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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS * Docket MDL 1657-L
LIABILITY LITIGATION *
 * April 17, 2008
 *
 * 9:00 a.m.
* * * * *

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

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24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer.

PROCEEDINGS

(April 17, 2008)

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

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

4 **THE DEPUTY CLERK:** MDL 1567, in re: Vioxx.

5 **THE COURT:** Counsel, make your appearances for the
6 record.

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

9 **MR. WITTMANN:** Good morning, Your Honor. Phil
10 Wittmann for liaison counsel for the defense.

11 **THE COURT:** We're here this morning on our monthly
12 status conference. I received from the parties a joint report
13 and proposed agenda. I've had an opportunity to meet with the
14 committees in advance of this meeting, and I will take the
15 agenda in the order in which it's presented.

16 First is the settlement agreement. Any report
17 on that?

18 **MR. WITTMANN:** Your Honor, we're going to defer to
19 Orran Brown of BrownGreer.

20 **THE COURT:** All right.

21 **MR. BROWN:** Good morning, Your Honor. I'm Orran
22 Brown from BrownGreer in Richmond. We're the claims
23 administrator for the settlement program. With me today is
24
25

1 Lynn Greer.

2 What I'd like to do, Your Honor, is what we do
3 each time at this status conference is go through where we
4 stand in the submissions we're receiving in the settlement
5 program through registration and the enrollment stages, and
6 then Lynn will talk briefly about where we are on the claims
7 front, because we're also receiving claims packages now as
8 well.

9 We always start off looking at the total number
10 of claimants who have registered for the program pursuant to
11 the court's orders directing counsel to designate primary
12 counsel and tell us about their Vioxx claimants. This slide
13 shows us the total number of people who have stepped forward in
14 that process.

15 The Court's orders require registration by
16 January 15th, 2008. So we always depict this as the number of
17 firms who gave us their information by January 15th, and then
18 the numbers that we're receiving after that.

19 Because we are still receiving unrepresented
20 claimants and represented claimants from counsel who want to
21 sign up for the program each day; and we are encouraging those
22 counsel and unrepresented claimants to continue to send their
23 registration affidavits to us.

24 Looking at where we stand as of yesterday, we
25 had a total of 58,842 claimants who had identified themselves

1 in the registration process. And if we're looking for a rough
2 number of claimants who seem to be -- or may be eligible for
3 the program, we take out in that lower row the number of
4 claimants who told us in their spreadsheet that they were
5 "other injury". Because the other injury that are not heart
6 attack or not stroke are not covered in the program.

7 So we get to a number that's about 50,076 of
8 claimants who have registered who have, at least so far, not
9 stated that they had an ineligible injury to us. There are
10 about three things we're pointing out at this stage about these
11 numbers.

12 First of all, Your Honor, there are still some
13 folks known to Merck -- some Vioxx claimants or plaintiffs
14 known to Merck who have not yet registered. They are scattered
15 around the country in various law firms that have not stepped
16 forward, not identified themselves to us, as the claims
17 administrator, in this process.

18 **THE COURT:** Mr. Brown, do you know if those people
19 have filed suit, or have not filed suit, or is it a mix?

20 **MR. MARVIN:** Your Honor, some did file suits. Others
21 are on tolling agreements.

22 **THE COURT:** Okay.

23 **MR. BROWN:** At this stage, Your Honor, the Merck
24 folks are going to send out letters to those firms encouraging
25 them to comply with the Court's order to register their clients

1 so that at least we have the whole census of all known Vioxx
2 claimants.

3 The second thing worth mentioning is, is that we
4 are still receiving registrations after January 15th, 2008. We
5 understand and have seen at least two motions filed with this
6 court by firms seeking leave to register after January 15th,
7 2008.

8 And tomorrow we're sending a letter out to those
9 firms that's been approved by the parties explaining to them
10 that we have been directed by the parties to continue to accept
11 registrations and that there is no consequence, really, to
12 coming in after January 15th, and that would moot the pending
13 motion.

14 There really is no need for it and we're asking
15 them to withdraw it so that it doesn't take up the court's
16 resources dealing with an issue that really is not an issue.
17 So we're always telling unrepresented claimants, and counsel,
18 to send us your registration affidavits, go ahead and get
19 started in the program, even if it's after January 15th.

20 The third thing worth mentioning about these
21 numbers, Your Honor, is that 50,076 number is, at best, kind of
22 a rough picture right now of claimants who may be eligible for
23 the program. For a number of reasons, a number of people who
24 presented themselves as "other injury", not MI, not stroke, in
25 their spreadsheets to us actually had information in their

1 lawsuits, or made assertions or allegations of a heart attack
2 or a stroke. And Merck has that information.

3 And so there are a number of people who've said
4 they're "other injuries", but they really do belong in the
5 program under the terms of the settlement agreement. And I
6 think there are also some folks who said "other injury" and
7 they go back and look at it and then they change their minds
8 about it. So that's an exclusion that we make to give us a
9 rough number of people who should be in the program, but it's
10 not precise.

11 And other reasons it's not precise is that there
12 are some folks who did say they had an ineligible injury, but
13 they may be non-U.S. residents and their injury happened
14 outside the United States. They're not really eligible for the
15 program under the terms of the settlement agreement.

16 There are some folks who didn't have a lawsuit
17 or a tolling agreement by November 9th, 2007, which is the
18 cutoff date. So some of those folks are not eligible. So that
19 50,000 number is, at best, kind of a rough judgment right now
20 about people who should be in the program.

21 **THE COURT:** But whatever it is, it's clear that the
22 thresholds have been met. Is that what Merck sees?

23 **MR. MARVIN:** We certainly expect those thresholds to
24 be met, Your Honor. We're still verifying the numbers, but
25 we're confident that -- we have every expectation that they

1 will be met.

2 **MR. BROWN:** That gets us, Your Honor, to the next
3 step in the program because the thresholds really start being
4 measured by who enrolls in the program.

5 This slide shows us the number of claimants who
6 have presented themselves who want to go beyond registration
7 and actually enroll in the program. And this number still
8 grows every day as well because we still receive enrollment
9 materials from unrepresented claimants and primary counsel.

10 The deadline now -- I'm going to mention it
11 again in a few minutes -- for sending in their enrollment
12 materials is May 1st. The Court has, and the settlement
13 agreement has, prescribed several deadlines effecting
14 enrollment, February 29th, and then March 31st, for people who
15 wanted to be considered for an interim payment if it's made.

16 And these numbers, today, collapse all of these
17 together to show us the numbers of people who enrolled at any
18 time. And you can still enroll in the program. And people
19 have until May 1st now to submit their enrollment materials to
20 us.

21 This slide shows us the number of folks who
22 said, "I want to enroll," by giving us an online statement,
23 signing up a claimant online, giving us an enrollment form, or
24 giving us a "yes" answer in that question in their claimant
25 spreadsheet, or giving us a claimant list, which is what the

1 second amendment allowed people to do, to indicate that they
2 wished to enroll. And so we see 50,000 plus represented
3 claimants who have made that statement that they want to
4 enroll.

5 We have 332 pro se claimants who have enrolled
6 already. And that number increases each day as we work with
7 the pro se curator to try to help the unrepresented folks
8 through the process, to send in the materials that they need to
9 send in to enroll. It gives us a total of 50,683 claimants who
10 said, "I want to enroll in the program," and took the steps to
11 get that far in the program.

12 Again, we back out the number of claimants
13 who've told us in their spreadsheet they had an "other injury."
14 Again, not a precise or exact exclusion. But that's what we
15 know so far about them until we get their claims packet in. It
16 ends up with a net number of 46,697 claimants who said, "I want
17 to enroll," submitted themselves for enrollment as of
18 yesterday.

19 And running the numbers, based on that 50,000
20 number, it's 93.3 percent of the people who registered who have
21 said, "I want to enroll." And that 93 number, for all the
22 reasons I've mentioned, is 93 and up to 94 -- maybe over 94 --
23 once we're finally able to tell for certain who's really an
24 other injury, who's not a U.S. resident, who doesn't belong in
25 the 50,000 denominator to make that calculation.

1 But that's the best we can do today, as claims
2 administrator, is 93.3 and probably north of 94 as of now. And
3 remember, these materials are still coming in. People can
4 still register and have until May 1st to register.

5 This is a reminder for all of us, Your Honor,
6 about what it takes to register, and we'll see in a minute why
7 that matters. Because there are several pieces of the
8 enrollment package for people to -- and I said register. I
9 meant enroll -- people to enroll in the program.

10 You have to, as in row 1, say you want to enroll
11 online or give us that answer in a spreadsheet. It takes an
12 enrollment from the primary counsel, if you're represented, to
13 indicate the statement of enrolling. An enrolling claimant has
14 to send us a release. They also have to send us some signed
15 medical records authorization form. And then if they have a
16 pending lawsuit, give us a stipulation of dismissal.

17 Those first five steps are the primary pieces of
18 the enrollment package with the centerpiece of it really being
19 the release document that the claimant signs. To complete the
20 entire package eventually, we have to have the certification of
21 final enrollment from the primary counsel, if you're
22 represented, and that is due by May 1st, 2008.

23 When we were here the last time, the parties
24 agreed upon, and we have now posted and made available to all
25 counsel, a revised version of the certification final

1 enrollment that allows counsel to state that all the claims in
2 which I have a financial interest are either enrolled by me, or
3 enrolled by someone else, or here's a list of the folks that I
4 haven't been able to locate, but I'm still trying to locate
5 them and advising them -- recommending to them to be in the
6 program.

7 So that accounts for people -- all the folks
8 that have a financial interest in it, that form allows them to
9 send that certification of final enrollment in by May 1st and
10 list the ones that they just haven't been able to talk with
11 yet.

12 The other thing worth remembering about this
13 enrollment package, Your Honor, is that documents themselves
14 still have to be reviewed for completeness. The parties and we
15 have been working on the criteria to judge whether a document
16 is really the right document: If it hasn't been changed, if
17 it's been signed, signed by the right person.

18 There's always a completeness review that has to
19 happen on all these materials. We've been working with the
20 parties to agree on the criteria and that process is underway
21 with Merck's counsel, and we then looking at the documents and
22 then notifying the firms if there's something they need to cure
23 or fix up about one of these documents. So this is what it
24 takes to be enrolled.

25 So far we wanted to point out the materials

1 we've received with, again, starting in row 1, the number that
2 we had from the other slide about claimants who said they want
3 to be enrolled, and we back out the ones that say were another
4 injury, and you get to this 46,697 number. And already we have
5 over 43,000 releases from those folks in hand in the door.

6 Among the 43,000 releases, there are over 38,000
7 people who have given us the total package. They've given us
8 all of rows 1 through 5 here. And the only thing -- some of
9 them have given us a certification of final enrollment. But
10 for a lot of the firms who haven't yet finished with all of
11 their people, they give us the CFE by May 1.

12 So we already have 38,000 pretty much complete
13 packages -- enrollment packages from that group. So it's high
14 numbers, and we're still receiving them each day. We had a lot
15 of volume around the March 31 deadline to receive these
16 materials. We're still getting hundreds -- thousands of them a
17 day.

18 And I'm asking all counsel and unrepresented
19 claimants to remember the May 1 deadline to complete their
20 enrollment package in to us and get us that certification of
21 final enrollment signed by primary counsel, if they're a
22 represented claimant.

23 Your Honor, that's the discussion of
24 registration and enrollment. And Lynn is going to briefly talk
25 about the claims status. Does the Court have any questions

1 about --

2 **THE COURT:** Do you anticipate any particular problems
3 in following that that we ought to avoid?

4 **MR. BROWN:** No, Your Honor. Thus far, the process to
5 get people registered and enrolled, don't see any bottlenecks
6 in that. We're now looking ahead, as the parties are, to the
7 claims process. We want to make sure that people -- and Lynn
8 will mention a few things about how you ought to get your
9 claims in to us.

10 On the enrollment side, the questions we're
11 getting primarily from counsel are when the certification final
12 enrollment is due, May 1st. The new form, which requires the
13 list to indicate people you cannot locate.

14 And then some counsel are asking questions
15 about, "Well, the folks who refuse to participate, withdrawing
16 from, or seeking leave to withdraw from representation, and
17 then this claimant -- financial interest in those claims."

18 That issue requires some further explanation
19 with most firms to understand those pieces of the settlement
20 agreement. I think the parties have submitted a suggested
21 procedure to the Court about the process for seeking leave to
22 withdraw from representation.

23 What we see, other than that issue, which still
24 needs some attention by all of us, counsel and the claims
25 administrator, we don't see any bottlenecks in the registration

1 enrollment phase. And now we're really starting to look ahead
2 to the claims phase so we can move those claims through and get
3 to the point the settlement agreement contemplates an interim
4 payment after August 1, and we've got a lot of work to do to
5 make that happen.

6 **THE COURT:** With the claims process, as I mentioned
7 before, the special master and deputy special masters, if you
8 can give them some dummy claims, so to speak, so that they can
9 have some dry runs and get ready for it when they --

10 **MR. BROWN:** Yes, Your Honor.

11 **THE COURT:** That would be helpful to them, I know.

12 **MR. BROWN:** Yes, Your Honor.

13 We're working with Mr. Juneau to make that
14 happen so that there's no delay downstream when we get ready to
15 hit that point in the process.

16 **THE COURT:** Thank you very much for your work.

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

18 **MS. GREER:** Good morning, Your Honor. Lynn Greer
19 from BrownGreer. I would like to touch briefly on the claims
20 packages that we have received so far, with the reminder that
21 the claims package submission deadline is approaching. It's
22 July 1st, 2008. It seems a far way off, but it will be here
23 before we know it.

24 And so far what we have received from firms, 39
25 different firms have submitted so far 13 -- 1,317 electronic

1 claims package submissions; five firms have submitted hard-copy
2 submissions of 11 claims, for a total of 1,328 submissions from
3 law firms.

4 I would like to pause here, Your Honor, because
5 you asked about bottlenecks in the process. And one processing
6 bottleneck that we will encounter is if we receive a large
7 number of hard-copy submissions.

8 And the reason for that, Your Honor, is that
9 when we receive those hard-copy submissions -- and we have
10 received 11 so far -- they usually come to us just in a box
11 with none of the components labeled to let us know where the
12 drug proof is, where the event records are. And a lot of times
13 these are also coming with the accompanying claims forms.

14 We then stop and have to scan them into our
15 database, which can be done with this volume in a day; but as
16 the volumes increase, it will slow us down if we are receiving
17 hard-copy forms. So right now, obviously, the vast majority
18 are coming electronically. We would encourage firms, and do
19 encourage firms, to continue to submit those to us
20 electronically.

21 **THE COURT:** Yes. I urge the firms to do likewise. I
22 can understand some pro se problems with doing it
23 electronically. But the firms ought to be able to do it
24 electronically. So from the Court's standpoint, I suggest that
25 they make every effort to do it electronically.

1 I don't want to issue any particular orders at
2 this time, but I am contemplating doing that if it's a problem.
3 So I first urge them to do it, and hope I don't have to issue
4 any orders.

5 MS. GREER: Your Honor, we are available to help
6 firms, walk them through this process. Several weeks ago we
7 sent out an e-mail blast to firms. It was our first e-mail
8 blast related to the claims process. And in that we give them
9 links to documents that we've created.

10 There's one document called Guidelines for the
11 Creation and Submission of Claims Packages, and in that we give
12 very specific instructions and helpful hints about how to label
13 the documents. So we're hopeful that firms are using that and
14 that they will call us if they have any questions.

15 The pro se numbers are lower, as we would expect
16 at this point. We do have two electronic claims packages and
17 one hard-copy claims package. So our total number of claims
18 packages that we are able to review is 1,331. There are
19 another 39 packages that we have received that are just medical
20 records and not claims forms.

21 What our process is, is we are unable to start
22 the review of a claim unless we have the claims forms. So
23 we've also told firms that we really need that claims form
24 because it contains the certification that all of the records
25 are complete. It also gives us information on injuries and

1 whether the claimant is claiming the extraordinary injury
2 relief.

3 **THE COURT:** You can't make any payments until we get
4 this finished. That's why I think this is a critical part of
5 the process. I think that there are some folks that may be
6 concerned that they're never going to get money. I think when
7 the claims begin to flow and people begin to receive funds in
8 the summertime, I think that's going to increase the interest
9 in this situation.

10 **MS. GREER:** Yes, Your Honor.

11 And one final point that I would like to raise
12 is that even though the deadline is July 1st, we have heard
13 anecdotal comments from some firms that they are gathering all
14 of their records and they plan to submit them all to us at
15 once. We really would encourage firms to submit these to us on
16 a rolling basis. We are reviewing them on a
17 claimant-by-claimant basis, not on a law firm basis.

18 And we do want firms to take care to submit to
19 us to a complete package. We don't want piecemeal event
20 records arriving in advance of the pre-produced records. But
21 once they have a package for a claimant, if they could go ahead
22 and submit that to us one at a time, that is our preference;
23 and, obviously, that will allow us to meet the other deadlines
24 and get the money flowing.

25 Any other questions, Your Honor?

1 **THE COURT:** No. Let's focus on first in, first out;
2 and the people who delay longer, they delay receiving the
3 funds.

4 **MS. GREER:** Yes, Your Honor.

5 **THE COURT:** The sooner they get it in, the sooner the
6 funds would be flowing to them.

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

8 **THE COURT:** Thank you.

9 **MR. BIRCHFIELD:** Judge, that's one point that I
10 wanted to emphasize and make sure that everyone is aware of:
11 The way that the claims are processed is first in. Once you
12 submit a claim, then it goes in a queue to be processed; and it
13 will be handled throughout the process according to that queue,
14 including the receipt of the initial payment.

15 The point that you made about the electronic
16 records versus the hard-copy records, that puts another step
17 into the process. When someone submits a hard-copy claims
18 package, BrownGreer can handle and process those, but it takes
19 another step.

20 So once those are received, they're actually
21 scanned and converted to an electronic format. After that is
22 done is when they go into the queue for being evaluated and go
23 into the queue for receiving their initial payments. So
24 there's an incentive. There's a benefit to getting the claims
25 packages submitted on a rolling basis.

1 It's encouraging to see the numbers of claims
2 packages that have already been submitted. But we have heard
3 from firms that are wanting to -- or at least initial thinking,
4 "We'll just hold these and submit them once we have them all
5 done." We need to avoid that. We need those coming in on a
6 rolling basis.

7 One other point, Judge, if I may, Orran
8 mentioned the deficiencies on the releases and the other
9 documentation. I just want to make sure that everyone is aware
10 once those deficiency notices are sent out, there will be a
11 reasonable time to cure those deficiencies without interrupting
12 your eligibility for interim payment.

13 So you don't need to be alarmed about that. But
14 once you receive the deficiency notices, they need prompt
15 attention.

16 **THE COURT:** Okay. Thank you.

17 **MR. MARVIN:** Sorry, Your Honor. Just to clarify one
18 other point. You had asked about the thresholds. As Orran
19 indicated, May 1 is the deadline for lawyers to submit their
20 certificates of final enrollments. That's the best document
21 we'll see to determine who's into the program, who they still
22 cannot find, or for whatever other reasons there might be.

23 So it is important that that deadline be adhered
24 to so that we can have that document. Because we need that
25 document to verify the numbers for the thresholds.

1 **THE COURT:** Okay. All right.

2 **MR. HERMAN:** May it please the Court, just two other
3 issues with regard to the settlement. The BrownGreer Web site
4 is browngreer -- one word -- .com/vioxxsettlement. That's
5 browngreer -- one word -- .com/vioxxsettlement. There are
6 various forms and the amendments to the settlement document are
7 posted there.

8 Secondly, both the plaintiffs and the defendants
9 opposed Mr. Benjamin's appeal to the Fifth Circuit. It was
10 dismissed on March 28th, '08.

11 The next issue for the Court on the prearranged
12 schedule would be a report by Mr. Garretson with regard to
13 liens, and then Mr. Johnston with a report on pro se issues.

14 **THE COURT:** Do you have anything in between?

15 **MR. JOHNSTON:** No, I can wait.

16 **THE COURT:** Okay.

17 **MR. GARRETSON:** Your Honor, I'm Matt Garretson with
18 the Garretson law firm. I'm here to report as the Lien
19 Resolution Administrator. I'd like to share with the Court, we
20 have encouraging news, and continue to have, I should say,
21 encouraging news.

22 We have received a verification of entitlement
23 information on over 43,000 claimants with respect to Medicare.
24 We expect the balance of that data to be processed by Medicare
25 inside the month of May. So well before the August 1st,

1 deadline, we'll have a blueprint of who is a Medicare
2 beneficiary and who is not.

3 Right now, we're holding at about 70 percent of
4 the registrants as being Medicare beneficiaries. We're also
5 continuing to meet with Medicare about a hold-back provision.
6 As I've reported in prior hearings, we're trying to get an
7 initial global resolution hold-back agreement.

8 And then that amount could be set aside as a
9 high-water mark. And then as we learn more about the nature of
10 the claims being filed by the Medicare entitled plaintiffs and,
11 in fact, their points, we'll be able to calibrate, if you will,
12 that final amount that would be the global resolution for
13 Medicare.

14 With respect to Medicaid, at the last two
15 hearings we've reported that we've received, upon good counsel
16 from Special Master Juneau, the permission to submit to the
17 states voluntary protocols. And those voluntary protocols were
18 to encourage the state and territory Medicaid agencies to
19 engage in a cost-effective and uniform program that best served
20 public policy and this settlement.

21 We thought these were necessary and agreed
22 they're necessary to insure timely and equitable compensation
23 both to the claimants and to Medicaid. As you may recall,
24 those protocols include a hold-back provision. That is setting
25 a maximum amount on each individual claimant's gross award that

1 can be targeted for reimbursement by the state and territory
2 Medicaid agencies.

3 We have been able to get the states to agree
4 that that amount should be 20 percent. Now, that doesn't mean
5 that each plaintiff -- each claimant would pay 20 percent. It
6 simply means that those claimants who are identified as being
7 entitled to Medicaid, we would set aside 20 percent of his or
8 her gross award and then satisfy the claim within that amount.

9 In the unlikely event the final lien amount
10 exceeds 20 percent, and I believe that is very unlikely, the
11 states have agreed to cap their recovery at 20 percent on that
12 individual lien.

13 **THE COURT:** Any less goes back to the claimant?

14 **MR. GARRETSON:** Yes, Your Honor.

15 We also recommended a uniform and nationwide
16 procurement offset, and that is that a standard percentage
17 would be offset. Once we finalize that individual lien, a
18 standard percentage would be offset to reflect the fact that
19 attorney fees and case costs are also being taken out of the
20 claimant's award. So, similarly, the states should offset
21 their final lien in recognition of that expense.

22 So, Your Honor, a letter was sent to each state
23 and territory on March 14th requesting their voluntary
24 agreement to these protocols. I'm pleased to report to you
25 today, Your Honor, that as we sit here, we have now 88 percent

1 of the state agencies in just this short four-week time frame
2 have agreed to the protocols I've just described.

3 Forty-six of the states and territories have
4 responded. Forty-two agree in full with our protocol of a
5 standardized offset of the final lien and a maximum of
6 20 percent of a lien amount. Only one state has outright
7 rejected the protocol.

8 Three states have requested minor exceptions
9 that I believe are within reason. And only six agencies have
10 yet to make a decision. And I want to say with respect to
11 those six, I'm by no means implying here today that they have
12 rejected the protocol.

13 I have learned through this process that for any
14 state this must travel through three or four different desks
15 and decision-makers before they can agree upon these protocols.
16 So I expect that we will be hearing from them shortly. And so
17 by the next hearing, I think I'll have the complete blueprint
18 for the Court as to who has agreed and who has not.

19 So continue to be encouraged. The VA, the
20 Tricare, the Department of Defense liens, I've outlined that
21 program in prior hearings to the Court, and that appears to be
22 running very smoothly. So we're encouraged.

23 I really believe, Your Honor, that the agencies
24 have, indeed, embraced the fairness, and efficiency, and
25 compliance that the Court has mandated for this settlement

1 program.

2 **THE COURT:** Okay. Thank you very much.

3 I appreciate the states doing that. I think
4 it's good, obviously, for the program. But it is very, very
5 good for those states. I think it's efficient. I think it's a
6 win/win situation for them. They win in the sense that they
7 have served the people who are injured; and they win in the
8 sense that they have an efficient mechanism and resolution
9 process for their other citizens to get back a portion of their
10 amount.

11 They need to know that the Court, not only
12 appreciates it, but will do whatever it can to police that
13 situation and make sure that they are fairly dealt with. The
14 states that haven't come aboard yet, I urge them to come
15 aboard.

16 Because I've given a lot of thought to this and
17 I think that they need to know that the Court feels that it's
18 appropriate, it's efficient, and it's the best way that they
19 have to resolve this particular problem.

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

21 And I will just remind the attorneys and the pro
22 se claimants that we have a Web site set up similar to the
23 BrownGreer site that explains the process, the FAQs, and the
24 documents, and that's at vioxxlienresolution.com.

25 Thank you.

1 **THE COURT:** Thank you very much. I think that's just
2 another benefit, frankly, of a global approach to these types
3 of disputes, national in scope. I think that you can see from
4 participating in this that there are many aspects of the
5 program.

6 I think when you look at it globally, efficiency
7 and fairness come to fore, and this is one of the ways that we
8 can deal with some of these complex things, such as liens.

9 **MR. WITTMANN:** Your Honor, I think the next thing on
10 the agenda would be the report from Mr. Juneau.

11 **THE COURT:** Okay.

12 **MR. WITTMANN:** And then Mr. Johnston had a report
13 also.

14 **THE COURT:** All right.

15 **MR. JUNEAU:** Your Honor, I really don't have anything
16 to add. I think it's been well articulated by Mr. Garretson
17 and Mr. Brown. The interplay that we've had, we're constantly
18 communicating between the two to facilitate the process, either
19 through the lien resolution, and in particular, we're very
20 focused on reaching the point that you addressed earlier, to
21 get the information to us.

22 And the game plan, if you will, is to activate a
23 program in advance of actual determinations so that if there
24 are any bugs in the system insofar as efficiency, we want them
25 worked out. I've talked to the people from BrownGreer again

1 this morning and we're now attempting to see if we can target
2 date as soon as we can that specific date. We just don't have
3 that data yet to make that determination.

4 I have already alerted Justice Trotter and Judge
5 Corodemus of that program, and they're all on board about what
6 we're attempting to do in that regard. And everybody, from our
7 perspective, is committed to activate immediately that training
8 part of the program. So I anticipate as soon as that
9 information is available that we will be at the starting block,
10 ready to move the process.

11 **THE COURT:** Good. Well, I have no doubt that you-all
12 are going to be able to move it. Because with the
13 recommendations that I have received from many of the counsel
14 here and the judges from that area, we selected the deputy
15 special masters, and they'll do an excellent job.

16 I'm very confident that this aspect of the
17 program, as well as the other aspects, will work very
18 efficiently.

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

20 **THE COURT:** I appreciate your work. I appointed
21 Mr. Johnston to represent the pro se people, and I'll hear from
22 him at this time.

23 **MR. JOHNSTON:** Thank you, Your Honor. Robert
24 Johnston, court-appointed curator for the pro se claimants.
25 We've provided to the Court the curator status report number 1.

1 We have many copies here. So if anyone here wishes to have a
2 copy, it is available.

3 But briefly, after the directive of the Court
4 and the order dated February 12th of this year, we -- and
5 following being provided with the lists of registered but not
6 enrolled claimants and unregistered claimants, totaling
7 1,295 -- so just a few under 1,300 -- on March 19th, 2008, we
8 commenced sending out communications and documents to all 1,295
9 individuals.

10 As the Court, I'm sure, will expect, I can
11 report to you that we had a lot of action as a result of that.
12 In the curator's report, I think the one thing that is of some
13 significance to ask for some help from the Court is we received
14 61 mailings that were returned undeliverable.

15 Because we had addresses, we at least knew where
16 in the country the last known addresses were. So we are in the
17 process of preparing the three-day legal notices that we've
18 talked about to be published in the local newspaper. That's
19 ongoing as I speak.

20 We then had such problems as 11 potential
21 claimants, there was no address whatsoever. There were another
22 11 for which there was an incomplete address. And the proposal
23 that we put into the status report to the Court is that if
24 there is such a thing as a regional publication, then we might
25 go in that direction.

1 But my thought is, is that unless somebody can
2 tell me if there's another national newspaper, there are legal
3 notices that USA Today publishes, and we would ask the Court
4 for permission to utilize that vehicle to try to get
5 information to those that have no addresses and we don't know
6 where to go otherwise.

7 So I think that that's something that, based
8 upon what the Court has just indicated, that's where we're
9 going to go. As an aside, one of the individuals who we have
10 not been able to reach, but whose name is on one of the lists,
11 is Fidel Castro.

12 Now, I cannot tell the Court whether that is *the*
13 Fidel Castro or a Fidel Castro. But I want you to know that as
14 part of the appreciation for picking my law firm and me as
15 curator, we do have a bilingual Spanish-speaking attorney. So
16 if we ever get a call, we're ready to go in terms of that.

17 **THE COURT:** Okay. He may enter the case.

18 **MR. JOHNSTON:** That's exactly right, and we'll bring
19 it to the attention of the Court if necessary.

20 We have, I think, interacted really well with
21 BrownGreer. That's a really first-class group of individuals.
22 With regard to all the communications, all the phone calls, and
23 e-mails, and what have you, they have been logged into our
24 internal communication log. They'll soon be entered into the
25 communication log that has just been created by BrownGreer. So

1 it's all going to go where it needs to go.

2 We also got a call, a contact for 14 potential
3 pro se claimants who are not on any list. My guess is they got
4 it off the Web site. We have directed them to the claims
5 administrator, and we have provided them with the documentation
6 that they need.

7 I think that the only other thing is that there
8 have been some attorneys who have contacted us saying, "Nope.
9 I represent," you know, "Mr. Smith or Mrs. Jones." So what,
10 obviously, we have done is we have pulled back and have no more
11 communication for those. There were very few.

12 The only other bit of housekeeping is that we
13 had requested from defendant's and plaintiffs' liaison
14 committee permission to retain a paralegal at an hourly rate of
15 \$95 to help with all of this newspaper publication and what
16 have you. We just sent that out last week.

17 We'll follow up with them. I don't anticipate
18 that being any kind of a problem. So I think that from the
19 beginning to where we are today, I think we can report to the
20 Court that things are moving well.

21 **THE COURT:** Okay. Thank you very much for your help.

22 There are two aspects to the pro se situation
23 that we need to be focused on. One is to help those pro se
24 people who need help and are interested in receiving help.
25 Secondly, it's to give the others due process. Those who

1 haven't responded, we'll make an effort to locate them. A
2 reasonable effort.

3 But after a reasonable effort has been made and
4 still no response, then I'll entertain motions to dismiss for
5 lack of prosecution. So there are two aspects to it. I
6 appreciate your help.

7 **MR. JOHNSTON:** All right. Thank you, Judge.

8 **MR. HERMAN:** Your Honor, there is one pro se
9 claimant, Mr. Harrison, who advises that his written
10 presentation to the Court, the Court should be receiving that
11 very soon now. He has been given dates for access to the
12 depository.

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

14 **MR. WITTMANN:** Just to go back a little bit, Judge,
15 on the agenda. There are no cases set for trial in state
16 courts through June 30th, 2008.

17 **THE COURT:** Okay.

18 **MR. WITTMANN:** We've got nothing new to report on
19 Item VI or VII in the status report agenda. That's the class
20 action procedures or the discovery directed to Merck. I think
21 Mr. Herman has something on discovery directed to third
22 parties.

23 **MR. HERMAN:** May it please the Court, I want to
24 report that the FDA has advised it will deliver its documents
25 sometime today.

1 **THE COURT:** Okay.

2 **MR. HERMAN:** With regard to ESI, that matter is going
3 very well. We're in constant contact with them, and they are
4 providing, on a regular basis, medical records. Those are
5 really the only two issues. We did get some inquiries from the
6 State of Oregon, the State of Washington, regarding problems
7 with health care providers providing records.

8 Those attorneys have been provided Your Honor's
9 order with regard to medical authorizations, and we hope that
10 that matter is resolved.

11 **THE COURT:** I do appreciate the help that the FDA has
12 given the Court on this one. We had a bump in the road; but,
13 hopefully, we're able to navigate around it. Things have
14 fallen into place very well. I'm obliged for their
15 understanding and help, and also with ESI.

16 **THE COURT:** Next item on the agenda.

17 **MR. WITTMANN:** Your Honor, I don't see Ms. Barrios.

18 **THE COURT:** Anybody from state liaison?

19 **MR. ARSENAULT:** Good morning, Your Honor. Richard
20 Arsenault for the plaintiffs. Dawn Barrios couldn't be here
21 this morning. She asked me to make the presentation regarding
22 the status of the remand motions and non-PI economic cases.

23 There are currently 748 remand motions pending.
24 The two-volume DVD that indicates where those -- what states
25 are involved and the basis for the remands have been provided

1 to Your Honor's staff, and to the defendant's and the
2 plaintiffs' counsel.

3 The top five states in terms of numbers of
4 motions pending are California, 207; Missouri, 121; Texas, 104;
5 Illinois, 60; and Florida, 55.

6 I've been advised by Ms. Barrios that she is
7 coordinating with BrownGreer with regard to those 748 cases to
8 see where those people are in the settlement process to see at
9 the end of the day how many of these 748 motions Your Honor
10 will actually have to deal with.

11 **THE COURT:** Right. I think that's the key: See how
12 many get through the gates or participate at least in the
13 program, and that may resolve those. All of them, or some of
14 them, or most of them.

15 **MR. ARSENAULT:** Yes, Your Honor.

16 With regard to the non-personal injury economic
17 class cases, her study shows that there are 52 pending in the
18 MDL.

19 There are eight nationwide consumer classes;
20 five nationwide third-party payor classes; one nationwide
21 medical monitoring class; 17 state consumer classes; eight
22 state consumer and medical monitoring classes; two state
23 consumer and third-party classes; 10 state third-party payor
24 classes; and one state medical monitoring class.

25 Apparently, this week Judge Higbee in New Jersey

1 went through a similar exercise with the non-personal cases.
2 And in the materials, she provided Dawn Barrios with a list of
3 those type of cases that are pending before her.

4 On that list, I think Nos. 2 and 3 are consumer
5 cases. The list is identified as third-party payors, but it
6 also includes two consumer cases. I believe that the second
7 and third case on the list are consumer cases.

8 There, apparently, were also three cases that
9 were identified during the status conference that are not on
10 that list. And that also includes one medical monitoring case
11 that she, apparently, lifted the stay on all of those and
12 they're going to proceed, except the medical monitoring case
13 that, apparently, she's waiting for a decision from the New
14 Jersey Supreme Court on.

15 The next status conference is going to take
16 place, apparently, on May 24th. And she's instructed the
17 parties between now and then to develop a discovery plan and
18 move forward with discovery as quickly and efficiently as they
19 possibly can.

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

21 **MR. ARSENAULT:** Thank you.

22 **MR. HERMAN:** Your Honor, may it please the Court,
23 Ms. Barrios, on behalf of those types of cases, requested
24 information as to what the PSC would recommend regarding access
25 to trial packages. The PSC and the PNC met jointly last night.

1 We'll be presenting Your Honor an order for consideration, and
2 Your Honor should have that no later than Monday.

3 With regard to the trial package, Your Honor,
4 we'd like to have a presentation in the afternoon of May 22nd.
5 I was advised by our co-chairs, Jerry Meunier and Shelly, that
6 that package is ready, and it should take somewhere between a
7 half hour and an hour presentation, if Your Honor would
8 entertain it then.

9 **THE COURT:** That's the stroke cases?

10 **MR. HERMAN:** The stroke cases, yes, Your Honor. And
11 we are also submitting to Your Honor a draft proposal for Your
12 Honor to consider under what circumstances a request of a trial
13 package will be bound to confidentiality.

14 Thus far, we've had three requests for trial
15 packages, and I'd like the record to illustrate that within
16 five days after May 22nd, those packages will be ready for
17 dissemination.

18 **THE COURT:** Okay. Thank you.

19 **MR. WITTMANN:** We've been bouncing around quite a
20 bit, Judge, but basically we've covered the pro se claimants,
21 Mr. Johnston's report. We have nothing further to report from
22 the defense side, anyway. I don't think Mr. Herman does either
23 with respect to the remaining items on the agenda, with the
24 exception of the Vioxx statistics.

25 They're the same as they were. We've still got

1 December 31 statistics. But we will have new statistics next
2 week when Merck makes it's quarterly SEC filing. So I guess
3 we'll just have to wait until next week when we get those out,
4 because we can't give them out in advance, as Your Honor knows.

5 **THE COURT:** Right.

6 **MR. WITTMANN:** That's really all I think that we have
7 to report from the defendant's standpoint.

8 **MR. HERMAN:** From the plaintiffs also, Your Honor.

9 **THE COURT:** Anything further from anyone?

10 **MR. BECNEL:** The date of the presentation, the 22nd,
11 is it here in the courtroom?

12 **THE COURT:** Yes, here in the courtroom. The next
13 meeting is on 22nd. What time in the afternoon are you
14 scheduled for?

15 **MR. HERMAN:** Immediately after the status conference,
16 or as Your Honor would --

17 **THE COURT:** We'll start the status conference at the
18 same time. I'll see counsel in the conference at 8:30, the
19 committees, and then we'll start the open court at 9:00.

20 **MR. HERMAN:** One other issue, the U.S. Bank
21 representatives will coordinate with defense liaison, plaintiff
22 liaison, the special master, and BrownGreer.

23 **THE COURT:** They'll be here too?

24 **MR. HERMAN:** They'll be here on May 22nd.

25 **THE COURT:** I do want to meet with them. I think

1 it's important that we gear up the funds -- solve the aspect of
2 it. That is to say we're going to focus on the delivery of the
3 funds to the banks, and what the banks are going to do with it,
4 and how we're going to be dealing with the payouts.

5 **MR. HERMAN:** Your Honor, if I might suggest that that
6 take place immediately after the status conference and that the
7 presentation of the stroke trial package follow that, if that's
8 in accord with Your Honor's schedule.

9 **THE COURT:** We've got to focus on the liquidity of
10 the funds and also security of the funds. I don't know which
11 comes first. Probably security first. But everybody would
12 like to earn as much interest on the funds as possible, but
13 that has to be taken into consideration from the standpoint of
14 liquidity and security of the funds, but I know you know that.

15 **MR. HERMAN:** Sure.

16 **THE COURT:** Thank you very much. Court will stand in
17 recess.

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

19 **(WHEREUPON, the Court was adjourned.)**
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CERTIFICATE

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

/s/ Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter