanced to the place of being able to
21 be evaluated for Points. 10,003 of those claimants have been
22 paid and are on payments or Special Marker Fixed payments of
23 \$5,000.

24 For May payments, and the deadline to accept awards to
25 be paid in May is tomorrow at midnight, and we are sending a

1 reminder email to firms this morning that they can accept and be
2 paid in May. There are already 1,492 who have been accepted,
3 and they will be paid in May. Another 532, we are still waiting
4 on a decision from. And 465 who have appealed or who are
5 Special Marker Claims who've moved in the Special Review.

6 So, we have over 2,489 with current Points Awards
7 outstanding. Almost 2000 of those could be eligible for payment
8 in May. We will, as we do every day, issue more Points Awards
9 today, and some of those could be accepted by midnight tomorrow
10 and still be paid in May.

11 There are 348 where we have moved the claim to the
12 point of being fully reviewed, but we cannot issue it for some
13 administrative reason. Those reasons in the past have included
14 lien issues or remaining enrollment deficiencies, although, as
15 the Court knows, are down to really just estate issues at this
16 point.

17 There are 360 claims that are pending QC. And what
18 that means is that they've gone through our process. We take
19 one more look at those to make sure the Points are accurate.
20 And those are within days of being able to be issued.

21 There are 818 where we have reviewed them for Points,
22 but we've had to stop because there is not enough information in
23 the Claims Package to be able to do a complete Points Review.
24 And this is about 10 percent of all the claims that we get in
25 Points, we have to stop and work with the firms to try to go

1 obtain more records.

2 There are 243 where we have begun the review of the
3 Points, and 851 waiting in the que for us to be able to review.

4 This is a slide we developed several months ago to
5 show the current pace of what we need to do to be able to make a
6 September 30th payment, or end of the third quarter payment.
7 From slide 1 we know that there are 29,891 MI claims on file.
8 We estimate a Pass Rate when we and the Gate Committee and Merck
9 have made its final decisions on eligibility to be around 70
10 percent, and that's currently what it is running.

11 That would result in us needing to pay 20,924 claims.
12 We've already paid 10,003. And potential claimants for May is
13 2,024 that could be paid, which means we have about 9,000 that
14 we need to move to the point of being able to issue payment
15 between now and the end of September, or 2200 and -- 2,224 that
16 we need to move each month. We are on pace to do that. When
17 the initial Gates que ends this week, we'll be able to transfer
18 many of our claims reviewers to do nothing but Points. As we
19 juggled the Points Review and the Gates Review, obviously our
20 resources have been divided in terms of trying to tackle both
21 fronts. But now that we are through the Gates Review, those
22 trained heart attack claims reviewers will be able to devote
23 exclusively to the Points Review. So, as with many of these
24 programs, when a program starts and you have several items that
25 you're tackling, the volumes go up each month, and that's what

1 we're seeing. As the resources can be moved over to Points, we
2 fully expect that things will fall into place for us to be able
3 -- and we are actually moving over 2000, almost 2,200 claims to
4 Points each month already.

5 I'm not going to read the slide, but we do post these
6 slides, Your Honor, on our website under "MDL Court
7 Presentations." This slide is the current average Points for MI
8 Injury Level. And it shows that right now the Special Marker
9 Rate is running about 5 percent. And those are claims that for
10 MI claimants have total Points less than 10.

11 Paid through April, we've paid 10,003 claimants, over
12 \$854 million. The pending May payments to date are 1,492, and
13 the total dollar amount for those would be over \$121 million.
14 The potential May payments -- and those are the ones that could
15 accept between now and the end of tomorrow -- another 40,000,
16 532, claimants for a total of 2,024 potential May payments.
17 This could be higher; it could be lower depending on who accepts
18 between now and midnight tomorrow. So the total potential May
19 payments could run in excess of 161 million, which would mean
20 that through May we have paid over a billion dollars.

21 Our stroke progress has been steady. We have been
22 focused mostly, Your Honor, on the MI claims, however, we have a
23 dedicated team who continues to review stroke claims with
24 importance and urgency. We have reduced the initial stroke que
25 by almost a 1000 since March 26. There are many claims pending

1 our QC reviews, 7,977, that are pending our second review of
2 stroke claims. This is -- we will tackle this que to try to
3 keep moving the stroke claims forward as we have continued to
4 do. We have a stroke review team that focuses only on our
5 stroke claims.

6 We have 4,567 stroke claims that have advanced to the
7 point of Points Review. We've issued 1,692 Notices of
8 Ineligibility, and the Gate Committee has 420 stroke claims
9 currently pending with no vote yet.

10 We have paid through April, and we just started
11 payments of stroke claims in February, so February, March and
12 April we paid a total of 868 stroke claims. There are 696
13 stroke claimants with Points Awards outstanding for payment in
14 May. Four Hundred of those, 398 have already accepted, and
15 another 200 could accept between now and tomorrow, and 98 have
16 appealed.

17 This slide also walks through the other stages of
18 progress for the stroke claims and Points Review. We've
19 completed QC of 337, but again, those same issues that prevent
20 our being able to issue the Points Awards Notice apply here as
21 well.

22 There are 1710 that are pending QC. A Hundred and
23 Thirteen, again, roughly around 10 percent of all that we've
24 reviewed are incomplete where we have to stop and ask the firms
25 to submit more records. Three Hundred and Ten, their reviews,

1 as of yesterday, were underway, and 533 in the que to be
2 reviewed for the first time for Points.

3 This shows the summary of our payments on stroke
4 claims. Again, 868 claimants have been paid \$26 million.
5 There are 398 claimants pending payment in May for over 12
6 million. Two Hundred additional ones could be paid for a total
7 of 598 stroke claims that could be paid through May, \$17
8 million. And that would bring our total stroke claimants to
9 almost 1500.

10 Again, this is a breakdown of the average Points by
11 stroke injury level. The Special Marker Rate for strokes is
12 6.66 percent, and to be a Special Marker and a stroke claimant,
13 you have to have less than two Points when the final review of
14 the stroke claim is completed.

15 Finally, Your Honor, I'd like to show the Court and
16 those in the courtroom the progress of the Gate Committee. We
17 do know, and we've always anticipated that the Gate Committee
18 was an important piece of this program. We have found many
19 claims to be ineligible that the Gate Committee has found to be
20 eligible, but they have worked very, very hard in voting, as the
21 last row shows, on an average of 1000 a week. And it shows that
22 they've decided almost 16,400 claims, 16,399 claims.

23 There are 2,530 current total claims pending. Those
24 are stroke and heart attack claims pending. 165 of those are
25 more than two months old. Only one of those is a heart attack

1 claim. So, the Gate Committee has also prioritized the heart
2 attack claims as we have.

3 And there are over 2,500 that are pending, 2,196 have
4 been with the Gate Committee for less than seven days. So, the
5 Gate Committee is on task. They are reviewing claims very
6 quickly and helping us to be able to move claims along for the
7 final September payment.

8 THE COURT: Thank you very much. One of the reasons
9 I have monthly meetings is to get a feeling for what's happening
10 and other reason is to bring transparency as much as we can
11 possibly do. In addition to the monthly meetings, this is all
12 posted on the website so people have access to it, and they can
13 be kept up to speed with it.

14 So the long and short of it, you feel you're on target
15 to finish out the heart attack cases by September?

16 MS. GREER: Yes, we do, Your Honor. We -- obviously,
17 many things have to fall to into place.

18 THE COURT: Yes.

19 MS. GREER: And one of the things that we've done --
20 as the Court is aware -- last month we announced tightening up
21 of claims deadlines that were really starting to cause a problem
22 because some claimants were getting a lot of time to submit
23 records that they really needed to have submitted last July. We
24 have tightened up those deadlines, and we believe that by doing
25 that, that task -- that step alone will be able to help us get

1 finality on this. There are still, in the Gates process, there
2 are still 14 percent of the claims that are missing either a
3 Basic Event Records or Proof of Use Records. Those claimants
4 will certainly fail Gates. And the question is, will they be
5 able to get us records that will satisfy Gates within 21 days?
6 Because that's what they'll have, and they'll have no more than
7 that. When they get the notice of ineligibility have 21 days
8 and we are holding firm on that deadline.

9 10 percent, again, of the Points Reviews that we do
10 have incomplete records. And so we're giving firms 30 days to
11 submit those records. So it's a very delicate balance between
12 moving forward and giving claimants every opportunity they can
13 to perfect their Claims Packages. But we have really tightened
14 up on that and feel confident that that will help us meet the
15 goal. The Gate Committee's progress has been great, and we feel
16 like we're poised to be able to make that payment.

17 THE COURT: Okay. All right. Thank you very much.

18 MS. GREER: Thank you, Your Honor.

19 MR. HERMAN: May it please the Court, within the Items
20 1 and 2, we're pleased to report that the U.S. Bank Escrow
21 Amendment establishing a Qualified Settlement Fund has been
22 signed off by all parties to date.

23 Your Honor also had indicated that you wanted to
24 discuss from the bench the Rule 17, New York inquiries which we
25 had.

1 THE COURT: Yeah, we're getting some inquiries from
2 the Court on -- from New York claimants. In New York, a court,
3 a judge, has to approve the settlement before the Circuit Court
4 will sign the necessary documents. And the issue is, how do we
5 go about doing that? I talked to the parties about perhaps
6 having the MDL weigh in on it on a Rule 17 Motion. There is
7 some newness about that. That hasn't happened before, and there
8 is some jurisprudence, at least one case, that seems to question
9 whether or not it would be efficient or effective.

10 So, the first step is to see whether or not these
11 matters can be expedited in the normal way, namely, through the
12 New York Court. And I suggested to counsel that they see if
13 they can group those cases and get about 15 or 20 of them and
14 bring them to one judge there. And if the Court can -- if I can
15 weigh in on it, I'll talk to that judge and explain what the
16 situation is and what needs to be done, and we'll try to do it
17 that way. If not, then I'll look again at whether or not I can
18 do it by Rule 17 and do it a little faster.

19 MR. HERMAN: Your Honor, if it please the Court.

20 THE COURT: Yes.

21 MR. HERMAN: It might be the appropriate part in the
22 agenda for Ms. Snapka, Kathryn Snapka, and Mr. Birchfield to --

23 THE COURT: Okay.

24 MR. HERMAN: -- report to Your Honor about the
25 Extraordinary Injury.

1 THE COURT: Okay. This is a fund that's created,
2 because in matters of this sort, as we all know, there are some
3 cases that fall outside the -- I don't want to say normal, but
4 fall outside the regular matter, and they're extraordinary
5 injuries which result in extraordinary losses, primarily in
6 connection with wage loss and things of that sort. And a fund
7 has to be created, in my judgment, in complex litigation cases
8 of this nature to recognize those individuals, and so we've
9 tried to do that in this case.

10 One problem that has arisen is that when you do that,
11 when you create that fund, it is a fixed fund, it's not a
12 continuing, expanded fund. It is a whole piece of pie, so to
13 speak, or a whole pie. And so whatever slice you take out of
14 the pie, reduces the rest of the pie. You can't make it a
15 bigger pie each time. So, when you evaluate a particular claim,
16 that's a slice of that pie. That means that there is less of a
17 pie to go around for the rest of the claimants.

18 When you reevaluate that slice and increase the slice,
19 that takes away from the other claimants. So the issue
20 oftentimes in matters of this sort is, how do you deal with that
21 problem and also make sure that you have some due process, which
22 we've tried to do in this particular case? We've not only tried
23 to give some transparency, which I've been very sensitive to,
24 but also due process. And due process in a case of this sort
25 means appeal mechanisms. In the typical case you go through

1 Brown Greer, which is the Administrative Review, and then you go
2 through the Gates Committee, which is the attorney's review, and
3 then you have another appeal to a Special Master. So, I feel
4 comfortable that that presents some appeal mechanism.

5 The difficulty is, how do you deal with appeal in the
6 Extraordinary Fund case? And that's the issue that we have been
7 focusing attention on at this point.

8 MS. SNAPKA: Your Honor, Kathryn Snapka. I appreciate
9 the Court's recognition of the nature of the Extraordinary
10 Injury Fund. After a hearing in early April, we met with a
11 representative of Merck and the Plaintiffs' Steering Committee,
12 and yesterday afternoon I received a draft of some proposed
13 language, and I certainly think that it is something that we can
14 work with, and I want to express my appreciation. I know that
15 Merck also wants an opportunity to take a look at the language
16 as well. And since we do have a little bit of time on the
17 Extraordinary Injury Fund deadline, I would ask the Court if we
18 could make the final report at the next meeting since we've just
19 had an opportunity to look at it. But I certainly do think it's
20 something that we can work with and provide some due process for
21 those claimants who wish to avail themselves of an additional
22 review.

23 THE COURT: Okay. Any problem with that,
24 extending it, Andy?

25 MR. BIRCHFIELD: No, Your Honor. Following the

1 last status conference we met and we, dis -- and what the
2 draft language -- Andy Birchfield. And what the draft
3 language does is just reflects the agreement that we had at
4 that point. So, I don't think that the language is going
5 to be a big issue.

6 THE COURT: Okay.

7 MR. BIRCHFIELD: But since the deadline is September,
8 I don't see any problem --

9 THE COURT: Okay. All right. Fine.

10 MR. BIRCHFIELD: -- with us finalizing that and
11 posting it as part of the manual by the next status
12 conference.

13 THE COURT: All right. Thank you. Kathryn, I
14 appreciate your weighing in on that. I think you've
15 focused our attention on it, and I think that that's made a
16 better plan for everyone. Thank you.

17 THE COURT: Lien Administrator?

18 MR. HERMAN: Yes, Your Honor, Mr. Garretson is
19 here.

20 THE COURT: All right.

21 MR. GARRETSON: Thank you, Your Honor. Matt
22 Garretson with The Garretson Firm here to report on the
23 status of the Lien Resolution Programs.

24 Let me jump right in with the governmental liens, and
25 then I'll touch on the Private Lien Resolution Program.

1 With respect to the governmental liens, as the Court
2 is aware, we have arrangements in place with Medicare for the
3 both the MI and now the IS injury categories. To date, we have
4 only received 133 requests for redeterminations, as I report
5 each month. We're very pleased with this number. It represents
6 still approximately 1 percent of the Medicare entitled claimants
7 that have been assigned Points Awards by Brown Greer. Also, as
8 I've reported in previous hearings, we still see the trend of
9 the vast majority of these being taken care of just through
10 claimant education. The process on our call center seems to be
11 working well for these individuals who object, who largely just
12 need to understand why they owe a Medicare reimbursement claim
13 philosophically.

14 Also as reported last month, we're still trying to
15 isolate a subset of Low Point ischemic stroke cases. These are
16 cases that are above this Special Marker level, yet low in Point
17 value. And the arrangement we have with Medicare has perhaps a
18 disproportionately large amount of these individuals awards
19 dedicated to the Medicare reimbursement claim. So, we've begun
20 a process with Brown Greer where we're putting a hold on anybody
21 who is an ischemic stroke claimant who's Medicare reimbursement
22 obligation approaches 20 percent of their gross award. Medicare
23 has been very cooperative with us and understands that the
24 program has to work for all claimants. And this was something
25 we couldn't identify until we began to apply the Medicare

1 numbers to the ischemic stroke Point claimants. So, I'll
2 continue to report on that and do not anticipate any problem
3 solving that issue.

4 With respect to Medicaid, at the last hearing you
5 asked that we provide you a list of all the states that have
6 been non-responsive in providing us Medicaid claims data so we
7 could complete our audit process. I'm pleased to report that
8 all this -- that all five states who were slow responders as of
9 last month are now actively transferring all their claims data
10 to us, or have a plan in place and a time line that's acceptable
11 to us, Your Honor, to get those materials to us.

12 THE COURT: I need to express appreciation from
13 the bench to those states. We have been in contact with
14 many of them, and they've been very understanding and very
15 responsive, and I appreciate the efforts that both the
16 governors' offices in those states as well as the insurance
17 offices have given to the Court. They, I think, helped
18 their constituents very well, and has also helped move this
19 program along, and I appreciate it.

20 MR. GARRETSON: I agree completely, Your Honor. And
21 now we're pleased to have over 75 percent of all the Medicaid
22 claims data that we need to complete the task for tens of
23 thousands of claimants in-house.

24 With respect to the other governmental liens, we
25 do continue to get a good buy-in from all of these other

1 governmental programs like the VA, Tricare, Indian Health
2 Services, Department of Defense. I'll just remind the
3 parties that these programs, unlike Medicare and Medicaid,
4 are decentralized, meaning we have to actually make contact
5 with all the downstream medical facilities for many of
6 these programs to gather the medical records that we need,
7 but that seems to be moving well.

8 Now I turn my attention, as I mentioned, from the
9 governmental health care programs to the recently-announced
10 Private Liens Resolution Program. We're continuing to work with
11 the Plaintiffs' Steering Committee the group of Third Party
12 Payors to implement the procedures and protocols called for in
13 the Memorandum of Understanding. As the Court and the parties
14 are aware, this program is a voluntary program that allows
15 claimants to participate in a program that would match potential
16 lien obligations to a group of plans that have committed to
17 participate in this program. I won't go back through the
18 parameters of the program, but I did want to give some report on
19 the launch, the subsequent administrative process and some of
20 the new participants.

21 With respect to the launch of the program, we drafted
22 several documents that would assist plaintiff's counsel with the
23 introduction and participation phase of this program. Those
24 materials included a notice to primary counsel that was provided
25 to them through their web portal for primary counsel, a claimant

1 information package, as well as forms for claimants to sign,
2 including a HIPPA release, to allow them to participate in the
3 program.

4 These materials were sent out via email on January
5 30th of 2009, to all primary counsel. In addition to the email,
6 alerts were posted on the front page of the administrator's web
7 portal. The announcement also placed on the Court's Vioxx MDL
8 website, and we also provided these materials to pro se curator.

9 We are now, having had those out the door for several
10 months, we are now in the stage of actively managing the
11 participation process. To date, our firm has received over
12 16,500 claimant participation forms. That's as of April 28th of
13 2009. And while the program was officially launched January
14 30th, the time lag, it took several months to get the materials
15 out through primary counsel. Many of the counsel then, and
16 their firms, had to process these back out to the plaintiffs,
17 the claimants. Those had to be reviewed, brought back in-house
18 and many discrepancies and data cured. So we think that that's
19 actually a pretty quick turnaround when you're dealing with a
20 1,058 primary counsel disseminating mailings of this magnitude
21 to thousands of claimants.

22 Further, as reported last hearing, we did commit to
23 contacting any health care provider for a claimant who said, "I
24 want to participate, yet I do not see my plan listed on the
25 exhibit of participating health plans." I'm pleased to report

1 that since the program's inception, an additional 134 plans have
2 been added to the participating plan list through these efforts.
3 We have close to 1,000 more names of plans we're trying to match
4 to see if, in fact, that're already participating and perhaps
5 the claimant did not know the correct name, or if there are
6 other plans to be approached. But we have not had a plan yet
7 reject the program that's been approached with the momentum that
8 it has.

9 With respect to exchanging the claimant data, I think
10 this is the most significant point of the program to report. On
11 April 7, 2009, the participating private health insurance
12 providers, both the original group and these additional 134,
13 elected not to exercise their Walk-Away Rights, and now the
14 Vioxx Private Lien Resolution Program is, in fact, moving
15 forward.

16 Accordingly, we were able to take 15,686 claimant
17 names and begin to exchange those with the participating plans
18 that have elected not to walk away. We have over 1,000 more
19 currently in-house that we've not been able to share with the
20 plans yet because we're waiting to cure a material defect with
21 their HIPPA release.

22 We will continue to work with Brown Greer to insure
23 the program is coordinated into the, and integrated into the web
24 portal, and that appropriate hold backs and finalized liens are
25 noted in their system as well.

1 Your Honor, despite the fact that the program was
2 announced as going forward, at the Court's direction, we sent to
3 primary counsel a set of letters for primary counsel to then in
4 turn send to a very targeted group of non-participating
5 claimants, informing them of the extended deadline that the
6 parties have agreed to, to allow them to participate in the
7 program. These materials, as the Court is aware, ask the
8 claimants who have yet to participate, to reconsider their
9 decision, largely based upon new information concerning the
10 greater list of plans that have agreed to sign up since the
11 original list of plans was circulated.

12 So another email, with the Court's supplemental
13 letters, was sent on April 23rd to plaintiff's counsel with
14 instructions to have them return the forms by May 29th of 2009,
15 this being the extended deadline. The supplemental mailing to
16 primary counsel included an access to a very specific spread
17 sheet of claimants who are most likely to have private lien
18 program -- lien obligations that have yet to elect to
19 participate if the program, and we've also been able to earmark
20 those who have governmental obligations. So by process of
21 elimination, this has become a very targeted list of claimants
22 so firms can understand of their of clients who are those that
23 likely have obligations who have yet to participate.

24 These supplemental letters that I've described really
25 get to what we think are claimants who could benefit from some

1 further education. Mainly claimants who are eligible for
2 Medicare, but we've determined that they're not on governmental
3 Medicare, they're under a Medicare Part C or HMO or Advantage
4 Plan, which is actually administered by a private health care
5 program and so it is, in fact, a Medicare type of obligation
6 that would have to be resolved under the Private Lien Resolution
7 Program. And we wanted to, in the abundance of caution,
8 eliminate any chance that these claimants thought that the
9 supplemental programs that they purchased through a private
10 entity were somehow otherwise being resolved in the Governmental
11 Lien Program.

12 We've also included a list of claimants who have
13 been -- there was a stream of notices that were put out to
14 primary counsel that contained an exhibit of claimants who
15 certain plans thought they had a reimbursement obligation in.
16 And if those plaintiffs have yet -- those claimants have yet to
17 participate, we've informed primary counsel of that fact so they
18 can, again, educate that group.

19 And then there is a balance of others, Your Honor,
20 that have not participated that we have sent this program --
21 this updated extension to as well, just to inform them of the
22 extended deadline and let them know, again, of the additional
23 plans and the fact that the program is moving forward. We've
24 also supplied the pro se curator with that same spreadsheet and
25 information and letters for them to process to the unrepresented

1 claimants.

2 So, in conclusion, we're pleased with the progress to
3 date. As I think everyone is aware, this Private Lien
4 Resolution Program has not been implemented before, and so there
5 is no road map. And so as these issues are confronted, we'll
6 bring them to everyone's attention and try to find a logical way
7 to solve them.

8 THE COURT: The focus in the past has been on the
9 governmental liens because the governmental liens are statutory
10 liens, and not only individuals but their counsel and the
11 parties are responsible for those liens. A discounted program
12 has not posed a problem necessarily or a large problem from the
13 lien holders in those matters, but private liens have created
14 some difficulty.

15 In this particular case, I wanted to see whether a
16 negotiated deal with the governmental liens could set sort of a
17 base to move forward on private liens. Through the efforts of
18 Mr. Garretson's firm, the litigants were able to get a good
19 deal, so to speak, for both sides in the governmental liens.
20 The government has an opportunity, on one fell swoop, to get all
21 of their liens taken care of. But it is also a good deal for
22 the individuals because the liens are substantially discounted.

23 When that was solidified, then Matt stepped it out to
24 see whether or not the same kind of approach would work with
25 private liens. The individuals who receive the benefits have

1 both a legal as well as a moral responsibility to pay them. The
2 individuals who receive the benefits have both a legal and moral
3 responsibility to pay those liens.

4 The transactional cost of the lienholder is a
5 significant transactional cost. So it was to their benefit to
6 see whether or not they could use this litigation as a focal
7 point for getting their liens paid. Because of that interest,
8 however, there was also some opportunity for the claimant to
9 benefit from that. And that was negotiated, and so it's a good
10 deal for the claimants to do this. I expressed myself in those
11 letters to that extent, and I also think, obviously, it's a good
12 deal for the lienholder. But if the matter is not resolved at a
13 discounted, a highly discounted rate here, then the claim is
14 going to be pursued in the appropriate jurisdiction, and
15 claimants won't have the opportunity at that point to get a
16 discount. So, I urged them at least to consider it. What they
17 decide is up to them, but this is an opportunity for them to get
18 a great discount, a large discount on their lien, which they
19 have against their funds.

20 So, I appreciate all the work that you've done on
21 that.

22 MR. GARRETSON: Thank you, Your Honor.

23 MR. HERMAN: Your Honor, Item 14 on your --

24 THE COURT: Thank you.

25 MR. MARVIN: Your Honor, I just want to note that in

1 connection with the liens, there is a new law that now requires
2 defendants to notify a certain lienholders when a settlement has
3 been reached. And we will be working with the Lien
4 Administrator, Mr. Garretson, and with the Claim Administrators
5 to come into compliance with that additional requirement.

6 THE COURT: All right. Yeah, that has been on the
7 horizon for a while, and that presents a problem for the
8 claimants, and I wanted to see whether or not we could focus
9 them on joining this program, at least think about joining the
10 program, because it's to their benefit.

11 MR. HERMAN: Does this statute provide, Mr. Marvin,
12 that defense counsel is responsible for the lien if they don't
13 notify?

14 (Laughter.)

15 MR. MARVIN: Yeah, it does.

16 MR. HERMAN: I'm glad we have balance.

17 Your Honor, if I might call the Court's attention to
18 Item 14, which also relates to the AvMed issue and the lien
19 issue. Mr. Seeger and Mr. Sobol are here, and this may be --

20 THE COURT: Okay.

21 MR. HERMAN: -- a more appropriate time to --

22 THE COURT: Sure.

23 MR. HERMAN: -- deal with that.

24 THE COURT: Okay.

25 MR. SEEGER: You know, I -- Chris Seeger. Sorry.

1 Your Honor, I think that Matt did a really thorough
2 job in reporting where the program is. Mr. Sobol and I have an
3 issue we've been working through very hard, and that is trying
4 to come up with some audit procedures because we built into the
5 arrangement that the group that is represented by Mr. Sobol will
6 have an opportunity -- and our side -- to really kind of take a
7 look behind the curtain. We now, with the 16 or
8 17,000 enrollees -- I'm not sure what that final -- where are we
9 at, Matt?

10 MR. GARRETSON: Right here.

11 MR. SEEGER: How many enrollees do we have?

12 MR. GARRETSON: We are up to about 16,600.

13 MR. SEEGER: That's a -- that's a, you know, pretty
14 big group that I think we can start to look at it. So, I mean,
15 we have some open issues there, but I don't think there is much
16 to report at this time.

17 THE COURT: Okay. Well, if there is an open issue
18 and y'all can't resolve it, bring it to me and I'll resolve
19 it.

20 MR. SEEGER: Thank you, Judge.

21 THE COURT: Thank you.

22 MR. HERMAN: Your Honor, Mr. Juneau, our Special
23 Master is here.

24 THE COURT: Special Master. Okay. As I said before,
25 part of the process to insure that the parties have some due

1 process in this particular matter, is to have a Special Master
2 appointed as a final review in these matters. And Mr. Juneau is
3 a nationally recognized attorney, with a lot of experience in
4 cases of this sort. I've appointed him as Special Master, and
5 also some Deputy Special Masters who are also very experienced
6 in mass tort, mass litigation from New Jersey and from
7 California to be of assistance to him.

8 MR. JUNEAU: Your Honor, Patrick Juneau, Special
9 Master.

10 Very briefly report, Your Honor. We've had currently
11 414 appeals. We have -- there has been rulings in all but 27 of
12 those, and of those 27, some of those are just in the recent few
13 days. I'm pleased to report to the Court that we continue to
14 have these conference calls with myself and the Deputy Special
15 Master reviewing and attempt to develop some uniformity in terms
16 of the rulings in this matter. But I'm happy to report that
17 we're on target, that what we anticipated to be done is being
18 done. I have met with the respective parties in the PSC and
19 Merck. Mr. Birchfield has advised me of projections in the
20 future, and the Court is acutely aware of that.

21 There are some bubble periods that we expect to occur
22 in terms of the numbers of appeal, and they've been very
23 diligent in providing me with that information so that we would
24 be geared up to address those, the number of appeals we expect.

25 I want to continue to report to the Court though, that

1 in some of these matters -- it varies on the case, obviously.
2 It varies on what the issues is, but some of these matters are
3 quite extensive in terms of medical records. Some of them are
4 very isolated, depending on what the appeal is. But through my
5 discussions with the other Deputy Special Masters, they are
6 acutely aware of what the issues are. They're acutely aware of
7 what needs to be looked at, and they have addressed those issues
8 that they deemed, you know, appropriate for review and have
9 acted accordingly.

10 THE COURT: Good. Okay. Thank you very much.

11 MR. JUNEAU: Thank you, Your Honor.

12 THE COURT: Part of the process, as I mentioned,
13 is to achieve due process, but at the same time, we can't
14 get bogged down in a matter of this sort. We have 50,000
15 cases that have to be processed or thereabouts, and we
16 can't have any aspect of the program serve as a bottleneck
17 to hurt the development and the moving of the whole
18 program. But we've been able to achieve that because of
19 the expertise of the parties, and particularly the work of
20 the Special Masters.

21 I've asked Mr. Birchfield, who's acutely involved with
22 the Gate Committee to be in communication with the Special
23 Masters. When he sees a particular bubble coming through,
24 rather than surprise the Special Masters with several thousand
25 cases, he gives them a heads-up that you've got a bubble coming

1 out and it's going to look like it's going to be about two
2 weeks, or a week, or 10 days, or whatever it is, or three weeks
3 before it gets to you. They can beef up their staffs; they can
4 clear their deck; they can be ready for it. And that's what
5 we've been trying to achieve with this communication.

6 MR. JUNEAU: One item I maybe should address, I think
7 would be informative, Your Honor. The way the system is set up
8 through the meetings we've had with Brown Greer, when those
9 appeals are filed, we are immediately notified of the appeal, so
10 we know instantaneously what the matter is. So, it's not a
11 matter of delay or waiting for something in the mail, or waiting
12 for something to come. We know exactly what's pending and can
13 accordingly adjust. So, that has a tremendous affect and
14 ability for us to address on a quick order, these appeals. In
15 other words, to get them, put them in order, and address them so
16 that there is not a long delay period.

17 THE COURT: And electronically, has very helpful with
18 that too, because you get it electronically, and you're able to
19 look at it and everybody's able to look at it rather than move
20 paper around the country.

21 MR. JUNEAU: My old excuse doesn't work anymore,
22 Your Honor. Thank you.

23 MR. BIRCHFIELD: Judge, if I could, I wanted to
24 express my appreciation to Mr. Juneau. He's been very
25 cooperative in working with us to anticipate what may be

1 coming to the Special Masters. And as we had discussed, we
2 are seeing an uptick in the number of cases that are being
3 considered by the Special Masters. They're doing a very
4 good job of staying on top of those cases and giving us
5 prompt rulings, and prompt decision, which is necessary for
6 us to stay on track for the September final payment.

7 What we do anticipate, even though we're picking up
8 and the pace and we'll continue to pick up, there will be a very
9 significant bubble that will be addressed by the Special Masters
10 beginning the first of July. The potential is there for as many
11 as 4,000 cases that they will not see until the first of July,
12 but must be decided between the first of July and August 15th in
13 order for us to stay on track. That is a very large number of
14 cases, but we know from the Gates Committee experience that that
15 can be done. We're reviewing over a 1000 cases a week. So
16 4,000 cases certainly can be handle in that six-week period,
17 provided the resources are in place to do that and the Special
18 Masters, we've talked about what's necessary, what kind of
19 resources are required. And so I'm very pleased that they are
20 on track, they're committed to getting that done so that we'll
21 be on pace for the September payment.

22 Thank you, Judge.

23 THE COURT: Thank you very much. Next item, State
24 Court Trial settings.

25 MR. MARVIN: Your Honor, there is nothing new there.

1 THE COURT: Okay.

2 MR. MARVIN: No State Court Trial settings through
3 August.

4 THE COURT: Okay. There are some claims afoot in New
5 Jersey with the Third Party Payors' claims, and that I
6 anticipate if some of those cases can't be worked out, they may
7 have some trial settings either in the latter part of this year
8 or beginning of next. I've got the same issues, and I'm going
9 to be coordinating that with New Jersey to see that -- make sure
10 that we don't have the trials on the same date.

11 Class Actions?

12 MR. HERMAN: May it please the Court, nothing new on
13 that. With respect to Discovery Directed to Third Party, the
14 ESI issue is completely resolved. We are going to remove that
15 from the next status report. And we thank the Court for the
16 Court's intervention in that issue.

17 THE COURT: Well, I appreciate the ESI's
18 understanding, and I'm glad that that was resolved.

19 MR. HERMAN: Your Honor, since the general discovery
20 article was removed from the status reports at a prior time, I'm
21 wondering if this might be the appropriate time for the -- your
22 address as to the meeting you had yesterday and the appointment
23 of Ms. Ann Oldfather for the non-enrolled cases.

24 THE COURT: Yes, I have been dealing with, as you
25 know, about 50,000 cases or thereabouts. A settlement has been

1 arrived at for a large portion of the cases, the major portion
2 of the cases, but not all of the cases, because the Settlement
3 Program dealt with certain MIs and strokes and another matter or
4 two, malady or two. So they left -- there are other cases which
5 either didn't want to enroll in the program or wasn't qualified
6 to enroll in the program. And those cases total approximately
7 114, I think. That's what I've been able to glean from the
8 documents that I have in court, and maybe more.

9 In any event, I convened a conference of all
10 interested parties in those particular cases and notified the
11 attorneys who represent those 114 cases. And I convened the
12 conference and had it yesterday. My thinking on those cases is
13 that we've got to focus now on those cases. While we're dealing
14 with the Settlement Program, I'm able to get some time to focus
15 on those particular cases and put those in order for trial.

16 So, the first thing that's necessary is get a census
17 of those cases and to see what we're dealing with, and then to
18 put some structure into it so that I can have individuals to
19 talk to and deal with them. Then my thinking is that we'll have
20 a period of time for discovery in those particular cases, and
21 then I'll be calling upon the parties to pick some cases for
22 trial. I'll give everybody an opportunity to pick their cases.
23 I'll give them an opportunity also to veto, and we'll come up
24 with two cases in each category, and I'll pick the one that will
25 go to trial from that particular category.

1 Probably, I'll have some cases that I can try and
2 hear. There may be some cases that may have to be tried in
3 other parts of the country, and I'm in the process of talking
4 with the judges in those areas to see whether or not I can go
5 out there and try those cases. I haven't talked to any state
6 court yet, but we've got a committee for state and a Federal
7 Coordination, and I'm told that it's possible that I could be
8 appointed a state judge to try a particular case. If that's
9 possible, I'll try to do that.

10 But in any event, we're moving along that line, and
11 I'm now in the process of calling upon the parties to give me a
12 census. I've appointed Ann Oldfather, liaison, for that group
13 of cases because I think that they are outside of the program.
14 And I don't know whether there is any conflict or not conflict
15 between the PSC and these cases, but in any event the PSC is not
16 a part of that of those particular cases, and I wanted to have
17 someone outside of the PSC to coordinate those matters. So Ann
18 is going to be liaison counsel, and Doug Marvin is going
19 represent Merck. And I'm going to meet with them in two weeks,
20 at which time they will have had an opportunity to focus on the
21 census, communicate with all of the interested parties and give
22 me some grouping. I can see maybe come up with about five
23 groups or subgroups. And my thinking is that, as I say, I will
24 set a period for open discovery in all of those cases with the
25 view towards picking some of the cases in each of those

1 subgroups and teeing them up for trial.

2 I hope we can do that with the discovery of four to
3 six, seven months of discovery, and then we'll begin honing them
4 down to try the cases. Hopefully, I can begin trying cases in
5 either the latter part of this year or probably more likely, the
6 first part of next year, and we'll get those cases knocked out.
7 In addition to that, we're dealing with the Attorney General
8 cases and the Third Party Payor cases which I will be trying
9 also, hopefully the latter part of this year.

10 MR. HERMAN: Your Honor, since we have a lot of
11 new folks here, I do want to repeat the Court's website,
12 <http://vioxx.laed.uscourts.gov>. And all of the Court's
13 rulings and filings have been posted serially to date.

14 Ms. Dawn Barrios is here, Your Honor, with regard to
15 the State Federal Coordination. I do want to state on behalf of
16 the PSC, the -- we don't have a participation in any of the
17 cases that haven't enrolled. But the depository of documents is
18 open for lawyers to explore, and should Ms. Old father and her
19 group have need, please contact our office, and we'll make it
20 available.

21 THE COURT: With regard to the website, if you can't
22 remember the website, go to the website of the Eastern District
23 of Louisiana, and I have a link on that which will get you to
24 our website. I found the website very helpful in MDL. We post
25 all of our material on the website. And even transcripts of

1 these hearings, they go on the website so people who want to
2 know what the Court has said or what the individuals have said,
3 have access to it. I think it's been very helpful to -- for
4 transparency in this particular case, and I would urge all MDLs
5 to do that.

6 Next item is State/Federal. Dawn?

7 MS. BARRIOS: Good morning, Your Honor, Dawn Barrios
8 for the State Liaison Committee. I've provided the parties and
9 Your Honor with a CD ROM as well as a printout on the statistics
10 on the remaining remands. And if you turn to the second page
11 you'll see that there were 1,901 claimants who have filed for
12 remands. Those that have been disposed of because of enrollment
13 and resolution in the program equals 90 percent. So 90 percent
14 of that number have effectively had their remand rendered moot.

15 The other percentage, Your Honor, is broken down. And
16 the plaintiffs or claimants who are registered only but not
17 enrolled in the program, that's two percent. And I'm sure at
18 some point the parties will address the disposition of these
19 cases. Those plaintiffs or claimants who have not enrolled or
20 registered equals eight percent of that total. And if you'll
21 notice in the latter columns, we have 20 that were post
22 settlement filings.

23 THE COURT: Right.

24 MS. BARRIOS: And we have many -- 35 who are
25 Government Action, T.P.P. and consumer cases. The large number

1 of, if you'll notice, 43 pending remands for the State of New
2 York. Those cases, Your Honor, will be dealt with under Roman
3 Numeral XX of your joint report today, so that's why that number
4 is so large there.

5 THE COURT: Okay.

6 MS. BARRIOS: But as you can see, every month we seem
7 to be whittling down the number of remands.

8 THE COURT: I think that that's important for me
9 to comment on that. You get, in matters of this sort, in
10 MDLs, when the cases are transferred in, they come in
11 either with a Motion for Remand or Motion for Remand is
12 filed shortly thereafter. And as the case proceeds,
13 discovery proceeds, and I usually keep these cases until at
14 least discovery has reached a point where they can profit
15 from the discovery. Because a single case of this sort is
16 very difficult to handle, either state or federal court.
17 It's a rather difficult case; it's a rather expensive
18 case.

19 As you know, I've tried six of these cases. The
20 plaintiffs have spent between one and two million dollars
21 per case. The defendants have spent between two and three
22 million dollars per case. No attorney fees involved, just
23 expenses. It's a case that's hard -- that -- now these
24 were Bellwether cases, so all of the bells and whistles
25 have been utilized in those Bellwether cases. And probably

1 it would not have cost that much for single cases.

2 But it's a substantial case. It's a product
3 liability case, a very significant expense. So I've tried
4 to keep them as long as I -- is reasonable, so that these
5 individuals can get some benefit from the discovery, if
6 indeed they do go back. But it also gives them an
7 opportunity to decide whether or not they want to settle
8 their case. And if they're part of a large group, their
9 chances are better.

10 MS. BARRIOS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. HERMAN: Your Honor has appointed Robert Johnson
13 and his firm to represent pro se claimants. Ms. Claudia Santoyo
14 for the firm is here to report. We have received one more pro
15 se since the last meeting, which we will forward to Ms.
16 Santoyo.

17 MS. SANTOYO: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. SANTOYO: Claudia Santoyo here for the Curator's
20 Office.

21 Initially, I'd like to just to report that we've
22 continued responding and assisting the calls, faxes, emails and
23 mail that we receive from pro se's and from those claimants who
24 are either represented and in the course of becoming pro se, or
25 wish to become pro se.

1 The call link and contact link has increased
2 continually. But at this point now we can say that the pool of
3 callers and people that we are speaking with has sort of
4 plateaued. So in that regard, I think we're getting closer to
5 where we can say that those people are being assisted and will
6 be well on their way to understanding the issues.

7 Essentially the main things we're dealing with now is
8 the deficiencies in enrollment, specifically the release
9 documents. We've been able to work with counsel for Merck, who
10 is doing the review of those documents and they have been
11 extremely -- of great assistance in allowing us some flexibility
12 in assisting pro se claimants and clearing those deficiencies,
13 especially when the situation is such that the claimant mailed
14 in the portions of the release which needed their signature or
15 writing, but didn't send in those pages that were, I guess they
16 thought informational. And, of course, the entire release needs
17 to be submitted. We now have the authority and under agreement
18 with counsel for Merck to review the whole document, speak with
19 that claimant, assure that we have their permission to resubmit
20 the entire document and, in fact, can clear those deficiencies
21 fairly quickly. So I'd like to thank counsel for Merck,
22 especially the folks over at Brian Cave, Williams Connolly and
23 Stone Pigman in assisting.

24 The next part of our calls usually resolve -- I'm
25 sorry, revolve around representative capacity issues. As the

1 Court and parties are aware, there was a form Cap 2008, I think
2 dash 1 that was informational and gave the claimants sort of the
3 starting point to assure that they are the appropriate party to
4 represent either a deceased claimant or an incompetent claimant.

5 Now we're at the point where, although the form may or
6 may not have been completed, the second part of that, which is
7 getting the actual document of authority from a Court in the
8 jurisdiction in which the claimant resides, that's the part
9 that's not yet done. So we are working towards that. It's
10 complicated because of the fact that state law applies to each
11 individual claimant. But, again, counsel for Merck as well as
12 the Claims Administrator is assisting with advising us the
13 precise name and type of document that each person may need by
14 state. So we're working closely with them so that we can advise
15 the pro se where to go specifically, what the name of the
16 document is that they need, and how to go become about getting
17 it and facilitate that for them.

18 We continue to receive ongoing questions about claim
19 status, the pro se's option if they've received some type of
20 notice, either eligibility, ineligibility or Points Awards. And
21 we also continue to receive calls and assist people who are
22 receiving notices of deficiencies as to pretrial Order 28
23 and/or are the subject of a Motion to Dismiss. We process these
24 on a rolling basis, and as previously stated, all of our
25 communications are uploaded to the communications log available

1 through the secure portal.

2 We do have a special class of claimants who are either
3 switching to become pro se's voluntarily or who are in the
4 process of becoming pro se's because of a motion to withdraw
5 filed by their attorney. We're assisting those claimants. If
6 the claimant is the person requesting to become pro se, we've
7 been able to have the claim administrator immediately change
8 their status in the secure portal so that our office can see the
9 relevant information and give that person the update. Where
10 it's an attorney withdrawal, we facilitate communication between
11 that claimant and the attorney if, depending on the basis of
12 the withdrawal. And once the orders are signed, we inform them
13 of any pending deadlines, any other appeal requirements,
14 options, et cetera, as they come in.

15 I'd like to, in particular, thank the Court for taking
16 the time earlier to give us some guidance as to some of the
17 special claimants we have, such as claimants who may have had a
18 post attorney withdrawal appeal and have some questions about
19 that. We also have questions regarding the folks that were on
20 the list from yesterday's conference. There was only one pro se
21 in the exhibit listed therein, and we have spoken with him. But
22 from our conversations, I do believe there may be some other pro
23 se claimants who could fall into the ambit of that category.
24 However, I think that they've not filed suit, they were Tolling
25 Claimants. So on that issue, we're going to get with counsel

1 for Merck and report to the Court as to the names and the
2 potential on those claims.

3 THE COURT: Okay.

4 MS. SANTOYO: As the Lien Administrator stated, we
5 have been provided with the extended deadline for the Private
6 Lien Resolution Program. We are forwarding that information to
7 those pro se claimants who have either not who responded at all,
8 or who had questions about the program but had not yet enrolled.
9 As to the pro se's who have contacted our office and stated that
10 they did not wish to take part in that program, we are not
11 re-mailing the information since it -- we hope it's clear that
12 they don't want to participate.

13 THE COURT: Okay. All right. Thank you very much.

14 In matters of this sort, the Court recognized early on
15 that there would be some people, a considerable number of
16 people, who might be pro se, and my interest in pro se claimants
17 is that we need to provide some mechanism for at least allowing
18 them to have someone to talk to, to ask questions of. And so I
19 appointed a curator, and the curator has done a great job in
20 communicating with them. I thank you very much.

21 MS. SANTOYO: Thank you, Your Honor.

22 THE COURT: Next, Vioxx Statistics. Anything on that?

23 MR. MARVIN: Not really, Your Honor. The numbers are
24 set out in the Court report.

25 THE COURT: Trial Package, anything on that one?

1 MR. HERMAN: Yes, Your Honor. Your Honor, we recently
2 received from Decision Quest their work product, which includes
3 some substantial jury research demonstrative exhibits, time
4 lines, et cetera. And we will be going through that material to
5 add it to the Trial Package, either those parts that are
6 significant for future trials, or the entire Decision Quest
7 package.

8 THE COURT: All right.

9 MR. HERMAN: Other than that, nothing further to
10 report on the Trial Package.

11 THE COURT: The next item is Third Party Payor
12 cases. Anything on that?

13 MR. HERMAN: The Third Party Payor cases, Your
14 Honor, Elizabeth Cabraser has headed up those issues and
15 Your Honor has had submitted a Scheduling Order with regard
16 to those cases. And I believe discovery has already been
17 served -- written discovery by Merck.

18 THE COURT: Right. We have certain deadlines in
19 that discovery on that Scheduling Order, so hopefully
20 they'll be able to be met and we'll move forward with those
21 cases.

22 MR. HERMAN: Your Honor, with regard to the
23 Attorneys General's issues -- Attorneys General issues,
24 I've had several conference in person, by phone
25 correspondence. They've requested a meeting this

1 afternoon. As soon as this conference is over I will meet
2 with them. If we can't resolve it today, since this issue
3 has been ongoing for eight months now, then we'll submit it
4 to Your Honor for a decision.

5 THE COURT: Okay. All right.

6 MR. HERMAN: With respect to the Motion to
7 Dismiss foreign individual cases, there is nothing new. I
8 see that Mr. --

9 THE COURT: We talked about Decision Quest
10 already.

11 The Fee Allocation Committee, anything on that?

12 MR. HERMAN: Yes, Your Honor. We have been
13 meeting on cost now for four weeks, daily. With respect to
14 the Fee Allocation Committee, Your Honor has issued an
15 order that any firm objecting to the eight percent
16 assessment should file an objection by May 8, 2009, and
17 thereafter, as I understand it, Your Honor will set forth a
18 Scheduling Order for motion practice and argument.

19 THE COURT: Right. That's my thinking on it. The
20 committee has filed a motion requesting that the Common Benefit
21 Fee be set at 8 percent. This 8 percent, or whatever amount the
22 Court allows, will be coming from the principle attorneys
23 portion of the fees. So I want to have everybody focused on
24 that. And if there is any objection to it, they need to make
25 the objection, then I'll hear their objections and set some

1 scheduling orders so that -- I just need a notice of objection.
2 If they notice the objection, then I'll set a conference and
3 we'll set a schedule or ask them -- ask people what they need to
4 do, the discovery, whether it's argument, whether it's briefing,
5 that they wish to give to the Court, and I'll set some dates and
6 we'll move on that.

7 Motion for Reconsideration/Revision of Capping Fees.

8 I had an oral argument on that matter. The consortium of
9 attorneys asked that I refocus on that particular matter. I set
10 a cap of 32 percent on the principle attorneys fees. They filed
11 a brief in support of their position. I appointed the Tulane
12 Law Clinic to represent the claimants on that particular issue,
13 and I had heard oral argument on it about 10 days, two weeks
14 ago, and I'm in the process of focusing on that issue.

15 Merck's Motion for Rule PT, Order 29, Non-Compliance,
16 that's going to be next. We'll do that. Is that the motions
17 that we're going to take up after this meeting?

18 MR. MARVIN: It is, Your Honor.

19 THE COURT: Okay. And same way with the 31?

20 MR. MARVIN: That's correct.

21 THE COURT: Any other matters before the Court?

22 MR. DUGAN: Yes, Your Honor.

23 THE COURT: Okay, Jim.

24 MR. DUGAN: James Dugan. Just reminding the Court
25 that you issued an order on April 17 setting the status

1 conferences in both of the private Third Party Payor cases and
2 the Governmental Action cases.

3 THE COURT: Right. Yeah. Okay. We're going to
4 do that after this meeting, right?

5 MR. DUGAN: Yes, sir.

6 THE COURT: Yeah. Okay. Anything else?

7 MR. HERMAN: Your Honor, the date for next
8 conference?

9 THE COURT: The next date May 29th.

10 THE DEPUTY CLERK: Friday.

11 THE COURT: May 29th, 9 o'clock and 8:30. I'll take a
12 ten-minute break at this time, and I'll come back and I'll deal
13 with the motions. When we finish the motions, we'll do a status
14 conference.

15 THE DEPUTY CLERK: Everyone rise.

16
17 (The proceedings were concluded for the day.)

18 **CERTIFICATE**

19 I, Pinkey Ferdinand, Official Court Reporter, United
20 States District Court, Eastern District of Louisiana, do hereby
21 certify that the foregoing is a true and correct transcript, to
22 the best of my ability and understanding, from the record of the
23 proceedings in the above-entitled and numbered matter.

24 S: PINKEY FERDINAND

25 _____
Pinkey Ferdinand,
Official Court Reporter