

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF LOUISIANA

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4 IN RE: VIOXX PRODUCTS  
5 LIABILITY LITIGATION

6 MDL DOCKET NO. 1657  
7 NEW ORLEANS, LOUISIANA  
8 NOVEMBER 9, 2007, 8:30 A.M.

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10 TRANSCRIPT OF PROCEEDINGS  
11 HEARD BEFORE THE HONORABLE ELDON E. FALLON  
12 UNITED STATES DISTRICT JUDGE

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1   **P-R-O-C-E-E-D-I-N-G-S**

2   FRIDAY, NOVEMBER 9, 2007

3   M O R N I N G     S E S S I O N

4   (IN OPEN COURT)

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7                   THE DEPUTY CLERK:   Everyone rise.

8                   JUDGE FALLON:   Be seated, please.   Good morning, ladies

9 and gentlemen.   Call the case, please.

10                  THE DEPUTY CLERK:   MDL #1657, *In re Vioxx*.

11                  JUDGE FALLON:   Would counsel make their appearance for

12 the record.

13                  MR. WITTMANN:   Good morning, Your Honor, Phil Wittmann,

14 defense liaison counsel representing Merck & Company.

15                  MR. HERMAN:   May it please the Court, good morning,

16 Your Honors, Russ Herman, New Orleans liaison counsel for

17 plaintiffs in the MDL.

18                  JUDGE FALLON:   First, at the outset I would like to

19 thank Judge Carol Higbee from the Superior Court of New Jersey

20 and also Judge Victoria Chaney from the Superior Court of

21 Los Angeles County for being here today.   We have worked together

22 and been in touch with also Judge Randy Wilson from the Harris

23 County District in Texas.   I'm honored that they would be here

24 today and sit with me.

25    This is our regularly scheduled monthly status

1 conference. Because of some recent developments, I'll entertain  
2 a motion at this time to suspend the regular order of business.

3 MR. WITTMANN: Yes, Your Honor, I would move to suspend  
4 the regular order of business in order that counsel may report to  
5 the Court on a late-breaking development.

6 MR. MARVIN: Your Honor, Douglas Marvin representing  
7 Merck, Your Honor and Your Honor. We would like to announce that  
8 the parties have reached an agreement on a program that will  
9 encompass the great majority of cases in this proceeding, as well  
10 as in the New Jersey proceeding, the California proceeding, and  
11 the Texas proceeding.

12 This is a culmination of negotiations that were  
13 initiated by each of the three judges here, as well as  
14 Judge Randy Wilson of Texas. We appreciate and acknowledge the  
15 importance of that effort that was made last December when the  
16 judges called us together and asked us to meet and see whether  
17 and how we could try to resolve and begin resolving this  
18 litigation.

19 We have a PowerPoint, Your Honor, that will give an  
20 explanation of the program, but first I would like to talk to or  
21 return to Mr. Herman to discuss the process of the negotiations.

22 MR. HERMAN: May it please the Court, Russ Herman,  
23 Your Honors. Mr. Chris Seeger of the bar of New Jersey and  
24 New York and Mr. Andy Birchfield of the bar of Alabama have  
25 various -- very important roles for plaintiffs. Mr. Seeger is

1 one of the coleads in the New Jersey litigation and one of the  
2 coleads and members of the executive committee in the MDL  
3 litigation, and Mr. Birchfield is colead in the MDL and a member  
4 of the negotiating committee. They have devoted substantial time  
5 and resources to the Vioxx litigation, and in do deference, they  
6 would like to address the Court first. They will turn it back to  
7 me, and then they'll have some more.

8 MR. SEEGER: Good morning. I just wanted to acknowledge  
9 a couple of things to maybe a couple of people. This litigation,  
10 for many firms in the courtroom today, started back in 2001, and  
11 I think we heard this morning for Shelly Sanford it was 2000.  
12 Back in the early days it was Seeger Weiss and Beasley Allen and  
13 Mark Lanier's firm and a couple of others that were litigating  
14 these cases, so it's been a long road for many of us.

15 I just wanted to tell you that when we started this, the goal  
16 from the plaintiffs' perspective was to make this open to  
17 everybody, to really invite everyone to participate, in  
18 New Jersey and in the MDL, to have everybody working together,  
19 and to allow plaintiffs' lawyers who really wanted to participate  
20 and not worry about titles but to come in and be involved, and I  
21 think that we've accomplished that.

22 I think that when the litigation came here,  
23 Judge Fallon, in the MDL that many of the lawyers throughout the  
24 country who were litigating this case were very comfortable with  
25 my and Andy Birchfield's leadership, and I think that we've done

1 a good job of keeping everybody together through the setbacks,  
2 the good times and the bad times, but it's been a long road.

3 I just want to particularly say that having  
4 Andy Birchfield as a partner and as a colead counsel was a  
5 tremendous, tremendous asset. Andy is incredibly bright and hard  
6 working, and when I was doing one thing, Andy was doing another  
7 and just keeping us going. I just really wanted to say a few  
8 words about my team or our team and a couple things about Andy  
9 and just say that we think that what you're about to hear this  
10 morning is -- its time has come and it's a good result.

11 Andy.

12 MR. BIRCHFIELD: Good morning, Your Honors, and thank  
13 you, Chris, and I certainly share that sentiment. From this  
14 vantage point looking back, there are many things that are very  
15 rewarding about this and the friendships and the respect that has  
16 grown from the time that Chris and I and Shelly Sanford and  
17 Mark Lanier were really alone in litigating these cases, and  
18 we've seen more and more lawyers make tremendous contributions  
19 here. We have seen lawyering at the highest level on both sides,  
20 and I'm very proud to be a part of that.

21 I can also look at how this MDL, how this  
22 litigation has developed and see it as a model, and I can take  
23 pride in that because, as Chris said, from the time of the Vioxx  
24 withdrawal and the time of the MDL formation here, we were  
25 encouraged, and we wanted to bridge the barriers between federal

1 court litigation and state court litigants, and having the three  
2 of you on the bench together shows how effectively that has  
3 worked in this litigation. I think that it's a model from that  
4 standpoint.

5           From that vantage point as well, I take pride in  
6 where we are in this litigation. Most importantly, I'm proud of  
7 where we are in this litigation because of the result for the  
8 clients in this case. We have seen this litigation develop. It  
9 has been hard fought on both sides. Both sides, I think, have  
10 represented their clients zealously in this litigation.

11           We have tried the bellwether cases. We have seen  
12 the strengths and the weaknesses of these, and this is a model of  
13 how the civil justice system should work, and it has resulted in  
14 a resolution that is in the best interest of both parties here,  
15 and I take most pride in that result, and I thank you for the  
16 opportunity to address you this morning.

17           JUDGE FALLON: Thank you, Counsel. Anyone else?

18           MR. SEEGER: Judge Fallon, I did something that was  
19 unforgivable. Judge Higbee will understand why. I really wanted  
20 to acknowledge my partner, David Buchanan, and all of the work  
21 he's done in this litigation from the very beginning, and  
22 Jeff Grand, an associate at our firm has, done a lot of work. I  
23 don't think you got to see Dave that much, Judge Fallon, because  
24 we kept him in the boiler room, but the work they've done in this  
25 litigation is tremendous.



1           JUDGE FALLON: All of us know that from having been  
2 there. People who are outside of this courtroom, people inside  
3 of the courtroom who have not perhaps stood up to speak, we know  
4 that those are the people that drive a lot of the work effort,  
5 and all of our courts appreciate that and recognize that.

6           Mr. Herman, any more?

7           MR. HERMAN: Yes, Your Honor. May it please the Court,  
8 I want to acknowledge the court-appointed plaintiffs steering  
9 committees in the minor litigation, and if those members -- many  
10 of them are in the courtroom -- if you stand up, I'm not used to  
11 taking credit for something that's not mine. The people that put  
12 the oars in the water are in this courtroom.

13           Now, if the lawyers that tried cases all over this  
14 country, if you would stand. It's an extraordinary group of  
15 talented lawyers on our side and on the other side. Well, it is.  
16 They won more than we did, guys. It was hard fought litigation,  
17 and I'm very proud to have served with -- you've heard from Chris  
18 and Andy.

19           Tom Girardi was appointed from California. He was  
20 an extraordinary lawyer, past president of the National ABOTA and  
21 the International Trial Lawyers.

22           Ed Blizzard, a brilliant Texas trial lawyer, been  
23 through many, many cases.

24           Arnold Levin, who, for many years, has labored in  
25 the vineyards, and he knows more complex litigation law at the

1 tip of his fingers than most lawyers.

2           The reason I say this is I'm very proud that on the  
3 plaintiffs' side we had trial lawyers not only trying cases and  
4 serving on committees but also serving to negotiate because that  
5 experience has helped.

6           There were about 27,000 lawsuits, 45,000 plaintiff  
7 groups, 14,500, approximate, claimants on tolling agreements.

8           Essentially on December 7, 2006, Judge Fallon  
9 coordinated in this courthouse with three state court judges who  
10 had substantial dockets -- Judge Carol Higbee, who you've been  
11 introduced to to my right; and Judge Victoria Chaney, to my left;  
12 and Judge Randy Wilson, who is engaged in trial in Texas today  
13 and could not be here -- and we were charged with the  
14 responsibility of negotiating in confidence, in secrecy, and in  
15 good faith. Doug Marvin, with his colleagues, who he introduced,  
16 had the shame charge and responsibility.

17           Now, for 11 months, we were able to negotiate in  
18 confidence and secrecy until about 9 o'clock last night. We  
19 don't know who broke the news, but sometimes that happens. We  
20 had 23 meetings in New Orleans, Memphis, Montgomery, Washington  
21 DC, New York, Philadelphia, Los Angeles, and Houston face to face  
22 and another 26 meetings. In all, 59 negotiations in less than  
23 50 weeks between the folks.

24           We had 123 conference calls that were negotiated.  
25 We had 200-plus internal plaintiff negotiating committee

1 conferences. We had monthly conference calls and monitoring by  
2 the judges, and everyone likes to take credit, and in this case,  
3 everyone can take credit.

4           This is a massive effort by very talented lawyers  
5 on committees, trying cases, taking discovery, but I think  
6 everyone will agree, without the judicial constant monitoring,  
7 prodding, pushing the professionals who are fighting very hard  
8 against each other, there would have been no resolution because  
9 we were unable, in the heat of battle, really to sit down until  
10 the judges required us to do so.

11           So if someone asked me who is responsible, it's  
12 certainly not me, it's not the folks at this table, it's not  
13 here, it's the type of judicial activity that brings warring  
14 partners together. We're still trial by combat, and the combat  
15 has to end sometime, so we appreciate what Your Honors have done.

16           What is it that we did? The plaintiff group  
17 consulted with five physician experts, reviewed published  
18 materials, consulted with organizations that processed liens,  
19 consulted with three experts, professors in the field of ethics  
20 and complex litigation, joint interviews with claims  
21 administrators.

22           There were 18 trials between August '05 and  
23 March '07. In addition, the judges had to handle their regular  
24 dockets. There were literally thousands of motions. Seven clear  
25 defense verdicts. Five more that arguably were defense verdicts.

1 Five plaintiff verdicts. Two more that were arguably plaintiff  
2 verdicts. Mixed results. Retrials. Over 2,005 depositions.  
3 50 million pages of documents produced, reviewed, abstracted in  
4 this litigation. And that's on the plaintiff side. And I'm  
5 certain on the defense side, there were that many documents  
6 reviewed, perhaps more.

7 I'm now going to call on Mr. Girardi, Mr. Blizzard,  
8 and Mr. Levin, in whatever order you gentlemen want to speak, who  
9 were integral to getting this done on the plaintiffs' side.

10 MR. GIRARDI: Esteemed judges, thanks for being here.  
11 We talked about all of this work, quote, "that we've done." I  
12 have a real good idea how much work you've done, and it's deeply  
13 appreciated.

14 I don't think there has ever been a case like this  
15 in which there was better cooperation in the state courts and the  
16 federal courts. We have to take a model about this because  
17 generally in the MDLs, the state court people are over here doing  
18 one thing and the MDL is doing something else, and that wasn't  
19 the case here.

20 I believe the settlement is fair, which is the most  
21 important part of this. I think the various aspects of the  
22 various plaintiffs' other potential problems for heart attack and  
23 stroke are all taken into account in this very complicated  
24 63-page document which was signed at 4:45 in the morning this  
25 morning. Anyway, Judges, thank you so much for being here.

1 MR. LEVIN: Good morning, Your Honors. Arnold Levin.  
2 This group of attorneys are really Pilgrims. They concluded this  
3 settlement in two years, and they are early settlers.

4 We have tinkered with how to handle mass torts for  
5 many years ant, and quite frankly, at first the class action was  
6 the best vehicle since the invention of chopped chicken liver,  
7 and we found its flaws, and the results were not what certain  
8 plaintiffs groups wanted, nor the defense did.

9 We've come up with something that probably is the  
10 prototype for how to handle these cases in the future, and it's  
11 quasi. There is a jurisdictional input from the judiciary, and  
12 there is a private contract that allows for a meeting of the  
13 minds between the defendants and the plaintiffs who accept the  
14 contract, and as a result, the aftermath of this particular  
15 settlement will not give rise to the second rounds of litigation  
16 that other settlements have and class actions have, because, in  
17 essence, what we have here is a private contract administered as  
18 a private contract with input from the judiciary.

19 Those that go into this contract go in knowing full  
20 well what the terms of the contract are, and they are bound by  
21 the contract, and there will not be appellate appeals to the  
22 Fifth Circuit, to the Supreme Court, and various hearings because  
23 everything is spelled out with specificity. I guess now we'll  
24 just sit back and look at how it operates and see whether what  
25 we've done will be the way of the future in handling mass tort

1 cases. Thank you.

2 MR. BLIZZARD: Good morning, Your Honors. There were  
3 six of us, so of course you have to hear from six of us.

4 What we were focused on, as Your Honors know, is  
5 getting a settlement program that works. We've heard all these  
6 statistics this morning about 27,000 cases, and the projections  
7 are that 18 to 20,000 heart attacks alone will qualify for this  
8 program, 8 to 10,000 strokes.

9 When we talk about the statistics, a lot of times  
10 we lose site of the people that are behind those statistics, and  
11 I know Your Honors haven't lost sight of that and how do we get a  
12 program like that that works because, one at a time or even in  
13 large groups, it's very hard to get those kinds of numbers of  
14 people who have real injuries through the system.

15 I think both sides have been focused on trying to  
16 develop a program that works. Merck often said to us, "If we're  
17 going to go through this effort, we want a solution that works  
18 not just for you but for us, too." So that has been our focus,  
19 is to develop a program that works, and what we told them is,  
20 "These are serious injuries. We need generous compensation.  
21 This is a process that we need to do that's fair. We need to  
22 have a fair process with independent people that can make  
23 judgments based on objective criteria. Third, we need a system  
24 that will process these claims efficiently, because it's been  
25 many, many years where no one has received compensation."

1           So we wanted a system that streamlined it, that was  
2 objective, and that didn't bog down, and I think we've done that.  
3 We've worked hard on the details to try to make it work. We have  
4 in this courtroom people that have been involved in Vioxx for  
5 years and years, people who have been involved in other cases,  
6 and we all know that the devil is in the details, and we've  
7 worked hard on those details.

8           Now I think Andy is going to share with you some of  
9 the details that we have worked on. Thank you, Your Honor.

10           MR. HERMAN: Before you do, excuse me one second. My  
11 counterpart in these negotiations is Doug Marvin. To Doug and  
12 his team, I want to represent that these were tough negotiations.  
13 They were hard fought. Those are very bright people, and no  
14 matter how hard we fought each other -- it took a year -- it was  
15 always professional. Nobody ever raised a voice. Nobody ever  
16 stormed out of a room, and I know that Doug wants to introduce  
17 his group, and he's got a PowerPoint that Andy and Chris will  
18 participate in.

19           MR. MARVIN: Your Honor, each of you, I would like to  
20 acknowledge those sitting at counsel table with me.

21           Phil Wittmann, who is defense liaison counsel here  
22 for the MDL.

23           James Grasty, who is the vice-president and  
24 assistant general counsel of Merck. He's been in charge of this  
25 litigation and has guided us, all of us, in this respect with

1 respect to the litigation, as well as this program.

2 Phil Beck, who has tried a number of -- six cases  
3 here.

4 JUDGE FALLON: Six.

5 MR. MARVIN: In the MDL.

6 Adam Hoeflich, John Beisner, and Ted Mayer, the  
7 four of us worked together in meeting with counsel, as Russ said,  
8 through a number of cities, a number of times, and in each  
9 respect, I owe a debt of gratitude to each of them for their  
10 contributions to this as well. Russ is correct; the negotiations  
11 were hard fought. There was a lot of robust discussion, but in  
12 every respect it was professional throughout.

13 We have a PowerPoint presentation that, if we may,  
14 we would like to go ahead, which we hope will explain the program  
15 that is put together. Chris Seeger and Andy Birchfield and I  
16 will try to go through the program to explain it.

17 Three basic principles:

18 First, the scope of the program. It encompasses  
19 all heart attack cases, ischemic strokes, and sudden cardiac  
20 deaths. They would be eligible to enter this program. In terms  
21 of the numbers, those who allege heart attacks or sudden cardiac  
22 deaths, 29,000. Those who have alleged strokes number 17,000.  
23 Other injuries are 8,500.

24 Then there are also cases that have been filed, and  
25 we don't know yet what the injury is, and it's principally



1 because we haven't received the plaintiff profile forms or the  
2 information necessary to categorize those cases. Those are 6,700  
3 cases. In all likelihood, there are some heart attacks, strokes,  
4 sudden cardiac deaths in that number, but we don't know at this  
5 stage yet.

6 We also have a program where there are three gates  
7 that we'll go into in more detail, but basically the claims would  
8 come into the program, and they would have to pass through three  
9 gates that are erected to evaluate the evidence of injury, the  
10 duration of use, and the proximity of the injury to the usage.

11 Then finally, there is a settlement fund that is  
12 being established that is capped at 4.85 billion.

13 MR. SEEGER: So one of the challenges is to get your  
14 arms around what's out there, and as Doug laid out, we know there  
15 is a lot of cases out there, but we don't necessarily know a lot  
16 about them. So one of the first steps that we need to do is we  
17 need to see what's there, and one of the ways of doing that is  
18 we've asked for the courts to enter an order, a registration  
19 order that would just give us some very basic information about  
20 every case that's out there so that we know basically what the  
21 universe is. Of those cases, lawyers are asked to enroll their  
22 cases in the program, and the agreement really requires lawyers  
23 to enroll a hundred percent of their cases into the program.

24 For the deal to go effective, as you can see, the  
25 85 percent applies to MIs and sudden cardiac death cases,

1 85 percent of stroke claims, 85 percent of death claims, and  
2 85 percent of long-term use cases. The 85 percent threshold is  
3 significant because once 85 percent of the cases are committed to  
4 the program, of the hundred percent that we know are out there,  
5 this settlement then at that point would become effective, and  
6 the deal is binding on everybody.

7 Andy gets the next slide.

8 MR. BIRCHFIELD: Chris mentioned the fact that we're  
9 looking at a program that we would have a lawyer recommend to a  
10 hundred percent of his clients that he participate in this  
11 program, and when we undertook to design a program with that  
12 requirement, we understood that in order for a lawyer to do that,  
13 we must create a system that would be in the best, the best  
14 interest of each and every single client that would be  
15 represented by lawyers, and we think that we have accomplished  
16 that.

17 One of the things that we have done is we have  
18 established what we call *gates* to measure whether or not a claim  
19 would qualify for compensation under the program. The first gate  
20 that we look at is to determine whether or not it is the type of  
21 injury that is covered here. This settlement program applies to  
22 heart attacks, it applies to ischemic strokes, and it applies to  
23 sudden cardiac death. So the first gate is: Do you have a heart  
24 attack case, do you have an ischemic stroke case, or do you have  
25 a sudden cardiac death case?

1           That determination is made based on the event  
2 records. When the patient goes in to be treated for that event,  
3 we're looking at the event records because, as it was discussed  
4 earlier by Mr. Blizzard, we need a system that works efficiently  
5 because we have a large number of claimants here, and in order  
6 for this to work, we must be able to process those efficiently,  
7 so the records are limited to the event records and follow-up  
8 records as opposed to requiring two or three or four years of  
9 physician records leading up to that.

10           So the first gate to determine whether or not a  
11 patient qualifies is the event gate. Did they have a qualifying  
12 event? And then we have the duration gate, and that means did  
13 the patient, did the client have at least 30 pills prescribed to  
14 him or did he have 30 samples that were documented samples that  
15 were given to him?

16           And then the third gate is the proximity gate. Is  
17 there a connection between the Vioxx pills that the patient had  
18 and the time of the event? We know that there must be a  
19 connection there between the time of the usage and the time of  
20 the event, and that's the proximity gate.

21           Once a claimant is submitted to this process, you  
22 look at the event records and the administrator looks at those  
23 event records and identifies that each of those gates are  
24 present, then they would pass through the gates, and they would  
25 receive payment based on the degree of their injury and based on

1 the usage and based on the age at the time of the event.

2           Now, one of the things that we have established  
3 here is a mechanism to make sure, because any time you develop a  
4 system with definitions -- and we've tried to be as liberal as we  
5 could while only allowing the truly injury cases that are related  
6 to Vioxx usage through the gates -- we know we can't have  
7 definitions that worked perfectly, so we have a safety gap built  
8 in here.

9           This is a process where if a claim is reviewed in  
10 the most efficient way possible by a Special Administrator, and  
11 he looks at those objective criteria and he doesn't meet, we also  
12 have what we call a *gate committee*. That's a committee of  
13 lawyers because we have seen -- in developing this, we looked at  
14 hundreds of cases to see how this would actually work, and there  
15 were cases where the definitions really didn't match, but all of  
16 us around the table would agree, this person was on Vioxx, this  
17 person had a heart attack, or stroke. So we have a gate  
18 committee that can take a second look, and if it is truly a  
19 Vioxx-related injury, heart attack, or stroke, then that claim  
20 would be eligible for compensation under the system.

21           Then we also have a further safety net. If the  
22 gate committee also looks at it and says, "No, this is not a  
23 Vioxx-related injury," then that client, that plaintiff would  
24 have two options. One option is to appeal it to a  
25 special master. Get another independent review to see is this a

1 Vioxx-related injury? If the special master determines that it  
2 is, it goes into the system and would be eligible for  
3 compensation. That's option number one.

4 Or, at that point, the plaintiff could say, "This  
5 is all the evidence that I have. I will certify that this is all  
6 the evidence that I would use as far as usage and the degree of  
7 injury, and I'm free to try my case." So they would go out of  
8 the system, and they would be free to try that case.

9 We think that through this system, through this  
10 gate system we are going to be able to identify those cases that  
11 are currently pending or those cases that are on tolling  
12 agreement that truly are heart attack or stroke cases when a  
13 person was taking Vioxx.

14 MR. MARVIN: This shows really in diagram form a little  
15 bit what Andy was talking about in terms of the gates. If a  
16 person alleges an MI, in this case, or a sudden cardiac death, or  
17 ischemic stroke, that that is alleged in the case, it comes into  
18 the program. It then would go through the three gates analysis  
19 to determine whether in fact it was a heart attack in the sense  
20 of the duration of use and the proximity.

21 If the gate committee were to decide that, yes, it  
22 does pass through the gates, there is the necessary evidence  
23 there, then it would go to the claim assessment stage. If  
24 instead the gate committee were to say no, as Andy said, it goes  
25 to the committee. The committee can make its own determination

1 and agree that a case comes back into the program, or the  
2 committee could say, "No, it does not meet the criteria nor  
3 establish the necessary evidence to warrant being in the  
4 program." In that instance, the plaintiff has a choice. He can  
5 appeal that decision to a special master, or he could simply go  
6 ahead and say that he wants to pursue his claim.

7           If he goes to a special master, then the  
8 special master will be making an independent determination  
9 pursuant to criteria, which will then, if he were to decide yes,  
10 it should be in the program, it comes back into the program, or  
11 if it's no, then the claim is extinguished.

12           As Andy said, if the person decides not to appeal,  
13 then they can pursue their case, but they will need to certify  
14 that the evidence that they presented to the claims administrator  
15 is the evidence that they would have to present at any trial. As  
16 I said, it would be a certification there of that evidence.

17           If, for example, the person were to come up with  
18 additional evidence that they would like to present, then they  
19 could come back into the program and start from the top again to  
20 determine whether it meets the gates.

21           This brings us to step one to the claim assessment.  
22 Chris, do you want to mention that?

23           MR. SEEGER: So what we then tried to do is figure out a  
24 way to distribute the money that's in the capped fund for  
25 heart-attack victims as well as stroke victims, and we have a

1 grid for each which weights the cases really based on things that  
2 you can see that are obvious, like age, and the amount of time  
3 that they were on the drug. There are slight tweaks in the  
4 settlement agreement for the differences that sort of take into  
5 account how long you've been on the drug.

6           Also, what happens is once you're awarded a base  
7 amount, you have to kind of then go through a risk-factor  
8 analysis, and one of the things that Andy said earlier that I  
9 think is critical for people to keep in mind is that many  
10 settlements in the past were really bogged down with the analysis  
11 of medical records that go back ten years, five years.

12           Because this focuses on event records, which is a  
13 limited period of time, it's a much smaller amount of paperwork  
14 to deal with. Things like the admission records and discharge  
15 records and pharmacy records for the prescriptions, the ambulance  
16 records, and cardiology consults in the case of a heart attack,  
17 it's a limited group of paper that needs to be processed by the  
18 claim administrator.

19           We think that's a critical feature in getting cases  
20 through the system very quickly. In fact, I mean, I wouldn't  
21 want to be held to this, but I think that with regard to heart  
22 attacks, we've got a system that we think can process claims  
23 within 18 months. That's beginning to end.

24           The other thing, too, is in looking for the  
25 risk-factor analysis part of this, again, just focusing on the

1 event records, an example would be if the discharge summary of a  
2 heart-attack patient noted a risk factor, like hypertension, if  
3 it was important enough for the doctor to note as one of the risk  
4 factors that might have contributed to the heart attack, it will  
5 be on that document, and then that analysis would be done, and  
6 once you're awarded the base amount, you would then go through  
7 this risk-factor analysis, which would, again, tweak the base  
8 amount number that would get you ultimately to a compensation  
9 figure.

10 MR. BIRCHFIELD: The next step that you would go through  
11 in evaluating the claim and determining the level of compensation  
12 for a claimant, first, you identify the age and the level of the  
13 injury to determine the basis points on that grid.

14 The second step is you look at the consistency of  
15 usage. Is this a patient that was taking Vioxx on a regular  
16 basis, or was it on a less than regular basis? If it was someone  
17 that was taking the drug every day or if they were taking it  
18 five days out of seven, then they would be entitled to an upward  
19 bump. They would get a 20 percent upward adjustment. If it's  
20 less than that, then it would be a downward adjustment.

21 One of the things that I do think that is very  
22 important that we emphasize here, this is a program that is  
23 designed -- everyone who alleged a heart attack or a stroke is to  
24 be submitted to this program, but in the event that you do not  
25 pass one of the gates, then that claimant is free to pursue their



1 claim. They are free to pursue their claim. So every claimant  
2 that alleged a heart attack or stroke would come into the  
3 program, would be evaluated, would have the benefit of not only  
4 the special master or the special administrator evaluating that  
5 claim but also the gates committee.

6           The first step is the assignment of the basis  
7 points based on the grid, and then the second is the consistency  
8 of usage, and it also takes into consideration the label  
9 adjustment. Is this a heart attack or a stroke that occurred  
10 prior to the VIGOR unblinding in March of 2000, or is this an  
11 event that occurred prior to the label change in April of 2002 or  
12 was it afterwards, and there are adjustments based on these.

13           MR. SEEGER: One of the things that Andy and I and our  
14 negotiating team attempted to do with this grid in this  
15 risk-factor analysis is to take into account sort of real world  
16 realities about certain cases. The one example would be if  
17 somebody is an extreme smoker who smoked before the heart attack  
18 and continued smoking afterward, you would expect that to be  
19 treated differently from someone who didn't smoke. That was sort  
20 of an attempt to do that. It was also an attempt to take into  
21 account real world reality in running litigation positions that  
22 did well or did not do well at trial or in court, so I just  
23 wanted to point that out.

24           MR. MARVIN: Before I go to Step 3, I just realized  
25 that, with respect to those of us who were sitting down and

1 talking to each of the plaintiffs, I left out Ted Mayer, I  
2 believe. So it was Adam, John, myself, and Ted Mayer who were  
3 present at almost every one of these discussions.

4           The claim assessment stage, you go to the third  
5 step, and then there will be health factor adjustments. There  
6 are risk factors that are taken into account. We learned a lot  
7 from the trials that each of the judges here presided over, and  
8 we tried to take that learning from those bellwether trials that  
9 each of you tried, to build that into the program so that we  
10 would try to model that effort.

11           To step back for one second, when we talked about  
12 going through this process, whether it's going through the gates  
13 or whether it's going through the various adjustments in the  
14 program, we test drove the system, so to speak. We went to  
15 Montgomery, Alabama, to review cases that Mr. Birchfield had. We  
16 went to New Jersey to take a look at the cases Mr. Seeger had.  
17 We put them through the process to see how it would actually  
18 work. Mr. Girardi reviewed the cases that he had to apply the  
19 program to ensure they worked, and the company itself selected  
20 cases randomly to test drive the system, again, to see how it  
21 would work.

22           On Step 3, we do take into account the various risk  
23 factors. There are about a dozen risk factors that are taken  
24 into account. We have some of the principal ones up there right  
25 now -- smoking, family history, prior MI, cholesterol, but those

1 factors are taken into account and then adjustments made on the  
2 basis of those factors.

3           This, again, just is a chart. You've heard how it  
4 goes through the system. I won't belabor that point, but I guess  
5 the main point here for many of those sitting in the courtroom is  
6 that once you go through this, you come to a final calculation of  
7 the points for each individual.

8           At that point, once the people go through the  
9 system, there will be an evaluation. There will be an initial  
10 evaluation once we go through 2,500 cases so that we can make  
11 some projections based on those cases, and there would be an  
12 interim payment based on those projections that are made.

13           Then once the cases are through the program and we  
14 actually have the total number of points, each point will be  
15 assigned a value, and there will be the final payment.

16           MR. BIRCHFIELD: Just one point on this. As you look at  
17 these different steps as the case goes through, you could get the  
18 impression that this could be a step-by-step process, and it  
19 could take a considerable amount of time, but that's really not  
20 the case at all.

21           What we have designed with this program that I do  
22 think is worthy of noting here, and that is, that it is based on  
23 the event records. Because we have looked at these cases, we  
24 know that in these cases you can get a very good picture of the  
25 degree of injury, you can get a very good picture of the state of

1 the health of the patient with the event records. If a claimant  
2 wanted to submit additional records to establish injury, they are  
3 certainly invited to do that.

4           With this initial package that is submitted, an  
5 administrator can look at all of these issues at one time. He'll  
6 take it through each of these steps all at one time, make a  
7 determination as to whether they pass the gates, and at the same  
8 time, he will be able to go through and establish the injury  
9 level and put the base points on a chart, take it through the  
10 risk factors in making an evaluation and a determination of what  
11 is the total points allowed to this patient. While you see a lot  
12 of boxes up here, this is a very, very efficient process where  
13 these claims can be fairly evaluated on a very efficient basis.

14           One of the things here that I think is also  
15 important to note, and that is, if you see toward the bottom you  
16 have a box called *Special Review*. Once a claimant goes through  
17 this process, again, to build in a safety net there, once a  
18 patient goes through each of these steps and he's determined to  
19 pass the gates and he's assigned the basis points in each of the  
20 health adjustments, then a very simple form is generated by the  
21 special master and sent to the plaintiff through his lawyer, and  
22 the lawyer and the claimant can take a look and see, yes, this is  
23 accurate; these are the risk factors that I have; this is the  
24 degree of injury that I had. If there is some mistake there or  
25 if they challenge some of the risk-factor deductions there, then

1 they have an opportunity for a special review from a  
2 special master.

3           We also built in the interim payment, as Mr. Marvin  
4 suggested, because many of the plaintiffs here have suffered  
5 injuries that were several years ago, and we know that they have  
6 been a number of years without compensation, so we wanted a  
7 system that would put compensation, at least partial  
8 compensation. A substantial initial payment will be made in an  
9 interim basis late next summer is what we anticipate there.

10           MR. MARVIN: I think that concludes that, Your Honor.  
11 Is there anything else we need?

12           MR. HERMAN: Of importance to practicing attorneys is  
13 that you can recommend this because if somebody was on Vioxx,  
14 they had an injury in proximity, they get through those gates,  
15 they will be paid something. Nobody gets zeroed out. They get  
16 through the gates. The gates are fair.

17           Secondly, this contract only applies to filed and  
18 tolled cases. People that filed cases after today cannot take  
19 advantage of this. Don't go out and rush to file cases, because  
20 if you do, you are going to be trying those cases somewhere, but  
21 you're not going to get into this system. That's very important  
22 because 4.85 billion sounds like a lot of money. Well, it's not  
23 if it gets loaded up all at once with claims that were never  
24 contemplated and were never figured.

25           Lastly -- and I will tone it down. Thank you,

1 Chris. We have been up for about three nights straight.

2 MR. SEEGER: He's not yelling.

3 MR. HERMAN: Lastly, I know we'll get asked this  
4 question by attorneys, but Merck will pay the administrative  
5 costs. We're not talking about one administrator. We're talking  
6 about a company that has handled literally millions of claims.  
7 We considered three or four of these companies. We picked the  
8 one with the best track record. Thank you very much.

9 JUDGE FALLON: Anyone else from the attorneys? Let me  
10 hear from the judges now. Judge Higbee first.

11 JUDGE HIGBEE: It's a good day. It's a good day for the  
12 system. It's a good day for Merck. It's a good day for the  
13 plaintiffs. It's a really good day for me personally.

14 The bottom line is the word *proud* was used several  
15 times by different counsel, and that's what I feel today. I feel  
16 proud. Proud that the legal system that I'm a part of and that I  
17 believe in so strongly works. It worked here.

18 Basically, the adversary system that we have, the  
19 jury system, the court systems that we have, they are the best  
20 system in the world. They are not perfect. The press frequently  
21 can point out what's wrong with the system, and critics can  
22 constantly talk about what's wrong with the lawyers and what's  
23 wrong with the courts, but the bottom line is, most of the time  
24 it works really well, and it's the best system in the world.

25 The adversary system, where people who have

1 disputes and who have two different views of what the truth is  
2 and what happened or what offense means and what they are, go  
3 into that crucible of trial, go into that discovery where  
4 everything that's been set up where people actually get to hear  
5 about each other's side, get to know what each other understands,  
6 get to see each other's documents, get to see each other's  
7 information. In the end, it's a search for the truth, and in the  
8 end, it's something that I'm so proud to be part of.

9           In this particular case, and in most cases, the  
10 system worked. It works well. I just want to go through a  
11 couple of levels of which I'm so proud and feel that it worked.  
12 Number 1, this is a very fair resolution. This is something that  
13 we as a judiciary, both state and federal, are very happy about.  
14 This is not a resolution that's based on undue prejudice,  
15 coercion, either side acting out of fear.

16           This is a resolution where people have sat down,  
17 some of the most intelligent lawyers in the country, have sat  
18 down and advocated for their client's position. The defense  
19 counsel have done everything they can and done a magnificent job  
20 of presenting Merck's position, of advocating for Merck's  
21 position and doing everything they could to protect their  
22 clients.

23           The plaintiffs have done the same. The plaintiffs'  
24 lawyers were some of the top lawyers in the country, have in fact  
25 fought hard for their clients, and in fact have done everything

1 in their power to protect their clients and to advocate their  
2 client's positions. In the end, they came together and spent a  
3 long, long time coming to what they believe and what I believe,  
4 having looked it over, is a fair resolution of this huge dispute.

5           It's good for the plaintiffs; it's good for Merck.  
6 I do believe that this will work. As a judiciary we're going to  
7 do everything we can to try to facilitate the process.  
8 Unfortunately, we know we're not done, and one of the good things  
9 about it is that everybody -- Mr. Herman said everybody isn't  
10 going to get paid. Some people who have nonmeritorious cases are  
11 not going to get paid, and Merck has taken the position since the  
12 beginning that everybody shouldn't get paid, and through this  
13 settlement, they are going to achieve that.

14           They have gates. They have safeguards in there  
15 that show that those cases that have no merit won't receive  
16 compensation, but those cases that fit differently on the tiers  
17 and have merit, the plaintiffs have worked hard to make sure that  
18 their clients who they feel deserve compensation, or all their  
19 clients they have advocated for, but the bottom line is the  
20 system is going to work.

21           I'm extremely happy about the fact that for every  
22 juror who sat on any of those juries -- I know from the outside  
23 it looks like, oh, it was all different results. Well, there was  
24 a lot of consistency in those different results. There was  
25 knowledge that was learned. The attorneys learned what the



1 strengths were of their cases; they learned what the weaknesses  
2 were of their cases. Going through that, whether you want to  
3 call it *drama* or *combat* or whatever term you want to use for a  
4 trial, it's still the best way of getting at the truth. It's  
5 still the best way of getting at what's right. In this case, I  
6 think every one of those trials was important, and every one of  
7 those results has ultimately led to this resolution of the whole,  
8 not the whole, but the majority of the cases.

9           The next level that I'm proud of is of the  
10 judiciary itself. I'm proud of the fact that the state courts  
11 and the federal court were able to work together, that  
12 Judge Chaney and I from states across the coast -- her on the  
13 West Coast, me on the East Coast -- were able to work together,  
14 and Judge Fallon from the federal court was able to work with us  
15 and did work with us and did a magnificent job of handling the  
16 MDL.

17           I really believe that this resolution is partly the  
18 result of the fact that we've had such good cooperation between  
19 each other, that we were able to work together. That didn't mean  
20 that any of us gave up our independence. On every issue, each  
21 one of us made our own decisions, but I can tell you that it was  
22 good to have each other as sounding boards. It was good to work  
23 with each other. We cooperated.

24           One of us didn't run the show; one of us didn't  
25 decide it. The issues that were before us, each of us decided

1 independently, but how wonderful it was to be able to talk to  
2 each other, to be able to cooperate with each other, to be able  
3 to bounce ideas off of each other, and to work together to meet  
4 with the attorneys, and to, in the end, tell them, "It's time,  
5 guys. Let's get together and let's resolve this thing." If we  
6 hadn't had all of us involved in that process, I don't think the  
7 process could have worked as well. People always talk about  
8 state and federal cooperation, but it's hard to achieve, and it's  
9 great that it happened here.

10           Judge Fallon is to be commended. Judge Chaney. I  
11 just can't tell you how much it meant to me to be able to talk to  
12 them, to work with them. We e-mailed each other regularly. We  
13 talked on the phone constantly. We met here many times.  
14 Judge Fallon bought us some fabulous dinners. New Orleans is a  
15 fabulous place to eat, and it's been good.

16           The last thing that I'm proud of is the lawyering  
17 that I saw. Before I was a judge and before all of us were  
18 judges, we were lawyers. Lawyers get bashed so much. Our  
19 society just constantly talks about lawyers, lawyers, lawyers.  
20 Well, everybody can talk bad about a lawyer until they need one,  
21 until it's their lawyer, until they have a problem or they have  
22 an issue where they need protection or they need advocacy, and  
23 then whether it's a big corporation or whether it's an  
24 individual, the people they turn to are their lawyers who can in  
25 fact advocate for them, argue for them, protect them.

1           I think that to see the lawyers that I saw in these  
2 proceedings and through these years that I've been working on  
3 this, it's just been such a delight. People would constantly say  
4 to me, "Oh, Vioxx. Oh, my God, you have Vioxx," like  
5 commiserating with me, and I would say, "It's fun." It's really  
6 fun, and the reason why it's fun, I'm getting to see the best of  
7 the best. I'm getting to see these people come into my courtroom  
8 and argue, and I'm getting to see how hard they work and how  
9 diligent they are and how intelligent they are, and it's a  
10 pleasure.

11           I want to commend the attorneys on both sides.  
12 They have been excellent, and they have done an excellent job.  
13 I'll tell you, when you just look in, all you see are the lawyers  
14 make deals, the lawyers perform, and that's the little top of the  
15 iceberg that you see, but they work so hard to grasp a litigation  
16 like this, the complexities of it, the subtleties of it, the  
17 difficulties of it.

18           A good adversary understands the weaknesses and  
19 strengths of the other side. They understand the other side's  
20 position, and that's what happened here. We have people on both  
21 sides who understood the other side's position and who were able  
22 to finally come to a resolution that's good for their clients on  
23 both sides. I'm so happy today to have been a little part of it,  
24 and I'm so happy to have dealt with so many wonderful lawyers.

25           JUDGE FALLON: Thank you, Judge Higbee. Now we'll hear

1 from Judge Chaney.

2 JUDGE CHANEY: I would like to echo first Judge Higbee's  
3 comments and join prospectively in some of the things that I know  
4 that Judge Fallon is going to say. I also want to thank my  
5 cobench officers, Judges Higbee and Fallon, for working with me  
6 and supporting me and my efforts in California.

7 I also would like to acknowledge the incredible  
8 attorneys that I dealt with in California, some of whom are here.  
9 I would like to acknowledge them now personally on the record.  
10 First, Tom Girardi and Jim O'Callahan in California were the  
11 primary plaintiffs liaison counsel. From the defense standpoint,  
12 Ralph Campillo from the Sedgwick Detert office, Richard Geotz  
13 from O'Melveny's office, and Mike Brown from Reed Smith.

14 Without that group of people, we would not have  
15 come as far as we did in California or done as well. So  
16 Mr. Girardi, you're the only one of that group that's here now,  
17 but thank you very much. Please relay my thanks to the others as  
18 well.

19 MR. GIRARDI: I will.

20 JUDGE CHANEY: There are some people here in the  
21 courtroom with whom I went through two trials, but we tried three  
22 plaintiffs because one trial had two plaintiffs at one time, and  
23 I would like thank them as well. My first trial was with  
24 Tom Girardi. Mr. Girardi, can you stand up for me and remain  
25 standing for a second.

1           My next trial involved Bryan Panish, who is here,  
2 and Thomas Brandi. Mr. Panish and Mr. Brandi, can you folks also  
3 stand up for me. Backup trial counsel is also here. I see  
4 Mr. Kaufman. Mr. Kaufman, will you stand please. Well, he was  
5 there frequently.

6           MR. KAUFMAN: I'm on the defense, Judge.

7           JUDGE CHANEY: Well, he was there. Oh, I'm sorry. Then  
8 if you don't want to stand up.

9           Kevin Calcagnie, way in the background back there,  
10 was also present. That's my plaintiffs team.

11           From my defense team, the only person that's here  
12 was Eva Esper. Ms. Esper, can you stand. I also would like to  
13 acknowledge, although they are not here, Tarek Ismail from the  
14 Bartlit Beck office, and Stephen Raber from Williams Connelly.  
15 So I would like to applaud my group here and thank them very much  
16 for teaching me all about Vioxx and working with me.

17           Something more serious at this point, though, I  
18 would like to acknowledge the cooperation between the state and  
19 federal courts. It has been remarkable to be able to participate  
20 in this. The cooperation between the state and federal courts  
21 has inured to the benefit of everybody -- the parties, the  
22 courts, the legal system generally. It has reduced the costs and  
23 the amount of time spent.

24           We are not reinventing the wheel. We were able to  
25 piggyback on each other. I got the benefit mainly of

1 piggybacking, but I was able to piggyback on the efforts of  
2 Judge Fallon and Judge Higbee, so I want to acknowledge that.

3 I do not know or I have not heard much cooperation  
4 ever between the federal and state courts, and so I hope that the  
5 fact that it has worked so well here you folks can carry back to  
6 other judges with whom you work and suggest active cooperation as  
7 well.

8 I also would like to say that the cooperation here  
9 and the settlement here not only is a fair and reasonable  
10 resolution, but it benefits the parties very much, and the court  
11 system generally. It benefits the parties because I believe that  
12 the result here protects the due process rights of all the  
13 parties -- the defense, having to defend these cases all over the  
14 country, and the individual plaintiffs, many of whom have waited  
15 a very, very, very long time in order to get some resolution.

16 It also has benefitted the system generally. The  
17 reality is that there were more than 4,000 individual claimants  
18 who had filed in California. Not all of them will be swept into  
19 this settlement, but many of them will be. The reality is that I  
20 couldn't personally try them all. I would have to have the nine  
21 lives of a cat and then some to be able to get to all these  
22 folks. Without this resolution, these peoples' due process  
23 rights and their right for compensation, assuming that they had a  
24 viable case and a meritorious case, could not be addressed in a  
25 more practical way.

1           That's one of the reasons that the other judges and  
2 myself got together and started talking about, we realized that  
3 these peoples' needs could not be addressed, that is, the  
4 parties' needs, both the plaintiffs' and defendant's needs, could  
5 not be addressed with having to continue in this system, but we  
6 were not able to go forward, and I believe the defense and  
7 plaintiffs could not have gone forward with this settlement  
8 without the hard work and the experience that we've had to date.

9           I basically want to thank all of you, the attorneys  
10 who have worked with me in California, the attorneys that I've  
11 met through this process, and I especially want to thank  
12 Judges Higbee and Fallon. Thank you very much.

13           THE COURT: Thank you, Judge. I just have a few  
14 comments. I can't add much to my esteemed colleagues' remarks.  
15 Just three parts. I received this MDL case on February 16, 2005.  
16 On that date the MDL panel established MDL-1657, known as the  
17 *Vioxx Products Liability Litigation*, and designated this court as  
18 the transferee court. Between then and now, a lot has occurred.

19           Over 65,000 claims have been filed, both in state  
20 and federal court. More than 54 million pages of documents have  
21 been produced. 86 million pages of profile forms have been  
22 filed. More than 2,000 depositions have been taken, comprising  
23 more than 380,000 pages. More than 15 trials, six in the MDL and  
24 the rest in state courts throughout the country, have occurred.

25           Personally, I've ruled on over 270 substantive

1 motions, writing opinions on each of those motions. In addition,  
2 over 1,000 procedural motions have been resolved by the MDL  
3 transferee court. We've had weekly meetings with liaison  
4 counsel. I've had monthly meetings in open court with all  
5 counsel. It's been an active piece of litigation.

6 In less than three years after the creation of this  
7 MDL, the case or much of the case has been resolved. In my view,  
8 it was because a number of factors:

9 First, the cooperation of the state and federal  
10 courts. I have been blessed with my colleagues on each side of  
11 me, and Judge Wilson. They are incredibly bright, incredibly  
12 hard working, and the credit goes to them all the way. They were  
13 easy to work with, and I was able to get a lot of information and  
14 wise counsel and help from them, and I publicly thank them for  
15 it.

16 Secondly, this successful conclusion was due to the  
17 work of the lawyers. I practiced law for 33 years as an active  
18 litigator before taking the bench 13 years ago. I know what it  
19 is to be in the foxhole during the trial of a lawsuit. I lived  
20 in those foxholes, and I know that it is harder work to be a  
21 lawyer than it is to be a judge. I also know that a large  
22 portion of the credit for resolving litigation belongs to the  
23 lawyer and not the judge.

24 I am reminded of that wonderful, magnificent  
25 painting by Goya where he depicts an Arabian sheik seated on a



1 horse, and they are both perched on the top of a sand dune. All  
2 of the light is focused on the sheik. He's sitting there  
3 resplendent in his flowing robes, but he knows that it was the  
4 horse that got him there. It's important for judges to recognize  
5 that it is the workhorse, the lawyer, who get us through  
6 litigation, and all of us personally appreciate that in this  
7 case.

8           Also, I know each of the judges join me in thanking  
9 our staffs, our law clerks, our courtroom deputies, our clerk's  
10 office personnel, all of the staff that lends so much to us, and  
11 last but by no means at least, the litigants in this case.  
12 Regardless of the work of the lawyers, you need litigants who  
13 listen to lawyers. You need litigants who are kept advised. You  
14 need litigants who understand the risks as well as benefits of  
15 ultimately resolving the case, and we had great litigants on each  
16 side. The people who were badly injured are people that went  
17 through a lot of pain and discomfort, but they also looked at the  
18 case and were willing to listen to their lawyers. The defendant  
19 who could also see both the good and the bad of resolving the  
20 case, and the litigants cooperated in this case, and they, of  
21 course, ought to be applauded.

22           In many of these MDL cases, the thing that concerns  
23 me the most is that oftentimes immediately after the litigation  
24 is resolved, the floodgates open, and a great number of cases are  
25 brought. I don't anticipate that happening in this case.

1 I don't anticipate it for a number of reasons:  
2 First and foremost, this case is different than some cases out  
3 there. It's not an insidious injury like cancer or asbestosis  
4 that takes decades to develop, and it's secret as it moves into  
5 the body, and it doesn't make any motion until it is drastically  
6 recognized.

7 This is a heart attack, a stroke. People know when  
8 they have a heart attack or stroke. If someone is an interdict,  
9 if someone is a child and can't file a lawsuit, I understand  
10 that, but what I don't understand is somebody who has had a heart  
11 attack or stroke 10, 12 years ago who was taking Vioxx and saw  
12 all the media coverage certainly since 2004 and has not acted.  
13 Because of that, I don't see a deluge of new claims being filed.  
14 We have entered some orders that recognize that and call that to  
15 the lawyers' and to the litigants' attention.

16 Lastly, I join my colleagues in thanking all of you  
17 here today, including the press. The press has been incredibly  
18 informed in this case. They have reported complicated, sometime  
19 confusing scientific information accurately, and they worked very  
20 hard, and all of us appreciate that.

21 Lastly, I'm going to set the next status conference  
22 for December 14 at 8:30 here in open court, and everybody is  
23 invited. Court will stand in recess.

24 THE DEPUTY CLERK: All rise.

25 (WHEREUPON, the proceedings were concluded.)

## REPORTER'S CERTIFICATE

1  
2  
3 I, Cathy Pepper, Certified Realtime Reporter, Registered  
4 Professional Reporter, Certified Court Reporter, Official Court  
5 Reporter, United States District Court, Eastern District of  
6 Louisiana, do hereby certify that the foregoing is a true and  
7 correct transcript, to the best of my ability and understanding,  
8 from the record of the proceedings in the above-entitled and  
9 numbered matter.

10  
11  
12 \_\_\_\_\_  
13 Cathy Pepper, CCR, RPR, CRR  
14 Official Court Reporter  
15 United States District Court  
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