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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

MDL DOCKET NO. 1657
NEW ORLEANS, LOUISIANA
FRIDAY, MAY 29, 2009, 9:00 A.M.

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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1 personal privilege. First of all, our co-lead counsel for
2 plaintiff, we have a new member of the Birchfield family,
3 Cristina Hope Birchfield, called "Hope," and we congratulate
4 Mr. and Mrs. Andy Birchfield and their entire family.

5 THE COURT: Well, I join in that. We're happy for you,
6 Andy. We're delighted to hear it.

7 MR. BIRCHFIELD: Thank you, Your Honor.

8 MR. HERMAN: The second announcement is
9 Mr. Eben Flaster, who is a Merck counsel in charge of plaintiff
10 profile forms and other issues, has been here yesterday working
11 diligently, is here this morning, and tomorrow will say, "I do,"
12 and we congratulate him on his marriage tomorrow.

13 THE COURT: Eben, we're happy for you. You must have a
14 very understanding wife.

15 MR. FLASTER: So far.

16 THE COURT: So far. So far.

17 MR. HERMAN: Lastly, I would be remiss if I didn't say a
18 few words for the record about Your Honor's clerk, Nathan Bays,
19 who I first met at a conference that Your Honor and Nathan and
20 former dean, Ed Sherman, organized on complex litigation and then
21 beginning in June of last year, began to serve in Vioxx.

22 I can personally testify that he works 26 hours a
23 day; that when he calls and he's not here after 7:00 o'clock
24 night, he always leaves his home phone number, as well as his
25 cell phone number.

1 Your Honor has been gifted with some extraordinary
2 clerks, and in my experience, Nathan Bays has excelled. I want
3 to thank Nathan for his diligence for keeping us straight and for
4 going beyond the ordinary call.

5 Just one more comment. 1966 I began practicing in
6 these courts, and the most obnoxious people in the federal
7 courthouse, other than myself and the other lawyers that
8 appeared, were federal law clerks, who determined that -- I want
9 to say that there has been a terrific sea change in this
10 courthouse for a number of years. And in addition to his
11 brilliance and his diligence, he's always acted with the utmost
12 courtesy.

13 So Nathan, we thank you. And frankly, the
14 Louisiana lawyers are very happy you're going to the
15 Fifth Circuit. The Diogenes was up there with a lamp one time,
16 and we hope you find something up there.

17 THE COURT: I agree with those comments. Nathan has
18 been really great. One of the challenges that I have handling
19 MDLs is I don't have any permanent clerks. I have someone coming
20 in each year, so I don't have the luxury of having someone with
21 institutional memory. Unfortunately, I'm the institutional
22 memory. But they get up to speed very quickly, and I don't know
23 what I would do without him. But he's been exceptional and I do
24 appreciate all of his work.

25 MR. MARVIN: Your Honor, if I can just join Mr. Herman

1 in his comments about Nathan. Nathan really has been a pleasure
2 to deal with. We wish him the best for his search for certain
3 errors.

4 As to Andy, I congratulate him as well. As to
5 Eben Flaster, there is no truth to the allegation that he had his
6 wife fill out a profile form for the engagement.

7 THE COURT: Let's go to the agenda. I'm naturally in
8 the middle of a trial, so I've got a jury waiting outside.

9 MR. HERMAN: Your Honor, I'll be very quick.

10 Your Honor, in terms of item one, the settlement
11 agreement, I understand that Your Honor wants to address certain
12 objections regarding liens that have been filed against counsel,
13 and some matters you wish to discuss in that regard.

14 THE COURT: Yes. In a matter of this sort we have all
15 kinds of issues. And one of the ones that has presented itself,
16 liens have been filed against attorneys handling the case. And
17 in matters of this sort, there are several layers of attorneys,
18 often, so there is the primary attorney who then refers the case
19 to the trial attorney, or who may refer the case to someone else.
20 In any event, along that line, there are some liens that people
21 feel they have against that particular attorney. E have some in
22 this matter that is inhibiting the distribution of the funds to
23 the litigants, and I don't want that to happen.

24 If there are liens, what I plan on doing is to
25 segregate the lien, put it on the side. I'll deal with that, but

1 meanwhile we have to move on with the clients' distribution. I
2 don't want the client to be waiting while the attorney's liens
3 are removed, and so that's what I'm going to be doing. And if I
4 need to issue an order for the distribution of funds in that
5 fashion, I'll do so.

6 MR. HERMAN: All right. Your Honor, representatives
7 Orran Brown and Lynn Greer are here regarding registration of
8 claims and the settlement program and will give you a report.

9 And Orran, would you come forward? Thank you.

10 MR. BROWN: Good morning, Your Honor. I'm Orran Brown,
11 and with me today also is Lynn Greer from Brown Greer. We are
12 the settlement administrator, claims administrator for the Vioxx
13 settlement program. We're happy to be here today to update the
14 Court and the parties on where we are in the program.

15 We are focused now on claims review, claims
16 determinations, claims payments, and receiving claims in the
17 extraordinary injury program which is up and running. We will
18 not today report on enrollment numbers.

19 We had promised that this day would come, and it is
20 here. We are now working with the parties and pause on it only
21 to say that we're working on the final cleanup stages of all the
22 people who still don't have quite all their paperwork in order.
23 It's down now to a relatively small number, and we are working to
24 move all of them to some finite point so that we don't jeopardize
25 the program of having claims finished in time to make final

1 payments on the heart attack claims by September 30th.

2 So today what we want to talk about clinically are
3 a brief report on the extraordinary injury claim program with the
4 two funds that are available for claimants to seek relief for
5 heart attack claimants, to seek relief for stroke claims, to seek
6 relief for catastrophic or extraordinary injuries.

7 That program is up and running. We are receiving
8 claims, but as the Court can tell from this slide, it is still in
9 the early stages. We have essentially 38 claims now that are
10 real claims.

11 There are certain requirements to apply for the
12 program. You have to be eligible on your underlying claim, you
13 have to be higher than the special marker of \$5,000 fixed
14 payment. And so passing basic eligibility means you've cleared
15 those hurdles.

16 We have 38 claims. The deadline, though, as we see
17 here, is September 1st for claimants and counsel to submit claims
18 for these two funds. And I want to remind everyone that EI, the
19 extraordinary injury claim form, as well as the documentation
20 that is required for each claim, are due to us by September 1,
21 2009 to be able to be considered in the program.

22 And we -- this is -- because it deals with
23 catastrophic injuries, it's not an entirely simple program. We
24 have an elaborate, we think, extensive manual that's posted
25 online and available to *pro ses* and counsel about how the program

1 works. But if anyone has any questions after going through that
2 that's unanswered, we want them to contact us. We want to help
3 people understand this program, understand in particular what
4 kind of claims can be made, and what documentation is required
5 for the type of claim to be made. We will help people go through
6 this process, and we want to hear from them.

7 We have been working with the parties and
8 Ms. Naphtha on the issue about the processing of the
9 extraordinary injury claims. We have been discussing the idea
10 about the levels of review at our offices, and then whether there
11 is going to be any sort of step for an appeal from a claims
12 determination that we have made on an extraordinary injury claim.

13 And we have met with Ms. Naphtha. We are very
14 close to having the final language adopted by the parties on how
15 that process will work. This is a brief summary of it.

16 Essentially, the way we plan to do this for these
17 claims is that we will review the claim form; all the information
18 submitted. We will make a determination and issue a base
19 extraordinary injury award to the claimant. "Base" meaning it's
20 before we know the pro rata adjustment, because we have to do all
21 the claims in these limited funds before we can determine the
22 actual dollar amounts. So it's a base award.

23 After that -- we issue that notice, we will give
24 all claimants an opportunity for a second review by us. They can
25 request a second review if they think we missed something or we

1 didn't understand something about their submission or they have
2 additional material that they failed to give us. This will be
3 the opportunity for them to tell us where they think we're wrong.
4 And if we see something or make an adjustment or have additional
5 material, we'll make a second award. But at any rate, after that
6 review, we will issue what is our final base award determination.
7 And at that point, there will be an avenue for an appeal to a
8 Special Master.

9 This is the final language that we're working on,
10 Ms. Naphtha and the parties, to put this in place. As soon as
11 the language is finished and approved by the parties, we will
12 place that process description in the instruction manual that we
13 post and make available for the parties so everyone can see how
14 this has worked.

15 We have spoken with the Special Master Juneau about
16 the process. We will, once it's established, get him up to speed
17 on this program so we can assure that that will work fluently.

18 Your Honor, we will now turn to the claims report
19 section of our report, and Lynn will cover that.

20 THE COURT: Okay. Thank you.

21 How do you get the base, Orran? How do you go
22 about that?

23 MR. BROWN: On the extraordinary injury claims?

24 THE COURT: Yes.

25 MR. BROWN: Your Honor, there's two kinds of claims.

1 There's economic damages for past wages, lost wages or economic
2 or medical expenses. You have to have \$250,000 to be reimbursed
3 for those who qualify. We also have a category of special
4 medical injury for folks who feel like their injury was in
5 addition to beyond that that is reflected in the underlying MI or
6 IS grids.

7 We will take the submissions. And for the economic
8 damages, it's a fairly objective, mathematical review to see what
9 they have shown us. We have specified what they have to give us
10 for tax returns and W-2s to show that the wages or income from
11 self-employment from the period from their heart attack or stroke
12 up to the date of the settlement agreement, which is 11/9/07.

13 We will go through all those materials and make the
14 mathematical calculation of how much income they would have had
15 during the period that they didn't work, and make an award or
16 determination about whether they are above or below \$250,000
17 total, and if so, what that number is. And then that becomes
18 their base economic damages award.

19 On the special medical injuries, it is not as
20 objective mathematically. We have specified as best we can what
21 parties can submit any injury they think is truly catastrophic,
22 truly extraordinary, but we have to sort through the medical
23 records on those claims to see whether the injuries fall into
24 that sort of extraordinary or catastrophic category. That is
25 going to depend a lot on what we get.

1 We didn't -- we and the parties did not want to
2 codify, rigidly, definitions of what that type of injury is
3 because it's one of the things you don't really know until you
4 see it. And so once we see the submissions, we will -- we're
5 sifting through them as we get them now, but we'll go over them
6 and then go over the categories with the parties to get -- make
7 sure we're comporting with their intentions about how the program
8 is supposed to work, and then determine a damages award for a
9 special medical, extraordinary medical injury, not economic loss
10 injury. And we're still working with the parties on how to
11 quantify that.

12 Most likely the way we'll come up with a base award
13 on a medical injury is to find a type of injury in the existing
14 underlying grids that it's more like, what level it would be on,
15 or what level the claimant would have been on had their injury
16 they're claiming now put them on a higher compensatory level, and
17 that's the mathematical calculation for their award.

18 What we were -- we had worked out the criteria for
19 those steps, and we're trained and ready to go on how they're
20 going to be reviewed. All of the 38 we've already gotten we're
21 reviewing now. We haven't issued any notices, and really won't
22 until the September 9 deadline passes because people can still
23 send us material until then.

24 THE COURT: Okay. I got it. Thank you.

25 MR. BROWN: Thank you, Your Honor.

1 MS. GREER: Good morning, Your Honor. Lynn Greer from
2 Brown Greer, and I would like to give the Court an update on
3 where we are in the claims process.

4 This slide has stayed fairly constant over the last
5 status conferences, showing that the MI claims are comprising
6 about 63 percent of the total claims population that we have.
7 The total number of claims submitted is 48,422.

8 This slide is a bit different. In the past
9 conferences, we had a row for claims where the injury type had
10 not been specified by the law firm. That was running about
11 one percent of the claims.

12 Since the last conference, we went ahead and sent
13 gate failure notices for those claims to try to force the issue
14 and told the firms that they had to send back a claims form that
15 alleged an injury. So those have been cleaned up and have now
16 joined the regular gate process.

17 This slide shows where we are in the gate process
18 for the MI claims. And the first row shows that there are no
19 claims pending in the initial gate queue for MI claims. So we
20 have looked at every MI claim, initially, for gate purposes, and
21 there are no more claims in that queue.

22 Row 2 shows 252 claims. The title of that row is
23 "Initial CA Review, Complete QC, Pending." Really, a lot of
24 these claims are ones that we have already looked at once, we
25 have sent gate failure notices on, and the firms have submitted

1 to us additional documentation attempting to prove eligibility.
2 We call these our "secondary review." We're looking at those
3 again to see if that documentation will pass the claims.

4 Row 3 shows that there have been 17,697 claims
5 found eligible for gates and for the program. And claims given
6 to that row, if we have passed them as claims administrator, if
7 the gate committee has passed them, or if Merck has considered
8 them as part of its unilateral push rights and found them to be
9 eligible for the program.

10 Currently there are over 11,000 notices of
11 ineligibility that have been issued that have not yet been
12 decided. And so claims that go into that 11,300 are either those
13 that we have sent notices to the claimants on initially and they
14 are still within their 21 days to submit the materials to us,
15 there aren't -- there are fewer than a thousand such claims out
16 there now because we're at the end of this process.

17 The other claims that are in there are ones that
18 are currently under consideration by Merck to push into the
19 program. So we have denied them and the gate committee has
20 denied them, and Merck, as part of its rights, can consider
21 whether to put them in the program, and they have a reasonable
22 time within which to do so. And we expect and they have said
23 they will make all of those decisions by the end of June.

24 Row 4(b) shows that the gate committee has right
25 now, and was last night, only 656 MI claims that they have not

1 decided yet. So a lot of progress has been made on the gate's
2 front and with an effort -- combined effort to get these claims
3 paid by the end of September.

4 The status of the MI points claims are that through
5 May -- we issued the May payments last week -- there are 11,543
6 claims that have received interim payments. For the June
7 payments, the deadline for accepting points awards is at the end
8 of this weekend, but we need decisions by the end of Sunday,
9 May 31st. But right now, almost 1,200 claimants have accepted
10 and will definitely be paid in June.

11 There are another over a thousand that could come
12 in between now and Sunday asking to be paid and accepting their
13 awards. And about less -- just a little under 400 are currently
14 on appeal.

15 The rest of the slide shows you where the remaining
16 claims of that 17,000 are. We have 166 that have made it through
17 our process, but we need to take one more administrative step
18 before we can issue those notice of points awards.

19 There are 181 where we need to do our final quality
20 control check. 720 -- and this is running about 10 percent of
21 the claims that reach this point -- are incomplete. We can't go
22 forward, and so we've sent notices to the firms telling them what
23 we're missing, asking for records, and they are either trying to
24 get the records or they told us that they can't.

25 There are 284 MI claims that we have commenced

1 review on. And that last number, which is hard to see, is a
2 little over 2,100 that have recently come out of the gate process
3 that we are now looking at and will be looking at for points
4 awards.

5 This is the slide we discussed over the last
6 several conferences to show us if we're on pace with being able
7 to issue MI payments at the end of September. We feel confident
8 that we are. We have a total, again, of over 30,000 MI claims.

9 And when you go through the slide, Your Honor, and
10 you see that when you back out those that probably will not pass,
11 what we were estimating, a combined pass rate of 70 percent,
12 which will give us a little over 20,000 claims that we will need
13 to pay in September.

14 We've already made 11,500. There are another 2,260
15 that we can pay in June, and that leaves a little over 7,500
16 claims to review and pay by the end of summer in time to be able
17 to make the payments in September.

18 We are hoping that the appeal rate stays at
19 15 percent or less. Right now that has held steady over the last
20 couple of months. We don't anticipate, and hope that that appeal
21 rate does not increase, because that will just create additional
22 layers in time.

23 In the interest of time, Your Honor, I will not
24 read this. But for the benefit of those listening on the phone,
25 these slides we made available in the afternoon of the status

1 conferences on our website. So it's Brown Greer --
2 www.BrownGreer.com/Vioxxsettlement. And over on the left-hand
3 side of the website, those who are interested can review these
4 slides. But this slide shows the average points that we are
5 finding in the MI claims that we reviewed for points by injury
6 level.

7 Again, Your Honor, I won't read every number on
8 this slide, but what this slide shows is that, to date, through
9 May, we have paid almost a billion dollars in interim payments
10 for heart attack claims, over 978 million. And with those claims
11 that are eligible for payment in June, we're can surpass the
12 \$1 billion mark for interim payments.

13 THE COURT: And you're still running about 70 percent of
14 the claimants?

15 MS. GREER: Yes. A little -- a little under that,
16 Your Honor.

17 The stroke status, we, again, have focused most of
18 our resources on the heart attack claims. However, we do have a
19 dedicated team of reviewers who continue to work with stroke
20 claims, ever mindful of the fact that we need to be processing
21 these as quickly and efficiently as MI claims.

22 We have less than a thousand claims in the initial
23 stroke queue. There are almost -- there are a little over 9,000
24 that we have looked at at least once that still needs to have
25 quality control review performed on them. There are about 5,000

1 that have been reviewed eligible for points. About 2,600 notices
2 of ineligibility have been issued, and gate committee only has
3 165 stroke claims that they are considering now.

4 We have paid over 1,300 stroke claims. Another 700
5 could be paid in June. And the rest of the slide, Your Honor,
6 just shows, again, the various steps of where we are in the
7 review of the stroke claims. We have 1,326 that have been
8 reviewed at least once. We are QC-ing these to make sure the
9 awards are correct. That's the biggest bucket here on this
10 slide, but again, we are continuing to make steady progress the
11 stroke reviews.

12 This slide shows that, through May, we have paid
13 over 21 million to stroke claimants. And with the claims that
14 could be paid in June, that number could can exceed 58 million.

15 This is the corresponding slide to the MI average
16 point slide, and this shows the average points, after we've
17 reviewed these claims, of where the stroke claims are coming in
18 on the average by injury level.

19 THE COURT: Do you have any breakdown as to the
20 percentage of strokes that are getting through the gate? Is that
21 higher or --

22 MS. GREER: It's lower, actually, Your Honor.

23 THE COURT: It's lower.

24 MS. GREER: It's lower.

25 We don't have -- because it's still, relatively

1 speaking, preliminary, we're don't have a sense yet of how the
2 gate committee or Merck will consider these claims. Our claims
3 administrator review is finding that fewer are passing than the
4 MI claims did.

5 Your Honor, this last slide is just a summary of
6 the gate committee. I know there's been a lot of talk over the
7 last several months about the focus the gate committee has had
8 and the commitment they have had to review claims and make sure
9 the claims have come through their process. And I think this
10 slide illustrates how hard they have been working to make that
11 happen.

12 There have been over 22,000 decisions the gate
13 committee has rendered. Only 821 combined MI stroke claims are
14 pending on their portal, which is the way that we submit the
15 claims to them to review.

16 Only seven claims have been pending for more than
17 60 days. The majority of those are stroke claims. Again, they
18 have focused on the MI claims first. And 500 of the 800 have
19 been pending with the gate committee for less than a week.

20 Since March the 1st, they have averaged over 1,355
21 votes per week. So they have done their part to make this
22 program work successfully, and all assignments point to being
23 able to issue the final payment at the end of September.

24 THE COURT: Just from the standpoint of commenting on it
25 as a process, I think the gate committee is a key component of

1 any program. I've dealt with a number of MDLs, and I think that
2 the gate committee adds something to it.

3 I know some of my colleagues are a little concerned
4 about the gate committees because they feel that it is a
5 bottleneck, but that has not been my experience. I think they
6 bring to it some practicality that sometimes programs don't
7 offer, and this injects something into that. I think from both
8 sides it makes a lot more sense.

9 MS. GREER: Your Honor, if I could just add one more
10 thing. In April we announced that we were tightening up on
11 deadlines related to claims submissions. And I want to commend
12 the firms and counsel who have really worked very hard to comply
13 with those deadlines. We've had very few, relatively speaking,
14 ask for extensions.

15 We now, when we issue points awards, we make it
16 very clear in the banner of the notice itself that there are
17 deadlines to respond to those points awards, and that they have a
18 very limited time within which to submit any additional records.
19 That is going to be the pressure point over the summer.

20 As we issue several thousand additional points
21 awards, we urge counsel to make decisions to appeal quickly and
22 to please give us records quickly. We will not grant extensions.
23 We cannot make extensions and make that payment.

24 THE COURT: Yes. From the Court's standpoint, I urge
25 them to do so. I'm going to enforce the cutoffs. It's important

1 because if we don't do that, then the whole program gets
2 jeopardized and we can't make final payments, and that's a
3 problem.

4 Secondly, my view of the MDL is that it's got a
5 beginning, and hopefully has a middle, but it's got to have an
6 end. I'm very conscious of that, because everything you read,
7 the criticism of the MDL is that it can become a black hole where
8 cases just languish and sit there and gather cobwebs, and then
9 people just throw up their hands and say I quit, and that's not
10 the way a system ought to work.

11 This case worked fast, but also was well handled,
12 and I think that's the way it needs to be done. So I'm
13 interested in an end game gain, a final distribution of the
14 funds.

15 MS. GREER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Lien administrator is the next item on the agenda.

18 MR. HERMAN: Your Honor, Matt Garretson is here.

19 I do want to say, Your Honor has lectured on
20 professionalism and written on professionalism. The PNC and the
21 members of the Merck negotiating committee that worked so hard,
22 the gates committee, have handled their issues with the highest
23 degree of professionalism that I've seen by opposing parties, and
24 thank Brown and Greer, who has done an outstanding job. They've
25 hit every mark that was forecast.

1 MR. GARRETSON: Your Honor --

2 THE COURT REPORTER: I'm sorry. Could you state your
3 name and spell it.

4 MR. GARRETSON: Yes. Matt Garretson, G-A-R-R-E-T-S-O-N.
5 I'm here to report as the lien resolution administrator.

6 I'll go quickly today through the government
7 healthcare liens as there's not a lot of substance, other than
8 the few items to report since the last hearing.

9 With respect to Medicare, we still are seeing a
10 very low rate of appeals or reconsideration of the amount that's
11 been applied to the claimants' awards. To date, we've received
12 only 148. That's just a few more since the last hearing. That
13 means only 1.4 percent of the Medicare-entitled claimants have
14 been asking us to reconsider the amount of the Medicare deduction
15 applied to their award.

16 As I reported in recent months, the trend continues
17 that most of those are resolved simply through educating the
18 claimant as to why that amount was deducted.

19 Also, as I reported, we're continuing to work with
20 CMS, the Centers for Medicare and Medicaid Service to address a
21 very small subset of ischemic stroke claimants for whom the
22 current global resolution program we believe would require a
23 disproportionate percent of their gross settlement payment to go
24 back to Medicare. So we have a hold placed with Brown Greer on
25 that small subset of claimants which we think is in their best

1 interest for us to go and try to get a commitment to lower the
2 reimbursement amount for that subset.

3 Further, with respect to Medicare, at the last
4 hearing, Doug Marvin mentioned the need to address the
5 Medicare/Medicaid SCHIP Extension Act, the new act with respect
6 to Medicare. And I'm happy to report that we coordinated that
7 since the last hearing with Medicare and with Merck and the
8 defendants here, so everything is on track there, Your Honor.

9 With respect to Medicaid, at the last hearing -- or
10 at least it was the March hearing -- you asked me to report on
11 the status of the claims or the states that have yet to provide
12 us the claim data we need.

13 At that time, there were six states. I'll just
14 give you a quick review, Your Honor. Tennessee and Kentucky have
15 both submitted their claims since that March hearing. We are
16 experiencing some issues with that claim data. It's incomplete.
17 We're going back to them. I will keep you informed if we need
18 the Court's help there.

19 I also mentioned that Puerto Rico was experiencing
20 some unusual turnover in the governmental agency, and they are
21 experiencing delays, but the new individuals are engaged and we
22 expect their claims data shortly.

23 DC and Hawaii are in the process of submitting
24 claims. They account for 25 percent of -- or 25 of the claims
25 outstanding, so it's not a big issue. And we're experiencing

1 some issues with Nebraska, but they are engaged as well,
2 Your Honor.

3 So with respect to those six states, we have not
4 yet received audible -- audit-able claims histories, but they are
5 in the process, and so I do not think any further action will be
6 needed at this time from Merck.

7 We have received 80 percent of all the Medicaid
8 claims data we will need throughout the course of addressing over
9 16,000 Medicaid claims.

10 I also wanted to mention with respect to Medicaid,
11 that often, because of our role in addressing who has Medicaid,
12 we are often brought in to -- by counsel the discussion of
13 whether or not those claimants who are Medicaid entitled may
14 preserve their government benefit eligibility by way of a special
15 needs trust.

16 With respect to that, Your Honor, on May 15th, we
17 did draft a proposed protocol for the Court's consideration that
18 we believe has worked effectively in other MDL settlement
19 programs. That protocol would address a procedure for us to file
20 a petition and corresponding order for claimants who desire a
21 special needs trust to preserve their Medicaid eligibility.

22 With 16,000 or more Medicaid-eligible claimants, as
23 you can imagine, this would be thousands of submittals.

24 THE COURT: Right.

25 MR. GARRETSON: And basically what this process would do

1 would just allow us to attest that the documents meet the state
2 and federal requirements that the claimant meets the state and
3 federal requirements, and that way, the Court would not be
4 inundated with thousands of individual requests.

5 That brings -- one quick note. On other
6 governmental liens, we are experiencing some delay with some of
7 the governmental programs. The VA in particular, through no
8 fault of their own, it's just the way that program is designed,
9 we have to go to every treating facility that those veterans have
10 treated at to get their records. And so those are taking some
11 time, but I expect that we'll continue to work through those
12 issues. And again, I'm just updating the Court, and I do not
13 believe we need any assistance at this time.

14 THE COURT: Keep me in the loop because I will do what's
15 necessary. Again, I should say that I do appreciate the help and
16 support that the Court has been given by the governors' offices
17 in many of those states, and their attorney generals have been
18 very kind to us, and I appreciate their work.

19 SPEAKER: Likewise, Your Honor.

20 MR. GARRETSON: Let me turn now, if I may, to the
21 third-party private lien resolution program that we addressed at
22 the last hearing.

23 In April, I reported that we were working with the
24 PSC and the third-party payor committee to implement the
25 procedures and protocols called for in their Memorandum of

1 Understanding, which created that private lien resolution
2 program.

3 I think, as the Court and the parties are aware,
4 this is a voluntary program that allows claimants to extinguish
5 possible private liens and ERISA obligations through a uniformed
6 program.

7 I described in the past the participation materials
8 and forms that have been provided to claimants through their
9 primary counsel, as well as by the *pro se* curator. Those
10 materials, should anyone want to view them or have not seen them
11 yet, are available on the current development section of the
12 Vioxx MDL website, as well as the Brown Green web portal.

13 The initial participation period for that program
14 concluded just prior to the last hearing. At that time we had
15 received an election to participate from approximately 16,500
16 Vioxx claimants.

17 We also previously reported that the third-party payor
18 committee, which include both the original group of planned
19 representatives by Mr. Sobel (phonetic spelling) and the Ralings
20 and Associates organization, as well as a new wave of plans
21 largely represented by the Levy Phillips law firm, had opted not
22 to exercise their walkaway rights. And therefore, the program
23 was moving forward with one caveat, and that was that we send
24 supplemental mailings to a certain group of claimants who had not
25 yet elected to participate in the program as of that deadline.

1 Accordingly, at the Court's direction, we sent the
2 primary counsel a set of new letters that they could then, in
3 turn, send to a very targeted group of nonparticipating claimants
4 informing them of the extended deadline and asking them to
5 reconsider their decision and informing them that many other
6 private health insurance providers have signed up for the
7 program, and so it might be important for them to review the
8 program again.

9 That e-mail was sent on April -- or those letters
10 and those packages were sent to primary counsel and the *pro se*
11 curator on April 23rd, with instructions to have forms returned
12 by today, postmarked by today.

13 That supplemental mailing included very -- those
14 specific claimants in a spreadsheet who had not elected to
15 participate and who were likely thought to be in a Medicare or
16 Medicaid type of supplemental plan that has been not issued
17 through the federal government. So it wouldn't be resolved in
18 that governmental program, but would have to be resolved on the
19 claimants' own or pursuant to this program.

20 We also sent letters, sample letters to people who
21 had already been put on notice by a provider. So it was
22 important for them to see that this might yield a better result.

23 As of today, I can report that more than 1,800
24 additional claimants have mailed participation forms after having
25 received these supplemental letters. And based on our

1 experience, since the deadline was just today, most firms are
2 probably aggregating those and will send them on to us. So I
3 estimate an additional 500 forms will be received. That will
4 bring our total up another 2,500 or so to approximately 19,000
5 participants in the program.

6 I should also report on the status of plans that
7 have elected to participate according to the terms and conditions
8 of this program. The list grows daily. Since many claimants did
9 not or would not know, necessarily, the name of the health
10 plan -- many of them think it's their employer; they don't
11 understand it could be Blue Cross or Blue Shield -- they think
12 it's, you know, whatever, the steel company they work for.

13 Since many people don't know the names of their
14 plan, we said send in the forms if you like the terms of the
15 program, and we will go out actively to see if we can encourage
16 your plan to participate.

17 As of today we've added over 180 new plans. That's
18 up from 164 at the last hearing, So now we have a total of
19 approximately 300 plans participating. We expect two to three
20 hundred more to voluntarily elect to participate by the next
21 hearing, given the status of our discussions, and that would
22 leave a few hundred more that have yet to respond.

23 So I may ask the Court for some assistance, perhaps
24 for a letter that we could send maybe to those plans' notice
25 agents to get their attention so they at least read it and

1 consider participating in the program. What I would envision,
2 Your Honor, is asking for that in June, and then giving those
3 plans 30 days to respond.

4 With respect to the plans, having seen some of the
5 data already for those who were the first 16,500 to enroll, we
6 have some interesting statistics as of this morning. When we
7 submitted that list of 16,500 claimants to the plans who had
8 agreed to participate exclusively to the terms of this program,
9 20,000 plans responded against the 16,500 that they had a hit.
10 Now that -- what we have yet to do is scrub that down to make
11 sure it's within the applicable dates and applicable injury.

12 We expect that 75 percent of the claimants who
13 choose to participate will actually be matched with a plan that's
14 participating within the prescribed time period and will have
15 reported injury-related care to be resolved, which I think is a
16 phenomenal result.

17 Finally, just this past Friday, the Court issued an
18 order approving the settlement program with the private
19 third-party payors, and we thank the Court for its prompt
20 response to that end.

21 Also, the settlement agreement that the -- stated
22 that the -- between the PSC and the third party payors that we
23 would go through a process of matching to determine what
24 percentages of the entire universe of claimants participating in
25 this program, participating in the Vioxx settlement program, are

1 actually participating in the lien resolution program.

2 We have, in that order that was signed that I
3 mentioned, that contemplated matching process was approved
4 pursuant to a stipulated protocol in a manner that protects,
5 absolutely protects claimants' identifying information. And I
6 would be prepared to report on this effort and the result of that
7 extended process at the next hearing.

8 So with that, Your Honor, I conclude my report as
9 lien resolution administrator for this month.

10 THE COURT: Okay. Fine.

11 In this particular case, we've tried something new
12 in the sense of stepping out the governmental lien approach to
13 private plans, and there was a little concern initially for doing
14 this, but it's worked well. It's worked for the benefit of the
15 lienholder, but primarily it's worked for the benefit of the
16 claimant.

17 This is an opportunity for the claimant who owes a
18 lien to be able to get a substantial discount on that lien simply
19 because they are one of a group. From the lienholder's
20 standpoint, it takes away a lot of transaction costs that they
21 might ordinarily have, so it's worked out.

22 The challenge in it is that there are certain
23 walkaway rights and requirements percentage wise, and you have to
24 give both sides some comfort, that they are able to test that to
25 make sure that the percentages are appropriate, and also give the

1 privacy to the individuals. So we've tried to steer a course
2 that handles both of those issues, and you have been a key part
3 of it, Matt, and I appreciate all of the help that you've done.

4 MR. GARRETSON: Thank you, Your Honor.

5 MR. HERMAN: May it please the Court, Special Master
6 Juneau is here to report.

7 SPECIAL MASTER JUNEAU: Your Honor, for the record,
8 Patrick Juneau, Special Master, and I will make the report very
9 brief, Your Honor.

10 We have had 575 appeals, 546 of those have been
11 decided. We have under consideration only 29 currently. I would
12 like to make one comment, because it came up through some
13 correspondence I received.

14 The way the system is set up is very unique,
15 Your Honor. As soon as these appeals are filed and the data is
16 gathered in the form of positions taken by Brown Greer, they post
17 that on a separate privileged portal that we have, and those
18 appeals are immediately transmitted to the Special Master. And
19 we have set up an assignment system amongst the three special
20 masters.

21 It's not just the appeal, it's the entire record
22 that we have access to. And they do this on a rolling basis so
23 that it's not held for a month or two weeks or three. It's done
24 on a daily basis. Because of that, we are able to get appeals.
25 We'll get appeals late at night, sometimes get them early in the

1 morning. And because it rolls fast like that and we have access,
2 immediate access to the data that's in the claim file, the entire
3 file, we are able to, at that time, even at odd hours, to address
4 those matters and make rulings. I think that's been largely
5 attributable to the fact why we've been able to do that.

6 In the days, even your days, Judge Fallon, and my
7 days, you would wait, you know, a week to get the data. We'd put
8 it through a Xerox machine, we'd read it and render an opinion,
9 and two months later the opinion would come out, if everything
10 worked out. This is not that process. This is a lot more fluid,
11 a lot more prompt. And I think we're going to continue to see
12 that process develop like that.

13 The system has worked very well. Other than that,
14 I don't know of any glitches that we have to address, and I
15 conclude my report, Your Honor.

16 THE COURT: Fine. Fine. We were concerned about a
17 bubble, but you all were aware of it and were able to gear up for
18 it.

19 SPECIAL MASTER JUNEAU: Yes, and we were prepared to
20 handle it.

21 THE COURT: Great. Anything on class actions?

22 MR. HERMAN: Your Honor, we're --

23 MR. MARVIN: Nothing, Your Honor, other than the fact
24 that since the last status conference, the Court entered an order
25 on May 5 dismissing the personal injury and the medical

1 monitoring classes.

2 THE COURT: Anything on state/federal coordination?

3 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios
4 for the state liaison committee.

5 I know that we're all moving along because your
6 jury is here, but I would be remiss in not thanking Nathan for
7 everything that he's done. Not only has he been incredibly
8 responsive to all of my inane questions, but he's reminded me at
9 times of things I needed to do when I didn't have it to him on
10 time.

11 So I wish you well, Nathan, and I hope you stay in
12 the New Orleans area. And on behalf of all the Louisiana firms
13 in the courtroom, I'm sure that any of us would be happy to hire
14 you after you finish your tenure at the Big 5.

15 Your Honor, this month I'm happy to report that we
16 have had a substantial reduction in the amount of remands.
17 Technically, we have 1,866 pending, but of the number, only 32
18 are really ones that we have to ultimately pay attention to.
19 There are 27 of them pending in the government action,
20 third-party payors, and 21 pending for the post settlement
21 filings. So we're moving along very well with that, thanks to
22 Brown Greer, and also to the curator's office.

23 THE COURT: Okay. Thank you very much.

24 *Pro se.* Anything from *pro se*?

25 MR. JOHNSTON: Your Honor, Bob Johnston, curator for the

1 *pro ses.*

2 Continuing with the prospective you've asked to
3 show that jury, wherever it may be, and the Court's desire to
4 move on with the trial, I really think the best thing to do is
5 to -- for the record, tell the Court that we have filed our
6 latest status report. It contains all of the information.
7 Status quo, we continue to receive the communications that
8 continue from the *pro ses.* We interact with Brown Greer.

9 And I think the only other thing I would like to
10 say is that consistent, I am sure, with the high quality of work
11 that you have seen that Brown Greer have provided to the
12 settlement process, equally, the curator's office, I can't
13 compliment them high enough. It has been a pleasure to work with
14 them. I know that it has facilitated the assistance to the
15 *pro ses*, and we're all very fortunate to have that claims
16 administrator.

17 THE COURT: You're right. I also appreciate your work
18 on the matter. In a matter of this sort, we've got very capable
19 and high-powered attorneys, but not everybody is represented by
20 those individuals. So we have a lot of *pro ses*, and I don't want
21 those to get left in a lurch. So I got a well qualified,
22 high-powered attorney to represent them, and that's you, and I
23 appreciate all the work.

24 MR. JOHNSTON: I'll tell my wife you said so.

25 MR. HERMAN: High powered?

1 MR. JOHNSON: Yeah, high powered.

2 THE COURT: Trial package from the MDL.

3 MR. HERMAN: Tough when you belong to the same study
4 group in law school.

5 Trial package. There may be some
6 conception -- a misconception that the work of the PSC somehow
7 was arrested at the time a settlement was originally announced.
8 However, we've continued to work on trial packages very quickly.
9 The trial package has been substantially supplemented in terms of
10 two particular issues, stroke and biostatistics, as well as
11 others.

12 After -- at such time as Your Honor orders a
13 structure for the Attorneys General and governmental folks, the
14 third-party payors are -- already have a structure. We will have
15 for Your Honor, in closed court, the supplement to the trial
16 package first, and then we will have a view of the entire trial
17 package by such governmental lawyers and third-party payor
18 lawyers as wish to view it.

19 In terms of the third-party payor cases, there are
20 three different items on the agenda. I'm going to ask Mr. Seeger
21 to step forward and please give a brief an account, and we'll
22 handle all three of those subjects to Your Honor's inquiry.

23 MR. SEEGER: Excuse me, Your Honor, one second.

24 MR. HERMAN: Sit down, Chris.

25 MR. SEEGER: Judge, I was in a moment. I was sleeping

1 for a moment. I wasn't sure what I was addressing.

2 MR. HERMAN: I'm supposed to have the senior moment.

3 MR. SEEGER: I heard my name.

4 MR. HERMAN: Your Honor, in terms of the third-party,
5 Your Honor, in terms of this issue, there is a structure in
6 place. Secondly, there have been master sets of discovery
7 exchanged between the parties, the opposing parties. In addition
8 to that, the matching process that was supposed to go forward has
9 gone forward.

10 MR. SEEGER: Yes. And Matt reported on it.

11 MR. HERMAN: Yes. Your Honor, that takes care of
12 several issues regarding third-party payor, subject to your
13 inquiry.

14 THE COURT: We've got two matters that have to be
15 addressed. One is the third-party and the other is the
16 governmental actions in this matter.

17 The MIs and the ischemic strokes have been
18 resolved. As we know, some 50,000 claims, or thereabouts. We
19 are now focused on third-party payor cases. I put some structure
20 into that aspect of the case. And now I'm trying to deal with
21 the Attorney Generals for the 50 states who asserted claims on
22 behalf of their state Medicare and Medicaid.

23 The defendants, of course, in those cases have some
24 structure. We need to put some structure into the
25 Attorney General cases, and I'm going to look to the attorneys to

1 make some suggestions on it. I need a lead counsel and the other
2 committee counsel. And Dawn, I would like you to be liaison on
3 that group and interface with the Court on that.

4 MS. BARRIOS: Thank you, Your Honor.

5 THE COURT: But Elizabeth, I'll look to you to report on
6 some structure. I need to push that. I hope we can get some
7 structure. I will also look to you, Jim, to come up with some
8 form and fashion as quickly as possible. You're the first up,
9 Jim, so you're going to need to focus on other issues, but I need
10 you on that committee also.

11 MS. CABRASER: Your Honor, we're in the process of doing
12 that. And we will get something to do as soon as we possibly
13 can, hopefully early next week.

14 THE COURT: Jim, make your appearance for the record.

15 MR. HERMAN: That was Ms. Cabraser, Elizabeth Cabraser.
16 And I know that after Mr. Dugan speaks, Mr. Barnett and Mr. Dugan
17 want to address the Court regarding conferences they had
18 yesterday among AG and Merck representatives.

19 THE COURT: Okay.

20 MR. DUGAN: Yes, sir. Very quickly, Your Honor.

21 James Dugan on behalf of both private and public third-party
22 payors.

23 As the old saying goes, Your Honor, be careful what
24 you ask for, you just might get it. Well, we have it,
25 Your Honor, and I'd like to thank Mr. Herman, Mr. Davis,

1 Mr. Seeger and Merck for helping facilitate in kicking these
2 cases off. We appreciate that, Your Honor.

3 Yes, the private cases are going smoothly since
4 Your Honor has put CMOs and structures in place. When Mr. Davis
5 contacted me last weekend and let me know that Your Honor was
6 looking for some similar structure on that side, we had a
7 conference call this past Tuesday where some nominations were
8 made and a draft is floating around.

9 We had asked for comment back yesterday. I got
10 several comments back. I think it's very instructive that the
11 parties hear that Your Honor absolutely wants a structure. We
12 have a conference call on Tuesday of next week, of which we'll
13 report back to the group, and we hopefully will have a proposed
14 organizational structure to Your Honor by Wednesday of next week.

15 THE COURT: I'm aware that the Attorney Generals of the
16 United States of these various states have their own ways of
17 doing things, but I'd like to have some organization in place.

18 Do we have any states that are dragging their heels
19 in any way?

20 MR. DUGAN: No, Your Honor. I wouldn't say dragging
21 heels at this point. It was first proposed to the group last
22 Tuesday -- I'm sorry -- last Wednesday, so it was this Tuesday.
23 So it's been a relatively short period of time.

24 I have no doubt, Your Honor, that after one more
25 call that we'll be able to get an overwhelming majority of

1 support for whatever structure that we put in front of
2 Your Honor.

3 THE COURT: I really need their help, and that will help
4 me really put some priorities on dealing with motions to remand.
5 If I don't have any structures, it's going to be hard for me to
6 focus on those issues. So that will facilitate me.

7 MR. DUGAN: That is a very good point, Your Honor. Very
8 good point.

9 One small individual issue, Your Honor. On the
10 private third-party payor schedule, we're working through the
11 bellwether process. The next big date on the schedule is
12 June 10th. And June 10th, if Your Honor remembers, we picked 20
13 original bellwethers. Both sides are going to pick five, so it's
14 going to narrow it down to ten.

15 Then we have the strike process. My request to
16 Your Honor is that either we have a status conference by phone on
17 June 11th to work the strike process, because the next date,
18 two weeks after that, is Merck is going to file their motions to
19 dismiss. So it's very crucial that we know exactly who the six
20 trial plaintiffs are going to be at that point.

21 THE COURT: All right. Okay. Why on the phone? I'd
22 like to see people in person, if we can do that. I don't have a
23 problem with that date, but this is a serious thing, the
24 striking, so I like to hear from them.

25 MR. BEISNER: Your Honor, John Beisner from Merck. I

1 guess one other thing I need to talk about is what that date is
2 going to be. We still need to agree under the order to have the
3 discovery processes complete. And we're ready, but I think we'll
4 reach agreement on that.

5 THE COURT: Why don't you all both get together and give
6 me a date, and I'll do that. We need to do the strikes soon.

7 MR. BEISNER: Yes, because what we -- we need to have, I
8 think, under the order, the discovery complete. And then there
9 is a 14-day period, but we can agree on a date and we'll talk to
10 Your Honor about the date for doing that.

11 THE COURT: Okay. All right.

12 When can you get back to me, gentlemen, on the
13 organization of the Attorney Generals?

14 MR. DUGAN: I will get back to you next Tuesday,
15 Your Honor.

16 THE COURT: Okay. Let's do that, then. Tell them I
17 need some structure. If not, I'm going to come up with it.

18 MR. DUGAN: Will do, Your Honor. Thank you very much.

19 THE COURT: Discovery issues is the next item.

20 MR. HERMAN: I ask that either Mr. Marvin or Mr. Barnett
21 to step forward and talk about the various discovery issues that
22 have been handled. I know there was a discovery conference
23 yesterday.

24 MR. BARNETT: Good morning, Your Honor. Ben *Barnett* on
25 behalf of Merck. Just to cover quickly the TPP cases, we did

1 produce, I believe, two days ago all the documents that Merck had
2 produced to date in the New Jersey third-party payor cases. All
3 of those have now been produced to Mr. Davis so that they can be
4 put in the PSC depository.

5 And in addition, we have produced not only an index
6 of that production, but an updated production of all the
7 documents produced to date here in the PSC.

8 THE COURT: You have about 10 million of those now?
9 Where are you?

10 MR. BARNETT: I think we're a little north of 10
11 million.

12 In terms of AG actions, we have now had three
13 separate meet and confers on the past discovery to be served by
14 both sides. We had a meeting last week in person in New York.
15 We had a teleconference on Wednesday of this week, and we met in
16 person again yesterday. We are trying to resolve those issues
17 that we can, and we're also trying to honor the early court date,
18 trial date that Mr. Dugan has.

19 And we have -- we have discussed and are going to
20 try a program whereby we identify documents that Merck has
21 already produced that may be relevant to his matter, including
22 identifying, for example, Bates ranges for the 20 plus production
23 call notes that we did.

24 And in turn, Mr. Dugan is going to explore being
25 able to identify the Medicaid prescribers within Louisiana such

1 that we can move forward to see whether there is additional
2 material that might need to be produced consistent with an early
3 trial date.

4 We are obviously in close contact with Mr. Dugan
5 about that and will continue to work with him. Our hope is that
6 that -- that may become the model for the state -- other state
7 AGs. Clearly there is not consensus on that point yet, but I
8 think there is at least -- and obviously, Ms. Barrios, Mr. Dugan
9 or Mr. Davis can correct me -- I think there is at least a
10 willingness to see if this sort of pilot program will be
11 satisfactory for the other state AGs.

12 So there's been, I think, significant progress
13 made. We are meeting. We are talking. There are -- I think are
14 going to be some issues that we're not going to be able to
15 resolve, and there's obviously an agreement to bring those
16 promptly to the Court's attention for resolution.

17 And just to thank Ms. Barrios and Mr. Davis in
18 particular for helping to coordinate the meet and confers we've
19 had over the last couple of weeks. I think they've been helpful.
20 Thank you.

21 THE COURT: Thank you.

22 MR. HERMAN: May it please the Court, just two quick
23 comments. I've had a three-hour face-to-face meeting with
24 representatives of the New York AG yesterday, a very pleasant
25 two-hour meeting with representatives of the Florida AG. I've

1 had meetings with Mr. Dugan, Ms. Barrios.

2 I just want the other governmental entities to know
3 that if they want a face-to-face meeting, we're available to
4 determine what discovery materials there are available and how
5 they'll become available. Once a structure is in place, it
6 should be easy.

7 I believe the next issue is item number 13.

8 Mr. Marvin, pending personal injuries cases which *Lone Pine*
9 reports have been served.

10 MR. MARVIN: Yes, Your Honor. Ms. Oldfather could not
11 be here today, but Ms. Oldfather and I have been speaking over
12 the course of the last several weeks. And we will be calling the
13 Court early next week to set a date for a conference with the
14 Court.

15 THE COURT: I have asked both of you all to get
16 together, and I understand that that had to be continued because
17 of some difficulties, but I do want that meeting to take place.

18 MR. HERMAN: Item 14 has been handled by Doug.

19 Item 15 deals with some other *Lone Pine* issues.

20 THE COURT: Motions?

21 MR. HERMAN: There are six motions, I think, that Doug
22 has.

23 MR. MARVIN: Yes, Your Honor, we do have several
24 motions. But as the Court's custom has been in the past, we'll
25 be hearing these motions after the status conference.

1 THE COURT: Right.

2 MR. MARVIN: Thank you, Your Honor.

3 THE COURT: Okay. The fee allocation committee.

4 MR. HERMAN: Yes, Your Honor. There are two issues.

5 First of all, I want to thank Mr. Birchfield,
6 Mr. Blizzard, Mr. Levin and members of our firm and their firms.
7 We had an all-day meeting yesterday. More than 30 firms were
8 either in person or in phone conferences to review cost
9 submissions. Many matters have been clarified, and that process
10 is ongoing.

11 I want to advise the Court. As the Court knows,
12 numerous objections were filed by May 2009 with regard to
13 attorney's fee, accounting benefit fees. A number were filed
14 after May 8th on behalf of the PSC.

15 Your Honor, we don't challenge any late filings
16 that may have been made by objectors, and I believe it's now in
17 Your Honor's hands for what process Your Honor chooses.

18 THE COURT: Right. There are two issues here. One is
19 the fee, and the other is the cost. The plaintiff liaison
20 committee has filed a motion seeking eight percent of the case as
21 a fee. This fee, of course, will come from the general fee. The
22 primary attorneys and the PSC, the primary attorney's fees are
23 capped at 32 percent. So any fee that the PSC gets will come out
24 of that 32 percent.

25 They asked for eight percent. I put that on my web

1 site. Posted it. I gave everybody notice. And I've had a
2 number of objections to it, and I'll be dealing with that,
3 setting up a briefing schedule and also hearing date on those
4 issues.

5 With regard to costs, as we know in cases of this
6 sort, there are held costs and there are shared costs. The
7 shared costs do not present, necessarily, a problem because we
8 know what they are. They have been posted. They have been put
9 up.

10 The held costs oftentimes present some
11 difficulties, and in order to resolve those difficulties, I've
12 asked the fee allocation committee to talk with anyone who feels
13 they have held costs.

14 I have also had those checked with by the CPA that
15 I appointed at the beginning of this litigation. He's had an
16 opportunity to review all of those matters, check them for
17 accuracy, and now the PSC is reviewing them, and they will give
18 me some breakout as to what is not disputed and what is at least
19 still under consideration.

20 I will then focus on the latter and devise some
21 process of dealing with it so that we can resolve those issues,
22 and that's what I'm in the process of doing now.

23 With regard to the capping, I have a motion for
24 reconsideration of the capping. As all of you know, I've
25 appointed Tulane Law Clinic to represent the litigants on that

1 issue. I've heard oral argument, received briefing from the
2 parties, and I have it now before me and am in the process of
3 drafting my judgment on it.

4 Any other matters?

5 MR. HERMAN: Your Honor has advised that at some point,
6 you will advise the parties as to a status conference for
7 briefing discovery.

8 THE COURT: Right. I will.

9 MR. HERMAN: I don't know what revery Mr. Seeger was in,
10 but Mr. Davis, since Texas is the Number 1 seed has been in
11 revery, but I do want to thank my partner, who always does an
12 outstanding job.

13 Yesterday he coordinated three simultaneous
14 meetings, one reviewing costs, another for independent meetings
15 with AGs and then meetings with AGs and Merck. And I don't say
16 enough about the excellence with which Leonard Davis performs,
17 but he's a great partner and an outstanding lawyer.

18 And Lennie, I really appreciate you.

19 I think, Your Honor, the other remaining matters
20 are Merck's motions, which Ms. Wimberly will handle as you
21 scheduled.

22 And Your Honor, we need our next meeting date.

23 THE COURT: Our next status conference is June 24th.
24 I'll meet with the liaison counsel at 8:30, and I'll meet with
25 the general meeting at 9:00 o'clock, as we do always.

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