

October 23, 2013

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION - BERGEN COUNTY

DOCKET NO. BER-L-936-13

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IN RE: STRYKER REJUVENATE & ABG II :  
MODULAR HIP IMPLANT LITIGATION :CASE NO.  
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CASE MANAGEMENT CONFERENCE

October 23, 2013

- - -

BEFORE: HON. BRIAN R. MARTINOTTI, JSC

- - -

REPORTED BY: MICHELLE L. GRAY, RPR, CSR

GOLKOW TECHNOLOGIES, INC.

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<p>1 Case Management Conference, taken                  2 above-captioned matter, pursuant to Superior Court                  3 Rules of Practice and Procedure by and before                  4 MICHELLE L. GRAY, a Registered Professional                  5 Reporter, Certified Shorthand Reporter and Notary                  6 Public, held at the Bergen County Courthouse, 10                  7 South Main Street, Hackensack, New Jersey,                  8 commencing at 10:54 a.m., before:                  9 The Honorable Brian Martinotti                  10                  11 - - -                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p>1 APPEARANCES: (Cont'd.)                  2                  3 ANAPOL SCHWARTZ                  BY: THOMAS R. ANAPOL, ESQUIRE                  Representing the Plaintiffs                  4                  5 THE DiCELLO LAW FIRM                  BY: MARK A. DiCELLO, ESQUIRE                  Representing the Plaintiffs                  6                  7                  8 KEEFE BARTELS, LLC                  BY: JOSHUA S. KINCANNON, ESQUIRE                  Representing the Plaintiffs                  9                  10 SULLIVAN PAPAIN BLOCK MCGRATH &amp; CANNAVO                  BY: ANDREW J. CARBOY, ESQUIRE                  Representing the Plaintiffs                  11                  12                  13 HOLLIS WRIGHT &amp; COUCH, P.C.                  BY: BOBBY J. BELL, ESQUIRE                  Representing the Plaintiffs                  14                  15 SCHENCK, PRICE, SMITH &amp; KING, LLP                  BY: STEPHEN A. GEFFNER, ESQUIRE                  Representing the Plaintiffs                  16                  17                  18 BEASLEY ALLEN                  BY: NAVAN WARD, JR., ESQUIRE                  BY: CARRIE BLANTON, ESQUIRE                  Representing the Plaintiffs                  19                  20                  21 HOOK SMITH &amp; MYER                  BY: WILLIAM SMITH, ESQUIRE                  Representing the Plaintiffs                  22                  23 LIEFF CABRASER HEIMANN &amp; BERNSTEIN                  BY: WENDY FLEISHMAN, ESQUIRE                  Representing the Plaintiffs                  24                  25</p>
Page 3	Page 5
<p>1 APPEARANCES:                  2                  3 WEITZ &amp; LUXENBERG, P.C.                  BY: ELLEN RELKIN, ESQUIRE                  BY: DANIELLE GOLD, ESQUIRE                  Representing the Plaintiffs                  4                  5                  6 SEARCY, DENNEY, SCAROLA, BARNHART &amp; SHIPLEY                  BY: C. CALVIN WARRINER, III, ESQUIRE                  BY: BRENDA S. FULMER, ESQUIRE                  Representing the Plaintiffs                  7                  8                  9 POGUST BRASLOW MILLROOD, LLC                  BY: TOBIAS L. MILLROOD, ESQUIRE                  BY: KEVIN O'BRIEN, ESQUIRE                  Representing the Plaintiffs                  10                  11                  12 SEEGER WEISS, LLP                  BY: DAVID R. BUCHANAN, ESQUIRE                  Representing the Plaintiffs                  13                  14                  15 ROBINS KAPLAN                  BY: TARA D. SUTTON, ESQUIRE                  BY: MEGAN McKENZIE, ESQUIRE                  BY: HOLLY H. DOLEJSI, ESQUIRE                  BY: HILLEL PARNES, ESQUIRE                  BY: TROY TATTING, ESQUIRE                  Representing the Plaintiffs                  16                  17                  18 GOLDENBERG LAW                  BY: STUART GOLDENBERG, ESQUIRE                  Representing the Plaintiffs                  19                  20                  21 LAW OFFICES OF JOHN DAVID HART                  BY: ABBEY KIRBY, ESQUIRE                  Representing the Plaintiffs                  22                  23                  24 GURFEIN DOUGLAS                  BY: ELISE ALPERT, ESQUIRE                  Representing the Plaintiffs                  25</p>	<p>1 APPEARANCES: (Cont'd.)                  2                  3 POPE McGLAMRY KILPATRICK MORRISON &amp; NORWOOD                  BY: CAROLINE McGLAMRY, ESQUIRE                  BY: KIM JOHNSON, ESQUIRE                  Representing the Plaintiffs                  4                  5                  6 GRIECO OATES DEFILIPPO                  BY: NICHOLAS A. GRIECO, ESQUIRE                  Representing the Plaintiffs                  7                  8 TRIEF &amp; OLK                  BY: JORDAN RUTSKY, ESQUIRE                  Representing the Plaintiffs                  9                  10                  11 BERNSTEIN LIEBHARD, LLP                  BY: JASON S. GOLDSTEIN, ESQUIRE                  BY: FELECIA L. STERN, ESQUIRE                  Representing the Plaintiffs Murray, Pivaro,                  et al                  12                  13                  14 PRITZKER OLSEN, P.A.                  BY: DAVID SZERLAG, ESQUIRE                  Representing the Plaintiffs                  15                  16                  17 FARACI LANGE, LLP                  BY: HADLEY L. MATARAZZO, ESQUIRE                  BY: STEPHEN SCHWARZ, ESQUIRE                  Representing the Plaintiffs                  18                  19                  20 GIBBONS, P.C.                  BY: KIM M. CATULLO, ESQUIRE                  BY: SAMANTHA L. SPICER, ESQUIRE                  Representing the Defendants                  21                  22                  23                  24                  25</p>

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1 APPEARANCES CONT'D: (VIA TELEPHONE)  
2  
3 LIEFF CABRASER HEIMANN & BERNSTEIN  
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9 PRITZKER OLSEN, P.A.  
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13 THE LAW OFFICES OF ROBERT J. FENSTERSHEIB &  
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Fierro, Mercadante, Press, Gumnitz, Wilson  
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1 APPEARANCES: (Cont'd.)  
2  
3 RHEINGOLD, VALET, RHEINGOLD, McCARTNEY &  
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6 LYNCH DASKAL EMERY, LLP  
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9 COZEN O'CONNOR  
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BY: MARTY DUFFY, ESQUIRE  
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12 BERNHEIM & DOLINSKY, LLC  
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15 ARONFELD TRIAL LAWYERS  
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17 SANDERS, VIENER & GROSSMAN, LLP  
BY: VICTORIA J. MANIATIS, ESQUIRE  
Representing the Plaintiffs  
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20 SKIKOS, CRAWFORD, SKIKOS & JOSEPH  
BY: ADRIANA SUAREZ DESMOND, ESQUIRE  
Representing the Plaintiffs  
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1 THE COURT: Welcome, counsel on the  
2 telephone. We are on record in court. For those on  
3 the phone, I remind you of the protocol that has  
4 been in place now for several conferences.  
5 For those in court, your appearances  
6 for the record, please.  
7 (All live and telephonic appearances  
8 are noted on the appearance page.)  
9 THE COURT: I did speak to Judge  
10 Frank this morning. He sends his regards from balm  
11 Minnesota.  
12 He is very confident that the issues  
13 regarding a leadership committee will be ironed out,  
14 if not by agreement, then certainly by order in the  
15 very short-term. He feels by the end of this week,  
16 beginning of next week at the latest.  
17 He is a proponent of, and in fact  
18 lectures on state and federal coordination and  
19 cooperation, and I believe is searching for the  
20 right mix of individuals to make sure that New  
21 Jersey and the MDL continue to cooperate.  
22 And I am confident that that will be  
23 worked out and Judge Frank and I will certainly be  
24 on the same page. We may have gotten out a little  
25 ahead of him. We're not going to wait for him or

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1 the MDL. They will, I'm sure, catch up to us and  
2 we'll have a coordinated effort going forward.  
3 If that does occur or when that does  
4 occur, there may be some modifications to the New  
5 Jersey subcommittees which the court will certainly  
6 look upon with Ms. Relkin's recommendations.  
7 I look forward to seeing what happens  
8 in the MDL and working with Judge Frank, and others,  
9 as we move forward.  
10 As has been our practice, we meet and  
11 confer with counsel in chambers. We discussed the  
12 prior order and then we enter a new order going  
13 forward. That's not to exclude anyone in the  
14 courtroom. It's just impossible to get everyone in  
15 chambers.  
16 Ms. Relkin has certainly been doing  
17 an admirable job in representing all the plaintiffs'  
18 interests in chambers, building a consensus with  
19 those of you in the courtroom with her liaison and  
20 leadership team here, presenting a very cogent, well  
21 thought out discussion with Ms. Catullo and her team  
22 and arriving at an order which, though may appear to  
23 be an order that is reached on agreement, and a lot  
24 of issues are on agreement, there is a give and take  
25 and certainly a debate that goes on before the

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1 orders are entered in.  
 2 I thank all counsel for that. I  
 3 thank Ms. Relkin, in particular, for marshaling all  
 4 of your assets together and presenting a very brief,  
 5 and yet thorough, argument and presentation to the  
 6 court.  
 7 Since our last case management order,  
 8 we have entered one order which was the format of  
 9 production that was entered on September 30th. We  
 10 are entering an order today, regarding the  
 11 defendant's fact sheet.  
 12 Please read the order. It's  
 13 self-explanatory. I appreciate the parties reaching  
 14 the agreement in part. Let me rephrase that.  
 15 Reaching an agreement on the order and continuing to  
 16 discuss certain issues moving forward.  
 17 There have been two cases selected by  
 18 the defendants for the Phase I mediation,  
 19 particularly Maggi and Murray, Docket No.  
 20 BER-L-1401-13 and BER-L-1576-13 which have been  
 21 referenced in this order. And counsel did e-mail  
 22 that to me prior to this conference.  
 23 The parties will continue to meet and  
 24 confer regarding a protective order. If a form  
 25 cannot be agreed upon by November 11th, we will have

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1 a phone conference on November 12th at 8:30 a.m.  
 2 And I am cognizant that I have a  
 3 NuvaRing all day mediation that day, but I'll be  
 4 here at 8:30 to address any issues that arise with  
 5 respect to that order.  
 6 There is an issue regarding the Phase  
 7 II mediation. There were some cases that were not  
 8 eligible for Phase I mediation, and pursuant to the  
 9 way the order was crafted the last time, are not  
 10 eligible for Phase II mediation.  
 11 Counsel are going to meet and confer  
 12 regarding that gap, if you will, that pool of cases,  
 13 and attempt to devise a method to capture those  
 14 cases so that they can be included in Phase II  
 15 mediation.  
 16 Just to be clear, if you were  
 17 eligible for Phase I mediation but were not included  
 18 in the Phase I mediation, you are not eligible for  
 19 Phase II mediation. These are only cases that were  
 20 not Phase I eligible and fell outside the parameters  
 21 of our last order, trying to define a universe of  
 22 Phase II mediation cases.  
 23 Speaking about Phase I mediation,  
 24 nine out of the ten cases have been relatively  
 25 compliant. Apparently the Grossman matter is

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1 deficient. Counsel needs to participate to bring  
 2 that case up to speed. This process is only going  
 3 to work if the parties present or produce all the  
 4 necessary materials so that the mediation can be  
 5 meaningful.  
 6 So those counsel involved in  
 7 Grossman, I'd ask that you please bring up -- get up  
 8 to speed as quick as possible. Get the documents,  
 9 the documents in the discovery that's outstanding,  
 10 as soon as possible, and the records, so that can be  
 11 a meaningful mediation. If not, you may be left on  
 12 the outside.  
 13 Likewise --  
 14 MR. LAZZARA: Your Honor --  
 15 THE COURT: I'll let you talk in a  
 16 minute.  
 17 Likewise, for those of you that are  
 18 culling together your information, whether if you're  
 19 in the mediation process or not. If you're not in  
 20 the mediation process, you are still going to need  
 21 to cure your deficiencies, your discovery  
 22 deficiencies, your authorizations, sooner rather  
 23 than later.  
 24 Those of you in the mediation  
 25 process, there may be an issue regarding liens. The

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1 defendants need the amount of the liens, the  
 2 breakdown of the providers, again, to make it  
 3 meaningful. So try to get that information as soon  
 4 as possible. It's in your best interest and  
 5 certainly your client's best interest to accomplish  
 6 that.  
 7 With respect to discovery, the  
 8 parties have met and conferred regarding the  
 9 corporate organization and information exchange.  
 10 You'll continue to meet and confer regarding that  
 11 and the ESI information exchange over the next  
 12 couple of weeks and report back to the court with  
 13 respect to that information.  
 14 Please, it's in the order, sometimes  
 15 people look at the order, sometimes people don't  
 16 look at the order. Look at the multi-county  
 17 website. There's information on there. There's  
 18 orders on there. We are going to post the  
 19 appropriate approved authorizations on there. Make  
 20 sure you print out those or you file those and  
 21 follow the orders and follow the appropriate  
 22 authorizations on there, so that everybody is  
 23 utilizing the same form.  
 24 Likewise, if you're not getting  
 25 e-mails, please let Ms. Relkin know, as liaison

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1 counsel, and we'll get you on the service list as  
 2 soon as possible.  
 3 Our next conference is November 18th  
 4 at 11:00 a.m. Liaison counsel and I will meet  
 5 earlier, which has been our practice, to try to keep  
 6 those counsel on the telephone as not hanging on as  
 7 long as they have been in the past. And, again, I  
 8 apologize for that.  
 9 Anything further from counsel in the  
 10 courtroom on the plaintiffs' side?  
 11 MS. RELKIN: No, Your Honor.  
 12 I think we have 10 or 11 states  
 13 represented here from Alabama, Atlanta, Minnesota,  
 14 Florida, New York, Pennsylvania. Anyway...  
 15 THE COURT: Anybody care about the  
 16 world series?  
 17 (Whereupon, a discussion was held off  
 18 the record.)  
 19 THE COURT: Anybody else in the  
 20 courtroom from the defendant's side?  
 21 MS. CATULLO: Your Honor, briefly on  
 22 the mediation issue, just to restate what the court  
 23 has already said about the importance of getting all  
 24 of the documents for the Phase I mediated matters.  
 25 And I know that you did indicate "as soon as

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1 possible".  
 2 Really, we're getting to the point  
 3 where in the next week or so is when we really need  
 4 all the final information. We did pick those two  
 5 matters last week, the Maggi and Murray cases. And  
 6 I have talked to counsel and communicated with them  
 7 by e-mail about the importance of getting the  
 8 remaining records there. They have represented to  
 9 me that that would happen. And I believe that.  
 10 But there are some other outstanding  
 11 issues. So I would just encourage all counsel who  
 12 are part of Phase I, and they know who they are, to  
 13 please do what they can to get us the information  
 14 that's previously been requested including the lien  
 15 information.  
 16 THE COURT: Counsel on the phone, I  
 17 cut you off, I apologize. I'll hear you.  
 18 MR. LAZZARA: Domenick Lazzara.  
 19 I wanted to state for the record, we  
 20 are working very diligently to cure the deficiencies  
 21 and we've requested all the records and I'm making  
 22 copies of the films and will provide it to opposing  
 23 counsel as soon as we receive them.  
 24 THE COURT: Much appreciated. Anyone  
 25 else need to be heard?

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1 (No response.)  
 2 THE COURT: That being said, we will  
 3 adjourn. We will see you in November. Have an  
 4 enjoyable rest of the fall.  
 5 (Excused.)  
 6 (Hearing concluded at approximately  
 7 11:06 a.m.)  
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1 CERTIFICATE  
 2  
 3 I, MICHELLE L. GRAY, a Notary Public  
 4 and Certified Court Reporter of the State of New  
 5 Jersey, do hereby certify that the foregoing is a  
 6 verbatim transcript as taken stenographically by and  
 7 before me at the time, place and on the date  
 8 hereinbefore set forth, to the best of my ability.  
 9  
 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 the action.  
 16  
 17  
 18  
 19 \_\_\_\_\_  
 20 MICHELLE L. GRAY, CSR, RPR  
 21 Notary Expiration: April 20, 2016  
 22 CSR Number: 30XI00212600  
 23 Dated: October 28, 2013  
 24  
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1	LAWYER'S NOTES	
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