

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

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IN RE: STRYKER REJUVENATE :Case No. 296
& ABG II :
: MODULAR HIP IMPLANT :
LITIGATION :

- - -
May 20, 2014
- - -

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 1:26 p.m., before MARGARET
M. REIHL, a Certified Realtime Reporter, Certified
Court Reporter and Notary Public for the State of New
Jersey.

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Page 8

1 THE COURT: Counsel on the telephone,
 2 welcome, my apologies for the delay. We were
 3 diligently working in chambers. Those counsel in the
 4 courtroom, your appearances for the record, please.

5 MS. RELKIN: Ellen Relkin, Weitz and
 6 Luxenberg for the plaintiffs.

7 MR. WARRINER: Cal Warriner from Searcy
 8 Denney for the plaintiffs.

9 THE COURT: Another lousy weather day
 10 for you.

11 MR. WARRINER: Last time I was here, it
 12 was April 1st. I thought it was an April Fools Day
 13 trick, now you've proved it.

14 THE COURT: It was supposed to rain
 15 today. Again, the weather people are tops.

16 MR. WARRINER: Gorgeous.

17 MR. BUCHANAN: Dave Buchanan, Seeger
 18 Weiss for plaintiffs.

19 MS. SUTTON: Tara Sutton, Robins,
 20 Kaplan, Miller & Ciresi for plaintiffs.

21 MR. ANAPOL: Good afternoon, Judge, Tom
 22 Anapol, Anapol Schwartz, plaintiffs.

23 MR. MILLROOD: Tobi Millrood from
 24 Pogust, Braslow & Millrood for the plaintiffs.

25 MR. WARD: Good afternoon, Judge. Navan

Page 9

1 Ward from Beasley, Allen for plaintiffs.

2 MS. DOLEJSI: Holly Dolejsi, Robins,
 3 Kaplan, Miller & Ciresi, plaintiffs.

4 MR. PARNNESS: Hillel Parness, also
 5 Robins, Kaplan for plaintiffs.

6 MR. LAPINSKI: Good afternoon, Your
 7 Honor, Dan Lapinski from the Wilentz firm.

8 MR. KINCANNON: Good afternoon, Josh
 9 Kincannon, Keefe Bartels for plaintiffs.

10 MS. STERN: Felecia Stern for the
 11 plaintiffs.

12 THE COURT: Counsel, on the phone, you
 13 know the protocol that needs to be followed to get your
 14 appearances noted, so I'll ask that you please follow
 15 that protocol. Defense counsel.

16 MS. CATULLO: Good afternoon, Your
 17 Honor. Kim Catullo from the law firms of Gibbons, P.C.
 18 on behalf of the defendant, Howmedica Osteonics.

19 MS. SPICER: Samantha Spicer from
 20 Gibbons for Howmedica Osteonics.

21 THE COURT: Counsel, welcome. Judge
 22 Matsunami is here again visiting us from Japan. His
 23 time in the United States is starting to wind down. I
 24 believe he completed the formal part of his program,
 25 and he's doing a little touring, but, nonetheless, he

Page 10

1 wanted to come back to Bergen County as he has a
 2 special affinity for this litigation, in particular.
 3 So judge, welcome, and we hope your stay
 4 has been pleasant and you've learned something, and we
 5 look forward to reading about you in the future. I'm
 6 sure you're going to raise to great heights in Japan.
 7 This is our case management conference.
 8 We have received the agenda from counsel. We've met
 9 with liaison counsel in chambers prior to this
 10 conference. I want to thank counsel for their well
 11 thought out, very thorough submissions. The order, as
 12 you know, will be posted. I just want to highlight
 13 several portions of the order. Regarding a protective
 14 order, there has been a final form of a protective
 15 order agreed to in the MDL. New Jersey counsel shall
 16 continue to meet and confer to resolve any remaining
 17 issues regarding the final protective order which will
 18 be entered in the New Jersey litigation.
 19 Mediation. I am very pleased and very
 20 proud of the fact that I think this litigation has been
 21 setting a benchmark and is unprecedented in the
 22 parallel tracks we are proceeding upon regarding
 23 mediation and discovery.
 24 I was out at a conference two weeks ago
 25 or three weeks ago in Chicago, and we all know about

Page 11

1 the blogs, talk, if you will, about what happens in
 2 various litigations, and several academics and lawyers
 3 came up to me and inquired about how we are pulling
 4 this off in New Jersey regarding mediation with
 5 discovery pending, and we're very interested in how
 6 this has come to happen, and, candidly, I took no
 7 credit.
 8 I said we spoke about it early on, but
 9 the success of the mediation is really the cooperation
 10 of the lawyers willing to embark on a program that may
 11 have been a bit unorthodox at first. The fact that
 12 they realize by settling cases early on in the
 13 litigation is to everyone's benefit and the great
 14 mediators we have working on these cases, they have put
 15 the time in, and I think the resolutions, although I
 16 don't know the amount of the resolutions, from talking
 17 to counsel, everyone seems to be pleased, everyone
 18 seems to think the resolutions are fair, and the good
 19 news is the clients are getting compensation early in
 20 the litigation, rather than going through the rigors of
 21 the litigation, which is both time consuming and
 22 expensive.
 23 When I settle cases here, you can see
 24 the courtroom starting to fill up because it is a
 25 settlement conference day, I explain to counsel, I

Page 12

1 explain to the litigants in particular that there are
 2 several types of capital that get expended during the
 3 litigation. There is the financial capital because it
 4 does cost money to fund and participate in litigation,
 5 and there is also the emotional capital. You are
 6 vested in your case and you want to see your case go
 7 through fruition, and it does take a lot of time and
 8 emotional effort to follow through with a case.
 9 When a case is resolved, you stop
 10 spending financial capital, hopefully your emotional
 11 capital is relieved in a way, but you gain finality.
 12 It's over. You know what you have, you know what you
 13 gave away, and you move on with your life. And it is
 14 pleasing to the Court that so many people have
 15 benefited by this program, and counsel kudos and I want
 16 to commend you for a fine job in participating. It is
 17 appreciated, and I dare say I think that this is going
 18 to serve as a model for future MDL and MCL litigations
 19 moving forward, so thank you.
 20 And since our last conference, an
 21 additional Phase II matter has been completed, Kile
 22 versus HLC, Docket BER-L-688-12. Plaintiffs reside in
 23 Arizona, and they were represented by Searcy Denney.
 24 The 12 mediated cases comprised of Phase I and the
 25 completed Phase II matters had 100% resolution rate.

Page 13

1 There are three more matters scheduled for mediation
 2 this week. Additional matters are scheduled or are in
 3 the process of being scheduled over the next 30 days,
 4 and, hopefully, we'll have the same success rate.
 5 I am also advised that several matters
 6 in the MDL, specifically about 14 of them, have been
 7 resolved, some of them with the efforts of former
 8 Magistrate Boylan. I have spoken to Judge Frank.
 9 Judge Frank has nothing but praise and admiration for
 10 Judge Boylan, talks about Judge Boylan being a
 11 wonderful magistrate and a tremendous -- has a
 12 tremendous ability to settle cases. Though the MDL may
 13 not have had such a formal process as we have regarding
 14 mediation, it is good to see that the parties have
 15 reached out and have tried to mediate among themselves
 16 and the fact that 14 MDL cases have been resolved
 17 certainly indicates that is a successful program or
 18 hopefully will form the basis of a successful program.
 19 Defendants have selected the Tanitsky
 20 case for mediation, Docket is LH-61513. The Sheller
 21 firm, Morgan Procter for mediation, Docket is
 22 L-1026-13. Aylstock, Witkin, Kries & Overholtz firm,
 23 and defendant has ten days to announce their third
 24 choice. These mediations will be scheduled by
 25 June 4th. It doesn't mean they're going to be mediated

Page 14

1 by June 4th. It means that they will have dates for
 2 mediation scheduled by June 4th. I just remind counsel
 3 if you are involved in the mediation, please follow the
 4 appropriate order getting the records in.
 5 We've had such success with the
 6 mediation, and I don't want to beat it to death, but
 7 because of the rate of success, I am now ordering the
 8 beginning of Phase III mediation. I want counsel to
 9 meet and confer to discuss the parameters and
 10 eligibility for Phase III mediation, and we will
 11 address that as the litigation progresses, but it is
 12 certainly an outstanding effort by all the parties
 13 involved.
 14 It's my understanding that the parties
 15 have reached an initial agreement regarding the
 16 production of exemplars. This does not preclude a
 17 request for additional exemplars in the future, and
 18 defendant will begin the rolling production of
 19 exemplars by May 22nd. The parties have served
 20 interrogatories related to the exemplar issues, and the
 21 deadline for service to plaintiffs' exemplar
 22 interrogatories is currently June 23rd. Just a
 23 reminder that the authorizations are the forms that are
 24 on the MCL website. Please have your clients, if
 25 you're representing the plaintiff, complete the

Page 15

1 appropriate form. It does no one any benefit to
 2 complete a form that has not been approved.
 3 The Bellwether selection, we spoke about
 4 that. I understand the MDL has some sort of an order
 5 in place regarding a process. Counsel will continue to
 6 meet and confer regarding the Bellwether selection
 7 process and discuss how New Jersey thinks the selection
 8 should be done.
 9 We are approaching the statute of
 10 limitations, which expires in or around June of 2014 on
 11 certain matters. On my own motion, and I apologize to
 12 counsel, I threw this at them in the case management
 13 conference. One of the good things about being a judge
 14 is that I don't have to submit an agenda. It's my
 15 agenda, so notwithstanding the fact that counsel does
 16 submit agenda and the Court reviews the agenda, and
 17 sometimes the Court gets a little antsy if something
 18 comes up that isn't on the agenda, I get to throw
 19 curveballs at lawyers all the time.
 20 So we did some research and apparently
 21 there are approximately 1,188 cases filed in New Jersey
 22 now or in or around now. They could be filing more as
 23 we speak. I want to see the parameters of where we are
 24 and where we're going to be. So on my own motion, I'm
 25 directing counsel within the jurisdiction of this Court

Page 16

1 to submit to the Court and liaison counsel, that's Kim
 2 Catullo and Ellen Relkin within 14 days an inventory of
 3 their unfiled retained matters as of today's date.
 4 That list shall include whether or not it is a revision
 5 or nonrevision an ABG II or Rejuvenate Modular.
 6 What that means is if you have cases
 7 filed in this Court and this Court has jurisdiction
 8 over you, you will submit to the Court within 14 days
 9 those matters that you have been retained, but yet have
 10 not yet filed. We'll refer to it as your inventory of
 11 unfiled retained matters.
 12 I am directing liaison counsel to meet
 13 and confer and submit to me an order with a form to be
 14 filled out by counsel with the unfiled retained matters
 15 by May 30th, so there are several dates here. Within
 16 14 days, counsel within the jurisdiction of this court
 17 shall submit a list of your inventory, if you will,
 18 defined as unfiled, retained matters. That list will
 19 be as of today. Counsel will submit to me a proposed
 20 form of order by May 30th, which I will sign, which
 21 will be served on all counsel, which will contain a
 22 little more in-depth information. I just want to see
 23 where this litigation is going to go over the next
 24 several months.
 25 That being said we have our next case

Page 17

1 management conference on June 23rd at 1:00 p.m. Again,
 2 we will meet with liaison counsel at 11:30 and an
 3 agenda to be submitted in accordance with prior orders
 4 of this court.
 5 Counsel, plaintiff's counsel, any
 6 comments, anything for the record?
 7 MS. RELKIN: No, Your Honor. Thank you.
 8 THE COURT: Ms. Catullo.
 9 MS. CATULLO: Just one point, Judge.
 10 We've noticed that we've got a handful of filings
 11 recently and actually one from a while ago that we've
 12 asked for a dismissal on of cases involving monolithic,
 13 meaning not the modular devices that are the subject of
 14 this litigation, so I would just ask that for those
 15 counsel who we are contacting to advise that they have
 16 filed on the wrong device, we would ask for responses
 17 to our request for dismissals of those cases with
 18 prejudice, and I would also just implore for those
 19 firms that are obviously screening their cases to take
 20 a look at their implant labels and confirm that they're
 21 dealing with the modular devices. Because it's come to
 22 our attention after quite a bit of work that these are
 23 actually just monolithic devices. Thank you.
 24 THE COURT: Thank you.
 25 MS. RELKIN: Judge, one matter. I know

1 it's in the order somewhere, but I think you didn't
2 mention just we had discussed in chambers that the
3 parties will meet and confer on Bellwether selection
4 process.
5 THE COURT: I did.
6 MS. CATULLO: He did mention.
7 MS. RELKIN: I thought you mentioned
8 what the MDL was doing.
9 THE COURT: No, I said MDL has done it.
10 We're not going to follow necessarily, please meet and
11 confer on your own process.
12 Anything further? Counsel, have a nice
13 end of the spring. I hope you have an appropriate
14 Memorial Day. I hope the weather holds out. Please
15 remember those who serve our country or who have served
16 our country this weekend, and thank you and we will see
17 you soon, thank you. Off the record.
18 (Adjourned at 1:42 p.m.)
19 ---
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1 C E R T I F I C A T I O N
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
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<p style="text-align: center;">A</p> <p>abg 1:5 16:5 ability 13:12 academics 11:2 accurate 19:6 action 19:12,15 additional 12:21 13:2 14:17 address 14:11 adjourned 18:18 admiration 13:9 advise 17:15 advised 13:5 affinity 10:2 afternoon 8:21,25 9:6,8,16 agenda 10:8 15:14 15:15,16,16,18 17:3 ago 10:24,25 17:11 agreed 10:15 agreement 14:15 alabama 4:2 5:20 alexandria 5:3 allen 4:1 9:1 altenpohl 5:6,7,9 altenpohllawfirm 5:9 alyssa 5:14 amount 11:16 anapol 2:6,7 8:21 8:22,22 anapolschwartz 2:9 andrews 6:6 andrewsthornton 6:8 announce 13:23 antsy 15:17 apologies 8:2 apologize 15:11 apparently 15:20 appearances 4:17 8:4 9:14 appreciated 12:17 approaching 15:9 appropriate 14:4</p>	<p>15:1 18:13 approved 15:2 approximately 1:14 15:21 april 8:12,12 arizona 12:23 arsenault 5:1 asked 17:12 aspector 5:16 associates 7:5 atlanta 6:3 attention 17:22 attorney 19:11,13 attorneys 4:18 authorizations 14:23 avenue 2:21 3:2 4:7 5:7,15,19 6:11 aylstock 13:22</p> <hr/> <p style="text-align: center;">B</p> <p>back 10:1 bank 2:17 barnhart 3:9 bartels 2:15 9:9 basis 13:18 baumgartner 6:9 beach 3:10,11 7:6 beahan 6:18 beard 5:1 beasley 4:1 9:1 beasleyallen 4:3 beat 14:6 beginning 1:14 14:8 behalf 9:18 believe 9:24 bell 5:19 bellwether 15:3,6 18:3 benchmark 10:21 benefit 11:13 15:1 benefited 12:15 berezofsky 7:18 bergen 1:2,12 10:1 berl68812 12:22</p>	<p>bernlieb 3:21 bernstein 3:18 birmingham 5:20 bit 11:11 17:22 bitzko 6:18 blogs 11:1 bob 5:21 bobby 5:19 bonaventure 5:3 boulevard 3:10 6:20 7:6 boylan 13:8,10,10 braslow 2:11 8:24 brian 1:10 broadway 2:3 brown 6:20,22 bryant 5:22 buchanan 3:14 8:17,17 buechele 6:17 building 7:2</p> <hr/> <p style="text-align: center;">C</p> <p>c 2:1,2 3:10 4:1 5:18 6:1 7:18 9:17 19:1,1 cal 8:7 california 6:7 calvin 3:10 camino 7:11 campbell 5:2 candidly 11:6 capital 12:2,3,5,10 12:11 carl 5:2 caroline 6:2 carr 6:18 case 1:4,11 10:7 12:6,6,8,9 13:20 15:12 16:25 cases 11:12,14,23 12:24 13:12,16 15:21 16:6 17:12 17:17,19 catullo 4:10 9:16,17 16:2 17:8,9 18:6</p>	<p>ccw 3:12 center 3:6 4:11 certain 15:11 certainly 13:17 14:12 certified 1:15,15 19:3,4,4 certify 19:5,10 chambers 8:3 10:9 18:2 cherry 2:8 7:19 chicago 10:25 choice 13:24 christian 6:18 christopher 7:10 ciresi 8:20 9:3 clark 6:1 clarkrosengarten 6:4 clients 11:19 14:24 clr 19:19 com 1:25 2:9,13,18 3:7,12,16,21 4:3 4:13,13,21 5:4,9 5:16,21,21 6:4,8 6:13,17,22 7:3,8 7:12,16,20,24 come 10:1 11:6 17:21 comes 15:18 commend 12:16 comments 17:6 commerce 4:2 compensation 11:19 complete 14:25 15:2 completed 9:24 12:21,25 comprised 12:24 confer 10:16 14:9 15:6 16:13 18:3 18:11 conference 1:11 10:7,10,24 11:25 12:20 15:13 17:1</p>	<p>confirm 17:20 conshohocken 2:12 consuming 11:21 contacting 17:15 contain 16:21 continue 10:16 15:5 cooperation 11:9 cornelius 7:13 corporate 6:7 corporation 4:14 cost 12:4 counsel 8:1,3 9:12 9:15,21 10:8,9,10 10:15 11:17,25 12:15 14:2,8 15:5 15:12,15,25 16:1 16:12,14,16,19,21 17:2,5,5,15 18:12 19:12,14 country 18:15,16 county 1:2,12 10:1 court 1:1,16 5:3 8:1 8:9,14 9:12,21 12:14 15:16,17,25 16:1,7,7,8,16 17:4 17:8,24 18:5,9 courthouse 1:12 courtroom 8:4 11:24 credit 11:7 credi 2:20 3:1 4:5 crow 4:1 crr 19:19 csr 19:20 cuker 7:18 currently 14:22 curveballs 15:19</p> <hr/> <p style="text-align: center;">D</p> <p>d 2:20 5:2 dan 9:7 daniel 3:5 dare 12:17 daskal 5:10 date 1:13 16:3 19:8</p>
---	---	---	---	---

<p>dates 14:1 16:15 dave 8:17 david 3:14 davis 6:9 day 8:9,12 11:25 18:14 days 13:3,23 16:2,8 16:16 dbuchanan 3:16 deadline 14:21 dealing 17:21 dean 7:10,10,12 death 14:6 defendant 4:14 9:18 13:23 14:18 defendants 13:19 defense 9:15 defilippo 5:14 defined 16:18 delay 8:2 dennehey 3:9 denney 8:8 12:23 deps 1:25 device 17:16 devices 17:13,21,23 didnt 18:1 diligently 8:3 directing 15:25 16:12 discovery 10:23 11:5 discuss 14:9 15:7 discussed 18:2 dismissal 17:12 dismissals 17:17 division 1:2 dlapinski 3:7 docket 12:22 13:20 13:21 doesnt 13:25 doing 9:25 18:8 dolejsi 4:6 9:2,2 doneson 7:8 dont 11:16 14:6 15:14 drive 3:6 7:19</p>	<hr/> <p>E</p> <hr/>	<p>filings 17:10 fill 11:24 filled 16:14 final 10:14,17 finality 12:11 financial 12:3,10 financially 19:14 fine 12:16 firm 5:6 7:10 9:7 13:21,22 firms 9:17 17:19 first 11:11 fleming 6:19 fleminglaw 6:22 floor 2:3 3:2,19 florida 3:11 4:20 7:7 follow 9:14 12:8 14:3 18:10 followed 9:13 fools 8:12 foregoing 19:6 form 10:14 13:18 15:1,2 16:13,20 formal 9:24 13:13 former 13:7 forms 14:23 forth 19:9 forward 10:5 12:19 frank 13:8,9 frankle 5:17 freeman 5:9 fruition 12:7 fund 12:4 further 18:12 19:10 future 10:5 12:18 14:17</p>	<hr/> <p>G</p> <hr/>	<p>gibbons 4:10 9:17 9:20 gibbonslaw 4:13,13 giuffra 6:14 go 12:6 16:23 godlawllc 5:16 godwin 6:11 going 10:6 11:20 12:17 13:25 15:24 16:23 18:10 golkow 1:23,25 good 8:21,25 9:6,8 9:16 11:18 13:14 15:13 gorgeous 8:16 great 10:6 11:13 gregory 4:19 6:20 6:22 grieco 5:14</p>	<hr/> <p>H</p> <hr/>	<p>h 4:6 hackensack 1:13 hadley 7:22 hallandale 7:6,7 handful 17:10 happen 11:6 happens 11:1 harbor 5:8 harford 5:11 heights 10:6 held 1:12 hereinbefore 19:8 hes 9:25 hickey 6:11 highlight 10:12 highway 2:7 hill 2:8 7:19 hillel 3:1 9:4 hip 1:6 hlc 12:22 hmatarazzo 7:24 holds 18:14 hollis 5:18 holliswright 5:21 5:21</p>	<p>holly 4:6 9:2 hon 1:10 honor 9:7,17 17:7 hope 10:3 18:13,14 hopefully 12:10 13:4,18 houston 6:21 7:11 howmedica 4:14 9:18,20 huber 4:18,19</p>	<hr/> <p>I</p> <hr/>	<p>ii 1:5 12:21,25 16:5 iii 3:10 5:2 14:8,10 ill 9:14 im 10:5 15:24 implant 1:6 17:20 implore 17:18 include 16:4 indepth 16:22 indicates 13:17 information 16:22 initial 14:15 inquired 11:3 interested 11:5 19:14 interrogatories 14:20,22 inventory 16:2,10 16:17 involved 14:3,13 involving 17:12 irvine 6:7 isnt 15:18 issues 10:17 14:20</p>	<hr/> <p>J</p> <hr/>	<p>j 5:19 7:5,10 jackson 6:18 jamesdeanlaw 7:12 janoski 7:18 japan 9:22 10:6 jason 7:6 jersey 1:1,13,17 2:8 2:17 3:6 4:12 5:8 5:15 6:12 7:19</p>
<p>f 19:1 fact 10:20 11:11 13:16 15:15 fair 11:18 faraci 7:22,24 fax 1:24 feldman 3:5 felecia 3:19 9:10 fenstersheib 7:5,8 filed 15:21 16:7,10 17:16 filing 15:22</p>	<hr/> <p>F</p> <hr/>	<p>gain 12:11 gateway 4:11 geisler 6:17 georgia 6:3 germann 6:9 getting 11:19 14:4 ghuber 4:21</p>									

<p>10:15,18 11:4 15:7,21 jez 6:19 jkincannon 2:18 jm 7:8 job 12:16 jones 6:18 jordan 7:14 josh 9:8 joshua 2:16 jr 4:1 5:19 jrutsky 7:16 jsc 1:10 judge 8:21,25 9:21 10:3 13:8,9,10,10 15:13 17:9,25 june 13:25 14:1,2 14:22 15:10 17:1 jupiter 4:20 jurisdiction 15:25 16:7,16</p> <hr/> <p style="text-align: center;">K</p> <p>kaplan 2:20 3:1 4:5 8:20 9:3,5 karren 6:6,8 kcatullo 4:13 keefe 2:15 9:9 keefebartels 2:18 kelly 7:1,3 kile 12:21 kilpatrick 6:1 kim 4:10 9:17 16:1 kimbrough 6:9 kincannon 2:16 9:8 9:9 kings 2:7 know 9:13 10:12,25 11:16 12:12,12 17:25 krempski 6:17 kries 13:22 kudos 12:15</p> <hr/> <p style="text-align: center;">L</p> <p>13:19 7:22</p>	<p>1102613 13:22 laauwe 6:13 labels 17:20 lake 7:19 lakes 3:10 lange 7:22 lapinski 3:5 9:6,7 lasalle 2:21 4:6,7 law 1:2 5:6 7:5,10 9:17 lawyers 11:2,10 15:19 learned 10:4 lexington 3:2 lh61513 13:20 liaison 10:9 16:1,12 17:2 liebhard 3:18 life 12:13 limitations 15:10 list 16:4,17,18 litigants 12:1 litigation 1:6 10:2 10:18,20 11:13,20 11:21 12:3,4 14:11 16:23 17:14 litigations 11:2 12:18 little 9:25 15:17 16:22 livenote 19:4 llc 2:15 llp 3:14,18 5:10 6:14,19 7:22 lominski 6:18 look 10:5 17:20 lot 12:7 louisiana 5:3 lousy 8:9 luxenberg 2:2 8:6 lynch 5:10</p> <hr/> <p style="text-align: center;">M</p> <p>m 1:14,15 4:10 17:1 18:18 19:2,19 magistrate 13:8,11</p>	<p>main 1:12 7:23 management 1:11 10:7 15:12 17:1 manocchio 7:6 margaret 1:14 19:2 19:19 maria 7:18 martinotti 1:10 matarazzo 7:22 matsunami 9:22 matter 12:21 17:25 matters 12:25 13:1 13:2,5 15:11 16:3 16:9,11,14,18 mccartney 6:14 mcglamry 6:1,2 mcl 12:18 14:24 mcnabb 7:1 mdl 10:15 12:18 13:6,12,16 15:4 18:8,9 mean 13:25 meaning 17:13 means 14:1 16:6 mediate 13:15 mediated 12:24 13:25 mediation 10:19,23 11:4,9 13:1,14,20 13:21 14:2,3,6,8 14:10 mediations 13:24 mediators 11:14 meet 10:16 14:9 15:6 16:12 17:2 18:3,10 melissa 6:15 memorial 18:14 mendoza 6:15 mention 18:2,6 mentioned 18:7 met 10:8 methvin 4:1 mh 6:13 michael 6:11 michelle 5:7</p>	<p>midland 6:12 miles 4:1 military 4:19 miller 2:20 3:1 4:5 8:20 9:3 millroad 2:11,11 8:23,23,24 milne 6:18 minneapolis 2:21 4:7 7:3 minnesota 2:21 4:7 7:3 mjanoski 7:20 mmendoza 6:17 model 12:18 modular 1:6 16:5 17:13,21 money 12:4 monmouth 2:16 monolithic 17:12 17:23 montgomery 4:2 months 16:24 morgan 13:21 morris 5:19 morrison 6:1 motion 15:11,24 moushon 6:18 move 12:13 moving 12:19 musso 6:9 myinjuryjustice 4:21</p> <hr/> <p style="text-align: center;">N</p> <p>n 2:1 19:1 navan 4:1,3 8:25 nbalawfirm 5:4 ne 6:2 neblett 5:1 necessarily 18:10 needs 9:13 neither 19:11,13 new 1:1,13,16 2:4,4 2:8,17 3:2,2,6,15 3:15,20,20 4:12</p>	<p>5:8,12,12,15 6:12 6:16,16 7:15,15 7:19,23 10:15,18 11:4 15:7,21 newark 4:12 news 11:19 nice 18:12 nolen 6:19 nonrevision 16:5 north 2:7 norwood 6:1 notary 1:16 19:5,20 noted 9:14 noticed 17:10 notwithstanding 15:15</p> <hr/> <p style="text-align: center;">O</p> <p>o 19:1 oak 6:20 obviously 17:19 offices 7:5 olk 7:14 olsen 7:1 orange 5:15 order 10:11,13,14 10:15,17 14:4 15:4 16:13,20 18:1 ordering 14:7 orders 17:3 osteonics 4:14 9:18 9:20 outstanding 14:12 overholtz 13:22</p> <hr/> <p style="text-align: center;">P</p> <p>p 1:14 2:1,1,2 3:9 4:1,18,19 6:1,10 6:11 7:1,5 9:17 17:1 18:18 palm 3:10,11 parallel 10:22 parameters 14:9 15:23 park 6:7</p>
---	---	--	---	---

<p>parness 3:1 9:4,4 part 9:24 participate 12:4 participating 12:16 particular 10:2 12:1 parties 13:14 14:12 14:14,19 18:3 19:12 pbmattorneys 2:13 pc 4:10 peachtree 6:2 pending 11:5 pennsylvania 2:12 people 8:15 12:14 ph 1:24 phase 12:21,24,25 14:8,10 phone 9:12 pinnacle 6:3 place 15:5 19:8 plaintiff 5:9,17,22 6:5,13,22 7:8,13 7:17,21,25 14:25 plaintiffs 2:5,9,14 2:18,22 3:3,8,12 3:17,21 4:4,8,21 5:5,13 6:9,17 7:4 8:6,8,18,20,22,24 9:1,3,5,9,11 12:22 14:21 17:5 plaza 4:6 7:2 pleasant 10:4 please 8:4 9:14 14:3 14:24 18:10,14 pleased 10:19 11:17 pleasing 12:14 pmkm 6:4 pogust 2:11 8:24 point 17:9 pope 6:1 portions 10:13 portis 4:1 post 6:20 posted 10:12</p>	<p>praise 13:9 preclude 14:16 prejudice 17:18 prior 10:9 17:3 pritzker 7:1 pritzkerlaw 7:3 proceeding 10:22 process 13:3,13 15:5,7 18:4,11 procter 13:21 production 14:16 14:18 professional 19:3 program 9:24 11:10 12:15 13:17 13:18 progresses 14:11 proposed 16:19 protective 10:13,14 10:17 protocol 9:13,15 proud 10:20 proved 8:13 public 1:16 19:5,20 pulling 11:3 put 11:14</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quite 17:22</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r 1:10 2:1,7 3:14 19:1 rain 8:14 raise 10:6 rate 12:25 13:4 14:7 reached 13:15 14:15 reading 10:5 real 7:11 realize 11:12 really 11:9 realtime 1:15 19:3 received 10:8 record 8:4 17:6</p>	<p>18:17 records 14:4 red 2:17 refer 16:10 regarding 10:13,17 10:22 11:4 13:13 14:15 15:5,6 registered 19:2 reihl 1:15 19:2,19 reingold 6:14 rejuvenate 1:4 16:5 related 14:20 relative 19:11,13 relieved 12:11 relkin 2:3 8:5,5 16:2 17:7,25 18:7 remaining 10:16 remember 18:15 remind 14:2 reminder 14:23 reporter 1:15,16 19:3,3,4,5 represented 12:23 representing 2:5,9 2:14,18,22 3:3,8 3:12,17,21 4:4,8 4:14,21 5:5,9,13 5:17,22 6:5,9,13 6:17,22 7:4,8,13 7:17,21,25 14:25 request 14:17 17:17 research 15:20 reside 12:22 resolution 12:25 resolutions 11:15 11:16,18 resolve 10:16 resolved 12:9 13:7 13:16 responses 17:16 retained 16:3,9,11 16:14,18 reviews 15:16 revision 16:4 rheingold 6:14</p>	<p>rheingoldlaw 6:17 riccobene 6:10 rigors 11:20 road 6:2 robert 7:5 robins 2:20 3:1 4:5 8:19 9:2,5 rochester 7:23 rock 5:15 rodriguez 6:9 rolling 14:18 room 1:13 rosengarten 6:1 rpr 19:19 rutsky 7:14</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 2:1,16 samantha 4:11 9:19 scarola 3:9 schaeffer 6:6 scheduled 13:1,2,3 13:24 14:2 schubert 6:18 schwartz 2:6 8:22 scott 5:11 screening 17:19 searcy 3:9 8:7 12:23 searcylaw 3:12 second 5:7 see 11:23 12:6 13:14 15:23 16:22 18:16 seeger 3:14 8:17 seegerweiss 3:16 selected 13:19 selection 15:3,6,7 18:3 serve 12:18 18:15 served 14:19 16:21 18:15 service 14:21 set 19:8 setting 10:21</p>	<p>settle 11:23 13:12 settlement 11:25 settling 11:12 sheller 13:20 shiple 3:9 shorthand 19:4 sign 16:20 sis 6:10 soon 18:17 sort 15:4 south 1:12 7:2 speak 15:23 special 10:2 specifically 13:6 spector 5:14 spending 12:10 spicer 4:11 9:19,19 spitzer 3:5 spoke 11:8 15:3 spoken 13:8 spring 18:13 sspicer 4:13 starting 9:23 11:24 state 1:16 states 9:23 statute 15:9 stay 10:3 stenographically 19:7 stern 3:19,21 9:10 9:10 sticher 6:5 stone 5:8 stop 12:9 street 1:12 2:12,16 3:15,19 4:2 5:11 6:15 7:2,15,23 stryker 1:4 sturgess 6:18 subject 17:13 submissions 10:11 submit 15:14,16 16:1,8,13,17,19 submitted 17:3 success 11:9 13:4 14:5,7</p>
--	--	---	---	---

<p>successful 13:17,18 suite 2:7,12,21 4:19 5:7,15 6:3,7,20 7:2,11,19,23 superior 1:1 supposed 8:14 sure 10:6 sutton 2:20 8:19,19</p> <hr/> <p style="text-align: center;">T</p> <p>t 19:1,1 take 12:7 17:19 taken 19:7 talk 11:1 talking 11:16 talks 13:10 tanapol 2:9 tanitsky 13:19 tara 2:20 8:19 tcampbell 5:4 technologies 1:23 telephone 4:17 8:1 ten 13:23 teschon 6:10 testimony 19:7 texas 6:21 7:11 thank 10:10 12:19 17:7,23,24 18:16 18:17 thats 16:1 theyre 13:25 17:20 things 15:13 think 10:20 11:15 11:18 12:17 18:1 thinks 15:7 third 13:23 thomas 2:7 thomason 4:21 thornton 6:6 thorough 10:11 thought 8:12 10:11 18:7 three 10:25 13:1 threw 15:12 throw 15:18 time 8:11 9:23</p>	<p>11:15,21 12:7 15:19 19:8 tmillrood 2:13 tobi 8:23 tobias 2:11 today 8:15 16:19 today's 16:3 todd 5:2 tom 8:21 tompkins 6:18 tops 8:15 touring 9:25 tracks 10:22 trail 4:19 transcript 1:11 19:6 tremendous 13:11 13:12 trial 4:18 trick 8:13 tried 13:15 trief 7:14 triefandolk 7:16 trslawfirm 6:13 true 19:6 two 10:24 tyler 5:18 tylerv 5:21 types 12:2</p> <hr/> <p style="text-align: center;">U</p> <p>understand 15:4 understanding 14:14 unfiled 16:3,11,14 16:18 united 9:23 unorthodox 11:11 unprecedented 10:21</p> <hr/> <p style="text-align: center;">V</p> <p>vail 5:18 valet 6:14 various 7:4 11:2 versus 12:22</p>	<p>vested 12:6 vii 7:2 visiting 9:22</p> <hr/> <p style="text-align: center;">W</p> <p>want 10:10,12 12:6 12:15 14:6,8 15:23 16:22 wanted 10:1 ward 4:1,3 8:25 9:1 warriner 3:10 8:7,7 8:11,16 washington 2:12 water 3:15 way 12:11 wcblegal 7:20 weather 8:9,15 18:14 website 14:24 week 13:2 weekend 18:16 weeks 10:24,25 weiss 3:14 8:18 weitz 2:2 8:5 welcome 8:2 9:21 10:3 west 3:11 5:11,15 7:6 weve 10:8 14:5 17:10,10,11 wilentz 3:5,7 9:7 williams 7:18 willing 11:10 wind 9:23 witkin 13:22 wonderful 13:11 woodbridge 3:6,6 work 17:22 working 8:3 11:14 wright 5:18 wrong 17:16</p> <hr/> <p style="text-align: center;">X</p> <p>xi01497 19:20</p> <hr/> <p style="text-align: center;">Y</p> <p>york 2:4,4 3:2,2,15</p>	<p>3:15,20,20 5:12 5:12 6:16,16 7:15 7:15,23 youre 10:6 14:25 youve 8:13 10:4</p> <hr/> <p style="text-align: center;">Z</p> <p>zachary 6:22 zele 4:18</p> <hr/> <p style="text-align: center;">0</p> <p>00 17:1 07052 5:15 07095 3:6 07102 4:12 07432 6:12 07701 2:17 08002 7:19 08034 2:8 08247 5:8</p> <hr/> <p style="text-align: center;">1</p> <p>1 1:14 15:21 17:1 18:18 10 1:12 3:19 100 12:25 10003 2:4 10005 3:15 10016 3:20 6:16 10018 5:12 100224611 3:2 101 7:19 10155 7:15 1040 2:7 11 17:2 110 6:7 1100 7:23 113 6:15 12 12:24 14 13:6,16 16:2,8 16:16 14614 7:23 150 7:15 1520 2:12 161 2:12 170 2:16 17225 7:11</p>	<p>188 15:21 190 7:11 19428 2:12 1st 8:12</p> <hr/> <p style="text-align: center;">2</p> <p>2 6:7 20 1:8 200 5:15 201 6:12 2014 1:8 15:10 210 7:19 212 2:4 3:3,20 4:19 5:12 6:16 7:16 2139 3:10 218 4:2 2201 5:19 2220 5:3 2249400 2:17 22nd 3:19 14:19 23rd 14:22 17:1 2432099 5:16 2561050 5:4 26 1:14 264 5:11 28 7:23 2800 2:21 4:6 6:20 2808900 7:12 281 7:12 2950 7:2 296 1:4</p> <hr/> <p style="text-align: center;">3</p> <p>30 13:3 17:2 3022400 5:12 30326 6:3 304 2:7 30th 16:15,20 3243636 5:20 3255150 7:24 327 6:11 33009 7:7 33409 3:11 33458 4:20 3377 1:24 3455 6:2</p>
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3498452 2:22	6704400 6:12		
3498500 4:8	6841880 6:16		
34th 3:2	6866300 3:11		
35203 5:20			
359 1:13	<hr/> 7 <hr/>		
36104 4:2	700 2:3		
370 1:24	713 6:21		
37th 6:15	71301 5:3		
	732 2:17		
<hr/> 4 <hr/>	7481000 6:8		
4000 6:20	77 3:15		
404 6:4	77056 6:21		
4085726 5:8	77058 7:11		
40th 3:19 5:11	7791414 3:20		
411 5:7	7th 7:2		
414 5:15			
42 18:18	<hr/> 8 <hr/>		
45 7:2	800 2:21 3:7 4:3,7		
4562488 7:7	5:4		
4600 4:19	8001 5:7		
4821600 2:8	856 2:8 7:20		
4866060 7:16	8646652 3:7		
4th 13:25 14:1,2	877 1:24 5:20		
	888 3:16		
<hr/> 5 <hr/>	8982034 4:3		
520 7:6			
5237706 6:4	<hr/> 9 <hr/>		
55402 2:21 7:3	90 3:6		
554022015 4:7	917 1:24		
5585500 2:4	925 6:3		
561 3:11 4:20	92606 6:7		
5672 1:24	9414204 2:13		
5840411 3:16	949 6:8		
585 7:24	954 7:7		
58th 7:15	973 4:12 5:16		
591 1:24	9807400 3:3		
5964500 4:12			
5th 2:3			
<hr/> 6 <hr/>			
601 3:2			
609 5:8			
610 2:13			
612 2:22 4:8			
6217944 6:21			
6309700 4:20			
6670500 7:20			