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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS
LIABILITY LITIGATION

MDL DOCKET NO. 1657 "L"
NEW ORLEANS, LOUISIANA
FEBRUARY 21, 2008, 9:00 A.M.

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

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1 P-R-O-C-E-E-D-I-N-G-S

2 THURSDAY, FEBRUARY 21, 2008

3 M O R N I N G S E S S I O N

4 (IN OPEN COURT)

5
6
7 THE DEPUTY CLERK: Everyone rise.

8 THE COURT: Be seated, please. Good morning, ladies and
9 gentlemen.

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

11 THE COURT: Would counsel make their appearance for the
12 record, please.

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

15 MR. HERMAN: Good morning, Your Honor, Russ Herman
16 representing plaintiffs.

17 THE COURT: This is our monthly status conference. I
18 met with the committees in advance of the meeting to discuss the
19 order in which we would take the items today. The first item is
20 the settlement agreement. Do we have any reports on the
21 settlement agreement?

22 MR. HERMAN: Yes, we do, Your Honor. Mr. Birchfield is
23 going to make a report.

24 MR. BIRCHFIELD: Good morning, Your Honor. I want to
25 give a report on where we stand. Orran Brown is going to report

1 for BrownGreer, and he will give us specific numbers. But I want
2 to focus our attention for a few moments on the enrollment
3 process. Over the course of the last few weeks, we have, we have
4 been talking with a number of firms that represent a larger
5 number of clients to see, to get a feel for where everybody is in
6 the process of getting their enrollment forms in.

7 And the response that we have got is very
8 encouraging, from firms that have a large number of clients to
9 firms that represent, you know, one or even a small number,
10 everyone is engaged. They are in the process of getting their
11 enrollment materials in and submitted to BrownGreer.

12 And although Orran will give the numbers in a few
13 minutes, we have seen the numbers of enrollment forms and the
14 releases increasing on a daily basis. So we're very encouraged
15 where we stand overall in this process.

16 One of the things --

17 THE COURT: Let me ask you first, as we understand it,
18 there are two steps. One is the registration step, and how many
19 people have registered?

20 MR. BIRCHFIELD: Just over 58,000 have registered,
21 and --

22 THE COURT: Registered simply means that they have a
23 case or they feel they have a case. It doesn't bind them to
24 anything. The enrollment is when they buy into the program?

25 MR. BIRCHFIELD: That's right. As Your Honor has

1 described it, the registration process is akin to a census, and
2 anyone that had a case that was filed or told at the time of the
3 settlement announcement, under court order to register those
4 claims, to identify those claims and identify whether it was an
5 alleged heart attack claim, an alleged stroke claim or some other
6 injury. But there was no commitment as to whether or not you
7 would be engaged in the settlement program or not. It was just a
8 registration or a census.

9 That was the deadline for January 15th. We have now
10 moved from the registration process to the enrollment process.
11 And the enrollment process entails two steps essentially: One,
12 you must enroll, an enrollment form must be completed identifying
13 the client name and information about the client and committing
14 to being a participant in the settlement program, to go through
15 the process. And that's where we are now. That's the first step
16 is submitting an enrollment form.

17 The second step, which is typically done all together,
18 is submitting the exhibits or the paperwork with that, which
19 would include a release that is signed by the client, and medical
20 authorizations and an employment authorization form for those
21 that would participate in the extraordinary injury fund.

22 As we have, members of the negotiating plaintiffs'
23 committee have reached out to talk to firms and see where they
24 are in the process, we have learned that they are making
25 tremendous progress but we have also learned that with a small

1 percentage, there are difficulties in actually getting the
2 paperwork back from the clients. And that arises in a number of
3 situations.

4 Sometimes there is difficulty in the mail, clients have
5 moved. There are also situations where it's received, the
6 release is received by the law firm, but it's been signed in the
7 wrong place or not properly notarized. And so sending those back
8 and getting the clients, we have learned that there is a need for
9 additional time to actually get the paperwork submitted.

10 And so we have worked with Marvin and Merck, and we
11 have arrived at an accommodation. And that accommodation is that
12 the enrollment deadline will remain intact. It is February 29th
13 in order to be eligible for an interim payment. And that
14 deadline, February 29th, to enroll a client remains in place.
15 But we are going to provide an accommodation, a 30-day grace
16 period to actually submit the paperwork, the release form and the
17 medical authorization forms.

18 So what that means now is that a lawyer or law firm is
19 to complete the enrollment form for any client that is choosing
20 to participate in the settlement program, there must be an
21 enrollment form completed.

22 And last week, BrownGreer launched an online enrollment
23 process to make that much more efficient and an easier process.
24 So a law firm would identify the clients that they wish to enroll
25 in the settlement program, and they would complete an enrollment

1 form listing all of the clients that are going to be
2 participating in the settlement program.

3 That step must be completed by February 29th. But if
4 the release is not actually received, then the law firm and the
5 client have a 30-day grace period, 30 additional days to actually
6 submit that paperwork.

7 So we want to, I want to thank Doug Marvin and Merck
8 for that accommodation. We know that it will help for the small
9 percentage of clients that are, that need the additional time to
10 get that paperwork in.

11 Thank you, Your Honor.

12 THE COURT: Any report from Orran?

13 MR. BIRCHFIELD: At this time, Orran, do you want to
14 step up and BrownGreer will make their report, Your Honor, on
15 registration of claims. I might add that all of the pretrial
16 orders that Your Honor has initiated since November 9, 2007,
17 pretrial orders 28 through 34 are not only noted in the status
18 report but are also noted on the Court's website.

19 We also, for the record, ask Mr. Brown to please, if he
20 would, even though it's in the status report again, give the
21 website for those who choose to access the website on
22 registration enrollment.

23 MR. BROWN: Good morning, Your Honor, Orran Brown from
24 BrownGreer in Richmond and we're the claims administrators. With
25 me today is Lynn Greer. We have a lot of activity going on right

1 now at the claims administrator office, including working with
2 the parties regularly for each step of the program. We have met
3 with Special Master Juneau and we're starting that process to
4 work together and make his function be ready to go when it's
5 needed. We work with a lien administrator for the lien
6 administration aspect of the program, which the Court will hear
7 more about this morning as well. We're starting the process to
8 be ready to receive claims packages and review claims. We
9 already have about 120 claims packages, which is the next step in
10 the program beyond today.

11 But the main focus of the day, as the Court and
12 Mr. Birchfield have already mentioned, is the tail end of the
13 registration phase and the enrollment phase, which we and the
14 parties are in right now.

15 After the January 15th registration period, the
16 enrollment phase really began in earnest. We are still receiving
17 some registration materials, and parties are still submitting
18 them and we're still taking those. And as Mr. Birchfield
19 reported, we're over about 58,000 claimants who were counted in
20 that census phase of the program. And now we are in the point
21 where we are receiving from primary counsel and from
22 unrepresented claimants the documents that Mr. Birchfield
23 described that are necessary for a claimant to really be enrolled
24 in the program, including the release and stipulation of
25 dismissal, medical authorization forms. There are about six

1 documents that are required of a claimant to be enrolled. If you
2 want to seek the extraordinary injury payment, you also submit an
3 authorization for release of employment records. And there is a
4 claimant spreadsheet that was used in the registration phase in
5 which --

6 THE COURT: Do you want to put that up on the overhead?
7 You've got, you have it here, if you could project it, it would
8 probably be helpful.

9 MR. BROWN: Yes, Your Honor. I could certainly do that.
10 Is this good enough, Your Honor?

11 THE COURT: Yes, that's fine.

12 MR. BROWN: This is a list of the documents that a firm
13 has to submit to us for each claimant to be enrolled. And with
14 some indication as well as where they are coming from. The
15 enrollment form itself, as Mr. Birchfield described, is a form
16 that a firm fills out, maybe for one or more claimants to say,
17 I'm enrolling these people. And that was supposed to, under the
18 program, come in with the claimant's spreadsheet, which is the
19 same spreadsheet used in the registration phase where you had to
20 answer about five more questions per claimant to say, I am now
21 enrolling this claimant.

22 The other documents Mr. Birchfield mentioned, the
23 release form itself, signed by the claimant, the stipulation of
24 dismissal, signed by counsel, if you have a pending lawsuit, this
25 medical authorization form is required of every claimant to be

1 submitted for enrollment. This employment authorization is
2 required if you're seeking the extraordinary injury payment part
3 of the program.

4 And then once a firm is finished, it's supposed to send
5 us a certification of final enrollment saying, I have enrolled
6 everyone that I have who will enroll.

7 This also tells us where these documents come from.
8 These firms can enroll online. And I'd like to describe that in
9 a little more detail in a moment. But we also provide the
10 claimants, the counsel the claimant's spreadsheet that's been
11 reconfigured and we send it back to them. They can use that
12 spreadsheet. The release itself they get from us with a barcode
13 on it that is unique to the claimant, which makes the processing
14 come back to us a lot faster.

15 The stipulation of dismissal is a form that firms
16 download from the settlement website, and our website is
17 browngreer.com/vioxxsettlement, and, available to everyone
18 publically.

19 And each firm also has its own unique website portal
20 with a unique user ID we issue to them so they can obtain all
21 this information from us.

22 But these are where the documents come from. And these
23 are how they are supposed to send them back to us in hard copy or
24 an Excel spreadsheet or online enrollment. These are hard
25 copies. Some of these they can send in electronic PDF. But this

1 is the material that we're now getting back from firms.

2 THE COURT: Before you take that, Andy, what document do
3 you need by the 28th and which ones are you giving 30 days for?

4 MR. BIRCHFIELD: The enrollment form, Your Honor,
5 number 1. That is the form that is completed online that Orran
6 is going to go through in detail a few minutes.

7 THE COURT: And you need that by the 28th?

8 MR. BIRCHFIELD: By the 29th.

9 THE COURT: The 29th of February. The rest you're
10 giving 30 days to obtain?

11 MR. BIRCHFIELD: Yes, sir. You can either enroll by
12 completing the enrollment form, and that is the preferred method.
13 That's the most efficient way of doing it, or you can enroll a
14 client by completing the claimant spreadsheet. But those first
15 two, the first two items are the options that are available to
16 actually enroll the client. And then the paperwork, the release,
17 stipulation of dismissal, medical authorization, and employment
18 authorization can follow within the 30-day grace period.

19 THE COURT: Thank you.

20 MR. BROWN: Your Honor, let me show you the online
21 enrollment method, because the idea that we've had in working
22 with the parties to make this possible is that counsel can go
23 online to their secure website and -- that's not very visible
24 because it's too small.

25 Your Honor, we're using the button that says "zoom" so

1 we assume that's the right button.

2 The accommodation that Mr. Birchfield mentioned will
3 allow firms to submit claimants for enrollment by sending us an
4 enrollment form which is a two-page document with a list of their
5 claimants. And that's what they are now, will be required to get
6 to us by February 29th with the rest of those materials trailing
7 behind until March 30th.

8 And this is the system we created to make this happen
9 for law firms easier, because they can go to their website
10 portal. This a firm's website portal, and once a firm signs on
11 with their secure password, they get this home page which allows
12 them to then access a number of functions, including their
13 enrollment page.

14 And these are just artificial names that we made up;
15 it's nothing confidential up here. But a firm can then go to
16 this page and click on submitting claimants for enrollment. And
17 then they will get a screen that tells them the steps in that
18 process that they can follow online to just tell us who it is
19 they would like to submit for enrollment that day.

20 And if they hit "next" here, they will go to a screen
21 that lists all their clients. Again, these are artificial names.
22 They are not real people. But at this stage, the firm can pick
23 from this pick list and select them all, and this will list all
24 of their clients that have not yet been submitted for enrollment
25 previously in alphabetical order with a claim number that we

1 assign to them here. And it allows them to pick all of their
2 claimants, select them all or select individual ones and allows
3 the firm very quickly to answer the questions here that you would
4 otherwise be answering in this claimant's spreadsheet. And what
5 we have heard from firms is that a lot of firms, because some of
6 them have these spreadsheets that have hundreds or even thousands
7 or more people in them were waiting until they had everybody
8 ready in the spreadsheet. Rather than to have to send that
9 entire thing more than once with answers for a few people, they
10 were waiting until the end of the process. And we have been
11 encouraging firms to send us the materials as they are ready.
12 Send us the paperwork as they get them ready. We would like to
13 process them immediately.

14 And this system allows a firm not to have to use the
15 big entire spreadsheet to enroll persons, but instead they can
16 pick them online this way whenever they are ready to say, This
17 person wants to be enrolled. And skip the spreadsheet step. And
18 this allows them to do it now instead of waiting until the end to
19 get their entire spreadsheet ready.

20 And once they pick these people and answer these
21 questions, which would be the ones required in the spreadsheet,
22 they will then get the enrollment form.

23 This is the enrollment form which we're not going to
24 try to read on the screen, but it's the form that the settlement
25 agreement requires, and this is what would now be in by

1 February 29th, and this will print with the list of claimants
2 that they have now picked today to be enrolled, down here at the
3 bottom. And they agree to the form, they get a screen that tells
4 them they can print it, and it tells them where to send it to us.

5 And this step, we actually developed this with the
6 parties, started it February 14th, late in the day, and in the
7 essentially three or four business days that occurred since then,
8 between then and yesterday, we had about 135 firms who had
9 already used this for over 5,200 people to send them in for
10 enrollment this way in the online enrollment method.

11 So this is the way we are encouraging firms now to list
12 the people to us that they would like to enroll. But already,
13 Your Honor, we are receiving the actual documents. We have been
14 receiving them in increasing volumes. Each day, we receive more
15 releases and stipulations and materials that are coming in and
16 processing them in our office to identify what we have.

17 And this right here, gives us some numbers. And the
18 reason this has some handwriting on it is that the numbers change
19 every minute, and we work into the night to be able to process
20 these. And when we printed this yesterday afternoon to bring it
21 down here, the numbers changed more last night.

22 What this means is that this number down here tells us
23 that we have heard from 183 firms already who have sent us some
24 of these materials, some of the paperwork. And those firms in
25 the census part of the program submitted claimant spreadsheets

1 that listed over 30,000 now people. It was 29,000-plus yesterday
2 afternoon and this morning it's 30,041. So these people, these
3 firms that have already sent us some paperwork represent over
4 30,000 people, and they have sent us in something. They have
5 sent us in some of the papers that are necessary to complete the
6 entire enrollment package. And as of this morning, we have
7 gotten over 13,000 releases. Yesterday afternoon it was
8 12,000-plus. We've gotten now 6,700-plus stipulations of
9 dismissal. We've gotten over 12,000 of these medical
10 authorization forms. And we've gotten 6,400-plus of the forms,
11 the employment records authorization forms.

12 So firms are really trying to do this, and we're
13 hearing from them and they are working on it and trying to get
14 their clients and reaching out to their clients to sign these
15 papers and send them in to us. And each day we are receiving
16 increasing amounts of them.

17 And this is very typical of a program like this, where
18 a lot of it is really back loaded. We receive the bulk of
19 submissions whenever the deadline is or clustered around the
20 deadline. And particularly in a situation like this where there
21 are a number of components and claimants sign some, lawyers sign
22 others, there is paperwork to put together in a package, we would
23 expect most of those to come in in the last few days of the
24 period.

25 THE COURT: What's the census from the standpoint of MI

1 and ischemia and strokes from the standpoint of, what are we
2 dealing with, how many are there that the 85 percent is going to
3 be figured on, do you know?

4 MR. BIRCHFIELD: Your Honor, it's 47,000, roughly
5 47,000. There is approximately 30,000 MI cases and 17,000 stroke
6 cases that have been registered.

7 THE COURT: And the 30,000 that have registered, those
8 are either stroke or MI?

9 MR. BIRCHFIELD: I think that includes, that would
10 include the others. I think that's the total number. The 30,000
11 represents the total number of cases that had been registered by
12 a firm that have submitted; is that correct?

13 MR. BROWN: That's right, Your Honor. The 30,000 is
14 everybody. I think that number right there, if you take out the
15 ones who in their registration spreadsheet put themselves in
16 other injury category, that number would fall, would be about 26,
17 27,000 people that you really expect to finally get these papers
18 from because those are the ones who have the qualifying injuries.

19 THE COURT: But 58,000 registered and now 30,000 has
20 enrolled, have enrolled?

21 MR. BROWN: 30,000, 30,000 people represented by those
22 firms have sent us in something. The numbers across the bottom,
23 if you add them all up, these tell the people that have really
24 sent in the whole package, but we've had pieces of it coming in
25 from a lot of people. We've gotten over 39,000 documents of some

1 type. But what this tells us is that law firms representing
2 about 30,000 people, of whom about 26 or 27,000 said they had
3 qualifying injuries, have already sent us in some of their
4 materials and they are still working to fill them out.

5 There are only a few firms that have finished and those
6 are firms with lower numbers. So we've heard from these. We've
7 heard from a lot of firms who are waiting to send them in. As
8 they get them all ready, we encourage them to send them in as
9 they have them and not wait to send them.

10 We think this online enrollment step, which really
11 allows the firms to tell us who they want to enroll online, and
12 they have to do that by the 29th now, that that will make that
13 step easier and all the paperwork will come in now and behind
14 that.

15 Your Honor, I think that pretty much covers our report.
16 Do you have any other questions for us?

17 THE COURT: No, I have nothing.

18 MR. MARVIN: Your Honor, Douglas Marvin for Merck. I
19 want to echo Mr. Birchfield's comments. We really are very
20 encouraged by the number of enrollments received so far. It
21 really is what we were anticipating. We know that firms are
22 working toward the deadline of February 29th, and that's still a
23 week away.

24 And if the registration is any guide, we know that more
25 than 20,000 registered in the last 24 to 48 hours before that

1 deadline. So we're expecting some of the same results here.

2 And it's also very encouraging that now that we have
3 gone to the online process, where we had 5,000 enrolled in a
4 matter of three or four days, that also is making it much more
5 efficient.

6 As Mr. Birchfield said, we do appreciate, because we've
7 heard from firms as well, that in getting some of the backup
8 documentation collected, compiled, processed, and submitted
9 requires a little bit of additional time, and that's why we
10 agreed to the grace period for the additional backup
11 documentation.

12 But on the whole, Your Honor, we fully expect to meet
13 the thresholds and, in fact, we expect to exceed those
14 thresholds.

15 THE COURT: We've covered the first and second item on
16 the agenda, registration. The next item is lien administrator.

17 MR. HERMAN: Yes, Your Honor, and Mr. Garretson is here
18 to make a report.

19 THE COURT: As I mentioned before, one of the
20 complications in a case of this sort is that there are oftentimes
21 a number of liens, medical liens, and so forth involving the
22 census of the people. I think in this particular litigation, it
23 probably is more so because the type of medicine that we're
24 dealing with was traditionally given for musculoskeletal
25 problems, and those individuals with those problems generally

1 tend to be a little older in the population, and therefore, they
2 qualify for Medicare, Medicaid, things of that sort. So we now
3 have to deal with the reality of liens. I'll hear from the
4 person in charge of handling liens.

5 MR. GARRETSON: Matthew Garretson. As I shared with the
6 Court at our last status conference, we had been preparing
7 claimant educational materials. Those were completed, they were
8 sent to all the plaintiff attorneys and plaintiffs' attorneys by
9 the claims administrator BrownGreer with instructions for them to
10 be distributed to all of the enrolling claimants. So those, by
11 now, should be in the hands of all of the claimants.

12 And essentially, Your Honor, those explain to the
13 enrolling claimants the formalized process, and that is being
14 utilized to address these Medicaid, Medicare and other
15 governmental healthcare problems.

16 BrownGreer also worked with us to incorporate a page on
17 the Vioxx web portal that allows plaintiffs' counsel to
18 seamlessly enter the governmental lien information that we might
19 need to complete our assignment.

20 We have also recently sent out correspondence to all
21 the plaintiffs' counsel through the claims administrator just
22 making sure that they know this process of responding to our
23 needs on the lien resolution front should not in any way
24 interfere with their efforts to get their clients enrolled and
25 get the appropriate documentation in.

1 Your Honor, also at the last status conference, you
2 signed a qualified protective order that allows us to verify the
3 Medicare, Medicaid and other governmental entitlement with 54
4 federal and state agencies, and I will report briefly on that.

5 With respect to Medicare, we're very pleased. Medicare
6 has been very cooperative. We'll have inside the month of
7 February all the information we need to determine who is, in
8 fact, entitled to Medicare. And I expect that actually as early
9 as next week.

10 We've had multiple discussions with officials at the
11 Medicare secondary payor program about a mutually agreeable
12 methodology that allow us to establish what we call an initial
13 global resolution holdback. And, Your Honor, this would be the
14 amount of money, the maximum amount of money that Medicare would
15 require us to set aside for their interests to be satisfied with
16 them.

17 That, therefore, would serve really as a high water
18 mark and as we learn more working with the parties, working with
19 the claims administrators and the special masters about the
20 points finally awarded to those who are entitled to Medicare,
21 we'll be able to refine that number down within that initial
22 global resolution holdback amounts.

23 With respect to Medicaid, we have received entitlement
24 information back from states and territories for about 4,000 of
25 the claimants to date. The entitlement rate of Medicaid for

1 these enrolled claimants is holding at about 34 percent, I
2 believe that's what I informed the Court I thought it would be at
3 our last status conference.

4 We're doing some very good work with the centers for
5 Medicare and Medicaid state operations. That's the federal side
6 of the Medicaid program, the liaison between the federal and
7 state agencies, as well as leaders from the state Medicaid
8 third-party liability subcommittees.

9 Specifically what we've done, Your Honor, is we've
10 introduced to them what we believe are recommended voluntary
11 protocols that would allow us to satisfy Medicaid's interests in
12 a very cost-effective uniform and nationwide basis that would
13 serve public policy here.

14 Essentially, what those processes and procedures are is
15 we've asked them to agree to a holdback, and that holdback would
16 serve on an individual basis as a maximum amount in which a lien
17 could be resolved. And of course, the value in having
18 established a holdback for these Medicaid-entitled claimants is
19 that they would know, they being the claimants, that no matter
20 what the size of the lien, it would not exceed a certain amount.

21 And then of course to the extent we resolve the lien,
22 which we would expect to resolve the vast majority, greater than
23 90 percent of these liens within that holdback amount, as we do
24 resolve those liens within the holdback amount, the balance would
25 of course be distributed to the claimant.

1 We've also asked for them to consider uniform
2 procurement offsets. And procurement is a term of art in the
3 lien resolution world which basically means that the states
4 should recognize a proportionate reduction in their interest
5 commiserate with the pro rata amount of attorney fees and
6 expenses, or I should say the proportion amount of attorney's
7 fees and case expenses being paid by the claimant.

8 Every state varies on the amount that they will do
9 that, but we've asked them to come together and find a uniform
10 approach.

11 Thirdly, we've asked them to agree on the
12 prioritization of recovery when we have beneficiaries that are
13 entitled to both Medicaid, Medicare and perhaps even military
14 benefits.

15 So with respect to Medicaid, Your Honor, we have very
16 good dialogue and we expect that those states that are willing to
17 voluntarily agree to those procedures will do so within the month
18 of March. So I'm very hopeful that at our next status conference
19 I'll be able to share with you those states that have agreed to
20 those procedures.

21 With respect to other governmental healthcare liens
22 such as Tricare, the Department of Defense and the VA, we've had
23 wonderful dialogue with the Department of Justice. They are
24 identifying the contacts, and I believe for the first time in any
25 aggregate mass tort settlement, we will find efficient ways to

1 deal with those military benefits in a manner that's similar to
2 Medicare and Medicaid.

3 The bottom line, discussions with all the governmental
4 healthcare agencies are proceeding. I believe we're ahead of
5 schedule in terms of the dialogue, and it's all very positive
6 momentum, Your Honor.

7 THE COURT: I appreciate your work, Matt. This is a
8 very important part of the process. One advantage of looking at
9 these cases globally in an MDL setting is that you can deal with
10 these liens in a global fashion.

11 There are claims in 50 states. We have cases
12 represented from the 50 states. In addition, there are 54
13 federal and state agencies to deal with, and their various liens.
14 When the cases can be grouped together in a global fashion,
15 oftentimes the claimants benefit from that packaging, and that's
16 what we're trying to do here, and I'm happy that it's working so
17 well. I appreciate all of your work.

18 MR. GARRETSON: Thank you, Your Honor.

19 MR. HERMAN: Your Honor, Special Master Juneau is here,
20 and Your Honor has issued certain orders.

21 THE COURT: I appointed Special Master Patrick A. Juneau
22 as a special master under terms of the settlement agreement. To
23 assist him as his deputy, I appointed Justice John Trotter, a
24 retired jurist from California, and Judge Marino Corodenus, a
25 retired jurist from the State of New Jersey, to be deputy

1 masters, to be of assistance to Special Master Juneau.

2 SPECIAL MASTER JUNEAU: Your Honor, very briefly. Just
3 to confirm, I have, in fact, met and coordinated with both
4 BrownGreer and with Mr. Garretson's firm. We're all in sync as
5 to what the policies and procedures would be. As a matter of
6 fact, we are already establishing forms and procedures that have
7 been used by the special masters in the discharge of their
8 duties, which would be coordinated and consistent through the
9 network established by the administrator. So we are ahead of the
10 learning curve in that regard.

11 I might also add, Your Honor, that we have scheduled in
12 March, the early part of March in this, through the consent of
13 your office, Your Honor, an orientation program we're going to
14 use to the special masters to be onboard. And that's done in
15 coordination with the defendants and the plaintiffs. We'll have
16 an orientation program that I'm familiar with because I've seen
17 that. But we're going to expand that through the good services
18 of BrownGreer to incorporate a lot more detail in that
19 orientation as to exactly the processes and the procedures. And
20 we'll even be talking about specific forms and details and access
21 to information and how that will be done.

22 THE COURT: Good, I'll meet with the three of you-all.

23 SPECIAL MASTER JUNEAU: Yes, sir. And that's all been
24 coordinated in that set and hopefully through today, through the
25 end of the business day today, we'll have firmed up the actual

1 involvement, participation of the deputy special masters in this
2 program that I've laid out for you.

3 I think insofar as policies and procedures, Your Honor,
4 a lot of the kickoff work insofar as the Special Master would be
5 concerned will actually take place at a later stage in maybe May
6 or June, but we're going to be ready to pull the trigger because
7 we're doing our work now to activate when that occurs, it will
8 occur on time, so it will put us on schedule with everything else
9 that has taken place. And that's pretty much it up to date,
10 Your Honor.

11 THE COURT: Thank you for your work, Mr. Juneau.

12 State court trial settings is the next thing on the
13 agenda.

14 SPECIAL MASTER JUNEAU: One other point, Mr. Herman
15 reminded me, I am including in the orientation program that's set
16 for March, Bob Johnson who is going to serve in the capacity as
17 court appointed to deal with pro se plaintiffs, I've already
18 coordinated and talked to Mr. Johnson and he will be and be a
19 participant in these discussions.

20 THE COURT: With regard to the pro se claimants, the
21 Court has been contacted by several of the pro se claimants, and
22 they have also contacted members of the PSC. The PLC lawyers
23 have conflicts in representing pro se claimants and so they are
24 not able to represent them or to give them advice. So I've
25 appointed a person to be available to answer questions posed by

1 the pro se claimants regarding the scope of the program and what
2 they have to do, and that person is attorney Bob Johnston.

3 MR. WITTMANN: Your Honor, the only state court trial
4 setting that we have to report on is the *Smith* case, which is set
5 for trial in West Virginia on May 19th.

6 THE COURT: Next item is class actions, anything on
7 that?

8 MR. WITTMANN: Subject to being corrected by Arnold, I
9 don't know of anything that we have on the class action front
10 before us.

11 THE COURT: The next item is discovery directed to
12 Merck.

13 MR. HERMAN: Your Honor, that particular discovery has
14 been stayed, and the FDA discovery has an exception noticed and
15 Your Honor's order is preceding.

16 THE COURT: The next item is discovery directed to third
17 parties.

18 MR. HERMAN: Your Honor, the FDA is the only ongoing
19 third-party discovery.

20 THE COURT: What happened with the ESI matter?

21 MR. HERMAN: Your Honor, it's been resolved. After
22 Your Honor convened representatives of ESI and representatives of
23 plaintiffs and defendants and Your Honor gave us guidelines, the
24 matter was successfully negotiated yesterday, and we'll be
25 providing the details for publication to the attorneys who have

1 clients who may be prescription benefit managers, ESI's
2 pharmaceutical reports.

3 THE COURT: I had a motion regarding ESI, so I'll deny
4 that motion as being moot.

5 MR. HERMAN: Yes, Your Honor.

6 THE COURT: The next item is deposition schedule.

7 MR. WITTMANN: Your Honor, some depositions that were
8 scheduled were rescheduled and are being negotiated right now for
9 new dates.

10 THE COURT: Next item is state/federal coordination.
11 Let me hear from the state liaison.

12 MS. BARRIOS: Good morning, Your Honor, Dawn Barrios for
13 the state liaison committee. If you might indulge me a
14 compliment from a private attorney to BrownGreer to let the Court
15 know how efficient they have been. Within the past 30 days, one
16 night about 10:00, I wrote to my assigned personal representative
17 there a whole list of questions my paralegals had put together
18 for me. When I got up the next morning and checked my e-mail
19 before 7:00 a.m., there were complete answers already given to
20 me. So I do thank them for that, and that is what I hear from
21 all the attorneys.

22 Having that personal liaison for the attorneys in the
23 office has gone, is a great step in the process.

24 THE COURT: The Court is aware of their good work, and
25 we look forward to working with them throughout this process. I

1 know they are doing a great job and I appreciate it.

2 MS. BARRIOS: Your Honor, my first item of business is
3 the statistics for the pending remands. I've given the parties
4 and your law clerk a document that gives the statistics, and your
5 MDL has 752 cases that are pending remand.

6 Your Honor, it dawned on me that most of these remands
7 will probably be taken off the docket because of the settlement,
8 and I realize how busy everybody is now with the enrollment date,
9 but I seek Your Honor's permission to, after the March date
10 settles down, allow me to communicate with BrownGreer what cases
11 I have appending and then we can really give you some valid
12 statistics on what you actually have in front of you after the
13 settlement.

14 THE COURT: Yes. I think that's the way to do it. I
15 think that after, as I will say now and later when we address
16 some other issues, but my thinking is that while I can put on
17 track the other matters now, I mean, immediately, I've been
18 resisting because I know that there is some overlap with counsel,
19 and I really would like counsel to focus on the enrollment
20 process and settlement and evaluation and making decisions
21 regarding their representation of each individual client as to
22 whether it's good for that particular client. Discussing matters
23 with each particular client, that can take some time. Rather
24 than having the lawyers distracted by doing other things, I
25 really have stayed everything, to give them an opportunity to

1 focus their attention solely on settlement program.

2 But when that's over, then I'm going to see what's
3 left, then we're going to have to deal with what's left, either
4 by remanding, either by trying, or by resolving any issues that
5 are outstanding, either by grouping and trying bellwether
6 matters. There are many ways of doing it, but at this point, I
7 really want everybody's attention to be focused on the settlement
8 project and program.

9 MS. BARRIOS: Yes, Your Honor, I am fully aware of the
10 segments, and I agree totally. My guesstimate is of the 750
11 approximate remands you have, at the end of the day after the
12 settlement program, you may be down to about 50 that you have to
13 deal with.

14 I've also provided Your Honor a spreadsheet updating
15 the one that I provided at the last status conference regarding
16 the consumer and third-party payor cases that are presently in
17 the MDL. I've been coordinating with the PSC and
18 Dorothy Wimberly from Merck's attorney on trying to give you a
19 sense of what economic cases are before you that are outside of
20 the settlement.

21 Thirdly, Your Honor, along the lines with the
22 state-federal coordination, I've been trying to gather
23 information on what state cases are out there that are driven by
24 an economic damage-only recovery. And the only, besides
25 New Jersey, Judge Higbee has several, we don't believe there are

1 any in the Texas MDL, and I'm trying to find out about the
2 California proceedings.

3 We're only aware of two state court cases. One is the
4 Texas Attorney General suit which Ms. Shelly Sanford is involved
5 with, and the other is a state court case in Indiana, *Donna*
6 *Cantor versus Merck*, and I've been in touch with the plaintiff's
7 counsel in that case and I'm getting the judge's name and contact
8 information for you on any possible coordination.

9 THE COURT: Okay. And that's key. When we get all of
10 that together, I would like to get the counsel involved and
11 determine what can be done from a global viewpoint. If I can
12 resolve any common issues, that's a benefit of the MDL. If I can
13 give you the opportunity to try some of the cases that would be
14 helpful in evaluating the matter globally, I'll do so. And then
15 when I'm finished with that, giving you a global look-see, then
16 I'll, if necessary, send them back to the places from which they
17 came.

18 That's one thing that's always difficult to deal with,
19 namely, remand. The cases are sent here, then they are followed
20 by motions to remand or accompanied with motions to remand. And
21 I have to make some decision as to whether or not to send them
22 back immediately or to give the people who are before me an
23 opportunity to at least participate to some extent in en globo
24 discovery and also to participate, if it's available, in the
25 global settlement.

1 I don't like to hold remand motions a long period of
2 time, but I got this case less than three years ago, and so with
3 the help of counsel and their diligence, we were able to resolve
4 it. I don't say that it's good to hold remands for six, seven,
5 ten years. That's too long. But a three-year or less period, I
6 think, would be a reasonable point. And while I've been a little
7 concerned about having the remands and having 700 remand motions
8 on my docket, I felt that the parties were getting some benefit,
9 some benefit out of the global discovery, some benefit out of the
10 global discussions. And so that's why I held them. And we'll
11 see what happens, how many of them are still viable, and then
12 I'll direct my attention to those.

13 MS. BARRIOS: Thank you, Your Honor.

14 THE COURT: Thank you for your help.

15 MR. HERMAN: May it please the Court, in the pro se
16 claimants. Recently liaison counsel handled the contacts and
17 approximately 340 pro se registered but a number of them had
18 substantive questions, and at that point we felt we would be a
19 conflict and the matter was referred to Your Honor and Your Honor
20 appointed Robert Johnson. Robert, I spoke with, he's going to be
21 meeting with us on March 4th to review the entire program, and I
22 believe it's tentatively scheduled that he would meet with
23 Mr. Juneau and the deputy special masters and the parties at
24 BrownGreer on March 5th. There are approximately, about 750 pro
25 se's who are still out there who need contact.

1 THE COURT: Merck motions. Anything?

2 MR. WITTMANN: Yes, Your Honor, I have indicated in the
3 joint status report there are several motions that are under
4 advisement of the Court, but there is nothing new to report on
5 those.

6 THE COURT: Issues related to pretrial order number 913?

7 MR. HERMAN: Your Honor, as a practical matter, it's
8 resolved. De bene esse depositions are going forward. The Texas
9 and California and New Jersey and New York attorneys who have
10 issues with cross-noticing now have agreed. We have had no
11 further issue come up really since December.

12 THE COURT: Vioxx statistics?

13 MR. WITTMANN: Yes, Your Honor, we have the December 31,
14 2007, statistics now. As of that date, Merck has been named as a
15 defendant in some 26,500 lawsuits, which included about 47,275
16 plaintiffs. Of that group, 9,025 of those suits representing
17 26,275 plaintiff groups as Merck classifies them, are slated to
18 be in the MDL. And approximately 15,575 lawsuits are in the New
19 Jersey coordinated proceeding.

20 There are more plaintiffs than there are lawsuits
21 because some of the lawsuits had multiple plaintiffs in the
22 caption, as Your Honor is aware.

23 In addition, there are approximately 13,230 claimants
24 who have entered tolling agreements with Merck and approximately
25 6,350 plaintiffs have had their suits dismissed as of

1 December 31st.

2 THE COURT: And the 13,000 are here in the MDL?

3 MR. WITTMANN: The 13,000 that have entered tolling
4 agreements are in.

5 THE COURT: So that's what, about 40,000 in the MDL?

6 MR. WITTMANN: Correct.

7 THE COURT: Motions to conduct case-specific discovery,
8 anything on that?

9 MR. HERMAN: Your Honor, the PSC withdraws its request
10 for the case-specific discovery and article 15 will not appear
11 with any narrative in the next report that we have in May.

12 With regard to the next item, item 16, Your Honor, the
13 PSC MDL trial package, as Your Honor is aware, the MI package is
14 complete, it's been viewed by the Court. We had a PSC conference
15 telephonically yesterday. I received a report from Levin,
16 Pat Antonio, Pete Kaufman that we are awaiting two expert
17 reports, and as soon as they are received, that package will be
18 complete. I expect to notify Your Honor and have the outline of
19 that report and a presentation in camera to the Court sometime
20 within the next three weeks.

21 THE COURT: One of the responsibilities of the PSC, when
22 I appoint them, is to conduct common discovery and also to keep
23 an eye on and potentially resolve the case by conducting
24 settlement discussions. But also, a significant responsibility
25 of the PSC is to prepare a trial package so that those who are

1 not on the PSC or those who are not on any committees and those
2 who are not interested in settlement will have the benefit of the
3 PSC's work product assembled during the discovery phase of the
4 case. So this trial package could then be sent back to those
5 individual claimants who want to try their case in state or
6 federal court, and they will have access to the trial package and
7 be able to put their trial on with both live testimony as well as
8 deposition testimony, visual deposition testimony, as well as
9 have access to various documents which will be helpful for them
10 in the trial.

11 And a trial package has been prepared in the MI cases
12 and now one is being prepared in the stroke cases. And I saw the
13 one for the MI, and it's a fine job, and will be of help to those
14 individuals who wish to try their cases.

15 MR. HERMAN: May it please the Court, with respect to
16 other motions, there are two motions, one by Florida parties who
17 seek an amendment to the Vioxx MDL settlement agreement set for
18 today. All the briefing has been complete. One, another motion
19 was filed by Mr. Jeffrey Lowe for a plaintiffs group, and we
20 understand that that matter is to be continued. There are
21 conferences ongoing between Mr. Seeger and Mr. Lowe.

22 THE COURT: Let me skip over that because I'll finish
23 this conference and then I'll go into the motion, if anyone has
24 oral argument on it.

25 The last item on the agenda is third-party payor cases.

1 Any comments on that?

2 MR. SEEGER: This is Mr. Lowe. He just indicated, I
3 think what he heard today is that the motion is moot.

4 MR. LOWE: We filed a motion for an extension on the
5 enrollment deadline. If you enroll by the 29th, the enrollment
6 form has a 30-day grace period. That's basically what we're
7 asking. We'll withdraw the motion.

8 THE COURT: Thank you, Mr. Lowe. I appreciate it.

9 The other motion is still set?

10 MR. HERMAN: Yes, sir.

11 THE COURT: I'll take that after this meeting. We'll
12 take a five-minute break.

13 MR. WITTMANN: There is nothing on the third-party
14 payor.

15 THE COURT: Nothing on that?

16 The next date for the next meeting is when?

17 THE CLERK: March 20th.

18 MR. WITTMANN: March 20th, 9:00 a.m.

19 MR. HERMAN: Thursday, March 20th. I think the 21st was
20 Good Friday, Your Honor.

21 THE COURT: What about the 13th? Is the 13th available,
22 Counsel?

23 MR. WITTMANN: 13th of March.

24 THE COURT: Will that work?

25 MR. WITTMANN: Your Honor, I'll unfortunately be in

1 Hawaii, but I'm sure Mr. Marvin can handle it.

2 THE COURT: Can we do April?

3 MS. BARRIOS: Thursday, April 3rd?

4 THE COURT: The 20th gives some people problems with
5 religious holidays.

6 MR. HERMAN: April 13th?

7 THE COURT: April 3rd.

8 MS. BARRIOS: What about Tuesday, March 25th?

9 THE COURT: Will that work for everybody, March 25th?

10 MR. BIRCHFIELD: Yes, Your Honor.

11 THE DEPUTY CLERK: 9:00.

12 THE COURT: And I'll meet counsel with the committees at
13 the same time, 8:00, 8:30.

14 MR. WITTMANN: Yes, Your Honor.

15 THE COURT: I'll take a five-minute break and we'll come
16 back and deal with the motion. Thank you very much. Court will
17 stand in recess for 5 minutes.

18 THE DEPUTY CLERK: Everyone rise.

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REPORTER'S CERTIFICATE

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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 /s/Cathy Pepper

13 Cathy Pepper, CCR, RPR, CRR
14 Official Court Reporter
15 United States District Court
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