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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

* Docket MDL 1657-L
*
* March 25, 2008
*
* 9:00 a.m.

* * * * *

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

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PROCEEDINGS

(March 25, 2008)

1 **THE DEPUTY CLERK:** All rise.

2 **THE COURT:** Be seated, please. Good morning, ladies
3 and gentlemen.

4 **ALL LAWYERS:** Good morning, Your Honor.

5 **THE DEPUTY CLERK:** MDL 1657, in re: Vioxx.

6 **THE COURT:** Counsel, make their appearances.

7 **MR. HERMAN:** Good morning, Your Honor, Judge Fallon.
8 May it please the Court, Russ Herman for the plaintiffs.

9 **MR. MARVIN:** Douglas Marvin for Merck, Your Honor.

10 **THE COURT:** We're here today for our monthly status
11 conference. I met with the liaison committees in advance and
12 got from them a proposed agenda. I'll take it and I'll hear
13 from the parties as to the agenda items.

14 **MR. HERMAN:** Your Honor, all the orders regarding
15 settlement agreement are posted. If Your Honor pleases, we'd
16 like to move to registration, and Mr. Marvin will introduce
17 that subject, followed by Mr. Birchfield, and then followed by
18 BrownGreer.

19 **THE COURT:** That's Item II, registration of claims in
20 the settlement program. Mr. Marvin?

21 **MR. MARVIN:** Yes, Your Honor. Orran Brown and Lynn
22 Greer, the claims administrators, are here today and they're
23 prepared to report to the Court on the number of registrations,
24
25

1 as well as the number of enrollments in the resolution program.

2 For my part, I'll just go quickly to the bottom
3 line and advise the Court that more than 94 percent of the
4 claimants with eligible claims have enrolled in the program to
5 date. There are more claims that are being enrolled. More
6 claims are being received each day.

7 We know that there are pro se claimants who have
8 until March 31 to enroll in the program in order to qualify for
9 an interim payment. Mr. Johnston will be able to report on
10 that with respect to contacting those pro se claimants. So we
11 do expect more pro se claimants to be enrolling in the program.
12 There are also some firms that are still processing the claims,
13 those particularly with large inventories. We're continuing to
14 review those claims and enroll the claims in the program.

15 So we expect the numbers, more than 94 percent,
16 to rise even further. To accommodate those continuing to
17 enroll in the program, Merck has served notice, as provided in
18 the master settlement agreement, to extend the deadline for
19 enrollments in the program, and that deadline is now extended
20 to May 1. So the program is still open to those wishing to
21 enroll in the program.

22 Mr. Birchfield is going to address another issue
23 that we'd like to bring to the Court's attention with respect
24 to the program as well.

25 **THE COURT:** All right.

1 **MR. BIRCHFIELD:** Thank you, Your Honor. Andy
2 Birchfield on behalf of the plaintiffs steering committee.

3 I would like to discuss the issue of the timing
4 of motions to withdraw that are contemplated under the
5 settlement agreement; but before I do, I'd like to provide one
6 point of clarification that goes along with the extension of
7 the enrollment deadline date.

8 We have received a number of questions about the
9 timing of the final certification and when that should be filed
10 with BrownGreer. Now that the enrollment deadline date has
11 been extended to May 1st, that is the deadline for filing the
12 final certification.

13 There's been a very slight modification that has
14 been made to the final certification that will be posted on the
15 BrownGreer Web site, and an e-mail will be sent to all primary
16 counsel regarding that modification. But I would like to make
17 it clear that for those firms or those lawyers that have
18 already completed and executed their final certification, there
19 is no need to submit a new one.

20 The modification is made just to allow a firm
21 to -- if they have one or two clients where they are continuing
22 to pursue enrollment, that they can exercise or execute that
23 final certification. But the final certification now is due by
24 May 1st, and we'll get notice out through the BrownGreer e-mail
25 lists, as well as posting it on their Web site.

1 In conjunction with that, we have -- the
2 settlement agreement contemplates that in a limited number of
3 circumstances, lawyers, where they have exercised their
4 independent judgment, determined that it's in the best interest
5 of their clients to enroll in the program, they have
6 recommended that the clients enroll in the program, yet for
7 some reason, the clients have not yet enrolled, then the
8 lawyers are to move to withdraw, provided they can do so within
9 equitable parameters.

10 We've received some questions about timing:
11 When is the deadline for filing those motions to withdraw? We
12 have worked with Merck and we have extended that deadline to
13 June 1st. So lawyers now have until June 1st, under the
14 settlement agreement, to move to withdraw in the limited number
15 of circumstances where that will be necessary.

16 We know from the number of releases and the
17 number of enrollments that the percentage of folks that will --
18 or lawyers that will need to file motions to withdraw is very
19 small. But in those circumstances, they have until June 1st.

20 One of the reasons that we see the need for
21 extending that until June 1st is there are a small number of
22 cases where lawyers have yet to be able to locate or to
23 communicate with their clients. So we want to encourage
24 lawyers to continue making those efforts before they file their
25 motion to withdraw.

1 So another circumstance where lawyers would need
2 to withdraw is if there is a disagreement between the lawyer
3 and how they should proceed and the client. We would ask the
4 Court if you could provide some guidance, perhaps through a
5 case management order, about what you would expect to see in a
6 motion to withdraw and the circumstances where a lawyer, for
7 instance, has been unable to locate or communicate with their
8 client.

9 We could submit something to you, or ask you if
10 you would enter a case management order to provide that
11 direction.

12 **THE COURT:** Yes, they will fall into two groups. One
13 is the lost-client group. In the lost-client group, we're
14 going to need to be a little more specific on it, but we'll
15 need what the lawyer has done thus far, and I would expect him
16 or her to try to locate the person by writing a letter and then
17 post it in local newspapers, and give me proof that they have
18 done that, and then the last known address, and, hopefully, the
19 last known address of someone else, kin of some kind.

20 I'll be a little more specific in the case
21 management order. But then irreconcilable differences, I want
22 to make sure that the individual has an opportunity to get
23 other counsel, or make a decision as to whether or not to
24 proceed pro se, or to find other counsel. Again, we'll give
25 them enough time to do so, and then we'll set their case for

1 trial and proceed.

2 **MR. BIRCHFIELD:** Your Honor, in regards to providing
3 a declaration about the efforts that have been undertaken, a
4 lot of times that will involve a level of attorney-client
5 communication. We would ask the Court -- we think that that
6 could be addressed in one of two ways. It could be filed under
7 seal. But we think that would be an administrative burden on
8 the Clerk's Office and as well as on the court.

9 One possibility we would ask you to consider is
10 having the lawyer file the motion with the court, but the
11 declaration that's setting out the effort that had been
12 undertaken, the declaration that is submitted in support of
13 that motion be filed only with BrownGreer.

14 **THE COURT:** That's fine, as long as I have the
15 opportunity to see it.

16 **MR. BIRCHFIELD:** Yes, Your Honor, and BrownGreer
17 could make that available to the Court. So the bottom line is
18 that the deadline for filing the motions to withdraw, under the
19 settlement agreement, is now June 1st.

20 **THE COURT:** Okay.

21 **MR. BIRCHFIELD:** Your Honor, Jason Wolf is here with
22 the Garretson Law Group and just wanted me to let the Court
23 know that they are continuing to make progress in working with
24 the governmental lien issue; and then BrownGreer is here and
25 prepared to give a report of the numbers that have been

1 received.

2 **THE COURT:** All right.

3 **MR. BROWN:** Good morning, Your Honor. My name is
4 Orran Brown from BrownGreer in Richmond, and with me today is
5 Lynn Greer as well.

6 What we would like to do today, Your Honor, is
7 what we've done before is update the Court and the parties on
8 where we stand on the numbers, the materials, and the claimants
9 from whom we've received information so far; also talk about
10 other major activities that are underway right now at the
11 claims administrative level with the parties involved in this
12 settlement program; and then look ahead a little bit to the
13 next stages and what's on the horizon for all of us as we move
14 through the program.

15 First of all, let's talk about what we always
16 report, the people, the folks who submitted materials to
17 register for the program at the outset. The Court's order
18 required those submissions by January 15th; but the parties
19 agreed to still receive submissions of people signing up for
20 the census, as the Court referred to it, after January 15th.

21 This table shows us how many more claimants we
22 have heard from, and how many law firms, and unrepresented
23 claimants have presented registration materials to us. By the
24 15th of this year, we had heard from a total of 57,595 people.
25 In that process, the counsel were required to give us a

1 claimant spreadsheet that listed a lot of information about the
2 clients, including their injury assertions; and a number of
3 folks who signed up said that they had other injuries, which
4 are not eligible injuries under the settlement program.

5 So to give us an accurate picture of the census
6 results, we have to back out the folks who told us in the
7 spreadsheet that they were other injuries. So if we're looking
8 for a rough ball park of eligible claimants to participate in
9 the program, we had 49,121 by the 15th of January, another 760
10 since then, for a total audience of 49,881 people who said they
11 had -- who signed up and said they had injuries that may
12 qualify for the program.

13 That is not an exact number because the
14 information at this stage is still subject to the medical
15 records and everything else coming in. Some of the folks still
16 left the injury answer unanswered. So the number is, as best
17 we could tell today, 49,881 people who registered in the
18 program who may have an injury that qualifies, or at least they
19 have told us that they do.

20 **THE COURT:** You're counting the people who came in
21 after the deadline?

22 **MR. BROWN:** Yes, Your Honor. That total number of
23 49,000 includes the 760 potentially eligible people who have
24 come in since January 15th. We still receive these. We still
25 get some registration sign-ups here and there every day.

1 **THE COURT:** You're counting those?

2 **MR. BROWN:** Yes, Your Honor. This is through
3 yesterday.

4 **THE COURT:** I think that's appropriate. As I
5 remember the first census in Bethlehem, there were some people
6 who were late and they seem to have done okay and were counted.

7 **MR. BROWN:** We're following that model, Your Honor.
8 The parties have told us to count them and include them, and
9 the volume has dropped off considerably, obviously, because now
10 people have moved really into the enrollment stage.

11 As the parties announced the last time we were
12 here, they had agreed to a second amendment to the settlement
13 agreement that specified what counsel had to do to enlist their
14 clients in the program by February 29th, 2008, which was the
15 date to be considered for an interim payment under the
16 settlement program.

17 And that was the key to get their initial
18 information by the 29th to us, which was they could sign up for
19 us online through their Web site portal that we created for
20 each firm; they could send us the claimant's spreadsheet, which
21 is CS up here, with the question 35, which is, is the claimant
22 enrolled, answered yes; or they could just send us a claimant
23 list attached to an enrollment form. They also had to give us
24 an enrollment form by the 29th of February.

25 Now, coupled with that, they still have to send

1 us the other pieces of the enrollment package, which are the
2 release, the stipulation of dismissal if they have a pending
3 lawsuit, a medical authorization form, and then an employment
4 records authorization form if they're seek the extraordinary
5 injury payments.

6 So those are the pieces of the enrollment
7 package, and they were required to do the first part, the
8 informational part, the enrollment form by the 29th, and finish
9 out the rest of it by the 31st of March, which is soon, to be
10 in the running for consideration for an interim payment.

11 **THE COURT:** The 3,108, is the hard copy that the
12 others can be hard copied or online?

13 **MR. BROWN:** We're supposed to have a hard copy of
14 everything, Your Honor, except for the medical authorization
15 form and the employment authorization form, the parties have
16 told us we could accept electronic copies of those two
17 documents. Everything else is supposed to be sent to us in
18 hard copy form, post-marked or handed to an overnight carrier
19 by the 31st to meet that deadline.

20 So looking at our enrollment numbers, first
21 we're going to break them down into folks that we heard from by
22 the 29th, and then I'll show the Court who we've heard from
23 since the 29th, and then we'll show the totals.

24 This is the group that really was enrolling
25 within the meaning of the second amendment, by the 29th of

1 February, to be considered for an interim payment. As I
2 mentioned, they could come in online to us, which is the first
3 row, the 29,000 plus; they could send us their spreadsheet,
4 which a number of firms did that with their claimant's
5 spreadsheet, that's another 19,000 plus. We had a few folks
6 who just sent us a claimant list attached to an enrollment
7 form.

8 If you pull out the folks that were turned in by
9 more than one firm or turned in twice, we had a total number of
10 claimants from law firms, from primary counsel, of 49,135 of
11 people who enrolled by the 29th. By that time we'd already
12 heard from 233 of the pro se, unrepresented folks, which gave
13 us a total number of people who were enrolling by the 29th of
14 49,368.

15 But once again, to get a little bit better feel
16 for claimants who really may be eligible for the program, we
17 have to back out the claimants who told us in their spreadsheet
18 had an other injury, an ineligible injury. So we get to a
19 number of 45,804 claimants from primary counsel and pro se's
20 who enrolled by the 29th.

21 Now, the pro se claimants themselves, they have
22 until March 31st to do all of this. They were not bound by the
23 29th deadline. They can enroll by the 31st of March and still
24 be considered by then for an interim payment. We've still
25 received enrollments after the 29th. We've got the numbers

1 shown here, coming in in the same methods, a net number of 480
2 folks who have signed up, enrolled since the 29th. Because you
3 can still enroll after the 29th, you just won't be considered
4 for the interim payment.

5 As we just heard from Mr. Marvin, the parties
6 now have -- or claimants now have until May 1st to send us
7 enrollment materials to sign up for the program and be
8 considered in the program. They just won't be considered for
9 an interim payment if that occurs.

10 So then we look at the total enrollments. These
11 are the numbers of the total enrollments from before the
12 29th of February and after -- or since the 29th of February.
13 As of yesterday afternoon when we ran these numbers, we have a
14 total of 50,004 people, claimants, who are enrolled in the
15 program within the meaning of the second amendment, take out
16 the 3,720 folks who said they had an other injury, and we get
17 to the 46,284 claimants who have done what they need to so far
18 to enroll in the program.

19 Now, the next step for all those claimants are
20 sending us the rest of the enrollment package, as we mentioned
21 earlier: The releases, the stipulation of dismissal, the
22 medical authorization -- the medical records authorization
23 form, and the employment records authorization form. Those are
24 the numbers as of yesterday afternoon that we had of those
25 documents.

1 We've already gotten almost 40,000 of the
2 release documents. We've gotten over 27,000 stipulations of
3 dismissal, and over 39,000 medical authorization forms, and
4 then 25,000 -- almost 26,000 employment authorization forms.
5 These are the documents that are coming in every day now.

6 We receive shipments, mail, Fed Ex and UPS
7 deliveries every day. Because these are the materials that are
8 required to be post-marked or delivered to an overnight
9 carrier, addressed to us, by the 31st of March -- or on before
10 the 31st of March to complete their enrollment package for
11 purposes of being considered for the interim payment.

12 Now, these materials, if you're not in line for
13 an interim payment, didn't make the 29th of February step to be
14 considered for that, as we just heard, you can still send these
15 materials through May 1st to sign up and enroll for the
16 program, just not for the interim payment step.

17 Looking ahead, Your Honor, to the next steps in
18 the program, one thing that has to happen is review of all
19 those enrollment materials. We and the parties have been
20 working out the criteria and the process to look at the
21 releases and the stipulations and let the counsel know, or let
22 the pro se claimants know, if there's something wrong with
23 them, if they're not signed, if there's some material flaw in
24 them that keeps them from being a true, complete enrollment
25 document.

1 We've been working with the parties on those
2 criteria for completeness, and then the process for reviewing
3 them and how we transfer to claimants or counsel what they need
4 to do to remedy a problem in a document.

5 We're going to use the Vioxx portal as the
6 method to tell represented claimants what they have, what
7 they've sent us, and what's not complete, what they need to fix
8 about it. We have been using this portal so much that we keep
9 adding functions to it; and I think that most of the counsel
10 are finding this to be an efficient, helpful way to receive
11 information from us and send us information.

12 So we have now and will post in the next couple
13 of days, a complete user manual and send an announcement to
14 each law firm about how to use all the functions on this. It
15 will have screen shots in it and will explain how to go about
16 each function that's now available online through our processes
17 to handle claims, submit claims, find out about their
18 enrollment documents.

19 This is the system we're going to use to permit
20 firms to hear about that. So far we're getting a lot of good
21 feedback from firms that are using this. So we're getting
22 ready to issue a complete user manual to show them how that's
23 done. One of the things that they will see on their portal now
24 is under the enrollment section -- we've rolled this out last
25 week -- a firm can go to their enrollment page and they can

1 search their clients.

2 This will now show them what enrollment
3 documents we have received and not received from each claimant.
4 They can look up each person, look up all their claimants.
5 This is where you go now if you're a primary counsel to see
6 what documents we have and don't have.

7 If you're wondering what we have by the 31st of
8 March and don't have for somebody, this is how you look it up.
9 Because right now what it shows for each firm is if we have
10 received a document, a release, a stipulation, a medical
11 authorization, or an employment authorization, as shown across
12 the bottom, for each claimant it will say, "received". If we
13 haven't received it, it's blank. We've explained that to the
14 firms. That way they can tell what we're missing, we just
15 don't have yet.

16 As we do the completeness reviews, working with
17 the parties on the completeness reviews, this is where we'll
18 show a deficiency. If we found something and the parties found
19 something wrong in the release, that it's not signed, for
20 example, it will say, "deficiency", here, as this example here
21 shows. If it says, "NCD", that means no current deficiencies.
22 That means we've looked at it, the parties have looked at it
23 and it's okay.

24 If it says a deficiency, this is where they can
25 open it up and see what the problem is and what they have to do

1 to correct it. If someone didn't sign it, or it was the wrong
2 signature, this is how you correct it. This is a normal
3 deficiency process for any document in the settlement program.
4 Here, we're going to provide that online. This will also allow
5 the firms to print everything, print the deficiencies, print
6 all of them, print them as to a particular claimant.

7 We think this is the most efficient way to make
8 that happen.

9 **THE COURT:** Each firm will be private? That is to
10 say, no one else can go into that without the proper
11 authorization?

12 **MR. BROWN:** Correct, Your Honor. Each firm has a
13 secure password and an I.D. and can see only their claimants
14 and no one else's claimants. Only the people in their firm
15 that they've authorized and given the password to can even do
16 that within their own firm.

17 Another area of activity, Your Honor, since we
18 last met is we've been working with Mr. Johnston, the pro se
19 curator, and folks in his office, to set up the processes to
20 enable him to have information about the unrepresented
21 claimants from whom we've already heard.

22 We are doing the same thing for him, to set up a
23 Web-based connection with us as a pro se curator portal. It
24 will permit them to do the same sort of search on each of the
25 unrepresented claimants that we've heard from. They will be

1 able to look them up and see what we have, see some basic
2 information on them. This is all dummy information, not real
3 social security numbers.

4 They can access this and look up what those
5 claimants have sent us, if they need to see what we've received
6 and not received. We'll also enable them to actually view the
7 images, the PDF image, of each document if they need to see it
8 or download it for themselves if they'd like to have it.

9 The Court's order appointing the pro se curator
10 required the curator to keep a log of telephone calls with
11 unrepresented claimants. We're setting up the process to
12 enable Mr. Johnston, and the folks at this office, to use our
13 call center screens and database so that they can log into our
14 system and record them directly into the database and keep
15 notes as to what the call was, what the purpose was, and the
16 outcome of it, to enable him to perform that function under his
17 order.

18 Your Honor, that carries us through
19 registration, enrollments, and recent activities in our office.
20 The next, and last, part of our presentation deals with the
21 claims status and where we are on that right now, the deadlines
22 for that, and Lynn is going to cover that for the Court.

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

24 **MR. BROWN:** Thank you.

25 **MR. BIRCHFIELD:** Your Honor, before Lynn addresses

1 the claims package, if I could address one matter that
2 Mr. Brown raised, and that is using the portal to notify
3 lawyers regarding any deficiencies in the documents. One area
4 where we have received a large number of inquiries, and I know
5 BrownGreer has as well, is the status of the documents that
6 have been received.

7 I know that lawyers are concerned about
8 receiving notice of a deficiency and it impacting that client's
9 eligibility for an interim payment. So I want to make it very
10 clear that once BrownGreer notifies a firm of a deficiency,
11 they will be given a reasonable period of time to correct that
12 deficiency. If that deficiency is timely corrected, it will
13 not impair the eligibility for their interim payment.

14 I know that there's been some concerns. So I
15 wanted everyone to know that once you receive the notice of the
16 deficiency, there will be an opportunity, a window there, of
17 reasonable time to make that correction and not affect
18 eligibility for interim payment.

19 **THE COURT:** Okay.

20 **MS. GREER:** Good morning, Your Honor. Lynn Greer
21 from BrownGreer in Richmond, Virginia.

22 I wanted to talk quickly about the next phase of
23 the process, which is the claims package submission phase, and
24 that deadline, the settlement agreement provides, is
25 July 1st of this year.

1 We have been talking with many firms about the
2 steps that they are taking to submit these packages. It's
3 obviously a lot of work for the firms to compile the records
4 and to submit them to us.

5 So what I wanted to do was give the Court a
6 brief report of how many packages we've gotten to date; and
7 also to share with the Court some steps that we are taking to
8 simplify, we hope, the steps that the firms must take as they
9 compile and submit these packages to us.

10 The claims package contains the claims form; the
11 required pharmacy, medical and event records, which we call the
12 PME records; the profile forms, which were submitted in the
13 underlying litigation; and any additional claims information
14 that we may request. These are the components of the claims
15 package that we look for when we receive packages from the
16 firms.

17 As of yesterday, we have received from 25
18 different firms and pro se claimants, 49 pro se's, 774 claims
19 packages. The majority of these are coming to us in electronic
20 format, which is what we prefer, and I'll go into a little more
21 detail about that in a moment. We have gotten 35 claims
22 packages by hard copy from primary counsel; 49 from pro se's.
23 The pro se's are submitting those in hard copy, which we would
24 have expected. And a total today of 774 claims packages.

25 We are sharing with the firms and would like to

1 share with the Court our suggestions on how firms can submit
2 these packages to us most efficiently. First and foremost is
3 that they should submit them electronically. We will handle
4 and we can accommodate hard copy submissions. But the easiest
5 way for the firm, and for us, is to process those upon receipt
6 is for the firm to use their own Vioxx portal to upload the
7 claims packages to us.

8 We have many people at our firm who monitor that
9 and will download the claims packages as they come in to us.
10 It is also very important that as they send the packages to us
11 that they label each package with the client's VCN, or Vioxx
12 claims number, which is our unique identifier within our
13 system.

14 The claims form is available in two places.
15 One, there is a hard copy form that's available on the Vioxx
16 claims administrator Web site that the firm can use and print
17 and fill in by hand.

18 However, what we have made available to the
19 firms is, again, on their Vioxx portal, each claimant has a
20 claims form that is viewable by the firm when the firm logs in
21 and selects a claimant. The claims form is prefilled with a
22 lot of information that we received as part of the enrollment
23 and registration phases.

24 The goal here was to try to pre-populate as much
25 as possible so the firm would not have to continue to repeat

1 entering the same data on these claimants. So the firm can
2 pull up a claims form, they can change the data if there has
3 been any change in address or any other demographic
4 information.

5 This is where the firm indicates the primary
6 injury. We've recently changed this claims form to allow the
7 firm to input a secondary injury, if they are alleging a second
8 injury, and this is where they also provide the event date.

9 When it comes time to sign and submit the claims
10 form, one of the things that we have done, with the agreement
11 of the parties, is rather than have the firm fill this out,
12 print it, and then send it to us as part of the claims package,
13 we have provided a method for them to provide an electronic
14 signature.

15 So if, and only if, there has been a profile
16 form submitted in the litigation which contains the requisite
17 signatures, if we have record of a profile form, or if the firm
18 indicates that they are submitting a profile form, then they
19 will be able to get this box that confirms their electronic
20 signature.

21 They will be able to say that they agree that
22 this is the equivalent of an original signature, they submit
23 the claim form, and it automatically gets transmitted to our
24 server, and they need not include the claims form in the
25 package that they submit to us.

1 If there was not a profile form submitted in the
2 litigation, then the claimant has to complete Attachment A to
3 this claims form which asks family history and risk factor
4 information. The claimant does have to provide his or her
5 original signature. And in that instance, the firm would need
6 to print off a claims form, obtain the original signature and
7 send that to us.

8 The other area that is a challenge for many is
9 to be able to gather the proof of use information. One of the
10 things that we have posted as of Friday of last week for each
11 firm to use is a pill count calculator. This is a tool that on
12 the Web site is a live Excel document.

13 What it does is it allows the firm, as they're
14 looking through their claimant's records, to enter the claimant
15 name, the VCN, the event date, and then the firm can enter each
16 instance of a prescription or a sample having been provided to
17 a claimant.

18 The only areas that firm need enter are these in
19 the green areas here. So they do have to enter the claimant
20 name, the VCN, and the event date. Then they can list each of
21 the prescription dates, the number of pills dispensed, the
22 dose, and the prescriber pharmacy.

23 The calculator tool on the live Excel document
24 has a button that they can push once they have entered all the
25 information -- it's a calculate button -- and they push that

1 button and the rest of the spreadsheet is populated. What this
2 calculator does, and what it will assist the firms with doing,
3 is it helps them access whether the claimant has met both
4 duration and the proximity gates under the gate criteria. It
5 also provides information for the point calculation.

6 What it does is it will shade, in pink, any
7 prescription that was dispensed within 365 days prior to the
8 event. So that's the one-year look-back period where any
9 prescription that was dispensed -- I mean, any pills that were
10 dispensed within that 365 days are highlighted in pink. If the
11 quantity satisfies one of the proximity gates, then those cells
12 are also highlighted in pink.

13 So you see for this test claimant that it meets
14 the portion of the proximity gate that at least 90 pills were
15 dispensed within the 140 days prior to the eligible event. And
16 it shows this firm then that their client has met the proximity
17 gate. That is automatically prefilled once this is calculated.

18 The other thing that this does for the points
19 criteria is it calculates the consistency of use adjustment
20 that the settlement agreement provides, as well as the label
21 adjustment. So this is a one-stop shop for any of the duration
22 and the pill calculations that are relevant under the
23 settlement agreement.

24 Finally, the things that we are -- other things
25 that we are encouraging the firms to do are to understand what

1 the settlement agreement provided in terms of the required
2 records, and this is posted -- it is an exhibit to the
3 settlement agreement, obviously, but we have also made this
4 available in a document that lists for each injury type,
5 specifically, what the records are that are required.

6 There's also a document on the Web site that is
7 a step-by-step guideline for submitting claims packages that
8 tells the firms in detail how to bookmark and highlight the
9 medical records. Firms can go to our Web site and print this
10 and it goes through, step-by-step, how to put together the
11 claims packages in terms of Adobe folders, how to label those,
12 and send those to us.

13 So we are trying, Your Honor, to provide tools
14 for the firms to use that will assist them in making submission
15 of claims packages consistent.

16 **THE COURT:** Okay. Thank you very much. That's very
17 good. I appreciate your work.

18 **MS. GREER:** Thank you, Your Honor.

19 **MR. BROWN:** Thank you, Your Honor.

20 **MR. HERMAN:** May it please the Court, Your Honor --

21 **THE COURT:** Mr. Johnston had some comment.

22 **MR. JOHNSTON:** Mr. Herman, can I get in front of you?

23 **MR. HERMAN:** Absolutely.

24 **MR. JOHNSTON:** I asked to speak briefly to the Court
25 because I have a 10:00 status conference in Jefferson, and we

1 all know how much time it takes to get over there. All I want
2 to notify the Court is that last Thursday there was the initial
3 communication that was disseminated by our office, sent out to
4 those that have registered but not enrolled.

5 I checked this morning with my office manager at
6 7:15 and was told either the next batch of letters, which are
7 some 900 of those who have not yet registered, either went out
8 yesterday or are going out this morning. Russ and I have
9 talked and we have gotten great assistance from BrownGreer.
10 They're obviously way ahead of us in terms of that.

11 The logging-in that you heard about is going to
12 be a great benefit to us. We'll be able to provide reports to
13 the Court. I think things are moving well from our standpoint.
14 If there's any questions that the Court --

15 **THE COURT:** How many pro se claimants have you
16 written to so far?

17 **MR. JOHNSTON:** So far it was 314, I think, went out
18 last Thursday, and we're having another 900-some that may well
19 have gone out yesterday. I just was not in my office and I
20 wasn't able to verify it. But hot off the press is it's either
21 yesterday or today in terms of my office manager.

22 We're going to be dealing very closely with
23 BrownGreer and I think that we'll be able to provide additional
24 positive information to the Court the next time we're together.

25 **THE COURT:** All right. Thank you very much.

1 **MR. JOHNSTON:** Thank you. Thanks, Russ.

2 **MR. HERMAN:** May it please the Court. Your Honor,
3 just two quick references that relate to registration.

4 We have had some problem with health care
5 providers of one type or another or pharmacies requiring
6 special medical authorizations, repetitively. The plaintiffs
7 and defendants have worked on a proposed recommendation, Your
8 Honor, for a universal order that would remedy that, and we
9 should be able to get that to Your Honor before the week's end.

10 Secondly, with regard to the medical
11 certification of records, preservation of records, as Your
12 Honor has pointed out, it's been a burden on the Clerk's Office
13 because those preservation certifications have been going to
14 the Clerk's Office, and we just wanted to make special note
15 that they should not go to the Clerk's Office. They should go
16 to Merck's representatives.

17 BrownGreer has agreed to pick up whatever there
18 is in the Clerk's Office to that effect and just store them for
19 the present. But I do want to emphasize the necessity that
20 those preservation certifications not be sent to the Clerk's
21 Office.

22 **THE COURT:** Okay.

23 **MR. HERMAN:** Your Honor, the next matter on your
24 suggested agenda is the Item IV, special master and deputy
25 special masters. On January 14th Your Honor appointed Mr. Pat

1 Juneau as a special master.

2 Then after Your Honor consulted with Judges
3 Chaney and Higbee, Your Honor on January 16th appointed as a
4 deputy special master, retired Justice John Trotter of
5 California and retired Judge Marina Corodemus of New Jersey.

6 Your Honor and Mr. Juneau directed that there be
7 an orientation, which was held on March 5th, 2008. Mr. Juneau
8 and Your Honor, I believe, have some comments regarding that.

9 **THE COURT:** I met with the special master and the
10 deputy special masters together with representative counsel
11 from both plaintiffs and defendants. The deputy special
12 masters, with Mr. Juneau's direction, were given a course in
13 what to expect and how to handle the proceedings. I thought it
14 went well. It took the better part of a day. Their questions
15 were answered and I think they went away with a good feeling
16 for their responsibility and duties.

17 I'm also directed that the appeals, if there be
18 any, be randomly divided between and among the special masters.
19 They will go to Mr. Juneau, and Special Master Juneau will then
20 randomly send them out. I think the random approach is best
21 for consistency and also credibility. It's just best for the
22 special masters, for the deputy special masters, as well as for
23 the litigation as a whole.

24 Mr. Juneau, do you have any comments?

25 **MR. JUNEAU:** No, sir, Your Honor, other than the fact

1 that we've already gotten together and interfaced with
2 BrownGreer, and we've already started into that process, how
3 that will be done in a blind system.

4 The second thing is, we've already interfaced
5 and dealt with the forms and procedures we'll use in that
6 regard. We're also putting in process in fairly short order,
7 we're going to have a dry-run process to make sure everybody's
8 on board with the mechanics -- a test run, if you will, of the
9 procedures.

10 So I think we're ahead of the learning curve in
11 that regard.

12 **THE COURT:** I think that's very helpful. They've
13 devised a program whereby we can have a dummy run, so to speak.
14 They'll get a couple of claims and be able to process those
15 claims and get input from the various parties as to the proper
16 way of doing it, the most efficient way of doing it from
17 BrownGreer's standpoint. I think that will be very helpful.

18 **MR. JUNEAU:** Just one last comment, Your Honor.
19 Pursuant to the Court's direction at the orientation program,
20 and I have verified this with the two deputy special masters,
21 the object after we've gotten the system established, we've got
22 the commitment that this thing will be done on an efficient,
23 prompt manner. There won't be any delay in the reviewing
24 process. We have a tracking mechanism to track all that.

25 So I think all that is in place to make this

1 thing run efficiently and on board as you've directed.

2 **THE COURT:** Thank you very much. The next item is
3 state court trial settings.

4 **MR. MARVIN:** Your Honor, I guess for the first time
5 in three years, we're able to advise the Court that there are
6 no cases set for trial in any of the state courts through the
7 relevant period.

8 **THE COURT:** I've been in touch with several of the
9 judges and I'm happy that the situation is working out. I
10 think that throughout the country the program has been
11 well-received. I know the state courts around the country
12 appreciate it, as well as the MDL court.

13 **MR. HERMAN:** Your Honor, with regard to the next item
14 on your docket titled, class actions, Merck's motions to
15 dismiss have been briefed and replied to and have been
16 submitted. Those motions have been submitted on brief and
17 they're under advisement.

18 With regard to discovery directed to Merck, Item
19 VII, that discovery has been stayed. With regard to discovery
20 directed to third parties, the FDA, through its counsel, has
21 indicated that it will provide a privilege log and documents
22 within the next two weeks.

23 I believe that Dawn is here with a report on the
24 state liaison committee. Ms. Barrios?

25 **THE COURT:** I should say that I personally appreciate

1 the FDA's cooperation. I think that that's very helpful that
2 they're doing that. I appreciate their work.

3 **MR. HERMAN:** Yes, Your Honor.

4 **THE COURT:** Ms. Barrios for the state/federal
5 coordination liaison committee.

6 **MS. BARRIOS:** Good morning, Your Honor. Dawn Barrios
7 for the state liaison committee.

8 I've provided to your law clerk today our usual
9 submissions. We have two DVDs of cases that you have pending
10 remands for. We have set up, Your Honor, a conference call
11 tomorrow with Lynn Greer at BrownGreer to review the cases
12 which you have before you with pending remands to see if those
13 claimants have actually been enrolled and registered so we can
14 whittle down the number of valid remands still before you.

15 With regard to the other issue we've been
16 working on, the nonpersonal injury cases that are still before
17 you. I've provided you with a spreadsheet of the cases in the
18 MDL. There are, by my count, still 49. We've been circulating
19 this list around the country for several weeks. I think we're
20 going to wind up with just 49 nonpersonal injury cases before
21 you.

22 Of those 49 on the spreadsheet, I've listed the
23 national ones first. There are 15 cases that are nationwide in
24 scope, particularly with regard to class definitions. There
25 are 35 that relate to state matters. There's one case that

1 alleges both national and one particular state issues.

2 **THE COURT:** What type of cases are they, basically?

3 **MS. BARRIOS:** I've broken them down in the chart,
4 Your Honor. They're third-party payor cases. They're
5 Medicaid/Medicare cases from state attorney generals, return of
6 purchase price, unjust enrichment. But we've broken those
7 down. We're continuing a dialogue with -- the PSC, through
8 Ms. Cabraser, has set up a Friday call that we have every
9 Friday. We're just beginning that. I've been invited to
10 participate in that call.

11 We're trying to get our arms around a method to
12 present to Your Honor that would be logical on how to group
13 these cases in any bellwether matter.

14 **THE COURT:** The ones that you've mentioned, are they
15 a multiple-claims or just one claim? You said there were 40 or
16 so. Is that each of those have a number of claims with it?

17 **MS. BARRIOS:** Yes, Your Honor. Yes, Your Honor.

18 And that's what we're going to look at, the
19 complaints, individually, to see how best to group them.

20 I've also provided Your Honor something that
21 I've gotten from Judge Higbee yesterday. It's a letter in your
22 packet. She is having a status conference on April 14th for
23 the 14 nonpersonal injury claims before her. I plan on
24 attending that status conference so that I can personally
25 witness what is going on in New Jersey and report back to you

1 on that.

2 **THE COURT:** Okay.

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

4 **THE COURT:** Thank you very much. The next item is
5 the pro se claimants, and we've heard from Mr. Johnston on that
6 previously. Merck's motions is number IX.

7 **MR. HERMAN:** There are two motions pending, *Arnold*
8 and *Gomez*, and I believe they're under advisement.

9 **THE COURT:** Okay.

10 **MR. MARVIN:** Yes, Your Honor, they are under
11 advisement. There's no change there.

12 **THE COURT:** Any issues relating to Pretrial Order 9?

13 **MR. HERMAN:** There are no new developments with
14 regard to that at this time, Your Honor. I believe that's
15 because discovery, for the most part, has been stayed.

16 **THE COURT:** Item XIII is Vioxx suits statistics.
17 Anything on that?

18 **MR. MARVIN:** Your Honor, there's virtually no change
19 in the number of statistics. We'll be having a new report on
20 statistics at the next conference.

21 **THE COURT:** All right. Item XIV is the trial
22 package.

23 **MR. HERMAN:** Yes. There's been a series of
24 conference calls and work done regarding the trial package,
25 particularly the outstanding stroke package. Ms. Sanford and

1 Mr. Rafferty of that committee are here.

2 Yesterday I spoke with Mr. Meunier, who gave me
3 a report that the stroke package would be ready for
4 presentation to Your Honor at Your Honor's selection of date
5 and time within the next two weeks, in camera.

6 There would still be one expert report
7 outstanding. We received an outline, but it won't be ready for
8 90 days. Because there have been requests, the PSC believes it
9 would be important to go ahead and release the stroke trial
10 package, the MI trial package, now and then supplement the
11 stroke package when that additional expert report is ready.

12 We've only had, thus far, two requests for trial
13 packages. I'd like to get those expedited within the next
14 three weeks, a week post the time that Your Honor selects for a
15 review.

16 **THE COURT:** I think, as I said before, one of the
17 advantages of the MDL process is, of course, the global
18 opportunity for the parties to look and see whether or not the
19 matter can be resolved.

20 Another aspect of it is the trial packages. It
21 gives the other claimants who choose to proceed in either their
22 respective state jurisdictions, or other jurisdictions, or in
23 this jurisdiction, an opportunity to benefit from all of the
24 discovery that has gone on in the matter.

25 A trial package is prepared with various

1 documents and witnesses and it's trial-ready. The individual
2 then can garnish that package with case-specific information
3 and their client and proceed to trial. So this is a very
4 important aspect of the whole MDL process.

5 I'll get with counsel and we'll set a date in
6 the very near future.

7 **MR. MARVIN:** Your Honor, just for equal time, the
8 defense trial package is complete and ready to go.

9 **THE COURT:** Okay.

10 **MR. HERMAN:** Would counsel entertain an exchange?

11 **THE COURT:** You want to see his, but you don't want
12 him to see yours? I'm kidding.

13 **MR. HERMAN:** Fair is fair.

14 **THE COURT:** Other motions?

15 **MR. HERMAN:** Your Honor, there are two matters. One
16 is, actually, not in motion form, but I understand will be
17 either by letter or formal motion. Mr. Harrison --

18 **THE COURT:** Okay.

19 **MR. HERMAN:** -- as Your Honor knows, has matters that
20 he wants to bring to the Court's attention. The Court has
21 directed that they be placed in writing, and that's been
22 communicated to Mr. Harrison. We would expect some filing
23 directed to Your Honor. I will follow-up, personally, with
24 Mr. Harrison to see that he gets his opportunity to submit
25 whatever writings he deems are necessary.

1 **THE COURT:** I know Mr. Harrison has been very
2 thorough in researching this particular matter. I would profit
3 from his information that he has. He's an articulate
4 individual and he can package it properly, and then I will look
5 at it and deal with it accordingly.

6 The other motion of HRI, I'll take after we're
7 finished with this proceeding. It's almost finished at this
8 time.

9 **MR. HERMAN:** Your Honor, the third-party payor cases
10 have been previously discussed today by Ms. Barrios. I do want
11 to point out that Ms. Cabraser has organized those efforts and
12 is present in the court. Your Honor, the next status
13 conference --

14 **THE COURT:** The next status conference is
15 April 17th at 9:00. I'll see the committees at 8:30 that day.
16 My thinking on the other matters, right now, as you can see,
17 we're trying to focus everyone's attention and take all of
18 their time and effort and talent on trying to move the
19 settlement aspect of it.

20 There's a lot of documents that have to be
21 collected. A lot of information. A lot of communication has
22 to be made. A lot of effort and time goes into that. I would
23 like for all the parties to focus on that aspect of the case.

24 When we're finished with that aspect of the
25 case, I think we also have to recognize that when it gets to

1 the processing of these claims, people going through the gate,
2 hopefully, many will get through the gate; some may trip and
3 not get through the gate, that's going to be a problem that has
4 to be dealt with somewhat. That's the appeal process and the
5 review process.

6 After some headway in that program, then I want
7 to figure out what's left. I'll be meeting with the parties to
8 determine, first, what's left and then invite their input as to
9 the most efficient and effective way of packaging those
10 what's-left cases and see if we can bellwether some of them to
11 learn more about them in that way and give counsel an
12 opportunity to present the cases, and we'll see how that works
13 out. But right now, I want to focus on the program.

14 Anything else from anybody? Mr. Becnel?

15 **MR. BECNEL:** Your Honor, one of the things I just
16 heard that brought back something is the people who are having
17 lawyer problems of getting enrolled and not getting enrolled.

18 Sometimes I find that we've all had those kind
19 of clients. No matter what we say, no matter what legal
20 arguments we make, no matter what minefields they have, they're
21 just sort of at loggerheads.

22 I'm particularly concerned about those people
23 that might not be able to get enrolled by May 1st. I was going
24 to suggest something that kind of worked in breast implant.
25 Mr. Levine, Ms. Cabraser and Mr. Blizzard knew that in breast

1 implant, when settlement was announced, nobody would take
2 anymore cases. People were scrambling and looking try to find
3 a lawyer, couldn't find one. Finally, Judge Pointer asked us
4 to volunteer to do that.

5 I think our office did about 70 percent of them.
6 They're still, 13 years later right now, they're getting
7 checks. So what I was going to suggest is, pro bono, that our
8 office would be willing to talk to those people once they get
9 here and you have to say, hey, you're out, Mr. Lawyer A.

10 We have a couple of retired state judges at our
11 office. Judge Marino, who has worked almost two years on this
12 case almost exclusively, that could talk to them. Sometimes a
13 judge, or even you could have one of your magistrates talk to
14 the people after you present the minefields that a pro se
15 claimant now has in the environment that we have concerning
16 preemption and all of the other potential defenses that
17 defendants may have.

18 I think that might help two people. Number one,
19 it would help the client most of all. Number two, it would
20 help that lawyer who's just kind of in a box of quicksand that
21 he can't get out of.

22 It would help the Court and the defendants,
23 trying to get these people in, even if it takes a long time and
24 they don't get the prepayment or what have you. I can tell you
25 when we get these checks -- every week we get some of these

1 breast implant checks now for people and there's no fee in
2 them.

3 I mean, if it's under \$10,000, you don't charge
4 them anything. If it's over that, it was like are 5 percent or
5 10 percent. I mean, it's unbelievable. But I think that might
6 help get a lot of those people into this program where they
7 should and ought to be, especially after all of the work that
8 I've seen that all of these lawyers have done and having read
9 most of the transcripts of all the trials.

10 I think if people would spend time, independent
11 of the lawyer they hired, whether it's me or anybody else,
12 might help the situation. We'd be more than happy to do that
13 pro bono.

14 **THE COURT:** All right. Thank you for your
15 suggestions, Mr. Becnel. I appreciate it.

16 Anything else from anyone?

17 I'll take a five-minute break here and then
18 we'll come back and I'll have argument on the motion. Court
19 will stand in recess.

20 **THE DEPUTY CLERK:** All rise.

21 **(WHEREUPON, the Court took a recess.)**

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CERTIFICATE

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

Jodi Simcox, RMR
Official Court Reporter

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