

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION BERGEN COUNTY

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

- - -

Wednesday, May 15, 2013

- - -

Transcript of Case Management Conference
held at Bergen County Courthouse, 10 S. Main Street,
Hackensack, New Jersey, on the above date, beginning
at approximately 10:00 a.m., before Kimberly A.
Overwise, a Certified Realtime Reporter, Certified
Court Reporter, and Notary Public.

- - -

BEFORE: HON. BRIAN R. MARTINOTTI, JSC

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 Niki Rodino, paralegal
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1 THE COURT: Counsel, good morning.
 2 My apologies for making you hang on the phone so
 3 long. I had another conference and we were working
 4 in chambers on the order. Again, I appreciate your
 5 patience.
 6 Counsel in the courtroom, your
 7 appearances for the record, please.
 8 MS. RELKIN: Ellen Relkin from Weitz
 9 & Luxenberg.
 10 MR. WARRINER: Cal Warriner, Searcy
 11 Denney.
 12 MS. SUTTON: Tara Sutton,
 13 Minneapolis.
 14 MR. BUCHANAN: Dave Buchanan, Seeger
 15 Weiss.
 16 MR. MILLROOD: Toby Millrood, Pogust
 17 Braslow Millrood.
 18 MR. LAPINSKI: Good morning, Your
 19 Honor. Dan Lapinski from the Wilentz law firm.
 20 MR. GEFFNER: Stephen Geffner,
 21 Schenck, Price, Smith & King.
 22 MR. TAMBURELLO: Anthony Tamburello,
 23 Schenck, Price, Smith & King.
 24 MS. HAGUE: Melissa Hague from Anapol
 25 Schwartz.

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1 MS. DOLEJSI: Holly Dolejsi, Robins,
 2 Kaplan, Miller & Ciresi.
 3 MR. CARBOY: Andrew Carboy from
 4 Sullivan, Papain, Block, McGrath & Cannavo.
 5 MR. MERRITT: Dean Merritt from File
 6 & ServeXpress.
 7 THE COURT: Hold on one second on the
 8 phone.
 9 Defense counsel?
 10 MS. CATULLO: Kim Catullo from
 11 Gibbons P.C. and Samantha Spicer as well.
 12 THE COURT: Hold on one second. Hold
 13 on on the phone. Hold on one second. There's got
 14 to be an orderly way to do this and I'm not exactly
 15 sure how. So we're going to try it alphabetically.
 16 Anyone whose name begins with an A? B? C? D? E?
 17 MS. DESMOND: Adriana Desmond.
 18 THE COURT: Could you spell that,
 19 counsel?
 20 MS. DESMOND: Desmond, D-E-S-M-O-N-D.
 21 THE COURT: Okay. Any other Ds? E?
 22 F? G?
 23 MR. GALLANT: Michael Gallant with
 24 Kelley Bernheim & Dolinsky, Your Honor.
 25 THE COURT: Okay. We missed that.

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1 One more time.
 2 MR. GALLANT: Michael Gallant with
 3 Kelly Bernheim & Dolinsky.
 4 MR. GROSSMAN: Marc Grossman,
 5 G-R-O-S-S-M-A-N, Sanders Viener Grossman.
 6 MR. GOLDSTEIN: Jason Goldstein with
 7 Bernstein Liebhard.
 8 THE COURT: H? I? J?
 9 MR. KINCANNON: Joshua Kincannon,
 10 Keefe Bartels, for the plaintiff.
 11 THE COURT: K? That was K. L?
 12 MS. LIN: Diana Lin with Cozen
 13 O'Connor.
 14 MR. LAZZARA: Domenick Lazzara on
 15 behalf of Aronfeld Trial Lawyers.
 16 THE COURT: M? N? O?
 17 MS. WRIGHT: Wright on behalf of
 18 Rheingold Valet.
 19 THE COURT: Okay. Can you repeat
 20 your name, counsel? I'm sorry.
 21 MS. WRIGHT: I'm actually a
 22 paralegal. I'm calling on behalf of Michael Ihrig
 23 from my firm.
 24 THE COURT: Okay. So what's your
 25 name?

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1 MS. WRIGHT: It's Olubunmi Wright,
 2 O-L-U-B-U-N-M-I Wright.
 3 THE COURT: And who are you on behalf
 4 of? What lawyer are you calling on behalf of,
 5 ma'am?
 6 MS. WRIGHT: Michael Ihrig. Sorry.
 7 I couldn't hear you.
 8 THE COURT: That's okay.
 9 P? Q? R?
 10 MS. RODINO: Niki Rodino, paralegal
 11 calling in for Jack Wurgaft at Javerbaum Wurgaft.
 12 THE COURT: S? Looks like S is a
 13 popular name. Go ahead.
 14 MR. SZERLAG: David Szerlag,
 15 S-Z-E-R-L-A-G, Pritzker Olsen.
 16 MS. SCHAEFFER: Karen Schaeffer,
 17 Andrews & Thornton, S-C-H-A-E-F-F-E-R.
 18 THE COURT: T? U? V?
 19 MR. VAIL: Tyler Vail from Hollis
 20 Wright, Birmingham, Alabama.
 21 THE COURT: W?
 22 MR. WEINKOWITZ: Michael Weinkowitz,
 23 W-E-I-N-K-O-W-I-T-Z, Levin, Fishbein, Sedran &
 24 Berman.
 25 MR. WARD: Navan Ward, N-A-V-A-N

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1 W-A-R-D, from Beasley Allen.
 2 MR. WESTHEIMER: Michael Westheimer
 3 from Babbitt, Johnson, Osborne & Le Clainche.
 4 THE COURT: W? X? Y? Z? Well, I'm
 5 certainly glad I paid attention in second grade.
 6 Okay. Welcome, everyone. There was
 7 an agenda submitted. We have had, as is my protocol
 8 and our past practice, a conference in chambers with
 9 liaison counsel and the Court and I believe the
 10 terms of an order have been set forth.
 11 I'm going to go through the agenda
 12 and address the agenda items as reflected in the
 13 order. The first was a form of a Plaintiff's Fact
 14 Sheet that was the subject matter of an e-mail
 15 yesterday.
 16 Ms. Relkin, would you like to state
 17 something on the record?
 18 MS. RELKIN: Yes. Well, the parties
 19 met. Tom Anapol on behalf of the plaintiffs spent
 20 numerous hours on the phone with Ms. Catullo in a
 21 meet and confer and were able to narrow their
 22 differences substantially. There were a number of
 23 items that we could not agree upon. Those were
 24 submitted to Your Honor by e-mail and I think an
 25 unprecedented adjudication. There was an e-mail

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1 adjudication at 4:35 this morning from Your Honor
 2 resolving what the discrepancies -- differences
 3 were. And that be will be in a Plaintiff's Fact
 4 Sheet that Ms. Catullo will submit to the Court
 5 Monday.
 6 THE COURT: Ms. Catullo?
 7 MS. CATULLO: I agree with what Ms.
 8 Relkin said, Your Honor.
 9 THE COURT: All right. So the issue
 10 of the Plaintiff's Fact Sheet, Court has received
 11 the e-mails. Counsel should complete a fact sheet
 12 reflecting the Court's decision by May 20th.
 13 Defendant's fact sheet to be completed by June 14th.
 14 Is that okay, counsel?
 15 MS. CATULLO: Yes, Your Honor.
 16 MS. RELKIN: Yes, Your Honor.
 17 THE COURT: Okay. And, in fact,
 18 June 14 was a date that was requested in the e-mail
 19 to extend time to the prior order.
 20 With respect to the protective order,
 21 likewise the time to submit a form of protective
 22 order will be extended until June 14th. Proposed
 23 language of the implementing order, I believe we
 24 entered the implementing order today; is that
 25 correct?

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1 MS. CATULLO: Yes, Your Honor. The
 2 implementing order related to the answers.
 3 THE COURT: Right. And that was
 4 entered today and that will be reflected in the
 5 compliance portion of the order.
 6 Preliminary disclosure forms, there's
 7 been some confusion, I guess. I'm just reminding
 8 everyone that the Case Management Order No. 3,
 9 specifically Paragraph 312A1, needs to be complied
 10 with and I'd refer everyone to that regarding the
 11 terms of a disclosure order and compliance with that
 12 and submission to the parties on the disclosure.
 13 Anything need to be said on that,
 14 Ms. Catullo?
 15 MS. CATULLO: No, Your Honor. Just
 16 to explain the situation, we've had a number of
 17 individuals who have said they want to participate
 18 in the Phase I or be eligible to participate in
 19 Phase I who have not completed that. So both in the
 20 mediation order as well as in CMO No. 3 there was a
 21 requirement even just generally about the disclosure
 22 form and there are some folks who seem to be
 23 confused about that deadline.
 24 THE COURT: Okay. And we'll just
 25 reaffirm that.

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1 MS. RELKIN: Yeah. Ellen Relkin for
 2 the plaintiffs. Just for the benefit of those who
 3 might be confused as to why we have a Plaintiff Fact
 4 Sheet and the preliminary disclosure form, because
 5 there was certainly a thought why do we need both
 6 since when everyone sees the Plaintiff's Fact Sheet,
 7 it's fairly long and extensive, and there was
 8 discussion between the parties about that. And
 9 ultimately Stryker, they wanted it to be distinct
 10 and there are distinct purposes. The initial
 11 disclosure form, preliminary disclosure form, is
 12 only two pages. It's pretty straightforward. And
 13 it is required even once we start filing Plaintiff
 14 Fact Sheets.

15 THE COURT: Okay. Status of
 16 mediation, counsel?

17 MS. CATULLO: We did extend the
 18 deadline. There was, again, some confusion about
 19 when folks could opt in to be considered for that
 20 Phase I. We extended that to I believe it was
 21 May 1st, but we frankly did accept some that came in
 22 even after that. At this point we have about 60
 23 folks who've said that their clients would like to
 24 be included. And out of those there are some who
 25 have not complied with the disclosure form. We're

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1 following up with those individuals.

2 THE COURT: Okay.

3 MR. BUCHANAN: Kim, is that 60
 4 lawyers or 60 plaintiffs?

5 MS. CATULLO: No. 60 plaintiffs.

6 THE COURT: Anything further on
 7 mediation?

8 MS. RELKIN: Just for -- now that the
 9 fact sheet form is done, that kind of becomes the
 10 focus of getting those done. Even though we have a
 11 deadline of whatever the deadline was --

12 THE COURT: I didn't get to that yet.

13 MS. RELKIN: Okay.

14 THE COURT: With respect to the fact
 15 sheets, just moving forward just to pick up where
 16 you left off, plaintiffs who have elected to be
 17 eligible to participate in Phase I mediation as set
 18 forth in the initial mediation order will serve
 19 completed fact sheets on defendant liaison counsel
 20 no later than July 10.

21 So we're going to have the fact
 22 sheets submitted to the Court as adjudicated by the
 23 Court by this Monday. July 14 -- I'm sorry --
 24 July 10 for those plaintiffs. Plaintiffs not
 25 referenced in that paragraph will serve -- who have

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1 served their Complaints prior to the entry of this
 2 order will serve completed fact sheets on defendants
 3 and liaison counsel by August 12, so roughly 30 days
 4 later. And then moving forward all other plaintiffs
 5 shall serve their completed fact sheets on defendant
 6 and liaison counsel within 60 days of service of the
 7 Complaint. So we'll have a rolling submission
 8 moving forward.

9 Are those dates okay, counsel?

10 MS. CATULLO: Yes.

11 MS. RELKIN: Yes, Your Honor. And
 12 just indicating for the plaintiffs who are eligible
 13 for the mediation, even though the deadline's
 14 July 10th, obviously we can get them in on a rolling
 15 basis the sooner the better, since there will be a
 16 lot of materials to cull from the 60 cases down to
 17 the five and five the parties get to pick.

18 THE COURT: Right.

19 MS. CATULLO: Your Honor, if I can
 20 just say I agree, it would be very helpful to get
 21 that on a rolling basis. Just one other thing that
 22 I wanted to point out is we've had approximately 14
 23 plaintiffs who have said they want to participate
 24 who have indicated that they don't know if they have
 25 a Rejuvenate or an ABG II module.

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1 THE COURT: Okay.

2 MS. CATULLO: So obviously that kind
 3 of undermines --

4 THE COURT: Right.

5 MS. CATULLO: -- the process. If the
 6 word could be out to folks that we need to know
 7 that, and I'm happy to even follow up with those
 8 folks, but it would be very helpful to confirm that
 9 they have one or the other.

10 THE COURT: Right. That okay,
 11 counsel in the courtroom and on the telephone?

12 MS. RELKIN: Yes, Your Honor.

13 THE COURT: Okay. There was issues
 14 concerning the Stryker Corporation. I will note
 15 that counsel have been meeting and conferring. I am
 16 satisfied that progress has been made and the
 17 parties will continue to meet and confer on that
 18 issue and hopefully we can have that wrapped up by
 19 the next case management conference; is that fair?

20 MS. CATULLO: Yes, Your Honor.

21 THE COURT: And just for purposes of
 22 completion, the next case management conference will
 23 be June 18th at 10:00 a.m.

24 That being said, with the exception
 25 of a File and Serve presentation, does anyone have

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<p>1 anything to add to the record?</p> <p>2 MS. RELKIN: No, Your Honor.</p> <p>3 MS. CATULLO: No, Your Honor.</p> <p>4 THE COURT: No? Okay.</p> <p>5 Sir, welcome.</p> <p>6 MR. MERRITT: Thank you. I won't</p> <p>7 bore you with the entire presentation, but I'm Dean</p> <p>8 Merritt from File & ServeXpress. I just wanted to</p> <p>9 be here to answer any questions about the service</p> <p>10 system. I provided liaison counsel with a proposed</p> <p>11 case management order. You're welcome to modify. I</p> <p>12 believe we have an electronic copy as well.</p> <p>13 Judge, you signed a YAZ one back in</p> <p>14 2010. It's pretty similar to that.</p> <p>15 THE COURT: Anyone in the courtroom</p> <p>16 have any questions of our representative here?</p> <p>17 MR. MERRITT: We can set your firm up</p> <p>18 with training. I have my information here if anyone</p> <p>19 needs training. I think most counsel know using our</p> <p>20 system is much less expensive than traditional</p> <p>21 methods, especially you also get an online case</p> <p>22 file. The judge will have access to it as well.</p> <p>23 We're pricing this reduced at \$10 a transaction.</p> <p>24 Any questions I'm here or if you need</p> <p>25 training or if any of your paralegals, let me know.</p>	<p>1 (Adjourned at 11:15 a.m.)</p> <p>2 - - -</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>
Page 19	Page 21
<p>1 THE COURT: Counsel?</p> <p>2 MS. RELKIN: I would just say on</p> <p>3 behalf of plaintiffs, plaintiffs would very much</p> <p>4 like to participate in it. We think it's kind of a</p> <p>5 no-brainer. It's very inexpensive and it simplifies</p> <p>6 service and it's also a form of having everything</p> <p>7 accessible. So we used it in other litigations and</p> <p>8 we hope that Stryker agrees.</p> <p>9 THE COURT: Ms. Catullo, are you</p> <p>10 going to consider it?</p> <p>11 MS. CATULLO: Understood. Thank you.</p> <p>12 Yes.</p> <p>13 THE COURT: Just a reminder to remind</p> <p>14 your client about my other favorite issue.</p> <p>15 MS. CATULLO: Yes.</p> <p>16 THE COURT: Anything further from</p> <p>17 anyone in the courtroom?</p> <p>18 Sir, thank you very much.</p> <p>19 MR. MERRITT: Thank you.</p> <p>20 THE COURT: Anyone on the telephone?</p> <p>21 Okay. Counsel, enjoy your day. If</p> <p>22 you are members of the New Jersey Bar, I look</p> <p>23 forward to seeing you at the convention tomorrow and</p> <p>24 Friday. That being said, we will adjourn. We'll</p> <p>25 see you in June. Thank you.</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, KIMBERLY A. OVERWISE, a Certified</p> <p>4 Court Reporter and Notary Public of the State of New</p> <p>5 Jersey, do hereby certify that the foregoing is a</p> <p>6 verbatim transcript of the testimony 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 this action.</p> <p>16</p> <p>17 KIMBERLY A. OVERWISE</p> <p>18 CCR: 30X100224600</p> <p>19 Dated: May 29, 2013</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>1 LAWYER'S NOTES 2 PAGE LINE 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>	

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