

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION BERGEN COUNTY

- - -

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

- - -

Tuesday, June 18, 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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1 THE COURT: Welcome, counsel on the
 2 telephone. You need not put your appearances on the
 3 record. It's about 25 to 12:00. We just are going
 4 on the record for the first time. I am going to
 5 read to you my order, which is going to be a
 6 standard paragraph moving forward in all of my
 7 multicounty litigation. And this will instruct you
 8 on how you're going to get your appearance on the
 9 record.
 10
 11 Quote, counsel is permitted to appear
 12 telephonically. In order to have your appearance on
 13 the record, it is counsel's responsibility to e-mail
 14 liaison counsel and the court reporter at least one
 15 hour before the proceeding with your name, firm, and
 16 party representing indicating that you intend to
 17 appear by phone. In addition, you must confirm your
 18 appearance immediately following the proceeding.
 19 Absent the above, counsel's appearance will not be
 20 noted.
 21
 22 Now, understanding that you just
 23 found out about this so it would have been
 24 impossible for you to e-mail anyone prior to the
 25 conference, I'd ask that you please e-mail your
 respective liaison counsel at the conclusion of this
 conference and that will be forwarded to the court

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1 reporter so your appearance will be noted. You are
 2 all officers of the court so I trust that anybody
 3 that says they are listening was, in fact,
 4 listening.
 5 That being said, welcome to counsel
 6 in the courtroom. Before we get started, I would
 7 like to introduce Kelly Gibson, who will be or is
 8 our new team leader in multicounty litigation. She
 9 comes with a wealth of experience having served in
 10 every possible division in our civil division. And
 11 she ducked us long enough, but the wheel came around
 12 so she is now part of our team and we welcome her.
 13 And I am sure she is going to do an outstanding job.
 14 Michelle did a great job and will be missed. She's
 15 still here. She has a couple more months before she
 16 goes on to better pastures. So we thank Michelle
 17 for her service if she's listening and we welcome
 18 Kelly. And I'm sure we will have a seamless
 19 transition.
 20 That being said, counsel your
 21 appearances for the record, please.
 22 MS. RELKIN: Good morning, Your
 23 Honor. Ellen Relkin, Weitz & Luxenberg.
 24 MR. WARRINER: Cal Warriner, Searcy
 25 Denney.

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1 MS. SUTTON: Tara Sutton, Robins
 2 Kaplan Miller & Ciresi, Minneapolis.
 3 MS. FLEISHMAN: Wendy Fleishman,
 4 Lieff Cabraser.
 5 MR. ANAPOL: Thomas Anapol, Anapol
 6 Schwartz.
 7 MR. MILLROOD: Toby Millrood, Pogust
 8 Braslow & Millrood, Philadelphia.
 9 MR. SMITH: William Smith, Hook Smith
 10 & Meyer.
 11 MR. DiCELLO: Mark DiCello, DiCello
 12 Law Firm.
 13 THE COURT: Anybody else want to put
 14 an appearance on the record? You've been sitting
 15 here for almost two hours.
 16 MR. PARNES: Hillel Parnes, Robins
 17 Kaplan Miller & Ciresi in New York.
 18 MS. DOLEJSI: Holly Dolejsi, Robins
 19 Kaplan Miller & Ciresi, Minneapolis.
 20 MS. MANIATIS: Vicky Maniatis,
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 22 MR. KASSIS: James Kassis, Schenck
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 15 MR. FLAHERTY: Brendan Flaherty,
 16 Pritzker Olsen.
 17 MR. SZERLAG: David Szerlag, Pritzker
 18 Olsen.
 19 MR. CORDELLA: Paul Cordella, Lanier
 20 Law Firm.
 21 MR. KELLEY: Walter Kelley, Kelley
 22 Bernheim & Dolinsky.
 23 MR. CARBOY: Andrew Carboy, Sullivan
 24 Papain Block McGrath & Cannavo.
 25 MR. LAPINSKI: Good morning, Your

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1 Honor, Dan Lapinski, Wilentz law firm.
 2 MS. CATULLO: Good morning, Your
 3 Honor. Kim Catullo and Samantha Spicer from the
 4 Gibbons PC law firm on behalf of the defendants.
 5 THE COURT: Okay. Counsel, welcome
 6 again. Since we last met, the federal joint panel
 7 on multidistrict litigation has assigned this matter
 8 to Judge Donovan Frank in Minnesota. There will be
 9 an MDL. We did have a conversation in chambers. I
 10 understand Judge Frank is wrapped up in a trial
 11 that's going to take about two months. I will reach
 12 out to the judge, introduce myself to the Judge, and
 13 discuss this matter with the Judge. It seems to me
 14 that New Jersey is ahead of the curve. I think we
 15 have done some creative and some innovative orders
 16 here. Hopefully, the Judge will agree to at least
 17 look at and perhaps even adopt some of the orders
 18 that we have entered here to help streamline the MDL
 19 litigation.
 20 For those of you that know from prior
 21 litigation, I am a proponent of coordination between
 22 federal and state. However, this is New Jersey. We
 23 do have our own rules and I do not cede my authority
 24 or jurisdiction to any other state or federal, but
 25 cooperation certainly is encouraged.

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1 That being said, we have been out of
 2 the gate pretty quickly. I think we are moving at a
 3 very good pace. I do not want to hold up this
 4 litigation to allow the federal litigation to catch
 5 up to us. I'm confident that the federal litigation
 6 ultimately will catch up to us, but I am not going
 7 to slow our process down. So we're going to be
 8 running on parallel tracks, maybe even three tracks,
 9 if you will. We're going to move forward with
 10 discovery. We're going to move forward with
 11 mediation. And we're going to move forward with our
 12 litigation. We will coordinate with Judge Frank in
 13 the MDL and we will move forward with our mediation
 14 and you'll hear about that in a few moments. And I
 15 think that that will serve everyone well. When the
 16 Judge does have his initial conference and starts to
 17 manage the case, hopefully he will find what we have
 18 been doing in New Jersey beneficial.

19 Anyone wish to comment on that?
 20 No? Okay. For those of you who are
 21 new here, you will notice how my orders are set up.
 22 They're set up into several parts. The first part
 23 is entitled "Compliance with prior orders." At that
 24 part of the order I just say what has happened since
 25 our last case management conference, what orders

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1 have been entered, and there have been new no orders
 2 entered since our last case management conference.

3 Part 2 is compliance, which should
 4 have been done since our last case management
 5 conference, if, in fact, it has been done. It
 6 appears that we're still working on defendants' fact
 7 sheets and a protective order. Counsel has
 8 indicated that they will be having a meet and confer
 9 on July 2nd. That will be two of the issues that
 10 will be addressed at the meet and confer.

11 We go into the discovery portion of
 12 the order. Written discovery is proceeding.
 13 Defendants will be producing a chart that will be
 14 setting forth their respective insurance
 15 information, insurance coverage. There will be a
 16 declaration pages attached to that chart. The
 17 premiums will be redacted.

18 There was a request for certain
 19 witnesses to be produced. I've decided that to move
 20 the litigation forward, that defendants will produce
 21 one ESI witness and one corporate structure witness
 22 by August 7th so we can start some depositions and
 23 move that phase of discovery forward.

24 With respect to the defendants' fact
 25 sheet and other requests for discovery, a meet and

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1 confer will also be on July 2nd to see how -- if you
 2 can reach a common ground on that, perhaps even a
 3 phase-in of discovery, perhaps a two-part fact sheet
 4 to get some basic information, information that is
 5 general to all cases and move on rather than get
 6 bogged down in numerous requests at this particular
 7 time.

8 An issue came up regarding the
 9 production of records attached to a fact sheet. If
 10 you are sending records, the preferred way and the
 11 ordered way to serve the records with the fact sheet
 12 is on a CD. The CD will have -- will be Bates
 13 stamped. There is a format. It will be produced as
 14 follows: Plaintiffs' first initial, plaintiff's
 15 last name, and the Bates stamp number on that CD. I
 16 am led to believe that there is a program that does
 17 that for you. That is certainly beyond the
 18 technology capabilities of the State of New Jersey.
 19 So, for example, if it was my record, it would be B.
 20 Martinotti No. 1, et cetera.

21 Counsel will be discussing the vendor
 22 that the defendants want to use regarding medical
 23 records and will provide that vendor to the
 24 plaintiffs by July 2nd.

25 With respect to general case

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1 management, which is Part 3 of the order, the same
 2 orders remain -- same paragraphs remain in effect.
 3 However, counsel will meet and confer regarding an
 4 ESI protocol. And that will be -- ESI protocol and
 5 scheduling will be done on July 1st.

6 With respect to the stipulation
 7 regarding Stryker Corp. and Stryker Ireland, the
 8 Court has reviewed a proposed stipulation. It was
 9 modified. Counsel will meet and confer and submit
 10 same. I will enter it as an order. And that will
 11 be done within seven days, though I'm led to believe
 12 that that will be done a little earlier.

13 There was an issue concerning the
 14 exemplars. I'm ordering the defendants to
 15 investigate and I'm using the word "universe" of
 16 exemplars that exist and provide to the plaintiffs a
 17 chart setting forth the type, size, quantity,
 18 whether they are packaged or unpackaged, within 30
 19 days. Once that chart is prepared and served,
 20 counsel and I, liaison counsel and I, will have a
 21 meet and confer telephonically to discuss the
 22 specific production of certain exemplars.

23 I know File and Serve were here
 24 before and that's pending a proposal. Counsel again
 25 will meet and confer on that just to come to some

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1 common ground.
 2 What continues to be a proverbial
 3 thorn in my side is the fact that for some reason
 4 known only to the corporate world, your client
 5 refuses to accept service of the Summons and
 6 Complaints and makes everybody go through the
 7 exercise of actual service. Understanding that's
 8 their right as per court rules and due process, is
 9 there any way I can persuade your client to soften
 10 its stance on this particular issue?
 11 MS. CATULLO: Your Honor, I can
 12 certainly raise the issue again. I'm happy to do
 13 that.
 14 THE COURT: Okay.
 15 MS. CATULLO: I can tell you that
 16 it's not particular to Your Honor or this
 17 litigation. I've represented them for many years
 18 and they have never allowed counsel to accept
 19 service. So it is not particular to this litigation
 20 or Your Honor, but I will revisit the issue again.
 21 THE COURT: The other option I'm
 22 thinking about is having a corporate rep come to
 23 court every case management conference and just have
 24 plaintiffs come in with their Complaints and hand
 25 them to them individually. We'll have the sheriff

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1 right outside and just serve them right here in the
 2 courthouse. Would that be an option you think they
 3 would appreciate?
 4 MS. CATULLO: I will let them know
 5 that's something you're considering.
 6 THE COURT: Since we are moving into
 7 the summer months and I anticipate, expect, and hope
 8 all counsel are taking vacation, well-deserved
 9 vacation, I thought it prudent to set forth two case
 10 management dates so you know when we are going to be
 11 here in July and August. And the dates that I had
 12 set forth in my order are July 16th and August 13th
 13 at 10:00 a.m., so please note that. I have already
 14 advised counsel on the telephone of the requirements
 15 moving forward.
 16 Just for the record, we had some
 17 issues concerning the official record because of the
 18 antiquated recording system we had. We've now moved
 19 to this century. We are no longer using VCR tapes.
 20 We are actually being recorded digitally as I speak.
 21 Therefore, we're going to have to go back to the
 22 official record is now -- well, let me rephrase
 23 that. Would counsel still prefer the official
 24 record to be the court reporter or the Court's
 25 record? If you agree, the court reporter can be the

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1 official record.
 2 MS. RELKIN: Plaintiffs would opt for
 3 the court reporter because it's always more
 4 accurate.
 5 THE COURT: Okay.
 6 MS. RELKIN: And there's not
 7 "unidentified males and females." We have names.
 8 THE COURT: Okay.
 9 MS. CATULLO: I'm fine with that.
 10 THE COURT: Okay. So the court
 11 reporter is still the official record for all issues
 12 on appeal, et cetera, though we do have the benefit
 13 of what's called CourtSmart. And just to give you a
 14 lesson, when the blue person is lit, that means we
 15 are on the record and being recorded. However,
 16 counsel, be warned that there is a backup system
 17 that records everything that goes on in the
 18 courtroom even without the blue man on but cannot be
 19 accessed except by order of the assignment judge and
 20 can only be accessed if for some reason something
 21 that should have been recorded isn't recorded. But
 22 candidly, since we are not using this as the
 23 official record and we have madam court reporter to
 24 my left, we will never have that problem in this
 25 case. So that's a good thing.

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1 One other issue with respect to
 2 mediation. I really want to move this mediation
 3 forward. There have been some dual proposals about
 4 plaintiffs' picks, defendants' picks, random picks.
 5 My suggestion was a random pick by the Court.
 6 Plaintiffs' counsel in chambers voiced an objection
 7 to that. I thought I came up with a relatively good
 8 compromise, which was a certain number of picks for
 9 plaintiff, a certain number of picks for the
 10 defendant, and the Court randomly picking. I am
 11 going to enter an order that the first ten cases
 12 will be selected as follows: Six random by the
 13 Court, two by the plaintiff, two by the defendants,
 14 so that would get us eight right out of the box,
 15 understanding that the defendants are a bit behind
 16 the eight ball because they still need the
 17 information before they can make their selections.
 18 That being said, albeit only two
 19 picks, I trust that plaintiff will be selecting not
 20 their best case, certainly not their worst case, but
 21 what they deem to be the most typical case. It does
 22 not advance the ball just to have your best case go
 23 forward.
 24 Anybody wish to be heard?
 25 Plaintiffs' side?

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1 MS. RELKIN: No, Your Honor.
 2 THE COURT: Nothing?
 3 Defendants?
 4 MS. CATULLO: No, Your Honor.
 5 THE COURT: Okay. We'll see you on
 6 July 13th and August -- what did I say -- 16?
 7 MS. RELKIN: July 16.
 8 THE COURT: Did I mess up the dates?
 9 There we go. July 16th and August 13th. Sorry
 10 about that. 10:00 a.m.
 11 Yes, is there a problem?
 12 MS. CATULLO: Well, I have a trial
 13 with Judge Higbee which I think will be adjourned,
 14 but --
 15 THE COURT: What day?
 16 MS. CATULLO: That day.
 17 THE COURT: July?
 18 MS. CATULLO: Yeah. Can you do the
 19 17th?
 20 THE COURT: Yeah. Does July 17th --
 21 Judge Higbee has counsel on the --
 22 MS. RELKIN: That might be getting
 23 close to the AAJ conference in San Francisco.
 24 THE COURT: Want to do the 15th?
 25 MR. WARRINER: Travel day on

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1 Thursday. AAJ doesn't start till Friday.
 2 MS. RELKIN: So is the 17th good?
 3 17th then? That's Wednesday.
 4 MS. CATULLO: Wednesday I can do.
 5 The 17th I can do.
 6 THE COURT: The 17th? That's okay?
 7 All right. July 17th. Anything further?
 8 Counsel, we will tweak the order. It
 9 will be e-mailed to liaison counsel for comment and
 10 posted on the website. Okay. Everyone have a happy
 11 fourth of July. Enjoy. Have a safe trip back. And
 12 I will send Judge Frank your regards, counsel.
 13 We're off the record.
 14 (Adjourned at 11:55 a.m.)
 15 ---
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Page 24

1 CERTIFICATE
 2
 3 I, KIMBERLY A. OVERWISE, a Certified
 4 Court Reporter and Notary Public of the State of New
 5 Jersey, do hereby certify that the foregoing is a
 6 verbatim transcript of the testimony as taken
 7 stenographically by and before me at the time, place
 8 and on the date hereinbefore set forth, to the best
 9 of my ability.
 10 I DO FURTHER CERTIFY that I am
 11 neither a relative nor employee nor attorney nor
 12 counsel of any of the parties to this action, and
 13 that I am neither a relative nor employee of such
 14 attorney or counsel, and that I am not financially
 15 interested in this action.
 16
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 CCR: 30X100224600
 Dated: June 26, 2013

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1 LAWYER'S NOTES
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