

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

MDL No. 1657
Section: "L"
New Orleans, Louisiana
Friday, March 18, 2005

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

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P R O C E E D I N G S

(FRIDAY, MARCH 18, 2005)

(MONTHLY STATUS CONFERENCE)

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5 THE COURT: Be seated, please. Good morning, ladies and
6 gentlemen. For those of you who are not from the New Orleans area,
7 I welcome you to the Eastern District. The purpose of this meeting
8 is to discuss with you the logistics and some of the organizational
9 aspects of this particular case.

10 In that regard I issued a court order directing anyone
11 interested to give me suggestions for an agenda. I have received
12 the suggestions and I met with the designated liaison counsel and
13 discussed with them what I wanted to talk about today and also
14 advised them of various suggestions that I had received. I directed
15 them to prepare an agenda, which they have done, and I will discuss
16 the agenda in order.

17 I also would like to tell you that we have a web site,
18 it's vioxx.laed.uscourts.gov. That's vioxx.laed.uscourts.gov. I am
19 going to post everything on the web site, all of the orders, all of
20 the minute entries, transcripts, and things of that sort, hopefully
21 to give everyone interested access to them.

22 I think one of the challenges in a case of this sort is
23 making it transparent, and I feel strongly about that and I want you
24 to have all of the information that you need. So please look at the
25 web site.

1 I will take the items in the order that I have on the
2 agenda. The first item is Service List of Counsel/Lexis-Nexis
3 Electronic Service. One aspect of this particular case that is also
4 challenging is to make sure that everybody receives all of the
5 orders. I am going to post them on the web site, but I also want
6 you to have them; so I have discussed some outside providers with
7 the liaison counsel and put them in touch with them, and they have
8 been talking to Lexis/Nexis electronic service. I will hear from
9 the liaison.

10 MR. HERMAN: May it please the court, good morning, Judge
11 Fallon. I am Russ Herman of the firm Herman, Herman Katz & Cotlar
12 in New Orleans for plaintiffs. Mr. Wittmann, liaison counsel for
13 defendants, will address the service list issue and I'll address the
14 Lexis/Nexis electronic service application.

15 MR. WITTMANN: Good morning, your Honor, Phil Wittmann,
16 liaison counsel for defendants. At the outset, your Honor, this
17 morning I would like to introduce defendant's lead counsel to the
18 court with me, I haven't had a chance to do that. Douglas Marvin
19 with the firm of Williams Connolly, seated at the table next to me,
20 will be our lead counsel.

21 THE COURT: Welcome to you, sir.

22 MR. WITTMANN: Next to him is John Beisner of the firm
23 O'Melveny & Myers, who will be working with us also; and also Ted
24 Mayer of Hughes, Hubbard & Reed.

25 Your Honor, with respect to the service list, we are in

1 the process of preparing a list that will reflect counsel as we have
2 them that have been reported to us, and we will provide a service
3 list to the court and to counsel. And we are working with Ms. Whyte
4 to make sure we have everybody on that list, And so far I think
5 we've come along well on it.

6 THE COURT: All right.

7 MR. HERMAN: Your Honor, with regards to electronic
8 service, it's the intention that all matters be served
9 electronically to the maximum extent possible. Verilaw, which was
10 one of the few venders, has now been annexed or subsumed by
11 Lexis/Nexis. The Defendants Liaison Counsel and our firm met on
12 March 14th with representatives from Lexis/Nexis, there is a
13 representative in the courtroom.

14 We had an additional meeting, we've negotiated costs and
15 parameters. If Lexis/Nexis is selected and approved by the court,
16 it will be available seven days a week, 24 hours a day, 365 days a
17 year, and would provide instantaneous notification, as well as
18 security measures and access through an individual code for each
19 lawyer. Registration would have to be on court service list.

20 We've had other conversations, PTL 5 contains a counsel
21 contact information, which all MDL attorneys have been instructed to
22 fill out. That information has been coming in regularly, and we
23 believe that we will be able to submit, that is the Plaintiffs and
24 the Defendants Liaison Counsel, a proposal to your Honor very
25 shortly.

1 THE COURT: That's fine. One of the important jobs of
2 liaison counsel is to make sure that all counsel of record receive
3 the information. So if you have any questions about the
4 information, how you get it, how you can pull down the material, you
5 need to talk to liaison counsel, one or the other, and they will
6 handle that problem. Anything further on this?

7 MR. WITTMANN: Just one thing, Judge. I think that
8 probably counsel present would like to know that in the negotiations
9 so far with the Lexis/Nexis people that they have agreed to waive
10 their initial one time set up licensing fee of \$350 per firm, so I
11 thought I should mention that to counsel present this morning.

12 MR. HERMAN: They have also reduced the filing fee per
13 document.

14 THE COURT: Anything else on this particular topic?

15 Let's go to Trial Settings. I am interested in what's
16 going on around the country with regard to any trial settings. In
17 the federal system I stopped the trials and had the cases moved
18 here. With regard to the cases in states, that's a different
19 situation, but I need to know the trial situations in the states.

20 I've instructed defense counsel to give me a list of all
21 of the cases that are pending in state court and where they're
22 pending. I intend shortly to get in touch with every state court
23 judge and keep them advised of what we're doing now and what we
24 intend to do in the future. I hope that we can coordinate this
25 project, both state and federal.

1 I think it'll be to the advantage of all of the litigants
2 to have the proceeding proceed in some orderly fashion. So to that
3 end, I instructed defense counsel to get me information regarding
4 the trials set.

5 MR. WITTMANN: Your Honor, we are in the process of
6 compiling a list of all of the cases that have been filed nationwide
7 to furnish to the court. We have found that there are so far, in
8 terms of being set for trial, only 11 cases actually set for trial.
9 The first trial setting, according to our records, is in my home
10 state of Alabama, the Rogers case which is set for trial on May 23rd
11 of this year; that's followed by a couple of cases in Texas, the
12 Ernst case which is set on May 31st, the Guerra case set on June the
13 6th. There are then a series of cases that are set in California,
14 there are five case set in California on July the 7th of 2005, and I
15 assume counsel from California know the names of those cases.

16 Then in Mississippi we have a case set, the Skinner case
17 on September 28th, 2005; and another case in Texas the Zajicek case
18 set on October 26, 2005; and in Alabama another case set on November
19 14th, 2005, the Darby case. That's our current list of trial
20 settings, Judge.

21 THE COURT: All right. Thank you very much. Anything
22 else on the trial settings?

23 Let me go to the next item on the agenda, the Plaintiff
24 Steering Committee. Let me say something about this item before I
25 hear from the parties.

1 The way that I am beginning to see the case, now, I don't
2 have all of the cases in, the cases are coming in and we get them in
3 every day or two, and they are coming in the hundreds. So I am not,
4 I don't have all of the cases in and I haven't looked at all of the
5 records yet. But it seems to me that all of the cases are falling
6 into several categories. And you can make different groupings of
7 them, but if you look at the theory of liability and focus only on
8 the theory of liability, it seems to me that the groupings are at
9 least two.

10 **First, there are tort claims.** Tort claims include
11 personal injury claims, death claims and also third-party payor
12 claims; that is to say, third parties such as Blue Cross and pension
13 plans and so forth that have paid moneys to reimburse recipients for
14 medical care that these individuals have received. The individuals
15 claim that they took Vioxx and they claim that as a result of the
16 Vioxx they have required certain treatment for other maladies
17 allegedly caused by Vioxx, and they turned to their medical benefits
18 group and received pay for that cost or reimbursement for their
19 total cost or a portion of their expenses.

20 Those latter groups, those latter organizations are now
21 seeking recompense for the moneys paid. But that's the tort theory
22 basically, the damages are different, theories of liability may be
23 different from the standpoint of damages and proof in certain areas
24 are certainly different.

25 But in addition to that group of tort claims, I am

1 beginning to see a **second group namely consumer claims**. Consumer
2 claims are based on a different concept, different theory. They are
3 not based, they are not tort based claims, they are based on state
4 consumer laws. And their position is that they purchased Vioxx and
5 that either it caused them some concern or they weren't told of all
6 of the problems or all of the things that they say they now know,
7 and, therefore, they feel that they were misled, they feel that
8 there was some action under the consumer laws.

9 Those cases are different in the sense that plaintiffs are
10 not urging that they were injured, they are not urging that anything
11 happened to them, they're urging that they were misled into buying
12 Vioxx or continuing to buy Vioxx, they want their money back for the
13 amount that they spent for Vioxx. They also want triple damages or
14 double damages or whatever damages based on the amount that they
15 expended. Also attorneys fees and court costs.

16 **Those are the broad groupings that I am beginning to see.**
17 **I mentioned the groupings because in the Plaintiff Steering**
18 **Committee, I am going to make an effort to have the various groups**
19 **properly represented on that committee.** To that end **I invited**
20 **anyone who is interested in being on the Plaintiff Steering**
21 **Committee to submit to me an application.** I am certain that with
22 the talent that I see out there you could each write a book about
23 your past experiences and your past achievements. I don't have the
24 time to read War and Peace over and over and over, so I need you to
25 be conscious of the **three page double space limit**, don't tell me

1 what your mother says about you, just tell me what you feel is the
2 essence of your experience and I assure you that I will read it.

3 It is also helpful to me if you focus me also on the area
4 of your expertise, particularly if you've had the experience in the
5 consumer area or in the tort area or whatever other area, third
6 party pay out area, things of that sort. I am interested in it, I
7 invite you to apply.

8 But in doing so, let me say a couple of things. I am
9 going to be appointing the committee. I will appoint the committee
10 before we meet again next time, and it's my practice and will be my
11 practice to meet at least once a month with the committees in open
12 court, so anyone who wishes to attend will feel free to do so. I
13 will post the meeting dates and the locations of the meeting on the
14 web site and you can pick it up.

15 But before you apply or if you have applied, please keep
16 in mind the following: First, the court will appoint a person, not
17 a law firm. I am interested in that person's efforts, not the law
18 firm's efforts. And I need that person to participate. I don't
19 need the law firm in place of that person to participate. I expect
20 the people who are on the committee to be present and I expect them
21 to be working.

22 I remind you that this is a case that will take
23 considerable time and considerable resources. You have to go in
24 this position with your eyes open and be willing to commit both time
25 and resources into a project of this type. It's not going to be

1 interminable, but it's not going to end in six months or a year, it
2 will take a considerable period of time that you'll need to know.

3 Also, if you're on the committee, you're on the committee
4 as long as the court declares that you're on the committee. No side
5 agreements to get off of the committee for any reasons will be
6 accepted. I'll consider those side agreements as contra bonos
7 mores, I'll consider penalties on both the maker and the receiver of
8 the side agreement, and I will declare them null and void if such an
9 agreement comes to my attention. It also may result in the
10 expulsion from the committee and forfeiture of any fees or costs
11 that have thus far been expended.

12 Also I mention to you to be conscious of the potential for
13 conflicts of interest. Many of you undoubtedly will have both state
14 and federal cases. I expect the people on the committee to have
15 their cases in this court. I can see a potential, and you will see
16 it quicker than I, but I can see a potential for a conflict for
17 someone handling cases with the right hand on the committee and with
18 the left hand in state court.

19 Oftentimes, there is a conflict between time requirements,
20 procedure or even law; there can be a conflict between effort and
21 there are various potential conflicts that are presented in matters
22 of this sort. So I suggest that you be conscious of them. Again,
23 if it comes to my attention and there is a conflict, you may have to
24 leave this committee and all that you have done will not be
25 recognized.

1 So with all of that in mind, let me hear from counsel on
2 the Plaintiff Steering Committee.

3 MR. HERMAN: May it please the court, your Honor, the
4 clerk of court has received more than 30 applications for
5 consideration for the Plaintiffs Steering Committee and they're
6 coming in daily. As your Honor has directed, the cutoff date is
7 March 28 and April 4 is this the date for any objections to anyone
8 that's submitted an application. The applications are three pages,
9 double spaced and they are to be sent, the original and one copy are
10 to be sent to the clerk of court.

11 Your Honor, we have had several meetings among, between
12 liaison counsel, nothing definitive has been agreed to pending the
13 appointment by you of the Plaintiff Steering Committee so that the
14 steering committee has the full input on such issues as deposition
15 guidelines, et cetera.

16 THE COURT: That's my thinking. I think that the
17 committee not only serves a purpose to do the work, but they also
18 serve a purpose of thinking about what's needed from their aspect of
19 the case. And so it's essential that they have input. Anything
20 further from the plaintiff?

21 MR. HERMAN: Not at this point.

22 THE COURT: Defendant Steering Committee. I also intend
23 to appoint a Defendant Steering Committee, and at this point it's
24 not clear to me, at least from the record, whether I am dealing
25 with, in this case, with one defendant or more than one defendant.

1 So let me hear from defendant liaison counsel.

2 MR. WITTMANN: Your Honor, I've introduced Doug and John
3 and Ted to you this morning, and they certainly will be on the
4 Defendants Steering Committee. And in addition, if your Honor would
5 approve, I would anticipate that my colleague Rick Stanley would be
6 on that committee as well.

7 We haven't made any firm decision yet as to the size of
8 the committee, the number of lawyers on the committee. As we told
9 your Honor back in chambers that we will work on that and have a
10 recommendation to you before our next meeting.

11 And I think that pretty well covers the question of the
12 Defendants Steering Committee.

13 THE COURT: I will need to hear from you in 21 days as to
14 recommendations or applications or anything regarding the committee.
15 I need to appoint a committee, we need to get started with the case.

16 MR. WITTMANN: I can get that as quickly as your Honor
17 would like. If you would like it sooner than that, Judge, we can do
18 that.

19 THE COURT: No later than 21 days.

20 MR. WITTMANN: Okay.

21 THE COURT: Thank you. At the next meeting I intend to
22 have the committees in place and I would intend at that time to be
23 able to focus on some schedule of discovery, even though you know
24 your cases better than I at this point and I will look to you for
25 suggestions, I want it to move forward and I want it to move forward

1 in a way that is consistent with everybody's position on the
2 committees; and I look to you for suggestions as to the deposition
3 and the discovery of documents and production of documents and
4 things of that sort.

5 The next item on the agenda is the Master Complaint or
6 master answers. Again, let me hear from counsel. In a case of this
7 sort, occasionally there are amendments that are necessary as the
8 case proceeds and there are other matters that come in to focus that
9 need to be cleared up. Rather than have 90,000 petitions that need
10 to be amended, it's often more expeditious to have a master
11 complaint.

12 Now, in a case of this sort we have a mixture of not only
13 individual cases but also class actions as well as individual cases.
14 So you need to focus on whether or not there is need for a master
15 complaint for the class action, a master complaint for the
16 individual cases or perhaps one for all. But you need to give all
17 of that some thought. Let me hear from the parties on the master
18 complaint.

19 MR. HERMAN: Your Honor, Plaintiffs Liaison Counsel and
20 the Defense Liaison Counsel have discussed this matter face to face.
21 We've exchanged some views, we are deferring consideration of a
22 master complaint and class issues until the Plaintiff Steering
23 Committee and the Defense Steering Committee are appointed, because
24 we both, we feel that those are issues that should be addressed by
25 the steering committees rather than liaison counsel.

1 THE COURT: All right. I just wanted you to focus on it,
2 and that's one of the things that I will be visiting with you when
3 you get your committees in place. Anything on the master complaint?

4 MR. WITTMANN: Just briefly, your Honor. In this case, as
5 you know, there are numerous overlapping and conflicting class
6 actions, competing class actions, different lawyers who are
7 asserting similar claims on behalf of similar groups of people.
8 Obviously we are going to have to work together, Mr. Herman and I,
9 to develop a means of reconciling these various class action claims
10 that are out there so that everybody has a clear idea about classes,
11 what they are and the claims that are being asserted in those
12 classes.

13 And I guess the bottom line is the court needs a clear
14 idea of what the target here is for purposes of assessing the class
15 certification issues and a myriad of other issues that are inherent
16 on in those complaints.

17 I think Russ is correct, we've discussed it, it's high on
18 our agenda to talk about, and hopefully we will have a better report
19 for you next time.

20 MR. HERMAN: Your Honor, if I might I would just like to
21 make one comment for the record. Some of the complaints are
22 equitable in nature, and it will be necessary at least from point
23 advantage of liaison counsel to perhaps have several master
24 complaints. And I just wanted to point that out for the record.

25 THE COURT: I don't have any problem with it. The purpose

1 of the master complaint is just to recognize that during the course
2 of litigation complaints need to be changed for various reasons, and
3 to have everybody to have to file an amendment in a case of this
4 sort doesn't make much sense for the litigants. It's not good for
5 either side, for the plaintiffs to have to amend each of their
6 petitions separately or to have the defendants answer each of those
7 petitions. It is expensive and it's time consuming and it doesn't
8 make any sense. So shrinking that down and consolidating it makes
9 more sense.

10 If you can do it in one complaint, that's fine. But in a
11 case like this it may not be able to be done, but we can do a lot
12 better than having separate complaints.

13 Another item on the agenda is Tolling Agreements. Tolling
14 agreements, of course, depend to a great extent on the law of the
15 state and the people who have tolling agreements have to know and to
16 understand the appropriate state law; that is to say, whether or not
17 you can toll.

18 Tolling agreements focus on whether a claim needs to be
19 filed or whether it can be held off without prejudicing the person
20 with a claim, in essence tolling the statute of limitations to allow
21 that individual to not file but at the same time not be prejudiced
22 by it.

23 It's obviously an advantage to the parties who have the
24 claim, they don't have to expend the money to file the necessary
25 complaints. But it is also sometimes helpful to the defendants to

1 have tolling agreements also for various strategic and other
2 reasons. They don't have to answer each claim, which is expensive
3 and time consuming, and they can deal with it in a different
4 fashion.

5 I've asked the parties to at least consider this, look at
6 it, and let me hear from them at this time.

7 MR. WITTMANN: Your Honor, we have several concerns about
8 the use of a tolling agreement in this proceeding. For one thing, I
9 think that a tolling agreement is going to prevent us from having a
10 clear picture of what's out there. We know there a lot of cases
11 just based on what's happened to date and there are a lot more that
12 we have been told about that are in the pipeline. And a tolling
13 agreement would prevent us from really getting a clear picture, a
14 master tolling agreement, not giving us a clear picture of what is
15 out there.

16 The capacity from taking discovery from the plaintiffs who
17 have got claims diminishes as the days go by, and we think it's
18 important that claims be asserted as lawsuits so that the discovery
19 and investigatory process can go forward.

20 But having said all of that, I don't stand to reject
21 anything today, we are still considering the tolling agreement. I
22 think preliminarily, to be candid with the court, that a master
23 tolling agreement is not in my client's best interest, but we are
24 still discussing it and we will be prepared to discuss it further
25 with the court at our next meeting.

1 THE COURT: All right. Anything from the plaintiffs?

2 MR. HERMAN: Your Honor, I am going to reserve comment on
3 tolling agreements, except to say that I believe that the defendants
4 need to discover and tolling agreements are not inconsistent and
5 perhaps we can work towards a point of agreement.

6 THE COURT: I don't see tolling agreements as a preventive
7 for discovery and I don't see tolling agreements as an opportunity
8 for a person not to express themselves as to the fact that they have
9 a claim. It's just an issue of economics practicality.

10 Oftentimes a person who is willing to step forward and
11 file a lawsuit is in it for the long run. Occasionally when they
12 look at it from a tolling agreement viewpoint, they are not in it
13 for the long run. But that's something that the parties have to
14 think about, consider, but I need you to at least view it and
15 consider it from your standpoint.

16 The next item is Deposition Guidelines. I firmly believe
17 that the committees need to be consulted with regard to the
18 substantive aspects of the case, such as which depositions are to be
19 taken and who is to take them and things of that nature.

20 But with regard to deposition guidelines, this is again
21 one of the housekeeping matters as I see it, and so I directed
22 liaison counsel to begin discussing and fashioning or attempting to
23 fashion the various guidelines.

24 My approach is to get them focused on it and to see if
25 they can agree on the whole guidelines. If they can, that's fine.

1 It's their depositions and it's their deposition guidelines, so it's
2 for them, not for the court. But I want to have some understanding
3 of just the mechanics of the depositions. If they can't agree on
4 all of the specifics, then they can agree on what they can agree on
5 and then I will make the decision on what they can't agree on. But
6 I've asked them to focus at least on deposition guidelines. I will
7 hear from the parties on that issue.

8 MR. HERMAN: Your Honor, Plaintiffs Liaison Counsel and
9 Defense Liaison Counsel have met face to face on at least two
10 occasions to discuss potential guidelines. We've exchanged
11 thoughts. From a plaintiff's perspective we are sort of faced with
12 a Holmesian dichotomy as to form and substance. And until the PSC
13 is formed, Plaintiffs Liaison Counsel is not comfortable in agreeing
14 to all of the guidelines that have been suggested.

15 I will say that there are at least 50 percent of the
16 proposed guidelines which seem that we can agree on, but there are
17 many more that we have not been able to reach agreement. I will say
18 this, I know that the lawyers that you choose will work in good
19 faith to present defense counsel and try to resolve the guideline
20 issue.

21 THE COURT: We don't have time to worry about the size of
22 the table and things of that nature. I am interested in more of how
23 many people ask questions and mechanics of that nature.

24 Also, with depositions when we get further along you need
25 to be considering whether or not internet depositions can and should

1 be used. There are various providers which provide access for
2 internet depositions. During internet depositions, each side has at
3 least two people, one with a laptop and the other asking questions.
4 They go to the depositions, any interested party may log on to the
5 deposition and pull it up on their computer screen in their office.

6 On the right-hand side of the page is real time, on the
7 left-hand side is voice and image. The plaintiffs have their chat
8 rooms and the defendants have their chat rooms, the experts have
9 their chat rooms.

10 If they have some input, they simply type it in and send
11 it to the individual next to the questioner. It appears on that
12 individual's laptop and he or she at the appropriate time meets with
13 the questioner and says, New Orleans wants this question or San
14 Francisco wants this one or Hawaii wants this one or so forth. So
15 everybody has an opportunity to input there.

16 There are, as I say, several providers, and I suggest when
17 we get with them and begin focussing on that tool.

18 MR. HERMAN: Your Honor, I can make one short statement.
19 Mr. Seeger invited me to New York to meet with the court reporters
20 that have been reporting depositions in the coordinated New Jersey
21 action and other actions, and the technology is available to do what
22 your Honor suggested. And beyond that, things can be fully
23 digitized and edited from a lawyer's law office very easily for
24 whatever purpose they have.

25 THE COURT: It can also be looked at by me during the

1 deposition, and in a particularly problematic deposition I can
2 monitor it and I'll rule on those objections immediately so that you
3 can continue onward.

4 MR. HERMAN: Your Honor, when the PSC is formed we will
5 immediately make available whatever vendor the PSC desires to use
6 for your Honor to meet with. Thank you.

7 THE COURT: Anything further on deposition guidelines?

8 MR. WITTMANN: Just a couple of things, Judge. I may be
9 more optimistic than Russ as to where we are in the deposition
10 guidelines. We met a couple of times and I don't think we are going
11 to have any significant problems on the deposition guidelines.
12 We've agreed to provide the PLC at their cost copies of all of the
13 depositions that have been taken in other litigation so that they
14 can maintain a separate depository for the depositions. The
15 deposition copy would also include exhibits and will be provided in
16 electronic and video format, subject to compliance with any
17 applicable confidentiality orders in other courts. So I think
18 that'll be a big start toward the deposition guidelines having the
19 depositions there.

20 Probably the biggest for us will be over redeposing
21 people. We've had some people deposed half a dozen times already,
22 and that's something that Russ and I are going to have to work with;
23 but I know many of the counsel in this room on the plaintiff side,
24 I've had cases with them before, and usually we are able to resolve
25 that to our mutual satisfaction and I think we will do that in this

1 case here.

2 THE COURT: I urge counsel to try to do that. I also tell
3 you that if you can't do that, I will do it. I want the deposition
4 guidelines in place before the next meeting. I will be meeting with
5 liaison counsel weekly on that and focussing on that, but we will
6 have them in place before the next meeting.

7 MR. HERMAN: Just one more comment about the providing of
8 depositions. Your Honor, I am optimistic by nature after having my
9 head beat in by Mr. Wittmann for many years. I could not stand
10 before you unless I was optimistic.

11 May it please the court, what we've decided is they will
12 provide a log, the defense will provide a log of depositions that
13 have been taken, we will get them to Mr. Seeger, he will compare
14 them. If there is something we don't have, we will order it at our
15 expense.

16 But it really does lead into the plaintiff's document
17 depository issue.

18 THE COURT: Let me have a word on that. With this number
19 of documents, and I know that the case has been going on in various
20 state courts and also a couple of federal courts, so a lot of
21 discovery have been rendered and made. I don't want to reinvent the
22 wheel or redo the discovery. We need to be able to migrate that
23 discovery into the plaintiff's depository in this case.

24 And I also urge counsel to henceforth, if you haven't done
25 it thus far, to produce documents in CD ROM or some electronic

1 format. It's easier to access and it's easier to research. And
2 organize. So I would be looking for you to do that.

3 One of these days, one of these case are going to find
4 that it's helpful to have a common depository. The last time I
5 focused on that there was some question as to security. There may
6 still be security potential problems, but it seems to me that a
7 common depository with common numbers, that's the essential part in
8 a production, you've got to have the same numbers and you're
9 migrating the documents, let's not renumber them, let's try to use
10 the same numbers so that your depositions make sense so that we
11 don't have to tell the jury you've heard him say Plaintiff 5, well,
12 it's now Plaintiff 8, it's no longer -- it just doesn't work. So
13 think about the trial aspect of the case when you begin to collect
14 information and see if you can keep it uniform.

15 But also I will be talking to you about some common
16 depository, it just makes more sense, it's more efficient, but that
17 is something that is in the lawyers realm and not the judge's realm
18 as I see it. It's for your use, not mine. Let me hear from the
19 plaintiffs on the document depository.

20 MR. HERMAN: Your Honor, to date in state court
21 coordinated action between 6,000,000 and 7,000,000 pages of
22 documents have been produced serially. They will produced
23 electronically, they are fully searchable, and that depository is
24 housed at the Seeger Weiss office in New York with satellite
25 depositories in Alabama, California, Pennsylvania and New York and

1 New Jersey.

2 It's contemplated that there would be a plaintiffs'
3 depository which can be accessed electronically by all plaintiffs
4 counsel. It's contemplated that the same numbering system that's
5 already been used be used, as your Honor in other cases has
6 requested so that we don't have double Bates numbers, for example.
7 We expect that within 30 days of the PSC being selected by your
8 Honor, that we will have a plaintiffs depository with availability
9 nationwide for MDL plaintiff registrants to access. We appreciate
10 defense counsel's willingness to provide us with a list of
11 depositions that have been taken in cases.

12 With respect to a single depository, your Honor, we have
13 been discussing and suggested that as regards medical records and
14 pharmaceutical records that we may very well be able to establish a
15 uniform depository with enough security that only the attorney for
16 plaintiff whose client's records are registered may access it and
17 comply with HIPA, because as your Honor is aware because of the new
18 HIPA procedures we are going to have to go through some hoops that
19 we haven't had to go through before.

20 THE COURT: Any input from the defendants on that?

21 MR. WITTMANN: Only this, your Honor. We obviously have
22 copies of documents that defendants have produced during the course
23 of other discovery, and we will, of course, make available to the
24 Plaintiffs Liaison Counsel any documents that they don't have. As I
25 understand it they are all electronic, in electronic form and fully

1 searchable. So that should not be a problem.

2 I would not anticipate a joint depository because we've
3 got our documents already and they've got theirs and just if they
4 need something let us know. And Russ is correct, we are working to
5 try to figure out a way to deal with these healthcare forms we will
6 be getting from the plaintiffs and we will continue to work on that.

7 THE COURT: Bring the court into that if that's a
8 potential problem because I can cut some of that red tape. The
9 Plaintiff Profile Form, this is either the plaintiff, probably the
10 defendant should speak on that.

11 MR. WITTMANN: Yes, your Honor. We provided Mr. Herman
12 with a suggested plaintiff profile form, we call it a fact sheet,
13 but it's the same thing. It was based largely on a profile form
14 that was used, as I understand it, in the state of New Jersey.
15 Mr. Herman is looking at it, he's obviously got to wait for his
16 committee to get formed to come to some agreement on it, and we will
17 continue to work on that between now and the next meeting.

18 THE COURT: With regard to plaintiff profile forms let me
19 say a word. You have a right to have information, so when you get
20 to the point where the form is agreed upon and it's been sent out,
21 you need to keep a record of who gets them and who doesn't send them
22 back. After an appropriate period of time and effort for those
23 individuals who haven't sent back completed plaintiff profile forms,
24 I'll entertain a motion from you to dismiss their case.

25 Everyone has to know at the outset that they have a right

1 to file a suit, but they also have a duty to respond to discovery.
2 And if they decide not to respond to discovery, they need to be out
3 of the lawsuit and people who are willing to respond need to be in
4 the lawsuit.

5 MR. HERMAN: Your Honor, with respect, most respectfully
6 to the court, the Defendants Liaison Counsel would make an objection
7 the first time this comes up to any dismissal for prejudice for
8 failure to timely file a patient profile form.

9 THE COURT: I understand and I would expect you to do that
10 and I would overrule the objection. I am not going to willy-nilly
11 dismiss cases. I am going to give an opportunity to the person to
12 respond, I am going to do everything I can to urge that person to
13 respond. But after a number of requests, if they do not respond
14 over the objection of Plaintiff Liaison Counsel or Plaintiff
15 Steering Committee, I will dismiss those cases with prejudice.

16 MR. HERMAN: Your Honor, I have a comment about the
17 patient profile forms.

18 THE COURT: All right.

19 MR. HERMAN: We are going, I predict, being the optimist
20 that I am, that we are going to need the court's supervision in this
21 matter. We have already many, many members of plaintiff firms have
22 objected to the overly burdensome and intrusive patient profile
23 forms which have been suggested or utilized. And Mr. Wittmann and I
24 and his defense committee and the PSC will work diligently to reach
25 some common ground, but I fear this is an area where the court's

1 attention is going to be needed.

2 THE COURT: You need to get me involved in it and I will
3 get in that area as quickly as I can. I don't see a plaintiff
4 profile form as a substitute for a deposition; therefore, you can't
5 send out an encyclopedic form and expect the plaintiffs to fill them
6 in, they are just not able to do that, especially the pro se
7 plaintiffs. But a reasonable attempt to get information you're
8 entitled to.

9 But bring any discussion, any disputes to me and I will
10 resolve them promptly and we will have a profile form for sure.

11 Plaintiff's Time and Billing Guidelines is the next agenda
12 item. One of the duties that an MDL judge has is to keep an eye on
13 the work as it's being processed, both from the defendant and the
14 plaintiff standpoint. Particularly duty some to look at the
15 plaintiffs because the court has input and must approve any fees or
16 disbursements. So I do that by basing it on information. I need
17 information.

18 And so I've asked the plaintiff liaison to deal with this
19 particular problem and come up with some way of handling it. I'll
20 ask them to comment on it at this time.

21 MR. HERMAN: Your Honor, we have endeavored to interview
22 certified public accountants familiar with this activity who are not
23 employed as accountants for our firm or any firm that has submitted
24 a PSC application. We will at your Honor's convenience have that
25 CPA meet with your Honor so that your Honor can direct the CPA as to

1 the form and type of substance your Honor requires.

2 THE COURT: These are my initial, this is my initial
3 thoughts on it. I would like to see the forms generally on a two
4 month basis. I would like to see time, as well as expenditures from
5 the plaintiff committee members. I will treat that confidential, I
6 will put that under seal, I will not disclose that to the defendant.
7 I feel that that's a plaintiff work product and, therefore, it's
8 privileged and they have a right not to disclose it.

9 They will disclose it to the court, but only to the court.
10 It will help me in keeping up with who is doing what and when I get
11 to the point of having, if it gets to that point, if I am called
12 upon to look at fees or costs I will be able to intelligently make
13 those decisions. But I will meet with the accountants and discuss
14 that further with them.

15 MR. HERMAN: There is one comment, if your Honor would
16 permit. There are an extraordinary number of experienced and
17 talented firms who thus far have sent in applications for PSC, and
18 as liaison counsel I am advised there will be a number more. It's
19 anticipated that liaison counsel will recommend to the PSC in
20 accordance with Complex Manual 4 and 3 that committees will be
21 formed subject to the PSC for common benefit work, and that they,
22 too, would submit but that they would have to be authorized by the
23 PSC. This seems to have worked well in MDL-1355 and I am hopeful
24 that the PSC in this case will do that.

25 We are going to, at least in this lawyer's judgment, need

1 every bit of talent and experience that we can muster against these
2 formidable firms.

3 THE COURT: The way that I see it is that the Plaintiff
4 Steering Committee is going to have to be a manageable number. No
5 disrespect to anyone who is not on the Plaintiff Steering Committee.
6 I know that there will be a lot of talented people who are not on
7 the plaintiffs committee, and that doesn't mean that they are not
8 talented, it doesn't mean that they're not first rate. There are
9 other aspects to the committee that the court will consider, and so
10 everybody will not be on it.

11 But that doesn't mean that they will not have the
12 opportunity to do the work. I would encourage the plaintiffs'
13 committee to utilize any person who is interested in working and
14 that person will also be accounted for in time and effort and that
15 will help me making any decisions, if I am called upon or if it is
16 necessary for me to make those decisions at the termination of the
17 litigation.

18 So I do encourage the use of committees. That does not
19 mean that the Plaintiff Steering Committee will be shirking
20 responsibility. They will have the ultimate responsibility.

21 And also I will be interested in a state committee. I do
22 feel that it's helpful for a state, for all of the cases in the
23 states to at least know what's going on here; and so I would invite
24 them eventually to give me some liaison with the states so that a
25 person or persons can participate in these meetings, such as we're

1 having here, and to report on any problems that their state cases
2 are having so that the court can be aware of them. And if I can
3 assist them in any way I will do so.

4 The next item is Position Papers. I have received
5 position papers from a number of people in addition to the Plaintiff
6 Liaison Counsel.

7 MR. HERMAN: May it please the court, on behalf of the
8 plaintiffs, I want to particularly thank Mr. Seeger, Mr. Birchfield
9 and Mr. Davis who have participated in the submission of position
10 papers. As Plaintiff Liaison Counsel, we would like to reserve the
11 right when the PSC is formulated for the PSC to supplement the
12 position paper in the event that the PSC feels it's necessary.

13 There has been on-going litigation in cases in California,
14 New Jersey, New York, Texas, Alabama, as Mr. Wittmann indicated.
15 And once the PSC is formed, there may be positions that we need to
16 alert the court to and defense counsel which have not been
17 heretofore expressed.

18 THE COURT: I don't have any problem with either one of
19 you all supplementing. It's helpful to me, I need to know all of
20 the aspects of the litigation. I look to you to educate me. If I
21 need any information, I will conduct a seminar and have your experts
22 talk to me about it. I need to know what's going on in the cases to
23 at least make some intelligent judgments, and I will do that.

24 The next item is the Third-party Payor Claims.

25 MR. HERMAN: Your Honor has described the third-party

1 payor claims as distinct, some are tort claims, third-party payor
2 claims are actually tort claims, and then the consumer claims.

3 THE COURT: And there are some third party consumer
4 claims. There are some groups that have purchased in bulk and
5 expended money for Vioxx and they feel they have a claim based,
6 solely on the consumer laws, and so I recognize that that is also an
7 aspect of this case and I would like represented on the committee.

8 MR. HERMAN: I've been remiss, as I am sitting there
9 recall receiving at least one letter from a law firm indicating in
10 New England they had a RICO claim pending, which I assume is a tort
11 claim, not a consumer claim. But I am sure when that matter is
12 transferred down here, we can alert the court to it.

13 THE COURT: All right. On this matter, is there anybody
14 else in the audience which has any view of this, any comment that
15 they would like to make?

16 MR. HERMAN: I know that Mr. Dugan and Mr. Sobol called me
17 yesterday and came in and said they would like to address this
18 issue.

19 THE COURT: Okay. I don't mean to shut out anybody in the
20 audience from speaking, I just need it organized somewhat and that's
21 why I have a liaison counsel to at least spearhead it. I like
22 Athenian democracy, but it doesn't work if everybody talks at the
23 same time.

24 THE DEPUTY CLERK: Put your appearance on the record.

25 MR. DUGAN: James Dugan with the Dugan and Browne law firm

1 here in New Orleans. Good morning, your Honor. I would like to
2 first commend you on your appointment of liaison counsel of
3 Mr. Herman and Mr. Wittmann. If anybody can corral the lawyers out
4 there, it's these two gentlemen.

5 I was asked to report to you on the consumer and
6 third-party payor cases that are filed out there. According to my
7 knowledge, there are approximately 11 cases, all class actions,
8 filed around the country.

9 THE COURT: They're in 11 states?

10 MR. DUGAN: They're in about nine different states, your
11 Honor. Of those eleven, nine are in the federal system and two are
12 in state court in New Jersey. Seven out of the eleven are filed on
13 behalf of third-party payors only, two on behalf of consumers only,
14 and two are filed on behalf of consumers and third-party payors.

15 There are three cases filed in front of your Honor here in
16 the Eastern District of Louisiana, which I have filed. One on
17 behalf of third-party payors only, which was originally filed in New
18 York, has been transferred to your Honor by way of the judicial
19 panel's initial transfer order. There are approximately five other
20 in the federal system that should be making their way to your Honor
21 in the very near future.

22 I have been organizing, along with Mr. Sobol, the lawyers
23 that have filed these types of cases, and I expect that there will
24 be several other lawsuits filed around the country. That's the
25 report on the cases.

1 In addition, Mr. Sobol had transmitted to your Honor an
2 additional agenda item that he would like to speak to.

3 THE COURT: That's fine. Okay, Mr. Sobol.

4 MR. DUGAN: Thank you, your Honor.

5 THE COURT: Thank you very much.

6 MR. SOBOL: Good morning, your Honor.

7 THE COURT: Good morning, Mr. Sobol.

8 MR. SOBOL: May it please the court, Tom Sobol, Hagens
9 Berman Sobol and Shapiro. I will be brief because you've already
10 addressed the essential issue which we wanted to make sure that the
11 court was aware of, which was fundamental difference between these
12 two kind of cases and the court has addressed that.

13 And I also just want to say, although I am standing before
14 the court, there are quite capable other counsel that could have
15 been making this presentation and that kind of thing, as well as my
16 colleagues Mr. Landon and Ms. Hart who are behind me.

17 I want to address, I think then your comments are raised
18 what I would just suggest are two issues that we might at least want
19 to flag. The first is this. Your Honor contemplates a single
20 Plaintiff Steering Committee. Obviously then the members of the
21 steering committee, some constituents will be on the, what I will
22 call, if you will, the mass tort side and others will be on the
23 consumer side. Either the committee itself will have to organize
24 itself as to how it handles that, either with or without the
25 direction of the court. But that's something that would perhaps be

1 nice to have at least in some way in place by the next time that
2 counsel are before you.

3 The second thing that I want to address to you, your
4 Honor, is you obviously noticed from the submission that my firm and
5 other counsel made, we laid out, we were optimistic like Mr. Herman
6 we set out a schedule, of course we haven't had an opportunity to
7 review it with defense counsel. It's not clear to me whether there
8 will be enough time, hopefully there will, between the time that you
9 form the Plaintiff Steering Committee and the time that we have the
10 next meeting here whether at least members from the group that I
11 work with, the consumer claims, as you've called it, will have time
12 to confer with defense counsel to see whether they can, we can make
13 a joint recommendation on scheduling aspects of that claim or not.
14 Obviously it would be expeditious in the interest of justice if we
15 did have that amount of time. Those are the only two comments I
16 want to make.

17 THE COURT: I will be responsive to that. I am aware of
18 the differences, I am aware of the problems, and I will make an
19 effort to do that. And I can always supplement case management
20 orders to take that into consideration. So I am aware of that and I
21 appreciate the submission you made. It was helpful to me.

22 MR. SOBOL: Thank you, your Honor.

23 MR. HERMAN: I have a question, your Honor. Go ahead,
24 Phil, excuse me.

25 MR. WITTMANN: Just a few comments on the consumer

1 actions, Judge. These cases seek basically compensation or refund
2 of money expended in purchasing Vioxx. Really the third-party
3 claims and consumer claims are essentially seeking the same type of
4 recovery. And I think it's important that the third-party payor
5 cases be coordinated closely with the economic loss claims because
6 we have other class actions asserting this economic loss. So that
7 certainly needs to be done as Mr. Dugan and Mr. Sobol pointed out.

8 But I am concerned that the basic discovery in those cases
9 is going to overlap with the other cases that will be going forward.

10 THE COURT: I understand that. And we are not going to
11 have double discovery. The areas that are overlapping, the people
12 have to recognize that one discovery is fine. But there are some
13 areas that may not overlap and that's where I think some discovery
14 and some attention needs to be placed.

15 MR. WITTMANN: We've thought about this a lot. We would
16 propose to the court and to Mr. Herman that the better approach
17 would be to have the third-party payors and the economic class
18 people have a spot on the Plaintiffs Steering Committee, but that
19 there be one steering committee rather than separate steering
20 committees.

21 THE COURT: There is no question about that. I am making
22 one steering committee, I will make them have a representation on
23 it. But I need to have something that's manageable. That doesn't
24 mean that there are not going to be other people working, but I need
25 a manageable committee that I can meet with in one room and not this

1 type of room.

2 MR. WITTMANN: Finally, Judge, on the defense side, we
3 will be working with the counsel for the other defendants. And to
4 the extent there is any difference in what they're presenting to the
5 court, we will coordinate closely with them and convey that to the
6 court. But we will stay on top of that situation.

7 THE COURT: My interest in all of the aspects, I want
8 plaintiff and defendant's counsel to meet before they come to me.
9 To meet and confer. I want them to legitimately look at a problem
10 and to see if they can find some commonality in that particular
11 problem.

12 Now, those of us who walk in these corridors whether the
13 plaintiff or defendant lawyer or judge, know that there are going to
14 be areas that you can't agree on, notwithstanding good faith
15 efforts. That's where I need to come in. But I don't need to come
16 in on areas that you folks can agree on.

17 Let me make this point, too. Most of the time, most of
18 the time a decision that you make that's agreeable to you is going
19 to be a better decision than the one that I impose on each side.
20 It's going to be better for you to see if you can agree on something
21 than for me to have to impose it. If I do, it's not going to be as
22 good or convenient of a decision as you yourself have been able to
23 make, but I can assure you that I have no reticence about imposing
24 decisions.

25 MR. WITTMANN: Thank you, Judge.

1 THE COURT: Thank you very much. One thing that I should
2 comment on, too, with regard to the class actions. I had not made a
3 decision as to whether I will handle class certification in all
4 class actions or whether I will send them back to the states. I
5 want to take a look at that. I can do either and I haven't made any
6 decision as to whether or not I will handle all of the
7 certifications applying the appropriate law, myself doing it either
8 in this courthouse or in the local courthouse, because an MDL judge
9 sits throughout the country and has the capacity to sit throughout
10 the country. So I haven't made that decision yet.

11 I saw someone standing up. Yes, sir.

12 MR. JOHNSON: Thank you, your Honor. My name is Dennis
13 Johnson, I am with Johnson and Perkinson in South Burlington,
14 Vermont.

15 THE COURT: Welcome to you, Mr. Johnson.

16 MR. JOHNSON: Thank you. I am one of the firms that also
17 made a submission to you.

18 THE COURT: Yes, and I appreciate your submission, I
19 noticed that.

20 MR. JOHNSON: I would also ask your Honor just to keep an
21 open mind to whether or not there may be separate groups within the
22 economic set of classes that may have differing claims and defenses.
23 In particular, states that may have consideration paid statutes,
24 whereby you are not seeking to demonstrate the amount of overpayment
25 that might have incurred as a result of the misrepresentation, but

1 rather simply need to prove deception in order to tap into the
2 statutory rights. Which may eliminate and may expedite a lot of the
3 discovery that might be necessary. If you look at the types of
4 discovery that Mr. Sobol set forth for an overpayment claim, many of
5 those things will simply be unnecessary in states that have
6 consideration paid statutes.

7 THE COURT: Which are most states, right?

8 MR. JOHNSON: Well, many of them do, many of them have
9 statutory rights to consideration pay, others have the right to
10 possible equitable relief. That creates differences between claims
11 and defenses. So we will address some of that in our papers seeking
12 a position, but I just wanted to ask your Honor to keep that in
13 mind.

14 THE COURT: I understand. I look upon that mostly as
15 damages as opposed to theories of liability. I see a difference in
16 damages and in each of the states there is some tweak on the damage
17 aspect depending upon who is pushing the law. But that's what
18 happens.

19 MR. JOHNSON: I agree with that. And with that in mind,
20 you will see that in my papers as well, Vermont is one of those
21 states that actually been termed the fourth category of consumer
22 fraud having probably the most liberal statute out there. Thank
23 you, your Honor.

24 THE COURT: Thank you very much. I thought I someone.

25 MS. HART: Your Honor, Barbara Hart with Goddkind Labaton.

1 THE COURT: Welcome to you.

2 MS. HART: I'm well, your Honor. Defense counsel has
3 suggested that it might be appropriate to have one position on the
4 Plaintiff Steering Committee for economic injury cases, and I would
5 just beg to differ as to whether that is the correct composition.
6 Actually, you have not only the consumers but then a panoply of
7 third-party payors ranging from the private insurers to the union
8 benefit funds and also self-insured government entities such as
9 counties and various cities across the nation.

10 So there may be the need to have, I tend not to agree that
11 the legal theories are different but you do have plaintiffs that
12 have different voices that should be represented at that committee.

13 THE COURT: I understand that. And also I would say that
14 it's not inconsistent with what we've been talking about to have
15 people who are not on the committee at least doing some of the work
16 and coordinating it. So I would expect that whoever or however many
17 there are on the committee represent that aspect of the case, I
18 don't think those individuals are going to be the only ones who
19 work. I would expect those individuals to coordinate the work
20 throughout the states with other people and also to keep me
21 up-to-date on who is doing what.

22 MS. HART: Thank you, your Honor.

23 THE COURT: Thank you. Anyone else that would like to
24 address this point, or for that matter any other point?

25 MR. WITTMANN: Let me just rise to say that I never meant

1 to suggest a number of people from the consumer class being on the
2 Plaintiff Steering Committee. I do not have a dog in that hunt on
3 the Plaintiff Steering Committee and I would never even begin to
4 suggest who should be on that committee, your Honor.

5 THE COURT: I am interested in suggestions, but everybody
6 needs to know that it is my decision and not your decision. So I
7 respect your input, I look at it, I invite your input, but it will
8 be my decision and I will make it considering various factors. Yes,
9 sir.

10 MR. BECNEL: May it please the court. Good morning, your
11 Honor. I have some people that sent things to me unsolicited that I
12 do not represent that I told I would bring to the attention of the
13 court. One deals with an issue of remand, which I gave to your
14 clerk and I've given counsel a copy of it. And I think the issue is
15 self-explanatory as to how remands where cases are removed but then
16 there is a stay in place that they can't file the remand how that's
17 going to be handled. So I would like to make the court aware of
18 that.

19 Another person sent a submission and said he could not be
20 here because of illness in his family and so I think the court has
21 been served, and that is a Mr. Zonas, Z-O-N-A-S, who submitted
22 something to you. The young lady who submitted something is a
23 Sherry L. Tarr, T-A-R-R, by letter, which she gave to me yesterday
24 in New York. So I brought it to the court's attention.

25 THE COURT: Thank you very much.

1 MR. BECNEL: Two other things I would ask in reference to
2 class certification I sent to Mr. Herman and others for
3 consideration because of Louisiana peculiar statute that you have to
4 file within 90 days a motion for class cert. He's held it in
5 abeyance pending some decision by this court of how it is to be
6 handled. I would like to ask the court to waive that 90 day
7 requirement until the court decides it wants those motions filed.

8 The other thing I would ask the court to do in reference
9 to its future meetings here, we have been able to, as you can see
10 the number of lawyers that have come, to negotiate special rates at
11 the Windsor Court Hotel, the W and the Ritz-Carlton for people in
12 the \$200 range as opposed to their usual three or \$400. And the
13 general managers of those hotels had asked if they could reserve
14 those rooms in advance if the court could give us some lead time
15 because many times there is conventions and people are scrambling.
16 I had literally 15 or 20 people calling trying to find out where
17 they could stay, and if the court could do that with some advance
18 schedule five, six months in advance of when it wants to meet and
19 how many rooms we can reserve. Thank you, your Honor.

20 THE COURT: Thank you very much. Anything else?

21 MR. HERMAN: If there is no other comment from any
22 attorneys, I have several matters, your Honor.

23 First of all, does your Honor wish to have those folks
24 that want to apply for a state liaison committee submit papers by
25 the March 28th date? And the folks that have consumer claims who

1 haven't submitted any papers submit papers, or would your Honor --

2 THE COURT: The latter for certain, I need the people from
3 the consumer claims or anyone else who is interested in submitting,
4 wishing to be on the Plaintiff Steering Committee to give me the
5 information. Those of you who have done it, fine. If you haven't,
6 you have an opportunity to do it until that period of time.

7 With regard to the state liaison, I will talk with you
8 about that at the next meeting. I don't need that before. My first
9 responsibility and obligation is to this case. But I also feel that
10 if I can be of service to the state cases, I want to be able to do
11 that and have them have access to it.

12 I think it's best for this MDL, too, that we have some
13 coordinated effort so it helps the MDL by coordinating states. But
14 I will get to that after I've taken care of the housekeeping aspects
15 of the MDL before me.

16 MR. HERMAN: Thank you, Judge. There is one other issue I
17 know that the court's aware of the cases which have MDL which have
18 both a Pfizer Celebrex drug and a Merck Vioxx drug alleged to have
19 been prescribed or taken by a single claimant and that there is a
20 severance issue out there. I don't know whether your Honor has made
21 a recommendation yet or not, but I did want to call it to the
22 court's attention.

23 THE COURT: Yes, sir. There is a severance, those cases
24 are going to New York, I will be severing those and sending them
25 along at the appropriate time.

1 MR. HERMAN: Your Honor, as one of the most important
2 piece of business before this court, and I know Mr. Wittmann joins
3 me in this. We want to thank Loretta Whyte, the honorable clerk,
4 and her staff and your staff for a very large burden that recently
5 has been put on them with all of the transfers, et cetera. And as
6 usual, they have done a wonderful job.

7 THE COURT: I will second that. We have an outstanding
8 clerk's office and they've been working overtime and helping me
9 greatly in getting a handle on this particular case.

10 MR. HERMAN: I have one last short comment. Your Honor
11 mentioned Athenian democracy. In Pericles funeral oration, he said:
12 "We differ from other states in regarding the person who holds aloof
13 from public life not as merely as quiet but as useless; and we
14 discuss all matters of state, carefully and in person, holding not
15 that words and deeds go ill together, but that an act is foredoomed
16 to failure when undertaken undiscussed."

17 To that end, I can commit your Honor that the PSC will
18 have very vocal internal discussions, and we will have discussions
19 with defense counsel also.

20 THE COURT: That's fine. The next meeting will be April
21 the 28th, April the 28th at nine o'clock.

22 Anything from anybody that I haven't covered, anything you
23 would like me to cover, anything you would like me to talk about?

24 MR. BECNEL: Judge, those people, if I may stand here and
25 not take time, that have submitted applications without the

1 knowledge of what you wanted in terms of different aspects, should
2 they resubmit? And some people I've noticed have done single
3 spaced, others have double spaced. What is the court's pleasure?

4 THE COURT: My pleasure is double spaced. I have enough
5 to read folks and I am trying to do the best I can with it. So give
6 me something that I can look at.

7 I know most of the people that I have gotten applications
8 from. I am not a stranger to them, I know them. So you don't have
9 to tell me about yourself in as much detail as you would somebody
10 who is from another planet. Keep that in mind.

11 But I don't need a letter from everybody, but if there is
12 somebody who is focussing on specifically on the consumer cases that
13 is not presently discoverable in the material that you've sent,
14 you've got to know that I will read it. So if it's in there, I
15 don't need another letter telling me in paragraph 6 I said such and
16 such. I will read paragraph 6.

17 But if there is something there that you feel that you
18 haven't said, this is where my peak interest is, bring it to my
19 attention with a short two line letter. I don't need anything more
20 extensive than that.

21 Finally, I take the opportunity to express my appreciation
22 to all of the lawyers who are present here today, and I look upon
23 these cases as workable only because of the high caliber of lawyers
24 who handle this particular case. I look to you for suggestions and
25 I expect you, as you've always done, to handle yourself in a very

1 professional way.

2 We have an opportunity in this case, as in other cases, to
3 make our society proud of lawyers. We have a long tradition in our
4 profession of helping our country in times of adversity, and I know
5 that whoever participates in this litigation will rise to that
6 challenge and will handle themselves in an appropriate professional
7 way.

8 So I thank you for being here, I thank those of you who
9 have given me written suggestions, and I thank those who have spoken
10 here today. The court will stand in recess.

11 THE DEPUTY CLERK: Everyone rise.

12 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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15 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.

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Karen A. Ibos, CCR, RPR

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Official Court Reporter

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