

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

MDL No. 1657
Section: "L"
New Orleans, Louisiana
Friday, October 17, 2008

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

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13 Proceedings recorded by mechanical stenography, transcript
14 produced by computer.
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P R O C E E D I N G S

(FRIDAY, OCTOBER 17, 2008)

(STATUS CONFERENCE)

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

7 THE DEPUTY CLERK: MDL No. 1657, in re: Vioxx.

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

9 MR. HERMAN: May it please the court, Russ Herman for the
10 plaintiffs.

11 MR. WITTMANN: Good morning, your Honor, Phil Wittmann and
12 Doug Marvin for Merck.

13 THE COURT: We're here today for two reasons, one is our
14 monthly status conference which we have been having now since the
15 commencement of this litigation on February the 16th, 2005.

16 And secondly, after we deal with that, which we should be
17 able to do in a short order, we have an abbreviated meeting today
18 so that we can devote some time to the litigants and their
19 attorneys, who I've asked to come today.

20 We'll start with the monthly status conference. Let me
21 hear from the parties.

22 MR. HERMAN: May it please the court, Doug Marvin for
23 Merck will make the initial remarks regarding Item 1 on the agenda
24 and then introduce BrownGreer for a report.

25 THE COURT: And I have received an agenda from the

1 parties, I've added to it, and I am able to discuss it with them in
2 the order in which it's been presented.

3 Item 1 is Settlement Agreement.

4 MR. MARVIN: Your Honor, there is an important deadline
5 that is just 13 days away, and that's the October 30th deadline for
6 enrollment in the program. That is a hard and fast deadline. And
7 in order to be enrolled in the program, a claimant must advise
8 Brown & Greer, the claims administrator, of their indication that
9 they are enrolling in the program and submit a release as well as a
10 stipulation of dismissal. Both the release and stipulation of
11 dismissal will be held by the claims administrator pending further
12 processing of the claim.

13 But this is a hard and fast deadline. We know that there
14 are some of those who are eligible for the program, we know that
15 there are some who are eligible for compensation under the program
16 who have not yet enrolled. And I know that your Honor has set
17 conferences both today as well as Monday and Tuesday to ensure that
18 those individuals are fully informed and make a conscience decision
19 about the program.

20 But as I say, October 30th is the final deadline. It is a
21 hard and fast deadline, and so that will be the last date that
22 anyone can enroll in the program.

23 THE COURT: Up until now, how many who are eligible have
24 chose to enroll?

25 MR. MARVIN: Your Honor, it's approaching 99 percent, if

1 not 99 percent of those who are eligible. So we are down to less
2 than probably 500 at this point who are eligible. But in many
3 instances we have found that when we have made phone calls to their
4 counsel some had thought that they had enrolled when, in fact, they
5 had not. Others thought that another attorney was handling it and
6 that sort of fell through the cracks.

7 And in other instances some claimants simply didn't know
8 how to determine and their lawyers didn't know how to determine
9 what would be an estimated amount that they would receive under the
10 program. In some instances we've been able to address those
11 questions, I expect today we'll be able to address more of them.

12 But in many most instances, when the program has been
13 explained, when we've been able to sit down and talk to individuals
14 to give them an estimate as to what they'd receive, they have
15 enrolled in the program.

16 THE COURT: That's one of the reasons that I did want to
17 meet with the claimants and their attorneys themselves because of
18 this impending deadline. I have on occasion been called upon to
19 relax a deadline, but this deadline cannot be relaxed. This is a
20 hard and fast deadline. It's sort of like prescription from the
21 standpoint of the law. Once it's passed, it's passed. So I wanted
22 to have the opportunity to meet and talk with the litigants to make
23 sure that they're informed, not to speak on behalf or against the
24 program in any way, but just to make sure that everybody is
25 informed of it. But I'll do that afterwards.

1 Let's go to the next item.

2 MR. MARVIN: Your Honor, one other point is that there is
3 another deadline, it's more than 13 days away, but it's still a
4 deadline that needs to be met, and that is the deadline of
5 December 30 for enrollment packages -- I'm sorry, for claims
6 packages.

7 THE COURT: Yes. That in the program once the enrollment
8 is initiated, there are certain requirements to present certain
9 information. The claims are made, the information, if it's not
10 satisfactory the administrator gives deficiency notices and
11 deficiency notices have to be taken care of. If they're not taken
12 care of, then the person who has enrolled may not be eligible for
13 the program.

14 That is an important deadline and that's one that I am
15 going to ask later on that the attorneys, the PSC members who are
16 available for that purpose, I don't want any members who are
17 involved in the negotiation aspect of the program, but those
18 members of the PSC who are available, I want them to be available
19 for attorneys who can get some assistance from them to flesh out
20 that deficiency and take care of the deficiency. It's very
21 important that those deadlines be made.

22 And I am going to ask Mr. Birchfield to get together some
23 individuals on the PSC and make them available to the litigants and
24 their attorneys.

25 MR. BIRCHFIELD: Yes, we will do that. And if someone

1 needs the assistance of the PSC, they can contact Russ Herman's
2 office or they can contact me, but we will coordinate that through
3 Russ's office so that we can arrange for everyone to get the
4 assistance that they need.

5 The deadline was actually July the 1st and these are
6 actually deficiency notices. And extensions can be granted for
7 cause. If someone has made diligent efforts and additional time
8 will be fruitful, then under those circumstances they can be
9 granted an extension up to December 30th. But the time for
10 urgency, your Honor, is now.

11 THE COURT: That's a separate and distinct deadline from
12 the October 30th deadline.

13 MR. BIRCHFIELD: Yes, sir.

14 THE COURT: What you're speaking about now is the deadline
15 for those who have already enrolled but they haven't tied up, they
16 haven't given all of the information. But from the standpoint of
17 whether or not you enrolled, that's a deadline that's October 30th
18 and that is the final deadline. Okay.

19 MR. BIRCHFIELD: Thank you, your Honor.

20 THE COURT: Yes.

21 MR. HERMAN: Your Honor, with respect to both Item No. 1,
22 Settlement Agreement, and No. 2, Registration Enrollment, I want to
23 make a couple of quick comments, your Honor.

24 There is a new order to assist in obtaining medical
25 records. There is a deadline of October 17th under a current order

1 for healthcare providers to provide records. Those that are
2 concerned about any HIPAA will provide the records to the court,
3 liaison counsel will pick them up and get them in to wherever they
4 need to go.

5 Secondly, the Benjamin motions are fully briefed, under
6 advisement, Mr. Benjamin filed a new motion last night.

7 Mr. Stratton's letter motion has been answered by Merck.
8 We have a list of those healthcare providers who are supposed to
9 provide records by end of business today; if they don't, we will
10 see your Honor Monday. The conference your Honor has set for
11 October 20th at nine o'clock, I believe that's Central, in New
12 York. Mr. Seeger, Mr. Weiss, Mr. Lanier will be present. I
13 understand that Mr. Juneau, the Special Master has also, I know at
14 a great trouble, rescheduled his presence there.

15 In Chicago on the next day, the 21st, Mr. Levin,
16 Mr. Seeger, Mr. Blizzard, Mr. Lanier, Mr. Birchfield and I will be
17 in New Orleans in the event your Honor has further orders or
18 questions.

19 With respect to Item No. 2, I'll call on Doug Marvin
20 who'll introduce the claims administrator.

21 MR. MARVIN: Your Honor, I would like to introduce Orren
22 Brown and Lynn Greer who will report on the claims administration.

23 THE COURT: Okay.

24 MR. BROWN: Good morning, your Honor, I'm Orren Brown and
25 Lynn Greer is with me with today. We're from BrownGreer, we're the

1 claims administrator for the settlement program. We will update
2 the court, as we usually do, on where we are and status on our
3 numbers. We will go through this very quickly and then focus,
4 first, on the enrollment; and then on the claims, Lynn will spend a
5 few minutes talking about where we are now on the claims review
6 picture.

7 This is our slide we look at every time about the folks
8 who haven't registered for the program. Just to point out that we
9 still get a few people who register. You are permitted to still
10 register for the very first time for the settlement program
11 provided that you also get in your enrollment materials to us by
12 October 30. We see 11 people in row three who we've picked up
13 since we were last here on September 23rd.

14 On the enrollment picture, we look at this slide every
15 time, we now have gained another 32 people when we did this slide
16 yesterday morning. We've gained more since then.

17 The actions, Merck's working with the folks who have been
18 ordered to appear at your court and in other courts, and so folks
19 are enrolling still. When we did this slide it was above
20 98 percent of the claimants that seem to be eligible for the
21 program are enrolled, it is creeping up around the 99 percent
22 level. There is just a few hundred left that we and the parties
23 are trying to determine whether they will come into the program.

24 I wanted to mention briefly this number because we always
25 see this number in row four of the claimants who appear to be

1 ineligible but nonetheless are enrolling and this is why. Based on
2 the information really that Merck has that they're ineligible but
3 yet they have enrolled, and point out only that the folks in the
4 first row, if they didn't have a lawsuit or tolling agreement, they
5 are not eligible to be in the program unless they can show us that
6 they did. And we have told everyone that they are ineligible on
7 that basis, and some folks are coming forward with copies of
8 complaints that they never served and we're giving those to Merck.
9 Some of those may come back into the program if they can prove that
10 they were, in fact, eligible.

11 Folks that are foreign residents, non-U.S. citizens and
12 did not have, as far as Merck knew, an eligible injury, they might
13 come back into the program if they dig out their records and file a
14 claim and it turns out their injury was in the United States or, in
15 fact, they had an eligible injury. Some that number is still
16 something we have to keep up with, but it moves around a little bit
17 as well.

18 Mr. Marvin and the court have already mentioned the final
19 enrollment deadline of October 30. We and the parties, as the
20 court has been, are on a full-court press now to make sure that all
21 claimants and the lawyers know about that deadline. We can't read
22 this on the screen, but this is just a sample of a report that
23 we've been sending out for sometime to all primary counsel. It
24 lists all of their clients that they registered with us and breaks
25 them down into four groups, either they are interim payment

1 enrolled in Section A; or B, they're enrolled but didn't make the
2 March 31 interim payment deadline; and then C and D are the
3 claimants that we're focused a lot on now. People in C start
4 enrollment, they send us one piece of the package or two pieces but
5 not the whole enrollment package. And then D are claimants who
6 have never sent us anything.

7 We have done these reports for counsel to inventory their
8 clients periodically throughout the program. We sent out a full
9 set of reports to all counsel on September 30 so they could tell
10 which of their clients were safely enrolled and which were not and
11 what they had to do.

12 On the 10th of October we sent out another spreadsheet to
13 all of the counsel who had anyone who is not enrolled, not safe
14 harbored enrolled and needs to do something by October 30th, we
15 call that the last chance enrollment spreadsheet. And we sent it
16 out to 317 firms, some them had one person, to show them what they
17 were missing and ask them to tell us if they're going to enroll and
18 what we can do to help them. On the 15th, Wednesday of this week,
19 we called all of those firms, our people, our contacts called each
20 firm to make sure they're aware of this and on top of what they
21 need to do. So we and the parties and the court are working with
22 all of these folks trying to get them enrolled.

23 And we have amidst the number of enrolled people, we are
24 also working with this group shown on this slide of about 1,300
25 plus, almost 1,400 people who have sent us their intention to

1 enroll, they have sent us some materials but they're missing
2 something. They're the people in Section C of that report we just
3 looked at. We've been working with the law firms to make sure they
4 realize that there are people who are still missing a piece of the
5 package and need to get it in to us, even though they've taken some
6 of the steps.

7 And on the right-hand side we see the 417 that were on the
8 certification of final enrollment, Exhibit A, those are people that
9 the firms have told us they really cannot locate, and that's the
10 group of people that are going to be the most troublesome to ever
11 pin down; and most of them by this time will never be found and
12 probably will not conclude their enrollment.

13 But that's another group that we're working with as part
14 of this October 30 deadline date to make sure they realize what
15 still they need to do, if anything.

16 I want to mention briefly the pro se claimants because
17 this slide shows us that we had 866 unrepresented people who signed
18 up for the program during registration. These are claimants who
19 have been pro se all along, this does not include any of the
20 claimants that the court has allowed their counsel to withdraw.
21 We're working with the pro se curator Mr. Johnson and Merck and the
22 claimant's counsel to see where they come out.

23 But this is people who have been pro se all along. We had
24 251 of them register, but they seem to be ineligible; and then we
25 end up with 615 pro ses who registered with us, of whom 379 are

1 safely enrolled. So we've been working with this 236 pro ses as
2 well, sending them letters, all of them have gotten multiple
3 letters from us with the forms they need to enroll. We sent
4 another round of letters yesterday to all of these folks to make
5 sure they're aware of the October 30 deadline to enroll.
6 Mr. Johnson and his office have been very diligent working with
7 these folks as well; again, trying to make sure they have ample
8 notice and opportunity to get their papers ready to participate in
9 this program, if that's what they want to do.

10 Your Honor, that takes us up to the claims report, and
11 Lynn will take care of that.

12 MS. GREER: Good morning, your Honor, Lynn Greer from
13 BrownGreer, and I would like to review with the court the current
14 claims status.

15 As of yesterday we had received packages from over 39,000
16 people, 39,575, that had enough material in them for us to be able
17 to commence gates review. Rows two through six show the court the
18 materials that we have received that fall short of being complete
19 enough for us to commence review. Row two shows that as of
20 yesterday there are still over 6,000 people from whom we've
21 received nothing, no claims form, no medical records of any kind.

22 Row three shows that there are 2,400 people that we have
23 received only a claims form. Row four shows that we have 500
24 people, we have received some type of medical record, it is not the
25 full required set of PME records, but it is something, but that

1 does not have with it a claims form.

2 Row five shows 215 claimants where we don't have any of
3 the PME records or claims form. And row six shows those that we
4 have 2,000 where we have a claims form but we don't have the full
5 PME records set. Row seven shows that we've received materials
6 from 954 firms, and row eight shows that we have materials from 286
7 pro se claimants.

8 When we were here last, your Honor, we discussed the
9 original, the first claims package deficiency notices that we had
10 issued to now over 12,000 claimants, and these were notices that
11 went out to folks who were represented on that first slide where we
12 didn't have enough to begin our review. We have issued 12,430 such
13 notices. Of those, 2,665 have cured so they have joined the queue
14 for us to be able to review. And there are 9,765 deficiencies
15 still out there that need to be cured.

16 Last time we also talked about the phenomenon where we had
17 issued a lot of notices and only 19 percent of those individual
18 notices had been viewed on the portals. The picture is a little
19 better today. We received notices to 386 firms and of those 293
20 firms have opened at least one notice. And so what that tells us
21 and in our discussions with firms what they have said is the
22 notices often look alike, they are talking about the claims forms
23 that haven't been submitted, so when a firm opens one, in essence
24 they can sort of ascertain what is wrong with maybe 1,000 others.

25 And the 293 firms represent 11,716 of the 12,000, so the

1 picture is better. We do feel like firms are opening these and
2 they are working we know very hard to try to submit the packages.

3 This shows general overview of the claims review status as
4 we just discussed. 9,700 still have uncured material deficiencies.
5 There are 18,500 approximately in the queue that we have not yet
6 reviewed or even pulled out of the queue to begin review. There
7 are over 15,000 in the gates review process, and I want to spend
8 just a moment to explain what can be going on in that category of
9 claims.

10 In our gates review process we review the claim once, and
11 because this threshold determination of gates is so critical, we
12 will review it a second time, we put it through a quality control
13 review. The other thing that the Settlement Agreement contemplates
14 is if we fail a claim at gates, because we don't have discretion,
15 we have to apply objective criteria, when we fail the claim at
16 gates, it is going to the Gates Committee for them to review. And
17 the Settlement Agreement does not provide notice at that point to
18 the claimants for the very good reason that the Gates Committee has
19 a lot more discretion to put a claim in the program than we do.

20 And I think wisely so, the Settlement Agreement did not
21 want to generate unnecessary concern among claimants who ultimately
22 could come into the program either at the hand of the Gates
23 Committee or ultimately Merck's unilateral push.

24 And so when a firm sees that a claim is in the gates
25 review process, it can mean that we've looked at it once or twice

1 or that it's with the Gates Committee. But no one should infer
2 that their claim has failed or that it will never enter the program
3 if they see this status on their portal.

4 Row four shows that there are 4,600 claimants that we are
5 reviewing for points that have made it through the gates process.
6 And row five shows that we have paid or will pay by next week over
7 1,000 claimants, 1,315.

8 THE COURT: That's the total number who have thus far been
9 paid?

10 MS. GREER: Yes, or by next week will have been paid.

11 THE COURT: Do you have any idea of money totals?

12 MS. GREER: Yes, I have a slide on that, your Honor, that
13 will be at the very end.

14 The notice of points awards that we have issued to date
15 exceed 2,000, and of those there are still 378 that the firms are
16 considering -- actually have accepted but they are in line to be
17 paid, they will most likely be paid in November. 202 have
18 preliminarily appealed our decision.

19 And just to review real quickly that process. When a firm
20 appeals a decision, they are able to submit additional
21 documentation that we will review again. And if we decide that the
22 additional materials or that the response that the firm gives us
23 when we go back and take another look we are able to look at it a
24 little differently, we will go back to the firm and they do not
25 need to then proceed on to the Special Master, we will issue an

1 amended notice of points award and the claim will then be accepted.

2 There are 200 from whom we have not received a decision,
3 they are still within their window of time to let us know what they
4 want to do. And again, 1,315 have been paid or 63 percent of all
5 of the notices issued to date.

6 This is the last slide that shows the 1,315 receiving
7 payment. This has gone to over 100 firms, 105 firms. The current
8 per point value -- these are just MI claims, your Honor, because IS
9 claims do not start interim payment until February of '09. The
10 current point value for an MI claim is \$1,915. I think it is
11 everybody's estimate and best guess that that point value will
12 increase, but right now the current payments are going out at 1,915
13 per point.

14 We have paid or by next week will have paid over a hundred
15 million dollars, 103,401,308.

16 There are 46 special markers that we have paid. A special
17 marker is a claim that if it has come through our process and
18 receives less than ten points, they can elect a \$5,000 fixed
19 payment to receive all of that now. And we've paid 46 such special
20 marker claims and the total amount paid to those exceeds 207,000.
21 The reason that's not a round number is that there are some lien
22 withholdings that come out of these payments because they are the
23 final payment for these special marker claimants.

24 So the total paid or to be paid, the next payment will go
25 out on the 22nd, next week, is \$103,609,207.

1 Thank you, your Honor.

2 THE COURT: Thank you very much. Just a couple of
3 comments. One, for those of you who have just arrived, I mentioned
4 at the outset that today we have two things going on: One is the
5 monthly status conference, which I am meeting with all of the
6 lawyers who wish to appear at the conference, including
7 particularly the members of the various committees.

8 But I have it in open court, I've been having them in open
9 court once a month, every month for the last three or four years
10 since the commencement of this litigation. That's what's going on
11 now. This will be an abbreviated meeting and then we will go into
12 the meeting which I have set with the claimants and the claimants'
13 attorneys, and we'll take that up shortly.

14 You've heard from the claims administrator. For those of
15 you who are not familiar with this, this is a program that is
16 administered by a claims administrator. The claims administrator
17 is not associated with either the plaintiff or the defendant. They
18 are professionals who do this type of work and have done a yeoman
19 job thus far on it. It's somewhat involved and that's why I have
20 them here today so that those of you who are interested can speak
21 with them and ask them any questions that you may have.

22 The next item on the agenda.

23 MR. BROWN: I had one final comment that ties in with what
24 the court just mentioned that the parties had asked me to mention.
25 And this is not a statement about us, it is a statement about this

1 program and this courts' and the parties' efforts as a whole. The
2 numbers that we have reached with folks registering for this
3 program really in January and then reaching the point by August
4 with the first payments and payments each month having paid out
5 over \$103 million, in that amount of time from January to
6 August/October is really unprecedented in a facility of this nature
7 to be able to reach the point of actually paying claims in that
8 volume in that short amount of time. It is an attractive aspect of
9 this program and something that is attributed to the way it was
10 designed by the parties and this court's effort in keeping people
11 on task.

12 THE COURT: Along that line, I might say also that this is
13 unprecedented that a case, an MDL case, a case involving 50, 60,
14 70,000 people can be resolved and paid out within about a
15 three-year period. I got this case or this court was designated
16 transferee court in February of 2005, and before February of 2008
17 the matter had proceeded through six trials here, a number of
18 trials in state court, millions of documents presented, and a lot
19 of work done, and through the efforts of counsel for both sides the
20 matter was able to be resolved. So I am proud of their work and
21 happy that they have come to resolve this matter shortly.

22 MR. HERMAN: Your Honor, may it please the court, two
23 quick comments. First of all, I want to thank Tom Girardi who
24 travels further than anybody else who volunteered to go to New York
25 and Chicago, and we relieved him of that because he's had to travel

1 a lot farther and we thank him for that.

2 Secondly, your Honor, in view of the global financial
3 markets and the markets in the U.S., I just want to report that
4 liaison counsel has undertaken with regard to the Royal Bank of
5 Scotland who has issued letters of credit, Merck and U.S. Bank I
6 have to report at this point we do not see any jeopardy whatsoever
7 to this settlement. We will continue to monitor it. I do want to
8 make it clear that U.S. Bank is not UBS. U.S. Bank has no
9 difficulty in their reporting. So I did want to make that quick
10 report.

11 And Mr. Johnson, your Honor, assistant Special Master for
12 pro se or the lawyer representing pro se, would like to make a very
13 quick report out of order if your Honor will permit.

14 THE COURT: Yes.

15 MR. HERMAN: Thank you, your Honor.

16 MR. Johnson: Your Honor, Bob Johnson, court-appointed
17 curator. In this abbreviated status conference, I have very little
18 to add to the Curator Status Report No. 7, which has been provided
19 to the court.

20 The only thing I would like to have the court focus on is
21 that since the last status conference, my office as curator had
22 sent additional mailings to 127 individuals that were identified by
23 Merck and state/federal liaison counsel as having been potentially
24 eligible, having potentially eligible claims who had not yet
25 completed enrollment. We sent all of the materials and it is

1 specified and contained in the status report.

2 The only thing I would like to add to that is the fact
3 that in chambers we had a brief discussion this morning about the
4 circumstances concerning claimants whose attorneys have been
5 allowed by the court to withdraw. And as we indicated and as I say
6 now in open court, we stand ready to assist those people in any way
7 that we can. But just briefly, based upon the discussions with the
8 court, it is going to be the responsibility of the claimants to
9 come to us and we do not have independent responsibility to
10 essentially go forward in a much more positive way as we've done in
11 the past.

12 And with that I am finished. And thank you very much.

13 THE COURT: Good. Well, thank you very much. I've been
14 very conscious of the fact that there are many people who may not
15 have an attorney, and I wanted those individuals to at least have
16 access to an attorney so I've appointed a special counsel to serve
17 as curator, but the people who want a curator, who want an attorney
18 must make the initial contact, they must contact him. If their
19 attorney has withdrawn and they wish to pursue the claim or wish to
20 get information, they have a contact, they can contact Mr. Johnson,
21 he is the court-appointed curator. He doesn't represent the
22 plaintiffs or plaintiffs' committee, he would represent or at least
23 be able to advise any individual who does not have an attorney who
24 needs some information.

25 Next item on the agenda.

1 MR. HERMAN: Yes, your Honor, the lien, Mr. Garretson is
2 here and will follow Mr. Juneau, the Special Master.

3 MR. JUNEAU: Your Honor, very briefly. I've been in
4 contact with BrownGreer, they've given you an extensive report on
5 the statistics that have developed thus far.

6 Based on what we see right now, next week there will be a
7 funneled down number of cases that will be appealed. Those will be
8 addressed to my office and we've committed time, resources, and
9 effort to take those appeals independently, evaluate those appeals
10 and make rulings in a prompt manner so that this progress continues
11 on track in an efficient manner. So that will occur and that will
12 actually occur next week. We're in the pipeline to do that.

13 And the last comment, your Honor, as Mr. Marvin or
14 Mr. Herman has said, I will participate in at least one of these
15 meetings with regard to assisting people. We want people to know
16 exactly what the role is of the respective parties. Of course I
17 represent the interest of the court at those meetings and strictly
18 from an independent standpoint to evaluate whatever appeals or
19 positions that are taken by the people that they find some
20 objection to. Thank you, your Honor.

21 THE COURT: Thank you very much, Mr. Juneau. I've
22 appointed Mr. Juneau, as well as a former justice of the Supreme
23 Court in California, as well as a judge from New Jersey, a former
24 judge from New Jersey to serve as Special Masters and Deputy
25 Special Masters to handle an appeal through the process.

1 There are certain gates that must be passed through. If
2 the administrator applying the objective criteria decides that
3 someone does not fall through a gate or does not go through a gate,
4 that individual may appeal that decision to the Gates Committee as
5 well as the Special Masters, and that's the part of the process
6 that is available to you.

7 Now, we have the lien administrator.

8 MR. GARRETSON: Thank you, your Honor. I am Matt
9 Garretson with the Garretson Firm, and I'll give a brief report on
10 the status of the lien resolution and administration part of this
11 settlement program.

12 With respect to Medicare, your Honor, I would just like to
13 speak for one moment regarding an item that comes up. We get a lot
14 of phone calls from counsel asking why there may be a hold on their
15 case related to lien resolution administration. Just real briefly.
16 As I reported at the last hearing, part of the reason why some, a
17 very small set, about 3,000 cases were not sent originally to
18 Medicare for verification of entitlement, we now have that in front
19 of Medicare, there's about 3000 cases on which we're waiting for
20 them to tell us if they have an interest in those cases.

21 Further, we have a small -- well, not too small, a
22 relatively large actually subset of people who are missing Social
23 Security numbers or have given us amended data regarding social
24 security numbers, and so that creates another set of several
25 thousand. So there is an LRA hold, as we call it, on about 5,000

1 to 6,000 cases currently. We expect that to be cleared. And many
2 of those haven't gone through the process yet to receive notice of
3 points awards letters, so there are certainly not that many being
4 held back but I wanted to bring that to everyone's attention.

5 We're obviously working with BrownGreer to clear as many
6 of those discrepancies as is possible in advance of those letters,
7 notice of points awards letters being issued to those individuals.

8 I'd also with respect to Medicare just give some good
9 news. So far through this process we have only heard from 13
10 claimants who have any objection at all or have inquired about
11 their Medicare reimbursement amount. I think that's a real
12 testament to the results and how these individuals have or the
13 lion's share of these people have appreciated the amounts and are
14 in complete satisfaction with the numbers that have been presented
15 to them.

16 With respect to those 13 people, I would also mention that
17 most of those inquiries to our office have been dismissed by just
18 explaining to people why they even owe a reimbursement claim back.
19 So again I think that's very good news.

20 With respect to Medicaid, your Honor. Last time we were
21 together I reported that we were making considerable progress
22 gathering the actual claims data from the 53 state and territory
23 Medicaid agencies. As of today we have close to 4,000 individual
24 files complete with Medicaid claims history from 31 agencies. We
25 expect a large influx of the remaining claims histories in in the

1 next 30 to 45 days. And through this process we now are in the --
2 we now know for sure we'll be auditing 17,500 claims histories.

3 And what's important to note on that is some people will
4 be calling our office asking when they'll have their final Medicaid
5 lien amount because they've been informed that there's, in fact,
6 this 20 percent holdback if they're a Medicaid entitled individual.
7 And I just want to reiterate that we cannot finalize a lien until
8 those claims histories are audited and that cannot occur until
9 they're approved for a notice of points award. So there's always
10 going to be a lag, by the time that you clear the gates, get your
11 notice of points award letter before we can lock down a final
12 Medicaid number within that 20 percent holdback or the relative
13 holdback.

14 With respect to other governmental liens such as V.A.,
15 Tri-Care, the Department of Defense, I think it's worthy to remind
16 everybody that unlike Medicare and Medicaid where we're able to get
17 information and exchange information with those agencies about who
18 is entitled, with respect to those other governmental liens we need
19 those claimants and those attorneys that received notice from those
20 agencies to speak up.

21 We are getting a lot of traffic in that regard. We have
22 700 claimants who have come forward with other governmental liens,
23 but I expect through this process the firms involved will continue
24 to get notice, the claimants may continue to get notice. And if
25 it's not Medicare or Medicaid, it's one of those other governmental

1 liens, they have to keep sending that information through the web
2 Site and instructions on the website at vioxxlra.com.

3 So in sum, let me just conclude with some statistics to
4 give everybody a feel for the scope of what's going on with respect
5 to this lien data. I checked in yesterday and was informed that
6 we've now performed over 2.7 million touch points with the federal,
7 state and military health plans with respect to these liens, and
8 that number will keep compounding as we've only touched about 4,000
9 final liens in the Medicaid side. So it just gives you a feel for
10 the amount of data being exchanged between those healthcare
11 agencies and the lien resolution administration.

12 THE COURT: All right. Thank you.

13 MR. GARRETSON: Thank you.

14 THE COURT: Thank you very much.

15 MR. WITTMANN: Your Honor, the next item on the agenda is
16 the State Court Trial Settings, and there are no state court trial
17 settings at all anywhere in the country.

18 THE COURT: All right. Class Actions have been taken
19 under advisement.

20 Discovery Directed to Third Parties, anything there?

21 MR. HERMAN: Yes. They are continuing to produce and we
22 ask that the matters pending before your Honor be continued to the
23 next meeting date.

24 THE COURT: All right. State Liaison Committee.

25 MR. HERMAN: Yes. Ms. Barrios is here to report, your

1 Honor.

2 MS. BARRIOS: Good morning, your Honor, Dawn Barrios for
3 the State Liaison Committee. Your Honor, we're continuing to work
4 hard on the remands, BrownGreer is being incredibly cooperative
5 with us. We're also working with Mr. Johnson's office to identify
6 some pro se plaintiffs in these cases, and to date I believe that
7 we're 100 percent, we have 100 percent participation of all remands
8 through mid-state of Michigan. I expect that we'll have everything
9 complete by the end of the year and will be very excited to give
10 you a holiday boxed set of all of the remands that have been taken
11 care of.

12 THE COURT: Okay.

13 MS. BARRIOS: Your Honor, with regard to the Attorney
14 General issues, there has been an incredible amount of work and
15 movement on all parties' part. I want to particularly thank Mr.
16 Brian Anderson and John Beisner and Ben Barnett from Merck, they
17 have been working with us. Yesterday we had a very, very
18 productive Attorney Generals meeting with the Plaintiff Steering
19 Committee's heavy participation, and I thank all of the Attorney
20 Generals who came in for that meeting.

21 We have entered an agreement on some basic rules regarding
22 discovery that I won't go into because of the expedited nature of
23 this hearing, but I do want to report that Mr. Anderson from Merck
24 and I are going to work on a joint motion to your Honor to lift the
25 discovery stay with regard to those AG cases that we've identified,

1 we have 14 of them, under particular conditions and circumstances
2 and we welcome your input on that. But we hopefully will get that
3 to you before the next status conference.

4 THE COURT: Okay. Thank you very much.

5 MS. BARRIOS: Thank you, your Honor.

6 THE COURT: Pro se, we've already heard.

7 MR. HERMAN: Mr. Seeger is going to give a very brief
8 report on behalf of the PSC with respect to the AG meeting
9 yesterday.

10 MR. SEEGER: Judge, Dawn is right. Dawn has done a great
11 job, by the way, of organizing everybody. Dawn, thank you for
12 that.

13 But we did have a brief meeting. I think we've made it
14 clear that what we have in the depository is now available to all
15 of the AG's. We don't have an agreement in place regarding
16 confidentiality and work product and stuff, but we'll work that
17 out. We're going to do that. And as far as access to depositions
18 of corporate witnesses and exhibits, they have access to that right
19 now.

20 THE COURT: Okay. Anything from Pro Se further? We've
21 already heard from Mr. Johnson?

22 Merck's Motions, anything?

23 MR. WITTMANN: Your Honor, there is no change in that from
24 the last status conference.

25 THE COURT: Pre-Trial Order No. 9 Issues. Anything on

1 that?

2 MR. HERMAN: Your Honor, with respect to motions also, I
3 want to indicate to the court the fact that the Benjamin motions
4 have been fully briefed and responded to, and Mr. Stratton's letter
5 motion addressed to Merck, Merck has fully responded to. And last
6 night Mr. Benjamin filed an additional motion, which your Honor is
7 aware of, regarding the presence of his clients at the various
8 meetings your Honor has directed.

9 There is no issue as regards to Pre-Trial Order No. 9.

10 Merck will be filing its quarterly report next week on
11 suit statistics.

12 MR. WITTMANN: Right, we won't have any new suit
13 statistics until next week when the quarterly report comes out,
14 your Honor.

15 THE COURT: Okay. And the Trial Package, anything on
16 that?

17 MR. HERMAN: Nothing new on that, your Honor.

18 THE COURT: What about Third Party Payor Cases?

19 MR. HERMAN: Yes. We have no change. The PSC has made
20 the depository available under certain circumstances, we will make
21 depos available, and Ms. Barrios and Mr. Seeger have previously
22 reported as regarding the AG matter.

23 MR. WITTMANN: Mr. Marvin is going to report on the
24 foreign individual cases, as well as the termination of tolling
25 agreements. Doug.

1 THE COURT: All right.

2 MR. MARVIN: Your Honor, I can be very quick. There is a
3 pending motion to dismiss the foreign individual cases.

4 As to the termination of the tolling agreement, the
5 tolling agreement did serve its purpose, but at this stage that
6 purpose having been served has been terminated. And everyone has
7 been receiving notice of that the termination since last April.

8 THE COURT: Thank you. Anything on Third Party Payor
9 motions?

10 MR. WITTMANN: No change since last report, your Honor;
11 and no change on the next item either on the Greater New York
12 Benefit Fund matter.

13 THE COURT: All right.

14 MR. WITTMANN: Mr. Marvin also is going to report on the
15 Nonresponsive Plaintiffs' Cross-Motion and Rule.

16 MR. KING: Your Honor, Henry King on behalf of the Greater
17 New York and Teamsters self-funded ERISA healthcare plans. We did
18 have three matters that we wanted to bring to the court's attention
19 today that we would like some assistance on.

20 As you recall from the last hearing, we had requested an
21 order on the class action denial, and we would ask that the court
22 please enter an order. We provided a proposed one.

23 THE COURT: Yes, I will. I am in the process of writing
24 that now. I should get it out by Monday. I've had a couple of
25 trials in-between.

1 MR. KING: Thank you. The other item that we wanted to
2 bring up, the NPC defendants have filed a motion to dismiss. We
3 would like either to set that motion or have a status conference
4 with your Honor next week so that we could get that set for hearing
5 as soon as possible.

6 THE COURT: Okay. I'll set a status conference then with
7 it. What's convenient for you, Wednesday, Thursday?

8 MR. KING: Let me check, if I can, with my counsel, and
9 I'll get with Nathan on that.

10 MR. HERMAN: May it please the court, Mr. Birchfield and I
11 will be here Monday and Tuesday, and if it's convenient for your
12 Honor sometime Monday or Tuesday and counsel.

13 THE COURT: That'll be fine, I'll work that in.

14 MS. GARSAUD: Your Honor, and on behalf of U.S. Bank, the
15 same for us, Monday or Tuesday would be best. Thank you.

16 THE COURT: Sure, okay.

17 MR. LEVIN: Your Honor, I think that motion was argued and
18 we are just waiting for an order.

19 THE COURT: That could be, but if he wants a status
20 conference, I'll give it to him.

21 MR. LEVIN: It's wrapped into the preliminary injunction
22 denial.

23 MR. KING: And we've already brought up before the
24 transcript, we don't think that the motion to dismiss aspect was
25 heard by the court.

1 THE COURT: That's why I am not setting anything, I want
2 to have a status conference first and we'll talk about that,
3 whether or not it's over or not.

4 MR. KING: And the last thing, I guess, tied into it,
5 Judge Fallon, is that we filed a motion for a preliminary
6 conference as we would like to get a scheduling order. There are
7 two viable self-funded pension plans or healthcare plans, and we
8 would like to proceed with that and we understand it's intertwined
9 with the other ruling, but we'd ask that that proceed as quickly as
10 possible.

11 MR. LEVIN: May I address that, your Honor?

12 THE COURT: Sure.

13 MR. LEVIN: Arnold Levin. There is an appeal pending in
14 the Fifth Circuit, I don't think there's any need for a discovery
15 conference down here while the appeal is pending.

16 MR. KING: Thank you, Judge.

17 THE COURT: Okay. Thank you very much. Merck's Rule to
18 Show Cause.

19 MR. MARVIN: Your Honor, Merck filed motions that are
20 covered by Items 19, 20 and 21 on the agenda. Those motions fall
21 into two categories. The first was a motion directed at those
22 plaintiffs who their counsel reported they could not be found or
23 did not respond to numerous contacts from their counsel. So as to
24 those claims, Merck moved to dismiss those claims for those who
25 could not be found.

1 The second category related to those who were required to
2 comply with PTO, Pre-Trial Order No. 28, which requires production
3 of medical records by claimants as well as expert reports, that
4 motion was directed against those who failed to comply with this
5 court's order. Those motions were heard as reported in the status
6 conference and ruled on last week.

7 THE COURT: All right. Decision Quest.

8 MR. HERMAN: May it please the court, I've had several
9 communications, as has Mr. Davis, with Mr. Miles Clements who
10 represents Decision Quest --

11 MR. CLEMENTS: I heard my name.

12 MR. HERMAN: It's a fine name.

13 MR. CLEMENTS: How are you?

14 MR. HERMAN: Fine. And we're going to be meeting Monday
15 and we're going to attempt to resolve this matter. Any attorneys
16 that have tried cases or used Decision Quest material may let me
17 know if they want to participate in person. If they want to
18 participate by phone, we can arrange to do that.

19 THE COURT: Good.

20 MR. HERMAN: I will be here in your Honor's court at
21 nine o'clock and then proceed over to my office to meet with
22 Mr. Clements and his client.

23 THE COURT: Good. With two reasonable people I know we'll
24 get this finished.

25 MR. CLEMENTS: I think that is the report, your Honor, and

1 we look forward to resolving this Monday at the ten o'clock
2 meeting. Mr. Cobo, one of the officers of Decision Quest has flown
3 in from California to attend this conference this morning and will
4 also be there Monday.

5 THE COURT: Good. I appreciate your help, Miles, on this.

6 MR. HERMAN: I want to thank Mr. Clements who is a
7 distinguished member of this bar for his, not only his tenacity but
8 his professionalism and look forward to meeting with him.

9 MR. CLEMENTS: Thank you, Russ, I repeat that for you.

10 THE COURT: Next status conference, November the 21st.

11 MR. HERMAN: Yes.

12 THE COURT: Nine o'clock and I'll meet with the committees
13 at 8:30. Anything further on this?

14 MR. WITTMANN: No, your Honor.

15 MR. HERMAN: Just one thing. Your Honor has allowed us
16 the use of a jury conference room. I need a ten minute PSC
17 Court-Appointed Plaintiff Management Committee meeting to discuss
18 the assistance of folks that need help assembling their claims
19 material; and, secondly, following that a very short Allocation
20 Committee meeting in the same room.

21 I do want to make it clear for the record, if I may, your
22 Honor, that no member of the Negotiating Committee or the
23 Allocation Committee or the Gates Committee will be participating
24 in assisting other lawyers in getting their claims packages
25 together in order to avoid any appearance of conflict, but we will

1 rely on PSC members who are not on that committee and that's why we
2 have this short meeting.

3 THE COURT: All right. And give me the names of them and
4 I'll put out an order creating a committee, assistance committee,
5 I'll put the names out.

6 MR. HERMAN: I will be happy to supply that to your Honor
7 after this meeting.

8 THE COURT: I didn't want to overdo -- yes, something on
9 this?

10 MR. BURFORD: Excuse me, your Honor. I have a question
11 regarding the dismissal of the claimants, about the expert witness
12 report.

13 THE COURT: Okay.

14 MR. BURFORD: I don't know exactly what is the status of
15 that. I know three people that I need to talk about, one expert
16 witness report has been filed before this motion was filed, I
17 wanted to get a chance to speak to that so that person wouldn't be
18 dismissed, I know they are trying to dismiss them with prejudice.

19 THE COURT: Let's do this, you and Mr. Marvin get together
20 and talk about that. And then if you do have any issues after you
21 speak with him and Mr. Herman, I'll take it up and I'll deal with
22 it. So I'll reserve your right to make anything on the record.

23 MR. BURFORD: Okay. Thank you, your Honor.

24 THE COURT: But I would like you to at least talk with
25 Mr. Herman and Mr. Marvin and see whether you have any problem or

1 not. You may not have any.

2 Okay. I didn't want to run through the meeting too fast,
3 but I do want to get to the next item on the agenda. And the next
4 item on the agenda is the meeting which I set with the litigants
5 and their attorneys. I know we have a number of litigants and
6 their attorneys present in the courtroom.

7 Just for the record, I am going to ask that you stand and
8 put your name at least on the record. And if it's an attorney
9 representing you, the attorney should give his name and then
10 followed by the people they represent.

11 I'd like to start on the left-hand side, your right, my
12 left, on the first row. If there is anybody in the first row who
13 is a litigant? Yes, ma'am, would you give us your name.

14 MS. LEE: Geraldine Lee.

15 THE COURT: Speak a little louder, please.

16 MS. LEE: Geraldine Lee.

17 THE COURT: Geraldine Lee, okay. And you're a litigant,
18 ma'am?

19 MS. LEE: (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

20 THE COURT: Okay. Anyone else on that row? How about the
21 second row?

22 MS. RODRIGUE: Cassie Rodrigue, I am an attorney here on
23 behalf of Michael Delaune --

24 THE DEPUTY CLERK: Judge, we're going to need them to come
25 to the microphone.

1 THE COURT: I'm sorry, we are going to need that because
2 we have people on the phone and we should do that. I am going to
3 have to ask --

4 THE DEPUTY CLERK: Come and put your appearance on the
5 microphone, thank you.

6 THE COURT: And the reason for that is that I have people
7 on the phone who are monitoring this and they ought to at least
8 have the opportunity to hear you. Let's clear some space, please.

9 Let me take a ten-minute break here and then we'll
10 re-assemble in ten minutes. Actually I have a list now and I'll go
11 through the names, and if you're present you can indicate. So I'll
12 take a ten-minute break here.

13 THE DEPUTY CLERK: Everyone rise.

14 (WHEREUPON, A RECESS WAS TAKEN.)

15 (OPEN COURT.)

16 THE COURT: Be seated, please. I have a list of those I
17 think that are present. I'll call the ones that I have. I have a
18 list of those who are on the phone, so if I call your name and you
19 can't answer because you're on only conference mode, we'll pick it
20 up and we'll note that you're here because I do have a list of all
21 of the people who are on the phone.

22 The attorney Mr. Burford, Robert Burford & Associates.
23 Would you come to the microphone and make an appearance and tell us
24 who you're here to represent, Mr. Burford.

25 Do you have a list? I have a list if you need it.

1 MR. BURFORD: I have that. Yes, your Honor, if it please
2 the court, my name is Robert Burford. I represent Mr. John
3 Bereskie, Mr. Lloyd Bishop, Mr. Robert Culp, Ms. Lisa England,
4 James Hallman, Mr. Fredrick Hendley, Timothy Herron, Barbara
5 Lawrence, Gary Morgan, Franklin Morrison, Mr. Cecil Munday,
6 Mr. Julian Page and Mr. Robert Phillips.

7 THE COURT: Okay. Thank you very much, sir. And Mr. Mark
8 Cantu, anyone here for Mr. Mark Cantu?

9 Frank D'Amico, Jr.

10 MR. EXNICIOS: Good morning, your Honor, Richard Exnicios
11 here from -- on behalf of Frank D'Amico. For today's matter, your
12 Honor, we're here on behalf of Alger MacKenzie, Lynette Paul, Carol
13 Robertson, Kimberly Taylor, Olga Torres and Lloyd Williams.

14 THE COURT: Okay. Thank you very much, sir. Stephen
15 Fabbro, anyone here from Stephen Fabbro's office?

16 Fears and Nachawati. May have these on the phone.
17 Hill, Dianne Hill.

18 Michael Hingle and Associates.

19 MR. PFLEEGER: Good morning, your Honor, Bryan Pfleeger on
20 behalf of the Michael Hingle clients, and I am here today
21 representing Luverdia Bell, Geraldine Billiot, Eunice Bleier,
22 Elaine Campbell, Edward Carter, Carolyn Chapman, Robert Clay,
23 Edward Deffes, Jr., James Faull, William (SIC) Flato, Louise
24 Fremin, Annie Gerald, Leon Gilbert, Arthur Granier, Barbara Jasber,
25 Helen Johnson, Yolanda Jones, Eugenia Loverde, Amintas Major,

1 Lucille McGinnis, Joe Miller, Alton Morris, Debra Randle, Rita
2 Robichaux, Mary Anne Sanders, Patricia Schexnayder, Mose Simmons,
3 Lewis Slaughter, Willie Smith, Pearl Sparks, Martha St. Germaine,
4 Saralyn Ann Stevenson, Pamela Thomas, Nathan Watson, Michael White
5 and Clarence Williams.

6 THE COURT: Okay. Thank you very much. Jones, Swanson,
7 anyone here?

8 Kelley Uustal?

9 MR. GARRISON: Your Honor, Eberhard Garrison here on
10 behalf of the Jones, Swanson, Huddell & Garrison clients, who are
11 Clarence Abrams, Grace Clennon on behalf of Elvina Clennon, Katina
12 Duffie on behalf of Joe Duffie, Sr., Birdie Catherine Gabbard,
13 Cynthia Taylor-Green on behalf of Leslie Green, and Annie Johnson
14 on behalf of Avie Johnson, Jr.

15 We're also here on behalf of Dorothy Cole, Jelonda
16 McCraine, Nicole Dorsey and Gregory Allen on behalf of Alice Allen.

17 THE COURT: Thank you very much. Kelley Uustal?

18 MR. FALZONE: Good morning, Judge. Todd Falzone here on
19 behalf of Kelley Uustal, and our client is Louise Griffin.

20 THE COURT: Okay. Thank you very much.

21 MR. FALZONE: Thank you, Judge.

22 THE COURT: Laine, Kevin.

23 MR. LAINE: Yes, my name is Kevin Laine, and I am present
24 for Freddy Blanchard and he is present as well.

25 THE COURT: Okay. Thank you very much. Langston, anyone

1 here for Langston and Langston?

2 Murray Law Firm.

3 MS. HAYES: Your Honor, Jessica Hayes, I'm here in the
4 Joseph Jaques case.

5 THE COURT: Okay.

6 MR. PLYMALE: Good morning, your Honor, Douglas Plymale.
7 I'm here on behalf of Alma Allen, Elizabeth Armstrong, Mohan
8 Baskaran, Brenda Clark, Thomas Dreher, Deborah Dunn, Ruthie Gipson,
9 Leroy Howard, Glenda Johnson, Barbara Lamb, Marilyn Ruffino, Roy
10 Saucer, Ruth Sullivan, Betty-Jo Sumler, Ebert Van Buren, Charlie
11 Watson and Christine White.

12 THE COURT: And Sanford Pinedo.

13 MS. SANFORD: Good morning, your Honor. Shelly Sanford
14 here. I believe we've resolved ours with Mr. Cohen.

15 THE COURT: Thank you. So that would be with Amaya and
16 Lasky and Street?

17 MS. SANFORD: Yes, your Honor, that's correct.

18 THE COURT: Okay. All right. Schonekas?

19 Singleton, Singleton Law Firm?

20 Stallworth, Arthur?

21 Marion Tabor?

22 Vaughn Bowden -- excuse me.

23 MR. TABOR: Two cases, your Honor, Manero, Armando Manero
24 and Margaret Schunior who is now deceased.

25 THE COURT: Okay. And your name my name is?

1 MR. TABOR: My name is Marion Jackson Tabor.

2 THE COURT: Okay. Thank you. Vaughn, Bowden?
3 Wiggins? Wiggins Childs?

4 MR. DOYLE: Good morning, your Honor. I'm Jimmy Doyle on
5 behalf of Morgan Ero here today. Thank you.

6 THE COURT: Okay. And Woody Falgoust?

7 MR. RODRIGUE: Good morning, your Honor, Cassie Rodrigue
8 from Woody Falgoust, a law corporation, on behalf of Michael
9 Delaune and Bonita Peltier.

10 THE COURT: Okay. And the Young Law Firm?

11 All right. Those are the ones that I have, and of course
12 I have the ones on the phone. Anyone in the audience whom I have
13 not called or who is present and I didn't get your name? If so,
14 please come forward.

15 MR. SONNIER: Good morning, your Honor, Chris Sonnier from
16 the McKay Law Firm. We're here on behalf of Lloyd Johnson and Gary
17 Guy this morning.

18 THE COURT: All right. Thank you. Yes, sir.

19 MR. ANDERSON: Your Honor, I am John Anderson. I am here
20 on behalf of Lamont Blankenship, Jr. I did speak with Mr. Marvin
21 last night and possibly that's why I wasn't on the list. Thank
22 you.

23 THE COURT: All right. Fine. Thank you for being here.

24 Any litigants who are in the audience who I have not
25 listed or don't have you on the list? Anyone?

1 All right. Seeing no one, let me first of all, I should
2 introduce myself, I am Eldon Fallon. I am the judge who has been
3 assigned to this MDL case. I appreciate your being here.

4 I requested that you be here today because of the
5 significance of this impending deadline that we have talked about
6 earlier today. You in your complaints and your papers and your
7 filings have indicated that you have a qualifying injury, so you're
8 eligible to enroll in the settlement program, but the enrollment
9 must be done on or before October the 30th of 2008. That's a hard
10 and fast deadline, it cannot be extended.

11 Now, the purpose here today is not to encourage or
12 discourage the settlement. The purpose is to inform you. I feel
13 obligated as the judge who is assigned to this case to do the best
14 I can to inform you of this, the areas that I think are significant
15 so that you can make an informed decision and decide whether or not
16 to enroll or whether or not to proceed with the settlement.

17 For those of you, particularly litigants, here today and
18 on the phone, let me just say a short word or two about the history
19 of this litigation. The MDL panel designates cases that have
20 similar fact situations and they group those cases and designate a
21 judge in the United States in order that all of the cases
22 throughout the United States be transferred to that particular
23 judge. I was the judge who was designated to handle the Vioxx
24 litigation.

25 We received the designation on February the 16th of 2005.

1 Now, much has happened during that period of time, and I've tried
2 to record that information and make it available to everybody by
3 creating a website and putting everything on the website. Millions
4 of documents have been produced over that period of time, hundreds
5 of depositions, many thousands of depositions have now been taken.
6 Six trials have gone on in federal court, five cases, I had to try
7 one case twice, but we've had six trials, and we've had at least
8 ten trials in the state courts. I've issued over 1,000 opinions in
9 this case since the time that I began handling it, either in
10 writing or verbally, but I've delivered over 1,000 opinions.

11 I've had weekly meetings with the parties and I have had
12 monthly meetings in open court with anyone who wishes to appear.
13 I've noticed the meetings well in advance, posted it on my website,
14 and all of my opinions I've posted on the website, all of the forms
15 I've posted on the website, and the transcripts of the meetings
16 that I've had with the parties I've all posted on the website.

17 In this particular case, there are really two areas of
18 discovery: One is what we call general causation and the other is
19 specific causation. There's been a lot of discovery on whether or
20 not Vioxx was problematic and whether or not Merck who manufactured
21 Vioxx knew that it was problematic and when they knew it. This
22 helps everybody, all of the litigants; and so a lot of the work
23 that's been done you may not have been aware of it, not been kept
24 advised of it, or not had an opportunity to view it from the
25 website.

1 But you need to know that the work was done and you need
2 to know that it was of help to your case because every case has a
3 general causation and a specific causation issue, and you need to
4 get over general causation before you get to specific causation;
5 that is to say, whether or not it caused you damage in that
6 particular incident.

7 I might say that during the course of time that I handled
8 this matter, I had the good fortune to have colleagues in state
9 court who were also handling the case. They had many cases before
10 I got involved in the case, so some of this litigation has been
11 going on longer than three years in state court. But I had the
12 good fortune of being able to communicate and work with some very
13 talented judges in state court. I've talked to many judges in the
14 state court. The ones that I've worked closely with were judges
15 from Texas, New Jersey and California, and we kept in constant
16 contact, shared information, shared thoughts and ideas, and handled
17 our own independent cases, but we had at least the benefit of the
18 scope of the entire litigation.

19 After a certain period of time I felt that enough
20 discovery had taken place and enough trials had taken place that it
21 would be helpful to the parties, to the litigants, to the lawyers,
22 but primarily to the litigants, to take a look at this case from a
23 global standpoint to see whether or not it could be resolved from a
24 global standpoint. Often times it's easier to resolve a case of
25 this magnitude by looking at it globally than it is by looking at

1 each individual case, at least the discussions part.

2 So I convened a meeting here in New Orleans and invited my
3 colleagues in state court, and they showed me the respect to come
4 and they were here, and I ordered the parties, a representative
5 from the Merck board with decision-making authority and their
6 lawyers and a representative group of the Plaintiffs' Committee to
7 meet in my conference room. And I encouraged the parties at that
8 meeting to view the matter globally to see whether or not it could
9 be resolved in some fashion.

10 They began serious negotiations and almost a year later
11 with meetings sometimes daily, weekly, into the wee hours of the
12 morning in many instances, they were able to craft a program that
13 each side, the plaintiffs' and the defendants' representatives felt
14 that they could recommend to their respective parties.

15 You claimants have met certain criteria, and the parties
16 have agreed that when a claimant meets certain criteria they are
17 eligible to enroll in the program. The choice is yours, ladies and
18 gentlemen, both from the lawyers' standpoint and the litigants. I
19 am not here to advise you on which choice you make. I respect
20 whatever choice you do make, but I do feel, as I said, obligated to
21 do the best, the very best I can to inform you so that you can make
22 an informed choice.

23 I've also requested that parties be here today, your
24 attorneys, the program administrator. Those of you who have sat
25 through the short meeting that we had heard the program

1 administrator. The program administrator is not associated with
2 either the plaintiffs or the defendants. They're retained for the
3 special purpose of administering this program, and they're given
4 certain criteria and they just apply the criteria that have been
5 agreed upon to the cases as they see them. I've asked that they be
6 here today.

7 And also representatives from Merck, representatives from
8 the PSC, the lien people, and individuals who you may talk to, talk
9 off the record to; that is to say, you can ask them questions and
10 flesh out whatever information that you feel is necessary.

11 I would like to make a couple of comments to you from at
12 least my seat in the bus. I have been trying this case and working
13 on this case now since 2005, February 16th. I have been closely
14 connected with the case, that is to say, intimately involved in,
15 hands-on in this particular case, and I've seen a lot of documents
16 and I've heard a lot of testimony and I've ruled, as I say, on a
17 lot of motions.

18 I call to your attention that between 98 and 99 percent of
19 those eligible have thus far enrolled in the program. As I
20 mentioned, I've had six trials, five cases have been tried. Four
21 cases have been won by the defendants, one case has been won by the
22 plaintiffs; 20 percent of the cases in federal court won by the
23 plaintiffs, 80 percent by the defendants. From the state courts
24 throughout the country, one third of the cases have been won by the
25 plaintiff, two thirds of the cases have been won by the defendants.

1 All of the cases are now on appeal that have been tried.
2 No one from those cases have received any money other than if the
3 case were settled or resolved. So the cases are not finished yet,
4 they're still on appeal.

5 The program basically, for those eligible, that is to say,
6 a person who alleges, claims that they have had a heart attack,
7 ischemic stroke, or sudden cardiac death are eligible to enroll in
8 the program. To enroll in the program the parties have agreed that
9 you must fit through or come through several gates, three gates.
10 First, the medical records must confirm that the claimant suffered
11 a heart attack, an ischemic stroke, or a sudden cardiac arrest.
12 That's the first gate.

13 The second gate is that the records, some records must
14 confirm that the claimant received at least 30 pills within 60 days
15 of the incident. That's the second gate.

16 The third gate is that some documentation must be
17 presented confirming that Vioxx was being used within 14 or so days
18 before the heart attack, stroke or sudden death.

19 If you don't get through the gates, as you know from our
20 discussion, you can appeal. You can do one of three things, in
21 fact. If you find out that you don't get through the gates, you
22 can return to the tort system and proceed with the case.

23 Secondly, you can appeal the negative determination with
24 the Special Master or the Gates Committee.

25 Or third, you can do nothing and have the case dismissed.

1 But you're going to have to make that decision one way or the other
2 before October the 30th.

3 And the purpose of meeting with you here today and
4 requesting that you be here -- and for those on the phone I've
5 gotten a telephone number that we can call back or you can be
6 contacted and ask any questions privately that you wish to ask to
7 the respective parties.

8 But the purpose today is to allow you to meet with any of
9 these individuals. First meet with your attorneys, and I suggest
10 that you meet with the Plaintiffs Committee and the attorneys; and
11 then you can talk with the program administrator and find out, for
12 example, the likelihood of getting through the gates or if you get
13 through the gates what are you looking at, what amount are you
14 likely to get. Now they can't write it in stone because you're not
15 there yet, but they've dealt with a lot of cases thus far and they
16 can give you some idea. So I want that opportunity to at least be
17 afforded to you.

18 I know that coming here today or participating on the
19 phone for now over an hour has been time consuming to you and it's
20 been probably inconvenient for you, but I wouldn't have asked you
21 to come here if I didn't feel that it was in your best interest, at
22 least to get information. As I say, it's not the purpose of the
23 court to tell you to settle or to tell you not to settle, but I do
24 feel an obligation to you to do the very best I can to allow you to
25 get informed, to hear from me from my experience in trying these

1 cases, to hear from me to assure you that a lot of the work that
2 has been done has been done for your behalf, even though you didn't
3 participate, you will reap some benefit from that. And also to
4 afford you an opportunity to ask any of these individuals questions
5 that either the attorney who is here with their clients or the
6 clients can discuss the matter with the parties.

7 So the deadline, and that's why we're here today, it's
8 critical that you make some informed decision before October the
9 30th. Thereafter, it will be too late.

10 Now, what I suggest is that the attorneys, perhaps the
11 best way of doing it is to have the attorneys and their clients
12 meet for a very brief time with the plaintiff PSC and then you
13 folks can see who they want to meet with, whether they want to meet
14 with the program administrator or the Special Master or Merck or
15 someone else.

16 Anything? Okay. And with regard to the people on the
17 phone, we will contact each of you and see whether or not you have
18 any questions; and if you have a question, you will be placed with
19 the party who can answer that question for you.

20 THE DEPUTY CLERK: Judge, those meetings will be in our
21 courtroom and in the jury room.

22 THE COURT: Yes. We have a meeting arranged here in the
23 courtroom, you can get on the side. We also have Judge Lemmon's
24 courtroom across the hall, we also have jury rooms in each side
25 that so that you can have some privacy in your meeting.

1 Okay. Well, thank you again for being here -- yes, what's
2 that?

3 Yes, it would be helpful, too, if at the end you just let
4 us know before you leave and just check out, tell us, let me know
5 whether or not you've enrolled or not enrolled so I can then keep
6 that record.

7 All right, fine. Thank you very much. Would the
8 plaintiff PSC make sure you know who they want to talk to and then
9 we'll get the parties. Thank you.

10 THE DEPUTY CLERK: Everyone rise.

11 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

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17 I, Karen A. Ibos, CCR, Official Court Reporter, United States
18 District Court, Eastern District of Louisiana, do hereby certify
19 that the foregoing is a true and correct transcript, to the best of
20 my ability and understanding, from the record of the proceedings in
21 the above-entitled and numbered matter.

22



23

24

Karen A. Ibos, CCR, RPR, CRR

25

Official Court Reporter