

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF LOUISIANA

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4 IN RE: VIOXX PRODUCTS
5 LIABILITY LITIGATION

MDL No. 1657
Section: "L"
New Orleans, Louisiana
Wednesday, June 1, 2011

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

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P R O C E E D I N G S

(WEDNESDAY, JUNE 1, 2011)

(MONTHLY STATUS CONFERENCE AND MOTIONS)

(OPEN COURT.)

THE COURT: Be seated, please. Good morning, ladies and gentlemen. Call the case, please.

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

THE COURT: Counsel make their appearance for the record, please.

MR. HERMAN: May it please the court, good morning, Judge Fallon, Russ Herman for plaintiffs.

MR. MARVIN: Good morning, your Honor, Douglas Marvin for Merck.

THE COURT: This is our periodic status conference, we're sort of in the wind-down stage, so I don't have it monthly, I have it every several months. I've been communicating and meeting with the parties as necessary in-between those particular meetings.

We're at the point now where we have a dwindling number of personal injury cases to deal with, we also have cases involving the Attorney Generals for various states, and consumer class issues that we're honing down and dealing with.

I have met with the liaison and lead counsel and others this morning to talk about the status conference. I have received from them all of suggested agenda, I'll take it in that order.

1 Settlement Program, anything on that?

2 MR. MARVIN: Yes, your Honor. As Elaine Horn reminded
3 me, it's been about ten months since BrownGreer submitted its final
4 report, that was July 26th. And since then, you know, the payments
5 have continued pursuant to the program.

6 There are, however, 55 cases involving about \$6 million
7 that has not yet been distributed, and that's because there have
8 been various estate issues that still need to be resolved by the
9 claimants involved in those cases, and because there are certain
10 lien issues that that still exists. So we would like to file a
11 motion for an order to show cause why the remaining money should
12 not be put in the registry of the court while these issues are
13 being resolved.

14 And quite frankly for us, that would mean that we would
15 be able to receive the releases from these individuals because
16 pursuant to the terms of the program, releases are only delivered
17 after payment has been made.

18 THE COURT: Right.

19 MR. MARVIN: So we're sort of stymied at this point.

20 THE COURT: Let's do it that way and then I'll confirm
21 the fact that Merck is released and that the case is dismissed with
22 the deposit of the funds. When I get the funds, there may be a
23 couple of things that need to be done, some of the cases might
24 involve liens; if so, I will order them, the interested people in
25 that particular case to come before the court, discuss it. If

1 nobody shows up, then I will move the funds into a cy pres award
2 that will be just no longer available to the parties.

3 So I'll do it in that form and fashion. But give it to
4 the court, I'll put it in the registry of the court, and I'll deal
5 with each one individually. But I think Merck ought to be
6 discharged in those cases once they tender the funds.

7 MR. MARVIN: Thank you, your Honor. My guess, your
8 Honor, is once the motion is filed and the order is entered, we'll
9 see more activity on those cases to get them resolved.

10 THE COURT: I think so.

11 Okay. While you're there with the Settlement Program,
12 any pending, any report on the pending personal injury cases? I
13 know that's seven on the agenda, but let's go to that.

14 MS. OLDFATHER: Thank you, your Honor. Ann Oldfather
15 lead and liaison counsel for a number of these cases. As a result
16 of conferences that we have had between the PSC and Merck and the
17 court, your Honor has requested that in the immediate future -- and
18 by that I am taking it to mean in the next couple of days -- that I
19 provide the court with a list of the cases in this group where I
20 have not received direct permission from either the pro se
21 plaintiff or the plaintiff's counsel for delivery of those
22 claimants PPF form medical records and Lone Pine reports to me so
23 that I can assist the court in preparing a census of these
24 remaining cases.

25 It's my understanding that the court intends to propose

1 or prepare an order that will direct those folks if they want to
2 move forward to provide that authorization. So I will be
3 submitting that to the court and communicating with all of the pro
4 se claimants and counsel in this group for that purpose.

5 THE COURT: Okay. Now, as I understand the plaintiffs
6 some profile forms from some of the plaintiffs, Plaintiff Committee
7 has profile forms for some of the plaintiffs. So I am going to
8 issue an order requiring them to deliver to the court that disc.
9 Now, that disc contains some information that is HIPAA sensitive
10 and may lead to problems for individuals who do not consent to the
11 disclosure of that information. So when I get that disc in court,
12 I am going to then issue a Rule to Show Cause why those individuals
13 should not come forward and either give the authorization, and also
14 I'll alert the government that they have an opportunity to stop the
15 distribution of it.

16 But then if the government doesn't come in and make any
17 HIPAA arguments, then I will deliver the list to you, you'll get
18 that list, that material I should say. But it's not everybody, so
19 those who are not on the list that Merck has given to you
20 outstanding cases that you still don't have the profile forms for,
21 those are the people that I'll order the show cause why they don't
22 come in and deal with it. And if they don't, I'll dismiss their
23 case

24 MS. OLDFATHER: Your Honor, for the benefit of those that
25 are listening -- and maybe I didn't say it and if not I'll just say

1 it now -- it's my understanding that my purpose in doing this is to
2 come up with relatively soon to come up with a plan of the trial of
3 these remaining cases, and that's why I am asking for this
4 information so that I know the types of claims that are there and I
5 can help the court in deciding how we're going to resolve these.
6 So we really are trying to get these brought to conclusion.

7 THE COURT: Right. And that's the reason, there are
8 obviously going to be some individuals who have abandoned their
9 case, who don't want to pursue their case, and that's their right.
10 They don't have to pursue a case if they don't wish to pursue it.

11 But some of those individuals on that list do wish to
12 pursue their case. So those individuals ought to have their case
13 tried, and the best way and the most efficient way is to cull out
14 those who do not want to try the case, have those individuals who
15 do want to try the case scrutinized, grouped, and see whether or
16 not we can pick a case from that group or group that best
17 represents that particular group and try that case and see whether
18 or not it helps the resolution of those other cases in the group.

19 That's the most efficient way. And if it doesn't, then
20 we take the next case and the next case. But that's a way of doing
21 it. But we first have to cull out the individuals who are no
22 longer interested in pursuing the case.

23 MS. OLDFATHER: Thank you, Judge.

24 THE COURT: Thank you.

25 MR. MARVIN: Your Honor, if I may add to that, your

1 Honor.

2 THE COURT: Yes.

3 MR. MARVIN: Since the stay has been lifted in each of
4 the category of cases, discovery has been proceeding in those cases
5 and a number of cases have been dismissed since then. There are
6 currently 121 cases that are still pending, and to put that in
7 context, there were once 60,000.

8 THE COURT: That's something that we all have to
9 recognize. We started with nearly 60,000 cases in this matter and
10 within three years those cases were resolved and within a short
11 period of time thereafter everybody's been paid off. So we've got
12 100 cases or thereabouts left and I really think we'll be able to
13 move on those.

14 So I don't think every case is going to need to be tried
15 but maybe some will be. And it will give me an opportunity, too,
16 to decide where to try the cases. When you get down to however
17 many there are who are interested in trying the cases, those that
18 survive the *Daubert* test and those that survive the depositions and
19 the *Lone Pine* requirements, we'll get to a number and then we'll
20 see where they are and the most efficient way of doing it.

21 It might be that we could do some summary trials or some
22 easier methods and cheaper methods so that we can give these folks
23 an opportunity to present their case in open court but not have the
24 expense that it costs us, as you all know with the bellwether
25 cases, they serve the purpose but they're also very expensive in

1 that form and fashion.

2 Bellwether, each plaintiff case between a million and \$2
3 million, each defendant's costs between two and \$3 million per
4 case. And you'll recall we did those cases within two weeks and
5 three days, each case, it wasn't a month and two and three-month
6 trials.

7 So I know there were bellwether cases and I know lawyers
8 look upon bellwether cases a little bit more and spend a little bit
9 more in the bellwether cases, but that's a very expensive method of
10 resolving them. I would like to see whether or not we can
11 streamline some of it at this point. Those cases that still need
12 to be tried we really ought to see whether we can try them a little
13 bit more efficiently and little less costly than that.

14 MR. MARVIN: The largest number of cases that remain in
15 terms of an injury do not involve a heart attack or a stroke or a
16 sudden cardiac death, those are the cases that were resolved
17 through the program. So we expect for our part to be filing
18 *Daubert* motions once the cases have been discovered.

19 THE COURT: Okay.

20 MR. HERMAN: Your Honor.

21 THE COURT: Yes.

22 MR. HERMAN: Your Honor, I would just like to put the
23 PSC's position on the record.

24 We have all of the documents in the depository and there
25 have been some supplements electronically available on searchable

1 discs for plaintiffs that request it. We have a trial package
2 that's been supplemented with individuals familiar with it to
3 illustrate it to plaintiffs that want it. Mr. Meunier and I for
4 the PSC have had some experience in the Eastern District analyzing
5 jury venire, we make ourselves available for that process when your
6 Honor sets trials.

7 THE COURT: Okay. Also mention that one of the things in
8 an MDL that's advantageous to even those individuals who are not
9 either had been tried or whatever that from those trials the
10 parties were able to get together a trial package so that a lot of
11 the evidence is in the can, so to speak, and can be played to the
12 jury and garnished with live testimony specific to that particular
13 case.

14 The case broke down into general and specific causation.
15 With general causation the trial package is pretty well prepared
16 and the specific issues are easier to deal with and probably more
17 cheaply dealt with because the experts and the witnesses are more
18 local so you don't have that problem that the bellwether cases
19 faced.

20 MR. HERMAN: I think the next issue is the Special
21 Master.

22 THE COURT: The Special Master.

23 MR. JUNEAU: Good morning, your Honor. For the record,
24 Patrick Juneau, Special Master, your Honor.

25 With regard to the pending issues, the main focus now has

1 turned to the issue involving the attorney fee dispute. I can
2 report to the court that we recently completed extensive hearings
3 here in this very courthouse. I just received the transcript of
4 those proceedings. I am in the process now that I've gathered all
5 of that information and starting to formulate a report and
6 recommendation to the court. I wish I could say more, but there's
7 a lot of material to be analyzed and I am doing that.

8 THE COURT: Sure.

9 MR. JUNEAU: But I do not anticipate any long delay at
10 all. The purpose was to put this on the front burner and I am
11 going to do that, and hopefully very shortly we will submit to the
12 court and to the parties an extensive report concerning the issues
13 that are now before the Special Master.

14 So that's on that front, your Honor. But we've moved
15 substantially from where we were at the last conference today
16 because of the hearings and the briefings and things of that
17 nature.

18 On the second front, your Honor, a matter involving the,
19 the matter before the court involving respective Attorney Generals.
20 As the court is acutely aware, we started this process back in
21 October, we've really kind of been in kind of a quicksand mode;
22 that is because it's a very intricate process that's entailed and
23 putting together settlements to go to the states called NAMFCU,
24 which I had mispronounced that earlier and it did not turn out too
25 well phonetically, but be that as it may, that process, the gap is

1 closing now, the court is acutely aware and we're going to have a
2 separate conference with the respective parties.

3 There are discovery issues, state issues involved in
4 that. I have indicated to the parties, I have been in constant
5 contact with the parties and the Department of Justice and the
6 people from the state liaison involving NAMFCU through your
7 encouragement and through mine, your Honor, we've been pushing it
8 as much as we can, but we're really in a locked step position until
9 that document is finalized.

10 And we're focused on getting that done because we've got
11 to sit down and have the meetings to see if we can dispose of these
12 issues. But until that piece of the puzzle is filled out, we can't
13 advance.

14 THE COURT: Right.

15 SPECIAL MASTER JUNEAU: So I know the court is acutely
16 aware of that, we're going to have conferences today to address
17 that to maybe dispose of some of these issues and move some issues
18 forward; but as soon as that's done we're going to immediately have
19 those meetings to see if we can get those issues disposed of.

20 THE COURT: I would like to focus on that with the
21 interested parties, and I know that discussions have been ongoing,
22 but perhaps -- and I would like to get information from them and
23 comments from them as to whether to move those negotiations to the
24 Eastern District of Louisiana. I have a room they can use and meet
25 and have the discussions here if they need the court, I will be

1 available to them. Maybe we need it a little bit closer to the
2 court than in Washington or other places. Sometimes there's a
3 slippage there that happens. But I'll be talking with them after
4 this conference to discuss that.

5 MR. JUNEAU: Thank you, thank you very much, your Honor.

6 THE COURT: With regard to the fees. Let me mention
7 that, as I've said several times in this matter, I've encouraged
8 over the course of the litigation anyone who is interested in
9 working on the case to feel free to contribute their time, energy
10 and resources. And every meeting or nearly every meeting in the
11 last several years that I've been handling this matter I've
12 encouraged that participation and instructed liaison counsel, lead
13 counsel, and all of the Plaintiffs Committee to be receptive to
14 anybody who is interested in doing work.

15 The only restrictions that I had to place on it is that
16 those individuals had to coordinate their work with the Committee,
17 and for obvious reasons. We have 1,000 lawyers in this case and it
18 doesn't work to have 1,000 lawyers go their own way and deal with
19 their own matters unknown to the other lawyers, it just is not a
20 way to do it. So I had to have some organization, some structure
21 put in place. So I required that anyone who is interested in
22 common benefit work and common benefit fees to coordinate with the
23 committee.

24 Now, this is rather difficult in a case that has a lot of
25 cases in the states because in the early days I didn't have as good

1 a working relationship with the judges as I did as the case matured
2 and we coordinated our respective schedules accordingly.

3 But in any event, that was one requirement. The other
4 requirement was that the individuals who are working on the MDL
5 cases would have to submit to the CPA timely records of their time
6 and expenses so that it could be coordinated. I met periodically
7 with the CPA in chambers and reviewed the material that he
8 prepared. I received those reports, put them under seal as the
9 case proceeded.

10 At the end of the case when the case was resolved, or at
11 least that aspect of it was resolved, I then alerted everybody who
12 had felt that they did common benefit work to file for common
13 benefit fees and costs if they felt that they were entitled to
14 them. I received about 100 applications for common benefit fees, I
15 posted that on the internet, and then I devised a method of
16 resolving those fees. And one thing I did was to appoint a Fee
17 Allocation Committee. It was comprised of individuals who were on
18 the Plaintiffs Committee but also individuals who were not on the
19 Plaintiffs Committee who were oftentimes doing work in the states
20 to be on that committee.

21 I also instructed the committee to meet with all of the
22 applicants and get from the applicants their supporting documents,
23 and have the applicants have an opportunity to explain their
24 position by meetings and conferences, and that was all put in
25 transcript form and perpetuated. At the end of the day the Fee

1 Allocation Committee was asked to prepare a recommendation to the
2 court and that was done after talking and conferring periodically
3 with the individuals.

4 For the most part, all but maybe 17, 18 came to some
5 agreement on their fees.

6 Then I went to the second stage. I felt that it was
7 important, first, to get observations from those individuals who
8 had actually done the work and tried the cases and discovered the
9 cases and participated in the MDL as well as the state proceedings.
10 But that wasn't the only avenue that I was interested in, so I
11 appointed a Special Master to also look at the matter. I posted
12 the recommendations of the Plaintiffs Committee on the internet so
13 that everybody could see what their recommendations were and what
14 their other colleagues were receiving or being recommended to
15 receive.

16 And those objectors came forward and the Special Master
17 took evidence, took information from them, got briefs from them,
18 conducted hearings. And in order to put some structure in that, I
19 appointed a liaison and lead counsel to handle that aspect of the
20 case for the objectors. I again, I didn't feel it was helpful to
21 have 17 or 18 individuals questioning every witness, I thought it
22 would be better to have some liaison for those objectors. So I
23 appointed liaison and lead counsel for those objectors, and they
24 proceeded to get discovery and prepare briefs and make arguments
25 and so forth to the Special Master. The Special Master in the

1 process advises me that they've been able to resolve all but four
2 or five of the cases, but he is now preparing his recommendations.

3 But because of the amount of objectors have dwindled
4 down, I don't feel that there is anymore need for liaison and lead
5 counsel for the objectors. I think the objectors that are still
6 objecting ought to consider hiring, if you will, the liaison and
7 lead counsel for the objectors because they've worked through it,
8 they know what the situation is. But they're not going to be court
9 appointed for that purpose. I am going to eliminate that court
10 appointment on June 7th and then we'll proceed accordingly.

11 When I get your material, I have received the Committee's
12 material, I've got a lot of transcripts that I am going through at
13 this time, and I'll read your material and I'll come up with the
14 final draft of the allocation.

15 But at that point I will have the individuals who've
16 worked on the case or who have been in the fox hole, so to speak,
17 and I'll have your observations from the independent source who is
18 familiar with the case obviously but who hasn't had a claim or any
19 interest in the case, and that will give me information together
20 with the information that I have gleaned over the past five years
21 or so having participated in thousands of meetings and thousands
22 of -- as I say I've written 1,000 opinions in this case, discovery
23 opinions, so I am somewhat familiar with it. I'll be able to deal
24 with those fees.

25 But I appreciate the work that you've done and I

1 appreciate all that you've added to the case.

2 SPECIAL MASTER JUNEAU: Thank you for your time, your
3 Honor.

4 THE COURT: Thank you.

5 Class Actions, anything on that?

6 MR. HERMAN: Your Honor, may it please the court,
7 Ms. Cabrazer isn't here, she is chair or cochair. Your Honor, on
8 purchase claims, your Honor has a matter under advisement, and I
9 suggest that we pass this until the next conference.

10 THE COURT: Okay. State/Federal Coordination.

11 MR. HERMAN: Yes. Ms. Barrios is here and I have a
12 couple of comments. I want to thank Ms. Barrios. We met I guess
13 last week or the week before. I pulled all of the references to AG
14 from status reports and status transcripts. Dawn went through
15 them, went through her own time records, I've added mine, and we
16 will be filing an affidavit probably tomorrow showing the amount of
17 involvement in the MDL of attorneys general and the assistance that
18 the PSC and the state liaison has given in this matter.

19 And in addition to that, another AG matter, your Honor,
20 is it Mr. Garmer represents the state of Kentucky is here, he may
21 have a few words

22 THE COURT: Right. Okay. And before, Dawn, you go, I
23 would like to hear from you.

24 But back to the fee part. When I said that I was
25 terminating the appointment of the objectors and lead liaison

1 committee, the reason I am go doing it on June 7th is that I want
2 to give them enough time to finish their briefing and also to get
3 together, get to me their application for fees and costs. They've
4 done work, substantial amount of work in the case.

5 When they give it to me, I am going to post it on the
6 internet so that everybody can see what their requests are, and I
7 am going to advise the objectors that they're to pay the fee, that
8 they're going to pay the fee because any benefit inured to them at
9 the expense of the non-objectors, so it seems to me to be fair that
10 they pay for it.

11 If anybody objects to the fee from the objectors, then
12 I'll have to deal with that in some form or fashion. But I want
13 everybody, because I am trying to keep this thing as transparent as
14 it possibly can be, I want everybody to know what the fee request
15 is so that they have had an opportunity. Hopefully there won't be
16 any objectors, but if there are, I'll work up some kind of form and
17 fashion to deal with that.

18 Okay. Dawn, do you want to report on the State
19 Coordination.

20 MS. BARRIOS: Yes, your Honor, Dawn Barrios for the State
21 Liaison Committee. I am very happy to say that we are really
22 winding down our work on remands. We now only have 105 cases open
23 in this MDL which contain motions for remand. And of that 105, 50
24 percent of them are comprised of the governmental action cases and
25 the consumer cases. So essentially there's only about 50 cases.

1 I've worked with Ms. Wimberly and Mr. Birchfield to try to narrow
2 that down as well. And I do have a CD for your law clerk.

3 Just one footnote, your Honor. When you were referencing
4 class actions with Mr. Herman, I saw that there was a footnote on
5 the purchase claims indicating there was a securities claim within
6 that purchase claim group. There's also a Washington state case
7 that was removed here, and that's a breach of contract claim; so it
8 doesn't fit that exact definition of purchase, and at the next
9 joint report I'll make sure that I have that citation available.

10 THE COURT: Let's do that so I can focus on that because
11 I really didn't realize that there was something outside of the
12 class.

13 MS. BARRIOS: Yes, your Honor, I will look through all of
14 them and make sure I give you that list. Thank you, your Honor.

15 THE COURT: Thank you.

16 Anything on the pro se?

17 MR. JOHNSTON: Your Honor, Bob Johnston curators for the
18 pro ses. As I've reported in the last few status conferences,
19 while we continue to receive calls, the number of calls has
20 continued to decline and there has not been any instances in which
21 I've needed to communicate with the court, request court assistance
22 regarding it. Things continue to go smoothly and the numbers of
23 individuals continue to narrow.

24 So that's essentially the report. Thank you.

25 THE COURT: Thank you very much. I appreciate your help

1 on this.

2 Governmental Actions, that's the Attorney Generals. John
3 do you want to report on that or anybody?

4 MR. BEISNER: Your Honor, as you noted previously, we are
5 having a separate status conference on that subject after the
6 meeting. We have the discovery stay in place, and as your Honor
7 noted earlier, we're in the process of engaging in negotiations
8 regarding those claims. So I think that's our status at the moment
9 on that.

10 THE COURT: And I know Kentucky is interested, do you
11 want to speak now on your issue?

12 MS. BARRIOS: Your Honor, if I might, Dawn Barrios. We
13 have a special call in number for the Attorneys General conference,
14 so I might ask if we can wait to do that because we have all of the
15 other attorney generals that will be on the status call.

16 THE COURT: That's fine, sure, let's do it that way.

17 Okay. Any Appeals?

18 Pending Motions, we'll take that up in a couple of
19 minutes after the status conference.

20 The next status conference is when? August 4th is the
21 next status conference, and I'll meet with the parties before as
22 usual.

23 Anything further?

24 MS. OLDFATHER: Your Honor, I don't know if this is the
25 right time to mention this, but on the pending motions we've

1 resolved one, should I address that now?

2 THE COURT: No. When we get to that.

3 All right. Anything from anybody?

4 MR. BECNEL: Your Honor, you want me here or there?

5 THE COURT: Sure, maybe you ought to come at the podium
6 so we can hear.

7 MR. BECNEL: Daniel Becnel, your Honor, there's a few
8 things I need to bring to the attention of the court. First, as
9 you know, I transmitted back to the court under your order almost a
10 half \$1 million that was sent to me unbeknownst to me and my notice
11 to the court. I've already paid income taxes on that money and I
12 need to have the court issue some kind of order so I can possibly
13 file an amended tax return. And I am at the top rate, so it's a
14 substantial sum of number.

15 No. 2, I just found out during the hearing that
16 Mr. Arsenault had submitted an affidavit. I was supervising a
17 group of lawyers that numbered quite a number of lawyers doing all
18 of the documents. I was unaware until this week that Mr. Arsenault
19 would contribute money to me, I would supervise them, hire them,
20 pay them, transport them to and from various document depositories,
21 et cetera. But it wasn't his money alone.

22 THE COURT: Mr. Arsenault, do you want to tell us the
23 first name?

24 MR. BECNEL: Richard Arsenault. It comprised five
25 people: Ms. Barrios, Mr. Witkin from Pensacola, Mr. Vance Andrews

1 and -- I'm trying to remember the other one, I was just given those
2 names. I had no idea they were involved. And they contributed to
3 him, he then sent me a check, and I did all of the work and
4 supervised and managed them doing most of the documents. So I was
5 not aware that until a few days ago, mainly because I was in
6 Houston for medical reasons.

7 So I don't know how that's going to be handled now, and I
8 don't think the Special Master knew that until I notified him with
9 another brief I was able to file yesterday. So it's --

10 THE COURT: This has to do with the fee issue?

11 MR. BECNEL: This has to do with the fee issue.

12 THE COURT: Pat, are you familiar with it?

13 MR. BECNEL: I am claiming hours for people that I
14 managed, a few of whom, four that they contributed to but I only
15 thought it was Mr. Arsenault. I never knew it was four other
16 people in this. And Mr. Arsenault apparently issued an affidavit
17 that I was confronted with during the fee dispute, and, you know,
18 my 16,000 hours somehow was 13,000 hours and then it keeps getting
19 chopped up at the end of the game.

20 Not at the beginning because I was in this case two years
21 before it even got to an MDL. And in addition to that, and I gave
22 some evidence of that to the Special Master. It becomes very
23 difficult because two years when you investigating a case you're
24 not keeping hours because you don't know whether it's going to pan
25 out or not pan out or whether it's going to be MDL or not going to

1 be an MDL. And at that time I had 2,000 cases.

2 When I was not appointed to the PSC, somehow or another
3 they disappeared, except for 144, so I am very concerned about a
4 number of things in this case, and those are what I am concerned
5 about.

6 THE COURT: All right. Okay. Thank you. Someone on the
7 telephone wanted to speak?

8 MR. SOBOL: Yes, your Honor. Good morning, it's Tom
9 Sobol from Hagens Berman in Boston.

10 And I simply wanted to raise the issue, as I'm sure the
11 court is aware, there is currently sitting in an escrow common
12 benefit fees for resolution of the third party payor purchase
13 claims. To refresh the court's recollection, that settlement was
14 negotiated in 2009, funded in 2009, and paid to the clients I think
15 in the latter part of the fourth quarter of 2009.

16 For understandable reasons -- and as the court may also
17 recall, there was a principle amount of \$15 million put into escrow
18 to be allocated to the law firms that handled third party payor
19 claims. Again, to refresh the court's recollection, there were
20 about 176 third party payors whose claims were resolved by that
21 settlement and there were at least as many as 27 law firms that
22 were on the pleadings in those cases.

23 No actions as far as I am aware have been brought,
24 undertaken yet by the court in the exercise of its discretion in
25 this regard, and I really would just like to be in a position to be

1 able to report back to those law firms, some of whom contact me
2 from time to time, many of which do not, simply to give them a
3 sense about whether the court has a sense about when it might take
4 up that process, and if so, when.

5 THE COURT: Any input from the Plaintiffs Committee?

6 MR. HERMAN: May it please the court, Russ Herman for the
7 PSC. Your Honor, Chris Seeger on behalf of the PSC and as co-lead
8 negotiated with Mr. Sobol the primary agreements. Chris isn't here
9 today. This issue was brought up in a prior status conference, I
10 don't have the note, and your Honor indicated at that time that at
11 some future date you would set in place a process for determining
12 the allocation of the \$15 million.

13 And of course it's the PSC's position that the PCS and
14 the MDL conferred common benefit in connection with that, and
15 whenever your Honor sets in process a way that that should be
16 handled, Mr. Seeger will meet with Mr. Sobol and I'm certain that
17 they will take care of following whatever process your Honor sets.

18 THE COURT: What I'll do, I'll set a status conference,
19 Tom, for you and the interested parties to meet, I'll do that next
20 week or the following week, and we'll talk about the issues; and
21 also I'll talk with you both about, all sides about how we deal
22 with it. It's timely that we deal with that, so I'll focus on
23 that. But I'll set a status conference to get everybody's input
24 and then I'll make the decision.

25 MR. SOBOL: Well, thank you to the court and to

1 Mr. Herman, it's appreciated.

2 THE COURT: Okay. Thank you. Anything else from anybody
3 in the audience? Anybody on the phone?

4 All right. Folks. Thank you very much. The court will
5 stand in recess.

6 THE DEPUTY CLERK: Everyone rise.

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 (OPEN COURT.)

9 THE COURT: Be seated, please. We have a number of
10 motions in cases that have either been delinquent or haven't sent
11 material in. Let me hear from the movent.

12 MS. HORN: Good morning, your Honor. Elaine Horn from
13 Williams & Connolly here on behalf of Merck standing in for Dorothy
14 on a series of motions that have leftover pieces to them.

15 The first group -- is there a particular order that you
16 would like to take them in?

17 THE COURT: No, whatever way you want to take them.

18 MS. HORN: The first group I would like to take up are
19 the Rule 25 motions, the ones to dismiss for lack of a proper
20 party.

21 The first one was Pedro Gonzales. Merck's original
22 motion was record document No. 61280 that was filed on February
23 3rd, 2011. That one we did not file a certificate of death, there
24 was a delay in an attempt of the then current counsel to get a
25 proper party, that didn't work out, counsel withdrew. We re-served

1 the motion on the pro se person and no response. So we would like
2 to have that case dismissed.

3 THE COURT: Anybody on that motion?

4 Hearing none, the plaintiffs object to dismissal and they
5 feel that if it is dismissed it should be dismissed without
6 prejudice. I deny that and dismiss it with prejudice.

7 MS. HORN: The second motion is Linda Thornton, that's
8 record document 62925 filed on May 5th, 2011. That is a plaintiff
9 in the *Alaniz* case. Again, we filed the suggestion of death and
10 then also the motion, no response, so we would like to have that
11 case dismissed at this time.

12 THE COURT: Any response? The plaintiffs make their
13 motion, I'll deny it, and dismiss it with prejudice.

14 MS. HORN: And the third Rule 25 motion is Michael
15 Wodowski, and that's record document No. 62926, filed May 5th,
16 2011. The motion itself, no response, we would like to have that
17 case dismissed.

18 THE COURT: Again, I deny the plaintiffs motion to
19 dismiss without prejudice, and I'll dismiss this one with
20 prejudice.

21 MS. HORN: The next set of motions are ones that have
22 been deferred from prior hearings. The first one concerned Dennis
23 Harrison, record document No. 61683. We had received some material
24 that was PTO 28 motion, we have received some material from
25 Mr. Harrison, he also informed us of his continuing health problems

1 and his recovery has caused some delay, we would like to defer that
2 motion.

3 THE COURT: Let's defer that. Mr. Harrison is made an
4 appearance several years ago and he's pursuing his case. I'm sorry
5 to hear that he is ill again and we'll pass that one.

6 MS. HORN: And then we have two leftover plaintiffs from
7 a motion that was filed in April of 2010, and this was record
8 document No. 40199, and both of those were *Lone Pine* motions for
9 cases that had gone through the settlement and not passed the
10 Gates. They were deferred indefinitely pending resolution of
11 counsel's motions to withdraw. They went through the various
12 procedural steps they were supposed to go through. The order has
13 not been entered on their motions.

14 What we ask is that the order granting the motion to
15 withdraw be issued and that the two remaining plaintiffs from that
16 motion be reset for the next hearing.

17 THE COURT: Okay.

18 MS. HORN: The exact cases are Kenneth A. Novick, Case
19 No. 07-7756, and Richard Garcia, Case No. 07-0902.

20 THE COURT: I'll issue those orders letting them
21 withdraw, and we'll set that for next time.

22 MS. HORN: And that's it.

23 THE COURT: Is that it? What about Ms. Oldfather's case,
24 did we pass that one?

25 MS. OLDFATHER: What happened to Mosby and Perry?

1 MS. HORN: Oh, we did have two other Rule 25 motions, and
2 my understanding is that an order was, a proposed order was sent
3 over to the court, in those two cases a proper party was
4 substituted so we would like that motion to be denied obviously as
5 moot.

6 THE COURT: All right. Make it moot.

7 MS. OLDFATHER: That's Perry and Mosby, just so I can
8 keep it clear?

9 MS. HORN: Yes.

10 THE COURT: All right. Anything else?

11 MS. OLDFATHER: Yes, your Honor. There's nothing like a
12 little talk to clear the air, and Mr. Marvin and I have agreed that
13 we will resolve my motion for protective order regarding the
14 unilaterally set depositions without seeking the court's
15 assistance.

16 THE COURT: Okay. All right. Fine. We'll make that
17 moot.

18 Okay. Anything?

19 MR. SMITH: Your Honor, if I may?

20 THE COURT: Yes, sure.

21 MR. SMITH: My name is James Smith, your Honor, I
22 represent Dr. Charles Conley.

23 THE COURT: Yes. We have to deal with that. What's the
24 input from Merck on that?

25 MR. SMITH: I have a motion for summary judgment just to

1 dismiss Dr. Conley from the case that was served on May 9th.

2 MS. HORN: Which case is it?

3 MR. SMITH: It's 2:05-CV-05295, *William Andrew and Tonya*
4 *Curl v. Merck & Company, et al.*

5 THE COURT: We ought to get the doctor out of this case.

6 MS. HORN: We have no objection.

7 MR. SMITH: And I've heard no objection from anyone.

8 THE COURT: I'll grant the motion.

9 MR. SMITH: Thank you, Judge.

10 THE COURT: All right. Thank you. And we'll convene in
11 the conference room for the Attorney Generals.

12 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

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18 I, Karen A. Ibos, CCR, Official Court Reporter, United
19 States District Court, Eastern District of Louisiana, do hereby
20 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.

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

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