

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION BERGEN COUNTY

- - -

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

- - -

Tuesday, April 1, 2014

- - -

Transcript of Case Management Conference
in the above-captioned matter held at Bergen County
Courthouse, 10 S. Main Street, Hackensack, New
Jersey, on the above date, beginning at
approximately 11:00 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: Good morning. Counsel on
2 the phone, you know how to put your appearances on
3 the record.
4 That being said, counsel in the
5 courtroom, your appearances, please.
6 MS. RELKIN: Ellen Relkin from Weitz
7 and Luxenberg.
8 MR. WARRINER: Cal Warriner from
9 Searcy Denney in Florida.
10 MR. BUCHANAN: David Buchanan, Seeger
11 Weiss.
12 MS. SUTTON: Tara Sutton, Robins
13 Kaplan.
14 MR. LAPINSKI: Dan Lapinski, The
15 Wilentz Firm.
16 MR. McGLAMRY: Mike McGlamry, Pope
17 McGlamry.
18 MR. ROSENGARTEN: Clark Rosengarten,
19 Pope McGlamry.
20 MR. PARNESS: Hillel Parness, Robins
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22 MR. GEFFNER: Stephen Geffner, Schenck
23 Price.
24 MR. KINCANNON: Josh Kincannon, Keefe
25 Bartels.

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1 MR. HICKEY: Mike Hickey, Teschon
2 Riccobene.
3 MS. CATULLO: Good morning, Your
4 Honor. Kim Catullo from Gibbons P.C. on behalf of
5 the defendant, Howmedica Osteonics Corporation.
6 MS. SPICER: Samantha Spicer from
7 Gibbons P.C. on behalf of the defendant, Howmedica
8 Osteonics Corporation.
9 THE COURT: Welcome, counsel. I want
10 to thank counsel for their submissions. As has been
11 our practice, we had a brief conversation in
12 chambers regarding where we were and where we are
13 going. Again, just for the record, I have been in
14 contact with Judge Frank and Judge Noel in the MDL.
15 We are going to work together. We are going to
16 cooperate. I look forward to developing and
17 continuing that relationship.
18 Since our last order, there have been
19 some developments. I'm going to go through the
20 order and just explain what's been happening. With
21 respect to Broadspire, I'm happy to advise everyone
22 that there have been requests, they've begun to
23 utilize the process. Please remember if you are
24 going to request records, the check should be
25 payable to Broadspire. It's \$50. In the memo

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1 field, you need to include the plaintiff's name and
 2 the Broadspire claim number. The checks must be
 3 mailed to Nora Wolf, care of Gibbons, PC, One
 4 Gateway Center, Newark, New Jersey. Please make
 5 sure the claim number and the plaintiff's name is in
 6 the memo field so that the appropriate records are
 7 received and transmitted.

8 The mediation, I'm happy to report
 9 since our last conference three additional cases
 10 have been resolved by way of mediation.
 11 Specifically, the Maggi case under Docket
 12 BER-L-1404-13 was resolved by Judge Hamlin. That
 13 was a Phase I mediation. That means out of the nine
 14 cases -- there were ten cases set up for Phase I.
 15 Nine of the ten cases have been completed. All of
 16 those cases in Phase I mediation have been resolved.
 17 At this point the only Phase I yet to be completed
 18 is Grossman. And there's an issue and that's been
 19 delayed, but nine out of the nine have been
 20 resolved. And I commend the mediators and I commend
 21 counsel for their cooperation in that. I think it
 22 was unprecedented at this stage of a litigation that
 23 we've had such success in mediation. And, again, I
 24 thank counsel.

25 And continuing with our success, we

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1 have begun Phase II and in Phase II the Dlutkowski
 2 case, BER-L-2621-13, and the Conklin case,
 3 BER-L-2139-13, Dlutkowski the plaintiff resided in
 4 Indiana, was represented by Anapol, Schwartz, the
 5 Conklin plaintiff resided in New Jersey, also
 6 represented by Anapol, Schwartz. Those cases
 7 likewise have resolved through the efforts of Judge
 8 Welsh. And again I want to thank the Judge and
 9 Judge Hamlin, thank the parties. And it really has
 10 given us a nice overview of settlement and I think
 11 is going to be very helpful as we progress through
 12 this litigation.

13 I'd also like to mention that our
 14 mediation order was amended on June 14th, 2014, to
 15 include a retired federal court judge, Dennis
 16 Cavanaugh, on our list. We look forward to working
 17 with Judge Cavanaugh as well as the other mediators
 18 as we continue through our mediation process.

19 The defendants have selected two
 20 matters to participate in Phase II mediation, Betty
 21 White -- we don't think the celebrity, we're not
 22 sure -- Docket BER-L-2501, and Doris Smith, Docket
 23 BER-L-3488-13. Defendant is in the process of
 24 choosing remaining selections for Phase II and we'll
 25 continue to proceed in that fashion.

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1 Just a reminder, all pertinent medical
 2 records for the selected matters to the extent not
 3 already provided pursuant to Plaintiff's Fact Sheet
 4 process shall be provided to the defense counsel
 5 within ten days of selection of case mediation.
 6 Plaintiff's counsel shall also secure and disclose
 7 any third-party information related to any
 8 settlement no later than 30 days prior to mediation.
 9 And the quicker and the more complete the packets
 10 are for mediation, the more likely it is that the
 11 matter will be resolved in mediation. So please
 12 continue to work together, continue to provide that
 13 information.

14 With respect to some other discovery,
 15 the exemplars, the parties will continue to meet and
 16 confer regarding available inventory and production
 17 of exemplars. And I'll ask that that continue and
 18 the parties continue to cooperate with respect to
 19 the production of exemplars.

20 Regarding general discovery, ESI
 21 information has been exchanged. Potential
 22 depositions will continue -- I'm sorry. The parties
 23 will continue to meet and confer regarding
 24 additional depositions. With respect to the rolling
 25 production, I've been advised that over 85,000 pages

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1 were produced as recently as yesterday. Defendant
 2 has agreed to produce the custodial files for
 3 additional rolling productions. As of the end of
 4 May 2014, in addition to the other categories of
 5 documents already produced in litigation, 12
 6 custodial files and four group shared drive files
 7 will have been produced. Again, the parties will
 8 continue to meet and confer and prepare a plan for
 9 rolling document production by April 14th and advise
 10 the plan for said production.

11 Just a pickup from the last order, we
 12 did amend the order of August 13th, 2013, on
 13 February 27th, 2014, regarding the service on
 14 defendants. Just be aware and take note of the
 15 additional -- strike that -- of the relaxation
 16 regarding service.

17 Counsel proposed a modification
 18 regarding fact sheets for nonrevision cases. I'm
 19 happy to report that the parties have reached an
 20 agreement whereby nonrevision Plaintiff Fact Sheets
 21 obligations will be suspended. This will be without
 22 prejudice and defendant reserves the right to
 23 request production of Fact Sheets in nonrevision
 24 cases. Counsel, again, we thank you for your
 25 cooperation with each other regarding that

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1 particular issue.
 2 There's been an issue concerning a
 3 continued request for this Court to set a trial date
 4 on bellwether cases.
 5 Ms. Relkin, I'll hear you on that
 6 issue.
 7 MS. RELKIN: Yes. Well, as Your Honor
 8 knows, we've been asking for trial dates at a number
 9 of the prior conferences and there was some
 10 preliminary discussions. Defendant has continued to
 11 maintain it's premature. We believe it is certainly
 12 time. The litigation's been going for I guess it's
 13 a good year now and it's time for a trial date. So
 14 in chambers we addressed that and Your Honor has --
 15 plaintiffs are very pleased that you've given us
 16 dates for trial dates, I believe.
 17 THE COURT: Ms. Catullo?
 18 MS. CATULLO: Your Honor, as you know
 19 and as I stated again today in chambers, the
 20 defendants do believe that this is premature and I
 21 want to very emphatically that we object to the
 22 setting of these trial dates that you have proposed.
 23 In fact, I believe that the summer of 2015 in
 24 general is premature for a litigation of this size.
 25 We've been moving along very reasonably and working

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1 together, and from our standpoint, the defendants, I
 2 can say that this is something that we do not
 3 believe is realistic and we do object to those
 4 dates.
 5 THE COURT: Okay. We have been moving
 6 down two tracks. We've been on the discovery track
 7 and a settlement/mediation track. Both have been
 8 moving independently. Both have been progressing to
 9 this Court's satisfaction. Nonetheless, the Court
 10 does feel now is the time to begin the process for
 11 trials. Accordingly, over defendant's objection, I
 12 will set June 15th, 2015, as the date of the first
 13 bellwether trial and July 13th, 2015, for the date
 14 of our second bellwether trial. Counsel will meet
 15 and confer regarding the bellwether selection
 16 process and we will address that issue as far as the
 17 process at a subsequent case management conference.
 18 But I do think it is appropriate to begin to look
 19 forward to see where we will be for those cases that
 20 don't resolve.
 21 Anything further on bellwether?
 22 MS. RELKIN: No, Your Honor.
 23 MS. CATULLO: No, Your Honor.
 24 THE COURT: Counsel, our next
 25 conference will be on May 22nd, which is a Thursday,

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1 at 11:00 a.m. and, again, liaison counsel will
 2 report here at 9:30 a.m.
 3 I think I hit the highlights of what
 4 we discussed in chambers. If I left something out,
 5 please let me know. Did I hit everything?
 6 MS. RELKIN: I believe so.
 7 THE COURT: Ms. Catullo?
 8 MS. CATULLO: I believe you did.
 9 THE COURT: Anything further from any
 10 counsel?
 11 MS. RELKIN: Oh, yes.
 12 MS. CATULLO: Your Honor, just one
 13 thing on the Broadspire checks because this has been
 14 a problem. The order does actually say that a
 15 payment for those cases that it's been requested has
 16 to be made by April 30th.
 17 THE COURT: Okay.
 18 MS. CATULLO: So I don't believe you
 19 mentioned the April 30th date so I just want to
 20 stress that to counsel. If you have requested the
 21 Broadspire files and you intend to send those checks
 22 in, please send them in by April 30.
 23 THE COURT: Counsel?
 24 MS. RELKIN: One thing you didn't
 25 mention I believe in the order is the protective

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1 order, that we're continuing to meet and confer but
 2 that it's been adjourned a few times because of the
 3 different positions, but it's going to come to a
 4 head that if we can't work it out by I believe it's
 5 April 15.
 6 THE COURT: April 15th you'll advise
 7 and we will have a conference call on April 16th at
 8 9:00 a.m.
 9 MS. CATULLO: Correct.
 10 THE COURT: I apologize for the
 11 oversight.
 12 Anything further?
 13 MS. CATULLO: No. Thank you.
 14 MS. RELKIN: Thank you.
 15 THE COURT: Counsel, thank you very
 16 much. We will disconnect. Everyone have a safe
 17 trip. Have a happy, healthy spring.
 18 (Adjourned at 11:20 a.m.)
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