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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS \* Docket MDL 1657-L  
LIABILITY LITIGATION \*  
\* November 4, 2011  
THIS DOCUMENT RELATES TO ALL CASES \*  
\* 9:00 a.m.  
\* \* \* \* \*

MONTHLY 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.  
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New Orleans, Louisiana 70113

For the Defendant: Williams & Connolly  
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Also Participating: Thomas Juneau, Esq.  
Dawn Barrios, Esq.  
Bob Johnston, Esq.  
Ann Oldfather, Esq.

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Proceedings recorded by mechanical stenography using  
computer-aided transcription software.

PROCEEDINGS

(November 4, 2011)

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

5                       Call the case, please.

6           **THE DEPUTY CLERK:** MDL 1657, In Re: Vioxx Products  
7 Liability Litigation.

8           **THE COURT:** Counsel make their appearance for the  
9 record.

10          **MR. MARVIN:** May it please the Court. Good morning,  
11 Your Honor. Douglas Marvin for Merck.

12          **MR. HERMAN:** May it please the Court. Good morning,  
13 Your Honor. Russ Herman for plaintiffs.

14          **THE COURT:** We have some matters today, not too many.  
15 I'm meeting with counsel in chambers after this main meeting.  
16 This is our monthly status conference. I met with liaison and  
17 lead counsel to discuss the agenda with them. I will go  
18 through the items on the agenda.

19                       The Settlement Program, anything on that?

20          **MR. HERMAN:** Your Honor, nothing new.

21          **THE COURT:** Special master and deputy special  
22 masters, anything on that?

23          **MR. JUNEAU:** Good morning, Your Honor. Thomas Juneau  
24 on behalf of the special master, Patrick Juneau. Judge, I will  
25 just report very briefly on four matters.

1           First, there are no further actions or duties to  
2 be performed by the special master with regard to the attorney  
3 general lawsuits. With regard to the lien matters involving  
4 attorney-client issues, those have all been addressed and the  
5 reports of the special master have been submitted to the Court.  
6 All issues regarding the attorney fees pertaining to the common  
7 benefit fees have been addressed and a report by the special  
8 master has been made to the Court, and all assigned duties with  
9 regard to the claims program have been completed.

10           So, Your Honor, it is the report and  
11 recommendation of the special master that he stand at ease and  
12 suspend all activities until ordered to perform additional  
13 tasks to be assigned by the Court.

14           **THE COURT:** That's fine. He has done yeoman work and  
15 contributed greatly to the resolution of the issues that were  
16 outstanding. I do appreciate all of the work that the special  
17 master and deputy special masters contributed to this  
18 litigation. It was very smoothly done.

19           I think that in the future the takeaway from  
20 some of this is the ease with which the material was able to be  
21 transferred back and forth via electronic methods. I think  
22 that was really good. We had deputy special masters in  
23 New Jersey and California and other places. They were able to  
24 communicate with each other with ease and get to the material.  
25 I think that that was very helpful. I'm hearing in other

1 litigation that that's a takeaway that a lot of courts have  
2 gotten from this process. I know the special master was very  
3 instrumental in trying that method, and the success is due in  
4 large part to his work. I appreciate that also.

5 **MR. JUNEAU:** Thank you, Judge.

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

7 Anything on class actions?

8 **MR. HERMAN:** No, Your Honor, but I would like to add  
9 a special thanks from the plaintiff steering committee and from  
10 the lawyers in the MDL. Special Master Pat Juneau and Tom  
11 Juneau have really done a remarkable job, as Your Honor  
12 indicated.

13 Under class actions, nothing new, Your Honor.  
14 Under state/federal coordination, Ms. Barrios is here to  
15 report, Your Honor.

16 **MS. BARRIOS:** Thank you, Mr. Herman.

17 Good morning, Your Honor. There has only been  
18 one conditional transfer order since the last status  
19 conference, but there were no remands associated with the case  
20 that was transferred over. We continue to update the database  
21 and remove cases and plaintiffs that have been dismissed.

22 We have about eight derivative claimants that  
23 are still open on the docket. I've been in communication with  
24 Ms. Wimberly who understands and will speak with Mr. Marvin  
25 about looking at these eight cases and see if they qualify for

1 a dismissal. We have at 9:45 a special status conference with  
2 the attorneys general. That's the end of my report,  
3 Your Honor.

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

5 The remand situation is persistent in these  
6 cases. It's a little difficult to get your hands around them  
7 early on. The motions are made more often than not in the  
8 transferor courts, and the judges in the transferor courts  
9 generally send the cases along with the outstanding motions.  
10 So the transferee courts in this country get a lot of those  
11 motions. It's difficult to make a decision as to whether you  
12 ought to stop everything and deal with the remand motions  
13 because they fall into several groups.

14 There's some remand motions that are filed for  
15 reasons that they feel that because of the defendants they  
16 don't have the diversity and their target defendant is local, a  
17 significant defendant is local, and therefore they should be  
18 back in their area. That's a small portion, but it's a portion  
19 of the remand.

20 This are other remand motions that are filed for  
21 various reasons. They are not really interested in going back,  
22 frankly. They're interested in creating some issues that call  
23 the attention of the plaintiffs' committee to their  
24 significance. Many feel that by filing motions to remand, they  
25 get the attention of the plaintiffs' committee. The last thing

1 they really want is to leave the litigation. They want to stay  
2 in the litigation. The purpose of the remand is for different  
3 reasons.

4           Lastly, oftentimes the motions are filed, but  
5 the individual lawyer who has filed the motion may not  
6 appreciate the cost that is going to be entailed if he or she  
7 has to try that case before any joint discovery is brought  
8 about in the MDL. Oftentimes there's some general liability as  
9 well as specific liability in these cases, and the general  
10 liability is extremely costly. If they have to pitch that case  
11 from soup to nuts by themselves, the resources that it takes  
12 are considerable. So it's like catching a tiger by the tail;  
13 you're sorry you did it.

14           So from my seat in the bus, it's difficult to  
15 focus on those cases without some understanding as to the  
16 nature of the remand and the significance of the motion. We  
17 talk about this when MDL judges get together, what to do with  
18 these matters, and it's difficult sometimes.

19           So what I did in this particular case is to hold  
20 them. My thinking was that at the appropriate time, I would  
21 try to group them and then bellwether them, or at least motion  
22 practice them so that I would just hopefully do one or two  
23 motions in each category and then "me too" the rest of them.  
24 There are many ways of doing it.

25           **MS. BARRIOS:** Yes, Your Honor. I failed to mention

1 one thing. I do want to add my thanks on the record to  
2 Mr. Juneau because he has been invaluable to the attorneys  
3 general. I ask that you don't totally dismiss him because I've  
4 spoken with him about assisting further in the discovery  
5 matters of the attorneys general. Thank you, Your Honor.

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

7 Anything on the *pro se's*?

8 **MR. JOHNSTON:** Good morning, Your Honor.

9 Bob Johnston, curator for the *pro se's*.

10 Nothing needs to be reported that is beyond --  
11 I'm just looking at it. I provided the Court with the  
12 Curator's Status Report 32. The first paragraph talks about  
13 the February 12, 2008 appointment of the curator, which tells  
14 me that we are approaching four years. So this long history  
15 that you're having a commentary by the various individuals,  
16 including the special master and Dawn Barrios and what have  
17 you, I want to thank you for obviously the appointment, but  
18 also because it has gone very, very smoothly. We have very,  
19 very few calls at this juncture. It's gone from the many to  
20 the very few. I think it's worked extraordinarily well. I  
21 thank the Court.

22 **THE COURT:** Thanks for your help. It was very, very  
23 significant. That's an issue that always presents itself in  
24 the MDLs. We really experimented a little bit with the  
25 appointment of a *pro se* curator.

1           People just want to know what's happening. We  
2 have tried to do that with the Web site, but oftentimes they  
3 are not really familiar or comfortable with the Web site. They  
4 like to be able to talk to somebody. That aspect of the case  
5 was very helpful. The public, litigation is all about being  
6 able to talk to a responsible lawyer and get their questions  
7 answered. You've done a great service and we appreciate it.

8           **MR. JOHNSTON:** Thank you.

9           **MR. HERMAN:** Your Honor, if I may, I would like to  
10 thank Bob Johnston. He certainly relieved the PSC of a lot of  
11 phone calls and letters, etc. His more than 45 years at the  
12 bar, both as a plaintiff lawyer and a defense lawyer, really  
13 served well. We thank him.

14           I also want to at this juncture, for the record,  
15 state what an extraordinary job Dawn Barrios has done as state  
16 liaison. Organizing the various AG conferences, participating  
17 in keeping everyone on an even keel, and moving the AGs along  
18 has been a vexatious job. The PSC appreciates what Ms. Barrios  
19 has done in that regard.

20           **THE COURT:** The Court likewise. The challenge in  
21 these cases is -- and it's becoming more and more of a  
22 challenge as the cases increase. By the way, I just came back  
23 from an MDL conference, and there's an uptick in the MDLs. My  
24 take on it is one of the reasons for that is CAFA, frankly.  
25 Also, I might say that the courts of appeal don't look upon



1 class actions with the enthusiasm that they did five, ten years  
2 ago.

3           So as a result of both of those things, I think  
4 the plaintiffs' bar is bringing complex litigation cases more  
5 in the MDL than they are in class actions. When they do that,  
6 that presents some issues of state/federal coordination that's  
7 challenging. We saw that in *Vioxx*. A large portion of the  
8 inventory was in state courts, primarily in New Jersey but also  
9 in Texas and in California as well as other states. Those are  
10 the three centers of gravity for those state court cases.

11           I think in order to bring some organization to  
12 that different structure, it's helpful to have a capable person  
13 who is the coordinator of that type of litigation. Dawn has  
14 served in that capacity and served well as chair of that state  
15 liaison committee.

16           What I do is talk to the state court judges and  
17 get recommendations from them, from their particular areas,  
18 that they think should be on the committee. I try to appoint  
19 those individuals, but I pick the chair, somebody who I think  
20 can coordinate well. I think that helped me coordinate it with  
21 the state judges. Of course, Dawn has done yeoman work  
22 coordinating with the lawyers and I appreciate her.

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

24           **THE COURT:** Governmental actions.

25           **MR. MARVIN:** Your Honor, before we turn to that, I

1 wanted to wait my turn on behalf of Merck until later in the  
2 agenda when I would address some other matters, but I would  
3 like to rise now and echo the words of Mr. Herman and to thank  
4 Mr. Juneau as the special master, Mr. Johnston, and  
5 Ms. Barrios. It really has been a pleasure in dealing with  
6 each of them. Their work has been excellent and just  
7 contributed so much to smooth operation of this proceeding. On  
8 behalf of Merck, we would like to thank them for their efforts.

9 **THE COURT:** This has been a standout litigation  
10 because it's the shortest litigation in the history of the MDL  
11 from the standpoint of the date that suit was filed until it's  
12 completed. It took us about three years to resolve the case,  
13 about 50,000 claimants. Some litigation is still going on 20,  
14 30 years afterwards, and nothing has been accomplished similar  
15 to this.

16 It's in large part because of the good fortune  
17 that I've had in having experienced counsel and professional  
18 counsel to drive this case. That's what makes it doable,  
19 frankly. It's not the Court. It's really counsel that pull  
20 the oars and move the boat, so I appreciate it.

21 Third-party payors, anything on that?

22 **MR. HERMAN:** Yes, Your Honor. I have a report to  
23 make on behalf of the committee. As I begin, I would like to  
24 preface the remarks.

25 Your Honor issued PTO 57 setting forth the

1 third-party payor parameters. There were 176 third-party payor  
2 matters. At present time there are 33 third-party payor  
3 attorney applicants for a limited fund that was negotiated with  
4 Merck. 26 of the 33 applicants filed timely. Nevertheless,  
5 the committee felt that rather than bring the matter to the  
6 Court that we would make extensions of the deadlines we set  
7 ourselves. We'll issue a written report to Your Honor on  
8 Monday.

9 I do want to point out that the matter was  
10 negotiated by Chris Seeger and Tom Sobol almost totally, and  
11 without their attention to the matter we wouldn't be before you  
12 today. Mr. Dugan, who is on the committee, tried the only  
13 third-party payor case. Elizabeth Cabraser was appointed by  
14 Your Honor at inception and has been very important in the  
15 third-party payor matters. Mr. Birchfield, myself, and  
16 Mr. Levin have from time to time participated in these  
17 considerations along with other lawyers.

18 We sent out two questionnaires to obtain  
19 basically the following information: Were they involved in  
20 third-party payor and would they affirm their involvement in  
21 detail; were they paid any fees from the third-party payor  
22 clients whom they represented; had they previously submitted  
23 hours in connection with the prior determination by Your Honor  
24 of common benefit; what they computed their lodestar to be in  
25 hours and dollars; whether there was an adjusted lodestar;

1 whether they had unreimbursed costs; and other information.

2           We received questionnaires from 31 of the 33  
3 applicants and then two additional came in. We can report,  
4 having reviewed the submissions, there are some qualitative  
5 differences as well as computation differences among the  
6 applicants. The fee allocation committee yesterday in its  
7 meeting determined that we would not make an allocation  
8 recommendation but that we would give Your Honor a full report  
9 on Monday, a written report, and we would await further  
10 instructions from Your Honor as to the future course of this  
11 matter.

12           **THE COURT:** Let me get the report first, and then I  
13 will get back in contact with you and explore some of the  
14 details. Frankly, when I saw the numbers, I didn't know that  
15 many people were working on this particular issue. I knew that  
16 Chris and Tom were, and of course I knew Elizabeth and James  
17 and the PSC leadership were, but I did not know that a lot of  
18 others had done some work in this case. I am going to have to  
19 take a look at that and decide where we go from there.

20           **MR. HERMAN:** Your Honor, the next matter at page 6  
21 are pending personal injury cases. I believe Ms. Oldfather and  
22 Mr. Marvin will speak to that issue.

23           **THE COURT:** We are in that phase of this case where  
24 it's closing out. I make some of these comments for the  
25 record. What I have done, as you all know, is to keep a Web

1 site active in this particular case. I put on the Web site the  
2 transcripts. I do that not only for people who are interested  
3 in the case or participants in the case presently, but I do it  
4 because of the scholars who study this area of the law.  
5 Hopefully they have a blow-by-blow account of what's going on  
6 and what has gone on so that they can at least analyze whether  
7 this method works, should be tweaked, should not be tweaked,  
8 whatever. That's the reason I go into some detail on some of  
9 these things. I received from Ann a list of the cases that she  
10 has compiled, and we are looking at --

11 What's the total on it, Ann?

12 **MS. OLDFATHER:** Good morning, Your Honor.

13 Ann Oldfather for the record.

14 The total is 97. We subtotaled them by groups.  
15 I apologize. We didn't have a bottom line total. For the  
16 benefit of those listening in, Your Honor, and others in the  
17 courtroom, I will just do a quick summary of that census.

18 **THE COURT:** Sure.

19 **MS. OLDFATHER:** Of course, the census originated from  
20 a project that started in June when Your Honor ordered all of  
21 the remaining personal injury plaintiffs to provide a consent  
22 to me and members of my firm, which we then provided to Merck,  
23 and Merck then provided us with a set of plaintiff records on  
24 each of those plaintiffs. We'll get in a moment to where that  
25 project stands, but it is substantially completed. There are

1 only three of the remaining personal injury plaintiffs for whom  
2 we have not gotten records.

3           So of the 97, Your Honor, I provided the same  
4 breakdown to Mr. Marvin, and I'll go through his numbers and my  
5 numbers very quickly. This are six categories. There's a  
6 heart attacks category. There is a stroke/TIA category. There  
7 is a category where the plaintiff claimed to have both a heart  
8 attack and a stroke, so both events. The fourth category is  
9 called VTE, venous thromboembolism, which picks up pulmonary  
10 emboli cases and deep vein thrombosis cases, PE and DVT cases.  
11 So that's the VTE category. There's an "other" category, and  
12 in the census we have provided a very brief description of what  
13 that is specifically for each person. Then the last category  
14 are the three folks for which we don't have records.

15           Our totals in the heart attack category -- and  
16 again, Your Honor, this is done by lawyers, not doctors. This  
17 is just for planning purposes, not certainly concession or  
18 admission or establishing of it as evidence. Our totals in the  
19 heart attack cases are 27. Merck disagrees on four of those  
20 and their total is 23, but roughly equal.

21           Our total in the stroke/TIA category is 15.  
22 Merck thinks two of those should come off, but it adds two  
23 others that it moved out of another category. So they end up  
24 with 15 also.

25           I should say, Your Honor, that you had asked in

1 the pre-status conference for the number of *pro se*'s. There  
2 are three *pro se*'s in the stroke category and there are four  
3 *pro se*'s in the heart attack category. I neglected to mention  
4 that.

5 Then in the third category, which is a combined  
6 claim of both an MI and a stroke, our number is the same. We  
7 have one person.

8 In the VTE category, the venous thromboembolism,  
9 our count is 29. Merck disagrees on one of those. They take  
10 off one. They add two. They end up with 30. I'm sorry,  
11 Your Honor. There are six *pro se*'s in the VTE category.

12 Then the fifth substantive category, which is  
13 the other, our count is that there are 22, and Merck's count is  
14 that there are 26. Of those number, of our 22 there are six  
15 *pro se*'s. Then as I mentioned, Your Honor, there are three  
16 plaintiffs who have not submitted consents and, therefore,  
17 Merck hasn't obviously provided the records.

18 My understanding, Your Honor, is that after the  
19 public conference, we are going to have an in-chambers  
20 discussion about trial plans and other plans and resolution of  
21 all of these 97 cases. So unless Your Honor has a question --

22 **THE COURT:** No, I don't. I think when we talk in the  
23 conference room about the VTEs and others, we probably ought to  
24 do some motion practice on the *Daubert* issues and see where it  
25 is at that point so that you don't spend a lot of money if you

1 don't have a case. I don't know whether you have a case or  
2 don't have a case, but it seems to me before a lot of resources  
3 are plugged in, we ought to see what the science is about that  
4 particular injury that that particular person is claiming.

5           With the three nonrecords, we have given these  
6 people a lot of time to respond. If they haven't contacted  
7 you, it just seems to me that they have moved on in life and  
8 they want to get finished with this case; they want it over.

9           **MS. OLDFATHER:** Your Honor, actually, we have made a  
10 lot of progress on that. When we started back in June, there  
11 were quite a few.

12           **THE COURT:** Oh, yes. No, I know that.

13           **MS. OLDFATHER:** When we were here in September, right  
14 before that, it was over 10 that had never been located.

15           Since we are doing shout-outs, I need to give a  
16 shout-out to Megan Hastings in my office, who utilized some of  
17 her prior journalistic career talents, and we have tracked down  
18 everybody but one. That one person, Maureen Campbell, we just  
19 cannot find. We found everybody else that was missing.

20           Of all those people -- and this is an  
21 interesting, I think, anecdotal statistic -- everybody was  
22 thrilled that they had heard from us and they wanted to keep  
23 their case active except for one person. And Your Honor has  
24 mentioned that there are people like that that have just moved  
25 on. I don't want to overstep here, but that person had an



1 opportunity to send in a consent and she declined.

2           That leaves us, really, with we have two people  
3 today to talk about, Maureen Campbell and Patricia Kelly. The  
4 third one is a death case, and we can't really get a formal  
5 representative to talk to. We have found them, but we can't  
6 get a party in interest.

7           **THE COURT:** It's not unusual. We have all seen that.  
8 People have these experiences in life and then they move on,  
9 and they don't want to be bothered with it. They don't want to  
10 look back. It's painful or they have moved on or they have  
11 reconsidered or they just don't want to be bothered anymore.  
12 That's their right, but I can't keep them on the docket.

13           **MS. OLDFATHER:** That is the next item, Your Honor.  
14 Mr. Marvin may want to respond to just the general comments  
15 about the cases.

16           **MR. MARVIN:** It is true that we are in agreement on  
17 the final number of cases that exist presently. We are pretty  
18 much in agreement on the categories of injuries that  
19 Ms. Oldfather has provided. I think that there are seven or  
20 eight where we might have a disagreement as to which category  
21 it should fall into. I think once we both have an opportunity  
22 to look at those cases more closely, we will be able to agree  
23 on the correct category.

24           As to the last point that Your Honor was making  
25 where records have not been available, two of those are on

1 motion for today, Campbell and Kelly, so I assume that  
2 Your Honor will hear that after the hearing as you have before.  
3 Those are two which are either missing in action or have not  
4 responded with consent, so we have moved to dismiss those  
5 cases.

6 We have several other motions. But as I say, I  
7 understand that Your Honor will take that up after the status  
8 conference.

9 **THE COURT:** Yes. The thing that we need to talk  
10 about in the conference room that will put a little bit more  
11 flesh on the bones is that we have to think about the  
12 preliminary motions in the cases. We'll get over that,  
13 preliminary motions, and then depositions of treaters, that  
14 needs to be done, and any other depositions that need to be  
15 done, and then I am going to look to you-all for some guidance  
16 or suggestions on how we go about dealing with the cases.

17 My thinking would be that we take one or two in  
18 each of those categories, the plaintiff picks one, the  
19 defendant picks one, and we bellwether it and see where it is.  
20 I would like you-all to look at the categories and see whether  
21 or not there's any case that sort of captures the whole  
22 category. Maybe it's not able to be done with just these  
23 limited numbers.

24 I think rather than start at the beginning and  
25 try every case -- it just doesn't make a lot of sense to me --

1 if we can short-circuit in some way, ideally with bellwethers,  
2 and then decide where we want to try the bellwethers, whether  
3 it's here or some other place, that will give me an opportunity  
4 to make a decision as to whether I go back and try it or we  
5 have somebody else try it.

6 **MR. MARVIN:** Thank you very much.

7 **MS. OLDFATHER:** Judge, I'm not sure if Mr. Marvin was  
8 suggesting that the items that are listed under B noticed for  
9 actual hearing today should be discussed at the end of the  
10 conference? It was my impression we were going to bring them  
11 up now.

12 **THE COURT:** I was going to finish this thing and,  
13 while everybody is here, bring them up.

14 **MS. OLDFATHER:** Then we will go back to the B items.  
15 Thank you, Judge.

16 **THE COURT:** The next item on the agenda.

17 **MR. HERMAN:** Your Honor, there is nothing new. The  
18 original fee allocation committee has done its job. The  
19 third-party payor committee has now reported orally and will do  
20 so on Monday.

21 With regard to the other pending motions, I do  
22 want to indicate that Mr. Birchfield has talked with  
23 Mr. Garretson. Mr. Birchfield will coordinate with  
24 Mr. Garretson the lien situation as regards the remaining  
25 cases.

1           **THE COURT:** That's important. I mentioned that at  
2 the conference a moment ago. While you have this inventory,  
3 Mr. Garretson can deal with the government better as a group  
4 than he can with single cases. Particularly the statutory  
5 liens, it's to their benefit that some negotiation be conducted  
6 on a group basis because the lawyers are responsible, the  
7 litigants are responsible, everybody is responsible, so there's  
8 no escape from those liens.

9           It's been our experience in this case that if  
10 the lien negotiator or lien organizer has a group, he can go to  
11 the government and get a discount from those liens. They are  
12 going to have to pay it or the lawyers are going to have to pay  
13 it or somebody is going to be responsible for paying it. So if  
14 you wait until each case spins off, they are going to pay the  
15 full lien, whereas now there's an opportunity to pay a  
16 substantial discount and you want to take advantage of that.

17           **MR. HERMAN:** Your Honor, the other pending motion  
18 is --

19           **THE COURT:** What about the appeals, Russ?

20           **MR. HERMAN:** Well, the appeals as regards the fee  
21 allocation committee appeals have now been dismissed in the  
22 Fifth Circuit.

23           **THE COURT:** Okay.

24           **MR. HERMAN:** Dorothy Wimberly has filed a motion for  
25 summary judgment that is quite extensive. Dorothy may want to

1 address that. I understand that the Court has set that for  
2 January 18 at 9:45.

3 **THE COURT:** I think that's set on that date. If we  
4 don't have anything else, I will hear from Dorothy on those  
5 three motions. Anything else?

6 **MR. MARVIN:** Just on the last point about the motion  
7 that we filed on the pulmonary embolisms and DVTs. I think  
8 that's something we are going to be discussing in chambers with  
9 you.

10 **THE COURT:** Right.

11 **MR. HERMAN:** Your Honor, I mentioned Ms. Wimberly,  
12 who is an outstanding member of the bar, and my partner Leonard  
13 Davis -- and I notice that this is Status Report 67. They have  
14 had primarily the responsibility for coordinating and resolving  
15 and producing the written status reports.

16 I might add that because of Your Honor's  
17 requirement that lawyers meet face-to-face often to resolve  
18 problems and because Your Honor has regular status conference  
19 meetings and post reports and conferences, that in large part  
20 has moved this case on remarkably well. We thank Your Honor  
21 for Your Honor's attention and your time, which is precious,  
22 and we also appreciate Ms. Wimberly and Mr. Davis for what they  
23 have done in helping us organize, that is, both sides, our  
24 presentations.

25 **THE COURT:** I think that's something that's been

1 kicked around now in the MDL committees, and the judges are  
2 trying to experiment with Skype and a couple other things.  
3 Skype is great, but there's something that happens when people  
4 get together, and they get together primarily in a conference  
5 room atmosphere, that is able to move the case along and also  
6 give the feeling that everybody is in this boat together, so to  
7 speak. It's a smaller boat in this kind of room and it has  
8 that effect on people, I have found. When you get more people  
9 to row the boat, even if you are rowing it from different sides  
10 of the boat, it moves the boat forward a lot better. I have  
11 found that that's helpful.

12                   Now, some of my colleagues, as I say, do it on  
13 the phone instead of in person, and some think you can use  
14 Skype and other methods. It has been my experience that it's  
15 not as effective as in person, but that's something probably  
16 you are going to be asked for input on because we are trying to  
17 do some interviews of lawyers. My view of life and living is  
18 that if you want to catch a fish, it's better to ask a fish  
19 than it is a fisherman. The committees are going to try and go  
20 out and talk with the folks who are specialists in this area.

21                   Anything else?

22                   **MR. HERMAN:** No, Your Honor. Mr. Davis passed me a  
23 note. I looked around for my colleague, Mr. Becnel, and I  
24 didn't see him. As I understand it, your next status  
25 conference will be January 5?

1           **THE COURT:** January 5.

2           **MR. HERMAN:** Mr. Davis tells me that may be the BCS  
3 game, which means colleagues from outside New Orleans better  
4 make transportation and hotel plans today for January 5.

5           **THE COURT:** I probably won't be able to do anything  
6 about that. I'm not going to issue an injunction to stop it,  
7 for sure.

8                                   **(End of Status Conference)**

9                                   \* \* \*

10                                   **CERTIFICATE**

11                                   I, Toni Doyle Tusa, CCR, FCRR, Official Court  
12 Reporter for the United States District Court, Eastern District  
13 of Louisiana, do hereby certify that the foregoing is a true  
14 and correct transcript, to the best of my ability and  
15 understanding, from the record of the proceedings in the  
16 above-entitled and numbered matter.

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