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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS * Docket MDL 1657-L
LIABILITY LITIGATION * March 27, 2009
 * 9:00 a.m.
* * * * *

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

APPEARANCES:

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PROCEEDINGS

(March 27, 2009)

1
2
3 **THE DEPUTY CLERK:** Everyone rise.

4 **THE COURT:** Be seated, please. Good morning, ladies
5 and gentlemen.

6 **THE DEPUTY CLERK:** MDL 1657, In Re: Vioxx.

7 **THE COURT:** Counsel, make your appearance for the
8 record, please.

9 **MR. HERMAN:** May it please the Court. Good morning,
10 Judge Fallon. Russ Herman for plaintiffs.

11 **MR. MARVIN:** Douglas Marvin for Merck.

12 **THE COURT:** It's good to see you, Russ. I know all
13 your colleagues are happy that you're back, as well as the
14 Court.

15 This is a monthly status conference. I received
16 from the parties a suggested agenda. I have added to it. I
17 met with the committees in advance to see what was anticipated,
18 and I will take them in order.

19 The first is the Settlement Agreement. Anything
20 to report on that?

21 **MR. HERMAN:** Yes, Your Honor. I think at this time a
22 report from BrownGreer on the progress itself would be in order
23 if Your Honor will entertain it.

24 **MR. BROWN:** Good morning, Your Honor. I'm Orran
25 Brown. With me today, as usual, is Lynn Greer. We are from

1 BrownGreer. We are the claims administrator for the Vioxx
2 Settlement Program.

3 We are happy to be here this morning to give the
4 Court and the parties an update on where we stand in the
5 Settlement Program. The slides that we will show today and
6 show each month when we are here, we post those on our general
7 settlement Web site. It's www.browngreer.com/vioxxsettlement.

8 Anyone can access this report and see these
9 slides. After we finish, we post these. In particular,
10 there's a number of points where we show numbers and data in
11 here that we don't read out loud for the folks on the phone,
12 but they can see this when we are finished. They are all
13 posted and they are public.

14 Today, I'm going to update the Court and the
15 parties on where we are on the enrollment side of things -- we
16 are still cleaning up the release and stipulation documents for
17 persons to be in this program -- a few comments about the
18 Extraordinary Injury Program that we have now rolled out, and
19 then some changes and enhancements we are making in the way we
20 communicate with primary counsel through their secure Vioxx
21 portal Web sites that we have created for them. Lynn will
22 cover where we are on the progress of our claims review and our
23 payments.

24 Your Honor, on the release and stipulation
25 documents that are required to be a participant in the

1 Settlement Program, we have reported many times on this. We
2 have been working with the parties, *pro se* claimants, and all
3 the lawyers who represent these claimants for about a year now
4 to get these documents clean, in place, and no questions about
5 who signed them or where they are signed.

6 The parties established a deadline of March 6,
7 2009, for all the claimants to clean up those for real, to get
8 them all done. We are talking about the release of all claims
9 and the stipulation of dismissal for claimants who have a
10 lawsuit. Those are the key pieces of that enrollment package,
11 and we have been working a long time to get them in shape, get
12 everything done, have the documents final and binding.

13 We rolled out in February the announcements to
14 *pro se's* and by letter and on e-mails to the primary counsel
15 that March 6 was the chance to get all these things cleaned up.
16 We had a lot of response to that effort. We had a lot of
17 material sent to us by March 6. We have processed that with
18 Merck's counsel at Bryan Cave to see what's still missing, see
19 what's fixed up, let counsel or the *pro se's* know they are
20 done.

21 That deadline went a long way to getting a lot
22 of these cleaned up. Now, we still have some folks left. We
23 still don't have them finished. It's a small number. I will
24 show you in a moment how many. Merck has filed six motions
25 this week, six separate motions with the Court here and served

1 it on the counsel or the claimants who still do not have their
2 release and stipulation in final shape to ask them to show
3 cause why the documents are not yet complete.

4 I think this morning the Court has set a hearing
5 on all six of those motions for April 15 at 9:00. The idea is
6 that these are grouped in six different filings by kind of the
7 nature of the problem. The signature issues on a release are
8 grouped together and other aspects of the release. The notary
9 issues are grouped together. The six motions are categories
10 that are sort of defined by a subject of what's wrong.

11 The idea behind these motions is that we still
12 want people to cure the documents. We are still getting in
13 cures. We are reviewing testimony and cleaning them up with
14 the parties if they send those in. If they do that, they will
15 be removed from these motions and be told that they are now off
16 the hook for the April 15 hearing.

17 The goal is to get the documents cleaned up, not
18 to close out the claims, or at least the goal is to finish them
19 because, as we mention each time, to the extent we still have
20 this going on and have holes in the release, it impairs our
21 ability to review the claims and get the payments out. So we
22 are trying to finish this out so that the parties can be safely
23 in the program, but also so that we don't have any impediment
24 to being able to finish out the MI payments in September and
25 keep going on the stroke claims, to get them done as well.

1 That's the idea behind these.

2 The fact that the motions were filed has
3 generated a lot of activity even since they came down this
4 week. As we said, we are going to take people off of the
5 motions if we get the documents cleaned up.

6 **THE COURT:** That's really important because everybody
7 has to understand that we can't deprive people who have done
8 what they were supposed to do with their final payment. That's
9 going to present a problem. If we have delinquent cases, it
10 will stop the whole train, and that's something that I'm very
11 conscious of.

12 A rule to show cause is important. If it is
13 simply delinquent and it can be cured but it hasn't been cured,
14 then I'm going to have to dismiss the case. If it can't be
15 cured notwithstanding good-faith efforts, perhaps there's
16 another way of dealing with it and handling that particular
17 matter. We have got to focus some attention on it.

18 **MR. BROWN:** Your Honor, this slide, which is Slide 3
19 in the slide presentation, shows us who is still at stake here.
20 We see in the top row here on the release that there are about
21 2,865 people who still have some hole in their release. What
22 this means here, where it says "Deficiency," that means that
23 that 2,834, they are now out in the field, posted to the firms,
24 or sent to the individual claimants.

25 There's 113 *pro se* claimants who have still a

1 problem with their release, and we are waiting on them to send
2 us back a cure. This is as of yesterday, so some of those
3 numbers have probably gone down since yesterday because we get
4 this material every day.

5 The "Pending" row here means there's 31 people
6 who have sent us something and we and Merck's counsel are
7 looking at it, and that's all happening very quickly. That
8 number goes down to zero about every day.

9 The idea here is that there's about 2,800-plus
10 people who still have a release problem. There's 187 people
11 who still have a stipulation that they need to sign and give to
12 us. That sounds like a lot of people, 3,000 people total, that
13 we see here in Row 7. It's really not because, remember, we
14 have over 50,000 people who enrolled in this program. These
15 are the only folks left who haven't gotten their paperwork
16 complete yet.

17 We look at it a little further to get a little
18 bit better picture about what's really still at stake. This
19 next slide, Slide 4, shows us that on Row 2 that about
20 1,600-plus of those folks are people who have estate-related
21 deficiencies, meaning that they haven't gotten a representative
22 appointed yet for a deceased claimant or a deceased derivative
23 claimant family member, and those take the longest. They are
24 the hardest to get cleaned up.

25 We have this Court Approved Procedure 2008-1

1 that the parties agreed to that allows claimants to get a
2 surviving spouse or estate successor to sign the paperwork, and
3 it keeps the claim moving. Recently, the parties announced and
4 we announced a change to that that allows, if a claim goes all
5 the way through and is compliant with that CAP, you can get a
6 points award notice. If you're under 25 points if you're
7 testate and 15 points if you're intestate, you can get paid.
8 So it's a situation here where a lot of these folks who have
9 still a release problem are using this CAP to keep going in the
10 process, and they may get paid without having to clean it up.

11 We get down to the bottom of this in Row 5, and
12 we see there's really only 777 folks who have nonestate
13 deficiencies that still need to get it cleaned up. 415 folks
14 that have an estate problem haven't used the CAP yet. So we
15 are down into relatively small numbers here out of 50,000
16 people. After all the work we and the parties and claimants
17 and lawyers have done, we are in good shape on getting this
18 finished. We think a lot of these folks that are left are
19 claimants that the counsel cannot locate anymore and they will
20 eventually have to be closed out.

21 When we were here last time, Your Honor -- we
22 were here on February 10, I think -- we announced that we were
23 going to roll out the Extraordinary Injury Program. These are
24 two funds that the Settlement Agreement created, \$195 million
25 for MI claimants and \$105 million for IS claimants, that create

1 separate funds for persons with truly extraordinary, unique
2 injuries, economic losses, past wages, out-of-pocket medical
3 expenses of \$250,000 or more, or a special medical injury
4 that's not covered on the underlying grid.

5 We did roll out that program on March 2 as we
6 had promised. We had an e-mail blast that we sent to all
7 primary counsel, and we sent letters to *pro se* claimants that
8 described the program and its deadline because the parties
9 established a June 1 deadline to send us their EI claim
10 materials. That's an EI claims form that we have created on
11 line for law firms to actually fill out on line and a hard copy
12 claim form that individual claimants, *pro se* claimants will
13 use. If a *pro se* claimant wants information on the program, we
14 have asked them to contact us, and some have.

15 We have developed an extensive instruction
16 manual because the Settlement Agreement itself did not really
17 define the contours of the Extraordinary Injury Program. We
18 worked with the parties to embellish upon that, to lay out the
19 provisions for what's covered, what's not, and try to explain
20 the documents, the sets of documents that are necessary to show
21 lost wages, past out-of-pocket medical expenses to set up that
22 program.

23 So we prepared a lengthy instruction manual for
24 counsel and a separate one for *pro se* claimants with
25 step-by-step instructions about how to fill out the claim form,

1 what documents are needed, how to label them, how to get them
2 into us, and that those materials are due by June 1.

3 A person doesn't qualify for extraordinary
4 injury payments unless they qualify on the underlying grid at
5 some level. There still are some people who don't know the
6 final outcome of their underlying MI claim or particularly
7 their stroke claims, but nonetheless we want these materials by
8 June 1.

9 I think at this stage counsel or claimants, if
10 they feel like they have got economic losses or they feel like
11 they have a medical injury that's not going to be adequately
12 covered on the underlying grid, they need to go through their
13 records and follow these instructions and get us these
14 materials by June 1 so that we can then be processing these
15 funds, which are also pro rata funds, and determine each
16 person's individual award and then how that pro rata allocation
17 is going to work out.

18 The program is up and running. We did get it
19 out. The letters to the *pro se's* actually were mailed on
20 March 3. March 2 was a very rare snow day in Richmond.
21 Everything was shut down. We got everything else launched, but
22 we mailed the letters on March 3 to the *pro se's*.

23 **THE COURT:** An extraordinary injury fund is really
24 important in cases of this sort. One thing that's always
25 troublesome is when you have litigation that contains 50,000,

1 60,000 people, whatever it is, you have to recognize that the
2 top end is potentially problematic because those cases, if
3 tried by themselves, might do better. Might do better. So you
4 have to be concerned, from a judge's standpoint, that those
5 individuals have an opportunity to get an increase in
6 compensation to recognize their extraordinary injuries. They
7 are over and above the average; not only over and above the
8 average, but they are extraordinary.

9 At the same time, it's not a second bite at the
10 apple. Somebody who doesn't fall into the extraordinary injury
11 fund, that doesn't mean that they have another opportunity to
12 get additional compensation. It's just to take into
13 consideration that in a case like this you're going to have
14 some people who don't fit in. It's fair and appropriate to
15 recognize those individuals, and that's what this does.

16 I think for every large case there ought to be
17 some thought given by lawyers, as well as courts, for the fact
18 that there are going to be extraordinary injuries and they
19 should be compensated for or have some mechanism to receive
20 additional compensation. This, to me, is an adequate way of
21 doing it.

22 **MR. BROWN:** Yes, Your Honor. I think that was
23 exactly the intent of the parties here. We tried to define it
24 working with the parties to achieve that goal. The manual
25 describes that, I think, in detail to the parties. It is some

1 steps to applying for those funds. The manual answers a lot of
2 questions, but we are encouraging for them to call us or e-mail
3 us if they have questions. We want to help folks understand
4 what they need to do to get in that program.

5 Your Honor, the last thing I will mention before
6 I turn it over to Lynn and go through where we are on claims
7 and payments is a brief comment about enhancements to this
8 Vioxx portal interface that we use with primary counsel.

9 We talk with counsel on the phone all the time,
10 we e-mail back-and-forth, but the primary way we communicate
11 back and forth with the lawyers who represent claimants in this
12 program, whether they have one claimant or thousands of
13 claimants, is through the secure interface that we created.
14 Firms can log onto a secure Internet Web site and go to their
15 unique portal where they see information about only their
16 clients. They can send us information. We send them
17 information. This is the main mechanism for us to share
18 progress status, what is going on with the claims.

19 It's in a constant state of evolution because as
20 the program has evolved, as it has expanded, the portal and its
21 functionality have expanded. We are rolling out on Monday a
22 new change to this that we think will help firms a lot.

23 Now, the program has gotten through so many
24 phases. It used to be this dealt only with registration and it
25 dealt only with enrollment. Now it's dealing with claims, and

1 it's dealing with liens, and it will be dealing with the
2 Extraordinary Injury Program, and it is dealing with payments.

3 We had designed this to cover those different
4 phases. Now we are rolling out something that integrates it
5 all together. What we see here in this slide is what a firm
6 sees when it signs onto the portal and enters their
7 information. Then if they go to the claimant's search feature
8 on the left menu, they will now get a claimant's -- or starting
9 Monday will get a claimant's search feature that allows them to
10 look up all their claimants or one of them and then see the
11 various phases of the program that those folks may be in. It's
12 a one-stop-shopping opportunity on the portal so that you don't
13 have to go look in the claims section for claims status,
14 enrollment in the enrollment section. This will take you
15 there.

16 We will soon have, after the claims section
17 here, an EI program. Assuming we have data to put up there and
18 have claims and statuses, there will be an extraordinary injury
19 status button here. If you click on one of these buttons, for
20 example, if you went through status on this particular
21 claimant -- for example, this is a claimant -- this is all
22 artificial data. This is a claimant who is closed, a
23 nonsubmitting program claimant for not submitting the
24 materials, the claims package by the applicable deadlines, and
25 this will tell them that person's status.

1 If you click on the demographic section, this is
2 where you see all the information about claimant; can change
3 the claimant's name and address. If you click on the
4 enrollment button, it will take you to the enrollment world,
5 tell you exactly where they are on their release and
6 stipulations. If you click on the claimant claims section, it
7 will take you to where that claimant is in the claims world and
8 everything that's happened to that claim in the claims world.
9 Whether they are at gates, if they are at gates denial, this is
10 where you see that. If you go to payment, it will show whether
11 the claim has been paid and, if so, how much and when.

12 So this is our effort to make the portal even
13 easier to use so that a law firm can check a claimant or all
14 their claimants through one window, one-stop shopping to get
15 them exactly with what they need to know about that person's
16 status.

17 Your Honor, that concludes my portion of this,
18 and then Lynn will go over where we are on claims.

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

20 **MS. SNAPKA:** Your Honor, I would ask for permission
21 to address the Court. I didn't want to interrupt Mr. Brown.

22 **THE COURT:** Okay.

23 **MS. SNAPKA:** Your Honor, with regard to the
24 extraordinary injury fund, this Court has crystallized what I
25 think is the essential part of the extraordinary injury fund,

1 which is for truly, truly extraordinary and not adequately
2 compensated cases under the program. However, I would ask the
3 Court, in reviewing the guidelines that were sent out, there is
4 a provision in there that I believe needs clarification and/or
5 modification.

6 Under I(C)(5)(c) it talks about the EI payment
7 determinations of the claims administrator shall be made
8 according to guidelines to be established by the claims
9 administrator in consultation with Merck and the negotiating
10 plaintiff committee and shall be final, binding, and
11 nonappealable.

12 I called BrownGreer and, as always, received a
13 call back almost immediately to discuss the nonappealable
14 nature of it. It is my understanding that once the claim is
15 submitted, then the claims administrator makes a determination
16 in consultation with Merck and the NPC, and under the terms
17 stated that's it.

18 Mr. Brown indicated that there was some
19 discussion about maybe a rereview by the same people. However,
20 I would urge the Court that given the extraordinary nature of
21 these claims, coupled with the Settlement Program's review
22 processes in other areas, certainly for a truly extraordinary
23 claim we would be able to set up some sort of review by special
24 master instead of just the NPC and Merck and the claims
25 administrator. If we are able to do that for the attorneys fee

1 issue, surely we are able to do that for the clients that we
2 represent, to have some measure of review after a determination
3 is made.

4 I wanted to bring this to the Court's attention,
5 and I would be happy to visit with the Court later or the NPC,
6 but this came up and I asked Mr. Brown for clarification. I
7 wanted to bring this to the Court's attention.

8 **THE COURT:** Thank you very much. Any comments from
9 anybody about that to flesh it out for me? Any reason not to
10 do that?

11 **MR. HERMAN:** May it please the Court. I think if
12 Ms. Snapka would address a letter to both Merck and the
13 negotiating committee, we can meet on it and attempt to resolve
14 it.

15 **THE COURT:** Well, let's dispense with the letter. I
16 will take it as a request. I would like Orran and the
17 committee to get together, and let's see what we can do to at
18 least deal with that issue.

19 **MS. SNAPKA:** I'll be happy to meet with them,
20 Your Honor.

21 **THE COURT:** Fine. Let me know by next time what's
22 happened.

23 **MS. SNAPKA:** Yes, Your Honor.

24 **MS. GREER:** Good morning, Your Honor. Lynn Greer
25 from BrownGreer. I today would like to give the Court an

1 overview of where we are in the progress on claims review and
2 payment and, also, towards the end of my presentation alert the
3 Court and those in the courtroom and on the phone to some very
4 significant changes to some of our claims policies that will
5 affect deadline extensions, going forward, to claims deadlines.

6 This first slide shows -- and it has not
7 differed much since last month. It shows that there are
8 approximately 48,520 individuals who have filed claims forms
9 with BrownGreer. 62 percent are MI claims; 37 percent IS
10 claims, stroke claims. We still have about 1 percent where we
11 have a claims form but we don't know what injury the claimant
12 is alleging. We have embarked on a campaign this week, with
13 the assistance of the NPC, to contact these firms by phone to
14 try to work with them to let us know what injury it is that
15 they are claiming because these claims cannot even enter our
16 queue for being able to review them unless we know what injury
17 it is that we are looking for.

18 Your Honor, we are all focused on the heart
19 attack claims to be able to reach our goal of a final payment
20 in September of this year. Accordingly, you will see a lot of
21 progress in the gates queue and also with the gate committee
22 that I will talk about also towards the end of the
23 presentation.

24 The first row here shows that there are just a
25 little over 2,000 claims that still await our first review for

1 gates review. This has dropped about 5,400 since we were here
2 back in February. That number is actually a little misleading
3 because other claims have come into the queue. So we are
4 really working that down and have just over 2,000 heart attack
5 claims to touch for the first time.

6 Row 2 shows that there are about 4,000 that we
7 have reviewed once. As I explained to the Court before, we put
8 all of these through a second review because this threshold
9 question of eligibility is so very important. We have about
10 4,000 pending now to be able to do that second review on. When
11 we look at those, if they pass, we immediately review those for
12 points. If they fail, we issue notices to the claimants that
13 they have failed and give the claimants an opportunity to
14 submit documentation.

15 To date, there are 12,668 claims that are
16 eligible for points review, and these have passed either the
17 claims administrator or they have passed at the hands of the
18 gate committee or by Merck, who has pushed some into the
19 program. We have issued, though, 8,902 notices of
20 ineligibility or gate failure. 2,000 claims are currently with
21 the gate committee with no vote yet, although they are
22 considering these at a very aggressive pace on a weekly basis.

23 We issued the March payment on Monday of this
24 week. Through March we have paid 8,275 MI claims. We have
25 gone to a schedule, Your Honor, of closing out the time for

1 when firms can accept notice of points award and be put on the
2 next payment list. That is now the end of every month. So
3 this coming Monday, which is March 30, will be the window that
4 closes for claims to be paid in April.

5 Right now there are 2,423 claims that could
6 possibly be paid in April. Almost 1,200 of those have already
7 accepted, so we know for sure they will be paid. There are
8 another 772 that could still come in and decide to accept
9 between now and Monday, so those could also be paid. There are
10 463 who are currently on appeal, and those are unlikely to be
11 paid in April because we review those, and the special reviews
12 obviously cannot be paid until the end of the program.

13 Row 3 shows that there are 369 claims that are
14 about ready to have notice of points awards issued. These are
15 those that we have completed our final step. There are some
16 for administrative reasons why we cannot issue a notice. This
17 sometimes has to do with lien data that we need. In the past
18 it has to do with some enrollment deficiencies, although that
19 is less and less of an issue, as Orran discussed before.

20 Row 4, there are 121 claims that we still need
21 to put through our final QC review, and as soon as we do that
22 notices of points awards will issue. There are 671,
23 Your Honor, where we have reached a point where we cannot go
24 forward on our points review because they are incomplete.
25 These are claims obviously that were complete enough to get

1 through gates, but as we get into points they're missing
2 follow-up records. They're missing some sort of proof-of-use
3 records that will allow us to either assess injury level or
4 risk factors.

5 So these have stopped in our process. We have
6 issued notices of incomplete claims packages to these
7 individuals, and I will discuss later what our plan is for
8 being able to deal with these types of claims to ensure our
9 final payment.

10 There are 203 claims where we have begun points
11 review and another -- you can't see this on the screen, but
12 another 386 that are in the queue waiting for us to be able to
13 review.

14 Each month for the past few months, Your Honor,
15 we have tried to project our pace and what we need to be doing
16 collectively to be able to get to a final payment in September.
17 This slide is this month's version of this, which incorporates
18 payments we have now made. What it shows as you go down is
19 that we -- Row 8 is significant. We have been experiencing up
20 until recently a 10 percent appeal rate from a notice of points
21 awards. That has now jumped to 15 percent.

22 We are watching that very carefully. Obviously,
23 the more claims that appeal, the longer it takes to resolve
24 those, and so we are watching those to make sure that that in
25 and of itself does not cause a delay that we can't handle as we

1 approach September.

2 We need to be on pace to bring 2,514 claims to
3 points award monthly. We are confident that we will do that.
4 We are running just slightly under that now, but we feel
5 confident that this is an average that we need to meet over the
6 next few months and we are on track to do that.

7 **THE COURT:** It's important when you see something
8 like that, a blip from 10 to 15 percent, that you alert the
9 special masters to that blip.

10 **MS. GREER:** Yes, Your Honor.

11 **THE COURT:** They are the ones that will in the future
12 be dealing with it. So if they can get ready for it, they can
13 deal with it more easily.

14 **MS. GREER:** Yes, Your Honor. I'm not going to read
15 these average points this month. What this slide shows -- and
16 this is Slide 18 for those who will later view this on the Web
17 site. This just gives what the average points value is for
18 each level on the MI grid and what the special marker
19 percentage is currently running. We tracked this and hope that
20 it's useful to firms in dealing with the notice of points
21 awards that they get to see where their claim falls along this
22 average.

23 Your Honor, this slide updates the Court on the
24 payments and the potential payments that we have made or hope
25 to make in April. As I mentioned before, we have paid 8,275 MI

1 claimants for a total of \$712,944,809, pending April payments
2 of 1,188, potential April payments of another 772. So we could
3 pay almost 2,000 claims in April, which would bring our total
4 payments through April up to over 10,000.

5 This slide describes the progress on the stroke
6 claims. We have been prioritizing the heart attack claims.
7 That does not mean that we have not continued our efforts on
8 the stroke side. We have not lost sight, obviously, of the
9 importance of continuing to review those aggressively.

10 We are now down to 4,073 claims that are in the
11 queue for gates review for stroke that we have not reviewed.
12 We have 7,000 that we have reviewed once that are pending our
13 second review. We made progress on 800 of those claims. To
14 date, almost 4,000 have gotten to the point where they are
15 eligible for a points review that they have passed and are
16 eligible for, and a lot of those have notices issued. Some of
17 those have also been paid. We have issued 1,316 notices of
18 ineligibility, and the gate committee currently has about 1,243
19 claims with no decision yet that are on the portal or before
20 the gate committee.

21 The points review status for stroke claims, we
22 have paid 482 stroke claims to date. Again, Your Honor, these
23 payments did not begin until February. We have paid 482. For
24 April we could possibly pay another 500.

25 Going down -- and I won't read each row -- this

1 also shows the progress we are making with our points reviews
2 on strokes. The biggest group here obviously are those that
3 are pending our QC. 869 we have reviewed for points, and we
4 are reviewing those once again.

5 As with the MI claims, Your Honor, in the
6 beginning of them we start issuing points awards and payments
7 on the stroke claims. We are taking very careful looks at
8 those. The stroke claims are a little bit harder to evaluate
9 than the heart attacks. They have some more subjective
10 components. So we are taking every effort in the beginning to
11 obviously get it right and to keep that appeal rate down.

12 A summary in terms of dollars, we have paid
13 \$14,214,878 to stroke claimants so far. Again, with the
14 pending April payments, we could almost reach 1,000 IS claims
15 paid through April.

16 Your Honor, over the past few months, we have
17 discussed in court potential bottlenecks to the process and to
18 our ability to pay in September. Questions have been asked
19 about the gate committee's progress, and we created this slide
20 to show the Court and those in the courtroom the tremendous
21 progress the gate committee has made.

22 To date, the gate committee has decided over
23 11,000 cases. Right now -- and these were figures that were
24 run last night -- there are 2,820 claims pending before the
25 gate committee.

1 The next row shows that only 337 have been with
2 the gate committee for more than 60 days. A big percentage of
3 those are stroke claims because, consistent with what we are
4 doing, the gate committee, while they are reviewing stroke
5 claims aggressively, they are prioritizing the heart attack
6 claims. You'll see, Your Honor, that almost 1,200 have been
7 with the gate committee less than a week. The average votes
8 that the gate committee is conducting, they are running about
9 1,200 a week, which is tremendous, significant progress by the
10 gates committee.

11 The other big area of potential bottleneck is
12 within the claims process itself there are several junctures
13 and decisions that require the firms to decide quickly and to
14 provide documentation quickly. We have identified this as an
15 area where if we do not enforce the deadline the Settlement
16 Agreement prescribes and that we internally, in using our
17 discretion, prescribe, we are in great jeopardy of not being
18 able to issue the payments in September.

19 This is going to be a sea change for many firms
20 who have gotten very accustomed to asking for more time to
21 submit records, to make a decision about whether to accept a
22 notice of points award, but I think I speak for the parties
23 when I say we are all very, very committed to making sure these
24 deadlines stay firm. So what I would like to do is walk the
25 Court through what these decisions are.

1 The first is when we issue a notice of
2 ineligibility, the firm to date has had 14 days to give us
3 additional documentation. What they can do, though, is they
4 can ask for more time, and almost 30 percent of the claimants
5 who have received a gate failure notice have asked for more
6 time. That's about 3,500 claims. Of those, about 1,200 have
7 asked for even more time. So we have been in situations where
8 firms have asked for 120 additional days, or four months, to
9 submit records that everyone knew starting on 11-9-07 they
10 needed to submit.

11 It's important to remember against the backdrop
12 for all of this that the initial claims package deadline was
13 July 1 of last year, the final claims package deadline was
14 December 30 of last year, so by definition we are at a point
15 now where these records should have been before us for months.

16 So what we have done internally and what we will
17 do starting on April 1 is rather than give people 14 days to
18 submit documents or to make a decision about whether just to go
19 ahead and send their claim to the gate committee, we are
20 extending that to 21 days for everybody. So firms who get a
21 notice of ineligibility have 21 days to submit records, and
22 that is it. There will be no further extensions. If firms
23 cannot give us these documents within 21 days, those documents
24 cannot be considered by the claims administrator, by the gate
25 committee, by Merck, or by the special master.

1 **THE COURT:** Let's have the committee prepare some
2 notice for me to post on my Web site because the Court is going
3 to have to get involved in this. If I don't get involved in it
4 and I don't take some action on those claims, then those claims
5 are going to retard the progress of the whole process because
6 the people are not going to be able to get paid, the people who
7 have done timely what they were supposed to do, and that's not
8 fair to them. Give me something that you're comfortable with
9 and I will look it over. If I'm satisfied with it, I will put
10 it on the Web site.

11 **MS. GREER:** Your Honor, the second notice that we are
12 enforcing the deadline for is when we get to the point in the
13 points review process where we have enough to review it for
14 eligibility, obviously, and we have enough to glean something
15 about the injury level, but we cannot do a full points review
16 on the claim, we will issue and have issued a notice of
17 incomplete claims package.

18 Firms will have 30 days from the date that the
19 notice is posted on the secure portal to supply the missing
20 information. At that point, again, no extensions will be
21 granted. Firms, if they pass the 30 days and they have not
22 responded or they come back to us and say, "These are all the
23 records I have. The records you're looking for simply don't
24 exist," they have either been destroyed or the patient never
25 went to see a cardiologist in follow-up, then we will issue a

1 final notice of incomplete claims package.

2 That notice will give the claimant two options.
3 The first is to acknowledge and to go down the road of a
4 nonsubmitting program claimant because by definition that is
5 what they are. They have not complied with Section 1.3 of the
6 Settlement Agreement.

7 The other option the claimant will have is to
8 elect to have us continue with our review and do the best we
9 can to assess injury level, to assess risk factors using the
10 documents we have, and also to apply some sort of standard
11 deduction, average deduction that we will design to make sure
12 that these folks do not get better treatment or do not benefit
13 from their lack of records vis-à-vis those who submitted claims
14 packages.

15 The details of that are still to be worked out,
16 but the option to that, the only alternative to that is to be a
17 nonsubmitting program claimant. The goal of that will be to
18 permit us to continue to review these claims and to get points
19 issued on claims that are technically incomplete.

20 The third row describes the decision that a firm
21 has when they get a notice of points award. They have 15
22 days -- and this is a Settlement Agreement deadline. They have
23 15 days to decide whether to accept or appeal it. That is a
24 deadline that many people have asked to extend. We have
25 actually had firms, once the 15 days passes, come back and say,

1 "I didn't mean to accept it. I meant to appeal it."

2 The message here is that you have 15 days to
3 decide and firms need to communicate with their clients early,
4 upon the receipt of a notice of points award, to find out what
5 the claimant intends to do. After the 15 days, if they have
6 not notified us of an intent to appeal the claim, the notice of
7 points award is deemed accepted and it goes on the next payment
8 list.

9 The fourth row is there are a lot of claimants
10 who wish to appeal, that they wish to give us additional
11 documentation, and that's fine because a lot of times the
12 notice of points award will show them something that they had
13 not focused on. If a firm wants to submit additional
14 documentation on appeal, they will have 30 days to do so from
15 the date the notice of points award is posted. No extensions
16 will be granted to that. If documentation does not come in
17 within 30 days from the posting of the notice, we will not
18 consider it and the special master will not be able to consider
19 it.

20 Finally, after we review a claim on appeal, we
21 do a first review, as the claims administrator, on any appeal
22 that's filed and we issue a postappeal notice of points award.
23 Again, a firm has 15 days to decide whether to go forward to
24 the special master or whether to accept the claim, and no
25 extensions will be granted to that 15-day period as well.

1 The consequences for failing to meet these
2 deadlines I've discussed briefly as I discussed what the time
3 periods are. If a firm does not submit documentation within 21
4 days after a gate failure notice, the claim will automatically
5 go to the gate committee and the late documents will not be
6 considered further in the process.

7 A firm who does not respond within 30 days to a
8 notice of incomplete claims package either becomes a
9 nonsubmitting program claimant or can elect the points review
10 with conditions. If someone does not decide within 15 days to
11 accept or appeal a notice of points award, we will deem that
12 notice of points award accepted. If a firm does not accept
13 documentation for appeal within 30 days, those documents will
14 not be considered. If a firm does not decide within 15 days of
15 our appeal notice of points award whether to accept it or go
16 further with the special master, that award will be deemed
17 accepted.

18 So important reminders to firms: They have to
19 check the portals daily. These notices get posted daily. All
20 of these deadlines run from the date the notice is posted on
21 the portal. We still hear too often of firms who never check,
22 or they let weeks go by and they haven't checked, and then the
23 14 days or the 21 days has run. The message here is that we
24 can't go and undo that anymore.

25 The second message here is that firms who know

1 they are still missing documentation and claimants who know
2 they are still missing documentation, they have got to gather
3 it now. We are not asking for anything new that has not been
4 part of the Settlement Agreement from the beginning.

5 Obviously, if on appeal we find a new risk factor and the firm
6 has never had an opportunity to submit documents to that, we
7 are going to give people a chance to submit documentation upon
8 appeal when we find something new for the first time. Other
9 than that, nothing is new. Nothing should be a surprise at
10 this point.

11 The other reminder is for firms to contact their
12 clients as soon as a notice of appeal is issued. We
13 understand -- and especially with the summer coming up and
14 vacation schedules -- a lot of times it is difficult to reach a
15 client in 15 days and to get a decision. But if firms start on
16 Day 1 or Day 2, our hope is that they will be able to get the
17 client's intention and to know whether to appeal or whether to
18 accept. If there is any question in a firm's mind, they should
19 appeal. They can always withdraw that appeal. If there is any
20 question on Day 14 about what their client wants them to do,
21 they should note an appeal.

22 No extensions will be granted. There is an
23 existing CAP, Your Honor, that was implemented. CAP 2008-3 was
24 implemented mostly to deal with deficient enrollment documents.
25 This is what has given rise to extension requests in the claims

1 process. We are revising that CAP, with the agreement of the
2 parties, to make it inapplicable to these claims deadlines.

3 Finally, the obvious point is that we have made
4 a determination the volume of these deadline extensions that we
5 have experienced so far, if they were to continue, would
6 seriously jeopardize and inhibit our ability to make payments
7 in September.

8 **THE COURT:** We just can't do that. The attorneys
9 have to recognize that if they don't do it and the case is
10 either dismissed or their clients are not afforded what they
11 should be afforded, there's going to be some lawsuits against
12 the attorneys. We have given enough notice, and the Court will
13 make it the Court's notice. If they violate it, then they will
14 have their own insurance company to advise.

15 **MS. GREER:** Your Honor, at this point, too, if there
16 are firms who have questions about how to use their portal, how
17 to see a notice, we encourage them to call their CA contact at
18 BrownGreer. We are standing by to help any who are not
19 familiar with it or who do not understand the importance or
20 even where to see these notices, although most firms by this
21 point do know that. Thank you, Your Honor.

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

23 **MR. MARVIN:** Your Honor, if I may just briefly
24 address the six motions that Merck filed on the order to show
25 cause why the releases and stipulations have not been cured.

1 As Orran Brown indicated, more than 45,000 have
2 complied, but we are down to now about 2,000, including those
3 who have estate issues. As to those 2,000, we have moved for
4 the order to show cause why those have not been cured.

5 All that needs to be done is to go ahead and fix
6 the cure. In some instances it's getting the right signature.
7 In other instances it's getting a complete signature. All that
8 needs to be done is to submit the proper documentation to
9 BrownGreer. BrownGreer will then notify us, and then we will
10 take the name off the order to show cause and they need not
11 appear. As I understand, the Court has set April 15 for that
12 appearance.

13 **THE COURT:** Yes.

14 **MR. MARVIN:** If that's not done by April 15 and there
15 is an order to show cause and there is not good reason, we will
16 have to ask for additional relief. Right now, all we have
17 asked is that they show cause why they haven't complied; but if
18 they haven't complied, then I will have to ask for additional
19 relief.

20 **THE COURT:** Yes. Including dismissal of the case.

21 We have gone through the Settlement Agreement
22 and registration and enrollment of claims. Anything on the
23 lien administrator?

24 **MR. HERMAN:** Your Honor, at page 2 of the report, I
25 just want to indicate that we have not had any additional

1 problems with the medical record gathering. Also, U.S. Bank
2 requested an amendment to the Qualified Settlement Fund Escrow
3 Agreement and we, with Merck, have agreed to such. It's not a
4 problem.

5 Then at the top of page 3, Your Honor, I
6 understand that Ms. Oldfather has filed a motion or a pleading
7 with respect to the joint motion to lift the Pretrial Order on
8 discovery and may be participating by phone.

9 **THE COURT:** Right. I think she is.

10 Ms. Oldfather, after the conference here today,
11 I would like to be able to call you, with defense counsel and
12 members of the committee, and set a date for an immediate
13 status conference. Hopefully, in the next week or 10 days, I
14 will meet with you as well as all of the other lawyers who are
15 involved. I understand there are not many of them, maybe two
16 or three in addition to yourself, and I would like to then
17 establish some scheduling order to move these cases on to
18 trial.

19 **MR. HERMAN:** At page 4, the lien administrator,
20 Mr. Wolf, is here to make a report. I believe Mr. Seeger also
21 has some comments as well.

22 **MR. WOLF:** Good morning, Your Honor. I am Jason
23 Wolf, director of operations, The Garretson Firm, and I'm here
24 to report as the lien resolution administrator to the Vioxx
25 program.

1 I will provide a brief report on the lien
2 resolution administrator work as it relates to the
3 consideration and satisfaction of the federal, state, and
4 military obligations on behalf of the over 78 percent of
5 claimants entitled to the programs. In addition, I will cover
6 the status of the third-party payor lien resolution program.

7 As for Medicare, The Garretson Firm is actively
8 applying the global resolution categories and the associated
9 reimbursement amounts to all entitled claimants as they're
10 approved and receive notice of points award letters.

11 In one of Lynn's slides, it did note PAN letters
12 that cannot be issued. One of the issues would be a lien
13 resolution administrator hold where there's a discrepancy on
14 our end to ensure that the agencies are being properly
15 considered. The primary reason for a lien resolution
16 administrator hold at this point of the program was the
17 introduction of the ischemic stroke category.

18 We did have global resolution categories in
19 place prior to the launch of ischemic stroke, but we have found
20 one small subsection of ischemic stroke, low-value ischemic
21 stroke claimants that fall in between two categories. We
22 expect to have that fixed prior to the next hearing. We are
23 working with CMS to address that.

24 As for the Medicaid programs, all Medicaid
25 programs are actively engaged. In response to your request

1 last hearing to know of any agencies that are delinquent and
2 considered nonresponsive, we are pleased to report that all
3 states and territories and their Medicaid agencies, including
4 the five that we were considering somewhat delinquent this time
5 last month, are actively transferring claims data and/or have
6 in place to have us the necessary claims data within the next
7 month.

8 The only agency that we are somewhat struggling
9 with, due to an unusual turnover rate, is the Puerto Rico
10 Medicaid agency, but we have established what we think is a
11 sound contact there and have plans in place to get the claims
12 data. This speaks specifically to the claims data. We have
13 all programs secured to ensure that holdbacks and proper
14 resolution are against those that were exposed as entitled.

15 For all the Medicaid programs, we have secured
16 over 12,000 paid claims. As has been discussed in the past,
17 the current protocol is to audit a claim as an eligible
18 claimant processes through and is approved by BrownGreer for an
19 injured category.

20 As it relates to the third-party payor program,
21 as the Court is aware, this program was launched on January 29.
22 E-mails were sent to all primary counsel introducing the
23 program with an explanation of that program and instructions to
24 send to their claimants, at their discretion, the claimant
25 education materials that were crafted specifically for that

1 audience.

2 Those materials explain the terms and the
3 conditions of the program, and the education materials
4 reiterated that some claimants may receive health-care coverage
5 from insurance sources other than government programs. The
6 sources could include health-care programs by a claimant
7 employer or a health insurance policy, disability insurance,
8 Medigap and/or Medicare or Medicaid replacement supplemental --

9 **THE COURT:** Do you have any feeling for how many?
10 What's the percentage of those that you have had so far, third
11 parties?

12 **MR. WOLF:** Third parties?

13 **THE COURT:** Nongovernmental liens.

14 **MR. WOLF:** Yes. There is a current rate of federal,
15 state, or military client participation of 78.75 percent
16 entitled to that. The balance were either insured by a private
17 plan and/or uninsured and had self-pay rates. The notation in
18 there, in the education materials, was even if someone was on
19 Medicare, they might have had a supplemental plan and,
20 therefore, might also have had a private payor obligation as
21 well. We do have statistics on that population as well.

22 As far as plan participation, we sent out with
23 the notice of third-party payor plan a list of participating
24 plans that went out with the notice and also went out with a
25 supplemental notice. There was an e-mail blast, as you're

1 aware, ten days prior to the March 20 deadline. That went out
2 with a new supplemental list of additional plans that have
3 agreed to participate since the launch of the plan. That was
4 up to 70 additional plans agreeing to the program and the terms
5 of the program. So that was favorable news to introduce to the
6 primary counsel and their claimants.

7 As for eligible claimant participation, the
8 enrollment has been favorable. The enrollment rate and the
9 communication that we have had with primary counsel is evidence
10 that it has been widely supported by primary counsel. The
11 enrollment rate, again, has been favorable and also suggests a
12 strong participation and receptiveness by the claimants
13 themselves.

14 In the event that the program moves forward, we
15 feel that an extension of the program, in addition to
16 supplemental information to some targeted groups, can further
17 enhance the participation rate in the third-party payor
18 program.

19 **THE COURT:** What's the percentage that you need to
20 make the program a go? What is that?

21 **MR. SEEGER:** Your Honor, the way the agreement is
22 defined right now, it's 90 percent of those eligible.

23 **THE COURT:** Eligible. In this particular matter,
24 because of the census, it's older people by and large. You
25 have a lot of governmental liens, so you may not have as many

1 nongovernmental liens. Is that what you're finding?

2 **MR. SEEGER:** That's what we think. Tom, who is
3 representing the other side of this, I think needs to be
4 satisfied that our numbers are correct. The way it's looking
5 to us, that's correct.

6 **THE COURT:** Tom, what's your view of this?

7 **MR. SOBEL:** Thank you, Your Honor.

8 **THE COURT:** Give us your name.

9 **MR. SOBEL:** Tom Sobel for the third-party payor group
10 in connection with the reimbursement program. I think it's the
11 classic situation where we are very happy -- I think everybody
12 should be very happy about where we are in this stage. There's
13 been a huge amount of effort, obviously, as The Garretson Firm
14 has indicated and as Mr. Seeger and the rest of the PSC have
15 done. There's been enormous progress in a very novel program.
16 That's the good part of it.

17 There are some issues that need to be grappled
18 with, and let me explain what I think that is. Of the
19 approximate 48,000 overall population of participants in the
20 program, to date approximately 17,000 persons have indicated
21 participation in the private lien program. Of that 17,000, we
22 don't know yet, at least from the third-party payor
23 perspective -- that 17,000, we don't know if that is purely
24 people who only have private liens on the one hand or, on the
25 other hand, is a sampling of the population as a whole on the

1 other --

2 **THE COURT:** Right.

3 **MR. SOBEL:** -- number one. Second, as to the 30,000
4 that are left, we similarly have an issue, which is are those
5 only people who don't have any kind of private lien or are they
6 the opposite.

7 Now, we do know that this population of
8 participants appears to have a higher participation in federal
9 and state health-care programs than is normal in the population
10 as a whole.

11 **THE COURT:** Sure. Because it's the purpose of the
12 drug.

13 **MR. SOBEL:** For any myriad of things. So we know
14 it's a higher population. That's helpful, number one.

15 The second thing we know, on the other hand, is
16 that when people participate in Medicare, Medicare does not pay
17 everything. That is very common for people who have a MediGap
18 policy or sometimes a shortfall issue. Sometimes that's paid
19 by Medicaid, but about half the time or more often it's paid
20 also by private insurance.

21 To make a long story short, I think what the
22 parties are going to try to do -- and I would like to talk a
23 little bit further about the details of this -- is for us to
24 learn more information about the population of participants we
25 have right now and maybe try to do some kind of an audit or

1 census of the participants who have not yet participated
2 because everybody wants this program to be successful.

3 The one thing we don't want to have in this is
4 thousands of eligible claimants not knowing that they have the
5 opportunity to participate in this, not appreciating that they
6 might have a piece of their insurance that was paid privately
7 and have that as a legacy issue that has to be addressed after
8 this MDL.

9 So there are other more draconian ways to
10 address this issue, but I think that the parties have been
11 trying to say, "No, let's not go there yet. Let's look at some
12 things to understand a little bit more first what we have.

13 Is that fair to say?

14 **MR. SEEGER:** Yes. I think Tom is correct. It's a
15 question of I think we have a better sense of what the data
16 looks like and the information than you do standing here today,
17 and we have to work together to get them comfortable. Speaking
18 with Jason and keeping in touch as I have -- Jason can address
19 this -- we are pretty confident that the group we have, the
20 17,000, includes both the purely private and the combination of
21 government/private.

22 In addition to that, one of the things we are
23 going to discuss, Judge, is maybe doing another mailing to say
24 to people even if you have gotten Medicaid and Medicare, for
25 people listening and reading the transcript, if they haven't

1 covered all your questions -- it could be a private wanting to
2 enroll -- let us take a look at it.

3 **THE COURT:** As I said before, this is an opportunity
4 for both sides because with the governmental liens we know that
5 the claimants have to pay it back. It's a lien. They have to
6 pay it back. So in a case of this sort, because of the
7 numbers, those liens can be discounted because the
8 transactional cost is down, it's a one-stop-shopping kind of
9 thing, and so you are taking advantage of that.

10 In the nongovernmental liens, there's also not
11 only a moral but a legal duty to pay them back, so those
12 individuals can and will be sued to get the money back.
13 Because of the numbers, the plaintiffs' committee has been able
14 to negotiate with the third-party insurers a very good deal so
15 that the amounts that they will be paying back are
16 substantially less than they would have to pay back in the
17 normal circumstance. From the insurer's standpoint, it's a
18 good deal, too, because their transactional cost is down and
19 their opportunities for getting them is better.

20 So it's a win/win situation. A person has to
21 make their own decision and a lawyer has to make his or her own
22 decision, but this is an opportunity that you ought to look at.
23 It seems to me to be one that is favorable to both sides.

24 **MR. WOLF:** Your Honor, to Chris' point, our
25 experience would suggest that supplemental information to

1 target groups, in the event that this moves forward, would be
2 very well received and assist in stimulating participation.
3 Specifically, because when it was first introduced, it was
4 introduced that, you know, once the deadline passes we'll
5 determine if it goes, it's a green light/red light, and there
6 was a limited number of plans. There's many more plans, and
7 introducing this plan is going forward and "Here's an
8 additional chance for you to recover" I think, again, would be
9 well received. Our experience would suggest that.

10 One of the things that The Garretson Firm did
11 put together was a call center to ensure that primary counsel
12 and all claimants did have an opportunity to make an informed
13 decision. We have logged over 4,000 calls to date in that call
14 center, and the call center remains open to take new calls to
15 educate anyone relative to the terms of the program.

16 So in sum, Your Honor, I'm pleased to report the
17 Medicare/Medicaid compliance program is progressing efficiently
18 and effectively. In addition, third-party payor lien
19 resolution program results have been positive to date.

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

21 The next item is the special master and deputy
22 special masters' report.

23 **THE SPECIAL MASTER:** Your Honor, as of today there
24 have been 234 appeals that have been filed. They have been 166
25 decided. I would like to make note of the fact that that would

1 be 68 undecided, but I was just informed this morning -- I know
2 these things are being logged as we speak, and that number
3 probably is more like a 50 number as opposed to the 68.

4 It's proceeding very rapidly. We have a
5 conference every two weeks, Your Honor, with the special master
6 and the deputy special master, and what we do at that
7 conference is take random cases from each special master and
8 run through the cases. The object of that exercise is to make
9 sure that, for the integrity of the program, there is
10 uniformity and a common understanding of what the standards are
11 being applied across the board so that we have a left-hand and
12 a right-hand approach. That's worked very well.

13 We also have kept abreast with BrownGreer. We
14 are aware of the amount of appeals bump that Lynn referred to,
15 that 15 percent bump. I have discussed that with the special
16 masters. We have made arrangements and are making arrangements
17 to take care of any increase so they will not affect the flow
18 of this, and I think this reflects what we have done thus far.

19 We have also made internal arrangements,
20 Your Honor, with the deputy special masters. If there's any
21 particular problem that comes up with regard to any one person,
22 we have instituted a mechanism to flow, for that given period
23 of time, those cases so we can continue to get the cases out on
24 a rapid process.

25 I will note, though, Your Honor -- and I do want

1 this abundantly clear for the record -- in a lot of these cases
2 especially -- I say "especially." It's true in all cases, but
3 certainly true in the review of these points awards, that it
4 involves a very meticulous look at a lot of medical documents,
5 and we are doing that. We have reiterated that amongst the
6 three of us.

7 It takes a considerable amount of time because
8 these records come in volumes and it's not a single thing. I
9 might add that that review is a very important part of this
10 whole aspect of this program. I know it's expected by us.
11 It's expected by the claimants. It's expected by the
12 attorneys. I want to give the Court assurance because I have
13 confirmed that on each and every call that we have made that
14 that is, in fact, the process that is taking place. I know
15 that from personal experience in the cases I have reviewed.

16 So an overall report, Your Honor, is we are on
17 target. We are doing, I think, what's been assigned to us by
18 the Court. We are aware of the various issues. Another issue
19 came up this morning that's been addressed. We are prepared to
20 deal with those issues. The flow is occurring as we thought it
21 would.

22 I might add one observation. Lynn talked about
23 what could happen to possibly delay the thing. From my
24 observation, we have seen this in some of the correspondence
25 that comes through the appeals, is this delay thing comes up

1 kind of in the mode of appeal.

2 From my perspective, Your Honor, I want the
3 Court to know I totally concur on your comments that there are
4 thousands and thousands and thousands of people who have
5 complied and are complying with the program, and it would not
6 be just or right for someone for whatever the reason --
7 whatever it is, a lack of attention -- to delay that process.
8 That's kind of how we are viewing this program. We are
9 affording as much due process as can be given to people, but
10 there's a flip side to due process. You don't want to
11 prejudice somebody who has done what should be done.

12 We have reviewed very carefully with BrownGreer
13 the various notices they have made. There's plenty notice in
14 this case what is required, when it's required, and when it has
15 to be done. That's substantially what the report is today.

16 **THE COURT:** Thanks very much.

17 **THE SPECIAL MASTER:** Thanks very much.

18 **THE COURT:** I've been particularly conscious of the
19 significance and importance of the procedure in this particular
20 Settlement Program. The program calls for administrative
21 review. After the administrative review, it goes through the
22 gates committee. The gates committee consists of both
23 plaintiff and defendant lawyers fully knowledgeable of the
24 terms of the settlement, and they look at it, and then finally
25 outside individuals. A highly experienced lawyer is our

1 special master, a former justice of the Supreme Court in
2 California is a deputy master, and a former district court
3 judge from New Jersey is another special master.

4 Not everybody is, obviously, going to get
5 through, but at least everyone ought to be satisfied that they
6 have had a number of look-sees at their particular case.
7 That's the best you can do in a case of this sort. I
8 appreciate all the work that you have done.

9 **THE SPECIAL MASTER:** And that's being afforded,
10 Your Honor. Thank you.

11 **THE COURT:** State court trial settings, anything?
12 Class actions?

13 **MR. HERMAN:** Yes, Your Honor. On February 2, 2009,
14 the Court granted a motion to dismiss without prejudice the
15 amended class action complaints -- personal injury, wrongful
16 death, and medical monitoring -- and I believe we await a final
17 order on that.

18 With respect to discovery directed to third
19 parties, the controversy between the PSC and ESI has been
20 resolved in terms of their outstanding bill. We have nothing
21 new to report on that.

22 Ms. Barrios is here with regard to the state
23 liaison.

24 **THE COURT:** Okay.

25 **MS. BARRIOS:** Thank you, Mr. Herman. It's nice to

1 have you back.

2 **MR. HERMAN:** Nice to be back. Thank you.

3 **MS. BARRIOS:** Good morning, Your Honor. Dawn Barrios
4 for the State Liaison Committee.

5 We have been plugging away on our remand
6 project, and I would like to give special recognition to my
7 assistant Dena Folts and to Bill Atkinson of BrownGreer. They
8 have worked tirelessly going through the list of plaintiffs
9 again and again and again to see if they're claimants in the
10 process. We hope to have some new numbers for you at our next
11 status conference. BrownGreer and my office are through the
12 state of Mississippi, but we had to stop there because we
13 didn't have any more data to go on.

14 We are providing everyone now with only one DVD,
15 which I'm very happy to also add. This DVD goes up to Transfer
16 Order 149. We are able now to highlight on the DVD those cases
17 which still have pending remands that could be alive. We feel
18 at the end of the day you will be down to less than 50 if we
19 take out the attorneys general and the third-party payor cases.

20 Your Honor, while I'm here I would also like to
21 report on the governmental action activity. We have been
22 having numerous discussions -- always weekly, sometimes every
23 other day -- with Merck and with the PSC on the issues. We
24 hope by next Friday, with regard to the discovery track for the
25 governmental action cases, we'll present you with an

1 agreed-upon discovery order.

2 **THE COURT:** That's fine.

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

4 **THE COURT:** How about the third-party payors?

5 **MR. SEEGER:** Your Honor, I'm going to bring up Jim
6 Dugan.

7 **THE COURT:** Jim, you have some input there?

8 **MR. DUGAN:** Yes, Your Honor. Thank you. Just to
9 report to you, since our March 5 status conference, Ms. Barrios
10 is correct we have been working with defense counsel and all
11 parties to get to Your Honor a proposed scheduling order, so we
12 are going to continue to work on that. By next Friday, we will
13 submit either a joint case management order or each side will
14 submit them to Your Honor.

15 The only other thing I would ask, Your Honor, to
16 keep the ball rolling here, is that you would set another
17 status conference for maybe April 10. From the plaintiffs'
18 perspective, we think these cases will be ready for trial in
19 November, and we would like to not wait a month before getting
20 to --

21 **THE COURT:** Sure. Do you have any problem with that?

22 **MR. BEISNER:** John Beisner for Merck. I think we
23 need to talk about a date for that. That probably won't work
24 for us, but I agree to having a status conference.

25 **THE COURT:** Let's get a date in the near future so

1 that we can deal with that. I am interested in some input from
2 you as to which case should go first and what scheduling order
3 that we need to do.

4 **MR. BEISNER:** The orders we are working on,
5 Your Honor, just to fill in a little bit, with respect to the
6 private TPP cases, we have taken the suggestion you made about
7 the trial selection process in the last hearing. What we are
8 working on is actually a schedule for getting everything done
9 leading up for them being ready for trial.

10 **THE COURT:** Great. Okay.

11 **MR. DUGAN:** Lastly, Your Honor, we have identified
12 ten third-party payor bellwether trials. We are going to have
13 some cases to try, Your Honor.

14 **THE COURT:** Thank you.

15 **MR. HERMAN:** Mr. Johnston is here, Your Honor, on the
16 *pro se* claimants.

17 **THE COURT:** Okay.

18 **MR. JOHNSTON:** Bob Johnston, curator for the *pro se*
19 plaintiffs.

20 As we have done each month, Judge, we have
21 provided the Court with the Curator Status Report 11. It
22 summarizes the basic year of communications that we have been
23 providing to the *pro se* plaintiffs.

24 Last month, as you know, we provided a mailing
25 to approximately 700 *pro se's* pertaining to the private lien

1 resolution program, its requirements, the deadline for
2 participation, the forms required, etc. As with all of our
3 communications, this has resulted in much communication back
4 from the *pro se's*.

5 Really, I'm not sure over the months that I have
6 been here for these statuses that I have indicated to you the
7 volume, but I want you to get the flavor of it. We are
8 averaging upwards of 150 to 200 communications a week back from
9 *pro se's*.

10 Claudia Santoyo, who is an associate attorney,
11 and Ira Rosenzweig, another associate attorney of mine, have
12 done an excellent job of communicating with them, assisting
13 them, working in liaison with BrownGreer, and the compliment is
14 well warranted.

15 What I just want you to understand is that we
16 have multiple questions that come up, and I feel that we have
17 accomplished an efficient, clear level of communication to
18 assist them. We feel good about it. As you know, we will
19 continue to do the best we can throughout the reminder of the
20 process.

21 **THE COURT:** Thank you very much. I know your office
22 has done an outstanding job. It's a very difficult task
23 because it's a wide variety of people and they are located in
24 all regions of the country, some of whom are living at the
25 expense of the government presently, and they have various

1 facilities available to them for communicating and researching
2 and they have questions. I'm sure you have been able to help
3 all people, including those individuals. It's hard sometimes
4 to deal with it, but you have been doing a good job and I
5 appreciate it.

6 **MR. JOHNSTON:** Well said. I couldn't say it better.
7 Thank you.

8 **THE COURT:** Next is PSC MDL trial package. Anything
9 on that?

10 **MR. HERMAN:** Yes, Your Honor. We have made a request
11 of DecisionQuest, through their counsel, to provide us with all
12 DecisionQuest work product so that it may be included in the
13 trial package. That will be the only addition once we receive
14 that material. Again, the trial package is available as well
15 as the depository. It will just take one call. That's all.

16 **THE COURT:** I've heard that before. Third-party
17 payor cases, anything that we haven't talked about? Foreign
18 individual cases?

19 **MR. MARVIN:** The only thing new there, Your Honor, is
20 that counsel for certain plaintiffs, who were subject to the
21 order of dismissal on the grounds of *forum non conveniens*, have
22 filed a notice of appeal. That's the only new item since the
23 last conference.

24 **THE COURT:** We talked about the third-party payors.

25 **MR. HERMAN:** Yes.

1 **THE COURT:** What's the next item, Russ?

2 **MR. HERMAN:** The Vioxx suit statistics, which I think
3 are reported at page 7.

4 **MR. MARVIN:** Those items are in the report,
5 Your Honor. I think the next item is Item XV, which is Merck's
6 motion on PTO 28, and then there are several other items with
7 respect to motions regarding other pretrial orders. As before,
8 Your Honor, would you like to take those after this?

9 **THE COURT:** We'll take those after this meeting.
10 DecisionQuest, anything on that?

11 **MR. HERMAN:** The matter has been resolved,
12 Your Honor, by stipulation and order. The PSC has been
13 assessed and first payment has been made.

14 **THE COURT:** Fee allocation committee, anything?

15 **MR. HERMAN:** We continue to meet. Your Honor has
16 directed us to meet with you again this afternoon.

17 **THE COURT:** The motion for reconsideration/revision
18 of the order capping contingent fees, that is going to be
19 argued April 7. I received a brief from the Tulane law clinic,
20 and that's on tap at that time.

21 **MR. HERMAN:** Your Honor, with the request of
22 Ms. Snapka for an additional review process, I'll speak with
23 Mr. Marvin and Mr. Juneau before we leave here today.
24 Hopefully, we can make a recommendation for Ms. Snapka to
25 consider and report to you on April 7 since she will be here.

1 **THE COURT:** What's the next item? PTO 29 and 31,
2 that goes to the motions which we will take in ten minutes.
3 Any other motions?

4 **MR. HERMAN:** The other motions that are pending, on
5 February 20 Stratton Faxon filed a motion to transfer cases not
6 participating in the global settlement. Ron Benjamin has filed
7 a motion for a suggestion of remand. Although the PSC has been
8 mentioned prominently in those papers, we choose not to reply
9 as it's not an issue that concerns us. It might be helpful,
10 Your Honor, if Mr. Stratton and Mr. Benjamin appeared before
11 Your Honor in connection with those matters.

12 **THE COURT:** I'm going to set a status conference for
13 those cases. What I'm interested in doing is to get a grouping
14 of those cases, get some census information on those cases, see
15 how many, what type of cases they are, and then what additional
16 discovery needs to be done on those particular cases.

17 I would like to see if I can get those cases
18 package ready before they are sent back to wherever they are
19 going to be sent back to so that the judge trying those cases
20 would simply get the package, the lawyers would know that this
21 is a full and complete package, and they would simply impanel a
22 jury and then start the trial.

23 I haven't made a decision yet as to whether I
24 will go back to those cases. I will certainly be talking to
25 the chief judges in those districts. I have also spoken with

1 the judge who is the intercircuit representative so that I have
2 an opportunity to go to those areas and try those particular
3 cases.

4 **MR. MARVIN:** Your Honor, we will be able to provide
5 the census information as to the remaining cases at the next
6 status conference.

7 **THE COURT:** I'll be setting a status conference for
8 those individuals. Anything further? Anything on anybody
9 else's agenda?

10 Our next meeting is on Wednesday, April 29. I
11 will meet again with the committees at 8:30, and I'll start
12 this meeting at 9:00. Thank you very much. Court will stand
13 in recess for ten minutes.

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

15 (WHEREUPON the Court took a brief recess.)

16 * * *

17 **CERTIFICATE**

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

24 s/ Toni Doyle Tusa
25 Toni Doyle Tusa, CCR, FCRR
Official Court Reporter