

VIOXX

CONSUMER SETTLEMENT

MDL 1657

BG
BROWNGREER
CLAIMS ADMINISTRATOR

SETTLEMENT ADMINISTRATION STATUS REPORT

DECEMBER 6, 2013

BrownGreer PLC

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I. INTRODUCTION

On August 2, 2013, the United States District Court for the Eastern District of Louisiana (the “Court”) entered its Order for Preliminary Certification of a Class for Purposes of Settlement and Preliminary Approval of Class Settlement, Class Notice and Related Matters (the “Order” or the “Preliminary Approval Order”) (Docket No. 64526). The Order appointed BrownGreer PLC (“BG” or the “Claims Administrator”) Claims Administrator and directed it to establish the Nationwide Vioxx Consumer Settlement Program (the “Program”). (Order at 7.) Upon entry of the Order, BG began to perform the functions of the Claims Administrator as set forth in the Proposed Settlement Agreement (the “Agreement” or “Agmt.”) (Docket No. 64501-3). Specifically, BG developed (1) an automated, toll free phone line providing information about the Settlement and the ability to request Claim Forms and other Settlement materials, (2) a P.O. Box to receive Claim Forms and other correspondence from Class Members, and (3) a public informational website and a Secure Claims Portal (the “Portal”) for submitting electronic Claim Forms and supporting documentation. BG continues to carry out its functions as Claims Administrator and offers the Court this Settlement Administration Status Report to relate what it has observed and accomplished to date for the Court’s consideration as part of its Final Class Settlement Approval decision.

II. INFORMATIONAL WEBSITE AND SECURE CLAIMS PORTAL

The Agreement required the Claims Administrator to “develop and manage a website” by September 1, 2013 that allows Class Members to “(a) access, download, and print the Settlement Notice, (b) access, download, and print a Claim Form, (c) access, download, and print the medical authorization, (d) electronically submit a completed Claim Form and medical authorization, and upload copies of any of the documented proofs of payment . . . , and (e) provide any information required in response to a deficiency notice or under the audit provisions described below.” (Agmt. ¶¶ 5.4, 11.6.)

On August 6, 2013, in consultation with the Parties and Notice Agent Kinsella Media, LLC (“Kinsella”), the Claims Administrator launched an informational “notice” website at www.VioxxSettlement.com that allows prospective Claimants to access, download, and print the required materials, along with other selected “Important Documents.” These materials are available as downloadable PDFs through the following link: <http://www.VioxxSettlement.com/Documents.aspx>. The informational website also made available Party-approved answers to Frequently Asked Questions available through the following link: <http://www.VioxxSettlement.com/FAQ.aspx>.

On September 1, 2013, the Claims Administrator launched the interactive Portal segment of the Program’s website that allows Claimants to submit an electronic Claim Form, medical authorization, and claim proof, among other items, easily and securely online. The Portal, which also allows the Claims Administrator to communicate formally with each registered Claimant or their registered counsel, is accessible through the following link: <https://www.VioxxSettlement.com/VioxxSettlement/Logon.aspx>.

III. QUALIFIED SETTLEMENT FUND

On August 19, 2013, the Court issued an order authorizing the creation of the Vioxx Consumer Settlement Qualified Settlement Fund (the “QSF”), naming BG as the administrator of the QSF and Esquire Bank as the financial institution for the QSF (the “QSF Order”) (Docket No. 64546). As directed by the Court’s QSF Order, BG opened the QSF at Esquire Bank on August 20, 2013, and Merck made an initial deposit of \$6,000,000 into the QSF.

In consultation with Esquire Bank, the Program invested those deposited funds in Federated US Treasury Cash Reserves. This investment complies with Schedule A of the QSF Order that allows the QSF Administrator to invest the QSF funds “with third parties in instruments/securities comprised of United States Agency, Government Sponsored Enterprises or Treasury debt securities or obligations (maturities not to exceed five years at time of purchase) or mutual funds invested solely in such instruments (average maturity not to exceed five years).” (QSF Order, Sch. A at 1.) The investment is liquid (to allow for the transfer of funds in order to pay any necessary expenses from the QSF) and conservative (to reduce the risk of a decline in the value of the investment). As of December 5, 2013, the Federated US Treasury Cash Reserves investment has resulted in \$59.17 of investment income.

On October 21, 2013, the Court issued an order authorizing Esquire Bank to wire \$1,667,140.09 to Kinsella for class notice services rendered (Docket No. 64646). At BG’s direction, Esquire Bank issued those funds to Kinsella on October 23, 2013. As of December 5, 2013, there have been no other transactions, and the balance of the QSF is \$4,332,919.08.

IV. DIRECT NOTICE MAILING CAMPAIGN

To comport with due process and Rule 23 of the Federal Rules of Civil Procedure, the Agreement required implementation of a Notice Plan designed to “direct to class members the best notice that is practicable under the circumstances.” (Agmt. ¶ 5.2.) Kinsella’s Notice Plan contemplated, *inter alia*, direct mail notice to “all counsel for the putative consumer classes” identified in the “Related Actions” list in Exhibit C to the Agreement. (Kinsella Notice Plan at 6.) In consultation with the Parties and Kinsella, the Claims Administrator executed the direct mail notice campaign on August 8, 2013. Using mailing addresses provided by Class Counsel, the Claims Administrator, through United States mail, sent to the 66 law firms identified as counsel of record in Exhibit C the complete Detailed Notice and Claim Form.¹ The United States Postal Service returned six of these mailings as undeliverable, as detailed in Table 1:

¹ Class Counsel requested that this Settlement Administration Status Report include a specific notation regarding direct notice provided to James P. Lyle, counsel to New Mexico objectors Debbie Pace and Patricia Archuleta. To that end, the Claims Administrator notes that it mailed the Detailed Notice and Claim Form notice packet to Mr. Lyle along with the other 65 identified Exhibit C firms on 8/8/13. Mr. Lyle’s packet was addressed as follows:

James P. Lyle, Esq.
Clyde DeMersseman
Law Offices of James P. Lyle, P.C.
1116 2nd Street, N.W.
Albuquerque, New Mexico 87102

The United States Postal Service did not return this notice packet to BG as undeliverable.

Table 1		
Direct Mail Notice – Returned Mail		
Row	Law Firm	Date Returned
1.	Law Offices of Robert J. Shelist, PC	8/23/13
2.	Wesley Warden Duke, Esq.	8/23/13
3.	Favre Law Office PC	8/26/13
4.	Law Offices of Timothy M. Pierce	8/22/13
5.	Margaret P. Ellis, Esq.	8/23/13
6.	Edgar D. McKean, III, Esq.	8/26/13

Class Counsel researched and provided updated addresses for these law firms, and BG mailed new notice packets to the updated addresses on September 3, 2013. The second effort packet sent to the Law Offices of Timothy M. Pierce was again returned as undeliverable on September 16, 2013. BG has received no further returned mail from this mailing campaign.

V. CLAIMANT ACTIVITY

Settlement Class Members can interact with the Program in several ways, including through the toll free automated phone line, the Portal, email, and United States mail. In addition to tracking certain elements of these interactions, the Claims Administrator also tracks claim submission data drawn from information entered on each Claimant’s Claim Form. Pursuant to the Agreement’s requirement that the Claims Administrator “provide reports to Plaintiff’s Counsel and Merck regarding the implementation of the Notice Plan and the number, substance, and status of claims,” BG sends a weekly Status of Claimant Activity Report to the Parties and the Court’s law clerk, reporting on various claimant Program interactions and claim submission information. (Agmt. ¶ 11.17.) The tables below draw from those weekly reports and present some expanded data pertinent to the Court’s Final Settlement Approval consideration, such as geography of Claimant interactions and submissions.

A. Call Data

The Agreement directs the Claims Administrator to “develop and manage a toll free number with an automated system providing information about the Settlement, with the ability to request copies of the Notice, the Settlement Agreement, and the Proof of Claim Form.” (Agmt. ¶ 5.3.) To that end, the Claims Administrator established a toll free phone number – 1-866-439-6932 – on August 2, 2013, following the entry of the Court’s Preliminary Approval Order, and thereafter began fulfilling requests from prospective claimants for mailed hardcopy versions of Program materials. Callers to the Program’s toll free number can select from the following options:

Table 2		Phone Line Options
Row	Keypad Selection	Option
1.	1	Listen to general recorded information about the Settlement Program, including key dates
2.	2	Request a Claim Form
3.	3	Request a Medical Authorization Form
4.	4	Request a copy of the Detailed Notice
5.	5	Request a copy of the Settlement Agreement
6.	6	Request all Settlement Materials (Claim Form, Medical Authorization, Detailed Notice and Settlement Agreement)

The Claims Administrator formally began tracking phone calls placed to the toll free number on September 1, 2013, in conjunction with the launch of Kinsella’s Notice Plan, which began its paid media campaign that week. Tables 3 through 10 reflect call volumes and requests for materials from September 1, 2013, until December 5, 2013.

Table 3			Cumulative Calls to Toll Free Number (9/1/13 - 12/5/13)
Row	Type of Call	Number of Calls	
1.	Total Calls	9,686	
2.	Unique Calls ²	6,976	

Table 4			Cumulative Requests for Materials through Toll Free Number (9/1/13 - 12/5/13)
Row	Type of Request	Number of Requests	
1.	Total Requests for Materials ³	6,197	
2.	Unique Requests for Materials ⁴	5,381	

Table 5					Total Weekly Calls to Toll Free Number (9/1/13 - 12/5/13)
Row	Week	Calls	Week	Calls	
1.	9/1/13 – 9/7/13	10	10/20/13 – 10/26/13	202	
2.	9/8/13 – 9/14/13	1,790	10/27/13 – 11/2/13	123	
3.	9/15/13 – 9/21/13	4,645	11/3/13 – 11/9/13	137	
4.	9/22/13 – 9/28/13	1,406	11/10/13 – 11/16/13	116	
5.	9/29/13 – 10/5/13	533	11/17/13 – 11/23/13	93	
6.	10/6/13 – 10/12/13	322	11/24/13 – 11/30/13	43	
7.	10/13/13 – 10/19/13	213	12/1/13 – 12/5/13	53	
8.	Total			9,686	

² This “Unique Calls” data shows the number of unique phone numbers that have placed at least one call to the Program. The Claims Administrator has observed that several unique calls may originate from the same telephone number, where they have been placed by separate individuals, particularly in the case of many individuals living in the same nursing home or working at the same place of business.

³ This item reflects the total number of voicemails left with the Program requesting materials.

⁴ This item reflects the number of unique caller names who have requested at least one document from the Program.

Table 6		Unique Weekly Calls to Toll Free Number (9/1/13 - 12/5/13)		
Row	Week	Calls	Week	Calls
1.	9/1/13 – 9/7/13	6	10/20/13 – 10/26/13	124
2.	9/8/13 – 9/14/13	1,406	10/27/13 – 11/2/13	61
3.	9/15/13 – 9/21/13	3,655	11/3/13 – 11/9/13	58
4.	9/22/13 – 9/28/13	913	11/10/13 – 11/16/13	48
5.	9/29/13 – 10/5/13	292	11/17/13 – 11/23/13	42
6.	10/6/13 – 10/12/13	190	11/24/13 – 11/30/13	21
7.	10/13/13 – 10/19/13	131	12/1/13 – 12/5/13	29
8.	Total		6,976	

Table 7		Total Calls to Toll Free Number by State⁵ (9/1/13 - 12/5/13)								
Row	State	Calls	State	Calls	State	Calls	State	Calls	State	Calls
1.	AK	3	HI	17	MI	300	NV	76	TX	645
2.	AL	480	IA	80	MN	102	NY	463	UT	40
3.	AR	191	ID	31	MO	162	OH	387	VA	203
4.	AZ	142	IL	496	MS	438	OK	107	VT	6
5.	CA	790	IN	188	MT	25	OR	88	WA	105
6.	CO	77	KS	58	NC	429	PA	379	WI	192
7.	CT	76	KY	173	ND	11	PR	4	WV	88
8.	DC	24	LA	263	NE	42	RI	32	WY	23
9.	DE	31	MA	113	NH	14	SC	229	Unavailable	10
10.	FL	706	MD	179	NJ	197	SD	16	Canada	41
11.	GA	381	ME	23	NM	38	TN	272	Total	9,686

Table 8		Unique Calls to Toll Free Number by State (9/1/13 - 12/5/13)								
Row	State	Calls	State	Calls	State	Calls	State	Calls	State	Calls
1.	AK	3	HI	14	MI	233	NV	61	TX	431
2.	AL	322	IA	59	MN	81	NY	322	UT	34
3.	AR	130	ID	22	MO	119	OH	298	VA	142
4.	AZ	102	IL	359	MS	276	OK	84	VT	4
5.	CA	550	IN	134	MT	21	OR	65	WA	84
6.	CO	56	KS	48	NC	308	PA	299	WI	136
7.	CT	58	KY	126	ND	8	PR	3	WV	63
8.	DC	14	LA	176	NE	36	RI	21	WY	10
9.	DE	26	MA	92	NH	11	SC	173	Unavailable	4
10.	FL	511	MD	127	NJ	142	SD	13	Canada	29
11.	GA	279	ME	15	NM	30	TN	212	Total	6,976

⁵ State call data in this Report is determined by area code. The Claims Administrator notes that this table cannot definitively predict the residence of each caller, particularly in the case of cell phone users who, with some frequency, have an area code outside of their state of residence.

Table 9		Total Requests for Materials through Toll Free Number by State⁶ (9/1/13 - 12/5/13)								
Row	State	Requests	State	Requests	State	Requests	State	Requests	State	Requests
1.	AK	17	HI	10	MI	209	NV	50	TX	379
2.	AL	320	IA	53	MN	70	NY	278	UT	28
3.	AR	106	ID	20	MO	99	OH	245	VA	132
4.	AZ	83	IL	319	MS	277	OK	63	VT	4
5.	CA	492	IN	124	MT	14	OR	59	WA	68
6.	CO	52	KS	42	NC	276	PA	254	WI	115
7.	CT	44	KY	98	ND	8	PR	0	WV	54
8.	DC	8	LA	157	NE	26	RI	21	WY	11
9.	DE	26	MA	70	NH	8	SC	132	Unavailable ⁷	103
10.	FL	469	MD	120	NJ	128	SD	11	Canada	4
11.	GA	251	ME	16	NM	19	TN	155	Total	6,197

Table 10		Unique Requests for Materials through Toll Free Number by State (9/1/13 - 12/5/13)								
Row	State	Requests	State	Requests	State	Requests	State	Requests	State	Requests
1.	AK	15	HI	8	MI	184	NV	42	TX	314
2.	AL	256	IA	47	MN	61	NY	244	UT	25
3.	AR	89	ID	17	MO	88	OH	212	VA	117
4.	AZ	76	IL	285	MS	233	OK	56	VT	3
5.	CA	444	IN	105	MT	13	OR	55	WA	62
6.	CO	48	KS	36	NC	243	PA	235	WI	105
7.	CT	41	KY	84	ND	7	PR	0	WV	50
8.	DC	5	LA	136	NE	23	RI	19	WY	8
9.	DE	23	MA	66	NH	7	SC	121	Unavailable	59
10.	FL	395	MD	107	NJ	117	SD	11	Canada	4
11.	GA	213	ME	12	NM	17	TN	138	Total	5,381

B. Website Usage Data

Tables 11 through 14 show the overall usage of the Program’s informational website and registrations for access to the Portal. The informational website does not require credentialed logins to access. The Portal requires first that individuals register for access, after which they can log into their own individual, secure segment of the Portal to submit an electronic Claim Form, upload supporting documentation, and view personalized notifications from the Claims Administrator.

⁶ Document Request state data is determined by using the mailing address provided by the caller requesting the materials.

⁷ These “Unavailable” requests occur when callers fail to provide sufficient enough information to complete the mailing and our outreach efforts to speak with them to capture the missing mailing information prove unsuccessful.

Table 11		Visits to the Settlement Website (8/6/13 - 12/5/13)	
Row	Type of Visit	Number of Visits	
1.	Total Visits ⁸	64,203	
2.	Unique Visits ⁹	17,964	

Table 12		Total Unique Visits by Location¹⁰ (8/6/13 - 12/5/13)								
Row	State	Visits	State	Visits	State	Visits	State	Visits	State	Visits
1.	AK	22	HI	36	MI	477	NV	144	TX	960
2.	AL	354	IA	122	MN	198	NY	932	UT	80
3.	AR	162	ID	62	MO	303	OH	652	VA	411
4.	AZ	306	IL	825	MS	249	OK	146	VT	26
5.	CA	1,897	IN	311	MT	35	OR	179	WA	482
6.	CO	219	KS	134	NC	600	PA	756	WI	275
7.	CT	183	KY	240	ND	18	PR	4	WV	88
8.	DC	68	LA	224	NE	88	RI	43	WY	35
9.	DE	53	MA	370	NH	61	SC	308	Unknown	1,109
10.	FL	1,369	MD	304	NJ	490	SD	24	NON-US	523
11.	GA	550	ME	57	NM	64	TN	336		
12.	Total									17,964

Table 13		Total Portal Registrations by State (9/1/13 - 12/5/13)								
Row	State	Count	State	Count	State	Count	State	Count	State	Count
1.	AA	1	GA	184	ME	23	NM	26	TN	127
2.	AK	5	HI	17	MI	182	NV	52	TX	324
3.	AL	130	IA	41	MN	77	NY	329	UT	30
4.	AR	71	ID	25	MO	74	OH	251	VA	112
5.	AZ	134	IL	319	MS	80	OK	54	VT	1
6.	CA	742	IN	132	MT	12	OR	63	WA	12
7.	CO	79	KS	50	NC	236	PA	300	WI	96
8.	CT	74	KY	75	ND	5	PR	2	WV	92
9.	DC	13	LA	76	NE	41	RI	23	WY	21
10.	DE	21	MA	133	NH	32	SC	123		
11.	FL	593	MD	132	NJ	176	SD	15		
12.	Total Portal Registrations									6,049

⁸ This item reflects the total number of visits to either the informational website or Portal.

⁹ This item reflects the total number of unique IP addresses that visited either the informational website or Portal.

¹⁰ Website access state data in this Report is determined by IP address. Like area codes, IP addresses cannot definitively predict the residence of the website user for a number of reasons.

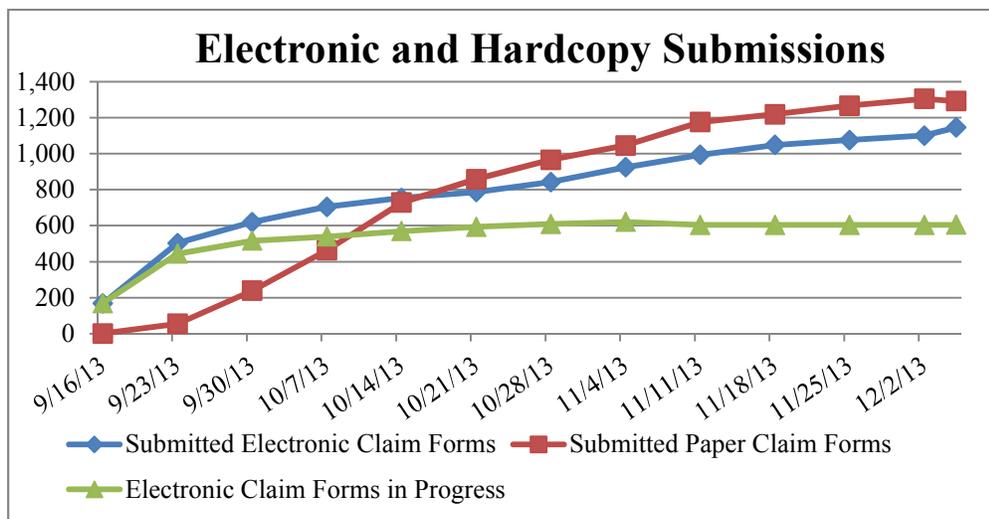
Table 14				
Total Weekly Portal Registrations (9/1/13 - 12/5/13)				
Row	Week	Registrations	Week	Registrations
1.	9/1/13 – 9/7/13	58	10/20/13 – 10/26/13	170
2.	9/8/13 – 9/14/13	914	10/27/13 – 11/2/13	131
3.	9/15/13 – 9/21/13	2,908	11/3/13 – 11/9/13	124
4.	9/22/13 – 9/28/13	745	11/10/13 – 11/16/13	86
5.	9/29/13 – 10/5/13	320	11/17/13 – 11/23/13	80
6.	10/6/13 – 10/12/13	205	11/24/13 – 11/30/13	44
7.	10/13/13 – 10/19/13	215	12/1/13 – 12/5/13	49
8.	Total Portal Registrations			6,049

C. Claim Submissions

Claimants can submit claims and supporting documents electronically or on paper. The Agreement requires that the Program’s website allow Class Members to “electronically submit a completed Claim Form and medical authorization, and upload copies of any of the documented proofs of payment” (Agmt. ¶ 11.6.) The Agreement also requires the Claims Administrator to maintain a P.O. Box that Class Members can use “to request Notice, Proof of Claim Form and additional information” and to “submit a Proof of Claim Form with supporting documentary proof.” (Agmt. ¶ 5.5.) Tables 15 and 16, and the accompanying graph, report the total number of electronic Claim Form submissions through the Portal, as well as the number of paper Claim Forms received by mail at the Program’s mailing address, P.O. Box 26882, Richmond, VA 23261.

Table 15		
Claim Form Activity		
Row	Item	Total
1.	Submitted Electronic Claim Forms	1,115
2.	Submitted Paper Claim Forms	1,323
3.	Total Submitted Claim Forms (Row 1 + Row 2)	2,438
4.	Electronic Claim Forms in Progress ¹¹	549

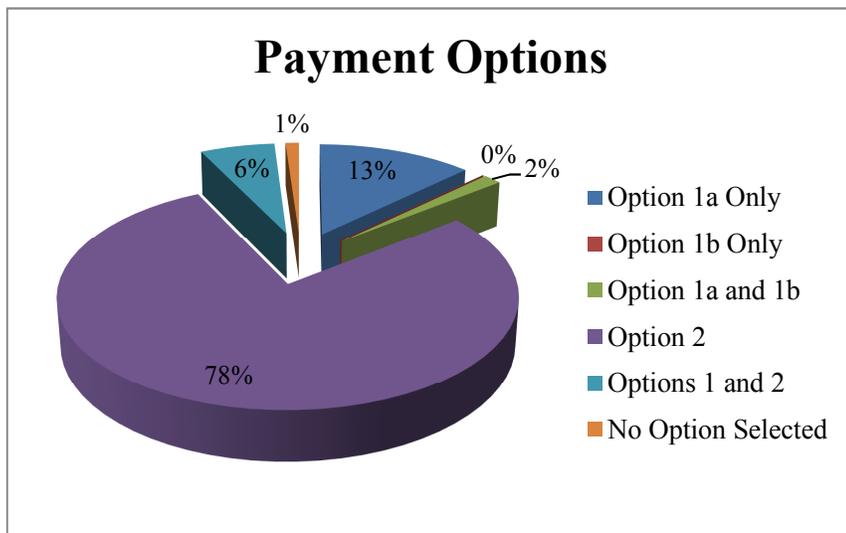
¹¹ This item reflects Claim Forms that have been started in the Portal but not yet completed and submitted.



Row	State	Electronic	Paper	Total	State	Electronic	Paper	Total	
1.	AK	1	0	1	MT	4	2	6	
2.	AL	19	39	58	NC	39	43	82	
3.	AR	8	21	29	ND	0	5	5	
4.	AZ	24	21	45	NE	1	2	3	
5.	CA	173	168	341	NH	4	1	5	
6.	CO	17	7	24	NJ	43	37	80	
7.	CT	18	23	41	NM	4	3	7	
8.	DC	3	0	3	NV	8	15	23	
9.	DE	4	6	10	NY	66	72	138	
10.	FL	103	121	224	OH	37	50	87	
11.	GA	36	42	78	OK	7	14	21	
12.	HI	7	1	8	OR	15	14	29	
13.	IA	7	14	21	PA	61	59	120	
14.	ID	5	6	11	PR	1	0	1	
15.	IL	59	73	132	RI	4	7	11	
16.	IN	16	29	45	SC	19	24	43	
17.	KS	13	7	20	SD	2	4	6	
18.	KY	13	15	28	TN	15	26	41	
19.	LA	15	17	32	TX	56	68	124	
20.	MA	30	16	46	UT	6	3	9	
21.	MD	27	24	51	VA	26	25	51	
22.	ME	2	4	6	VT	1	0	1	
23.	MI	29	41	70	WA	3	0	3	
24.	MN	17	15	32	WI	14	20	34	
25.	MO	11	10	21	WV	15	22	37	
26.	MS	4	66	70	WY	3	19	22	
27.	Total						1,115	1,323	2,438

The Agreement allows Class Members to recover, based on the form of proof submitted, either (1) their actual out-of-pocket costs for Vioxx purchases and up to \$75 for Post-Medical Withdrawal Consultation expenditures or (2) up to \$50. (Agmt. ¶¶ 11.2, 11.2.1.) Class Members must elect one option or the other in their Claim Forms. (Agmt. ¶ 11.2.2.) The Claims Administrator tracks the election types submitted and the values claimed in each submission, as set forth in Table 17 below. While the electronic Claim Form available through the Portal includes programmatic validations and restrictions so that Claimants cannot submit impossible claims, the paper Claim Form cannot guide Claimant responses in that way. As a result, a number of paper submissions include conflicting or contradictory claim selections, such as those in Rows 6 and 7 of Table 17 that impermissibly select both Option 1 and Option 2.

Table 17		Claim Payment Options and Total Amount Claimed			
Row	Item	Claim Forms	Percentage	Require W-9 (>\$600)	Amount Claimed
1.	Claims Forms with Option 1	350	14%	72	\$159,017.80
2.	Option 1a Only	312	13%	67	\$143,893.10
3.	Option 1b Only ¹²	1	0%	0	\$275.00
4.	Both	37	2%	5	\$14,849.70
5.	Claim Forms with Option 2¹³	1,911	78%	N/A	\$95,550.00
6.	Claim Forms with Options 1 and 2¹⁴	150	6%	21	\$150,601.31
7.	Claim Forms without Option 1 or 2	27	1%	N/A	N/A
8.	Total	2,438	100%	93	\$405,169.11



¹² The totals for Option 1b claims in this Report reflect totals of the claimed amount of Post-Withdrawal Medical Consultation expenditures, where a number of such claims impermissibly seek more than \$75 for this type of loss. Capping the claimed Option 1b losses at \$75 per claim results in a reduced total amount of \$397,206.72.

¹³ Claimants who select Option 2 only or Option 2 and Option 1 but no Option 1 value claimed have been treated in this report as having a claimed amount of \$50.

¹⁴ Row 6 includes one hard copy Claim Form in which the claimant entered \$100,000 under the Option 1a Amount Claimed, an unlikely amount that may improperly suggest a higher total value of claims submitted.

D. Claimant Questions and Attorney Access

In addition to the toll free phone line, P.O. Box and website, the Claims Administrator maintains three email inboxes for the Program: Questions@VioxxSettlement.com, PortalHelp@VioxxSettlement.com, and AttorneyAccess@VioxxSettlement.com. The “Questions” inbox serves as a general mailbox for the Program, and individuals who email that address receive an automatic reply containing general information about the Settlement Program, answers to Frequently Asked Questions, and links to PDFs of the Agreement and the Detailed Notice. The “Portal Help” inbox handles Claimant questions related to using the Portal. The “Attorney Access” inbox may be used by law firms to request access to the Portal, but attorneys can also register directly through the Portal as well. The Claims Administrator researches all law firms before granting access to prevent unlicensed individuals from representing putative Class Members. To date, the Claims Administrator has granted access to the Portal to the law firms identified in Table 18 below.

Table 18		Law Firms Registered for Portal Access	
Row	Attorney Contact	Law Firm	Location
1.	William Daley	The Law Office of William Daley	San Diego, CA
2.	Richard Getty	The Getty Law Group	Lexington, KY
3.	Brian Welch	Bingham Greenbaum Doll, LLP	Indianapolis, IN

E. Opt Outs

The Agreement requires that the Claims Administrator “receive, collect, identify, and process any requests by putative members of the Class to be excluded from the Class.” (Agmt. ¶ 10.4.) The Court’s August 2, 2013 Preliminary Approval Order established November 9, 2013 as the date by which Class Members must have postmarked a written request to be excluded. (Order at 8.) As of the date of this filing, the Claims Administrator has received three such requests, all timely, as detailed in Table 19 and as attached to Merck’s Statement in Support of Plaintiffs’ Motion for Final Approval of Class Settlement (Docket No. 64704, Exs. 7-9).

Table 19		Opt Out Requests Received by the Claims Administrator			
Row	Last Name	First Name	Address	Telephone	Postmark Date
1.	Harris, Jr.	Wardell	3403 Nottingham Ct Bowie, MD 20716	(301) 218-4363	9/23/2013
2.	Morris	Henrietta	4188 Howerton Rd Dunnsville, VA 22454	(804) 443-5106	9/23/2013
3.	Martin	Sheila	P.O. Box 701583 Dallas, TX 75370	(214) 789-3196	11/9/2013

F. Claim Filing Rates

A number of factors contribute to a class member's decision *whether* to participate in a settlement program, such as the individual benefit available to class members, attorney representation status, class member demographics, and the level of emotional attachment to the economic loss at issue, among many others. Similarly, a number of factors contribute to a class member's decision *when* to participate in a settlement program. The Parties requested that BG share with the Court BG's general experiences with this latter concept in past programs – when do claimants who have decided to participate decide to file their claims?

BG closely monitors portal registration and claim filing rates in each settlement program it administers in order to anticipate periods of high claim volumes and portal usage. As with the decision of *whether* to participate in a settlement program, the question of *when* to participate depends on many and various factors. In BG's experience, there are four primary milestones in a settlement program that can influence *when* putative class members become participating claimants: (1) the date the program launches with a paid notice campaign and earned media coverage; (2) the date of final approval of the settlement; (3) the date the first payments are made to eligible claimants; and (4) the claim filing deadline.

As the Notice Plan in this Program commenced on August 6, 2013, with the launch of the informational website, the Claim Filing Deadline is May 6, 2014, nine-months after the Program's launch. (*See* Agmt. ¶ 5.12.) This lengthy submission period affords class members ample opportunity to participate in the Program. Class Members will have more time following the Final Approval Hearing (144 days) than has elapsed since Program launch leading up to the Final Approval Hearing (129 days). The Program has already experienced its program launch and notice execution claim spike, and it will not experience the first payment, or the "money on the street," spike that other programs sometimes experience because this Program will not make any payments to claimants until the Program's close. However, two key milestones remain that may result in increased claim rates: (1) Final Approval, should the Court grant it, and (2) the Claim Filing Deadline. While a final approval spike may not always be substantial, BG's experience suggests that a claim filing deadline spike can be quite substantial, sometimes even more significant than a program's launch with notice campaign and media coverage. For example, in the Vioxx Personal Injury Settlement Program that this Court previously oversaw in this MDL, 79.7% of all claims filed were submitted within three weeks of the filing deadline. Additionally, in another settlement program over which this Court presides, *In re: Chinese-Manufactured Drywall Products Liability Litigation*, MDL 2047, 62.4% of all claims filed were filed within three weeks of the filing deadline.

As the Court is well aware, every settlement program is different, and historic claims rates in other programs may not hold much, if any, predictive value for this particular Program. Further, historical patterns of *when* claims rates may increase can be helpful guides, but any milestone-triggered spike's significance depends in the first instance on *whether* a class member will participate, as a high general participation rate will trigger more significant spikes at milestone periods. BG offers the foregoing discussion for the Court's consideration and would be happy to provide further analysis on this topic if it would benefit the Court's Final Settlement Approval decision. One expanded thought bears particular noteworthiness at this time. As Table

18 above indicates, only three law firms have registered with the Program to date. It has been BG's experience that law firms are particularly inclined to file closer to the claim filing deadline. Law firms, of course, also often have inventories of clients, so, when they decide to file claims, they typically file more than one claim. These experiences suggest, therefore, that, if more law firms decide to bring inventories of Class Members to the Program, claim submissions could increase significantly approaching the May 6, 2014 filing deadline.

VI. NOTICE OF RECEIPT OF CLAIM

The Agreement requires the Claims Administrator to, “[u]pon receipt of a claim, . . . send the Claimant and his/her attorney, if any, an acknowledgement that the claim was received and the date upon which the Claim was received.” (Agmt. ¶ 11.5.) Pursuant to that requirement, the Claims Administrator developed the Notice of Receipt of Claim attached to this report as Exhibit A. Following the Claims Administrator's receipt of electronic Claim Forms, this Notice automatically populates in the Claimant's online Claim File. In the case of paper Claim Forms submitted through United States mail, the Claims Administrator prints and mails a paper version of the Notice of Receipt of Claim and posts a PDF copy to the Claimant's electronic Claim File.

VII. POLICIES AND PROCEDURES

To ensure Program integrity and accuracy, the Claims Administrator will propose to the Parties policies and procedures that will govern the claims review process based on its analysis of the Agreement, Detailed Notice and Claim Form. As they are approved by the Parties, these policies and procedures will be archived in an online policy compendium that will be made available to all registered Portal users and as an unsecured webpage on the informational website. On October 25, 2013, the Claims Administrator sent the Parties its first Settlement Administration Policy Questions Memorandum posing several claims processing questions, the agreed-upon answers to which will be memorialized into controlling Program policies. Any future policy questions will be handled in the same manner.

VIII. CLAIMS PROCESSING AND ELIGIBILITY DETERMINATIONS

The Agreement provides that “all decisions with respect to the validity and timeliness of all Claims submitted . . . including the adequacy of all documentary proof of purchase, shall be made by the Claims Administrator.” (Agmt. ¶ 11.4.) Pursuant to this directive, the Claims Administrator has designed and developed an eligibility review process for all claims that is ready to be implemented pending the Final Approval of the Agreement and resolution of the questions posed in the October 25, 2013 Settlement Administration Policy Questions Memorandum.

In accordance with the Agreement, the Claims Administrator will issue deficiency notices to all Class Members who fail to present a valid claim, explaining the nature of the deficiency and affording the individual opportunity to cure the deficiency. (Agmt. ¶ 11.7.) All eligible claims may be subject to audit and, should the “aggregate amount of valid claims filed” exceed the Settlement Amount, to a pro-rata reduction. (Agmt. ¶¶ 11.11, 2.7.)

The Claims Administrator has also developed internal quality control measures to ensure the accuracy and efficiency of the Program. Should the Court grant final approval of the Agreement, the Claims Administrator will file a proposed a Court-Approved Procedure regarding the confidentiality of claims information to help protect all claimant data submitted to the Program.¹⁵

IX. CONCLUSION

Since the Court preliminarily approved the Settlement on August 2, 2013, the Claims Administrator has diligently and timely carried out its duties set forth in the Agreement with frequent contact with the Parties and Kinsella. The Claims Administrator will continue to work with the Parties and the Court to administer the Program in as fair, accurate, and efficient a manner as possible.

Respectfully submitted,

BROWNGREER PLC

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¹⁵ The Settlement Agreement contemplates the need for orders to protect the confidentiality of claims information in the Program. (See ¶ 17.3.) The Claims Administrator sent the draft Court Approved Procedure to the Parties and has received and incorporated their suggested edits.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Settlement Administration Status Report has been served on Liaison Counsel, Russ Herman and Phillip Wittmann, by U.S. Mail and e-mail or by hand delivery and email, upon Liaison Counsel Ann Oldfather by e-mail, and upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pre-Trial Order No. 8B, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing in accord with the procedures established in MDL 1657, on this 6th day of December, 2013.

/s/ Orran L. Brown
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Exhibit A

Notice of Receipt of Claim

VIOXX**CONSUMER SETTLEMENT**

MDL 1657


 BROWN GREER
 CLAIMS ADMINISTRATOR
NOTICE OF RECEIPT OF CLAIM

CLAIM FILED DATE : [DATE CLAIM POSTMARKED OR SUBMITTED THROUGH PORTAL]

I. CLAIMANT INFORMATION

Claimant Name	Last		First	Middle
	Claimant ID		Law Firm	

II. EXPLANATION

This Notice is an official communication from the Claims Administrator for the Nationwide Vioxx Consumer Settlement Program. We received your Claim Form and will process your claim in accordance with the Settlement Agreement. The Claims Administrator will notify you of the outcome of the review of your claim. As required by the Settlement Agreement, the Claims Administrator will not issue any payments until (1) the Judgment becomes Final, (2) the Effective Date of this Settlement Agreement is reached, (3) the Claim Filing Deadline passes and all cure periods expire, and (4) all claim audits are completed.

The "Claim Filed Date" indicated above is the date on which you submitted your claim online through the Settlement Program's Portal. That date will control the timeliness of your submission. [OR]

The "Claim Filed Date" indicated above is the date on which your paper claim was postmarked in the mail. That date will control the timeliness of your submission.

III. GET MORE INFORMATION

For questions about the Settlement Program, go to www.VioxxSettlement.com, call 1-866-439-6932, or send an email to Questions@VioxxSettlement.com.



[**Note for the Court:** the date field and text highlighted above are dynamic and change to fit the appropriate circumstances of each Notice, as do, of course, the Claimant Information fields.]