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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: VIOXX PRODUCTS  
LIABILITY LITIGATION

MDL DOCKET NO. 1657  
NEW ORLEANS, LOUISIANA  
THURSDAY, APRIL 29, 2010, 9:00 A.M.

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

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22 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT  
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1 three people to take your place.

2 MS. GREER: Thank you, Your Honor. It's good to be  
3 back.

4 I'm going to spend some time first off talking about the  
5 status of the stroke claims. The good news is we are nearing the  
6 end, and then Orran will talk about the status of the  
7 extraordinary injury program.

8 Your Honor, the first slide shows just a general overview of  
9 all of the claims that were filed as stroke claims that came  
10 through the Gates review process. You can see from Rows 1 and 2  
11 that there are no claims pending in the queue for our review.

12 And this slide really shows that after reviewing 17,851  
13 claims that were filed as strokes, 12,442 passed either by us,  
14 the Gate Committee, or were pushed in by Merck, and those are the  
15 ones that we will talk about in a minute in terms of those we  
16 have evaluated for points and where they stand.

17 5,409 ran through the process and were found to be  
18 ineligible either by us, the Gate Committee, or ultimately by the  
19 Special Master.

20 The 12,442 claims that were eligible are depicted here on  
21 this slide, and what this slide shows is that through April, and  
22 payments were made last week, 10,508 have received either interim  
23 payments or were special marker claimants and have received the  
24 5,000 fixed payment that is allowed for in the settlement  
25 agreement.

1           There are 1,925 where we have issued a notice of points  
2 award. 747 of those will be paid in May. We will be making  
3 interim payments in May, the third week of May.

4           1,083 are eligible for the May payment. Those are ones  
5 where folks are still deciding whether to accept. And, actually,  
6 there are some of those -- the eligibility for the May payment is  
7 a little bit of a misnomer. There are those in that category who  
8 are not interim payment enrolled but simply enrolled, so they are  
9 not eligible to receive anything but the final payment, and so  
10 those will actually be paid in the final payment for the first  
11 time.

12           There are 95 that are either on appeal to the Special Master  
13 or are in special review. And, again, the special review claims,  
14 and there are about 80 in that bucket that are in special review,  
15 those are folks who received points awards with fewer than  
16 2 points who elected not to receive the 5,000 fixed payment but  
17 to go into a bucket of claims where, at the end of process, the  
18 Special Master reviews them under criteria and with set point  
19 parameters that he can award. So those are awaiting the very end  
20 of the process.

21           Rows 3, 4 and 5 and 6 show virtually a handful of claims  
22 that are left. The two in Row 3 are those where we have finished  
23 our final review. Those are pending some sort of administrative  
24 issue. The Lien Resolution Administrator gives us the data we  
25 need on liens within 24 hours, and often this snapshot is just



1 that 24-hour window where we've sent the data to them and we have  
2 not yet received it.

3 There are three claims that are pending our final review,  
4 our second layer of review. There are two claims that are still  
5 incomplete.

6 We have -- as Your Honor knows from past status conferences,  
7 the incomplete claims package rate for the stroke claims was  
8 about 28 percent as compared to 15 percent in the myocardial  
9 infarction claims. That has created delays; although, we're  
10 happy to report we only have two left, and their windows for  
11 responding will run within the next week. After that, we will be  
12 able to issue the notice of points award and move on through the  
13 process.

14 And there are two claims that are still being reviewed by us  
15 that will hopefully receive a notice of points award this week.

16 What this slide shows, though, is that even though there are  
17 fewer than ten claims left, we can't issue the final payments  
18 until they are all resolved.

19 This slide shows the average points by stroke injury level.  
20 As in past months, I will not read these for the Court. Those  
21 here can see this. Those that are listening in on the phone can  
22 see this this afternoon. We will be posting this presentation on  
23 our web site. On the side there is a button that is MDL status  
24 court presentations and folks can see it there.

25 What it shows is the average number of points by injury

1 level, and it shows that the special marker population has been  
2 7.45 percent across all of the stroke claims.

3 THE COURT: How does that compare with the other MIs?

4 MS. GREER: It's about the same.

5 Your Honor, this slide reflects the dollars that have been  
6 spent to date. Paid through April, 10,508 claims, over 285  
7 million. I will reiterate, this number is 284 million because  
8 it's only 40 percent of the payments.

9 The total amount set aside for the stroke payment was 850  
10 million. So when we make the final payment, it will be the  
11 60 percent balance. And only those who've received the 5,000  
12 fixed payment, they will not receive another payment, but  
13 everyone else will receive 60 percent.

14 747 that are pending payment in May, right now that total is  
15 almost 15 million. That will go up because there are those who  
16 are still deciding whether to accept. There are another  
17 \$25 million of claims that are outstanding that could be accepted  
18 and will be paid their final payment. And so through May, we  
19 could pay over 324 million and then just await the final payment.

20 Your Honor, this timeline is our best estimate of when the  
21 final payments will be made on stroke claims. And what it  
22 does -- and I'll walk through this for the Court. We are  
23 anticipating, given all of the deadlines that these last claims  
24 will be able to take -- and we hope that if one of these last few  
25 claimants receives a notice of points award, they have

1 technically 15 days to decide whether to appeal, we really hope  
2 that perhaps that whole 15 days is not taken. But if it is, then  
3 we will -- we project the last claim will be resolved on  
4 May 21st, which is a Friday.

5 We will then be able to make, and this really isn't  
6 dependent on that, but we plan to make the interim payments for  
7 stroke claims the following Monday, May 24th. Between the 21st  
8 and the 26th of May, we will be looking at all of the final  
9 claims, and looking at the dollars that remain, and we'll be able  
10 to pinpoint what that final IS point value is.

11 Right now we do not know. Currently we are paying at 1810  
12 an IS point. But we will be able to make a determination by that  
13 week of May 26th.

14 Once we do that, we have to send the final payment list to  
15 the Lien Resolution Administrator. And that has to have the  
16 final point value that's used to calculate, and they have to look  
17 at it one more time. They have to be given a chance to reconcile  
18 it with theirs, because this is it. Once this list goes to them,  
19 they have to make sure that everything is straight with all of  
20 the obligations that they have been tracking.

21 It looks like they have eight days to do that. This  
22 actually falls over Memorial Day weekend. They need three full  
23 business days to turn that list around. We then get it back, and  
24 we will submit the final payment list, we hope, to U.S. Bank on  
25 June 4th, which is a Friday.

1 U.S. Bank needs all of ten days to be able to make sure that  
2 these payments are scheduled correct; that the checks are cut;  
3 that the wires are scheduled. And so our best estimate is that  
4 the payments will actually go out on June 14th.

5 If Your Honor doesn't have any questions, Orran will talk  
6 about extraordinary injury.

7 THE COURT: Thank you very much.

8 MR. BROWN: Good morning, Your Honor, I'm Orran Brown.  
9 I'm one of the three lesser people who was here last month trying  
10 to report on this in Lynn's absence.

11 Today I would like to tell everyone where we are on the  
12 other piece of the resolution program that we are wrapping up,  
13 and also plan to wrap up in June the extraordinary injury  
14 program.

15 A brief reminder of the nature of this program. The  
16 settlement agreement provided that some of the funds available  
17 for heart attack claimants or stroke claimants could be used to  
18 pay additional compensation to claimants who suffered  
19 catastrophic situations beyond the injuries associated with their  
20 heart attack and stroke, and allowed, if they qualified on the  
21 underlying grid, to seek additional payments for those  
22 situations.

23 The settlement agreement defined that as \$250,000 or more of  
24 economic loss, which were past medical expenses unreimbursed or  
25 lost income and wages, or another category of special medical

1 injuries, extraordinary injuries not reflected on the underlying  
2 grids. And then we designed the program, also, with the party's  
3 consent, to allow some payment of future medical expenses and  
4 future lost wages beyond the time of when this settlement  
5 agreement was put in place in November 9th of 2007.

6 So we have been working on these claims since they were  
7 filed by the deadline of September 1 of last year. Our review of  
8 these claims have been completely transparent. We posted a  
9 lengthy review manual December 1st last year that shows exactly  
10 how we go through to quantify these claims on the economic side  
11 or how we determined if a medical injury that's asserted comes  
12 out qualifying as a special medical injury.

13 So let's see where we are on those different types of  
14 claims. These tables will show us how many claims we received of  
15 each type and where they are in the process now.

16 This particular slide is about the medical expenses, both  
17 past expenses and what we call AED, which is additional  
18 extraordinary damages, that's the future side after November of  
19 '07. It shows us here that we got these 300 claims of past  
20 expenses, 88 futures, and this is where we are.

21 We have completed our reviews of these claims. This line  
22 here under review in the first stage of our process shows we have  
23 none left to review. After we issued our initial decision,  
24 claimants could ask for a second review within 20 days, and we  
25 had this many in this row who did, 97, for example, in the past

1 who asked for a second look, submitted additional materials. We  
2 reviewed them and we have finished all of those second reviews,  
3 too. We're done with the -- our review side of the medical  
4 expenses.

5 And then at that point, after we finish, the claimant has a  
6 right within 20 days to appeal to the Special Master and pay a  
7 \$700 appeal fee. We have two of these folks who have appealed.  
8 We still have some that are outstanding. We'll see how many  
9 total in a few minutes might still generate some appeals for us  
10 that we want to get finished this summer, and I'll cover those in  
11 a minute.

12 This is the lost income or LWI that we call it, past and  
13 future. It shows how many claims we received of this type of  
14 effort to receive payments from this program.

15 We have one claim left that's still in our review stage, and  
16 that particular claim is a special situation that we have been  
17 talking with the claimant's counsel a lot. It has been kind of  
18 off on a different track for various reasons, but other than that  
19 one, we have finished the review of all of these lost income  
20 claims.

21 And then of those who sought second review, these 486 are  
22 the primary number there, we have finished our review of all of  
23 those, and issued notices to those claimants about our review of  
24 their materials on the second go-round. And some of them do  
25 change on the second go-round, because this was their opportunity

1 to submit documents and tax records and other things that were  
2 missing from their first submissions.

3 We ended up with these numbers so far being appealed for  
4 lost income, 19 appeals for past lost income, and then six for  
5 future claims to the Special Master.

6 That's the lost income side.

7 The third piece of the puzzle is the special medical injury  
8 or SMI. We received over 1600 of those claims of persons  
9 asserting a different injury than was on the underlying grid. We  
10 have been through the reviews of all of them.

11 This one claim here that shows it's still under review is  
12 the same one claim that still has the lost income issue. This  
13 claim is on a different track of review with the claimant's  
14 counsel. But we have finished those reviews initially and issued  
15 the notices.

16 And then among the ones that we received asking for second  
17 review, which is the 721, we have finished our review of all of  
18 those, so we have none left in our review. Some of them are out  
19 in the field with the claimants and their counsel for a decision.

20 We have 28 of them who have appealed to the Special Master.  
21 And the ten in parenthesis there shows that we have already  
22 gotten ten decisions from the Special Master on these appeals.

23 This slide puts it all back together. We basically had over  
24 2,300 folks who sought compensation from the extraordinary injury  
25 program. We have the one claim that's still in the review

1 process. That's the same one. We have finished all the second  
2 reviews on everybody else.

3 And these are the ones out in the field, 394, that are still  
4 waiting for the claimants to accept or appeal to the  
5 Special Master. That's where we're going to maybe get some  
6 additional appeals.

7 We have 705 of them that are done, accepted for good.  
8 Forty-four appeals to the Special Master total so far, and, as we  
9 said earlier, ten of those decisions already issued by the  
10 Special Master.

11 And we are working with the Special Master and his office on  
12 those appeals, and Mr. Juneau was primed and ready for these when  
13 they happened. We have set up the secure interface, web-based  
14 interface with his office, just as we have done on the underlying  
15 claims appeals. He was ready to go. He's already issued some of  
16 these decisions.

17 And we don't think we're going to see a whole lot of  
18 appeals. So far the appeal rate is somewhere around 4 or  
19 5 percent, so we don't think we're going to have more than about  
20 60 or 70 of these to finish. But he is moving on them already  
21 and issuing written decisions on each one.

22 That's where we really are now is finishing out that process  
23 to enable us to do the final payments on the EI side.

24 These slides just show us of our reviews what happened  
25 afterwards. This shows us, after we reviewed a claim initially,



1 about half of the folks accepted that result and did not move  
2 forward in the process to second review. About half of them did  
3 move forward to second review, asking us to take another look at  
4 it.

5 This breaks it down a little further in terms of what they  
6 were accepting or rejecting when they asked for second review.  
7 It basically says that about 48 percent of the people ask for  
8 second review because they are not payable; about 46 percent,  
9 almost 47 of the people were not payable and accepted those  
10 results. So this just kind of gives us some sense of whether the  
11 claims were passing and what folks were doing with it afterwards.

12 After our second review, almost 62 percent are accepting the  
13 outcome that we give them after our second review of the process  
14 and not appealing to the Special Master. We see about 3.8,  
15 4 percent of them are appealing. This 34 1/2 percent, they are  
16 out in the hands of the claimants now, that's what we're waiting  
17 on to see if they appeal or accept.

18 And a similar slide here that tells us that of the ones that  
19 accepted, about 56 percent of them were not payable, and then  
20 about almost 30 percent of the ones out in the field of all of  
21 our second review decisions are not payable, and we're waiting on  
22 them to tell us if we're going to have an appeal.

23 The timeline here is very similar to the one Lynn showed.  
24 This is our best estimate right now of where we stand on being  
25 able to finish this program.

1           Our last first assessment that we issued was on April 22nd.  
2           Some of those trail behind the others because we could not issue  
3           the EI assessment until the underlying IS score was known because  
4           that score affects your EI score, and so we had to wait for  
5           claimant decisions on the IS claims.

6           We issued the last of our first assessments on April 22nd,  
7           allowing the full time of 20 days to seek a second review. On  
8           that one, puts us up until May 12th. And then we're going to  
9           jump on that immediately because we can now review that almost  
10          overnight if we get these in, and then they'll have 20 days to  
11          appeal to the Special Master if they don't like that second  
12          outcome.

13          The last appeal we think will end up with the  
14          Special Master, if there is one, and they take their full time,  
15          by June 2nd. We hope that the full time is not taken. We hope  
16          that we don't have that appeal. There are a number of appeals  
17          that could happen from that undecided group in the May period,  
18          and so it puts a lot of work in the lap of the Special Master at  
19          that stage, depending on how many claims we get.

20          The Lien Resolution Administer, Matt Garretson and his group  
21          have been working on this very closely to try to assess whether  
22          there will be governmental lien deductions from the special  
23          medical injury payments, because those are additional injuries  
24          that we are compensating for of a serious nature, a heart  
25          transplant, a craniotomy, an actual brain surgery.

1           We have some instances where someone had a stroke or a heart  
2 attack and was in a vehicle, car and had an accident and then  
3 suffered a cascade of injuries as a result of that. Very  
4 different situations of folks that had injuries. And so those  
5 injuries, if they are paid in the EI program, could be subject to  
6 a Medicare lien or another governmental lien.

7           So the Lien Resolution Administrator has been working with  
8 us about trying to identify those categories of injuries and  
9 working with the governmental agencies to try to pin down whether  
10 there will be a deduction, and there probably will be for some of  
11 them, and how much. All of that work has to finish in June as  
12 well.

13           So there's a lot to compress in there, as well as our final  
14 payments list and working with U.S. Bank to get the funds out.  
15 But we have got our fingers crossed that we'll be able to finish  
16 all of those steps and issue the final payments in the EI program  
17 by June 30th of this year.

18           Unless the Court has any further questions or comments,  
19 that's our report for today.

20           THE COURT: Thank you.

21           MS. GREER: Thank you.

22           THE COURT: The next item is Lien Resolution  
23 Administrator.

24           MR. HERMAN: Your Honor, on behalf of plaintiffs we want  
25 to thank BrownGreer for their professionalism and efficiency

1 which has been, we think, extraordinary in this case.

2 And I want to state, again, Judge Fallon's established  
3 <http://vioxx.laed.uscourts.gov> as the Court's official web site.

4 BrownGreer is:

5 [www.browngreer.com/vioxxsettlement](http://www.browngreer.com/vioxxsettlement).

6 And the third web site is:

7 <http://www.officialvioxxsettlement.com>.

8 THE COURT: Let's hear from the Lien Administrator.

9 MR. GARRETSON: Your Honor, Matthew Garretson, I'm here  
10 to report as the Lien Resolution Administrator.

11 Also, Your Honor, in chambers I provided counsel and the  
12 Court with a copy of a chart we prepared that we'll use for the  
13 final stages of the program to drive this project home. Just  
14 when I finally figured out how Orran made such pretty charts, he  
15 shows up with pie graphs and dynamic timelines. I have a ways to  
16 go, Your Honor, but I will get there.

17 So in an effort to follow this chart -- and we will also  
18 make this available on the claims administrator's and the Court's  
19 web site, if that's appropriate, just so people can follow along.

20 I'm going to look at this in separate buckets. The first  
21 being our original assignment, which were the governmental  
22 reimbursement obligations, and then also move to the private lien  
23 obligations as I've done before. And I'll also point to you  
24 where there seems to be some room to make up quickly, and a lot  
25 of that is what Orran covered, which has to do with getting the

1 final points awards related to the ischemic strokes.

2 So I'll try to give a quick synopsis of that.

3 THE COURT: Do you want to put this on the overhead? Do  
4 you want to do that?

5 MR. GARRETSON: How do you like me now, Orran Brown?

6 MR. BROWN: Where's the pie chart?

7 MR. GARRETSON: As you see with respect to the  
8 myocardial infarction cases with respect to Medicare, we're  
9 97 percent, roughly 98 percent of the way done with that. The  
10 balance of those, the 290 that are outstanding, relate to that  
11 entitlement discrepancy issue we continue to wrestle with, which  
12 is we do not have a confirmation from plaintiff's counsel that we  
13 have the correct Social Security number.

14 Ultimately, we'll continue to whittle away at that issue  
15 through review of medical records, working with counsel, but at  
16 some point when the program comes to an end in June, we'll have  
17 to have a solution that will likely be, with the consent of the  
18 parties, that will have to shift to the claimants because we've  
19 done everything we can do at that point.

20 You also see, with respect to Medicaid, that we're  
21 98 percent of the way done. Only 14 percent of those  
22 obligations -- I'm sorry, 12 of those obligations have to do with  
23 Social Security discrepancies.

24 The balance of that 95 that you see there, we are just  
25 waiting on the agency's approval of our audited claim values, so

1 I don't expect that to be an issue. We do have holdbacks in  
2 place, as the Court is well aware, and we expect those to be  
3 resolved shortly.

4 Governmental obligations, you see there, Your Honor, that  
5 we're about 90 percent of the way done. We continue to whittle  
6 away at that bucket of outstanding obligations. And that is  
7 simply the fact that many of the governmental agencies, like the  
8 Department of Veteran Affairs, as I've reported before, we have  
9 to go facility to facility.

10 And similar to my comments about Medicare, ultimately, if  
11 they cannot get those documents to us as the program concludes,  
12 we'll look to the Court's help in solving that issue.

13 With respect to ischemic stroke claimants, the big issue we  
14 have there is, you'll see some gaps in terms of work we have left  
15 to do, and that is largely because for many of these obligations  
16 as they relate to Medicaid, as well as when they cover the  
17 private health insurance program, we have a cap that is driven by  
18 a percentage of the final award amount. And so a large portion  
19 of these Medicaid and private liens, we've got to see where that  
20 cap is before we lock them down.

21 But with respect to Medicare, we're 95.5 percent of the way  
22 complete. The discrepancy issue is identical to what I reported  
23 for myocardial infarction, which is we are awaiting  
24 Social Security numbers to be cured, discrepancies to be cured.

25 But we also have of that 447 that is unresolved in the

1 ischemic stroke category, 273 of those relate to a  
2 redetermination process we are working on.

3       When we first came up with the program with Medicare, we  
4 didn't know how many -- we set a -- the special marker cases  
5 where we had, if you recall, there was a fixed payment that we  
6 paid a couple hundred dollars to Medicare for the ischemic stroke  
7 special marker cases. We have some cases that are just over that  
8 bubble, and so they jump up from a couple hundred dollars to a  
9 couple thousand dollars in reimbursement.

10       Medicare is cooperating with us, and we're asking for them  
11 to help us create a special category for this group of claims.  
12 Until then, we ask for everyone's patience. We could, of course,  
13 go ahead and lock them down under the terms of the program, but  
14 we think it is good advocacy to continue to try to find a  
15 solution for that subset of 273 clients.

16       At this point, I can't give the Court a final deadline on  
17 that. But I can say we'll be in touch with Medicare, let them  
18 know this program is wrapping up in June, hopefully, in terms of  
19 our work, and see if we can drive that to conclusion.

20       With respect to Medicaid, you see that we were 45 percent of  
21 the way done with the ischemic stroke cases. We have all the  
22 data we need in-house. All the liens have been audited, so there  
23 is no more work for us to do other than lock those down as soon  
24 as we have the final award amount for those cases. And as soon  
25 as that's accomplished, which is ongoing as Orran and Lynn

1 described, those will be finalized.

2       So there is about a third of those where we're -- I'm sorry,  
3 there's that chunk we're waiting on final awards. I probably  
4 spoke too quick. Of that 54 percent, we're not waiting on final  
5 awards for all of those. About a third of those we're waiting on  
6 final awards. The balance, we've already received that  
7 information, and it's been pushed back to the agencies now, and  
8 we're waiting for their approval against that cap and our final  
9 audits.

10       Same issues we have with the governmental liens. I won't go  
11 into detail with those, but it's the same issue I described,  
12 facility by facility claims pulling.

13       With respect to extraordinary injury awards, Orran gave a  
14 fine overview of that so I won't go into much detail, other than  
15 to say we're only looking at the special medical injury cases to  
16 see if there is a new obligation. We have screened those cases  
17 to see who is entitled, and 83 percent of those special medical  
18 injury cases involve Medicare beneficiaries, 27 percent involve  
19 Medicaid beneficiaries and, of course, that overlap in the math  
20 has to do with the fact that many of them are double -- are dual  
21 beneficiaries. And 40 percent of them also are participating in  
22 the private lien program.

23       So there is some considerable work to be done there;  
24 however, I think we are on track and working in step with the  
25 claims administrator.



1           That will take me now, Your Honor, to the private lien  
2 program. As you're aware, we have gone through the statistics  
3 before, but we have 5,488 claimants with a private obligation in  
4 the myocardial infarction categories; 3,152 in the ischemic  
5 stroke category.

6           We have completed our audit for nearly 100 percent of all  
7 those claims that have been inbounds, so there is not a  
8 considerable amount of work left to do there. However, we do  
9 have some issues that we need to discuss with the Court related  
10 to the private lien program.

11           With respect to the MI cases, there is only 76 claims that  
12 are outstanding where we are waiting on our final approval of the  
13 audited values we've given back to the 500 participating plans.  
14 So we're very close to resolving all those and we're waiting.

15           In the next ten days, we expect to have many more of the  
16 final values posted. You'll see that only 4,406 have been  
17 considered finalized. The difference between the 5,412 and the  
18 4,406 has to do with just getting the approval back from the  
19 plans, posting those results on the claims administrator's web  
20 portal, and giving counsel ten days to review and appeal, if they  
21 are going to appeal.

22           With respect to the ischemic stroke, we've received 100  
23 percent of the claims that have been sent to the plan -- or, I'm  
24 sorry, 99.5 percent of the claims back that we've sent the plans.  
25 Those, the audits are complete for those.

1           The same issues exist, but you'll see a major gap,  
2 13 percent only have been approved with respect to our audited  
3 values. And that is, again, a reflection of the fact that we're  
4 still waiting on final award amounts so we can get the approval  
5 of the audited lien amount from the plans.

6           So that bucket alone is where I expect over the next couple  
7 of months you'll see considerable progress made as we lock down  
8 the ischemic stroke cases.

9           The final issue, there are four issues I wanted to report on  
10 that relate to the private lien program, because we get some  
11 questions from counsel as it relates to the appeals that are  
12 being made. There is only a handful of cases that have appeals,  
13 but these issues are largely controlling the outcome of those  
14 appealed cases.

15           The four issues, Your Honor, only one of them at this point  
16 do I need the Court's assistance, but I wanted to point all four  
17 issues out.

18           The first issue, which is not the issue I need the Court's  
19 assistance with, is states that have antisubrogation laws. If  
20 the parties recall there, in the Memorandum of Understanding,  
21 there was a provision that no obligations would be created where  
22 none otherwise would exist due to state law, antisubrogation law.

23           There are about 1,000 cases, both MI and IS, that have  
24 claimants that reside in antisubrogation states. So 400 of those  
25 we've already released their final lien amount. Although they

1 had an audited lien value, the antissubrogation law was in effect  
2 and nullified that lien. The balance we're just waiting for  
3 approval from the plans that there is no disagreement that those  
4 liens should be canceled.

5 The topic that I do need the Court's assistance on is the  
6 plan language review. The client education materials that went  
7 out, with both parties' approval, allowed for an audit by us of  
8 plan language for any final lien; that once it was audited and  
9 reduced by the 50 percent reduction that applied to the audited  
10 lien, that if it was still over \$50,000, we would audit that plan  
11 language to see if it was sufficient under that state law and  
12 just to make sure -- because that's such a considerable number,  
13 to make sure that that was, in fact, without question, a valid  
14 lien. That was in the client education materials; however, it  
15 was not in the MOU, the Memorandum of Understanding.

16 There are approximately 200 claimants that are affected by  
17 that who wish to have their plans reviewed. And we simply,  
18 Your Honor, need some help bringing this to a conclusion, to have  
19 a meeting of the minds between the parties as to if that is a  
20 process that has been agreed upon.

21 THE COURT: All right. Give me the name of the person,  
22 your counterpart, and I'll set up a conference and I'll work  
23 through it with you.

24 MR. GARRETSON: Certainly, Your Honor, I will do that  
25 and I'll get with the clerk.

1           Finally, there a smattering of cases that involve two plans  
2 that have submitted the same claims, so we're working through  
3 that issue, but that only involves about 25 claimants. And I do  
4 not need the Court's assistance on that.

5           Then there is another issue that involves the review of  
6 wrongful death statutes in various states because they could have  
7 the same type of antissubrogation effect. And that is not an  
8 issue at this point, but there is about 120 claimants that fall  
9 into that bucket.

10          I share all this with you, because, as you can see, when you  
11 get down to it, there are several hundred cases that are going to  
12 be stuck with a holdback for a period of time until these four  
13 issues are resolved.

14                   THE COURT: Right.

15                   MR. GARRETSON: I'll continue to report to the Court as  
16 to those issues.

17          Finally, as I conclude, Your Honor, the only other issue I  
18 wanted to mention is we do have a release that has been agreed  
19 upon by the parties that will be provided to the claimants.

20          There is really two forms of it: Releases for claimants  
21 that participated in the process and paid a lien. And there will  
22 be a release for claimants that participated but did not have a  
23 lien identified so they, in fact, have something to show, should  
24 a plan assert a lien later, that they went through this program  
25 and that was the one chance that the plaintiffs had to assert a

1 lien. So that is in the works. I've had several counsel ask  
2 about that.

3 So I apologize for the length of my report this morning,  
4 Your Honor, but that concludes the report. And I will get with  
5 the clerk with the information you requested.

6 THE COURT: Okay, fine. Thank you, Matt. Give me a  
7 copy of those documents, the release, and I would like to post  
8 them on the web site.

9 MR. GARRETSON: Certainly, Your Honor.

10 THE COURT: What's next?

11 MR. BIRCHFIELD: Your Honor, the next item on the agenda  
12 is the Special Master's report, and Mr. Juneau is here to give  
13 that report.

14 As he is coming, Mr. Herman asked that I make sure that  
15 everyone is aware, plaintiff's counsel and claimants, that Matt  
16 Garretson also has a web site, and the web site is listed in the  
17 joint report that's posted.

18 SPECIAL MASTER JUNEAU: I don't have a pie graph today.  
19 I could have brought a pie from Lee's out of Alexandria,  
20 Louisiana, is probably the closest a Louisiana product could give  
21 to that, Your Honor.

22 This is going to be very brief. Mr. Brown's report was very  
23 detailed. It gave you a good synopsis of where we are and where  
24 we are headed on the extraordinary fund. I have already reviewed  
25 a considerable number of those cases. I've made rulings on

1 several of them already and getting ready to make rulings on the  
2 balance of these cases.

3 The bottom line of that, Your Honor, is I don't anticipate  
4 any problem at all in meeting the targeted deadline that we've --  
5 the parties have established for ultimate payment. And I do  
6 understand that's an integral part of the process.

7 I would like to note, Your Honor, that those are some real  
8 interesting, intricate problems that are addressed on appeal.  
9 They are very, very unique. Some very, very different  
10 circumstances for each of these cases and very difficult things  
11 happened. Some very odd things happened. Some very complex  
12 things happened. So it requires a fairly detailed analysis of  
13 each of those claims. But I don't anticipate any of that being a  
14 problem in the process. So we are on target.

15 I have sat down with BrownGreer. We're just trying to  
16 forecast in the future how many we'll have to address so that we  
17 can make these deadlines, but all of that looks like it's in  
18 place.

19 Now, the other matter, I think it would be -- or two other  
20 matters, Your Honor. On the heart attack and stroke cases,  
21 you'll notice there a minuscule number of those cases still  
22 remaining. That's because of the straggling nature of some of  
23 those claims as they came in.

24 There are a few of those that still exist and have been  
25 appropriately assigned between the three special masters that

1 you've designated in this case. That's going to be all handled.  
2 It's just in the process of being done.

3 The last thing, we have one audited claim that is still on  
4 the agenda. I've totally reviewed that case. That case is  
5 actually set for a hearing.

6 Again, what's critical, and the parties understand, I think  
7 Lynn referred to that, is all of these matters have to be  
8 resolved before you can get to the ultimate payment. So the big  
9 push is on, not for sake of completeness or thoroughness, but the  
10 push is on to dedicate the efforts to make sure that we do that  
11 so that we can make these payments.

12 And I think everybody here is dedicated to do that,  
13 including the part that Mr. Garretson referred to. All of these  
14 pieces of the puzzle, it's like a jigsaw puzzle, all have to come  
15 together to make it happen. It looks like, as I perceive the  
16 process, we're on target to do that.

17 And that concludes my report, Your Honor. Thank you very  
18 much.

19 THE COURT: Thank you very much. That's very helpful.

20 Next item on the agenda is class actions report.

21 MR. LEVIN: Good morning, Your Honor, Arnold Levin.

22 There is only one class action left. Fortunately, we're not  
23 involved in it. It's a purchase claims class action. There are  
24 motions pending, and the defendant has moved for a case  
25 management order. And you've indicated that you will have a

1 special meeting with counsel with regard to the same.

2 THE COURT: Right. I will set a meeting with counsel  
3 for both plaintiffs and defendants and we'll work through that.

4 MR. LEVIN: I would like to take this opportunity to  
5 thank Mr. Juneau for giving me another child. He tells me he's  
6 given me an LSU player, that it's a sixth-round draft choice for  
7 the Philadelphia Eagles, and we'll take good care of him if he  
8 takes good care of us.

9 SPECIAL MASTER JUNEAU: He doesn't eat cheese Philly  
10 steaks.

11 THE COURT: The next item on the agenda, state/federal  
12 coordination.

13 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios  
14 for the federal/state committee. I'm very happy I didn't bring  
15 any paperwork with me today. Mine is so fabulous. It's on a CD,  
16 and I would like to challenge everybody to review the CD when  
17 they get back to their offices.

18 But, Your Honor, we are moving very, very well on trying to  
19 clear up the remands, and we can only do it with the help of  
20 various offices. BrownGreer has been terrific because they have  
21 letting us know who has gone through the program, particularly  
22 Mr. Atkinson. Mr. Johnston's office has been terrific as well  
23 with the *pro se's*.

24 And we have contacted the counsel who have cases that are  
25 still pending with remands, but their clients have not gone



1 through the program completely. They just -- they just did not  
2 finish the enrollment process. We have done a questionnaire to  
3 send to those counsel to let us know their intent, and we'll  
4 assist them in trying to get those cases dismissed.

5 Thank you, Your Honor. I look forward to the day that I can  
6 tell you there are no remands pending.

7 THE COURT: It looks like it's moving in that direction.

8 *Pro se* claimants. Anything, Bob?

9 MR. JOHNSTON: Good morning, Your Honor. Bob Johnston,  
10 court-appointed curator.

11 I think you can get the sense from those who have been up  
12 here before, things are moving not only well but heading toward  
13 the end, and the number of calls that we have been receiving have  
14 reflected that. They are going down, but there are still,  
15 obviously, numbers that we get every day.

16 Most of the communications we've had have dealt with timing  
17 of payments and things of this nature, and we've continued to  
18 assist, as best we can, to help these individuals who do not have  
19 counsel understand the circumstances of what is going on in their  
20 particular claim.

21 There have been a number of calls that we've received from  
22 those who are to proceed in litigation, and there has been some  
23 effort that we've needed to make with numbers of those  
24 individuals to explain that the role of the curator is not to act  
25 as advocacy counsel and proceed with litigation. And we've, I

1 think, been able to get that message across, but I just wanted  
2 the Court to understand that that has come up numbers of times.

3       There is only one other matter that Lennie Davis and Dorothy  
4 Wimberly and I have talked about that we would like the  
5 opportunity to briefly talk with you at the conclusion of today,  
6 and if we can do that, we'll stay at the end.

7           THE COURT: Sure. Okay, I'll do that. Thank you very  
8 much for your help.

9           Anything on the trial package?

10           MR. HERMAN: Judge Fallon, as Your Honor conducted a  
11 Louisiana Attorney General trial recently, Mr. Dugan, lead  
12 counsel, we've requested and he's agreed to provide the journal  
13 articles, the fact evidence introduced, as well as the  
14 transcript. It will be referred to Jerry Meunier, and he'll get  
15 our trial package committee together and see if there is material  
16 there that should be added to the trial package.

17           THE COURT: Anything on governmental actions?

18           MR. HERMAN: It was reported this morning that there are  
19 14 left.

20           THE COURT: Yes. There's about 14 or 16 attorney  
21 generals. What I did was I tried recently, for two weeks, the  
22 Attorney General for Louisiana. I received yesterday their --  
23 both sides' proposed findings of facts and conclusions of law, so  
24 I will start working on my opinion and hopefully will get that  
25 out shortly.

1           Once we do that, I would like to regroup and see where we  
2 are, which states are entitled to jury trials, which states are  
3 bench trials, and then take some -- discuss some method of  
4 dealing with the cases.

5           I don't think we are there yet because there is some  
6 discovery, and the benefit of the MDL is to see if we can unify  
7 that discovery and make it more efficient and give everybody an  
8 opportunity to deal with the discovery issues that they may have.  
9 And then we have to talk about ways of completing those.

10           Some options: One, is to send them back. Of course, the  
11 other is to go back with them. And the other is, obviously,  
12 to -- somewhere in between.

13           But I'll be talking to the parties on that once we're  
14 finished with discovery and they are ready to be dealt with in  
15 trial. Then I'll meet with the parties and discuss it.

16           Pending personal injury cases subject to PTO.

17           MR. MARVIN: Your Honor, discovery is underway on the  
18 PTO 28 cases. We've noticed or requested depositions in  
19 40 cases. We've actually been able to proceed with depositions  
20 in 14 cases, and 6 cases have been dismissed so far.

21           THE COURT: We're not there yet, but also, when we get  
22 there, we ought to see what's left, both the attorney generals as  
23 well as all of the other things. Then my thinking is to see if  
24 we can do some prioritizing and deal with each segment in some  
25 realistic way and efficient way and we'll get to it.

1           Okay. Fee allocation committee.

2           MR. HERMAN: May it please the Court, Your Honor, I want  
3 to be careful how I report to the Court. I don't see  
4 Mr. Stratton, but I report that yesterday he took my deposition  
5 for three hours. I took his deposition for three hours.

6           It's the negotiating committee and the PSC's unanimous  
7 position that this is a matter of law and that we're ready to go  
8 forward.

9           Mr. Stratton contends it's a question of fact. We contacted  
10 Mr. Phil -- the court-appointed CPA, Phil Garrett. He tells us  
11 that he's available if Mr. Stratton would like to review time  
12 records under seal, confidentially.

13           And the plaintiffs will ask that -- the PSC and the PNC will  
14 ask that this matter be set down for hearing; that Mr. Stratton  
15 file whatever brief he is going to file. We're ready now to file  
16 a brief within five days, and we can argue any time that  
17 Your Honor sets, and we think that this matter is ripe for  
18 resolution.

19           THE COURT: I have a conference after this meeting with  
20 both the plaintiffs and Mr. Stratton, and we'll see where it is.

21           Any other motions?

22           Oh, Merck's motion on PTO, what is that, Doug? Merck's  
23 motions and rules on PTO's?

24           I'm sorry. We'll take that after at the meeting.

25           MR. MARVIN: Thank you, Your Honor.

1 THE COURT: Any other motions? Appeals?

2 MR. HERMAN: Your Honor, Ms. Oldfather has filed a  
3 motion. We responded yesterday. Ms. Oldfather, Mr. Birchfield  
4 and I would like to meet with you after the conference today.

5 THE COURT: All right.

6 Any appeals, things on appeals?

7 Motions for attorneys' fees and to enforce attorney liens.

8 As I mentioned last time, I appointed a Special Master for  
9 that, Mr. Juneau, and asked him to determine whether he's going  
10 to need some staff, and then we'll start teeing that up when we  
11 can.

12 SPECIAL MASTER JUNEAU: Yes, Your Honor. I've already  
13 proceeded to work on that. We are assembling all of the  
14 information now. I'm then going to put into process a protocol  
15 as to whether or not actual appearances will or will not be  
16 necessary in this matter, but I've received a voluminous amount  
17 of information already from the respective counsel.

18 I anticipate next week going out probably with a protocol  
19 that will address to the respective attorneys what the process  
20 will be.

21 THE COURT: Give some thought, when you get your hands  
22 around it, as to whether or not you need to beef up your staff  
23 with an attorney or investigator or anything of that sort.

24 SPECIAL MASTER JUNEAU: Yes, sir. I think all of that  
25 will hopefully be incorporated within that protocol.

1 THE COURT: Okay.

2 SPECIAL MASTER JUNEAU: Thank you, Your Honor.

3 THE COURT: Pending personal injury cases. Anything on  
4 that?

5 The next status conference is June 3, 2010, same time,  
6 9 o'clock, and I'll meet with counsel and the committees at 8:30.

7 Anything from anyone else?

8 Thank you very much. Court will stand in recess.

9 THE DEPUTY CLERK: Everyone rise.

10 (WHEREUPON, at 10:03 a.m. the proceedings were  
11 concluded.)

12 \* \* \*

13 REPORTER'S CERTIFICATE

14  
15 I, Cathy Pepper, Certified Realtime Reporter, Registered  
16 Merit Reporter, Registered Professional Reporter, Certified Court  
17 Reporter of the State of Louisiana, Official Court Reporter for  
18 the United States District Court, Eastern District of Louisiana,  
19 do hereby certify that the foregoing is a true and correct  
20 transcript, to the best of my ability and understanding, from the  
21 record of the proceedings in the above-entitled and numbered  
22 matter.

23

24

25

s/Cathy Pepper  
Cathy Pepper, CRR, RMR, CCR  
Official Court Reporter  
United States District Court

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