

March 19, 2013

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

- - -

IN RE: STRYKER REJUVENATE & ABG II :Case No.
HIP IMPLANT LITIGATION :296
:Master
:Docket No.
:BER-L-936-
:13

- - -

March 19, 2013

- - -

BEFORE: HON. BRIAN R. MARTINOTTI, JSC

- - -

Transcript of Case Management Conference
held at Bergen County Courthouse, 10 South Main
Street, Room 359, Hackensack, New Jersey, on the
above date, beginning at approximately 10:00 a.m.,
before KIMBERLY A. CAHILL, a Federally Approved
Registered Merit Reporter, Certified Court Reporter,
and Notary Public for the State of New Jersey.

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1 - - -
 2 THE COURT: Good morning, everyone.
 3 Welcome back. Hope you had an uneventful trip to
 4 Bergen County.
 5 You could all be seated. We're going
 6 to call in.
 7 (Pause.)
 8 THE COURT: Okay. Good morning,
 9 counsel on the phone. We are not ready for your
 10 appearances yet. We are on the record. Before we
 11 get started -- well, counsel, your appearances for
 12 the record, please.
 13 MS. RELKIN: Ellen Relkin from Weitz
 14 & Luxenberg for the plaintiffs.
 15 MR. WARRINER: Cal Warriner, Searcy
 16 Denney, for the plaintiffs.
 17 MR. BUCHANAN: Dave Buchanan, Seeger
 18 Weiss, for plaintiffs.
 19 MR. DiCELLO: Mark DiCello, The
 20 DiCello Firm, plaintiffs.
 21 MR. MILLROOD: Toby Millrood, Pogust
 22 Braslow & Millrood, for the plaintiffs.
 23 MR. ANAPOL: Thomas Anapol, Anapol
 24 Schwartz, for the plaintiffs.
 25 MS. SUTTON: Tara Sutton, Robins,

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<p>1 Kaplan, Miller & Ciresi, for the plaintiffs. 2 MR. GALEX: Richard Galex, Lomurro 3 Davison, for the plaintiff. 4 MS. HAGUE: Melissa Hague, Anapol 5 Schwartz, for the plaintiffs. 6 MR. KINCANNON: Josh Kincannon, Keefe 7 Bartels, for the plaintiff. Good morning. 8 MR. PARNES: Hillel Parnes, Robins, 9 Kaplan, Miller & Ciresi, for plaintiffs. 10 MR. HAJDARPASIC: Enes Hajdarpasic, 11 for the plaintiff. 12 MR. CARBOY: Andrew Carboy, Sullivan 13 Papain Block McGrath & Cannavo, for the plaintiffs. 14 THE COURT: Okay. Defense counsel in 15 court. 16 MS. CATULLO: Kim Catullo for the 17 defendant, Howmedica Osteonics Corp., from Gibbons 18 P.C., and Samantha Spicer, one of my colleagues, is 19 with me. 20 THE COURT: Counsel on the phone, 21 we're going to do it this way: I'm going to try to 22 read the names of the people that I think are on the 23 phone. Just say "here" if you're here. 24 Esther Berezofsky? 25 MS. BEREZOFSKY: Here.</p>	<p>1 MS. STERN: Here, Your Honor. 2 THE COURT: David Szerlag? 3 MR. BERNHEIM: Hi. This is Jesse 4 Bernheim. Mr. Szerlag is on his way. 5 THE COURT: Okay. Spell your last 6 name? 7 MR. BERNHEIM: Bernheim, 8 B-E-R-N-H-E-I-M. Mr. Szerlag is going to be 9 appearing by phone with me from my office. 10 THE COURT: Tyler Vail? 11 MR. BELL: This is Bobby Bell again. 12 Tyler Vail, unfortunately, wasn't able to make it 13 this morning, so I'm appearing for him as well. 14 THE COURT: Okay. 15 Beasley Allen? 16 MR. WARD: Yes, this is Navan Ward 17 for Beasley Allen. 18 THE COURT: Spell your last name. 19 MR. WARD: Ward, W-A-R-D. 20 THE COURT: Michael Weinkowitz? 21 Did I not -- did I get everyone? Is 22 there someone there that I did not call? 23 MR. ARONFELD: Good morning, Your 24 Honor. My name is Spencer Aronfeld. I didn't hear 25 you call my name.</p>
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<p>1 THE COURT: Jesse Bernheim? 2 Bobby J. Bell, Jr.? 3 MR. BELL: Here. 4 THE COURT: Bob Brown? 5 Holly Dolejsi? 6 MS. DOLEJSI: Here. 7 THE COURT: Martin Duffey? 8 MS. LIN: Diana Lin, filling in for 9 Marty Duffey. 10 THE COURT: Could you spell your last 11 name? 12 MS. LIN: L-I-N. 13 THE COURT: Thank you. 14 Stephen Geffner? 15 MR. GEFFNER: Here. 16 THE COURT: Scott Harford? 17 Michael Ihrig? 18 Kate Jaycox? 19 MS. JAYCOX: Here. 20 THE COURT: Michael McGlamry? 21 MR. McGLAMRY: Here, Your Honor. 22 THE COURT: Walter Kelley? 23 Charles Mindlin? 24 MR. MINDLIN: Here. 25 THE COURT: Felecia Stern?</p>	<p>1 THE COURT: Okay. 2 MR. ARONFELD: I'm here on behalf of 3 Candace Grossman. 4 THE COURT: Could you spell your last 5 name, please? 6 MR. ARONFELD: It's A-R-O-N-F as in 7 Frank-E-L-D as in David. I'm in Miami. 8 THE COURT: Okay. How's the weather 9 down there? 10 MR. ARONFELD: It's beautiful, sir, 11 beautiful. 12 THE COURT: Here, too. 13 Anyone else? 14 MS. SCHAEFFER: Yes, Your Honor. 15 THE COURT: Go ahead. 16 MS. SCHAEFFER: Yes, Your Honor, 17 Karren Schaeffer, Andrews & Thornton. 18 THE COURT: Could you spell your last 19 name, please? 20 MS. SCHAEFFER: S-C-H-A-E-F-F-E-R. 21 THE COURT: Okay. 22 Anyone else? 23 MR. GALLANT: Your Honor, Michael 24 Gallant. 25 THE COURT: Spell your last name?</p>

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1 MR. GALLANT: G-A-L-L-A-N-T.
 2 MR. SCIOLLA: Andrew Sciolla from
 3 Pogust Braslow & Millrood.
 4 THE COURT: Spell your last name,
 5 please.
 6 MR. SCIOLLA: S as in Sam-C as in
 7 cat-I-O-L-L-A.
 8 THE COURT: Okay.
 9 Is that it?
 10 MS. MANIATIS: Nope. Your Honor --
 11 MR. ZENNA: Jeffrey Zenna, Z-E-N-N-A,
 12 from the Blume Goldfaden Berkowitz firm.
 13 THE COURT: Okay. Z-E-N-N-A, Jeffrey
 14 Zenna.
 15 Ma'am?
 16 MS. MANIATIS: Vicki Maniatis,
 17 M-A-N-I-A-T-I-S.
 18 THE COURT: Is that it?
 19 MR. BURKE: Your Honor, Daniel Burke,
 20 B-U-R-K-E.
 21 THE COURT: Okay.
 22 Is that it? Okay.
 23 Counsel, welcome. Before we get
 24 started, there were some e-mail exchanges between
 25 myself, Ms. Catullo, and Ms. Relkin regarding the

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1 embarrassingly sparse work product transcript that
 2 resulted from our high-tech court recording system
 3 that uses VHS tapes, that we've been having
 4 numerous, numerous problems with.
 5 But I am happy to say, I think, as a
 6 result of that letter, we may be getting more modern
 7 equipment here. I think they're going to go to reel
 8 to reel now.
 9 So there was a request made by
 10 counsel that the court reporter, Madam Reporter,
 11 becomes the official record of this proceeding.
 12 Is there any objection to that?
 13 MS. CATULLO: No, Your Honor.
 14 MS. RELKIN: No, Your Honor.
 15 THE COURT: Okay. That being said,
 16 that will be the official record. Should I put this
 17 in an order -- it will be in today's order. Should
 18 it be an order that will remain in effect until
 19 otherwise modified by a subsequent order?
 20 MS. RELKIN: I think that's a good
 21 idea, Your Honor.
 22 MS. CATULLO: No objection.
 23 THE COURT: Okay. So for any
 24 substantive motions, this is the record. This will
 25 be the record on appeal.

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1 So, Madam Court Reporter, if you
 2 could preserve a copy of your work product and also
 3 e-mail us a copy, that we have it here.
 4 Is that okay, counsel?
 5 MS. RELKIN: Yes, Your Honor.
 6 MS. CATULLO: Yes.
 7 THE COURT: Okay. All right.
 8 Now, I think Stephanie was here the
 9 last time. Michele was not; is that correct?
 10 MICHELE: I was here briefly.
 11 THE COURT: So you met everyone or
 12 everyone met Michele and Stephanie, okay.
 13 Just for counsel on the phone,
 14 Stephanie and Michele are -- Michele is our team
 15 leader in now multicounty litigation. Stephanie
 16 will be the point person on this particular matter.
 17 Jen wasn't here. Oh, okay. And Jen
 18 Lahm, in the jury box, juror number, I guess, 6 --
 19 if we have 3 -- is my law clerk. She was in Florida
 20 -- or on her way to Florida at the last conference
 21 to take the Florida bar exam; and everyone was
 22 rooting for you, so hopefully you'll have three fees
 23 to pay beginning next year.
 24 That being said, I did review the
 25 agendas that were submitted. I'm going to go

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1 through what I think is a proposed case management
 2 order and solicit input from counsel, and then we
 3 can adjourn to my chambers just with liaison counsel
 4 very quickly and come back out onto the record.
 5 That being said, we were here on
 6 February 20th for an initial case management
 7 conference. At that time, an order was entered
 8 which set forth some time limits and some time
 9 goals, I should say. Unfortunately -- or we are
 10 still within the time that I had put forth in that
 11 order.
 12 But since the first case management
 13 order was entered, I did enter an order, CMO No. 2,
 14 and had selected the Plaintiffs' Steering Committee.
 15 That order was entered on March 11th, 2013.
 16 For those of you on the committee,
 17 congratulations. It was a very difficult choice to
 18 make. There were numerous -- actually, everybody
 19 was highly qualified, but I just needed to pare it
 20 down to the appropriate number.
 21 With respect to compliance, I will
 22 note counsel have met and are continuing to meet
 23 regarding that which was set forth in the order
 24 concerning various forms that needed to be
 25 completed.

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1 I am led to believe that the
2 preliminary disclosure form has been completed; is
3 that correct?
4 MS. RELKIN: Yes, Your Honor.
5 MS. CATULLO: Yes, Your Honor.
6 THE COURT: Talk to me about the
7 short form complaint/answer.
8 MS. RELKIN: Well, the short form
9 complaint is basically done. We had a few volleys
10 back and forth and I think just needs one more
11 look-over, but it's basically done.
12 THE COURT: And how much time do you
13 think you need for that?
14 MS. CATULLO: We'd said -- was it
15 March 28th, we were talking about?
16 MS. RELKIN: Yeah, I mean, that's the
17 outside limit. I think we can probably do it
18 sooner, but --
19 MS. CATULLO: That's for the
20 complaint.
21 THE COURT: Short form complaint.
22 MS. CATULLO: Right.
23 MS. RELKIN: See, the short form is
24 easy. The long form is, by definition, longer and I
25 think Ms. Catullo's view is that we shouldn't have a

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1 short form approved until we have the corresponding
2 long form which incorporates it.
3 THE COURT: So March 28th, you think
4 you'll be able to do that?
5 MS. RELKIN: For all three, yes.
6 THE COURT: So that will be the short
7 form complaint --
8 MS. CATULLO: Yes.
9 THE COURT: -- as well as the long
10 form complaint?
11 MS. RELKIN: Yes.
12 MS. CATULLO: Yes.
13 THE COURT: And how about the
14 answers?
15 MS. CATULLO: April 10th was the
16 deadline we were discussing.
17 THE COURT: Fact sheet?
18 MS. CATULLO: Fact sheets, I think we
19 had April 16th as the deadline.
20 MS. RELKIN: Your Honor, just by way
21 -- the preliminary disclosure forms, which
22 originally we used as a template the ASR, you
23 recently in ASR entered to that supplemental
24 preliminary disclosures, some of that was
25 incorporated in this disclosure.

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1 So it gives a fair amount of the
2 information, so that even if we don't have the fact
3 sheets done, both sides will have a fairly good
4 handle on the cases from the preliminary
5 disclosures.
6 THE COURT: Okay. Discovery?
7 MS. CATULLO: Judge, I think there
8 was also the -- did we talk about the protective
9 order?
10 THE COURT: Protective order?
11 MS. CATULLO: Yeah, we talked about
12 -- was it April 10th that we --
13 MS. RELKIN: Yeah.
14 THE COURT: Okay.
15 MS. CATULLO: We've gone back and
16 forth a bit. Right now, plaintiffs are working
17 through the latest draft. I think there will be
18 some issues with that, so we just want to give
19 ourselves enough time to at least come to the
20 agreements that we can come to and then I think we
21 may have to get that to Your Honor with some issues.
22 Hopefully not, but I suspect there will be some.
23 THE COURT: Okay.
24 MS. RELKIN: Now --
25 THE COURT: Go ahead.

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1 MS. RELKIN: Just with regard to
2 discovery, we obviously need to discuss that, and
3 plaintiffs' view is, we do want to get proceeding on
4 that. We will be serving a document demand any day,
5 very shortly.
6 And additional discovery we talked --
7 I just raised it with Ms. Catullo this morning about
8 corporate designee depositions and we, I think, have
9 differing views on that --
10 MS. CATULLO: Yes.
11 MS. RELKIN: -- but plaintiffs
12 believe it is necessary.
13 THE COURT: So where I have scope,
14 parameters, and timing for service of written
15 discovery, I'll put an asterisk, counsel will
16 continue to meet and confer?
17 MS. CATULLO: Yes, Your Honor. That
18 has not been done --
19 MS. RELKIN: You know, I think --
20 yeah --
21 MS. CATULLO: -- so we have not come
22 to any -- I have no sense of what's going to be
23 served and we have not worked through that.
24 MS. RELKIN: And we just want clarity
25 that it's permissible to serve the written

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1 discovery, which we plan on doing very shortly.
 2 MS. CATULLO: Your Honor, there was
 3 an order that the Court entered that actually said
 4 that no discovery would occur at that point -- it
 5 was the first one that came out.
 6 THE COURT: Right.
 7 MS. CATULLO: -- my understanding was
 8 that we were going to discuss that and come up with
 9 some sort of approach to that.
 10 THE COURT: Yeah, why don't we do
 11 that -- we're going to bring you back very quickly,
 12 so before you serve anything, I'd like you to agree
 13 on it. This way, we can start moving, because what
 14 I really disfavor is discovery motions.
 15 MS. RELKIN: Yeah, the original
 16 order, just my recollection was, before the --
 17 THE COURT: That's right.
 18 MS. RELKIN: -- case was centralized,
 19 you stated pending the AOC centralizing; and then
 20 once they did --
 21 THE COURT: That's right.
 22 MS. RELKIN: -- my impression was,
 23 the stay was over.
 24 I mean -- I think in terms of working
 25 out the scope, I mean, we're going to serve what

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1 plaintiffs do, fairly comprehensive discovery
 2 demands, and defendant can object as they
 3 customarily do, and then we can then work it out.
 4 But I think to have to get defense
 5 approval before we -- to the content of what we
 6 serve is unusual and --
 7 THE COURT: Well, let me -- meet and
 8 confer and then if -- why don't I say meet and
 9 confer within the next two weeks?
 10 MS. RELKIN: That's fine.
 11 THE COURT: Okay? And then Ms.
 12 Relkin, Ms. Catullo, and I will have a phone
 13 conference to address the discovery and then you can
 14 start rolling it out.
 15 I'm not going to tie your hands and
 16 you're not going to approve their discovery.
 17 MS. CATULLO: Understood.
 18 THE COURT: But by the same token,
 19 I'd like it to go out in an orderly fashion, not
 20 that there's document demands flying all over,
 21 because I really do not want to address discovery
 22 issues. Okay?
 23 MS. RELKIN: Understood.
 24 THE COURT: Protective order, we have
 25 April 10th. Designations of Plaintiffs' Steering

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1 Committee, that's been done. That's CMO No. 2.
 2 Subcommittees, Ms. Relkin, you
 3 submitted a letter?
 4 MS. RELKIN: Yes, Your Honor, I
 5 submitted a letter with proposed members of the
 6 subcommittee.
 7 THE COURT: I have reviewed that and
 8 I am prepared to reference that letter as Exhibit A
 9 to the order issued March 14th, 2012 -- which should
 10 be 2013 -- that will be Exhibit A to the order.
 11 Is that okay?
 12 MS. CATULLO: Yes, Your Honor. Are
 13 you going to have any of the language with regard to
 14 the communications with the Court --
 15 THE COURT: Well, all communications
 16 come through Ms. Relkin. So, basically, the
 17 subcommittees can funnel to their subcommittee
 18 chair. The subcommittee chair can funnel to
 19 whomever they want on the steering committee, who
 20 can then funnel it to Ms. Relkin, so that we just
 21 have two point people addressing the Court, not that
 22 I get 12 and 13 e-mails.
 23 Okay?
 24 MS. RELKIN: Fine, Your Honor.
 25 THE COURT: You're going to be busy.

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1 MS. CATULLO: And my understanding,
 2 Your Honor, is that the same will apply to counsel
 3 as well; correct? So, in other words, Ms. Relkin
 4 will contact me on --
 5 THE COURT: Right, right.
 6 MS. RELKIN: Yeah, on that, just with
 7 a caveat, there may be a particular issue that --
 8 for example, the ESI, electronic discovery, there
 9 are some individuals who are more appropriate to
 10 discuss that than myself.
 11 So for that issue, certainly I want
 12 to be able to have --
 13 THE COURT: Well, just give Ms.
 14 Catullo a heads-up --
 15 MS. RELKIN: Yeah.
 16 THE COURT: -- so she's not just
 17 getting bombarded with e-mails.
 18 Mediation? We'll talk about that in
 19 chambers.
 20 MS. CATULLO: Did you want to talk
 21 about that?
 22 THE COURT: Yeah, we're going to talk
 23 about mediation in chambers.
 24 I did modify all new complaints shall
 25 be served within 30 days of filing. Defense counsel

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1 shall meet and confer with defendant by the 14 days
 2 if defendant will accept service.
 3 Talk to me about that, Ms. Catullo.
 4 MS. CATULLO: Yes, Your Honor, I did
 5 speak to my client about that; and as I expected,
 6 just based upon my long history with them, the fact
 7 that I've never been permitted to accept service on
 8 behalf of the client in a new case, they are more
 9 than hesitant to start doing that in this litigation
 10 at this point.
 11 THE COURT: Well, just so they
 12 understand how important it is to the Court that
 13 service is accepted -- and I'm willing to do that
 14 with certain parameters -- I am going to enter an
 15 order saying defense counsel shall continue to meet
 16 and confer with defendant and advise the Court
 17 within 14 days if defendant will accept service.
 18 So you can go back to whomever and
 19 explain that the judge -- this is something that the
 20 judge is looking for.
 21 I don't think it really does anything
 22 except make the litigation move more efficiently and
 23 more streamlined, candidly; but I don't think I can,
 24 though we will look into it, compel you to accept
 25 service. But this is designated for MCLs and the

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1 rules are relaxed. I guess due process is one
 2 that's never relaxed, but we'll see.
 3 MS. CATULLO: Understood, Your Honor,
 4 and I will absolutely go back to my client and
 5 discuss it. Certainly they appreciate the Court's
 6 attempt at efficiency. It's just that understanding
 7 that they feel like this has been their policy.
 8 THE COURT: Right.
 9 MS. CATULLO: It's nothing against
 10 Your Honor or the Court for sure --
 11 THE COURT: Okay.
 12 MS. CATULLO: -- but certainly this
 13 is their policy. But I will discuss it with them.
 14 THE COURT: Ms. Relkin, anything
 15 else? We're going to talk about mediation inside
 16 for a moment.
 17 MS. RELKIN: There's a representative
 18 from LexisNexis who wanted to make a presentation on
 19 the possibility of us implementing LexisNexis.
 20 THE COURT: Why don't we do that when
 21 we come back onto the record.
 22 MS. RELKIN: Okay.
 23 MS. CATULLO: Your Honor, one other
 24 issue was, from the order that Your Honor entered
 25 after the last conference, we were talking about the

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1 fact that once we have the short form answer in
 2 place, we'll then go ahead and just file all of the
 3 answers that have been stayed for now?
 4 THE COURT: Right.
 5 MS. CATULLO: We put 10 days at that
 6 point to respond. We've had a bit of a backlog at
 7 this point, so we're just a bit concerned about the
 8 10 days once that stay is lifted and we have to
 9 answer all of those.
 10 So we were suggesting extending that
 11 10 days to 30 days. Once the stay is lifted and
 12 that 30-day period goes by, then we can just go back
 13 to what the rules provide. I mean, it's just that
 14 initial logjam that require that --
 15 THE COURT: Any objection to that?
 16 MS. RELKIN: No. I discussed it with
 17 Ms. Catullo and we will accommodate, but we just
 18 hope that her client accommodates us -- it's a
 19 two-way street -- for example, on accepting service.
 20 THE COURT: Okay. Anything else we
 21 need to address before we adjourn in chambers for a
 22 few moments to discuss mediation? No?
 23 Okay. Counsel on the phone -- how
 24 are we going to do this -- you're more than welcome
 25 to hold on -- I guess just hold on. I don't know

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1 how long it's going to be. We'll try to be as quick
 2 as possible, rather than play a guessing game onto
 3 when we're going to call you back.
 4 Is that fair?
 5 VOICE ON PHONE: Yes.
 6 THE COURT: Okay.
 7 VOICE ON PHONE: Yes.
 8 THE COURT: All right. We're off the
 9 record.
 10 - - -
 11 (A discussion off the record
 12 occurred.)
 13 - - -
 14 THE COURT: Okay. You can be seated.
 15 Thank you.
 16 How are our friends on the phone
 17 doing over here? Everybody still there?
 18 VOICE ON PHONE: Yes, judge.
 19 VOICE ON PHONE: Yes, Your Honor.
 20 THE COURT: We're back on the record.
 21 Just for those of you on the phone and those of you
 22 in the courtroom, let me explain how I proceed. I
 23 said this the last time, but now you can actually
 24 see it in progress, I think.
 25 My order is broken down into three

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1 basic parts as far as case management goes. The
 2 first part is compliance with the prior order. So
 3 with respect to this case management conference with
 4 this order, it's compliance with Case Management
 5 Order No. 1 and I track what was supposed to be
 6 done, or hopefully was going to be done, in Case
 7 Management Order No. 1 and I set forth whether or
 8 not it was actually completed or if more time is
 9 needed.

10 You'll see in Part 1 of the order in
 11 bold what was done and the dates for that which
 12 needs to be completed, as well as if counsel is
 13 going to meet and confer regarding certain issues.

14 So, for example, Part 1, we've
 15 indicated that I entered another order since our
 16 last case management conference, which was the order
 17 of selecting Plaintiffs' Steering Committee.

18 When I was in chambers with counsel,
 19 I was really just memorializing what was said in the
 20 courtroom with respect to certain dates. Counsel
 21 both looked at this order and reviewed it not for
 22 substance inasmuch as really just for form.

23 Part 2 is compliance, and what I'm
 24 going to say now was previously said or discussed in
 25 court: The preliminary disclosure form was

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1 completed. The short form and long form complaints
 2 are to be prepared by March 28th; the answers, short
 3 and long, by April 10th; the form and content of a
 4 fact sheet, by April 16th. With respect to
 5 discovery, counsel will continue to meet and confer
 6 regarding discovery, and we will have a phone
 7 conference to address any issues.

8 Now, just so it's clear, the
 9 defendant is not going to prescribe to the plaintiff
 10 what discovery can be served; and, likewise, the
 11 plaintiff isn't going to tell the defendant what can
 12 be served. But what I'd like to do is get to a
 13 format of discovery so that it's pretty uniform as
 14 we move forward, as well as what's going to be done
 15 at certain times.

16 I think it'll make the litigation
 17 more smooth. Everybody's going to get all the
 18 information that they are permitted to get pursuant
 19 to court rules. How that's rolled out and the
 20 format it's rolled out is really what I am concerned
 21 about.

22 So we are not slowing the process
 23 down. If we just kind of take our time at this
 24 juncture of the litigation, I think it will make the
 25 process move more quickly as we progress through the

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1 litigation.

2 In terms of a protective order, it
 3 will be submitted by April 10th. Designation of
 4 Plaintiffs' Steering Committee, we referenced Case
 5 Management Order No. 2. Subcommittees, that has
 6 been completed, as set forth in Ms. Relkin's letter.

7 Just so it's clear, all
 8 correspondence to counsel and to the Court shall be
 9 through Ms. Relkin unless otherwise agreed upon. So
 10 if Mr. Buchanan, for example, is going to address a
 11 certain issue, just shoot me an e-mail saying, "Mr.
 12 Buchanan's going to handle this," at least I'll
 13 know, not that I get nine different letters from
 14 nine different lawyers on the same issue, many of
 15 which don't agree with each other.

16 LexisNexis, we're going to get to in
 17 one second. Mediation, counsel will continue to
 18 meet and confer. Regarding mediation, I'd like to
 19 get started in mediation early in this litigation.
 20 I had said that at the first case management
 21 conference.

22 My thought is, a group of cases will
 23 be preliminarily worked up, maybe five
 24 plaintiffs'/defense -- five plaintiffs' cases, five
 25 defense cases. It will be sent to the mediators

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1 that counsel has suggested to the Court, and we'll
 2 see if we can work out a structure for an amicable
 3 resolution of this matter early on.

4 It does not benefit anyone to pick
 5 cases that are very good for the plaintiff or very
 6 good for the defendant or outliers, if you will.
 7 That doesn't do the process -- that doesn't help the
 8 process at all.

9 The mediators that are being thought
 10 about are highly skilled and can certainly do an
 11 outstanding job in bringing a resolution to this
 12 matter, provided counsel and the parties are willing
 13 to work within that goal.

14 Now, you've been practicing in this
 15 area probably for many, many, many years,
 16 collectively an extraordinary amount of years, and
 17 this is probably the first time the word "mediation"
 18 was mentioned in an initial case management
 19 conference. Maybe it's not. But I think if we can
 20 start the ball rolling earlier, things will move a
 21 lot more efficiently.

22 With respect to, new complaints will
 23 be served within 30 days. I'm going to request that
 24 Ms. Catullo continue to meet with her client
 25 concerning the -- to accept service of the

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1 complaints, and any answers will be filed within 30
 2 days of the Court approving the long and short form
 3 answer or pursuant to the rules of court, whichever
 4 is later.
 5 So if I approve it by next week or
 6 the week after, you'll have 30 days to catch up.
 7 Thereafter, as cases are filed, you'll have the 35
 8 days under the rule.
 9 Next case management conference will
 10 be April 10th at 10:00 a.m., an agenda to be
 11 submitted seven days prior.
 12 At counsel's request, the official
 13 record will be the transcript provided by the court
 14 reporter retained by counsel. The reporter shall
 15 preserve all proceedings and shall e-mail a
 16 transcript of any court proceeding to the Court
 17 within 14 days of the proceeding.
 18 Is that a fair amount of time?
 19 THE COURT REPORTER: Yes.
 20 THE COURT: Generally speaking in the
 21 industry?
 22 THE COURT REPORTER: Yes.
 23 THE COURT: Okay. So basically
 24 what's happening on our videotape is of no moment,
 25 and if there is a conflict between the tape and the

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1 court reporter, the court reporter wins.
 2 Is that okay?
 3 MS. RELKIN: Yes, Your Honor.
 4 MS. CATULLO: Yes.
 5 THE COURT: Okay. All right. And,
 6 candidly, the court reporter is probably going to be
 7 right in instances between the tape and the court
 8 reporter. And that is not taking a shot at Miss
 9 Dixon. She just pushes the buttons and sometimes
 10 things happen, though we have found out that the
 11 only time this machine does not malfunction is when
 12 it's not being used. So we realize that.
 13 That being said, would you like to
 14 make a quick presentation for us?
 15 MS. HISEL: Sure, thank you.
 16 THE COURT: What's your name, ma'am?
 17 MS. HISEL: My name's Jennifer Hisel.
 18 THE COURT: Okay.
 19 MS. HISEL: And just a point of
 20 clarification, LexisNexis did own File & Serve for
 21 many years, and most of you probably knew Sue, who
 22 would come to these hearings. She had some health
 23 problems. She is now enjoying retirement with her
 24 husband.
 25 And along with that change, File &

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1 Serve was sold to a company in Texas. It's now File
 2 & ServeXpress. A lot of the same people from
 3 LexisNexis went over. So going forward, just kind
 4 of to let you know, Lexis doesn't own File & Serve
 5 anymore.
 6 THE COURT: So when I say we had a
 7 presentation, what should I put for purposes of
 8 accuracy in the order?
 9 MS. HISEL: Sure, it's File &
 10 ServeXpress, and I'll show you how it's written.
 11 They kind of merge some words together. But thank
 12 you and I'll be brief.
 13 I know many of you in this room has
 14 probably used File & Serve before. It's the same
 15 technology that we're using with File & ServeXpress,
 16 same people.
 17 With big litigations like this, and
 18 we're finding this even in federal court where the
 19 PACER system is in place, it helps the parties stay
 20 on the same page, be able to verify what was served,
 21 when it was served, helps the Court, people like
 22 Stephanie who are going to be the point person for
 23 this litigation, definitely people like the liaison
 24 counsel for both the plaintiff and defense who,
 25 assuming this case -- or this litigation may also be

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1 in federal court and consolidated liaison counsel
 2 may be required to report back to this Court and
 3 track what's going on in both litigations, having an
 4 online repository where all of these documents that
 5 were served back and forth, that's searchable,
 6 that's secure, that's available any time, eliminates
 7 a lot of the problems that comes from traditional
 8 service, maybe from the mail.
 9 I mean, that's kind of a different
 10 type of an argument. When you look at the mail, the
 11 cost, and the time, and the efficiencies, I think
 12 most people now are looking at e-mail as sort of the
 13 other alternative.
 14 And some of the issues that we help
 15 with that you find with e-mail, if you're uploading
 16 big documents, a lot of times that becomes a hassle
 17 or if you're trying to e-mail 50 plaintiffs the same
 18 large document.
 19 By just uploading them to File &
 20 ServeXpress, you're able to access them. It's on
 21 our servers, not yours. So when you're talking
 22 about sending personal information, a lot of the
 23 things that are going to come up in the plaintiffs'
 24 fact sheets, depositions, I'm sure information from
 25 the defense as well, that's sensitive and that

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1 should be private. And e-mail, it's very hard to
 2 sometimes know if that's what you're getting on the
 3 other end of it.
 4 And then when you're trying to have a
 5 national practice, like most of these attorneys do
 6 with these big cases, and having everything being
 7 organized through e-mail can sometimes be
 8 overwhelming and hard to find what you need when you
 9 need it.
 10 So beyond the security, the tracking,
 11 the ability to search, I think maybe the biggest
 12 argument for doing something like this is that you
 13 can verify the service.
 14 And I was just reading a situation
 15 where Judge Crotty -- plaintiffs had filed a motion
 16 saying the defense had an untimely removal to
 17 federal court, and it came down to affidavits from
 18 the process server for the plaintiff saying, hey, we
 19 served this initial fact sheet and defense counsel
 20 saying, well, we never got it. And the presumption
 21 carried the day there and the case was sent back to
 22 state court. But something as simple as service
 23 really changed the outcome of that case.
 24 So keeping everybody on the same
 25 page, making it simple so they can focus on the

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1 complex things they have to do, like ESI protocol
 2 and all the other things you're going to get to,
 3 that's why I would urge you all to consider adopting
 4 this.
 5 And there's free training. There's
 6 no contract. You pay as you go for transactions.
 7 Anybody that needs to be added as an interested
 8 party, we can do that, make sure they get all the
 9 training.
 10 And any questions, I'm happy to
 11 answer.
 12 THE COURT: Anybody have any
 13 questions?
 14 MR. BUCHANAN: Just one. So does
 15 Lexis not have a similar product anymore?
 16 MS. HISEL: Yeah, they're out of the
 17 business.
 18 MR. BUCHANAN: They're out of the
 19 business. You basically took the software and the
 20 files and everything with you.
 21 MS. HISEL: Right, took all the
 22 existing customers. There's millions of cases
 23 online, hundreds of thousands of users, and that all
 24 came over.
 25 MS. RELKIN: What are the costs?

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1 MS. HISEL: For this litigation, we
 2 matched what's been done in other ones, in Mesh,
 3 Yaz, it's -- there's over ten firms, it looks like,
 4 so it would be \$15 per transaction. There's a \$5
 5 monthly fee per firm to have the online repository.
 6 The initial setup fee is \$35 per firm, and the
 7 Court's access is all free.
 8 THE COURT: Anything else?
 9 MS. RELKIN: And so just to be clear,
 10 we still need to file hard copies with the Court.
 11 THE COURT: Yes.
 12 MS. RELKIN: This is not like ECF in
 13 lieu of hard copies, but it's the convenience of
 14 having it electronically available.
 15 THE COURT: It's really more used as
 16 a tool by and between counsel than as far as the
 17 Court's concern, but it is nice to have the access
 18 once in a while, though I don't think I've -- we
 19 have it in Yaz. Right? I don't think we've used it
 20 at all.
 21 Now, maybe it's a good thing, because
 22 we had it in Yaz, and Yaz is settling at a nice
 23 pace.
 24 MS. HISEL: Could be a good sign.
 25 THE COURT: Pardon?

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1 MS. HISEL: Could be a good sign.
 2 THE COURT: Could be.
 3 Anything further?
 4 MS. CATULLO: Can we have that
 5 proposal?
 6 MS. HISEL: Yes, I will give you a
 7 copy.
 8 THE COURT: Thanks.
 9 MS. HISEL: Thank you.
 10 THE COURT: If you could just give
 11 the correct name to us so I can put it in the order.
 12 MS. HISEL: Absolutely.
 13 THE COURT: Thank you.
 14 Ms. Relkin, anything further?
 15 MS. RELKIN: I don't think so, Your
 16 Honor. Thank you.
 17 THE COURT: Any of the plaintiffs'
 18 counsel wish to be heard on any matter?
 19 Any plaintiffs' counsel on the phone
 20 wish to be heard?
 21 Ms. Catullo, anything further?
 22 MS. CATULLO: No, Your Honor.
 23 THE COURT: Okay. Counsel, I
 24 appreciate your efforts. We will see you in April.
 25 Enjoy the day. Have a safe trip back.

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<p>1 Counsel, we are going to be</p> <p>2 disconnecting from the phone. Thank you. We are</p> <p>3 off the record.</p> <p>4 (Case Management Conference adjourned</p> <p>5 at approximately 11:17 a.m.)</p> <p>6 - - -</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 LAWYER'S NOTES</p> <p>2 PAGE LINE</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
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<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, KIMBERLY A. CAHILL, a Notary</p> <p>4 Public and Certified Court Reporter of the State of</p> <p>5 New Jersey, do hereby certify that the foregoing is</p> <p>6 a verbatim transcript of the conference as taken</p> <p>7 stenographically by and before me at the time, place</p> <p>8 and on the date hereinbefore set forth, to the best</p> <p>9 of my ability.</p> <p>10 I DO FURTHER CERTIFY that I am</p> <p>11 neither a relative nor employee nor attorney nor</p> <p>12 counsel of any of the parties to this action, and</p> <p>13 that I am neither a relative nor employee of such</p> <p>14 attorney or counsel, and that I am not financially</p> <p>15 interested in the action.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 <u>KIMBERLY A. CAHILL, CCR, RMR</u></p> <p>20 Notary Number: 2160369</p> <p>21 Notary Expiration: February 6, 2014</p> <p>22 CCR Number: 30XI00188400</p> <p>23 Dated: March 21, 2013</p> <p>24</p> <p>25</p>	

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