

August 13, 2013

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

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

- - -

AUGUST 13, 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 11:18 a.m., before MARGARET
M. REIHL, a Certified Realtime Reporter, Certified
Court Reporter and Notary Public for the State of New
Jersey.

GOLKOW TECHNOLOGIES, INC.

877.370.3377 ph | 917.591.5672 fax

deps@golkow.com

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 WEITZ & LUXENBERG P.C. BY: ELLEN RELKIN, ESQUIRE 700 Broadway, 5th Floor New York, New York 10003 (212) 558-5500 Representing Plaintiffs</p> <p>5 SEEGER WEISS LLP BY: DAVID R. BUCHANAN, ESQUIRE 550 Broad Street, Suite 920 Newark, New Jersey 07102 (973) 639-9100 dbuchanan@seegerweiss.com Representing the Plaintiffs</p> <p>10 SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A. BY: C. CALVIN WARRINER, III, ESQUIRE 2139 Palm Beach Lakes Blvd. West Palm Beach, Florida 33409-6601 (800) 780-8607 Representing the Plaintiffs</p> <p>14 POGUST BRASLOW & MILLROOD BY: TOBIAS L. MILLROOD, ESQUIRE 161 Washington Street, Suite 1520 Conshohocken, Pennsylvania 19428 (610) 941-4204 tmillrood@pbmattorneys.com Representing the Plaintiffs</p> <p>18 SCHENCK PRICE SMITH & KING LLP BY: STEPHEN A. GEFFNER, ESQUIRE 220 Park Avenue P.O. Box 991 Florham Park, New Jersey 07932 (973) 539-1000 sag@spsk.com Representing the Plaintiffs</p> <p>23 24 25</p>	<p>1 ROBINS KAPLAN MILLER & CRESI BY: HILLEL PARNES, ESQUIRE 2 601 Lexington Avenue 34th Floor New York, New York 10022-4611 (212) 980-7400 Representing the Plaintiffs</p> <p>4 ROBINS KAPLAN MILLER & CIRESI, LLP BY: HOLLY H. DOLEJSI, ESQUIRE 6 800 Lasalle Avenue Suite 2800 Minneapolis, Minnesota 55402 (612) 349-8452 Representing the Plaintiffs</p> <p>8 SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO, P.C. BY: ANDREW J. CARBOY, ESQUIRE 10 120 Broadway, 18th Floor New York, New York 10271 (212) 732-9000 Representing the Plaintiffs</p> <p>12 GRIECO & DEFILIPPO, LLC BY: VANESSA FRIEDHOFF, ESQUIRE 14 414 Eagle Rock Avenue, Suite 200 West Orange, New Jersey 07052 (973) 243-2099 Representing the Plaintiffs</p> <p>16 17</p> <p>18 GIBBONS PC BY: KIM M. CATULLO, ESQUIRE SAMANTHA L. SPICER, ESQUIRE 19 One Gateway Center Newark, New Jersey 07102 (973) 596-4500 kcatullo@gibbonslaw.com 20 sspicer@gibbonslaw.com Representing the Defendant 21 Howmedica Osteonics Corporation</p> <p>22 --- 23 24 25</p>
Page 3	Page 5
<p>1 KEEFE BARTELS LLC BY: JOSHUA S. KINCANNON, ESQUIRE 2 170 Monmouth Street Red Bank, New Jersey 07701 (732) 224-9400 jkincannon@keefebartels.com 3 Representing the Plaintiffs</p> <p>4 DAVIS SAPERSTEIN & SALOMON, P.C. BY: TERRENCE SMITH, ESQUIRE 5 375 Cedar Lane Teaneck, New Jersey 07666 (201) 907-5000 6 Representing the Plaintiffs</p> <p>7 BERNSTEIN LIEBHARD LLP BY: FELECIA L. STERN, ESQUIRE 8 10 E. 40th Street, 22nd Floor New York, New York 10016 (212) 779-1414 9 Representing the Plaintiffs</p> <p>10 BALKIN & EISBROUCH, LLC BY: DAVID EISBROUCH, ESQUIRE 11 50 Main Street Hackensack, New Jersey 07601 (312) 726-4100 12 Representing the Plaintiffs</p> <p>13 LANIER LAW FIRM, PLLC BY: RICHARD D. MEADOW, ESQUIRE 14 126 East 56th Street 6th Floor New York, New York 10022 (212) 421-2800 15 rdm@lanierlawfirm.com 16 Representing the Plaintiffs</p> <p>17 KOPELOWITZ OSTROW FERGUSON WEISELBERG KEECHL BY: JAN DOUGLAS ATLAS, ESQUIRE 18 ANDREW A. NORDEN, ESQUIRE 19 200 S.W. 1st Avenue, 12th Floor Fort Lauderdale, Florida 33301 (877) 525-4100 20 Representing the Plaintiffs</p> <p>21 22 23 24 25</p>	<p>1 PRESENT TELEPHONICALLY: 2</p> <p>3 COZEN O'CONNOR BY: DIANA LIN, ESQUIRE MARTIN P. DUFFEY, ESQUIRE 4 1900 Market Street Philadelphia, Pennsylvania 19103 (215) 665-2706 5 dianalin@cozen.com</p> <p>6 THE LAW OFFICES OF ROBERT J. FENSTERSHEIB & ASSOCIATES, P.A. BY: CHARLES MINDLIN, ESQUIRE 7 520 W. Hallandale Beach Blvd. Fort Lauderdale, Florida 33009 (954) 456-2488 8 jsearle@fenstersheib.com 9 jw@fenstersheib.com</p> <p>10 LYNCH DASKAL EMERY LLP BY: BERNARD DASKAL, ESQUIRE 11 264 West 40th Street New York, New York 10018 (212) 302-2400 12 Daskal@lawlynch.com</p> <p>13 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP BY: DANIEL R. LEATHERS, ESQUIRE 14 250 Hudson Street, 8th Floor New York, NY 10013 (212) 355-9500 15 dleathers@lchb.com</p> <p>16 WILLIAMS CUKER & BEREZOFSKY BY: MARIA JANOSKI, ESQUIRE 17 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 (856) 667-0500 18 mjanoski@wcblegal.com</p> <p>19 20 21 22 23 24 25</p>

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1 SKIKOS, CRAWFORD, SKIKOS & JOSEPH
 2 BY: ADRIANA SUAREZ DESMOND, ESQUIRE
 3 625 Market Street, 11th Floor
 4 San Francisco, California 94105
 5 (415) 546-7300
 6 adesmond@skikoscrawlford.com

7 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
 8 BY: NAVAN WARD, JR., ESQUIRE
 9 218 Commerce Street
 10 Montgomery, Alabama 36104
 11 (334) 269-2343
 12 Navan.ward@beasleyallen.com

13 SEEGER WEISS LLP
 14 BY: MICHAEL C. HUGHES, ESQUIRE
 15 550 Broad Street Suite 920
 16 Newark, New Jersey 07102
 17 (973) 639-5318
 18 mhughes@seegerweiss.com

19 HOLLIS, WRIGHT AND COUCH, P.C.
 20 BY: TYLER C. VAIL, ESQUIRE
 21 Financial Center
 22 505 North 20th Street, Suite 1500
 23 Birmingham, Alabama 35203
 24 (205) 313-5989
 25 tylerv@hollis-wright.com

1 FLEMING, NOLEN & JEZ, LLP
 2 BY: G. SEAN JEZ, ESQUIRE
 3 2800 Post Oak Blvd., Suite 4000
 4 Houston, Texas 77056
 5 (713) 621-7944
 6 sean_jez@fleming-law.com

7 PARKER WAICHMAN LLP
 8 BY: MICHAEL S. WERNER, ESQUIRE
 9 6 Harbor Park Drive South
 10 Port Washington, New York 11050
 11 (516) 723-4627
 12 mwerner@yourlawyer.com

Page 7

1 THE LANIER LAW FIRM, PLLC
 2 BY: PAUL R. CORDELLA, ESQUIRE
 3 126 E. 56th Street, 6th Floor
 4 New York, New York 10022
 5 (212) 421-2800
 6 prc@lanierlawfirm.com

7 PRITZKER OLSEN, P.A.
 8 BY: DAVID SZERLAG, ESQUIRE
 9 45 South 7th Street
 10 Minneapolis, Minnesota 55402
 11 (612) 338-0202
 12 david@pritzkerlaw.com

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1 THE COURT: Good morning everyone. You
 2 can be seated. Do we have a telephone call in?
 3 MS. RELKIN: Yes.
 4 (Pause.)
 5 THE COURT: Good morning, counsel. I
 6 appreciate your patience waiting on the phone. It was
 7 a productive couple of minutes -- actually, a little
 8 over an hour with both counsel in the courtroom.
 9 We have not gone on the record. We're
 10 going on the record right now. I assume if you are
 11 participating by telephone you've read the protocol and
 12 understand how to proceed.
 13 That being said, counsel in the
 14 courtroom, your appearances for the record, please.
 15 MS. RELKIN: Ellen Relkin, Weitz &
 16 Luxenberg for the plaintiffs.
 17 MR. WARRINER: Cal Warriner, Searcy
 18 Denney for the plaintiffs.
 19 MR. MILLROOD: Tobi Millrood, Pogust
 20 Brawlow & Millrood for plaintiffs.
 21 MR. BUCHANAN: Dave Buchanan, Seeger
 22 Weiss for plaintiffs.
 23 MR. GEFFNER: Stephen Geffner, Schenck,
 24 Price, Smith & King.
 25 MR. KINCANNON: Good morning, Your

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1 Honor. Josh Kincannon, Keefe Bartels for Plaintiffs.
 2 MR. SMITH: Terrence Smith, Davis
 3 Saperstein & Solomon for the plaintiffs.
 4 MS. STERN: Good morning, Felecia Stern
 5 for the plaintiffs.
 6 MR. EISBROUCH: David Eisbrouch, Balkin
 7 & Eisbrouch, for the plaintiffs.
 8 MR. MEADOW: Rick Meadow, Lanier Law
 9 Firm, plaintiffs.
 10 MR. NORDEN: Andrew Norden, Kopelowitz
 11 Ostrow.
 12 MR. ATLAS: Jan Atlas, Kopelowitz
 13 Ostrow.
 14 MR. PARNES: Hillel Parness, Robins,
 15 Kaplan, Miller & Ciresi, for the plaintiffs.
 16 MS. DOLEJSI: Holly Dolejsi, Robins,
 17 Kaplan, Miller & Ciresi, for the plaintiffs.
 18 MR. CARBOY: Andrew Carboy, Sullivan,
 19 Papain, Block, McGrath & Cannavo, for the plaintiffs
 20 MS. FRIEDHOFF: Vanessa Friedhoff,
 21 Grieco & DeFilippo, for plaintiffs.
 22 THE COURT: I'm sorry. Sir, your name?
 23 THE WITNESS: I'm Robert McKey. I'm
 24 plaintiff.
 25 THE COURT: Okay. Welcome, sir.

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1 MS. CATULLO: Good morning, Your Honor.
 2 Kim Catullo from Gibbons PC firm on behalf of Howmedica
 3 Osteonics Corp.
 4 MS. SPICER: Samantha Spicer from
 5 Gibbons.
 6 THE COURT: Counsel, I have reviewed the
 7 agenda. We did have a conference in chambers. I
 8 appreciate the fact that everyone has been working
 9 diligently to advance this case, as evidenced by the
 10 amount of work that has been done to date, even since
 11 our last conference. I can assure those counsel that
 12 are not on the committee or not in chambers with me
 13 that your positions are being well advocated by
 14 Ms. Relkin. She has brought back to me all your
 15 thoughts, all your concerns, they are noted and they
 16 have been considered by the Court. We are not trying
 17 to freeze you out but it just is unwieldy to continue
 18 to talk to everyone, and you are being well served by
 19 liaison counsel.
 20 That being said, I'm just going to
 21 memorialize what we have discussed in chambers and ask
 22 if there are any exceptions to same.
 23 As you have now seen since we started
 24 this case, the order is broken down into several parts.
 25 First part consists of what happened since our last

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1 order and of import is the interim protective order as
 2 amended by an order entered today and an order
 3 regarding the option for service under specific
 4 circumstances. Let me talk about that order for a
 5 moment.
 6 That order resulted from the Court
 7 suggesting, requesting otherwise attempting to impose
 8 its position upon defense counsel to accept service.
 9 As we all know there is absolutely no authority for me
 10 to impose an alternate service method upon defendants
 11 absent certain circumstances as contained in the rules
 12 which are not evident in this particular case.
 13 That being said, counsel had been
 14 badgered by this Court every proceeding after I had
 15 requested for them to accept service and they were
 16 gracious enough to accept the Court's proposal, which
 17 is a modified alternate service proposal which was, in
 18 essence, once a certain number of firms got to a
 19 certain level, they then could serve by alternate
 20 means. And that was the Court's suggestion and I'm
 21 happy that counsel has finally been able to convince
 22 their client to accept same. I think it's good for all
 23 the firms with numerous cases moving forward.
 24 Understand that some firms may not have that many cases
 25 though it would not be a hardship for those firms to

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1 serve through the regular course as provided by the
 2 rules.
 3 So I appreciate the fact that your
 4 clients have seen the light. I have signed the order
 5 and under certain circumstances, once a certain number
 6 of cases have been filed, there is an option for
 7 alternative methods of service.
 8 Compliance with our prior orders. The
 9 defendant's fact sheet is a work in progress. There
 10 has been a -- plaintiff's now have received a red
 11 line -- a copy of a defendant's fact sheet. They are
 12 to respond to it with red line changes by August 19.
 13 Counsel will meet and confer thereafter to produce a
 14 final fact sheet by August 30. If they cannot agree,
 15 you will e-mail me your disagreements, I will address
 16 them and we'll proceed how we're going to proceed
 17 moving forward.
 18 Regarding discovery, you can serve
 19 certain discovery compliant with the court rules. You
 20 are to continue to meet and confer regarding the status
 21 and the scope of discovery. There has been a interim
 22 protective order entered, though the parties are to
 23 continue to meet and confer regarding the final
 24 protective order.
 25 I'm happy to report that now that we

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1 have an interim protective order in place, the
 2 insurance coverage information and declaration sheet
 3 will be produced by August 16th. ESI witnesses are
 4 going to be deposed by August 23rd. Again, they could
 5 be subject to cross-notice of deposition. That will be
 6 addressed by Judge Frank in the MDL. You will continue
 7 to meet and confer regarding the ESI protocol.
 8 And the market group has been selected
 9 regarding a vendor for medical records. The defendants
 10 will provide forms and the authorizations to
 11 plaintiff's counsel by August 21st.
 12 We have chosen -- strike that.
 13 The Court has chosen six cases randomly
 14 for mediation. I'm not going to read the docket
 15 numbers. They are the Seely case, the Catone case, the
 16 Syn case, the Seeman case, the Grossman case and the
 17 Cook case. Docket numbers are set forth in the order.
 18 Plaintiffs have previously selected their two cases,
 19 Dixon and Mergel. Defendants will select their cases
 20 within 30 days.
 21 I want this mediation up and running.
 22 We've spent a lot of time and effort and I think it's
 23 not unreasonable that a formal mediation session is to
 24 take place by December 15th, that gives you the entire
 25 fall to start moving this forward.

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1 You will continue to -- strike that.
 2 You will meet and confer regarding Phase
 3 II mediation, which will be defined at the next CMC.
 4 Just a reminder that completed fact
 5 sheets to be served within 60 days.
 6 The exemplar, a chart of the universe of
 7 exemplars to be produced by August 16th. Once it's
 8 produced we'll have a telephone conference concerning
 9 the actual production of same and I have entered an
 10 order regarding service.
 11 Our next case management conference will
 12 be August -- I'm sorry -- September 24 at 10:30.
 13 Liaison counsel shall be here at 9:45. Thereafter we
 14 have another scheduled for October -- I thought we did
 15 an October 1 too.
 16 MS. CATULLO: Well, it wasn't in the
 17 order and then we talked about whether we should just
 18 set it.
 19 THE COURT: Oh, set it at the next one?
 20 Okay.
 21 MS. RELKIN: That's fine.
 22 THE COURT: We'll set the next one at
 23 the September meeting. And the next rest of the
 24 remainder of the order is essentially the same.
 25 Any exceptions to the order? Any

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1 comments to the order? Ms. Relkin?
 2 MS. RELKIN: No, Your Honor. You
 3 mentioned the deposition of the ESI, there's also a
 4 corporate representative on organization.
 5 THE COURT: Right, before August 23rd, I
 6 think, right. Yep. Anything further? Anybody wish to
 7 be heard? No?
 8 Counsel, again, I appreciate your
 9 cooperation. I am moderately pleased with the progress
 10 we've made. I look forward to the mediation. I think
 11 it will be helpful to set some parameters to see where
 12 we're going with this litigation. I know everyone is
 13 approaching this in good faith, trying to move the case
 14 along. Again, I appreciate your efforts.
 15 For those of you that are here that have
 16 had an opportunity to work with Jen, this is her last
 17 CMC in this particular matter, as she will now join
 18 your ranks of competent counsel, rigorously
 19 representing their clients before various judges. So
 20 she has done a great job. I am sure she is going to be
 21 a worthy adversary as she moves on and an outstanding
 22 colleague to work with.
 23 That being said, we will see you in a
 24 couple weeks. I appreciate your time. I appreciate
 25 your patience and notwithstanding the fact that a lot

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1 does not appear to be getting done on the record, if
 2 you will, we are moving this case forward and I
 3 appreciate everyone's cooperation in that regard.
 4 Okay, thank you. Off the record.
 5 (Hearing concluded at 11:30 a.m.)
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1 CERTIFICATION
 2 I, MARGARET M. REIHL, a Registered
 3 Professional Reporter, Certified Realtime Reporter,
 4 Certified Shorthand Reporter, Certified LiveNote
 5 Reporter and Notary Public, do hereby certify that the
 6 foregoing is a true and accurate transcript of the
 7 testimony as taken stenographically by and before me at
 8 the time, place, and on the date hereinbefore set
 9 forth.
 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 that
 13 I am neither a relative nor employee of such attorney
 14 or counsel, and that I am not financially interested in
 15 the action.
 16
 17
 18 -----
 19 Margaret M. Reihl, RPR, CRR, CLR
 20 CSR #XI01497 Notary Public
 21
 22
 23
 24
 25

<p style="text-align: center;">A</p> <p>abg 1:5 able 11:21 absent 11:11 absolutely 11:9 accept 11:8,15,16 11:22 accurate 17:6 action 17:12,15 actual 14:9 address 12:15 addressed 13:6 adesmond 6:4 adriana 6:2 advance 10:9 adversary 15:21 advocated 10:13 agenda 10:7 agree 12:14 alabama 6:7,15 allen 6:5 alternate 11:10,17 11:19 alternative 12:7 amended 11:2 amount 10:10 andrew 3:23 4:9 9:10,18 anybody 15:6 appear 16:1 appearances 8:14 appreciate 8:6 10:8 12:3 15:8,14,24 15:24 16:3 approaching 15:13 approximately 1:14 associates 5:7 assume 8:10 assure 10:11 atlas 3:22 9:12,12 attempting 11:7 attorney 17:11,13 august 1:8 12:12,14 13:3,4,11 14:7,12 15:5 authority 11:9</p>	<p>authorizations 13:10 avenue 2:20 3:23 4:2,6,14</p> <hr/> <p style="text-align: center;">B</p> <p>back 10:14 badgered 11:14 balkin 3:13 9:6 bank 3:2 barnhart 2:10 bartels 3:1 9:1 beach 2:11,12 5:8 beasley 6:5 beasleyallen 6:8 beginning 1:14 behalf 10:2 berezofsky 5:20 bergen 1:2,12 berl93613 1:6 bernard 5:12 bernstein 3:9 5:16 birmingham 6:15 block 4:9 9:19 blvd 2:11 5:8 6:19 box 2:20 braslow 2:14 brawlow 8:20 brian 1:10 broad 2:7 6:10 broadway 2:3 4:10 broken 10:24 brought 10:14 buchanan 2:6 8:21 8:21</p> <hr/> <p style="text-align: center;">C</p> <p>c 2:1,2,11 3:5 4:9 6:5,10,13,14 17:1 17:1 cabraser 5:16 cal 8:17 california 6:3 call 8:2 calvin 2:11 cannavo 4:9 9:19</p>	<p>carboy 4:9 9:18,18 case 1:4,11 10:9,24 11:12 13:15,15,16 13:16,16,17 14:11 15:13 16:2 cases 11:23,24 12:6 13:13,18,19 catone 13:15 catullo 4:18 10:1,2 14:16 cedar 3:6 center 4:19 6:14 certain 11:11,18,19 12:5,5,19 certified 1:15,15 17:3,4,4 certify 17:5,10 chambers 10:7,12 10:21 changes 12:12 charles 5:8 chart 14:6 cherry 5:21 chosen 13:12,13 circumstances 11:4 11:11 12:5 ciresi 4:5 9:15,17 client 11:22 clients 12:4 15:19 clr 17:18 cmc 14:3 15:17 colleague 15:22 com 1:25 2:8,17,22 3:3,20 4:20,21 5:5 5:10,10,14,18,22 6:4,8,12,16,20,24 7:3,7 comments 15:1 commerce 6:6 committee 10:12 competent 15:18 completed 14:4 compliance 12:8 compliant 12:19 concerning 14:8 concerns 10:15</p>	<p>concluded 16:5 confer 12:13,20,23 13:7 14:2 conference 1:11 10:7,11 14:8,11 conshohocken 2:16 considered 10:16 consists 10:25 contained 11:11 continue 10:17 12:20,23 13:6 14:1 convince 11:21 cook 13:17 cooperation 15:9 16:3 copy 12:11 cordella 7:1 corp 10:3 corporate 15:4 corporation 4:22 couch 6:13 counsel 8:5,8,13 10:6,11,19 11:8 11:13,21 12:13 13:11 14:13 15:8 15:18 17:12,14 county 1:2,12 couple 8:7 15:24 course 12:1 court 1:1,16 8:1,5 9:22,25 10:6,16 11:6,14 12:19 13:13 14:19,22 15:5 courthouse 1:12 courtroom 8:8,14 courts 11:16,20 coverage 13:2 cozen 5:2,5 crawford 6:1 credi 4:1 crossnotice 13:5 crow 6:5 crr 17:18 csr 17:19</p>	<p>cuker 5:20</p> <hr/> <p style="text-align: center;">D</p> <p>d 3:18 daniel 5:16 daskal 5:12,12,14 date 1:13 10:10 17:8 dave 8:21 david 2:6 3:14 7:5 7:7 9:6 davis 3:5 9:2 days 13:20 14:5 dbuchanan 2:8 december 13:24 declaration 13:2 defendant 4:21 defendants 11:10 12:9,11 13:9,19 defense 11:8 defilippo 4:13 9:21 defined 14:3 denney 2:10 8:18 deposed 13:4 deposition 13:5 15:3 deps 1:25 desmond 6:2 diana 5:3 dianalin 5:5 diligently 10:9 disagreements 12:15 discovery 12:18,19 12:21 discussed 10:21 division 1:2 dixon 13:19 dleathers 5:18 docket 1:5 13:14,17 dolejsi 4:5 9:16,16 douglas 3:22 drive 5:21 6:23 duffy 5:3</p> <hr/> <p style="text-align: center;">E</p>
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