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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS \* Docket 05-MD-1657-L  
LIABILITY LITIGATION \*  
\* September 17, 2009  
\*  
This Document Relates to All Cases \* 9:00 a.m.  
\* \* \* \* \*

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

APPEARANCES:

For the Plaintiffs: Herman Herman Katz & Cotlar  
BY: RUSS M. HERMAN, ESQ.  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113

For the Defendant: Williams & Connolly  
BY: DOUGLAS R. MARVIN, ESQ.  
725 Twelfth Street N.W.  
Washington, D.C. 20005

Also Participating: Orran L. Brown, Esq.  
Lynn C. Greer, Esq.  
Andy D. Birchfield, Esq.  
Matt L. Garretson, Esq.  
Patrick A. Juneau, Esq.  
Dawn M. Barrios, Esq.  
Robert M. Johnston, Esq.  
John H. Beisner, Esq.  
James R. Dugan, Esq.  
Ann B. Oldfather, Esq.

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Official Court Reporter: Toni Doyle Tusa, CCR, FCRR  
500 Poydras Street, Room B-406  
New Orleans, Louisiana 70130  
(504) 589-7778

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1 "To do a great right, do a little wrong."

2 In terms of all of the lawyers in the case in  
3 creating a fund creatively that 99.5 percent of claimants have  
4 entered, Angelo from Act 2, Scene 1, in *Measure for Measure*,  
5 Shakespeare's great cry against precedent and the common law:

6 "We must not make a scarecrow of the law,  
7 "Setting it up to fear the birds of prey,  
8 "And let it keep one shape, 'til custom make it,  
9 "Their perch and not their terror."

10 In fashioning this resolution, all of the  
11 lawyers and the judiciary are to be commended for fashioning  
12 something new.

13 Lastly, if it was not for Pericles, a statesman  
14 and a general and also a lawyer, who indicated that juries are  
15 to be egalitarian and, therefore, for the first time legislated  
16 jurors to be paid fees so that not just the wealthy could  
17 serve -- Plato hated juries, but our Socrates rose and said,  
18 "Nothing done with intelligence is done without speech. It is  
19 the marshal of all actions and thoughts," in reference to the  
20 rejection of Plato's derision of jury trials and in supporting  
21 a trial bar in the adversary system.

22 So on this 50th status conference, these remarks  
23 are salutatory for everyone, no matter what part of the  
24 controversy they played, and particularly to the bench, which  
25 directed in appropriate ways that this matter be resolved.

1           **THE COURT:** Well, just a brief response. I'm not  
2 going to cite Pericles or Socrates or any of the other good  
3 folks we all admire and look up to.

4           You know, in a case like this -- and you have  
5 heard me say this before. I've walked in your shoes. I was  
6 practicing law for 33 years before I became a judge. I know  
7 that the work and resolution of cases are really more because  
8 of the lawyers than judges. You know the case better. You've  
9 come up with it, created solutions, and you put them in place.

10           I was very fortunate in this particular case to  
11 have not only great lawyers on both sides, but the assistance  
12 of some very talented state court judges who worked with the  
13 MDL court. I think it was largely because of the lawyers and  
14 the assistance that I got from the judges that this case was  
15 able to be resolved in the fashion that it was.

16           This has been one of the largest MDL cases in  
17 the history of the country. To resolve the case in three years  
18 was a monumental job, and it's because of the talent and  
19 creative views of the lawyers that really brought this to  
20 fruition. I do appreciate it.

21           Also, in these matters, if any lawyers have some  
22 comments to make either to me privately or whatever in giving  
23 the MDL courts throughout the country some assistance in things  
24 you feel worked or didn't work, I'm speaking again at the MDL  
25 group. They get tired of hearing me. They have me too much

1 now. I always mention that not to let you know I'm speaking,  
2 but I see it as an opportunity to give any thoughts that you  
3 might have to the MDL group.

4           Every MDL judge in the country appears at those  
5 meetings. Unfortunately, they don't have an opportunity to  
6 hear from lawyers. I always mention it so that if you have any  
7 comments, you can filter them through me, and I will make them  
8 known to the rest of the country for you.

9           Let's take the agenda, then, in order.  
10 Settlement Agreement, anything?

11           **MR. HERMAN:** BrownGreer has reports to make as to  
12 Items I and II, the Settlement Agreement and registration.  
13 Your Honor, I again want to mention the Web sites:  
14 [vioxx.laed.uscourts.gov](http://vioxx.laed.uscourts.gov) and [browngreer.com/vioxxsettlement](http://browngreer.com/vioxxsettlement).

15           **MR. BROWN:** Good morning, Your Honor. I am Orran  
16 Brown, and with me today is Lynn Greer. We are from BrownGreer  
17 in Richmond, and we are the claims administrator for the Vioxx  
18 Settlement Program. We are happy to be here on the occasion of  
19 our 21st -- not 50th but 21st report.

20           What we want to do today, Your Honor, is cover  
21 where we stand on the administration of the Extraordinary  
22 Injury Program as a piece of the Settlement Program, and then  
23 Lynn will cover where we are now on the processing of the  
24 IS/stroke claims and our plans for final payments on completing  
25 the processing of the heart attack/MI claims.

1           Your Honor, first on the Extraordinary Injury  
2 Program, we have discussed this at several of our recent status  
3 conferences. We, on March 2, announced that that program was  
4 underway, where we had done all the work to enable *pro se's* and  
5 represented claimants, through their law firms, to file  
6 extraordinary injury claims on an extraordinary injury claim  
7 form seeking payments from the funds that were allocated or at  
8 least earmarked for potential use for extraordinary  
9 catastrophic injury claims within the MI settlement fund and  
10 the IS settlement fund.

11           We announced it here on March 2 of this year  
12 first with a deadline of June 1 for all claimants to submit a  
13 claim to that program with their claim form and their  
14 documentation and tax forms and other materials that we need to  
15 be able to process them. We very soon after that, on April 14,  
16 announced that that claim final deadline was moved, extended to  
17 September 1. Then through the course of the summer, we were  
18 gearing up for that, and then the deadline has now passed on  
19 September 1.

20           What we had advised everyone and announced  
21 several times was that to be able to seek benefits in that  
22 program, you had to submit an EI claim form that we had  
23 designed and made available as well as the types of required  
24 documentation, we called it, to support the type of claim you  
25 were presenting to those funds, whether it was an economic loss

1 claim or a claim of some catastrophic physical injury not  
2 adequately reflected on the underlying MI and IS grids.

3 We had made it very clear that that was a time  
4 line, and we monitored that very carefully because most all of  
5 the claims from law firms were submitted online through the  
6 Vioxx portal. We monitored it down to allowing claims and law  
7 firms until midnight on the 1st of September local time of  
8 wherever the person was who was submitting that claim for the  
9 claimants. So we have monitored that very carefully and now  
10 that deadline has passed.

11 Now, with the passing of the deadline, this  
12 slide shows us how many claims we have received seeking  
13 benefits from these potentially available funds from either IS  
14 claimants or heart attack/MI claimants. We have a total of  
15 3,630 claims.

16 This slide shows us how they break down among  
17 the types of claims that could be asserted in the Extraordinary  
18 Injury Program, the first one being a claim for past lost wages  
19 or income with claimants who had an eligible event, a heart  
20 attack or a stroke, and then are asserting that they lost  
21 income or wages from that event up through the date of the  
22 Settlement Agreement, which was 11-9-07, and that's the past  
23 period. That's the period for asserting economic loss.

24 It has to be above \$250,000 of unreimbursed lost  
25 wages or income to be able to seek benefits in this program.

1 You see we have a total of 841 claimants who are asserting  
2 those kinds of economic losses for that past period.

3           The Settlement Agreement also contemplated that  
4 you could seek reimbursement for catastrophic past medical  
5 expenses for that period if they exceeded \$250,000, and we have  
6 286 claimants total who have submitted claims of that nature.

7           The Settlement Agreement also contemplated that  
8 you could seek benefits from this fund if you had a special  
9 medical injury, some sort of physical injury resulting from  
10 your heart attack or stroke that you felt was not adequately  
11 reflected on the underlying heart attack or stroke grids.

12           We have 1,857 claimants who have asserted that  
13 type of injury, something that they felt they had sustained as  
14 a result of their Vioxx use and their underlying eligible  
15 event, heart attack or stroke, that they felt was not  
16 adequately covered on the existing injury grids for their  
17 underlying claim.

18           Row 4 here is what we have called additional  
19 extraordinary damages, and this is really folks who are  
20 claiming that in addition to those past economic losses, they  
21 had suffered or will suffer, they think, a continuing loss of  
22 income or continuing medical expenses that are not reimbursed  
23 or covered by insurance for the future. We have said from the  
24 beginning that those types of losses, if they were presented  
25 and proven, would be a factor in evaluating the individual

1 award to be made from these available funds on an extraordinary  
2 injury claim. We have 646 claimants who asserted those types  
3 of claims.

4 Now, some claimants asserted more than one of  
5 these, so some claimants appear in more than one of these rows.  
6 There's not 3,630 people because some claimants asserted  
7 special injury and economic loss and future, so they are  
8 counted in more than one row. This does give us a total number  
9 of claims that we are now looking at in this program.

10 As is typical of these programs, the bulk of  
11 these claims came in in the last period. We received about  
12 81 percent of these claims in the last week before the  
13 deadline. We got 60 percent of them in the last two days, and  
14 we got almost 37 percent of them on the very last day, which is  
15 typical when there's a deadline for a program of this nature.

16 We are now reviewing these claims. We have  
17 teams trained to review the particulars of economic losses and  
18 the special medical injury. That review process is underway.  
19 We will continue to report to the Court each month as to how  
20 that process proceeds.

21 **THE COURT:** Okay. Now, Orran, just so that we are  
22 clear on it, this special fund is a pot, so to speak; it's not  
23 replenished. It is kind of like a pie, and it depends on how  
24 big the pie is as to how big a slice you get of the pie.  
25 That's why we had to say that's the end; there's no more claims

1 that can go in that.

2 **MR. BROWN:** Correct, Your Honor. The Settlement  
3 Agreement makes it very clear that there are funds out of the  
4 original MI fund that are potentially available to pay  
5 extraordinary claims for MI claimants. It also says that  
6 there's a sum of money, \$105 million, potentially available to  
7 pay stroke claimants who felt that they had extraordinary  
8 injury, and those are capped funds.

9 The Settlement Agreement is clear that if those  
10 funds are not needed, depending upon how these evaluations turn  
11 out, they stay in the original funds and they are distributed  
12 on the underlying claims, but it is a capped limit that the  
13 Settlement Agreement makes available for these types of  
14 claimants.

15 **THE COURT:** That's the point of saying that we have  
16 deadlines and if you have a claim, you have to get it in before  
17 the deadline. If you don't get in before the deadline, then  
18 you lose your claim.

19 **MR. BROWN:** Yes, Your Honor. We have talked to a lot  
20 of people about that who asked that question. We have made it  
21 very clear from the beginning that these deadlines are firm.

22 **THE COURT:** Okay.

23 **MR. BROWN:** Your Honor, If the Court has no further  
24 questions on this, Lynn will come up and then tell us where we  
25 are now on our stroke reviews and our MI reviews and final

1 payments. Thank you, Your Honor.

2 **THE COURT:** Thank you.

3 **MS. GREER:** Good morning, Your Honor. Lynn Greer  
4 from BrownGreer. Today we will cover where we are with the  
5 strokes and the MI's and talk about the final payment, as Orran  
6 said.

7 This is, as of yesterday, the distribution of  
8 the claims that had been filed between the two injury types,  
9 still with roughly 63 percent claiming heart attack and  
10 37 percent claiming stroke.

11 I'm going to do something a little different  
12 this month, Your Honor. I would like to focus on the stroke  
13 claims first, which will then leave the MI final payments to  
14 the end. The stroke reviews, although we have been focused on  
15 the MI's, we have continued to make progress on reviewing the  
16 stroke claims both at the gates level and the points level.

17 This slide shows that there are currently 6  
18 claims that are in the queue for our original gates review on  
19 strokes. There are 504 that are awaiting our second review,  
20 our quality control review. There are 1,916 where we have done  
21 our full reviews of the claims.

22 We have been rolling out our claims  
23 administrator notices of ineligibility in sort of batches over  
24 the last few weeks. The reason for that is because these  
25 notices are the notices that counsel need to respond to if they

1 need to go get additional information to be able to prove  
2 eligibility. This is often, in the process, one of the hardest  
3 junctures for firms, if they get a lot of notices at one time,  
4 because they then have to go try to gather records on hundreds  
5 of claims at once.

6           So what we have done is we have tried to roll  
7 these out to be able to give firms a chance, on an ongoing  
8 basis, to go get documentation, if any exists. So this almost  
9 2,000 claims represents a pocket where we have done our  
10 reviews, and we are releasing those in batches of several  
11 hundred a week. So those will shortly be released over the  
12 next few weeks.

13           The results of the claims that we have reviewed  
14 to date are that there are 7,258 that have been eligible for  
15 points review. There have been 7,650 notices of ineligibility  
16 already issued to claimants. There are 543 that are currently  
17 with the gate committee that they have not voted on yet.

18           This slide shows that through this month we will  
19 have paid over 2,500 stroke claims, and the interim payments  
20 for the stroke claims will go out next week. There are 300  
21 additional stroke claims where we have completed our reviews,  
22 and these will be paid in October. This number grows every  
23 day.

24           This is just a snapshot of where we were  
25 yesterday. 129 of those have already been accepted and will be

1 paid. 126 are still within a time to decide whether to accept  
2 or appeal. There are 45 stroke claims that have either already  
3 appealed or are in special review. Those special review claims  
4 are ones with stroke points of less than 2 points.

5           134 points awards, we have reached a point where  
6 we are almost ready to issue the notice. There are  
7 administrative issues that we need to clear up before we can  
8 actually issue a notice. There are 2,100 that are pending our  
9 level of quality control review on the points side. There are  
10 524 claims that are incomplete. We can no longer complete the  
11 points process. These have received notices. These firms have  
12 received notices telling them exactly what is missing and what  
13 we need to be able to complete points. We have started reviews  
14 on 366 claims, and there's a queue of about 1,021 that are in  
15 the queue waiting for our review.

16           Through September, we will have paid over 2,500  
17 claimants over \$69 million. What is pending that could  
18 possibly be paid in October is another \$8 million or 255, but  
19 again that number will grow significantly because there are  
20 still three to four weeks where people can accept their stroke  
21 awards and be paid in October. So through October it is  
22 possible that we will be able to pay another 2,500 claims. I'm  
23 sorry. That's actually another 500 claims, which would bring  
24 the total up to about 3,000.

25           I will not read this into the record,

1 Your Honor, but this is available on our slides, which we do  
2 post after every status conference. What this shows is just  
3 the average points by stroke injury level. There are five  
4 injury levels on the stroke grid, and the special marker  
5 percentage is 5.91 percent as of yesterday.

6 Turning our attention to the heart attack  
7 claims, these are the ones that we have all been focused on  
8 collectively to try to reach our goal of the payment at the end  
9 of this quarter. What this slide shows is that we are almost  
10 done. From the gates perspective, we have no more MI claims  
11 waiting to be reviewed for gate. There are 6 claims that we  
12 have issued a notice of ineligibility on that are in the works  
13 and that firms are responding to, and we expect a response to  
14 those soon.

15 What this slide shows us is that we expect that  
16 there will be 20,419 heart attack claimants paid. It also  
17 shows us that through this process of almost 30,000 heart  
18 attack claims that were filed, there have been notices of  
19 ineligibility or final gate failure notices issued on 9,885  
20 claimants.

21 Through August, we had paid interim payments to  
22 17,699 claimants. There are another 2,719 that will be paid  
23 and these are ones we are not -- I will announce this later.  
24 We are not making interim MI payments in September. We are  
25 going to pay them all at the same time we make the final

1 payments.

2           Out of the 2,719 MI claimants with unpaid points  
3 awards, 2,407 are accepted. They are fully resolved. They  
4 will be paid when we make the final payment. There are 43 that  
5 are still within the time limit to decide whether to accept the  
6 award or to appeal. We are working very hard and diligently  
7 with these firms and these claimants to get them to make their  
8 decision so that if they appeal, we can expedite the review of  
9 that; and if they ultimately appeal to the special master, they  
10 will be able to expedite their review to be able to resolve  
11 these claims.

12           There are only 27 appeals currently pending with  
13 the special master. Those are points appeals. We expect  
14 resolution of those within the week. There are 242 claims that  
15 will not be paid at the same time we make the final payment.  
16 These are the heart attack special review claims, and the  
17 process calls for all of the special review claimants -- and  
18 these are, again, claimants with special marker valued claims  
19 that have elected to go through the special review process with  
20 the special master.

21           What has to happen is that population has to be  
22 defined. Those all get sent to the special masters to review  
23 at the end of the process. They have to look at each of those,  
24 and they have to award an average across that population of 2.5  
25 points. So at the end, when we fully have resolved everything

1 and can figure out exactly how many people are in that bucket,  
2 we will send those to the special master, they will do their  
3 review, and those claimants will be paid.

4           There is currently one claim that is the subject  
5 of an audit, and that is pending with the special master. The  
6 response from the firm is due tomorrow. So, again, we expect  
7 resolution of that claim as soon as the response is filed and  
8 the special master is able to resolve that.

9           This slide shows the points by entry level for  
10 the heart attack claims. Again, I will not read this in the  
11 record, but this is available on our Web site in the slide  
12 presentation from today.

13           This shows that through August we have paid over  
14 \$1.4 billion to over 17,000 MI claimants. Those break down to  
15 over 16,000 interim payments and 850 \$5,000 fixed payment  
16 elections. Again, this just reiterates the earlier slide which  
17 shows that there are another 2,649 people who are resolved and  
18 who will be paid. It focuses us on the 71 people who we still  
19 need to resolve before we can make the final payment. This,  
20 again, brings us to the bottom line, which is that we expect  
21 over 20,000 MI claimants to receive payment.

22           Important reminders about what we need to have  
23 happen before the final payment can be issued, the first two  
24 items deal with reports that we have recently sent to firms.  
25 The first is a claims status report that we issued most

1 recently at the end of August giving each firm the status of  
2 each of their claimants, whether the claimant is open or  
3 whether the claimant is closed. The onus is really on the firm  
4 at this point if they see anything wrong with our reporting of  
5 where we have their claimants.

6           The second report is one that we issued last  
7 week that was a summary by claimant of each payment that we  
8 have made on behalf of each claimant. Again, this is just to  
9 be able to try to spot some glaring error. We do not expect  
10 there will be any. U.S. Bank has been very good about wiring  
11 the right amount of money, obviously, and I think we would have  
12 heard by now if something had happened that was not correct.

13           Again, on Friday we issued reports. We urge  
14 firms to look at them carefully, make sure the dollars match  
15 their records and that all of the information is correct. We  
16 are going to assume, if we do not hear from firms by the end of  
17 the day tomorrow, that those two reports are accurate and that  
18 we can move forward on that basis.

19           Again, the special marker claimants will not be  
20 paid at the end of the third quarter. This is the group I  
21 talked about that will go to the special master for resolution  
22 of payment shortly thereafter.

23           Again, there will be no separate MI interim  
24 payments issued in September. Instead, we will collapse those  
25 all in the final payment.

1           We are worried about the timing of the final  
2 payment. We are still on track. It has been a tremendous  
3 effort by firms, by the parties, by the Court, and we feel that  
4 those 71 claimants, obviously, still have their Settlement  
5 Agreement rights to respond and to be able to make their  
6 decision within a certain window.

7           We still feel that we will be able -- assuming  
8 that they will respond and allow us to, that we will be able to  
9 get all of the final payment information finalized by the end  
10 of this month. We will then send the list to U.S. Bank. It  
11 will be October before the payments actually come. We will  
12 need time to make sure that none of these deadlines extend  
13 beyond October 1.

14           We have to be able to quantify points. These  
15 point values will come down to the penny. Until we know  
16 absolutely everybody who is in the category, we cannot make the  
17 final payment. Again, we have been working with these firms.  
18 We encourage folks who are still sitting on these awards to  
19 contact their clients and to try to get a resolution. We will  
20 do everything within our power to be able to get the list to  
21 the bank, and then it will be just a matter of the payments  
22 being able to be issued in October.

23           **THE COURT:** You feel that you'll be able to get all  
24 of your paperwork to the bank by the end of this month?

25           **MS. GREER:** We do; depending, Your Honor, on these

1 unresolved claims, yes.

2           We have been working, obviously, to be able to  
3 get to the point where we are now down to the 71 that are  
4 unresolved. We do feel now that we can give a projection of  
5 the final point value. Right now, again, we cannot name this  
6 precisely because we have to wait until every claimant is  
7 resolved, but we believe now that the current point value is  
8 projected to be somewhere in the range of \$1,860 and \$1,870.  
9 This is different than what we projected last year. It's 2 to  
10 3 percent less than the value projected last year.

11           **THE COURT:** The reason it's less is because you have  
12 more people.

13           **MS. GREER:** We have more people. Your Honor, we did  
14 the projection last year based on data of about 2,500 people,  
15 which we extrapolated. We feel really good that the point  
16 value is coming in only between 2 and 3 percent because what  
17 the next item shows is that there have been over 3,000  
18 additional people who, through the adequacy of their firms and  
19 lawyers, were able to come into the program, were able to  
20 perfect their claims packages, and they are getting paid.

21           So to have it be 2 to 3 percent less when 3,000  
22 more people are being paid is something that we are really  
23 encouraged about and also the claims themselves. We are paying  
24 over 117,000 more points than were in the original projection.  
25 So this shows the quality of the claims and the number of

1 claims are greater, which inures to the benefit of more people.

2 We do expect for the final point value to come  
3 in somewhere in this range and, obviously, will let firms know  
4 as soon as we know what the dollar amount is to the penny. If  
5 your Honor has no further questions --

6 **THE COURT:** No. I appreciate it. Again, I think the  
7 concept of having a number of different reviews has helped in  
8 this particular case. You folks have given it the  
9 administrative review, that is to say, to make sure that the  
10 Settlement Agreement by and between the parties was satisfied.  
11 Then the attorneys for both sides created the concept of  
12 plugging in some humanistic view of it, that is to say, see  
13 whether or not there's some gray areas that they could work  
14 with. That, I think, has pushed more people through the gates.  
15 Then we have the special master review. There's another aspect  
16 of the review, an independent group review, that makes sure  
17 that everything else is worked out.

18 It's taken us a little time from the standpoint  
19 of these reviews, but I think the claimants have profited from  
20 it because 3,000 more people got through because of those extra  
21 reviews. I think that was very helpful. Thank you very much.

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

23 **MR. BIRCHFIELD:** I think this is absolutely  
24 remarkable, the job that BrownGreer has done. I mean, to be  
25 able to take a settlement program that involves 50,000 people,

1 50,000 claimants, and to process those and make a projection a  
2 year in advance that comes within 2 to 3 percent of the point  
3 values that were projected, especially in the light of when the  
4 parties at the very beginning rolled this out, we were looking  
5 at a threshold of 85 percent, and we had 99.5 percent of the  
6 eligible participants to elect to participate in this program,  
7 and from my standpoint -- and I've been working very, very  
8 closely with this throughout the course of this Settlement  
9 Program. From what I hear from lawyers that have been involved  
10 in the program, this is a remarkable result.

11 We are thrilled to see that we are in a place  
12 where we can issue the final payment on time and that it has  
13 come in at so close to the projected value. I just want to  
14 extend my thanks to BrownGreer and to Merck and to the special  
15 masters, who did a phenomenal job in making sure that we could  
16 stay on track for this final payment.

17 **THE COURT:** Notwithstanding that, I know that there  
18 are some people who may be disappointed because they didn't get  
19 through those reviews; they didn't pass the first one or they  
20 didn't pass the second one or they didn't pass the third one or  
21 didn't pass any of them. Obviously, there's going to be some  
22 people who are upset. The best I can do is to create a process  
23 and to make sure that due process and opportunity is there.  
24 Not everybody is going to be able to partake of the opportunity  
25 to get through it. I think everybody ought to be satisfied

1 that they had the opportunity and it was a fair shot.

2 The next item is the lien administrator.

3 **MR. GARRETSON:** I'm Matt Garretson here to report as  
4 the lien resolution administrator. Appreciating the timing of  
5 MI and SCD cases that are eligible for final payment, I have  
6 isolated just those data points for purposes of this report as  
7 this is our current priority.

8 Further, I would like to reinforce to everyone  
9 that there is now a feature on the primary counsel Web portal  
10 through BrownGreer that allows each primary counsel to export  
11 to an Excel spreadsheet the lien resolution detail that I am  
12 covering for their category of claimants.

13 With respect to Medicare, the current number of  
14 active claimants with a notice of points award, I believe, is  
15 23,271 claimants. The current number of points award notice  
16 claimants that are active that have a Medicare obligation is  
17 approximately 16,000 of those or 70 percent. Out of the 16,000  
18 total Medicare entitled claimants who received a points award  
19 notice, 87.2 percent of them have an MI or sudden cardiac death  
20 primary injury. So those are the claimants who are ready for  
21 payment.

22 I'm pleased to inform the Court that we have  
23 completed the Medicare resolution for approximately 99 percent  
24 of these cases. The unfinalized cases largely involve  
25 unfinalized redeterminations. As you may recall from my

1 monthly reports in the past, we have received about 288  
2 requests by claimants for us to take another look at their  
3 Medicare reimbursement category.

4 Many of these will be resolved just, again,  
5 through education. What we are finding is they have been  
6 categorized correct; it is just a group of claimants largely  
7 who has a fundamental misunderstanding of the necessity to  
8 repay Medicare, thinking that they shouldn't have a Medicare  
9 reimbursement. So, again, very positive signs that we are only  
10 dealing with 288 redeterminations.

11 Furthermore, a few hearings ago, the Court asked  
12 me to report that we are in compliance with this new Medicare  
13 reporting statute, the Medicare/Medicaid SCHIP Extension Act or  
14 MMSEA. We have been working closely with defense counsel Doug  
15 Marvin and Merck, and more specifically we have been working  
16 with the Centers for Medicare & Medicaid Services to ensure  
17 that the process by which we are finally reporting Medicare  
18 claims will meet Merck's obligation under this new statute. Of  
19 course, we will continue to report to the Court and Merck and  
20 to the plaintiffs' steering committee about the specifics, but  
21 we are right on track with having this new statutory  
22 requirement satisfied.

23 With respect to Medicaid, approximately  
24 28.8 percent of all active claimants have Medicaid obligations.  
25 The current number of points award notice active claimants with

1 a Medicaid obligation -- so those that are ready to be paid  
2 out -- are approximately 4,812. There are 4,812 active  
3 claimants who have an MI or SCD primary injury that are ready  
4 for payment. Interestingly, these 4,812 claimants have  
5 generated over 5,200 liens, and that's because from some point  
6 from the date of their injury to the date of their settlement  
7 they have treated in two separate states.

8           We have finalized Medicaid obligations for  
9 91 percent of these cases. We are in the process of updating  
10 this information into the Web portal so that information can be  
11 downloaded by primary counsel.

12           The unfinalized Medicaid cases are due -- I'll  
13 just list these in order of importance: One, because they are  
14 close to hitting their cap. If you recall, there's a  
15 20 percent cap on a Medicaid obligation in most of the states.  
16 That is part of the protocols we have put in place. We have a  
17 group of Medicaid claimants that are approaching that cap, and  
18 we can't finalize their lien until we have the finalized  
19 numbers, which are, of course, just coming down the pike. So  
20 as soon as we are able to apply the math, we will be able to  
21 finalize those liens.

22           We also have a few states that did not agree to  
23 these protocols. If the Court will recall, there were a few  
24 states who would not agree to these caps and offsets, and so we  
25 have to have those claims on hold again until we have their

1 final award so that we can satisfy the Medicaid claim.

2 Also, we are dealing with an issue I need to  
3 bring to the Court's attention with Kentucky. Kentucky  
4 Medicaid has over 100 liens, and they have yet to provide us  
5 their inbound claim detail. They work with a contractor. The  
6 contractor submitted data four times that we have audited, and  
7 then they have told us it's the wrong data. So we are spinning  
8 our wheels, Your Honor. We are going to need probably some  
9 help from the Court to tell them it's time to get the right  
10 data in our hands.

11 **THE COURT:** Why don't you get me the name of the  
12 individual who is in charge of the office, and I'll handle it.

13 **MR. GARRETSON:** Yes, sir. That's the biggest issue  
14 with respect to Medicaid that I would like to report. Of  
15 course, we can apply the holdback to those cases. So there is  
16 a solution to allow money to flow to those, but they can't be  
17 finalized within that 20 percent holdback until we actually get  
18 their claims data. That is the only state or territory we are  
19 still struggling with.

20 In this regard, with respect to all the Medicaid  
21 obligations for the claimants who have a points award notice  
22 letter, we are pleased to report that we have finalized  
23 approximately 98 percent of all the Medicaid liens, so that's  
24 an encouraging number. If we could just get that last slug of  
25 cases in, I think we will be in good shape. The rest of those

1 that we have yet to finalize could also be areas where we have  
2 a discrepancy that we are still trying to cure with the  
3 Social Security number provided.

4           With respect to other governmental liens, the  
5 VA, TRICARE, Department of Defense, we have received for the  
6 claimant population that has the points award notice  
7 approximately 606 claims files. As I have reported in the  
8 past, we have to actually go to the individual treating  
9 facilities for each of these. So we are 60 percent complete  
10 with those obligations at this point. We continue to try to  
11 get the data in, but again we have the holdbacks in place  
12 there.

13           What we would ask is that we are still getting  
14 from primary counsel notice on a weekly basis of new claims.  
15 We may have to come to the Court to ask for a deadline for  
16 people to submit, perhaps in October, so that we are not  
17 dealing with this issue since we are now 18 months into the  
18 process.

19           That concludes the governmental lien. Let me  
20 shift for a few moments to the private lien resolution program.

21           We continue to work with the plaintiffs'  
22 steering committee and the third-party payor committee to  
23 administer the terms of the memorandum of understanding. We  
24 now have 477 private health-care plans that have agreed to  
25 participate according to the terms and conditions of the

1 program, and we continue to see that grow every week. So we  
2 have added successfully, since the program has been in place,  
3 300 plans. We have nearly tripled the participant pool. The  
4 majority of plans are still represented by two main consortiums  
5 who have been very active in the program.

6 Total participating claimants to date: We have  
7 20,381 claimants who have elected to participate in the  
8 program. The first wave of data that we sent to the plans  
9 consisted of the first 15,000 claimants that signed up. We  
10 have sent subsequent waves of data to these plans, and we are  
11 now still in the process of receiving back what we are calling  
12 "matches," the actual plan matches.

13 A couple other statistics:

14 Of the 20,381, we have already determined that  
15 approximately 3,300 of the claimants are inactive in the  
16 program at this point, so they will be dropped or put on the  
17 side of this program. We are only going to be working with  
18 17,000 participating claimants.

19 12,600 of the over 17,000 claimants have been  
20 matched with one or more of the 477 plans, so we have 12,600  
21 claimants with a match and a lien to be resolved pursuant to  
22 this program.

23 We have asked that all the plans give us their  
24 matching data by September 21, assuming that no other -- well,  
25 at that point we can lock down 15 percent holdbacks on all the

1 claimants that are participating in the program, but we are  
2 hoping to have a match. We will then inform the claimants and  
3 their counsel if there is not a match so that they're aware  
4 that even though there was not a match to the plaintiff  
5 participating in this program, they may have obligations to the  
6 plan on their own that they will have to resolve outside of  
7 this program.

8           With respect to the plans providing us the  
9 actual claims data for us to audit, 7,600 of the files have  
10 been shipped to our office relative to the 12,600 active  
11 claimants that have been matched, so we have approximately  
12 60 percent of the claims in-house. Actually, I should say for  
13 the 7,600 claims, because many of them have multiple plans  
14 during the period of date of injury to date of settlement, we  
15 are actually auditing about 11,000 files.

16           We have completed approximately 3,337 claim  
17 summaries to date. This is going on, as you would imagine,  
18 daily. We are in a position where we think, as the data comes  
19 in, we are only running 48 to 72 hours for us to audit a lien  
20 when it comes into our shop. We have those claims in front of  
21 the plans for their approval.

22           Due to the extension provided for claimants to  
23 participate in the program, we will be working closely with  
24 BrownGreer to figure out who has come into the program to see  
25 if there is now a match to one of these 477 plans. We will

1 work with them to apply this 15 percent holdback so money can  
2 continue to flow, final payments can continue to flow while we  
3 work through this matching and resolution process.

4 Your Honor, that concludes my report as the lien  
5 resolution administrator for this month. I apologize for the  
6 length of it, but there's a lot of data to report here in the  
7 final hours.

8 **THE COURT:** I appreciate your work on this. As  
9 everybody knows, the statutory federal liens, they will come  
10 out one way or the other, lawyers on either side or the  
11 claimants. They have to be paid back. The opportunity that  
12 this case presented is that if you grouped them, you were able  
13 to negotiate for a lesser payment, so that's what has happened.  
14 They were able to negotiate for a lesser payback of these  
15 liens, so it was a win/win situation. The lien holder got back  
16 money, and the claimant paid less. I think it was very helpful  
17 to both sides, certainly to the claimants. I appreciate your  
18 help.

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

20 **MR. HERMAN:** Your Honor, Special Master Juneau is  
21 here.

22 **THE SPECIAL MASTER:** Your Honor, Patrick Juneau,  
23 special master. I will make my report very brief. Part of  
24 that was covered by Lynn Greer.

25 It is true, Your Honor, we are down to 27

1 appeals. Those matters are being addressed as we speak. I  
2 anticipate this week or by early next week all of that will be  
3 cleared out of here.

4 We have processed close to -- not quite but  
5 nudging on 7,000 appeals in this matter between the three  
6 special masters appointed in this case. Obviously, the  
7 overwhelming bulk has been handled because we are down to 27.  
8 So we have fallen within the deadlines I think that the Court  
9 has set forth as goals to make payments to people in a prompt  
10 and efficient manner. I think we have met with all of those  
11 criteria.

12 There is one matter that I do want to call  
13 attention to. There was a series of audit claims that were  
14 submitted. All of those claims have been addressed in findings  
15 and rulings made on those claims save and except one. The  
16 reason that's not done is because the expiration time for the  
17 response to the audit notice is tomorrow. I'm assuming I will  
18 receive that tomorrow, and then we will determine what will be  
19 necessary to address that. We are down to one, so that's not  
20 going to be an obstacle in what we are talking about.

21 Beyond that, Your Honor, we are working now with  
22 BrownGreer in trying to project and target into the future,  
23 since the concentration has been on heart attack claims, of  
24 what we can anticipate in the future in terms of what will  
25 occur or when will it occur and when will there be, as we refer

1 to it, "bubble periods," will be intense work efforts required.

2 They were able to do that very, very accurately  
3 to allow us to be where we are today. Based on that experience  
4 factor, I anticipate that being the same result we will be able  
5 to do in the future. It looks like maybe sometime in November,  
6 probably, is maybe what we are looking at as the first phase of  
7 that bubble period.

8 Based on experience that I have seen thus far,  
9 Your Honor, I think we will be on target to address the matters  
10 that have been addressed thus far, and that is succinctly where  
11 we are.

12 **THE COURT:** I know the special masters did yeoman  
13 work in this case. I might also mention that it was very  
14 helpful in this case that they had electronic access to the  
15 records so that they didn't have to mail the records back and  
16 forth. Thank you very much.

17 Any state court trial settings?

18 **MR. MARVIN:** No, Your Honor. That's the fifth item  
19 on the agenda.

20 **THE COURT:** Class actions?

21 **MR. MARVIN:** There's nothing new on the class  
22 actions, Your Honor. That then brings us to Ms. Barrios as the  
23 chair of the state liaison committee.

24 **THE COURT:** The state liaison committee.

25 **MS. BARRIOS:** Good morning, Your Honor. Dawn Barrios

1 for the state liaison committee.

2           Unlike last time when we didn't have any new  
3 remands to report, we do have three new ones that were recently  
4 filed. Two were filed in the governmental actions: One by the  
5 County of Chautauqua, the other by the County of Orange. The  
6 third remand that was recently filed was done, I believe, this  
7 week from a case out of CDC, so we don't have too much  
8 information on it.

9           To succinctly let Your Honor know where we stand  
10 on the remands, the majority of remands that we have  
11 outstanding that are what I consider live remands are in the  
12 governmental action and TPP arena. We have 29 there. There  
13 are 26 postsettlement filing cases that have remands. There  
14 are 18 that are represented by counsel and 14 *pro se* remand  
15 matters.

16           There is a limbo area. If Your Honor will look  
17 at the second page, the fifth column that says "Plaintiff  
18 Claimants Registered Only But Not Enrolled In The Resolution  
19 Program," we have 42 represented by counsel and 16 *pro se*.  
20 These people have filed motions for remand. They have not gone  
21 through the program.

22           I have been working with BrownGreer, who has  
23 been incredibly cooperative in providing this information to  
24 us. I can only assume that these people's claims will  
25 ultimately be extinguished and, therefore, the remands will go

1 away.

2 **THE COURT:** Okay.

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

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

5 Anything on *pro se* claimants?

6 **MR. HERMAN:** Mr. Johnston is here.

7 **MR. JOHNSTON:** Bob Johnston, court-appointed curator  
8 for the *pro se* claimants. As we have done every month since  
9 the Court appointed me as curator, we have filed with the Court  
10 the curator status report. The only change a little bit is  
11 that with the filing by Merck of the multiple motions to  
12 dismiss, with regard to the curator, the transmittal  
13 communication provided my name for the *pro se's* to call, which  
14 as the Court certainly can understand has created an uptick.  
15 We sometimes have had as many as 10 calls a day.

16 As we have done throughout the time that the  
17 Court has asked me to be the curator, the communications that  
18 we have had have been to assist them to understand the nature  
19 of the motions in this instance that Merck has filed and  
20 essentially try to assist them through the process.

21 You know, from the time that the Court appointed  
22 me, we do believe that curator communications that have been  
23 had by my firm, attorneys who work with me in terms of this,  
24 with the *pro se* claimants have positively assisted them in  
25 participation in the Settlement Program. As the Court has

1 required, we do believe that has afforded due process to the  
2 *pro se's*.

3           The only other thing is, as the Court I believe  
4 knows, there has been some informal discussions regarding the  
5 possibility of mediating some issues between *pro se's* with the  
6 former attorneys pertaining to the issues of fees and costs.  
7 We have had some activity in terms of that in the last two  
8 months. In addition to my litigation practice, I also have a  
9 mediation practice and stand ready to assist in the event that  
10 there is an agreement by both the *pro se* and the former  
11 attorney to see if it can be resolved through mediation.

12           **THE COURT:** Thank you very much. It's been very  
13 helpful. The best I can do for the *pro se's* is to give them  
14 someone to talk to and some direction. You have helped  
15 immensely in that way, and I appreciate your help.

16           **MR. JOHNSTON:** It's been a wonderful experience.

17           **THE COURT:** The next item is the MDL trial package.  
18 Anything on that?

19           **MR. HERMAN:** Yes. Your Honor established PTO 37 with  
20 regard to access to the trial package, and we have afforded  
21 access to the trial package upon request.

22           The next issue is the third-party payor cases.  
23 I believe that Mr. Beisner will address that.

24           **MR. BEISNER:** Good morning, Your Honor. John Beisner  
25 on behalf of Merck.

1           Your Honor, I just wanted to advise the Court  
2 that the parties have finalized a settlement agreement that  
3 will resolve all of the pending lawsuits in which U.S. private  
4 third-party payors have sought reimbursement for covering Vioxx  
5 purchased by their plan members. These are both cases that are  
6 here in the MDL proceeding and also other cases that are around  
7 the state courts, particularly in New Jersey, and there are  
8 some other claims that have been included in this settlement as  
9 well. This to some extent is old news, Your Honor, inasmuch as  
10 there was some press coverage of this earlier, when Merck  
11 disclosed the reserve for this several weeks ago, but I did  
12 want to advise the Court that this has been finalized at this  
13 point.

14           I also wanted to note, Your Honor, that a number  
15 of people have been involved in negotiating this, some of whom  
16 are not here this morning, but I just wanted to advise the  
17 Court. Chris Seeger, Tom Sobol, Doug Marvin, and a number of  
18 other people have been involved in this negotiation effort over  
19 the past couple months.

20           We have provided a copy of the agreement to the  
21 Court. It's a private agreement. It is not a class agreement.  
22 It doesn't require the Court's approval, although there are  
23 some provisions that, with the Court's indulgence, will  
24 probably require Your Honor's involvement in certain issues as  
25 we go forward in implementing the settlement.

1           **THE COURT:** I've been advised throughout the process  
2 and I saw it unfold, so I know the work of both sides that has  
3 gone into this. So now that is finished, so the only  
4 outstanding group now is the AG's?

5           **MR. BEISNER:** Your Honor, we also have some of the  
6 consumer class actions that are still pending as well.

7           **THE COURT:** Jim, you had something?

8           **MR. DUGAN:** Thank you, Your Honor. James Dugan on  
9 behalf of the private third-party payor committee. That's  
10 correct, Your Honor. That program is being implemented. All  
11 the attorneys who have been involved in that case have received  
12 the Settlement Agreement and Escrow Agreement. We hope to have  
13 that resolved by the end of this month, Your Honor, and have a  
14 full report by the next status conference.

15           **THE COURT:** That's the third-party payors?

16           **MR. DUGAN:** Yes, sir, that's correct. That's the  
17 private third-party payor cases, with some 200 companies that  
18 are participating in it, with filed cases in New Jersey state  
19 court and filed cases in the MDL.

20                   You're correct, Your Honor, the other piece, the  
21 governmental action cases, which include state AG cases and  
22 cities and counties, is still going on.

23           **THE COURT:** All right. Thank you.

24           **MR. HERMAN:** Your Honor, may it please. I want to  
25 supplement just one remark. There have been other folks

1 involved in this process. Recently, Your Honor, there was a  
2 conference call with Mr. Sobol as lead. He had a motion  
3 pending, which he advised is now withdrawn. I don't know  
4 whether formally papers have been filed, but his pending motion  
5 is withdrawn.

6 In connection with that, Your Honor, if I might  
7 skip to page 10, Item XIV, third-party payors' motions,  
8 Your Honor issued PTO 48 on September 15, 2009. I want to  
9 repeat that. On September 15, 2009, Your Honor issued PTO 48,  
10 which requires every attorney to notify their clients who are  
11 eligible claimants of the private lien reimbursement program.

12 We are advised that a number of lawyers may not  
13 have notified their clients of the program or have not followed  
14 up with written or other notice to their claimants. In  
15 connection with the resolution, there appear to be a  
16 substantial number of claimants who have not been included in  
17 this private lien program, which essentially is to their  
18 detriment. I know that Your Honor wanted to address that  
19 following the phone conference.

20 **THE COURT:** I spoke with Mr. Sobol on this. My  
21 concern is that both from the standpoint of law and ethics,  
22 there are some issues that are involved. The Court is  
23 concerned about both of those situations.

24 I really don't care whether the claimant chooses  
25 to partake of the program or to enter the program. That's

1 their choice and that's up to them, but I do think that they  
2 ought to be advised of the opportunity. They ought to be  
3 advised of the program.

4           If they want to go into it, fine. If they don't  
5 want to, fine. To not tell them about it is problematic. It's  
6 a problem for the attorney who has that responsibility both  
7 from the standpoints of ethics and law. These individuals have  
8 the opportunity to enter a program and pay back substantially  
9 less than they will have to pay back later on.

10           Now, they may skate, they may get away from it,  
11 they may not have to pay back anything, but that's a decision  
12 that they ought to make. They have an opportunity to enter a  
13 program where they can pay back less than they are required to  
14 pay back. Whether or not they want to enter the program, as I  
15 say, is up to them, but to not tell them about it is a real  
16 problem.

17           I know I'm speaking to the choir now because  
18 these attorneys who are in the room and hopefully on the phone  
19 have done that. If you haven't, you have to tell them about  
20 it. If you haven't told them about it, that's going to be a  
21 problem, and I'm going to have to get involved in it. I expect  
22 Mr. Sobol to give me some motions to that effect, and I'll look  
23 into it.

24           **MR. HERMAN:** Your Honor, back now to the agenda,  
25 Item XI at page 7.

1           **THE COURT:** Government actions.

2           **MR. HERMAN:** Government actions. I want to advise on  
3 the record that the PSC is going to make available to the AG's,  
4 on a request and at their cost, hard drives of all raw  
5 documents and materials in the depository so that they don't  
6 have to go into the depository and they don't have to get to  
7 the depository in some remote electronic way.

8                         Secondly, there were two Oklahoma government  
9 actions added when we initiated the status report for today,  
10 and we are advised today that there is now a third Oklahoma  
11 government action. That brings us to Item XII.

12           **THE COURT:** With the government actions, I know we  
13 have some motions that both Merck and the AG's have filed. I  
14 will take those motions up after this meeting, and perhaps we  
15 can do it in the conference room.

16           **MR. DUGAN:** That's correct, Your Honor. Those  
17 motions are case specific to the Louisiana Attorney General  
18 case.

19                         The government action cases, along with the  
20 assistance of Ms. Barrios and James Young in Florida and Randy  
21 Fox in New York and all of the attorneys, we have been working  
22 on the discovery process. That process is going well,  
23 Your Honor.

24           **MR. HERMAN:** Item XIII, pending personal injury cases  
25 reference *Lone Pine* orders at page 9 of the report,

1 Ms. Oldfather is present. Under PTO 45, Ms. Oldfather was  
2 appointed as lead for those matters. On 8-20-09, the Court  
3 issued PTO 46 with a case management order, and Ms. Oldfather  
4 may wish to address this issue.

5 **THE COURT:** I had two motions. One was to assure  
6 that she received notices. I agree with that. The way that it  
7 should be done, though, is LexisNexis ought to be forwarding  
8 those to you immediately.

9 Dorothy is here. Why don't you meet with Ann  
10 later on and work out a protocol so that she gets all of the  
11 material immediately. It's quicker that way than if the Court  
12 sends it. It's just easier for LexisNexis to do it.

13 **MS. OLDFATHER:** Thank you, Your Honor. Good morning.  
14 Ann Oldfather for the plaintiffs' steering committee for the  
15 ineligible and nonenrolled claims. Thank you, Mr. Herman.

16 I have been appointed to be responsible as  
17 liaison counsel and also as lead counsel for claims that are  
18 under the management of PTO 28 and PTO 29. It looks,  
19 Your Honor, like that count -- and I think Jared was getting  
20 some information for me on the cases that have been filed since  
21 November 9, and those are under PTO 29. Did we get that  
22 number? I'll talk with Jared about that afterwards.

23 In addition to those, Your Honor, we have had  
24 cases that are ineligible because they ultimately could not  
25 qualify under the resolution program, as we heard Lynn report

1 this morning, and some of those that are ineligible elect to  
2 file an appeal with the special master. The other route the  
3 cases can take is to file a future evidence stipulation and  
4 then come back into the litigation.

5           It appears as if -- and we have had a hard time  
6 getting exact data -- somewhere in the neighborhood of 200 or  
7 so future evidence stipulations have been filed. I'm working  
8 with Mr. Marvin and with Lynn Greer to try to get that number.  
9 It's a little tough because some have been withdrawn. Then  
10 after those are filed, there is a 30-day period within which  
11 certain compliances are supposed to take place under PTO 43.

12           So it looks like there may be anywhere between  
13 another 15 to 100 cases that would come back into the  
14 litigation through that route so that, Your Honor, I think  
15 ultimately that my liaison responsibilities and our plaintiffs'  
16 steering committee on these cases will probably be responsible  
17 for somewhere in the neighborhood of 300 cases. That is a wild  
18 guess, but it looks to be where it is going.

19           Then, Your Honor, I do have a motion filed to  
20 address the future evidence stipulations, and I don't know when  
21 the Court would like to take those up. I could either mention  
22 it now or wait until the next --

23           **MR. MARVIN:** Your Honor, the motion, I believe, was  
24 filed yesterday or the day before, and we would like to have  
25 the opportunity to respond. I would also like to have the

1 opportunity to talk to Ms. Oldfather about it and see if we can  
2 resolve it.

3 **THE COURT:** Okay. Why don't you do that, then get to  
4 me. We can either do it next time or if you need to do it  
5 sooner, we can do it sooner.

6 **MS. OLDFATHER:** All right. Your Honor, just for the  
7 benefit of those persons that are listening, this does deal  
8 with the issue of allowing a cure in the event a future  
9 evidence stipulation was rejected by BrownGreer as not having  
10 met one of the technical requirements of that route.

11 **THE COURT:** Okay.

12 **MS. OLDFATHER:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 **MR. HERMAN:** Your Honor, we have discussed the  
15 third-party payor motions, Item XIV at page 10, and the issue  
16 of an attorney's responsibility to notify eligible claimants in  
17 accord with Your Honor's remarks today.

18 Item XV is the fee allocation committee. I'm  
19 pleased to report that the subcommittee to review costs, after  
20 four months of examination and frequent discussion with the CPA  
21 on that committee, as well as the PSC executive committee  
22 members Arnold Levin and Ed Blizzard, out of 112 applications  
23 for costs, all but 6 are resolved.

24 Your Honor, we have submitted for your  
25 consideration a 1 percent holdback for costs, indicating what

1 each firm has agreed to after audit and review. I do want to  
2 indicate to the Court that Mr. Clements -- I haven't seen Miles  
3 Clements today but, of course, he is very interested in this  
4 issue. In addition to the attorneys' costs to be reimbursed,  
5 also Mr. Clements' client is to be reimbursed out of the  
6 1 percent. Even though his client doesn't appear with the  
7 attorneys, we will send Mr. Clements a copy of the proposed  
8 order. He has the actual amount that his clients are entitled  
9 to plus interest.

10 We want to thank the cooperation of all 112  
11 attorneys who submitted common benefit costs. They have  
12 appeared in person. There have been numerous conversations;  
13 there have been a lot back and forth. We are satisfied that we  
14 applied consistent treatment to every one of those submissions  
15 on an individual basis.

16 With regard to Item XVI, a motion for  
17 reconsideration/revision of the order capping contingent fees,  
18 this relates to the 32 percent fee maximum order. Notices of  
19 appeal have been filed, and Your Honor has requested a  
20 submission for a 32 percent escrow of funds. That has been  
21 submitted to Your Honor.

22 With respect to other motions, Ms. Oldfather  
23 submitted two motions. Of course, the PSC has no objection  
24 whatsoever to her utilizing LexisNexis for purposes of  
25 notification, etc. The other motion Mr. Marvin has addressed.

1           With respect to appeals, there have been four  
2 motions to dismiss Your Honor has granted by Merck on different  
3 issues since exceptions.

4           With respect to Item XX, a motion for attorney  
5 fees and to enforce an attorney's lien, Your Honor has that  
6 matter set out in PTO 47. It's been addressed. Unless  
7 Your Honor has other questions or comments, the next issue  
8 would be the date for the next status conference.

9           **THE COURT:** The next status conference is October 23.

10          **MR. HERMAN:** Excuse me. I do want to correct the  
11 record. I'm in error. 32, on cost reimbursement, is  
12 DecisionQuest, the sum of money that is to DecisionQuest, and  
13 we'll notify Mr. Clements of that.

14          **THE COURT:** One moment on the date. We have a  
15 problem.

16               I'm told that we have some work going on in the  
17 courtroom, so we may be in a different courtroom. I'll have to  
18 put it on the Web site on October 23. When I say "courtroom,"  
19 I mean this building, just a different room. I'll post it, in  
20 any event, so everybody knows.

21          **MS. OLDFATHER:** Your Honor, just given my role as  
22 liaison counsel, I wanted to make sure I would have leave of  
23 court to miss that. I'm going to be in trial in Kentucky on  
24 that date.

25          **THE COURT:** Sure. That's fine.

