

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF LOUISIANA

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4 IN RE: VIOXX PRODUCTS
5 LIABILITY LITIGATION

MDL No. 1657
Section: "L"
New Orleans, Louisiana
Tuesday, September 23, 2008

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

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1 received and well given. Please extend to Phil our best
2 respects.

3 THE COURT: The court is very familiar with that
4 award. It came in I think during my administration many, many,
5 many years ago and I am delighted that he received it. And I
6 know Curtis Boisfontaine would be very happy that Phil has
7 received it, he certainly deserves it.

8 MR. HERMAN: Just one more brief comment. As your
9 Honor knows, Phil was a graduate of the Tulane University Law
10 School, and I wore a purple tie this morning and I want to make
11 it very clear. My colleague Bob Johnson, who is not with us
12 today, we were part of that law school class that went to LSU on
13 a train and I believe we lost 63 to 0. Nevertheless, my blood
14 is green.

15 THE COURT: And that's not unusual either.

16 MR. HERMAN: Well, what was unusual is when their
17 quarterback kicked the extra point.

18 MR. LEVIN: Russ, we're green, too, for the
19 Philadelphia Eagles.

20 MR. HERMAN: Well, I don't talk about those birds.

21 I'd like, your Honor, Doug Marvin for Merck and then
22 Andy Birchfield for plaintiffs would like to address and
23 emphasize some deadlines that are very important to the
24 agreement.

25 THE COURT: Okay.

1 MR. MARVIN: Your Honor, we do have a deadline coming
2 up in about 40 days, it's October 30th, and that is the deadline
3 for claimants to enroll in the program. We are aware of a
4 number of claimants who are eligible for the program that did
5 incur a heart attack or a stroke or sudden cardiac death and
6 have not enrolled in the program yet. The program is still open
7 but it does close on October 30th and that is a firm hard
8 deadline.

9 I know in the past we've had a number of extensions
10 for interim payments and other extensions in the program, but
11 this deadline is a hard one that's been set by the agreement.
12 And in order for the smooth functioning of the program so that
13 we can continue the program and make sure that people are paid
14 in a timely manner, we do need to adhere to that deadline.

15 THE COURT: How many of those individuals that are
16 eligible but have not enrolled as yet?

17 MR. MARVIN: There are about 900. Now, of that 900
18 there is a fairly large percentage who have not been found or
19 are not responding to their counsel. Some of those cases
20 haven't filed, a lot of those cases were tolled. But there's a
21 total of about 900. And in addition to those who cannot be
22 found, there are some out there who have been filed by counsel
23 that some of us have reached out to and really have not been
24 familiar with the program, and so we have thought about
25 contacting them and perhaps we could use the court's assistance

1 so that everyone has the opportunity.

2 THE COURT: Yes. I would like to at least meet with
3 those individuals, and it's a little difficult with an MDL in
4 the sense that it's covering the nation. And so I hate to order
5 someone from Alaska to come down to talk with me for a couple of
6 minutes about these matters, but I'd like you to get together
7 the group and let's see where they are and then I'd like to
8 start setting up some meetings.

9 I really don't care whether anyone wants to accept or
10 not accept the program or enroll or not enroll. If they choose
11 not to enroll, that's their choice and they have a right to try
12 their case, and I will respect that and put them on track to try
13 their case. But I would like them at least to understand the
14 whole scope of the matter and I think it would be beneficial not
15 only to the litigant but also to the lawyer to at least hear the
16 court discuss these matters and make sure that the client
17 understands what the situation is both with potential preemption
18 plus the costs plus the risk involved.

19 And if they wish to take that risk and they fully
20 understand it, that's fine. But if they don't understand it, if
21 they haven't focused on it, if a lawyer who has been busy with
22 other things has not had a chance to either look at this
23 complicated agreement or understand it, then that's another
24 thing. I hate to see some individuals slip through the cracks
25 when they simply just didn't know it. So I'd like to satisfy

1 myself with that. So let's get together that list and I'll set
2 up some meetings.

3 MR. MARVIN: We will do that, your Honor. I think as
4 Mr. Brown will be reporting, more than 98 percent have enrolled
5 in the program and so it's just with respect to this last two
6 percent that we want to make sure that they understand the
7 program, they're focused it, and setting up that conference will
8 be very helpful. We'll get that list together.

9 THE COURT: Okay.

10 MR. MARVIN: So that's the first deadline October 30th
11 for enrolling, it's a hard deadline.

12 The second deadline is December 30th, that is for
13 claims packages. That is for people who have already enrolled
14 in the program. And once they've enrolled then they need to
15 submit claims packages showing their proof of use and their
16 injury, along with other facts relating to their claim. Again,
17 December 30th is a hard deadline and again it is a deadline that
18 has to be held firm if everyone in the program is going to be
19 paid in a timely manner.

20 So again, it's a situation where counsel representing
21 parties as well as those who are acting pro se need to comply
22 with that deadline in getting their enrollment packages in and
23 complete.

24 MR. BIRCHFIELD: Judge, on the December the 30th, that
25 is, that's an absolute deadline, no extensions beyond that,

1 that's an essential part of the master settlement agreement.
2 But no one should look at December the 30th and say that's the
3 real deadline because you do not even get to December the 30th
4 unless you can show cause, you know, to BrownGreer, the efforts
5 that you have made to get records and how it's not your fault as
6 to why you do not already have those records. The initial
7 deadline was July the 1st, deficiencies notices were posted to
8 those that did not have complete claims packages saying that you
9 have until September the 1st.

10 Now for those that have still to complete a claims
11 package, another notice went out and said that you have an
12 extension till November the 1st. And so one of the things
13 that's very important is that lawyers view the portal, see these
14 deficiency notices and respond quickly to complete those claims
15 packages.

16 One of the things that we as a Plaintiffs Steering
17 Committee are doing right now, we're reaching out to lawyers,
18 offering our assistance to anyone who needs help in completing
19 these claim packages. And so they can contact Russ Herman's
20 office or Chris Seeger's office or my office and we will
21 coordinate assistance for anyone who needs that in completing
22 these claims packages.

23 But it's crucial that lawyers be working diligently
24 now to complete these claims packages because you cannot wait
25 until the last minute, you would not be able to get the records

1 in time, and it's an absolute deadline.

2 THE COURT: I would from the court's standpoint
3 reinforce that. Often times lawyers, after they agree to a
4 settlement, they put that case away and go to the next case
5 which is nipping at their heels and that's not the situation in
6 this case.

7 I think that you need to get a small committee
8 together to focus on that and do some hands-on. But if you get
9 to the point where you're not getting their attention, you can
10 send out e-mails but if they're not reading them or they're not
11 even opening them, then that's a real problem. So if that
12 doesn't work, in time you have to let me know so that I can rule
13 them into court to show cause why their case should not be
14 dismissed in lieu thereof to contact BrownGreer or take care of
15 the deficiencies, and that way we'll get their attention.

16 MR. BIRCHFIELD: Thank you, your Honor.

17 MR. MARVIN: Your Honor, if I may also jump ahead to
18 another issue that came up at the last status conference, and
19 that relates to releases and stipulations of dismissals where
20 there have been some deficiencies. A number of lawyers have
21 brought to our attention a number of issues, Tom Gerardi, Grant
22 Kaiser and several others with respect to deficiencies in the
23 releases and the stipulations of dismissal.

24 Your Honor, to enroll in the program a claimant
25 basically has to sign four documents: One is a release, second

1 is a stipulation of dismissal, a third is a medical
2 authorization, and a fourth is an employment authorization. The
3 parties established criteria to govern the review of those
4 documents to ensure that the documents, once executed are valid
5 documents.

6 And the purpose of the criteria is to serve basically,
7 well, there are two purposes: The first is to make sure the
8 right person is getting paid. And the second purpose is to
9 ensure that the document can be filed in a court of law and the
10 case proceed through its course and be enforceable as a
11 necessary document to complete the litigation.

12 As I say, at the last conference a number of concerns
13 were raised about the deficiencies and over the marking of
14 documents as deficiencies, and over the past several weeks we
15 have been engaged in a painstaking exercise in reviewing all of
16 those criteria, we've been meeting with BrownGreer, meeting with
17 a number of plaintiff representatives and others, and the
18 emphasis is on the word painstaking as part of that exercise and
19 we've reviewed all of the criteria.

20 As a result of that review we've made a number of
21 adjustments and clarifications to those criteria, and I believe
22 it was on Friday that BrownGreer sent an e-mail to all counsel
23 setting out what a number of those adjustments are. And I think
24 once counsel has the opportunity to review those, and I believe
25 that either Orran Brown or Lynn Greer is going to review those

1 adjustments that have been made, but it should clear up a number
2 of deficiencies.

3 For example, the four documents, the employment
4 authorizations, the medical authorizations, we're taking those
5 off the table at this stage, not requiring people to work on
6 those deficiencies and instead focus on the releases and
7 stipulations of dismissal. We'll only come back to them with
8 respect to cures to the medical authorizations and employment
9 authorizations if we need those documents down the road. So
10 that in itself is clearing up thousands of documents for
11 deficiencies. And we've made a number of other steps, too, that
12 Mr. Brown will be able to outline.

13 So we've been looking at it, we've been working hard to
14 try to streamline that process, and if there are any other
15 suggestions or ideas that still will ensure that a document will
16 be enforceable, we're happy to talk to others to address those
17 issues

18 THE COURT: I've seen some of the documents, and
19 there's some room, there was some room originally for the
20 objection that this being too nitpicking and things of that
21 sort. But the ones that are still, that are outstanding now
22 with those two areas, the release and the dismissal, those are
23 key. And I've seen some releases that come through that are not
24 even signed, I mean the release is not signed. That's a
25 deficiency if the release is not signed. If the release is

1 signed saying subject to approval by client and it's signed by
2 the lawyer, that's a deficiency. How can that release work? So
3 these are serious issues that, and they're very simple issues
4 that ought to be focused on and gotten through. There are about
5 11,000 of these, with those two areas taken off of the table it
6 reduces it to maybe about 4,000; but to send a release back
7 that's not even signed, that's pushing the envelope a little
8 bit.

9 Okay. Anything?

10 MR. HERMAN: Your Honor -- I'm sorry.

11 THE COURT: Yes.

12 MR. HERMAN: Excuse me, your Honor.

13 THE COURT: That's all right.

14 MR. HERMAN: I do want to again mention that there are
15 three web sites that can be accessed to look at the settlement
16 agreement and the deadlines: Vioxx.laed.uscourts.gov, that's
17 the court's web site; and browngreer.com/vioxx settlement; and
18 claimsadmin@browngreer.com.

19 I further want to point out to lawyers and on the
20 record that they're going to lose almost a week of workdays with
21 Thanksgiving and the Christmas holidays, so that December 30th
22 date does not really give a great deal of time if you wait until
23 December 1st to begin your work on it.

24 I want to again, as Doug has, thank Tom Gerardi and
25 Grant Kaiser for pointing out deficiencies; for Chris Seeger,

1 Andy Birchfield and others and BrownGreer for working with Doug
2 Marvin to do what we can to minimize the types of deficiencies
3 which are not paramount.

4 Your Honor, with respect to page four in the fee
5 guidelines which your Honor ordered in Pretrial Order 6D on
6 September 15th, 2008, Mr. Blizzard, Mr. Lanier will undertake to
7 make sure that the Texas contingency state lawyers, I should say
8 contingent state lawyers are fully advised. Mr. Gerardi has
9 already done that in California and is going to repeat, and
10 Mr. Seeger and Mr. White will undertake to make sure that the
11 New York/New Jersey lawyers -- and I'm speaking now of state
12 lawyers -- are fully advised of the guidelines.

13 And in the event that there are other states involved
14 which are not part of the MDL, our office is going to undertake
15 to search those out and make sure they're aware of Trial Order
16 6D and their obligation to file certain materials as well as an
17 affidavit by the October deadline set forth in Pretrial Order
18 6D.

19 At page five your Honor has under advisement without oral
20 argument Mr. Ronald R. Benjamin's June 30th, 2008, motion to
21 vacate Pretrial Order No. 28.

22 THE COURT: I invited Mr. Benjamin to come to the
23 court to make an oral presentation, but he suggested that it be
24 submitted by documentation only.

25 MR. HERMAN: Yes. And on behalf of the PSC, I'm

1 certain that Mr. Levin would welcome his appearance or
2 discussion.

3 On September 12th, 2008 Mr. Stratton addressed a letter
4 motion to your Honor, and your Honor will need a briefing
5 schedule, if the matter is not resolved before then. Mr. Marvin
6 will address Mr. Stratton's letter.

7 THE COURT: I'd like Merck to respond to the letter
8 setting forth your response to it, and then if it persists, I'll
9 set it down as a motion and deal with it.

10 MR. MARVIN: Very good, your Honor. We will go ahead
11 and prepare a written response to that letter. Hopefully get it
12 to you before the end of the week.

13 THE COURT: All right. Let's do that within one week
14 from today.

15 MR. MARVIN: Okay. I believe also, your Honor, that
16 Lynn Greer will also be addressing a couple of those points as
17 well.

18 THE COURT: Registration enrollment of claims, is that
19 the next item?

20 MR. HERMAN: There is also, it was a request from
21 Grant Kaiser and Shelly Sanford regarding an issue that's purely
22 a plaintiff issue, and we'll attempt to, our office will attempt
23 to mediate that. If Mr. Kaiser, who is here, will get in touch
24 with Shelly and just arrange a date that's convenient for you
25 folks before the next status conference.

1 THE COURT: I suggested that you try to mediate. If
2 that's not satisfactory to both sides, then I'll do it.

3 MR. KAISER: Thank you.

4 MR. HERMAN: Your Honor, the registration and
5 enrollment of claims in the settlement program, I'd like to call
6 on BrownGreer to make their presentation at this time.

7 MR. BROWN: Good morning, your Honor, Orran Brown from
8 BrownGreer, the claims administrator of this program. And with
9 me today, as usual, is Lynn Greer; and as usual, we will cover
10 the registration enrollment phase, I'll speak to that, including
11 talking a little bit about enrollment deficiency process that
12 you and Mr. Marvin have already discussed; and then Lynn will
13 cover where we are in the claims world and the payments, the
14 interim payments that we have been making.

15 This slide again is familiar to the court, we use this
16 each time, just to remind us as to the number of folks who
17 initially registered for the settlement program. And each time
18 we're here, that number creeps up a little bit because the court
19 set the target date originally of January 15th for law firms to
20 step forward and identify their Vioxx claimants. We have been
21 receiving new firms and new claimants at certain levels since
22 January 15th, and we still today we receive each week still some
23 law firms who show up for the first time with their clients to
24 register for the program.

25 As you can see in row three, that number of 59,392 is

1 up 93 from when we were last here on August the 20th, and we are
2 still open to receiving registrations for the very first time.
3 This has to be finished though by the deadline that Mr. Marvin
4 mentioned of October 30 of this year, because not only do you
5 have to register by then you have to finish enrollment by then.
6 So this issue is still open.

7 On row four we get down to the number that we look at
8 each month we're here of people who have registered for the
9 program, who appear to be actually eligible to proceed in the
10 program; and that's based on information that Merck had about
11 these folks from the litigation primarily, whether they had a
12 lawsuit filed by November 9 of last year, whether they had a
13 tolling agreement by the end, whether they were U.S. citizens,
14 whether they have an injury that seems to qualify for the
15 program. And that gets us down to the 49,761 number of people
16 who registered who appear to be eligible based on that
17 information to go forward in the settlement program.

18 Then we look at, well, who has been to the next step,
19 we look at this each month as well. And again, this number
20 creeps up each week, each day. In row five we see 48,791 folks
21 now who are enrolled in the program. And out of the 49,761 that
22 we just looked at who appear to be eligible based on the
23 information that Merck has about them, it gives us about
24 98 percent of the community that seems to be eligible for the
25 program have actually stepped forward and sent us some materials

1 to enroll in the program.

2 And we stop here, it's worth mentioning two things
3 about the two percent and the other folks we're looking at on
4 this slide. Mr. Marvin has already mentioned this and the court
5 has addressed it. The about 900 to 1,000 people that's in that
6 two percent there who seem to be eligible but they haven't yet
7 enrolled in the program, this is a clean-up issue, as the court
8 mentioned, trying to impress upon folks that the program is
9 here, you can enroll if you wish to. We still think about half
10 of that group are people that cannot be found, they simply are
11 claimants that cannot be located anymore.

12 And for the rest of them, we are working with counsel
13 and with the courts involved to try to find out why they're not
14 enrolled if they are eligible to make sure that people don't
15 miss the opportunity, again knowing that it has to be fixed and
16 cleaned up by October 30 of this year.

17 Another couple of clean up things about this slide and
18 the people it shows. In row four, that group of ineligible
19 people, some those folks can still come back into the program
20 because a lot of lawyers or the claimants, once they get all of
21 their medical records they see an injury that qualifies when
22 they didn't think they had one previously. So some of that
23 number comes back in to enrolling that 3,689 can actually
24 enroll. For example, if you're not a U.S. citizen but had an
25 injury in the United States, you're eligible for the program.

1 And so sometimes the records show us things and show the counsel
2 things that were not known before.

3 The last clean-up issue on this is that there are about
4 1,500 people whose enrollment packages are not yet complete.

5 And by that I don't mean the signature issues or the deficiency
6 issues but we're missing one of the four key components, either
7 the release or the stipulation of dismissal if you have a
8 lawsuit or the medical authorization form or the employment
9 authorization form if you're seeking extraordinary injury
10 payments. One of those four components is not present yet, and
11 so we've been going out to the firms to try to get them to
12 realize that they're missing a piece of the puzzle for some of
13 their clients and to get that cleaned up, too, by October 30.

14 We hope to clean up most of them, some of them may
15 never get their whole package in to us by that deadline, but as
16 Mr. Marvin mentioned, that is our deadline now we all need to
17 have our eyes on to get this clean-up operation finished for all
18 of us.

19 Then we want to talk a little bit more about the
20 deficiency process. The court mentioned when we were here on
21 August 20, it's already been the subject of some discussion this
22 morning, Mr. Marvin mentioned it, the court's addressed it,
23 Mr. Herman has addressed it. This is an area in every program
24 that is a painstaking process for everybody involved to try to
25 get the paperwork in complete order. And since we were here on

1 August 20, we have been working a lot with the Merck counsel and
2 with claimants' counsel, people who send us issues and
3 questions, we've been addressing them, going over with them with
4 Merck and its advisors to try to make sure that we do everything
5 we can to reduce the level of pain in the painstaking process to
6 get this finished.

7 And as we said on August 20, every program sees
8 adjustments as you go along. And Merck has been working really
9 hard to make some adjustments in this process to try to speed it
10 up, streamline it and let's get it finished. I want to go
11 through quickly what they are. Mr. Marvin has mentioned some of
12 the key ones.

13 But one thing, the medical authorization forms which
14 are part of the enrollment package, Merck has now determined to
15 defer reviewing them for now and basically allow us and the
16 claimants' lawyers to stop working on them right now. That took
17 about over 14,000 of those documents that were not pipeline to
18 be addressed, to be reviewed, or to be cleaned up by counsel,
19 had something wrong with them, missing signature, missing name,
20 something, they're now off the table on the shelf, we don't have
21 to work on them now. We'll come back to them later, if and
22 when, we or Merck decides to use one of those medical
23 authorizations to go get some records, and we'll deal with it at
24 that time. So that takes a lot of work that was staring us and
25 the lawyers in their faces off the table for now.

1 Same thing true of these employment authorization
2 forms, Merck has determined that we can defer reviewing them
3 now, stop working on them now. There are over 7,000 of those
4 that were left to be finished and cleaned up, they're now off
5 the table and we can focus on other things now. And again for
6 those, we will come back to them. If someone submits a claim
7 for extraordinary injury payments and we need to go behind them
8 and get their employment records, we'll look then to see if
9 their employment authorization form is complete and have them
10 fix it up if it's not. So it will be deferred until later and
11 then done only if really necessary. That also is going to save
12 some resources and time around the table now to let us focus on
13 getting the rest of the job done.

14 The other point worth mentioning about this is,
15 claimants can seek extraordinary injury payments for past wages
16 that are lost as well as extraordinary medical bills. We've had
17 some claimants who want to seek extraordinary injury payments
18 from that fund but they're for medical pills and not past wages.
19 If that's the case, we have a form now that's posted on our web
20 site under the form section that they can sign and just waive
21 any claim for past wages and then they don't need an employment
22 authorization form at all, not even as part of the package. So
23 that's another way to streamline what people have to send in to
24 us or get signed by their clients.

25 Those two steps right there are two big things that

1 will allow us all now to focus on the releases and the
2 stipulations of dismissal and get them finished and get this
3 part of it behind us. We will now and the Merck counsel
4 reviewing only releases and stipulations of dismissal and only
5 the cures that come back in on those so that we can now really
6 focus on getting that process finished.

7 There are some other things that were adjusted that are
8 also important. One of the issues that has generated a lot of
9 activity back and forth is the effort to confirm the identity of
10 people, because Merck has been trying to match up the folks that
11 we have with each person that they had from the litigation phase
12 or the tolling agreement phase to make sure they're all
13 accounted for. And where there was differences or they were
14 unable to confirm the social security number or the name or
15 there was a name change or an address change or a date of birth
16 that didn't match, they haven't been able to make sure it's the
17 right person, to make sure that everybody is accounted for in
18 the program if they're supposed to be or can be, and then that
19 the right person gets paid.

20 And so it's generated some deficiencies back asking
21 folks to tell us who they are basically and send us something to
22 confirm their identity. This started out with really asking for
23 Social Security card to get the Social Security number and name
24 off of it. It has gradually evolved into a lot more than that
25 because now claimants can send us other documentation that shows

1 identity, driver's license, some other government issued
2 document like a Medicare card and then send us the social
3 security card only if they already have it. Because people were
4 wondering and feeling that they need to go down if they didn't
5 have their card and wait in the Social Security Administration
6 Office and get it, and Merck has said, no, you don't have to do
7 that. Send that if you have it; if not that, send us one of
8 these other things and we've told everybody what that can be.

9 That are also about 2,200 out of the 3,200 people that
10 have been told that need to be identify themselves like this
11 that we're now going, Merck has said we can -- they don't have
12 to send any of that documentation, instead the law firm can just
13 send us a letter vouching that this is the same person that we
14 had in the prelitigation phase. We are going to send them a
15 form letter they can give us, it's a cure that the law firm can
16 take care of and not have to bother their client with at all.
17 This is another adjustment that Merck has made since we were
18 here on August the 20th.

19 They're also not dealing with any of the derivative
20 claimants on this identity issue. This is focussing on the
21 primary claimant, the main releasor, not the family members that
22 are the secondary claimants. They have scaled down the scope of
23 this a lot. It is a painstaking process, this is in particular,
24 but it has been evolving so that it is, we're trying to make it
25 as fast and as easy as it can be made to pin down who these

1 folks are.

2 Another issue that has come up a lot is where the
3 notary dates on the release where the releasor signed or
4 derivative claimant signed don't match. And that originally
5 meant, well, it looked like the person didn't sign in the
6 presence of a notary if the dates don't go together, are not the
7 same, and we had a lot of issues with that because a lot of
8 times the dates do vary. Merck has agreed now that if the
9 notary date is after the claimant date or the derivative date
10 that they signed, that will not be marked as a deficiency, it
11 will be accepted as a valid release.

12 So now this is going to generate a deficiency only if
13 the notary date is before the signature of either the releasor
14 or the claimant, which means obviously there's something wrong
15 there and that has to be fixed. But this is another issue where
16 Merck has agreed to not make people re-sign if the dates don't
17 match, if the date comes later.

18 Representative capacity documentation, another big area
19 that takes a lot of work, the deceased claimants and deceased
20 derivative claimants are always an area in these programs that
21 are the hardest things to pin down. And in every program,
22 including this one, people have to submit documents that show
23 that whoever is acting as the executor or the representative of
24 a deceased person has the authority to act. We get those in
25 English, we get them in Spanish, we get them in other languages.

1 Until recently the Spanish ones were generating a
2 deficiency that we needed an English translation, Merck wanted
3 an English translation. Now Merck has agreed to accept them in
4 Spanish which takes care of most of that problem that comes up
5 with these representative capacity documents, that the language
6 that they're in.

7 Another thing that Merck has agreed to is that if
8 somebody has a derivative claimant that they do not want to or
9 cannot have signed the actual release page, they can, if they
10 have a lawsuit, dismiss that derivative claimant now with
11 prejudice instead of getting them to sign. And a lot of people
12 are using that alternative rather than getting them to sign just
13 dismissing that person out of the case now to take care of that
14 issue.

15 Another area has been an area where notary commission
16 expiration dates has generated a lot of activity back and forth
17 where the notary did not put down a date by which their
18 commission expires. Some states require that to be shown. Most
19 states require that to be shown to be a valid notarization.
20 Merck is marking and we're marking that as a deficiency only
21 where it's required in the state that it has to be shown. And
22 the cure for that is easy, the lawyer just can send us something
23 telling us the date and we put it on the release, it does not
24 require the whole thing to be resigned all over again.

25 So those eight areas, your Honor, are the primary areas

1 where there have been adjustments made since we were here on
2 August 20. It's not over, it's not finished. This is still an
3 ongoing process. We are working really hard, as are the Merck
4 lawyers and representatives now, as are the primary counsel, to
5 finish releases and stipulations of dismissal. We want anyone
6 who has a question, an issue, if you feel like something has
7 been posted as deficient on your portal and you feel like you
8 sent in something to fix it and it's still posted as deficient
9 or it comes back posted as deficient again, that usually means
10 Merck has looked at it and it's still not right. But if you
11 have any question about that, notify your CA contact at our firm
12 by e-mail or phone, or send me an e-mail at
13 obrown@browngreer.com and we will look into it, and we are
14 taking these immediately to Merck and Merck is immediately
15 looking at them. We will sleuth out any question you have.

16 And some firms have one question, some firms have
17 hundreds because they have hundreds of claimants. But this
18 process is not finished, but we are all determined to make it
19 finished and get it behind us so that we and the counsel can all
20 focus on getting your claims packages complete and then getting
21 your claims reviewed and paid, if eligible.

22 That gets us, your Honor, to the claims phase. Unless
23 the court has further questions of me about any of that, I'll
24 let Lynn address the claims of payments issues

25 THE COURT: Okay. Thank you.

1 MS. GREER: Good morning, your Honor, Lynn Greer from
2 BrownGreer. I would like to review with the court where we are
3 in terms of the claims materials that we have received to date
4 and what is going on with the deficiency notices that have
5 alluded to this morning.

6 Right now we have approximately 36,000 claims
7 packages that contain enough information for us to conduct some
8 sort of claims review on them. And the next slide will show you
9 where those 36,000 are in our process. The rows on this slide,
10 rows 2 through 6 reflect the number of claims submissions that
11 are deficient in some way, and the level of detail here shows
12 you where the deficiencies are.

13 Row two, we have received from 4,600 people who we
14 were expecting to receive claims materials from, we have
15 received nothing. Row three shows that 2,500 claimants have
16 submitted only a claims form, not the required medical records.
17 Row four shows that there are 500 who've sent us some medical
18 records but no claims form. Row five, 225 we have received some
19 sort of a medical record, an office note, but it does not
20 satisfy the PME requirement, the pharmacy medical record or
21 event record, and 225 of those have some sort of record but
22 without a claims form. And then row six shows that 2,200 we've
23 received some sort of record with the claims form, but again the
24 records do not qualify as PME records.

25 The firms who've submitted materials, there are 944

1 firms who have submitted or have attempted to submit some sort
2 of claims material and 263 pro se claimants.

3 This slide shows that there are over 10,000 claims that
4 have pending deficiency notices and Mr. Marvin and
5 Mr. Birchfield have already told the court that we have
6 generated now deficiency notices under Exhibit 1.5 of the
7 settlement agreement which required us to identify claims that
8 were missing the required elements and to give claimants three
9 opportunities to cure those deficiencies, and we have now sent
10 two deficiency notices to approximately 11,000 people, and of
11 those about 10,000 deficiencies remain.

12 And what I would like to highlight again is the
13 importance of primary counsel going to their portals and opening
14 these deficiency notices. We did a query in our database after
15 we had generated the first deficiency notice to about 11,000
16 claimants, and after a couple of weeks we were able to determine
17 that only 19 percent of those deficiency notices had actually
18 been viewed by counsel. And so it obviously is a concern. We
19 are sending, whenever we post notices to a portal we do send a
20 daily e-mail reminder saying that something has changed on the
21 claims portal, to please go look at it.

22 And on the record here I would like to encourage firms,
23 if those e-mails are going to the wrong recipient within a firm,
24 please let us know who we should direct those e-mails because it
25 is of the utmost importance that these deficiency notices be

1 viewed and acted upon and these deadlines are running. They are
2 generous opportunities within Exhibit 1.5 to cure the
3 deficiencies, but once we get to November 30th and the
4 December 30th, that deadline will run and it is a drop-dead
5 deadline.

6 THE COURT: See, that's a critical situation, because
7 if only 11 percent of the e-mails are being opened. I mean, the
8 deficiency e-mails go out. If the lawyers are not even opening,
9 how are they going to cure it? That's a problem. And then all
10 of a sudden the deadlines are going to fall and then people will
11 be unable to collect money that they are entitled to receive
12 because their lawyers didn't open the e-mails. That's something
13 that we have to get the word out.

14 And if not, as I say, I will have to order them into
15 court to show cause why their case should not be dismissed for
16 failure to open e-mails to cure deficiencies, that's an
17 embarrassing situation.

18 MS. GREER: Your Honor, the PSC, we have given them a
19 list of the firms who have received these e-mails. There are
20 certain pockets that we do know that they will be reached out to
21 to be able to offer assistance and to see if there's anything
22 that any of us can do to help.

23 One thing that we do know has arisen, there are firms,
24 I don't want to paint the picture that no one is attempting to
25 cure, there are firms who have run into legitimate problems

1 trying to get their records. There is an isolated -- actually,
2 it's not isolated, it is an issue where there is a deceased
3 claimant and the medical provider or the pharmacy record
4 provider is unwilling to honor the medical authorization because
5 they can't determine if the proper person has signed the medical
6 authorization. We will be working with the PSC and presenting a
7 draft order for your Honor's consideration to enable those
8 medical providers to be able to release the records and not risk
9 running afoul of HIPAA or releasing the records to the wrong
10 person.

11 THE COURT: Okay.

12 MS. GREER: Your Honor, just real briefly. The
13 remaining around 36,000 people who have enough for us to review,
14 this slide shows that there are about 21,500 in the queue waiting
15 for us to review. As we told the court before, there was about
16 30, 33, 34 percent of all of the claims materials came in right
17 around the July 1 deadline, so we've obviously moved the claims
18 that were received before the deadline further along in the
19 process.

20 There are 11,000 claims that are somewhere in the
21 gates review process. We reviewed the claims at the gate stage
22 thoroughly, and actually we review them and then we QC review
23 them to make sure that that eligibility determined, which is the
24 threshold determination, is absolutely correct. There are
25 11,000 in the gates review process. And 3,500 that are at

1 various stages in the points review process.

2 It also bears mentioning, your Honor, that the points
3 review process is where we actually look at the claims package
4 to see if there is a medical record missing that was not a
5 technical deficiency. For example, when a claim gets to the
6 points process, it has a claims form, it has pharmacy records,
7 it has medical records, but if there is something that prohibits
8 our further review of the claim to be able to do the points
9 assessment, that takes place in the points review process as
10 well.

11 So when I say that a claim is in the points review
12 process, it's either in the points review process because we're
13 evaluating it for points or we're looking at it for more
14 substantive deficiency than just a technical deficiency in the
15 package.

16 Your Honor, Mr. Marvin mentioned that there had been a
17 motion filed by the Stratton Law Firm for a motion for
18 transparency that I do know a letter will be prepared and
19 presented to the court. I would like to address some of the
20 issues that were raised in that brief paragraph.

21 One of the things I wanted to share with your Honor,
22 and with counsel, is that we are making every effort to make
23 this claims process transparent. The use of the secure portals,
24 the availability of our CA contacts, the e-mail blasts that we
25 try to send to outline what counsel can expect in the claims

1 process are all efforts that we are making to have firms be able
2 to access their portal, to access their claim, and be able to
3 try to tell where the claims are in process. We welcome any
4 suggestions from firms, if there is something we can do more to
5 make it more transparent.

6 We have not published cue numbers for review of claims
7 because of the expectations that that could create and because
8 there are so many areas in the process for a claim to either be
9 deficient for it to go into gates and go to the gate committee,
10 so a que number would be misleading we fear, but we have tried
11 to make every effort in the use of the portals to let claimants
12 know generally where their claims stand, And specifically if a
13 claim has been found eligible or as it proceeds through the
14 process.

15 The other thing that I would like to address is the
16 suggestion in the Stratton paragraph that there could be some
17 not favoritism but that there were certain claims that may be
18 being reviewed before others. I just wanted to make it
19 abundantly clear that we review claims in the order in which a
20 claims package was submitted, that it was found complete, and
21 that a claim then for points was found to be a qualified program
22 claimant. Our database is set up to run in que order, we have
23 no input from any parties in terms of priority. Our reviewers
24 pick the next claim that comes up in the cue. And what we do is
25 we follow the criteria, the objective criteria in Exhibit 3.1 in

1 evaluating these claims.

2 And so to the extent that anyone is scared that a
3 certain firm or firms are being pushed forward, it's purely by
4 claims order in the que how we review those claims.

5 Once a calculation is made, the firm will get a notice
6 of points award that is very detailed. So if there's ever a
7 question about why the points are what they are, the notice of
8 points award itself will show them risk factors, how much was
9 taken off for risk factor and what their injury level was, and
10 it's a very detailed document. And I think this process was
11 designed to build due process, and at every juncture they can
12 always ask us if they get a notice of points award that they
13 don't understand. And if they end up not liking it or being
14 satisfied with it, there is the appeal route to the special
15 master.

16 So I know that the letter will address in more detail,
17 but I did want to highlight those four areas. Thank you, your
18 Honor.

19 THE COURT: Okay. Thank you very much. And people
20 have been paid a number of them, do you want to tell us about
21 that?

22 MS. GREER: Yes, thank you. Very important. We have
23 issued two rounds of interim payments. We issued one round in
24 August and actually payments were made again yesterday. These
25 will be made on a rolling basis every month. And obviously

1 claims will be paid only if they've gone through the process,
2 have been found eligible, have been issued a notice of points
3 award and have chosen not to appeal that. And the firms who
4 have gone through that process for the claimants will receive
5 payments on a rolling basis, generally the third to fourth week
6 of the month. Thank you, your Honor.

7 THE COURT: Okay. In advance of the payments, as you
8 all know, I issued an order and reasons capping the primary
9 counsel's fee at 32 percent plus reasonable costs. Later after
10 an opportunity to be heard, I will set a common benefit fund.
11 The common benefit fund will include the costs and fees of the
12 common benefit attorneys, the PSC and others, and that will come
13 out of the 32 percent.

14 I know that's made me unpopular, the marshals wanted
15 to know whether I needed more marshals this morning, but I
16 declined. I know that no one minds my preaching, but they don't
17 want me to meddle and this is probably going beyond the
18 preaching and into the meddling part and I am aware of that. I
19 gave it a lot of thought.

20 As all of us know, everybody represents somebody.
21 You've heard me say before that the plaintiff lawyers represent
22 the plaintiffs, and they have done a good job with that; defense
23 lawyers represent Merck and they've done a good job. I, too,
24 represent somebody, and as many of you have heard me say before,
25 I represent this room and the room contains the flags and

1 200 years, or 600 years of jurisprudence if you put in England.
2 And I consider all of that when I am dealing with this, and in
3 representing the room I have to look over not only the attorneys
4 and the profession but also the claimants.

5 And I gave it a serious thought, researched as I do,
6 and wrote an opinion on it. I didn't intend to offend anybody,
7 although reading blogs I understand I have, but that's my job
8 and I did that.

9 I expect it to be followed, and if it comes to my
10 attention that it is not followed, I will treat it seriously and
11 take serious action. I talked with members of the PLC and they
12 suggest that I need not put out any rules or regulations to
13 enforce that, they currently feel that the opinion is clear and
14 that people will follow it. But if it comes to my attention
15 that that hasn't been followed, then I will be offended and I'll
16 take appropriate action.

17 Next item on the agenda, the lien administrator.

18 MR. HERMAN: Your Honor, if I may, I'd like to note in
19 connection with your Honor's comment about your Honor's opinion
20 regarding fees and your ruling, that there have been no
21 reduction or withholding of any common benefit costs or fees
22 from the interim payment. And after your Honor makes a ruling
23 as to common benefit and fees, they will come out of the last
24 payment.

25 THE COURT: Okay.

1 MR. HERMAN: Your Honor, there is a matter, two
2 motions, Document No. 15702 and 15857, regarding healthcare
3 providers who have not complied with requests for records. That
4 matter is set for argument today. Your Honor, it might be to
5 your Honor's, for your Honor's view something that should be
6 postponed until after this conference because it may take some
7 time.

8 THE COURT: Okay. I'll do that.

9 MR. HERMAN: Thank you, your Honor.

10 With regard to the lien administrator, Mr. Matt
11 Garretson, he is here, has a report to make.

12 THE COURT: Mr. Garretson called to my attention last
13 week that Texas was one of the only states that had not
14 complied. I contacted Texas and talked with them, or their
15 representatives, and I think that they understand the
16 significance of the matter and I think Mr. Garretson has their
17 attention and I hope that will resolve it. So keep me in the
18 loop if it doesn't.

19 MR. GARRETSON: I will, your Honor, thank you. Your
20 Honor, I am Matt Garretson with the Garretson Law Firm to give
21 you a brief report this morning on the lien resolution process.

22 I really wanted to focus today on just two issues
23 which are two common questions we're hearing from primary
24 counsel and claimants who are phoning the lien resolution
25 administrators call center. One is why there may be holds

1 placed on certain claims by the lien resolution administrator at
2 this time; and the second issue is an issue that attorneys have
3 asked whether or not they need to do anything to help perfect
4 these liens and insure that the federal and state agencies are
5 paid. And so I'll address those shortly just so there is more
6 instruction available.

7 Let me just start by saying our primary focus right now
8 has been to get waves of data to the federal and state agencies.
9 Because of the way in which we're coordinating this with 54
10 agencies, we try to only send three to four waves of claims data
11 during any settlement program. The states and the federal
12 government would simply be inundated if we tried to do this on a
13 piecemeal basis. And of course, part of the reason they've come
14 to the table to embrace these process of protocol is because
15 we've assured them it will be efficient and we need to stay true
16 to that commitment.

17 So we sent the first wave of claim data to, for
18 instance, to Medicare in early February, we sent the second wave
19 in June, and we still have a wave of around 10,000 that have yet
20 to be able to be sent to the Centers for Medicare and Medicaid
21 Services. Of this, approximately 7,000 have yet to be sent
22 because our instructions have been to hold them because they
23 have not claimed a compensable injury, it's not marked as an
24 ischemic stroke, MI or SCD claim. So those are, of course,
25 being held.

1 There are 3,000 that have not been sent in those first
2 or second waves because we did not have sufficient data to send
3 to the Centers for Medicare and Medicaid Services, and that
4 would be because those claims were submitted to the claims
5 administrator without a social security number or date of birth
6 or both.

7 With respect to those who are pro se, we're taking a
8 little extra effort with those and working with BrownGreer to
9 devise a plan to make sure we contact all of those pro se
10 plaintiffs so we can get their information just as soon as
11 possible to hit this third wave of data. And of course we're
12 working to get these deficiencies corrected from primary
13 counsel.

14 But I did want to point that out because it shows that
15 there is, in fact, a ripple effect of these deficiencies and it
16 will take, once we get this next group into the hands of the
17 agencies, it could take them 30 or 40 days to respond to us with
18 who is entitled so we can apply these procedures and protocols.

19 So that, your Honor, is just a quick update with
20 respect to Medicare. The same is true with Medicaid, we still
21 have to get that third wave of data out. So there are going to
22 be attorneys or claimants who see that their claim is on hold,
23 it's a small percentage, but that will explain or hope will help
24 explain why certain claims are on hold.

25 Brief note on claims data with respect to Medicaid. We

1 are now, as I mentioned in the last hearing, in the process of
2 getting claims data back from these states. The states have
3 been very responsive. We have received claims paid data from 23
4 agencies associated with that first wave of data and about a
5 dozen associated with that second wave of data. This, of
6 course, is several thousand individual lien files, which include
7 these individuals' entire claims medical history, not from a
8 medical records standpoint but from a billing standpoint, which,
9 of course, will be the bulk of the materials we review to
10 finalize these Medicaid liens.

11 I did want just to point out that we will, we expect to
12 receive the entire claims files for all of the claimants that
13 have been submit to the state agencies within 60 days. So
14 everything is running very smoothly with respect to that issue.

15 We will not be able to finalize liens because we are
16 getting a lot of phone calls with people asking, I understand
17 you have this hold back of 15 percent or 20 percent in this
18 state and I want to understand what my claimant's final lien
19 amount would be. And we're just not simply able to finalize
20 that and I think it's important for people to know until they
21 have a fully audited claim through the claims administration
22 process. That is a condition precedent to us finalizing a lien.

23 The only other issue I wanted to bring to the court's
24 attention is we're getting a lot of questions from counsel that
25 they received the notice of points award and they see that there

1 is a hold back in place for the Medicaid lien and a dollar
2 figure denominated for the Medicare reimbursement claim. And
3 some of the attorneys are mistakenly withholding that amount
4 from the money they are receiving. And I just wanted to assure
5 everyone that with respect to federal Medicare and with respect
6 to the state and territory Medicaid obligations, we are, in
7 fact, working with BrownGreer to hold that money back to ensure
8 those state and federal agencies are paid and there is nothing
9 with respect to those two federal programs that counsel needs to
10 do.

11 Finally, with respect to the other governmental liens
12 which are within our assignment, Veterans Administration or
13 V.A., Tri-Care or Department of Defense, or Indian Health
14 Services, we did get a big spike of activity early on in the
15 program where counsel was giving to us any notice that they had
16 received directly or any notice that their clients had received
17 directly. I just want to remind everybody that with respect to
18 those programs, not the federal Medicaid and state Medicaid
19 where we were affirmatively work with them to verify who has
20 benefits. With these other programs, the V.A., the Tri-Care,
21 the Department of Defense and Indian Health, we can only respond
22 and satisfy that obligation if counsel tells us of the notice
23 they've received. So I just want to encourage people to not, as
24 busy as everyone is, to make sure they keep that process going
25 of notifying us when they, in fact, receive notice from those

1 other agencies.

2 So in sum, your Honor, I am pleased to report I believe
3 we're where we need to be. I think your assistance is greatly
4 appreciated with Texas. I know from hearing from them they're
5 very committed to this program as well. And obviously thanks to
6 BrownGreer for all of their help in getting us the data we need.

7 THE COURT: Okay. Thank you very much.

8 The next item was special and deputy special master.
9 I met with the special master this morning early and he's filled
10 me in on the present status of it, and in short, they're waiting
11 to be called, if necessary, on the appeal and they have their
12 programs and they're ready. At this time there is nothing else
13 to report.

14 State court trial settings. Anything?

15 MR. HERMAN: There is nothing, no trials set, your
16 Honor.

17 And under the next issue, class actions, those
18 matters, motions are under advisement.

19 THE COURT: Discovery directed to third parties,
20 anything there?

21 MR. HERMAN: Yes. With respect to ESI, your Honor,
22 and the furnishing of pharmaceutical records, Ms. Lynn Greer
23 reported to you earlier today the problem that ESI and others
24 have with regard to releases from claimants who are deceased.
25 And we're working on an order that your Honor has suggested for

1 your Honor to review.

2 THE COURT: My suggestion is that you consider an
3 order from the court ordering ESI and similarly situated
4 individuals or entities to send that in to the court, directly
5 into the registry of the court, and I'll keep it under seal and
6 protect them from the standpoint of their concerns of privacy.

7 MR. HERMAN: Mr. Arnold Levin will work with
8 BrownGreer to have such an order for you, to be recommended to
9 your Honor.

10 THE COURT: Okay.

11 MR. HERMAN: With regard to pro se claimants, Claudia
12 Santoyo is here on behalf of Mr. Johnson, who I understand is
13 having a second honeymoon.

14 THE COURT: Okay. There is a State/Federal
15 Coordination. Any State Liaison Committee meeting?

16 MR. HERMAN: Oh, excuse me, did I miss that?

17 THE COURT: Yes.

18 MR. HERMAN: I did, I'm sorry.

19 MS. BARRIOS: Mr. Herman.

20 MR. HERMAN: I don't know how I missed that, Dawn, I
21 apologize.

22 MS. BARRIOS: Apology accepted. Good morning, your
23 Honor, Dawn Barrios for the State Liaison Committee. I've
24 provided the parties and your Honor through your law clerk with
25 updated CDs -- I'm sorry, DVD's on the remands. We are looking

1 at still over 700 remand cases, and as I explained to your
2 Honor, we are changing the paradigm and not looking so much at
3 cases as claimants to determine if any of these remands will
4 remain an issue for your Honor after the conclusion of the
5 program.

6 I wanted to give your Honor one statistic that I
7 thought was incredible: Missouri, the state of Missouri had 117
8 cases that had remand orders in them, or remand motions rather.
9 Those 177 (SIC) cases had 1,298 plaintiffs. So it's an
10 incredible job to go through each of these claimants and it's
11 very deceiving if you look at just the number of remands there.

12 But with the assistance of BrownGreer, particularly
13 Bill Atkinson who has been helping us tremendously with this
14 project, we're happy to say that we're through half of the
15 states now, and that's the paperwork that I've provided with
16 everyone this morning.

17 We expect that we should be finished all of the states
18 by the end of the year, and especially given the extensions of
19 time will have concrete numbers for you we hope then. Also,
20 Mr. Johnston's office has been helping us because we're running
21 into many pro se plaintiffs and they don't know what to do with
22 their motions to remand.

23 Your Honor, my second item of business regards your
24 appointment as a coordinator of the AG cases in the particular
25 common discovery. I wanted to report to the court that all is

1 going well, that we have had a very large conference call on
2 September 11th with all defense counsel and most of the AG's
3 participated. We agreed to exchange letters to spell out the
4 exact discovery we thought would be undertaken, we did that last
5 Friday, and we're to set up another meet and confer with Merck.
6 So I wanted to report to you that that is going along well.

7 One issue that I bring to your attention, reviewing all
8 of the discovery that the attorneys for the Attorneys General
9 have given to me, it's apparent that there may not be any common
10 discovery. Everything is really state specific. So I just
11 wanted to raise that issue with you. We have undertaken a
12 review of the allegations and causes of action in each of the
13 AG's cases, shared that information with Mr. Seeger and
14 Mr. Davis, and we're trying to see if there's any grouping
15 that's possible pursuant to your Honor's request a couple of
16 status conferences ago.

17 THE COURT: Some of the things that I see
18 opportunities from the standpoint of the attorney generals. We
19 have now approximately 30 million documents that have been
20 produced by Merck. The 30 million documents are generally
21 housed in the document depository of the plaintiffs. I have
22 decided 1,000 motions, discovery motions. It just seems to me
23 that there's a lot of material that's available and a lot of
24 decisions have gone out on these documents.

25 That material, it seems to me, the Attorney Generals

1 can benefit from that material and they also can benefit from
2 some of the rulings that I made rather than have to re-urge
3 rulings, particularly rulings where they've already won, or
4 their side has won.

5 The benefit of having the 30 million documents, which
6 would fill up this room, in an organized, searchable way in a
7 document depository is an enormous opportunity. If they get
8 even new documents, 30 million documents that are disorganized
9 that they have to organize and put in some searchable format, it
10 will be ten years before any of them are able to try their case.

11 So before they march off or try to march off back to
12 their home states, they ought to look around to see the
13 opportunities before they do that. Now, if they say we don't
14 need them then I understand that. But even if there's not some
15 commonality in issues or law, there may well be some commonality
16 in general causation and things of that sort that they can
17 profit from. And it just makes sense to me money wise as well
18 as time wise that they look over what has taken place in the
19 last three years in this court.

20 MS. BARRIOS: Your Honor, perhaps I gave a
21 misimpression to the court and counsel. The attorneys for the
22 AG's are very interested in that material and they've been
23 talking to Mr. Seeger weekly about access to it, so that's not
24 the issue. They want to take advantage of the material that's
25 already been produced in a searchable format and the trial

1 package, and they recognize your Honor's and all counsel's work
2 in the area and they are certainly not turning that down at all.

3 THE COURT: Right. And I understand there's costs
4 involved, but I can handle that, just bring that to me if there
5 is a problem and I can handle that. And it ought to be some
6 economy or scale. It's one thing if you have 50 Attorney
7 Generals wanting this material as opposed to one Attorney
8 General wanting this material. It may work out if one Attorney
9 General wants the material the cost may be the same amount that
10 if 50 do it. If they do it each separately, then it looks to me
11 like it might be 50 requests as opposed to one request. So
12 that's a potential problem.

13 MS. BARRIOS: Yes, your Honor. And I'll pass that
14 word along.

15 And the third matter that I report to you on are the
16 economic loss cases that are still standing after the
17 announcement of the fabulous settlement. Those are contained on
18 your DVD's. We have sections on consumer protection, the third
19 party payor, and medical monitoring.

20 THE COURT: Okay. And I do appreciate all of the work
21 that you've been doing, and you need to know I appreciate what
22 you've done with the Attorney Generals. I know that that is a
23 thankless task, but it's at my request that you've done that and
24 I appreciate it.

25 MS. BARRIOS: Thank you, your Honor.

1 MR. HERMAN: Your Honor, if I might, I want to also
2 echo what your Honor said and thank Dawn for her work and also
3 Chris Seeger on behalf of the committee you've appointed.

4 I do want to make a couple of things clear. From the
5 PSC's point of vantage, the 30 million documents are there,
6 they're in a searchable fashion. We have more than a dozen
7 computers available, we have personnel there that can answer
8 questions. We don't have a problem with the AG's coming in and
9 doing their own search and if they want to tell us what they
10 want put on a disc, we can even arrange to do that at their
11 cost.

12 Mr. Meunier and Mr. Rafferty were cochairs of our trial
13 package committee. That offer does not include the trial
14 package. The trial package contains substantial information
15 that's not public as well as information which is public, and we
16 would at some point, if that matter cannot be negotiated, may
17 come to your Honor with a representative of the AG's to, should
18 they want access to the trial package, for some determination by
19 you. And I think that that really, those issues handle Item 14,
20 XIIII at page 11.

21 So I want to go back now with your Honor's permission
22 to page seven -- I'm sorry, to page nine and Claudia Santoyo
23 from Mr. Johnston's office is here with us. Claudia.

24 MS. SANTOYO: Thanks. Good morning, your Honor. I am
25 here to make the sixth report of the curator and basically to

1 give you the highlights of the report that was filed yesterday.

2 Essentially we have now completed 273 total legal
3 notice publications. We believe that this may be the total
4 number of publications that will be needed. There are still
5 nine newspapers who will refuse to publish both the first and
6 the last name of a claimant. They will only will publish the
7 last name citing some sort of privacy concern, although they
8 can't explain to me what. So we are working with those
9 newspapers and if we're not able to go through them, we will do
10 a publication more regional or nationally to assure that the
11 information gets out.

12 We have gotten quite a number of responses coming in,
13 especially recently, from the legal notice publications. And we
14 are communicating with both the claims administrator and counsel
15 for Merck to inform them of the updated information, as well as
16 resending registration and enrollment packages to the people
17 that request it.

18 The 900 claims that Mr. Marvin mentioned earlier, the
19 approximately 900 claims that are not yet enrolled, of that
20 number I believe 115 are pro se claimants, 16 of which are
21 actually plaintiffs in their own litigation, the rest of which
22 are tolling claimants. We have received a list from
23 Mr. Marvin's office of those people and their most recent
24 addresses, some of them have already contacted our office and
25 have been sent registration enrollment packages. The remainder

1 we will be sending another mailing next week to assure that they
2 understand that October 30th deadline is right around the corner
3 and that they need to make all haste to attempt to get their
4 enrollment completed.

5 I would like at this time to point out especially the
6 efforts of BrownGreer and in more particular Diann Bates and
7 Ms. Tamera Blankenship who have been of great assistance in
8 getting repeat sending of some duplicate documents that pro ses
9 misplace or neglect to submit back to the claims administrator
10 in the appropriate fashion.

11 We're also, as Ms. Barrios stated, conferring with her
12 office to resolve any issues with pro se remands, as some of
13 those claimants maybe are not aware yet of their ability to take
14 part in the settlement program. We are working with her office
15 and we will continue to do so and should have some more
16 information on that by the next status conference.

17 Additionally, we have received quite a number of
18 contacts and inquiries from attorneys seeking to withdraw under
19 Pretrial Order 36 who are attempting to comply with the
20 requirements and attachments thereto. As those have come in, we
21 are reviewing our records, both in hard copy and the online
22 version. I do need to note that a few attorneys have contacted
23 us this week or during the evacuation for Gustov where we lost
24 approximately 11 days of working time, and as a result there may
25 be some attorneys who are awaiting a response that, you know, we

1 would ask that they notify the court in some way if they're
2 going to be late because they're waiting on a response from us.
3 We are turning them around as quickly as possible, but we did
4 want to note that delay.

5 Additionally, we've been assisting pro se litigants and
6 claimants who have had difficulty getting medical records or
7 difficulty getting documents to prove their representative
8 status. Part of that process has been using the pleadings and
9 other filings and orders that have been filed in the record.
10 Some of the pro se claimants have been successful by taking, for
11 example, the order in Mr. Ranier's case where your Honor
12 compelled several medical providers to show cause why they
13 should not be in contempt. They used the order from that
14 litigation in order to facilitate the provider to provide them
15 records promptly without the need to actually file anything with
16 your Honor.

17 There are some subpoenas that I believe have been
18 issued by pro ses, and we're dealing with the attorneys directly
19 who have called with questions about that.

20 Lastly, we are making every effort to contact any
21 remaining claimant who may have registered but not yet completed
22 enrollment to make them aware of this October 30th deadline and
23 that it cannot be extended. We assure every caller knows that
24 information when we either receive or return a call. We will
25 continue to keep the court and the parties and the claims

1 administrator advised if we learn of any claimant who has chosen
2 not to take part in the settlement program proactively.

3 We understand that soon after the October 30th deadline
4 Merck will likely move to dismiss any of the pro se claims that
5 were not enrolled as of that time. I'm sure before then we will
6 receive a date and that date will again be communicated to any
7 individuals who have not yet enrolled or who have not responded
8 to our request for information.

9 Essentially all of the publications, save the nine that
10 I mentioned, have been done. We continue to receive new
11 requests and new registration materials. When we get a
12 registration we have encouraged and facilitated the affidavit to
13 be either faxed or e-mailed to the claims administrator, and
14 they have been extremely helpful in turning around sometimes
15 within mere minutes an enrollment package to those newly
16 registered claimants so that they have the opportunity to get
17 their forms completed by the deadline. So essentially I'd
18 really like to thank the claims administrator's efforts in that
19 regard.

20 With the online communication log, we are still
21 uploading our information. We received quite a number of calls
22 per day and over the weekend, so much so that I accept them on
23 my home phone, on my cell phone. I give out the number to
24 anyone who calls so that we don't get a backlog in come in
25 Monday morning with some 90 voice mails. But as a result of the

1 sheer number, we've only uploaded through the middle of June the
2 contacts and claims. So if you believe that your claimant may
3 have contacted us, especially this is directed to attorneys who
4 are seeking to withdraw, please send us an e-mail or call our
5 number and contact information is on the court's web site, and
6 we will go through our hard copy documents to assure that we can
7 tell you definitively whether or not your claimant contacted our
8 office.

9 And I believe that's all that we need to report at this
10 time. We will continue as such and be prepared for the next
11 conference.

12 THE COURT: Okay. Thank you very much. And thank you
13 for your work. I've made every effort to contact pro se
14 claimants, it's a very important part of the process. But if
15 they do not respond then I am going to have to act accordingly
16 and dismiss their case. But your work is very vital to the
17 process and I appreciate it.

18 MS. SANTOYO: Thank you, your Honor.

19 THE COURT: Merck's motion is the next item on the
20 agenda, ten.

21 MR. MARVIN: Yes, your Honor, there is no change
22 there. Those motions have been submitted under advisement.

23 THE COURT: How about issues relating to Pretrial
24 Order No. 9, item 11?

25 MR. HERMAN: Nothing new there, your Honor.

1 THE COURT: Vioxx suit statistics, anything there?

2 MR. MARVIN: No, your Honor. Next month we will be
3 releasing the new statistics. September 30th is the end of the
4 quarter, and so we will be releasing those in mid October.

5 THE COURT: We covered the trial package and third
6 party payor cases.

7 MR. HERMAN: Yes, your Honor.

8 THE COURT: And the next item is the motion to dismiss
9 foreign individual cases, that's under submission.

10 MR. HERMAN: Yes, your Honor.

11 THE COURT: All right. Determination of tolling
12 agreement is the next item.

13 MR. MARVIN: Your Honor, the notice period for
14 termination of the tolling agreement has now passed and the
15 tolling agreement has been terminated.

16 THE COURT: Let's make sure that's on the web site.
17 Third party payor motions.

18 MR. HERMAN: Yes, your Honor. On September 11th of
19 this year AvMed third party payors filed in the Fifth Circuit.
20 The Fifth Circuit has, United States Fifth Circuit Court of
21 Appeals has now asked for designations. And I don't believe
22 there is anything to address in that regard. But Monique,
23 you're here, you may want to discuss that. Ms. Garsaud will
24 speak to the court on that.

25 MS. GARSAUD: Good morning, your Honor, Monique

1 Garsaud on behalf of BrownGreer and U.S. Bank. Just to update
2 the court, as you know the AvMed suit is on appeal with the
3 Fifth Circuit. They have filed their brief as of this week, our
4 briefs are due I believe, the exact date is October 9th. The
5 Fifth Circuit has asked the parties to work together because of
6 the voluminous size of the record to work together to pare that
7 down to something reasonable that they can review. So we are,
8 in fact, working with counsel for AvMed to do that and that will
9 be submitted this week.

10 THE COURT: Okay.

11 MS. GARSAUD: Thank you, your Honor.

12 THE COURT: All right. Thank you.

13 MR. HERMAN: And, your Honor, I would like to thank
14 Chris Seeger and Arnold Levin, Ed Blizzard and those that have
15 met with third-party payors in an attempt to resolve matters,
16 and sorry to report no headway has been made in that regard.
17 But we are still open to discussions should they wish to
18 initiate them.

19 THE COURT: Next item is Merck's motion to dismiss
20 cases of non-registrants.

21 MR. MARVIN: Yes, your Honor. There were a number of
22 claimants who failed to abide by the court's order to register
23 their claims. Merck moved to, of course, show cause as to why
24 those claims have not been registered and the court granted that
25 motion and dismissed those claims.

1 THE COURT: Right. The next item is the Greater New
2 York Benefits Fund.

3 MR. HERMAN: Yes, your Honor. Arnold Levin will
4 address that for plaintiffs, but Mr. Marks is here.

5 MR. MARKS: Good morning, your Honor.

6 THE COURT: Good morning.

7 MR. MARKS: Andrew Marks on behalf of the self-funded
8 ERISA plans. Your Honor, we're asking the court to undertake
9 three actions this morning. The first, as the court knows,
10 correspondence has been sent. There is a motion to dismiss
11 pending filed by the law firms. There's never been a response
12 of any kind by BrownGreer to the amended complaint, I assume
13 they're going to join with the motion to dismiss, but we would
14 ask the court to promptly set a hearing date so we can get that
15 motion to dismiss heard.

16 MR. LEVIN: If I remember the motion to dismiss, it
17 tracks our response to the preliminary injunction, that being
18 that there is no cause of action. I don't know that there's
19 necessarily a need for a hearing after Mr. Seeger argued the
20 injunction, and I would say that we should just submit it to the
21 court for the court's ruling.

22 THE COURT: I don't have any problem if BrownGreer
23 doesn't have any problem on it because I don't think that they
24 were heard on that.

25 MS. GARSAUD: No, your Honor. Actually we are filing,

1 we are preparing basically a "me, too" brief to adopt the NPC's
2 motion to dismiss some of the arguments made.

3 But before we do that, our first position though, your
4 Honor, is that you've already ruled on the motion to dismiss.
5 You issued a minute entry, I have it, it's dated July 24th that
6 says NPC defendant's motion to dismiss and strike class
7 allegations in the complaint granted with written reasons to
8 follow.

9 So our first position is that you've already ruled on
10 this, we are just waiting for your written reasons. But if you
11 haven't ruled, then we will be filing a "me, too" brief.

12 MR. MARKS: Can I?

13 THE COURT: Sure, go ahead.

14 MR. MARKS: I would like to address the first point,
15 your Honor. On page four of the transcript of the hearing
16 July 24th the court identified the three motions that you were
17 hearing, it was the TRO, preliminary injunction, the class
18 action motion and the severance motion, there was no mention
19 made of the motion, the 12(b)(6) motion. Then again, your
20 Honor, on page 2 of your August 7th opinion you said you were
21 denying the preliminary injunction motion and you would issue a
22 separate order regarding the severance and the class action.
23 Again there was nothing regarding the motion to dismiss.

24 We then wrote to your Honor on August 22nd with
25 respect to calling to the court's attention that there was a

1 motion to dismiss, we want to move the case forward. There was
2 no objection by BrownGreer at that point in time. And, in fact,
3 the response by Mr. Davis was, yes, there is a motion to dismiss
4 pending, let's talk about getting it set.

5 There is nothing in the record -- it is true, your
6 Honor, that the minute order which you entered reflected that
7 the motion that was, that you ruled on which was class action
8 and it also included the words motion to dismiss, but your Honor
9 I'm sure will recall there was no ruling at all on the motion to
10 dismiss.

11 If we're wrong, if the court did rule on the merits,
12 then we would ask the court to promptly enter an order so we can
13 pursue our appellate rights, including that.

14 THE COURT: Sure.

15 MR. MARKS: But we think, your Honor, particularly in
16 light of the court's repeated statements recognizing that there
17 was a timing issue that led you to deny the preliminary
18 injunction but recognizing that at least with respect to plans
19 where there is a proper plan language that there is a lien
20 right, that it's hard to imagine this court would have ruled
21 based on the argument before you then on the merits dismissing
22 as a 12(b)(6) motion but.

23 So our view is we would like to respond in writing
24 since the motion that was addressed was not addressed to the
25 amended complaint. We think the court would benefit from

1 hearing from us, we would welcome that opportunity. Obviously
2 that's in the court's discretion, but one way or the other with
3 respect to the merits of the case, we would like to know are we
4 going forward or not.

5 THE COURT: Let me take a look first at the class
6 actions, I should be able to get that out this weekend and I'll
7 write and I'll send that to you all and see where we are with
8 that. I think that seems to me to be the right way to do it.

9 MR. MARKS: Certainly, please.

10 MR. LEVIN: Your Honor, I would just take exception to
11 his arguing individual plans when he brought a class action and
12 never identified the individual plans, that's why I think your
13 Honor is correct in ruling on the class first.

14 THE COURT: I think we need to first deal with the
15 class and see where we are at that point one way or the other
16 with the class. If you've got a class action then we'll deal
17 with the individuals. If you don't, we will have to look at
18 that.

19 MR. MARKS: Well, we have two named plaintiffs, your
20 Honor, there is no doubt, I am not sure what Mr. Levin is
21 talking about. They intend to pursue their claims, they have
22 stated claims. And irrespective of how the court rules on the
23 class action, those are the claims that we're talking about
24 moving forward.

25 MR. LEVIN: They are barred by the merits of the

1 preliminary injunction ruling.

2 MS. GARSAUD: Right.

3 THE COURT: I do understand the issue, I really do,
4 I've been down this road a couple of times. Let me look at
5 class actions and I'll deal with the others, with that other
6 issue.

7 MR. MARKS: Okay. There are two other issues, your
8 Honor.

9 THE COURT: Okay.

10 MR. MARKS: One related to the class action, which if
11 we submitted a proposed order, the court said from the bench
12 that you did not look favorably on our class allegations. We
13 asked -- there was no ruling except what the court expressed a
14 view that you were writing an opinion.

15 THE COURT: Right.

16 MR. MARKS: And we would ask the court, we proposed an
17 order to the court, it sounds like the court is going to issue a
18 written opinion in the next couple of days?

19 THE COURT: I will, yes.

20 MR. MARKS: So we don't need to press you for entry of
21 an order, we'll get that?

22 THE COURT: No, right, I will get that out for you.

23 MR. MARKS: Great. And secondly, your Honor, or
24 thirdly I should say, we've asked for a discovery conference to
25 move forward on the claims of the two named plaintiffs, and the

1 rules are clear that the pendency of a Rule 12(b)(6) motion does
2 not stay the parties' obligation under 26(f) to confer. We've
3 sought to do that in good faith, we would like to do that and
4 pursue that and then present to this court under Rule 16 should
5 present a scheduling order.

6 So again, we would like to move that forward. We
7 believe we have a claim on the merits, we want to pursue the
8 discovery, and we would like to do that in an orderly process,
9 your Honor.

10 MR. LEVIN: If the case is dismissed there is no
11 discovery.

12 THE COURT: Let's see where we are at the end of the
13 class action opinion and I will get with you all, I will set a
14 status conference.

15 MR. MARKS: Would you do that, your Honor, I think
16 that would be helpful.

17 THE COURT: Yes, I will do that in the next couple of
18 weeks, ten days or thereabouts I'll get you all together and
19 talk about it. I can do it on the phone, I'll set a status
20 conference up.

21 MR. MARKS: Whatever is convenient.

22 THE COURT: And we'll see where we are.

23 MR. MARKS: Great. Thank you, your Honor.

24 THE COURT: Okay. Thank you.

25 MR. MARVIN: Your Honor, a number of plaintiffs have

1 moved to withdraw from representation of the client because the
2 client cannot be located or is non-responsive. This is Item 20
3 on the agenda, and Merck has moved or filed a cross motion with
4 respect to those same claims where the plaintiffs cannot be
5 found to dismiss those claims for failure to prosecute.

6 THE COURT: I think I have dismissed those; but if
7 not, I will be doing so.

8 MR. MARVIN: And then, your Honor, Item 21 there,
9 there are a number of plaintiffs who have failed to comply with
10 the discovery requirements set forth in PTO 28. We have filed a
11 motion to show cause why those cases should not be dismissed.

12 THE COURT: Let me set that motion to show cause on
13 October the 15th.

14 MR. MARVIN: Thank you, your Honor.

15 THE COURT: And we will do that at 9 o'clock and I
16 will put the notice out.

17 MR. MARVIN: Thank you, your Honor.

18 THE COURT: Anything on Decision Quest? I think we
19 discussed that.

20 MR. HERMAN: May it please the court, we recognize
21 Mr. Miles Clements of this bar who represents Decision Quest and
22 is in the courtroom. We've asked this matter be deferred, we've
23 attempted to set up a mutual meeting, we're in the process of
24 doing that.

25 In the meantime the PSC, the PNC and the PEC have to

1 be coordinated, and during our PEC meeting yesterday the
2 consensus was that the attorneys that actually tried the 18
3 cases in state court and the MDL be surveyed as to what
4 materials Decision Quest provided, what the billings were, et
5 cetera, and what the payments were and that all of this be done
6 under seal. We will also at the same time the same inquiry to
7 Mr. Clements so that he can contact his clients, we'll have a
8 meeting, and then at your Honor's next status conference the
9 matter will either be resolved by then or we'll ask your Honor
10 for your Honor to deal with it.

11 THE COURT: Okay.

12 MR. HERMAN: Your Honor's requested that liaison
13 counsel respond with respect in a letter form regarding the
14 Decision Quest controversy, and we respectfully ask that that
15 matter be deferred until we can go through this process.

16 THE COURT: Okay. All right. Anything else on the
17 agenda, anyone have anything else on the agenda?

18 MR. HERMAN: That's it.

19 THE COURT: Okay. The next meeting, October the 17th,
20 9 o'clock, I'll meet in open court; 8:30 I'll meet with the
21 liaison counsel.

22 MR. HERMAN: Your Honor, there are two post status
23 conference motions to show cause regarding medical records to be
24 heard, one filed by our firm and one filed by Ms. Sanford, and I
25 don't think there's been any opposition. And Mr. Davis will

1 address the court when the court is ready to hear that.

2 THE COURT: Why don't we take that. What's the
3 problem, Lenny?

4 MR. DAVIS: Good morning, Leonard Davis from the law
5 firm of Herman, Herman Katz and Cotlar. I am here in connection
6 with two motions, one by our firm regarding certain plaintiffs'
7 motion to show cause why certain medical record providers should
8 not be held in contempt for failing to comply with Pretrial
9 Order No. 35 and requests made for the production of medical
10 records.

11 In a similar motion that I've been asked to assist
12 Shelly Sanford, her firm filed and unfortunately due to the
13 hurricane she is not able to be here today but asked if I would,
14 with the court's permission, be allowed to go forward and argue
15 that motion.

16 With respect to the Herman, Herman, Katz and Cotlar
17 motion which relates to Case No. 05-4416, Case No. 05-0903, Case
18 No. 06-4468, Case No. 07-7078, Case No. 05-0859, Case
19 No. 05-4422, Case No. 05-4450 and Case No. 05-6215. There are a
20 number of claimants, and I can provide to the court a packet of
21 material, if I may. There are a number of claimants identified
22 in that motion and a number of providers who have outstanding
23 medical requests. Basically they are broken down into four
24 categories. There are some providers who have had no contact
25 with us despite being mailed, pursuant to the court's

1 directives, a copy of the motion, and we do not have any
2 responses from those providers. They're listed on the sheet
3 that says outstanding medical requests. We have not received a
4 response from those providers, and we would request that they be
5 forced to provide the records or held in contempt as the court
6 deems appropriate pursuant to the motion. That's one category
7 and there are a limited few of those. And again that's
8 identified on that sheet.

9 With respect to some of the providers who have asked
10 for a different authorization, in other words, they have not
11 accepted that the court issued Pretrial Order 35 or they don't
12 recognize Pretrial 35 applies to them, we would request that the
13 court give some guidance further or hold those providers in
14 contempt for failing to comply with Pretrial Order 35. That's
15 the second category, and again, on that list those are
16 identified.

17 With respect to the third category, there are a number
18 of providers who require death certificate or state papers or
19 something like that, and again that's identified on the list. I
20 believe your Honor's previous comments regarding the order
21 similar to ESI should provide some assistance in that regard,
22 and I would hope that that order will be sufficient for those
23 providers. We have had communication with those providers and I
24 think that once they receive an order from the court, if it's so
25 inclined to issue that order, then that category should be

1 satisfied.

2 The fourth are providers who claim that they're in the
3 process. I would suggest that they be pushed off until a later
4 date because we expect that we will be getting documents from
5 those providers.

6 And that should take care of all of them, except
7 there's 1 or 2 where mail was returned and they didn't get
8 response. And again, those are identified on here, and we will
9 attempt to communicate further with those, one of them being or
10 two of them actually being facilities that as a result of
11 Katrina here in New Orleans they were shutdown and we sent the
12 mail to them expecting that it would be forwarded to the
13 appropriate Eckerds or Winn-Dixie or K-Mart or whatever it was.
14 But we will follow-up on those and try to make better service on
15 those.

16 And that's the extent of that motion, your Honor.

17 THE COURT: All right. With respect to the first
18 providers in which there has been no response, I am going to
19 issue a Rule to Show Cause by October 15th why they should not
20 be held in contempt of court and required to pay \$1,000 a day
21 until the records are received. I'll give them an opportunity
22 to contact you and present the records. If they don't do so,
23 I'll enforce it and it will be required to pay \$1,000 a day
24 until they do deliver the records.

25 With respect to the second and third providers,

1 prepare some order consistent with what I said about delivering
2 the material in the registry of the court, particularly with the
3 death certificates and the representatives. Something of that
4 sort can also be done with the second grouping, too. I think
5 that if I can give them some comfort as to privacy and
6 confidence that they are not going to get sued for delivering
7 materials for failure to file some particularly detailed
8 request, I'll do so. But you need to give me a list of those
9 individuals and talk with me about an order tailored to those.

10 But the first one, I will issue that, I'll require
11 them to show cause on October the 15th. The others I will deal
12 with in the form of an order. And the fourth grouping, I'll
13 give you enough time to talk with them.

14 MR. DAVIS: I do want to point out to the court that
15 one of the parties mentioned in this motion is MediConnect. I
16 have had a number of discussions with either representatives or
17 counsel from MediConnect, as early as this morning I had
18 communication with counsel from MediConnect, and I advised them
19 that I would advise the court that MediConnect is not a provider
20 of medical records. They, in fact, are a gatherer and we have
21 been working with MediConnect and they have been involved and
22 hopefully they'll continue to assist in this process, but they
23 were concerned because of the motion and the implications that
24 they were, in fact, a medical provider. And I just wanted the
25 record to be clear.

1 THE COURT: Give me by today a list of the first
2 categories so that I can directly serve them with the rule.

3 MR. DAVIS: Yes, your Honor.

4 Moving to the second motion, the Shelly Sanford or the
5 Sanford Pinedo, LLP motion. This relates to Case No.
6 2:06-CV-08375 and 2:06-CV-219. With respect to this motion, the
7 issue with respect to Wegman's Pharmacy has been resolved, so
8 that is not at issue.

9 The other is with respect to Rite Aid. Rite Aid was
10 contacted by Court Record Research and Rite Aid was sent an
11 institution specific authorization form. When Rite Aid was
12 notified of PTO 35, they stated that it would still not
13 necessary or that it would not provide the medical records and
14 it wasn't required to provide the records. In further that it
15 had no proof that the plaintiff was deceased and was not
16 authorized to release the records.

17 Court Records Research thereafter sent Rite Aid a copy
18 of the death certificate and the affidavits of heir of the
19 surviving four children and Rite Aid complained that it couldn't
20 read the death certificates and a new one was sent. Thereafter,
21 Rite Aid said that the only person who could sign for the
22 records was "the informant" who was listed on the death
23 certificate. That informant was a police officer who arrives on
24 the scene after the death was reported and unrelated in any way
25 to the estate of the deceased. Although Rite Aid was provided a

1 death certificate and an affidavit of facts concerning the
2 identity of the heirs of the decedent, Rite Aid continues to
3 refuse to release the records.

4 I believe that some guidance from the court might be
5 very helpful in this regard. Again, that order regarding death
6 and heirship may also help, but Rite Aid has refused to provide
7 the medical records?

8 THE COURT: Where is Rite Aid, here?

9 MR. DAVIS: I believe they're in Texas in this
10 particular one.

11 THE COURT: All right. That's fine. All right. Get
12 that to me and I'll issue an order to them specifically on that.

13 MR. DAVIS: Thank you, your Honor.

14 THE COURT: Thank you.

15 MR. HERMAN: Your Honor, since Ms. Sanford isn't here,
16 I want to reserve her firm's right to sue Rite Aid in the event
17 that they have an eligible claim that's been thwarted due to
18 their failure to comply with this court's order.

19 THE COURT: Okay. All right. Anything further? All
20 right, folks, thank you very much. The court will stand in
21 recess.

22 THE DEPUTY CLERK: Everyone rise.

23 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.



Karen A. Ibos, CCR, RPR, CRR
Official Court Reporter