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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS * Docket 05-MD-1657-L
LIABILITY LITIGATION *
* July 27, 2010
*
This Document Relates to All Cases * 9:00 a.m.
* * * * *

STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Appearances:

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Proceedings recorded by mechanical stenography; transcript
produced by computer.

1 Settlement Agreement, anything on that?

2 **MR. HERMAN:** May it please the Court. Orran Brown
3 and Lynn Greer have a report from BrownGreer with regards to
4 the progress of distribution. They will be followed by
5 Terry McRoberts, executive vice president of corporate trust of
6 U.S. Bank, who is here with vice president of the bank
7 Tom Tabor and the fund consultant.

8 **THE COURT:** Before Lynn proceeds, I do want to
9 mention that my law clerk, Katie Wozencroft, will be leaving
10 us. She is going to work in New York for a public defender
11 there. Joe Escandon is replacing her. We thank Katie for her
12 work and look forward to working with Joe as we complete this
13 matter.

14 **MS. GREER:** Lynn Greer from BrownGreer, and I'm here
15 with Orran Brown today. We, in our firm, have been privileged
16 to serve as the Vioxx claims administrator in this matter.
17 Today what we want to do is take the Court and those here and
18 on the phone through the process from the beginning to the end.
19 I want to just dispell the rumor that I think Mr. Marvin has
20 started that although we are going to cover a lot, no one needs
21 a brown-bag lunch to survive this presentation.

22 What we do want to do this morning is generally
23 give an overview of the Settlement Agreement and its basic
24 terms, what the goals of the Settlement Agreement were and what
25 our collective goals in this program have been, and then to go

1 through the steps in the program very briefly, to hit the high
2 points and to give the Court and those listening some
3 statistics on what the program has accomplished, and then to
4 provide a conclusion.

5 Your Honor, very briefly, the Settlement
6 Agreement was negotiated for approximately a year before it was
7 signed on November 9, 2007. Shortly after the agreement was
8 signed, the leaders of the plaintiffs went out and had meetings
9 all over the country to explain the terms of the Settlement
10 Agreement, to answer questions about it.

11 Within a week of when the Settlement Agreement
12 was signed, we had a Web site and a toll-free number up and
13 running to be able to address the questions of those who had
14 not been able to attend the meetings. Unrepresented claimants
15 were able to start calling in. The process was underway within
16 a week of when the Settlement Agreement had been signed.

17 The settlement fund provided \$4 billion in the
18 MI fund and \$850 million in the IS fund. To be eligible for
19 the program, there were three basic requirements:

20 You had to be a U.S. citizen, you had to be a
21 legal resident, or you had to be physically located in the
22 United States at the time you suffered your eligible event.

23 You also had to have a pending lawsuit or a
24 tolling agreement as of the date the Settlement Agreement was
25 signed, 11-9-07.

1 You had to have suffered losses or damages
2 allegedly as a result of an eligible event and to then be able
3 to pass the duration and proximity criteria that we'll talk
4 about in a little bit.

5 This program, Your Honor, as you have mentioned
6 several times, could not be possible without many, many
7 participants. The Court is at the top of this circle to
8 signify the leadership that you have provided throughout this
9 program, and those surrounding the circle have had an equal
10 role in the success of this program. It includes the NPC and
11 Merck, the special masters, all primary counsel, the claimants
12 themselves, the lien resolution administrator, the gate
13 committee, the *pro se* curator, the escrow agent U.S. Bank, and
14 the claims administrator. None of what we are going to talk
15 about today, in terms of the final payments, could have
16 happened without the cooperation of everyone depicted on this
17 circle.

18 The Settlement Agreement provided for basic
19 deadlines in the program. The first was registration, and that
20 deadline was January 15, 2008. Enrollment for interim
21 payments, the deadline was February 29, 2008. Claims packages
22 had to be submitted by July 1, 2008. MI interim payments were
23 to begin in August of 2008. The last date to enroll was
24 November 30, 2008. The very final claims package submission,
25 after extensions that were provided for in the Settlement

1 Agreement, the final deadline was 12-30-08, and the IS interim
2 payments were to begin in February of 2009.

3 The goals of the Settlement Program, as we
4 collectively have developed them, were that this program
5 provide communication and transparency, that there be due
6 process and fairness, and that the claims be timely processed
7 and paid.

8 The communication and transparency was achieved
9 primarily through these monthly MDL status conferences that
10 were open to everyone in person and on the phone. After each
11 status conference, we made the presentations on at least the
12 claims status available on the claims administrator Web site.

13 The communication was achieved primarily through
14 broadcast e-mails from the claims administrator. What we did
15 was to provide any important news and developments that would
16 be posted and broadcast to all primary counsel, and these
17 e-mail blasts would alert firms to deadlines and to important
18 developments in the program.

19 A secure Web portal was something that people
20 participated in. What we did was we set up a secure portal for
21 each primary counsel firm. It was a secure portal so that only
22 those people authorized by the firm could log in and see the
23 status of their claims. What it allowed each lawyer to do for
24 his or her claimant was to view and monitor the status of the
25 claim as it progressed through the program, to be able to

1 provide information, to submit information around the clock
2 every day of the week.

3 This is an example of some screenshots from the
4 portal, just to give the Court an idea of what counsel saw when
5 they signed on. They can search by claimant, by last name, by
6 whatever the juncture in the program was that they were
7 interested in viewing.

8 Further communication was achieved by claims
9 administrator contacts, which were folks in our office who were
10 assigned to firms, and that firm had one person at the claims
11 administrator's office to be able to call and to talk about any
12 claimant or any issue that arose.

13 We also had a special *pro se* team that
14 communicated with the unrepresented claimants. The *pro se*
15 curator's office did a remarkable job. It was appointed by the
16 Court to assist and discuss the status of the Settlement
17 Program and the status of individual claims with the
18 unrepresented claimants as well.

19 This slide depicts the Vioxx portal. The portal
20 was not just available to primary counsel. We designed, with
21 input from many people, a central hub where every participant
22 in the program could access the information that was stored
23 centrally in our database.

24 The *pro se* curator could come into the portal
25 and see the status of the unrepresented claimants, who then log

1 their own call center information into the portal. Primary
2 counsel we have discussed. Merck and the gate committee, in
3 exercising its obligations under the Settlement Agreement, also
4 had their own portals where they could see the status of the
5 claims that they were reviewing. The special master had access
6 to the portal to be able to decide the appeals. The lien
7 administrator had access to the portal, and we worked together
8 to post information about the lien developments in the program.

9 The second goal was due process and fairness,
10 and this was achieved by the multiple layers of review that the
11 Settlement Agreement provided. It started with the claims
12 administrator, but at every point there were multiple layers of
13 review with the gate committee and the gates process, Merck
14 then, and then the special master, who really was the fourth
15 level of review, sometimes the fifth and sixth because of how
16 many times we would look at a claim if an issue arose.

17 It was important that we post the results of our
18 reviews very timely. The portal allowed us to post results of
19 a review instantaneously, as soon as our reviewers had
20 completed a review, so that law firms could see it immediately.
21 There was no delay in the mail. We did mail notices to *pro se*
22 claimants in a timely fashion so that they could be apprised of
23 deadlines and be able to meet them.

24 The Settlement Agreement provided numerous
25 opportunities to perfect claims submissions. Even though, for

1 example, the initial claims package deadline was July 1, 2008,
2 the Settlement Agreement provided three or four different
3 opportunities before it all cut off at the end of that year to
4 be able to perfect claims packages.

5 Reasonable extensions were granted throughout
6 the program. There were times, as Your Honor understands and
7 supported, where we had to say no more deadlines to be able to
8 meet the goals. Throughout the process, when faced with a
9 request, we tried to be reasonable in granting those
10 extensions.

11 The next part of the presentation will discuss
12 registration. Orran is going to discuss registration and
13 enrollment, and then I will review the claims status.

14 **THE COURT:** Good.

15 **MR. BROWN:** Good morning, Your Honor. I'm Orran
16 Brown from BrownGreer. Many of you may be very happy, though
17 some may be quite dismayed, to know that I did not develop
18 laryngitis over the evening.

19 We will take us back now to our early days, back
20 to the beginning of the program and very quickly just recap how
21 those initial steps worked because they were key to the success
22 of this program, starting with the registration phase.

23 This slide, No. 19, just shows us how that
24 process worked. With the Court's orders and the coordinated
25 orders from Texas, New Jersey, and California, this step

1 required all Vioxx claimants to step forward and identify
2 themselves. Back in those days, the Court referred to this as
3 taking a census. A lot of programs skip over this step and
4 just go to sign-up, but this was a key step, with the Court's
5 backing with those orders, to identify the population that was
6 involved so that then all the parties and the courts knew who
7 was involved and how many claims were out there.

8 So this is how that process worked, briefly.
9 When we first started working on this, we created a spreadsheet
10 that law firms could use in Excel to give us all the
11 information about their clients and their claims. We made that
12 available to them electronically so they could fill it out and
13 give it back to us, and they e-mailed it back to us generally
14 or sometimes sent it on a CD.

15 Working in the electronic format made it faster,
16 easier for all of us, with the firms inputting that
17 information. For *pro se* claimants, they had to do it by paper,
18 and we worked with them on paper to make sure they understood
19 what they needed to do to register, the first step for this
20 program.

21 That was the first information that went into
22 our database, the massive database that we now have that was
23 generated and allowed this program to work. This was the first
24 information we started collecting about the claimants, the law
25 firms, who was involved.

1 Once we got that information from a law firm
2 that was designated as primary counsel for a claimant or group
3 of claimants, we then sent them an introductory letter to teach
4 them how to use this Web interface, the Vioxx portal that Lynn
5 described, so that that method of communication could take over
6 from that step forward, giving them a secure access to all
7 their claimant information that they use and access via secure
8 password.

9 The box down here shows us we ended up with
10 1,061 different firms who had Vioxx claimants who were involved
11 in this program, who sent us over time over 2,700 of these
12 spreadsheets, because firms would send us additional ones and
13 new ones as the information changed. Some of those firms had
14 one client, some of them had hundreds or thousands of clients.

15 We also ended up with 1,126 of these
16 registration affidavits that the order required from
17 unrepresented claimants. Obviously there, because there are
18 893 people, some of those folks sent us more than one, but we
19 sorted them out to get down to individual claimants.

20 This was the registration affidavit required by
21 that set of orders that started the program. It provided basic
22 information about the lawyers involved, their clients, the
23 injuries that they asserted, derivative information, any of the
24 family members or spouses who were also connected to the claim
25 whose releases were also necessary in this program, and then

1 any other law firms who had an involvement as secondary
2 counsel. This process was used to give us that information,
3 and law firms were required to provide us this affidavit
4 certifying that they were representing these folks and they
5 were authorized to act on their behalf.

6 At the end of the day, we ended up with 59,365
7 Vioxx claimants who registered in the census for this program,
8 most all of whom were represented. This number of 1,224
9 *pro se's* is the number we had to start out with. The number of
10 unrepresented claimants moved around a lot because people would
11 gain law firms and become represented or law firms would
12 withdraw from clients, generally with the Court's permission,
13 and so the number of *pro se* claimants was a little bit of a
14 moving target. It is always around 1,000. This 1,224 was our
15 high point of how many people, in the early days, signed up
16 originally as registered as unrepresented people.

17 Our next step was enrollment. Item B on this
18 slide was once you're counted and we know the audience, how
19 many people actually want to sign up for the program and
20 participate in the program, and so we entered the enrollment
21 phase. That required each claimant to complete a set of
22 documents. The centerpieces were a release and a stipulation
23 of dismissal that if you had a lawsuit pending that we would
24 hold in escrow until the claim worked through the process.
25 They also were required to do a medical authorization form and

1 an authorization form to obtain employment records if they
2 intended to make a claim for lost wages or income in the
3 extraordinary injury program. Those pieces are components of
4 the enrollment package.

5 Once we knew who the clients were from
6 registration, we were able to generate those documents and send
7 them to the law firms to fill out electronically, in an
8 electronic image that they would print out already bar-coded,
9 already labeled with a person's identifying information, so
10 that sped up the process for them and us to get those materials
11 back.

12 They could download them or we would send them
13 on CDs, and now most of the information was being exchanged
14 through this Web interface, the portal, with these law firms,
15 and it sped up the process for all of us. They would then
16 obtain the signatures necessary on the documents and then
17 either e-mail them back to us or upload them on the portal and
18 in some instances mail them or deliver them to us.

19 Then we would process them, log them in, and in
20 the enrollment phase those documents had to be reviewed for
21 completeness: Were they signed? Were they signed by the right
22 person? Merck and its counsel were involved in this process.

23 At this stage is where a lot of these programs
24 kind of founder because that paperwork process can take a long
25 time. It's confusing. You have to get the right people to

1 sign. Sometimes there are estate issues involved about who can
2 sign, family members who won't sign. Here the parties work
3 really hard with us to keep that moving. Merck and its counsel
4 really put a lot of resources on making this happen and not
5 having it bog down the program, and it did not bog down the
6 program. We promised it wouldn't and it didn't. We moved
7 through that process and figured out, in many instances agreed
8 on ways to sort of relax some standards or temporize some
9 issues so that they could be put off until later so claims
10 could keep moving.

11 We would then give the results of reviews of
12 those documents and tell the law firms through their portal
13 what was wrong with them, how they could fix them, and how they
14 could submit cures to us, which they did, to get their
15 documents in order that they could then move through the
16 program. Of course, all of this is done with *pro se's*,
17 unrepresented people, by letter.

18 This is what we ended up obtaining in the
19 enrollment phase. These are the documents that were part of
20 the enrollment package, and we ended up with 51,000-plus
21 releases. Now, that equated to about 92,000 documents because
22 a lot of releases came in in parts and repeated over and over
23 to get them right or more than one copy of it.

24 The left-hand column on claimants tells us how
25 many people. These are all the documents that we collected in

1 the enrollment phase, with the net result being this 51,764
2 people who attempted to enroll. Most of them ended up
3 successfully enrolling or had to send us some piece of this
4 enrollment package or all of it. All the work that was
5 necessary on the claimant's part, the lawyer's part, this is
6 where we ended up in the enrollment world to have people
7 actually in the running now to start the claims process in the
8 program.

9 If we want to step back and look at the
10 registration phase and the enrollment phase and how did it
11 collect the Vioxx litigation world, at the end of the day, if
12 we look at the number of claimants who registered and then look
13 at and if we back out -- this number right here are people who
14 were not U.S. citizens or did not have a lawsuit or tolling
15 agreement. They were not eligible for this program. Then we
16 get down to a net number of 58,000-plus of people who are
17 eligible to participate in this resolution program.

18 Then if we count up all the people who were
19 enrolled in a program and went through the program to a finite
20 state -- they ended up getting paid, or they ended up dropping
21 out, or they ended up not finishing their claim and getting
22 closed, if you add up those and any of the folks who ended up
23 being dismissed -- as the Court well knows, there was a series
24 of dismissal orders where people hadn't perfected their
25 packages, or hadn't complied with various pretrial orders, or

1 in some instances claimants who just said, "I don't want a
2 claim anymore. I'm abandoning my claim," or had been inactive.

3 Around 58,000 people -- and I say "around"
4 because that number is not static. There are dismissals every
5 day. There are withdrawn cases every day still. There's still
6 cleanup activity going on on those.

7 In Row 5, there are only about 50 claims, or
8 around that number, or fewer than 50 that are still folks who
9 could have been in this program, are eligible for the program,
10 and are still not resolved, which gives us this kind of
11 remarkable number down here of almost 100 percent of the Vioxx
12 litigation audience, of people who could have been in this
13 program who ended up being resolved directly through this
14 program or as a result of the program.

15 The next phase of the program was the claims
16 section and all the steps involved in that, and Lynn is going
17 to walk us through how that process worked.

18 **MS. GREER:** The claims package deadline, as I
19 mentioned before, was July 1, 2008, and there were four
20 components of the claims package that were required. The first
21 was the claims form that firms could fill out on line for their
22 claimants. The second were the required pharmacy, medical, and
23 event records, which were called the PME records, and this was
24 the crux of the claims package because this program was founded
25 on evaluation being performed only on contemporaneous medical

1 records. Unlike many programs, where affidavits are allowed to
2 come in to produce, this program was masterful in requiring
3 that there be contemporaneous records at the time of the event,
4 at the time of dispensation of Vioxx, to be able to prove the
5 claim, and the effects of that we will talk about later in
6 terms of how successful this was.

7 The profile form, if the claimant had submitted
8 one in the litigation, was required in the claims package, and
9 then there was a catchall that if there was any other
10 information that we required or the special master required as
11 we reviewed the claims, that had to be submitted as well.

12 This slide shows the deadline in the claims
13 package submission. Again, the first deadline was July 1. The
14 Settlement Agreement provided the opportunity for three notices
15 of deficiency. We sent those out in early September and early
16 November and late November to remind those who had not given us
17 the required components of the claims package that they must do
18 so. The final deadline was December 30, 2008.

19 These were the number of deficiency notices that
20 we sent. The first notice of claims package deficiency was
21 sent out to 12,431 claimants. So there were this many folks
22 that as of July 2 or thereafter had not submitted us a claims
23 package. Many people cured. So in September the number of the
24 second notice that we sent out only went to 9,700.

25 In Row 3, more people were coming into the

1 program. We sent out over 10,000 notices of claims package
2 deficiency. We ultimately sent out notices of nonsubmitting
3 program claimant, which meant that the claimant had not been
4 able to submit enough material to be considered a claimant in
5 the program, to over 2,500 claimants. We issued over 35,000
6 deficiency notices or notices of nonsubmitting program
7 claimant. Ultimately, we closed almost 2,000 claims for
8 failure to be able to provide the required records.

9 This slide shows how many materials we received
10 in electronic and hard copy. The total number of documents we
11 received as part of this process is 598,830. That reflects
12 medical records, pharmacy records, and all of the records that
13 were required and were submitted through a lot of diligence by
14 firms and claimants together to gather those and submit those
15 to us.

16 The first review phase of the program was what
17 was called the gates review. The Settlement Agreement provided
18 that a claim, to be able to make it through to a points review,
19 had to pass three gates:

20 The first gate was the injury gate, and that was
21 a requirement that you had to show that you suffered a heart
22 attack, a sudden cardiac death, or an ischemic stroke.

23 The second gate was the duration gate, and what
24 that required was that you had to show a minimum of 30 Vioxx
25 pills within a 60-day period prior to your event.

1 The third gate was the proximity gate. The goal
2 of this gate was to try to be able to gauge how proximate your
3 use of the Vioxx was to your alleged injury, and there were
4 five different ways to be able to meet the proximity gate.

5 The last one, it all had to do with pill counts.
6 We didn't look to see whether there was proof that the Vioxx
7 pills had actually been ingested, only that they had been
8 dispensed. There were time parameters and pill counts that
9 were prescribed in the Settlement Agreement. The medical
10 records, when you went in and were suffering your heart attack,
11 if it showed you were on Vioxx as a current medication, that
12 was enough to pass the proximity gate as well.

13 The Settlement Agreement also provided different
14 levels of gate review, and the levels of discretion were
15 different at each level. The first review was ours, the claims
16 administrator's review; very little discretion, if any. We had
17 to strictly adhere to the terms of the Settlement Agreement.
18 There were things that were perhaps close calls that we could
19 not allow a claim to pass if it did not meet one of those
20 technical requirements of the Settlement Agreement.

21 The Settlement Agreement provided that the gate
22 committee could pass such claims if those claims met the
23 general intent of the Settlement Program. The gate committee
24 had much more discretion than we. The gate committee was
25 comprised of representatives from Merck and from the NPC, and

1 the committee worked very, very diligently in reviewing
2 thousands of claims in record time. A majority vote of the
3 gate committee was enough to make the claim eligible.

4 Merck had the right under the Settlement
5 Agreement, if the gate committee did not have the claim, to
6 push the claim. It was a unilateral push right. There were
7 limits on the numbers of claims that Merck could push. They
8 did not push as many as the limits were. They worked very,
9 very closely to pushing the claims that, again, were within the
10 spirit of the Settlement Agreement.

11 By the time it got to the special master with
12 all of these increasing levels of discretion that were accorded
13 under the Settlement Agreement, the special masters would look
14 at this to see: Is this a claim that just slipped through the
15 cracks? Is this one that really does adhere to the terms of
16 the Settlement Agreement?

17 So at that point, even though it was a *de novo*
18 review, the special master in essence was doing a lot of what
19 we had done in the beginning. Maybe some additional documents
20 had come in along the way. Really, the discretion at the gate
21 process rested in the hands of the gate committee and in the
22 hands of Merck and not so much with us or the special master,
23 although the special masters did put claims into the program
24 based on new evidence or things that the special master, in his
25 appellate review, decided to put in.

1 This slide shows the gates process. What would
2 happen: If we failed it, we would send the claim immediately
3 to the gate committee. The first step was we would send a
4 notice to the claimant to be able to give them a chance to
5 submit documentation. If they did, we could then pass it. If
6 they didn't, we would send it to the gate committee.

7 If the gate committee passed it, then they would
8 get a notice of eligibility, the claimant would. If the gate
9 committee failed it, then the claim was sent to Merck. If
10 Merck passed it or pushed it into the program, the claimant
11 would go towards points review. If Merck, after its review,
12 failed it, then the claimant would get a gate committee notice
13 of ineligibility.

14 At that point the claimant had two choices: He
15 or she could either submit a future evidence stipulation, which
16 would allow the claimant to exit the program and return to
17 litigation, or the claimant could appeal to the special master.

18 If the special master granted the appeal,
19 obviously the claim would go towards points. If the appeal was
20 denied, then the claimant would get a final notice of
21 ineligibility and the claim would be closed, as it would if the
22 future evidence stipulation expired.

23 This slide shows the ultimate pass rates for
24 heart attack and stroke claims. The sudden cardiac deaths are
25 subsumed within the MI category. What this slide shows us is:

1 Out of 30,499 MI claims that went through the
2 program, 20,611 passed for a pass rate of 67.6 percent; 9,888
3 failed for a failure rate of 32.4 percent.

4 For strokes, there were 17,863 claims that went
5 through the gates process. Of those, 69.8 percent passed or
6 12,464 claims, 31.2 percent failed, for a total of 5,399
7 claims.

8 So out of 48,362 claims that went through,
9 33,075 passed, 15,287 failed.

10 This slide shows how claims passed. You'll see
11 from the numbers that the claims administrator, upon first
12 review, found that 10,362 heart attack claims met the specific
13 terms of the Settlement Agreement. 4,343 stroke claims met the
14 specific terms of the Settlement Agreement. So we were able to
15 pass, adhering to the terms of the Settlement Agreement, a
16 total of 14,705 claims.

17 When the gate committee and Merck reviewed the
18 claims, they were able to pass around 10,210 heart attack
19 claims, another 8,104 stroke claims. So the gate committee and
20 Merck together passed more than we were able to -- again,
21 because they had more discretion -- and they passed 18,314 who
22 were allowed to come into the program.

23 The special master then, upon appeal, granted
24 appeals in 39 heart attack claims and 17 stroke claims for a
25 total of 56 claims. Out of many that the special masters

1 reviewed, they put 56 in the program.

2 So the totals are, again, the 20,611 heart
3 attacks, 12,464 strokes, for a total of 33,075 claimants who
4 ultimately were able to go through the points process and be
5 paid.

6 This is what happened to the claims that failed
7 gates. Of the 15,287 that failed, 6,019 did nothing. They
8 neither appealed or submitted an FES, a future evidence
9 stipulation. 3,793 heart attacks and 2,226 strokes simply did
10 nothing after they received the gate committee notice of
11 ineligibility. 8,381 total appealed to the special master, and
12 the special masters affirmed the gate committee's and Merck's
13 decision and the claims administrator's decision.

14 5,319 claimants who appealed to the special
15 master for heart attack claims were not able to go further, and
16 3,062 claims were closed after the special master affirmed the
17 decision. A total of 887 submitted the FES form: 776 heart
18 attack claimants and 111 stroke claimants. This, again,
19 comprises the total population of the claims that failed gates
20 as 15,287.

21 Once a claim passed gates, it then joined the
22 queue for review for points, and the Settlement Agreement
23 provided that claims will be evaluated using four different
24 components:

25 The first was what we call basis points, and

1 that was looking at the claimant's age at the time of the
2 eligible event, the overall duration of Vioxx drug use, and the
3 injury level. The Settlement Agreement prescribed very
4 specifically what the injury levels were.

5 Those were the basis points, and then you had to
6 alter those either positively or negatively for consistency of
7 use and label adjustment. These two components had to do with
8 how much Vioxx the claimant used in the year prior to the
9 eligible event, which was the consistency of use adjustment,
10 and the label adjustment is when the claimant first started
11 taking Vioxx, the date on which he or she first started taking
12 Vioxx.

13 Then once you got that -- that was called the
14 subtotal points -- then you had to look at the risk factors,
15 and the risk factors in the Settlement Agreement were specific.
16 They were specific deductions that we were to take if the risk
17 factors were apparent, again, in the contemporaneous medical
18 records.

19 The deadlines for the points process were the
20 claims administrator completed a review of 2,500 MI claims by
21 August of 2008, so we had enough completed claims packages to
22 be able to do this. At that point we were able to project what
23 a likely MI point total would be so that we could commence
24 making payments later that month. So August of 2008 is when
25 interim payments began.

1 In February we had completed a review of 2,500
2 stroke claims, which is what the Settlement Agreement said,
3 again, that we needed to do to be able to do a projection, and
4 interim payments for stroke claims began and went out for the
5 first time on February 27, 2009. We made final payments for
6 over 20,000 heart attack claimants on October 8, 2009, and most
7 recently made final payments for over 11,000 stroke claimants
8 on June 14 of this year.

9 Before a claim could become complete for points,
10 it had to be complete enough for us to do a review. A claims
11 package could be complete for gates review and not for points
12 review because there was so much more that was required for a
13 points review. This slide depicts the process that we would go
14 through if our reviewers picked up a claim and realized that
15 they could not proceed any further.

16 As we discussed before, this was a point in the
17 program that we hit a few snags simply because the percentages
18 of incomplete claims packages were very high. The ultimate
19 incomplete rate for the heart attack claims was 15 percent, and
20 for stroke claims the first assessment of the claims package
21 being incomplete was in 28 percent of the claims.

22 What we would do is we would stop the review.
23 We had to stop the review, and we would send notices to the
24 claimant. Most claimants, most counsel sent us what we needed,
25 what was missing. The choices, if they were not able to do

1 that, were to either elect at that point just to give up and
2 become a nonsubmitting program claimant -- only one such person
3 did that. To be able to keep these claims moving, what we
4 decided to do collectively was to say we have enough in the
5 claims package to at least do something, we can assess an
6 injury level.

7 What we needed to do, though, a lot of times the
8 records that we were missing were records where we could have
9 found a risk factor that we would need to assess. So the
10 claimants were given a choice to either elect to become a
11 noncommitting program claimant or to take what we call the
12 standard deduction. What we did was we had enough data at that
13 point to be able to say for claimants asserting this injury, on
14 this injury level, at this age: "Here is the average risk
15 factor adjustment that we see in this population."

16 There were 130 heart attack claimants who ended
17 up taking a standard deduction to be able to get paid. The
18 average deduction that those claimants received was almost a
19 55 percent deduction, which means that in all of the claimants
20 similarly situated, that was the average risk factor adjustment
21 that we would take. There were 102 stroke claimants who
22 ultimately accepted the standard deduction, and that was almost
23 a 62 percent deduction. So the good news is that out of all of
24 the claims that we found initially incomplete, there were only
25 232 who ultimately had to take a deduction because they simply

1 could not get us the claims package materials.

2 This slide is just a slide depicting how many
3 notices of incomplete claims packages we sent. We sent a total
4 of 6,644. As you read down this slide, which I won't do, this
5 just shows how many notices we issued as part of the points
6 process, including our initial notice of points, 33,000,
7 post-appeal notice of points awards after claimants would
8 appeal to us, and then special master notice of points awards
9 after they would appeal to the special master.

10 Your Honor, in the past we have shown this
11 slide, which is a slide depicting the injury levels in the
12 heart attack claimant population, and we have shown what the
13 average points were. We are able today, now that everything is
14 closed and the data is set, to show exactly how many claimants
15 ended up in the heart attack claimant population on each injury
16 level and what the percentages of claims were that landed on
17 each level. The slide shows:

18 Level 1: 2,878 claimants or 13.98 percent of
19 the total.

20 Level 2: 539 claimants or 2.62 percent.

21 Level 3: 3,572 claimants or 17.35 percent.

22 Level 4: 1,330 claimants or 6.46 percent.

23 Level 5: 9,729 claimants. Almost 50 percent,
24 47.25 percent, of the heart attack claimants ended up on
25 Level 5.

1 Level 6: 1,289 claimants or 6.26 percent.

2 Special marker claimants -- and these were
3 claimants that had point totals for the MI claimants of fewer
4 than 10 -- there were 1,254 claimants, and that comprised
5 6.09 percent of the entire MI claimant population.

6 For strokes, what this slide shows is that on
7 Injury Level 1, there were 590 claimants who ended up there or
8 4.74 percent of the total.

9 Injury Level 2 was 275 claimants or 2.21 percent
10 of the total. The average points there were higher than the
11 average points on Injury Level 1 because the stroke grid
12 provided higher points on Injury Level 2 because it was the
13 disability level, with claimants who fell onto this level
14 generally needing longer term care.

15 Injury level 3: 1,516 claimants or
16 12.18 percent.

17 Injury level 4: Only 62 claims at .5 percent.

18 The vast majority of the stroke claimants were
19 Injury Level 5: 9,077 or almost 73 percent of the stroke
20 claimants.

21 927 stroke claimants were special marker
22 claimants. The point threshold there was that if the points
23 for a stroke claim were fewer than 2, then a stroke claim would
24 be a special marker claimant. 7.45 percent of the stroke
25 claimants were special marker claimants.

1 This program did have an audit provision, as
2 most do. This slide shows the general level of activity that
3 surrounded these claims with audit. The takeaway from the
4 audit program is that there were almost 7,000 claims that our
5 reviewers proposed for audit review initially. What our
6 reviewers would do is they were trained to look through the
7 medical records and to see any inconsistency that caused a
8 question either about dates of use or claimant identity. A lot
9 of times these are nothing more than two medical records
10 containing different dates of births and they were very, very
11 easily reconciled, no problem whatsoever.

12 So you will see that Row 1, for heart attack
13 claimants, there were almost 5,000 claims that were flagged
14 immediately by reviewers possibly having a problem, but almost
15 4,000 of those were released upon further review. The same
16 with the strokes: 2,825 were proposed for audit review by our
17 reviewers, but almost 2,000 of those were almost immediately
18 released as having no concern.

19 We then subjected 1,128 heart attack claims and
20 841 stroke claims to a little further scrutiny. At this level
21 we would use the medical authorization that Orran described as
22 being part of the enrollment package to go back and get
23 additional medical records to shed light on inconsistencies
24 that we would find. Sometimes the inconsistency was nothing
25 more than a few missing pages in a document that we thought had

1 sequential Bates numbers. Because they were missing, we
2 wondered why.

3 Again, our reviewers were trained for this, and
4 we did a very lengthy review of this. Happily -- and I think
5 it's a testament to, again, the way this program was set up.
6 Any time you have a program that deals with contemporaneous
7 medical records and doesn't allow a lot of subjectivity to come
8 in, the controls are much, much stronger and the likelihood of
9 fraudulent activity is much, much lower. That was certainly
10 true here.

11 We only referred 8 heart attack claims and 3
12 stroke claims to the special master for review. The totals of
13 all the claims that we looked at that possibly had any sort of
14 problem -- and most of them had absolutely no problem -- only
15 6 percent of the heart attack claims and 8 percent of the
16 stroke claims were held up for just a few days, in most
17 instances, because of our audit review.

18 As part of the points process, claimants could
19 appeal their notice of points award. The first step in that
20 was to appeal a claim to us. Many times this involved sending
21 us additional medical records. Many times, once the claimant
22 appealed to us and provided additional records, the claim was
23 resolved and the claimant accepted the award.

24 There were 1,095 total claimants, though, who
25 even after we reviewed the claim wanted to go further to the

1 special masters, as they were certainly able to do under the
2 Settlement Agreement. This slide shows the results of the
3 appeals to the special masters.

4 What it shows is that for the heart attack
5 claimants, 392 appealed a points decision to the special master
6 and -- well, 392 appeals were denied in full by the special
7 master or 76.3 percent. Stroke claimants, 451 out of 581 were
8 denied in full for a percentage of 77.6 percent. The special
9 master granted the appeals in 93 heart attack claims and 69
10 stroke claims or a total of 162 claims.

11 Claimants were able to appeal any one of the
12 issues that they disagreed with, so often they may succeed on
13 one issue but not on the other. That's what this row
14 signifies, that they were successful in some aspect of their
15 appeal a total of 90 times: 29 heart attack and 61 stroke
16 claimants.

17 Again, these numbers reflect the layers of
18 review that we discussed early on, the multiple layers of
19 review, the chances the claimants had to submit additional
20 documentations up until this point, and the numbers really
21 reflect very focused effort by the special master to look
22 through the medical records, looking through every page,
23 looking through summaries and cover letters that counsel wrote
24 to support their appeals, oftentimes looking at additional
25 records, requesting that additional records be submitted to be

1 able to decide the appeal. This slide represents and almost
2 oversimplified the tremendous amount of work that Mr. Juneau
3 and the deputy special masters dedicated to this program and
4 made possible.

5 The last thing that I will talk about are the
6 payments that have been made, and this slide shows the payments
7 that have gone out to the heart attack claimants. There have
8 been 19,286 what we call nonspecial marker claimants, so these
9 are claimants with points awards greater than 10 that have been
10 paid. The final MI point value was \$1,865.01. The total paid
11 to the nonspecial marker claimants is \$3,603,121,746. The
12 average nonspecial marker payment across all of the almost
13 20,000 heart attack claims is \$186,825. The 1,247 nonspecial
14 marker claimants were paid a total of \$6,038,469.

15 Row 7 shows that 20,533 heart attack claimants
16 have been paid over \$3.6 billion.

17 Row 8 shows that as of yesterday there were
18 still 58 heart attack claimants who had not yet been paid; of
19 these, 6 have perfected. Most of the reason that the claimants
20 at this point have been unpaid are enrollment reasons dealing
21 with estate issues that Orran mentioned earlier.

22 Since we have prepared this slide and actually
23 since we paid the claims in July, there have been another 6
24 that will be paid in August. So this number of unpaid
25 claimants goes down every day as documents are submitted to be

1 able to perfect any remaining deficiency.

2 This slide shows the dollars associated with
3 each injury level in the heart attack population for the
4 nonspecial marker claims. What this shows is that for
5 Injury Level 1, the average payment that was made to a heart
6 attack Injury Level 1 claim was \$374,112. The lowest payment
7 that was made on Injury Level 1 was \$18,743. The highest
8 payment was \$1,795,072.

9 This range, as you will see throughout the
10 slide, really reflects many things that the points process took
11 into account -- the age of a claimant, the number of risk
12 factors -- and that's why you have such a wide disparity on the
13 same injury level for the lowest and the highest payment.

14 Injury Level 2, the average payment made to an
15 Injury Level 2 heart attack claim was \$341,967, the lowest
16 payment at that level was \$19,023, and the highest payment was
17 \$1,328,820.

18 Injury Level 3, the average payment was
19 \$249,343, the lowest payment was \$19,004, and the highest
20 payment was \$1,135,959.

21 Injury Level 4, the average payment was
22 \$173,274, the lowest payment was \$22,380, and the highest
23 payment was \$822,469.

24 Injury Level 5, the average payment was
25 \$146,648, the lowest payment was \$18,762, and the highest

1 payment was \$822,488.

2 Injury Level 6, the average payment was \$92,149,
3 the lowest payment was \$18,650, and the highest payment was
4 \$427,684.

5 It's important for folks to realize, as you look
6 at these, the averages are just that, and the lowest and the
7 highest reflect the very individualized approach that the
8 Settlement Agreement provided to take into account a myriad of
9 factors that affected these values.

10 The stroke claimants, we have paid 11,306
11 nonspecial marker claimants. The final point value for strokes
12 was \$1,833.32. We have paid over \$691 million to the stroke
13 nonspecial marker claimants. The average stroke payment is
14 \$61,165. We paid 1,047 special marker claimants over
15 \$4.7 million. We have paid 12,353 claimants over \$696 million.

16 Again, as of yesterday there were 94 unpaid
17 stroke claimants, 18 of which have been resolved. So we have
18 only 76 stroke claimants that have yet to be paid or will not
19 be paid by the end of August unless they perfect their estate
20 issues.

21 The total population, out of the thousands of
22 claims that have come into this program, of unpaid claims
23 today, taking into account those that we know will be paid in
24 August, is down to 128 claims.

25 On the stroke claims, for Injury Level 1, the

1 average payment was \$119,618, the lowest payment was \$5,015,
2 and the highest payment was \$818,119.

3 Injury Level 2, the average payment was
4 \$181,576, the lowest payment was \$5,812, and the highest
5 payment -- again, because the grid treated Injury Level 2
6 differently than the MI grid did with having higher points --
7 was \$1,191,090.

8 Injury Level 3, the average payment was
9 \$132,297, the lowest payment was \$5,005, and the highest
10 payment was \$647,052.

11 Injury Level 4, the average payment was \$81,176,
12 the lowest payment was \$8,580, and the highest payment on that
13 level was \$215,158.

14 Injury Level 5, the average payment was \$53,518,
15 the lowest payment was \$5,004, and the highest payment was
16 \$336,891.

17 Your Honor, that concludes the claims portion of
18 the presentation unless you have any questions.

19 **THE COURT:** No, I don't. Just by way of review, I do
20 think the Court ought to recognize that this case was very,
21 very effectively handled. We began with over 59,000 claims.
22 The case was declared an MDL on February 16, 2005. A
23 Settlement Agreement was reached in November of 2007. In
24 between 2005 and 2007, we had six trials here in this Court.
25 My colleagues, who did a great job, the state judges, had about

1 twice that number of trials throughout the country.

2 We had cases from every state in the union. The
3 attorneys compiled 9 million documents. I delivered 1,000
4 opinions in this case on discovery. The Settlement Agreement
5 was reached in November of 2007. Payments began the very
6 following year, 2008, and the payments have been concluded in
7 2010.

8 So within five years this case, which was the
9 largest case in the history of the country in MDLs, has been
10 effectively resolved. That is in large part because of the
11 ability of the attorneys, the lien administrator, the special
12 master, the *pro se* administrator, and all of those associated
13 with the case.

14 We hear so much these days about bad lawyering
15 and ineffective mass cases being handled, black holes
16 developing in litigation, cases take decades to resolve, making
17 Dickens *Bleak House* look like it's hurried litigation, and this
18 has not been the case in this particular case. I think this is
19 really a remarkable achievement, and it is because of all of
20 the ability and work that was put into it by the attorneys in
21 the case and by those associated with the case.

22 All of you need to know that the Court
23 appreciates that. I'm very proud of the way that you all have
24 effectively handled this case, the high level of
25 professionalism, and the high level of work that was done in

1 this case. I think it's appropriate for me to at least take
2 note of that. Thank you very much.

3 **MS. GREER:** Thank you, Your Honor. Orran is going to
4 now conclude with the extraordinary injury program.

5 **MR. BROWN:** It's a brief recap of the rest of the
6 program, just to finish out our final report. I will run
7 through the extraordinary injury program, which was another
8 piece of this Settlement Program, and then the final statements
9 about some last cleanup activities. Then that will conclude
10 our report.

11 This Settlement Agreement, in addition to what
12 Lynn has described for the heart attack and stroke funds, it
13 provided that certain amounts of those funds could be used to
14 pay injuries that were catastrophic, that were truly
15 extraordinary beyond the underlying heart attack and stroke
16 injury. In the extraordinary injury program which we
17 administered, there were some hurdles the Settlement Agreement
18 said you had to pass to get into the program:

19 You had to be eligible on your underlying claim;
20 you had to be above the special marker claim; you had to file a
21 claim with us for the EI program on time, which the deadline
22 was September 1, 2009; and you had to send us the paperwork to
23 support your claim.

24 The Settlement Agreement provided these benefits
25 for economic loss and for a special medical injury. The

1 economic loss was past lost wages, which is before the
2 Settlement Agreement, exceeding \$250,000; or past out-of-pocket
3 medical expenses before the Settlement Agreement of greater
4 than \$250,000; or some combination of the two. So it's large
5 injury, unreimbursed, lost wages, lost income, medical
6 expenses, or some medical injury that did not appear on the
7 heart attack and stroke grids and gate criteria.

8 What we found, Your Honor, throughout this
9 program was that there were relatively few people who had this
10 kind of economic loss. We are not talking about businesses and
11 lost profits for ongoing business. These were individuals
12 either on salary or in some instances an owner of a business or
13 a partner in a business. It was not a huge economic loss
14 population of people with income in that period of time
15 exceeding these levels. Because of the design of the
16 underlying grids, there were not many injuries associated with
17 these claimants that were not already on the grids.

18 We had made it clear from the beginning that the
19 extraordinary injury funds were not an opportunity just for a
20 second bite at the apple. They were not for injuries that were
21 below the severity level of the heart attack and stroke grids,
22 and they were not for people who just wanted more money than
23 they had gotten on the heart attack or stroke grids. That
24 meant that the extraordinary injury fund confined it down to
25 the truly catastrophic situations.

1 We made this completely transparent. In March
2 of 2009, when the program first rolled out, we posted on the
3 portals and the general Web site a manual that laid out the
4 criteria to get into the program so everybody could see it.
5 Then when we began reviewing the claims in December of 2009, we
6 posted a criteria manual that made it completely transparent
7 how these claims would be evaluated and what it took to be
8 paid. This was available to everyone to see.

9 The process we went through we have talked about
10 before, where we would review the claims, issue an assessment
11 to the claimants or the counsel. They could request a second
12 review by us. We would then go through it, issue another
13 determination. Then if they were unhappy with that, they could
14 appeal to Mr. Juneau, as the special master, and that would
15 finish out the claim.

16 This is our time line for the EI program, where
17 we first started in September 1, 2009, with the deadline to
18 send in your claims package to us. We started issuing notices
19 in November 2009, right on the heels of that. We started doing
20 the second reviews in February of 2010. We finished basically
21 in May. Mr. Juneau really scrambled to get the appeals done
22 early in June so that we could make the EI final payments on
23 June 29. We had promised them by June 30, and they were made
24 on June 29, 2010.

25 We ended up with this many people in the EI

1 program: 2,653 people who started out, but some of them did
2 not finish their claims, and we ended up with 2,610. Some of
3 those were not eligible because they hadn't passed on their
4 underlying claim or they withdrew their claim. We ended up
5 with 2,332 people in the EI program whose claims then we
6 processed.

7 This is how those claims broke down among the
8 various types of injuries that were compensable in this
9 program: Past medical expenses, past lost wages, special
10 medical injury.

11 The AED is additional extraordinary damages.
12 They were futures. The program did not specifically guarantee
13 future expenses, but we worked out with the parties allowing
14 some future medicals and some future lost income for claims.
15 That's how many claims we got for each type. There's more than
16 the number of people because a lot of people submitted more
17 than one type.

18 Your Honor, we went too far. I know people were
19 delighted to see that end slide. In the process, this is the
20 notices that we did. The main takeaway from that is about half
21 of the people ended up asking for second review. Only 99
22 people appealed their claims after our second review to the
23 special master. The special master did those appeals very
24 thoroughly and very quickly and ended up denying 85 of the 99
25 and then granting appeals and payments in 14 of the 99.

1 The next two slides show us -- this is the first
2 time we have been able to conclude and show this -- the amount
3 of funds that were paid out in total in the extraordinary
4 injury program, with the main takeaway being there were
5 \$48,744,627 paid in extraordinary injury payments for MI
6 claimants. On the IS side, we paid out \$10,731,741 to stroke
7 claimants.

8 Again, those numbers were a feature of the truly
9 catastrophic injury situations. The stroke number was lower.
10 We had fewer stroke claims because the stroke injury grid, the
11 underlying grid, encompassed just about every type of injury
12 that was normally associated with a stroke condition, so it was
13 difficult to have a special injury that wasn't already covered
14 by the grid. That's where we ended up on the actual payments
15 for EI claims.

16 Your Honor, brief remarks in conclusion, looking
17 back a little bit, a little bit of a retrospective. In this
18 program the Court has already mentioned the scope and breadth
19 of this and the success of it. These are just some factoids
20 that show we got over 1.2 million documents from claimants
21 throughout this process. We generated ourselves over 70,000
22 different notices that we sent back to the claimants. The
23 electronic storage that we have on this program -- just the
24 documents, not our database -- is 4 terabytes of data, which is
25 a lot of data. A CD holds about 400 to 600 megabytes of data.

1 This is 4,194,304 megabytes. It's over 7,000 CDs if we had to
2 put these documents on CDs. A lot of information.

3 This number down here is the lawyers relied on
4 their portal to figure out where their claims were. They could
5 look up any claim and see the status. To enhance that, we also
6 made global reports in Excel to each firm: "All your clients,
7 this is their status. This is what's wrong with their release.
8 This is how you fix it."

9 We pushed those out regularly so that no one
10 could be surprised when a deadline passed. We even monitored
11 to see who was opening their portal and looking at them. If
12 they hadn't looked at them, we then e-mailed them the report
13 directly. We wanted to make sure everybody had notice of
14 everything that was going on. We issued over 174,000 notices
15 throughout this on 747 different days in the program. Just
16 about every day we were sending e-mails to counsel, posting
17 things to counsel.

18 The last two blocks on here show that we kept
19 track of the calls we had with the unrepresented folks.
20 Remember, we only had about 1,000 unrepresented folks in the
21 program, and this does not count the calls that the *pro se*
22 curator got. We received over 10,000 calls, and we then made
23 outgoing calls ourselves over 5,200 times to unrepresented
24 claimants. They got a lot of attention in this program, and
25 they deserved it, but it helped them get through the program

1 successfully.

2 We like to make sure that we account for
3 everybody in the program, every claimant, and then all the
4 funds in the program. This shows us the claimants and what
5 happened to them. Basically, we had about 49,000-plus, almost
6 50,000 people who were really in the running to be reviewed and
7 submit claims.

8 Rows 2 through 7 show us how claims could fall
9 out of the program: They weren't eligible if they were not
10 U.S. citizens; some withdrew; final gate failure. We end up
11 with the numbers that Lynn has already talked about that were
12 the amounts of payments that we made and then the numbers Lynn
13 mentioned, too, of claimants that are still unpaid for various
14 reasons, mostly estate issues. That's some of the mop-up that
15 we will be doing.

16 We also like to account for all the funds, and
17 this fund was a \$4.85 billion fund. It shows the payments that
18 we have made. On the underlying stroke and heart attack claims
19 and in the EI world, there are some mop-up here with the claims
20 that haven't been paid yet, the estate issues that will be
21 flushed out. There's a little bit of mop-up in these numbers
22 because there's some uncashed checks still.

23 So there's still some housekeeping that we will
24 tend to after today, but for the bulk of this, everything is
25 accounted for. This number right here, the 479 number, are

1 withholdings for government liens, private liens, and the
2 common benefits fees and costs that we withheld from the
3 payments.

4 The Court has already mentioned the schedule
5 this was on. It started November 9, 2007, finished with the EI
6 payments June 29, 2010, a very tight, collapsed schedule.

7 We looked at this comparison grid when we did
8 the interim payments because we were looking at how this
9 program compared to other programs for payments, how long it
10 took from start to getting money out. Here we are down here
11 with this orangy color, interim payments in less than a year,
12 final payments in less than three years, really not much more
13 than two years after the claims packages started coming in.

14 Relative to other programs, this was a very
15 tight schedule, very complex, successful resolution, and these
16 other programs all have different issues. This is not a
17 criticism of these programs but just a testament to the way
18 this program was designed at the outset, all the parties that
19 played a role in it.

20 We had sort of a dream team lineup here of all
21 the service providers, the special master, the escrow agent
22 U.S. Bank, Mr. Garretson and his firm, and all of the work that
23 those folks did to make this happen, and Mr. Johnston as the
24 *pro se* curator. All those players played a big role in making
25 this keep moving, with the Court's guidance and leadership and

1 direction, plus the amazing work that Merck and its counsel and
2 the negotiating plaintiffs' counsel did to put this together
3 and then work together cooperatively to make sure it happened.

4 Lastly, all the primary counsel and the
5 claimants had to do what they were supposed to do. There were
6 a lot of people that contributed to making this happen, to keep
7 this as successful a program in this amount of time. We see
8 that compared to other mass tort settlement programs, we are
9 ending up in a much more compact schedule than most of those
10 programs have been able to achieve.

11 Your Honor, it's been a privilege and a pleasure
12 for us to be here at these sessions with you and the parties.
13 We have enjoyed working on this program. Unless the Court has
14 any questions for us, then that concludes our final report.

15 **THE COURT:** No, I don't. Thank you very much for all
16 of your work, Orran. You and your team have really done an
17 excellent job. As I say, it's a tribute to all of the
18 attorneys who have worked on this case, and I do appreciate
19 that. We have had over a thousand lawyers in this particular
20 case. I think one of the keys, too, that helped this case is
21 the transparency that all of us have tried to maintain. The
22 Court has developed a Web site. We put everything on the Web
23 site. You have also given a lot of information to the lawyers.

24 That's a criticism that I hear occasionally
25 throughout the United States on MDLs. People sometimes don't

1 know what's happening. They file a suit in Arizona, and all of
2 the sudden it winds up in New Orleans and they don't hear
3 anything at all thereafter. I think we have changed that a
4 little bit in this particular case. People have access to the
5 Web sites. They know what's going on.

6 All of the transcripts of these hearings I put
7 on the Web site. All of the Court's orders, everything
8 involving this particular case we put on the Web site for
9 people to see and look at. It's accessible to the public,
10 accessible to the lawyers, and I think that's very helpful in
11 these cases too. Of course, your Web site was invaluable to
12 the attorneys handling the case, so I appreciate all of your
13 work.

14 **MR. BROWN:** Thank you very much.

15 **MR. HERMAN:** May it please the Court. The next item
16 is the report by U.S. Bank.

17 **THE COURT:** Okay.

18 **MR. HERMAN:** We want to thank again BrownGreer for
19 their excellent work.

20 Our choice of U.S. Bank by defense and plaintiff
21 counsel proved correct. It's a major bank in this country
22 without problems. The way they have handled themselves has
23 been excellent. Terry McRoberts, the executive vice president
24 of corporate trust of U.S. Bank, has a presentation,
25 Your Honor.

1 **THE COURT:** Okay. Thank you.

2 **MR. MCROBERTS:** Thank you. Your Honor, it's a
3 privilege to be in front of your Court again on such a
4 successful and large case as those before me have presented
5 this morning.

6 U.S. Bank had the privilege of acting as escrow
7 and disbursement agent on the *Vioxx* settlement and
8 responsibility for many attributes, including the proceeds and
9 disbursing them to the beneficiaries. The balances that reside
10 as a result of the \$4.8 billion rolling through the escrow
11 funds over the last three years are an administrative expense
12 fund of \$2,275, an MI settlement fund of \$298,275,679, an IS
13 settlement fund of \$136,010,019, and a 468 holding settlement
14 subfund of \$4,354,059.

15 I'm happy to report on the payment and
16 disbursement activity that was reported by BrownGreer, that all
17 of those proceeds successfully passed through U.S. Bank and out
18 to the beneficiaries that I heard several times in my
19 appearances here was of the utmost importance to the Court.

20 We also have a subaccount for Medicare
21 subfunding of \$43,716,778. Also noted is that as proceeds did
22 come into the escrow and were held awaiting disbursement from
23 time to time, that at all times those funds were invested and
24 generated additional interest, at the direction of Merck, of
25 \$3.2 million based on the earnings rates and the availability

1 of appropriate investments.

2 We would certainly like to thank Merck for all
3 of their flexibility and conscientiousness in terms of the
4 timing and cooperation they provided in funding the escrow over
5 the last three years and the everyday activity that we had with
6 BrownGreer in terms of readying and many times adjusting for
7 the last minute to try to get as many payments out as we could
8 at any given distribution date as they were scheduled out month
9 to month for the last three years.

10 In terms of where the investments were held, I
11 thought it would be important to note to the Court that as we
12 have discussed in previous hearings, the trust funds were
13 invested in a AAA rated money market fund at all times. Any
14 dollars held in the escrow were held in a prime obligation
15 fund. That fund is a \$20.5 billion fund. It's also AAA rated
16 by the rating agencies. That was important because it lent
17 itself to, first of all, safety. There was never any risk to
18 the proceeds as they were held in the escrow.

19 Also importantly, they also had liquidity so
20 that if we did -- and we did -- have large disbursements that
21 would get through the approval process that the Court has heard
22 this morning, that there wouldn't be any tie-up in proceeds as
23 they were ready and necessary and needed for disbursement.

24 Just a couple comments in terms of U.S. Bank as
25 the escrow agent bank. Again, it's been a privilege to act in

1 this role as escrow and disbursement agent. We just reported
2 record revenues again last week for our quarterly report:
3 \$4.5 billion of revenue, which was up 9.5 percent in these very
4 difficult economic times, net income of \$766 million that
5 resulted in a 14.5 percent growth over last year. In short,
6 the best earnings report that any major bank has in the
7 United States.

8 I would say, too, that we remained profitable,
9 as I reported to the Court from time to time over the last
10 three years, throughout this very difficult financial time.
11 Quite simply, that's because our selection, part and parcel,
12 was because of our conservative nature, the strength of the
13 bank, and all of that proved as mettle as we went through some
14 very challenging times here in the last three years.

15 Just further data: We continue to be rated a
16 AA rated bank. We are \$282 billion in assets. Like the funds
17 that these were invested in, we were large enough, solvent
18 enough, stable enough to be able to handle this size of an
19 escrow and not to have any lapses either because of resource
20 constraints or size of the bank constraints, and from the
21 leading performance metrics have been the highest performing
22 bank in the country.

23 All of this results in, I think, the kind of
24 traits the Court was looking for in the handling and care of
25 the escrow proceeds over the last three years as funds were

1 held in escrow pending disbursement, pending the intensity of
2 the claims review process that was part and parcel to the *Vioxx*
3 case and the *Vioxx* processing. So, once again, it's been a
4 pleasure to have a role in this. I thank the Court for its
5 time and attention and for our opportunities and open up to any
6 questions.

7 **THE COURT:** How much do you still have in your bank?
8 Do you know?

9 **MR. MCROBERTS:** Yes. We have got, as one slide
10 showed, about \$438 million.

11 **THE COURT:** Thank you very much.

12 **MR. MCROBERTS:** Thank you.

13 **MR. HERMAN:** I believe Matt Garretson is here with
14 the lien report.

15 **THE COURT:** Let me hear from the lien administrator.

16 **MR. GARRETSON:** Your Honor, I will be brief this
17 morning since I will reserve next hearing to give my final
18 report as there's still a few outstanding items of which the
19 Court is well aware. I'm Matt Garretson. I'm here to report
20 as the lien resolution administrator. I will just give a few
21 combined statistics.

22 We moved the meter quite a bit since the last
23 hearing. There are a few outstanding items that I'm going to
24 point out. I'm not going to go into detail during this
25 hearing. I think the most important thing to share with

1 everybody is these aren't black-hole issues that are going to
2 linger for years. Every one of them has a game plan. Where
3 there was not a game plan or there was concern, this Court has
4 issued orders since the last hearing to help move them along.
5 While I will give a quick overview, I don't think anyone should
6 have cause for alarm because it is normal that there would be a
7 few outstanding items.

8 With respect to Medicare, we are 96 percent of
9 the way. There's 4 percent outstanding. Two-thirds of those
10 that are outstanding is because claimants have asked for a
11 reconsideration and we are in the process of finalizing those.
12 720 of them have been requested, and many of those within the
13 last 45 days. So those are going to take some time for us to
14 process.

15 Those that are older have been outstanding, and
16 the reason they are not finalized is we are asking the
17 claimants for additional information to support that. I would
18 say during our next status hearing I will ask the Court to set
19 a date by which we must shut those down if we have already had
20 them in-house and cannot get the information from the
21 claimants.

22 Twenty-five percent of the outstanding cases are
23 due to an issue we are working on with Medicare. The ischemic
24 stroke model, as I have reported over the last several months,
25 did not accommodate -- there was a certain threshold of cases

1 that were above the special marker, where the global amount to
2 be received by Medicare for the ischemic stroke would have
3 actually made the net result to the claimant lower than the
4 individuals in the special marker category. We are working
5 through that with Medicare. We have their commitment to
6 resolve that before the next hearing.

7 We have some entitlement discrepancies I brought
8 to the Court's attention. You have instructed us to work with
9 the claims administrator to tell the attorneys involved we need
10 them to give us that correct Social Security number or forever
11 hold your peace. It is the attorneys' responsibility at this
12 point to return any funds they have received or to block those
13 funds and hold those funds because there is nothing we can do
14 when we are not in receipt of correct data.

15 With respect to Medicaid, we are also 96 percent
16 of the way done. Four percent are outstanding due to the same
17 issues. We don't have confirmation of the correct Social
18 Security number or the Social Security number has, in fact,
19 changed, and so we had to restart the process over again. I
20 want to move the meter on those quite a bit by my final report
21 at the August hearing, and then similarly I will ask the Court
22 to just give us some guidance on how to instruct the attorneys
23 that our work is done.

24 **THE COURT:** That's unfortunate because the whole
25 purpose of trying to do a lien resolution program within the

1 confines of an MDL is to provide a win/win situation. Of
2 course, the Medicaid/Medicare institutions have one focal
3 point, where they get all their funds as opposed to 50,000
4 centers. The claimants get something, too, because they get a
5 discount on what they legally otherwise have to pay. So they
6 are going to lose that opportunity when it goes back, and the
7 attorneys are going to be responsible or liable for those
8 amounts. As we know, with statutory liens, the attorneys are
9 responsible as well as the litigants. It's unfortunate that
10 they are not participating. It would be to their detriment.

11 **MR. GARRETSON:** I believe some of this is going to be
12 corrected as soon as we tell the parties that the time is up,
13 we can no longer have files outstanding.

14 With respect to Medicaid, there's two issues
15 that I did need to bring to the Court's attention that I hope
16 to have resolved by next hearing. The first is two states did
17 not accept the protocol we worked with the Court and the
18 special master to put forward, which was a 20 percent cap on
19 their Medicaid lien, 20 percent cap of gross settlement award,
20 plus a 35 percent reduction to those liens, which represents
21 the procurement costs that the claimant paid their attorneys
22 for their attorney fees and case expenses.

23 I do not feel that we are authorized, without
24 the Court's guidance, to accept that because I know this Court
25 has expressed the importance of uniformity. So I bring that to

1 the Court's attention, and I will need guidance on what we do
2 with those two states that have yet to adopt the protocol.

3 **THE COURT:** I want to meet with you on that so that
4 we can deal with it, but the claimants ought to at least bring
5 that to the attention of the attorney general as well as the
6 governor and the senators of that state because they're going
7 to be disadvantaged as opposed to 48 other states.

8 We have had 50 states involved in this program.
9 It's unfortunate that in two states the litigants will be
10 discriminated against as opposed to the litigants in those 48
11 other states who get some benefit. These litigants in these
12 two states will not. That's unfortunate. At least it ought to
13 be explained that way, and they ought to express themselves to
14 their elected officials in that regard.

15 **MR. GARRETSON:** Yes, Your Honor. With respect to
16 other governmental liens, the Court issued an order this month
17 telling the facilities to produce their claims data or
18 surrender their right of recovery. I am told by tomorrow that
19 the agency will surrender their right of recovery on those for
20 which they have not been able to produce claims data as the
21 Court has instructed. There are some of those where we are
22 allowing them to have more time because of this Social Security
23 number issue I keep mentioning, the shift. So they will have a
24 little bit of time to cure those, but two-thirds of them that
25 are outstanding will be released, my understanding is,

1 tomorrow.

2 The private lien program, there are only a few
3 items outstanding. You may recall that 16,882 claimants agreed
4 to participate in the program voluntarily. Actually, over
5 20,000 agreed to participate. 16,882 were the claimants that
6 agreed to participate who were also receiving a payment out of
7 the Vioxx program. Just roughly over 9,000 of those claimants
8 had liens reported by the participating plans. We are about
9 95 percent of the way done with those. The remaining, there's
10 about 500 claims outstanding. Now, mind you, they all have
11 caps, so it's not that the whole money is frozen on those.
12 There are, in fact, caps.

13 These issues are what I reported last time:
14 Determining an antistatutory right of states, just making
15 sure we are looking at the funding status of the plan and the
16 plan language to make sure no obligations are created where
17 none would otherwise exist under state law. We had duplicate
18 charges submitted by several plans. Your Honor issued an order
19 this month that cleared that issue for us. I want to report
20 that that has, in fact, resolved itself.

21 There are 152 claimants who had appeals, pending
22 our review of plan language, for liens that exceeded \$50,000 in
23 their final audited state. We have conducted that audit, we
24 have reported it to the parties, and it's my understanding that
25 that issue will now be resolved.

1 With that, Your Honor, there are just a few
2 trailing issues. I think you will see, as I said, the meter
3 moved completely by next month or we will ask the Court for
4 some deadlines so that we can shift any remaining obligations
5 back to the attorneys.

6 **THE COURT:** Thank you.

7 **MR. GARRETSON:** Thank you very much for the
8 opportunity, and we will report next month.

9 **THE COURT:** Good. Thank you very much.

10 Special master, deputy special masters, any
11 report?

12 **THE SPECIAL MASTER:** Your Honor, unfortunately I
13 don't have a pie to present here today.

14 **THE COURT:** We enjoyed that pie.

15 **THE SPECIAL MASTER:** I meant to say technically that
16 it was offered into evidence for the Court's consumption. I
17 understand you took care of that.

18 Your Honor, a very brief comment. The very
19 detailed report of BrownGreer incorporates the detail of the --

20 **THE COURT:** Excuse me, Pat. We have the AT&T
21 operator. They have some problems with the people who
22 apparently were cut off, so they want us to reconnect to them.

23 We can continue. Let's go.

24 **THE SPECIAL MASTER:** Your Honor, the very detailed
25 report of BrownGreer has the detail about the number of

1 appeals, the number of reversals, what was granted, what was
2 not granted, so that serves as my report. This is not my final
3 report because I still have a few matters on the table to
4 address and I want to address those now.

5 I have developed, published, and sent out the
6 protocol and scheduling with regard to the lien matters that
7 exist between lawyers. That is a matter that the Court has
8 instructed will be handled separately, but those notices have
9 been set. They are scheduled. All of that is in play and will
10 play out over the next couple months, some of which have been
11 resolved, fortunately, I might add, during the course of the
12 publication of those protocols. I don't look for that to be a
13 detailed, involved matter. It's just a procedural matter that
14 has to be addressed, but it is in fact being addressed.

15 **THE COURT:** Pat, what about the fraud claims that you
16 have?

17 **THE SPECIAL MASTER:** She mentioned the fraud claims.
18 The rulings were made in each and all of those claims. We had
19 hearings in this courtroom before a court reporter. Records
20 were made. There were two of those claims -- I think there
21 were eight in total, as I recall -- which were rejected and
22 actually dismissed. They were found to be misrepresentations
23 to the Court and to the process.

24 Notices of those rulings and so forth have been
25 mailed out and established. That's all part of the matrix

1 that's been developed by BrownGreer and the ultimate decisions,
2 but we have taken care of it. All of those matters are now
3 resolved.

4 **THE COURT:** Those are unfortunate. On the bright
5 side of it, there were 2 out of 50,000 claims that were
6 fraudulent, so I think the process worked. We are always going
7 to have some of that, but the limited amount is noted.

8 **THE SPECIAL MASTER:** I might add, Your Honor, it was
9 very interesting. We had very detailed hearings, and there was
10 full due process afforded to everyone. I think the process we
11 established and you adopted in this matter worked very well,
12 the processing for those claims. With that said and done, I
13 will just reserve comments, Your Honor, regarding the finality
14 of these lien matters.

15 I would like to make just one brief comment,
16 Your Honor. You talked about the black hole we have all read
17 about. I've been in several black holes, I might add. This
18 case, in my humble opinion, Your Honor, sets the hornbook
19 guidepost for class actions and mass actions, the track they
20 should be on, how they should be handled.

21 Obviously, everybody here enjoyed and
22 appreciates an opportunity to be a participant in that. I
23 think it's truly a milepost in the whole country, but I would
24 like to make this final comment. I'm speaking for myself. I
25 know I'm speaking for everybody in this room: The plaintiffs

1 and defendants, Merck, BrownGreer, and everyone. The candid
2 response, Your Honor, is this really doesn't happen unless
3 there's a conductor at the train who has a strong hand on the
4 wheel and you push this matter, and that's how we got to where
5 we are today.

6 I don't think there's anybody here in this
7 courtroom that doesn't recognize that, but I think it's truly
8 remarkable the stage we have gotten to today. I, frankly,
9 didn't think it could be done, but it has been done. It's
10 effectively done with complete transparency. On behalf of
11 myself and everybody else, we appreciate the strong leadership
12 and direction you gave us in this case. Thank you.

13 **THE COURT:** The next matter on the agenda is class
14 actions. Any report on that?

15 **MR. HERMAN:** Your Honor, there's nothing new. You
16 have issued a schedule and there's a hearing on September 22.

17 **THE COURT:** State and federal coordination.

18 **MR. DAVIS:** Ms. Barrios is here.

19 **MS. BARRIOS:** Thank you, Mr. Herman. Good morning,
20 Your Honor. Dawn Barrios for the state/federal committee.

21 I hope that Katie gets back into the courtroom
22 because I would like to officially thank her for all the help
23 that she has given all the attorneys in the courtroom,
24 particularly myself. She is one very bright, energetic, and
25 polite young woman who usually works after business hours, so I

1 do thank her. I welcome Joe to follow into Katie's footsteps.
2 We look forward to working with him.

3 Your Honor, we have done a big push to try to
4 clean up the remands and that's what I would like to talk to
5 you about today. Since my report in March, we have gotten over
6 100 cases with approximately 800 plaintiffs who had remands
7 dismissed to clean up the record.

8 We have provided the *pro se* curator with the
9 names of *pro se* plaintiffs with pending remands, and I
10 understand Mr. Johnston's office is contacting those plaintiffs
11 regarding their desire to continue with the case. We have
12 contacted counsel with the remaining pending remands to
13 determine their intentions in pursuing the cases, and we have
14 assisted them in dismissing the cases when it was their
15 intention to do so.

16 We have provided a list of derivative claimants
17 whose case is still open with a remand although the primary
18 claimant's case is closed. It's just something that fell
19 through the cracks. Merck is going to address that issue and
20 get those cases dismissed so that we will continue to reduce
21 our numbers.

22 There are five remand cases where all of the
23 plaintiffs have been terminated but for some reason remain on
24 PACER. With Your Honor's permission, I would like to give Joe
25 the docket sheets of those five cases because that just

1 administratively has to be cleaned up.

2 Currently, we have 380 cases that have pending
3 remands with 855 plaintiffs, and we are continuing to work on
4 cleaning those up. As I said before, I have also been working
5 with Mr. Birchfield and with Mr. Davis on helping clean up the
6 record.

7 **THE COURT:** Thank you for all of your help on the
8 coordination with the state cases. I think that's something
9 that worked well in this case too. It's really a tribute to
10 you and your work and also the work of my colleagues in state
11 court.

12 **MS. BARRIOS:** Thank you, Your Honor.

13 **THE COURT:** We were very fortunate in this case to
14 have great state court judges working with the MDL.

15 **MR. HERMAN:** May it please the Court. On July 23 I
16 received from Mark Menzer a counsel request that the 18 cases
17 in which his firm is involved be set for remand hearings.
18 Your Honor has previously addressed that Your Honor wanted to
19 hear these various remand matters at once. I think Your Honor
20 has instructed plaintiff and defense counsel to organize those
21 attorneys to meet.

22 **THE COURT:** Yes. My thinking on it is that we need
23 to put some structure on the remand situation now. We are
24 getting to the point where we need to address those issues
25 because the other cases have been dismissed or resolved. My

1 thinking is that I need to get my hands around the number of
2 cases and the lawyers involved in the remand. I'll then set a
3 status conference inviting all those lawyers to participate,
4 and I would like to talk about a method of dealing with them.

5 I would like to know whether or not there's any
6 discovery that needs to be done, which cases need discovery, if
7 there are any; and then whether there's any legal issues that
8 need to be addressed, whether or not we can address those legal
9 issues once as opposed to in each case; and also deal with some
10 priorities.

11 Some of them need to be remanded immediately.
12 Some of them need discovery. Some of them may need to be
13 dismissed. In any event, we need to address those. I've
14 instructed liaison counsel for plaintiffs and defendants to
15 prepare the list and give me a list of the lawyers involved,
16 and then I will notice the status conference and we will talk
17 about all of the outstanding issues. Hopefully we can get
18 these resolved within several months as opposed to years.

19 The next item on the agenda is the trial
20 package. Any report on that?

21 **MR. HERMAN:** I want to thank Mr. Dugan, who is
22 providing a transcript, learned treatise, and exhibits for
23 supplement to the trial package based upon the Louisiana AG
24 trial. We have had two requests since the last status
25 conference, and we have provided trial packages to the folks

1 that requested trial packages, Your Honor.

2 **THE COURT:** That aspect has worked very well because
3 an MDL allows an opportunity for skilled lawyers to prepare for
4 trial and also to perpetuate their work and have other people
5 who are not participating in the process profit from it and use
6 it in connection with their trials. I have reviewed the trial
7 packages. They are very effective, they are very
8 professionally done, and will be of great help to those
9 individuals who want to try their cases in other locations.

10 Government actions.

11 **MR. HERMAN:** Mr. Dugan is here, Your Honor.

12 **MR. DUGAN:** Good morning, Your Honor. James Dugan on
13 behalf of the government action cases. As Your Honor is aware,
14 on June 28 Your Honor entered judgment for Merck. The
15 Louisiana Attorney General will be filing its notice of appeal
16 of that judgment.

17 **THE COURT:** Okay.

18 **MR. DUGAN:** In addition, Your Honor, the other 13
19 governmental action cases are on a remand schedule. Your Honor
20 is involved in discovery issues, so those cases are moving
21 forward.

22 **THE COURT:** I think we have a meeting --

23 **MR. DUGAN:** Later in the week.

24 **THE COURT:** -- later in the week.

25 **MR. DUGAN:** Thank you, Your Honor.

1 **THE COURT:** Thank you very much for your help, Jim.
2 Pending personal injury cases, anything on that?

3 **MR. MARVIN:** Your Honor, as you indicated earlier,
4 there are still some cases that remain in the program. It's
5 approximately 215 cases. At the Court's instruction, we will
6 be working with Mr. Herman, Mr. Seeger, and Mr. Birchfield on
7 behalf of the PSC, as well as Ms. Oldfather on behalf of her
8 committee, in preparing a plan for dealing with those cases.

9 **THE COURT:** Ann, do you have any comments?

10 **MS. OLDFATHER:** Thank you, Your Honor. Good morning.
11 Ann Oldfather under the PTO 56 and select PTO 28 and 29 cases.

12 Yes. One of the things that I think the Court
13 has just addressed is getting together this information on
14 cases you just discussed regarding remand. If my understanding
15 is correct, the Court intends -- I think Mr. Marvin just
16 indicated -- for that to cover all of these remaining cases.

17 **THE COURT:** Right. The names of the attorneys as
18 well as the cases and see where we are. I understand that
19 you're working with the PSC and the defendants to come up with
20 some program and plan. I would like to get that, and then when
21 we have everybody together I would like to determine whether or
22 not we can use that plan as a method for dealing with all of
23 the cases.

24 **MS. OLDFATHER:** That would be great, Your Honor. I
25 just wanted to confirm we were dealing with everything under

1 that plan.

2 **THE COURT:** Yes.

3 **MS. OLDFATHER:** I think the count right now is
4 somewhere around 46 cases that are under my leadership that
5 came out of PTO 29 and 43, about 80 to 100 that are under my
6 leadership that came out of PTO 28. Then the original PSC has
7 elected to retain -- I guess we'll see when we see the list --
8 somewhere I think in the neighborhood of 80 other PTO 29,
9 PTO 43 cases, but none of that is particularly important. It's
10 just to kind of get those numbers out there for anyone that's
11 listening on the conference call. Thank you, Your Honor.

12 **THE COURT:** Thank you. Fee allocation committee,
13 anything on that?

14 **MR. HERMAN:** Nothing new, Your Honor.

15 **THE COURT:** Merck's motions and rules on PTOs,
16 anything on that?

17 **MR. MARVIN:** Your Honor, there are four cases that
18 are up for consideration today.

19 **THE COURT:** Right. I will take those afterward when
20 we finish with this conference. Any other motions?

21 **MR. MARVIN:** Your Honor, Mr. Stratton has filed a
22 motion to transfer his cases or to set a discovery schedule for
23 those cases. I think that that's encompassed within what
24 Your Honor has been discussing previously about a plan that's
25 going to relate to all the cases and not just to cases by firm.

1 **THE COURT:** I would like to get everybody together on
2 it. We may be able to come up with some kind of priority
3 dealing with the cases, but I would like everybody's input on
4 it. I don't want to just deal with one group of cases without
5 everybody's input. I think we can learn from it and maybe deal
6 with some issues that are common to those cases and shorten the
7 problem.

8 **MR. MARVIN:** Yes, Your Honor.

9 **THE COURT:** Jim mentioned an appeal. There was also
10 an appeal recently that I received from Mr. Benjamin. He had
11 appealed a matter.

12 **MR. MARVIN:** That is correct. Your Honor, the
13 Fifth Circuit dealt with one of the appeals that Mr. Benjamin
14 made and upheld Your Honor's rulings in that. There are
15 several other appeals that address basically the same issues.
16 We expect that perhaps the Fifth Circuit will be consolidating
17 some of those appeals they are dealing with based upon its
18 rulings previously.

19 **THE COURT:** Okay. Motion for attorney fees to
20 enforce attorney's lien.

21 **MR. HERMAN:** May it please the Court. Mr. Stratton
22 is here. The PSC executive committee and Mr. Levin would like
23 to meet in chambers with you and Mr. Stratton at a time
24 Your Honor designates.

25 **THE COURT:** Is that okay?

1 **MR. STRATTON:** That's fine, Your Honor.

2 **THE COURT:** Let's do it that way, then. Third-party
3 payoff settlement, anything on that?

4 **MR. SEEGER:** No, Your Honor. Claims have all been
5 paid. The only issues is the attorneys' fees.

6 **THE COURT:** Merck's motion to dismiss for failure to
7 prosecute, is that the other --

8 **MR. MARVIN:** Yes. That's what we have already
9 discussed.

10 **THE COURT:** Motion to transfer and set
11 discovery/trial dates, we have talked about that.

12 The next status conference is August 26. I have
13 mentioned to the parties that it looks like that the status
14 conferences in the future may have fewer people involved
15 because we really are finished the large portion of this
16 litigation, but I will still need the liaison and lead counsel
17 for plaintiffs and the defendants. I've asked them to at least
18 consider whether or not we need everybody at the future
19 conferences, but I'll leave that up to you.

20 I understand we lost a number of people during
21 the process. As you know, I make a transcript of this
22 conference. We'll get the transcript and file it in the
23 record.

24 **MR. HERMAN:** May it please the Court. On behalf of
25 all counsel, we want to thank Katie for her service. We wish

1 her well. We understand she's going to a public defender
2 office in New York. They certainly could use her intelligence
3 and personality in that role. We thank you for everything.

4 **THE COURT:** Good. Well, likewise, the Court
5 appreciates all of her service. She's done a great job in
6 working on the case, and certainly I have benefited by her
7 wisdom and work. I appreciate it. I'll be back in a couple
8 minutes. Court will stand in recess.

9 **THE DEPUTY CLERK:** Everyone rise.

10 * * *

11 **CERTIFICATE**

12 I, Toni Doyle Tusa, CCR, FCRR, Official Court
13 Reporter for the United States District Court, Eastern District
14 of Louisiana, do hereby certify that the foregoing is a true
15 and correct transcript, to the best of my ability and
16 understanding, from the record of the proceedings in the
17 above-entitled and numbered matter.

18
19
20 s/ Toni Doyle Tusa
21 Toni Doyle Tusa, CCR, FCRR
22 Official Court Reporter
23
24
25