

August 4, 2014

Page 1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

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

August 4, 2014

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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 1:20 p.m.,
before KIMBERLY A. CAHILL, a Federally Approved
Registered Merit Reporter, Certified Court Reporter,
and Notary Public for the State of New Jersey.

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Page 2	Page 4
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Page 6

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Page 7

1 - - -
 2 THE COURT: Welcome, counsel on the
 3 phone. We are on the record in the courtroom.
 4 Those appearing telephonically, I hope, know by now
 5 the protocol that needs to be followed to make sure
 6 your appearances are properly noted on the record.
 7 That being said, counsel in the
 8 courtroom, your appearances, please.
 9 MS. RELKIN: Good afternoon. Ellen
 10 Relkin from Weitz & Luxenberg for the plaintiffs.
 11 MR. WARRINER: Cal Warriner from
 12 Searcy Denney for the plaintiffs.
 13 MR. MILLROOD: Toby Millrood, Pogust
 14 Braslow Millrood, for the plaintiffs.
 15 MR. ANAPOL: Good afternoon, Your
 16 Honor. Tom Anapol for plaintiffs.
 17 MR. SZERLAG: Good afternoon. David
 18 Szerlag, Pritzker Olsen, for the plaintiffs.
 19 MR. PARNES: Hillel Parnes for the
 20 plaintiffs.
 21 MR. SMITH: Good afternoon, Judge.
 22 Terrence Smith, Davis, Saperstein & Salomon, for the
 23 plaintiffs.
 24 MR. LAPINSKI: Good afternoon, Your
 25 Honor. Daniel Lapinski, Wilentz firm, for

Page 8

1 plaintiffs.
 2 MR. CARBOY: Good afternoon, Your
 3 Honor. Andrew Carboy, Sullivan Papain Block McGrath
 4 & Cannavo, for plaintiffs.
 5 MS. CATULLO: Good afternoon, Your
 6 Honor. Kim Catullo from Gibbons, P.C. on behalf of
 7 the defendant, Howmedica Osteonics Corp.
 8 MS. SPICER: Samantha Spicer for the
 9 defendant, Howmedica Osteonics Corp.
 10 THE COURT: Counsel, thank you very
 11 much.
 12 We did, as per our protocol, have our
 13 meet-and-confer in chambers. I want to thank
 14 liaison counsel for submission of the agenda and for
 15 their hard work and diligence in moving the
 16 litigation forward.
 17 Since our last case management
 18 conference, there have been three additional matters
 19 in Phase II completed for mediation: The Procter
 20 matter, L-1026-13; the Geisler matter, 5035-13; and
 21 the Krempski-Jones matter, 5023-13.
 22 Two of these matters have been
 23 resolved. Of the 21 mediated cases comprised of
 24 Phase I and Phase II, 19 of 21 have settled. Three
 25 remaining Phase I -- I'm sorry -- Phase II matters

Page 9

1 and the Grossman matter are in the process of being
 2 scheduled for mediation.
 3 I want to thank counsel and the
 4 mediators for a job well done mediating these
 5 matters. I think this is a unique situation -- I
 6 apologize. I've said this numerous times -- that we
 7 are early on in the litigation, or as the litigation
 8 is progressing, we are mediating cases and resolving
 9 matters. And I think that that is very positive for
 10 all parties concerned, lawyers and the litigants,
 11 and I thank them for their hard work and I dare say
 12 this is probably unprecedented areas that we are
 13 moving into.
 14 Regarding Phase III, I am -- after
 15 meeting and conferring with the parties, I'm
 16 expanding the date upon which cases to be eligible
 17 to March 1st, 2014. Because the date has been
 18 expanded, I am going to amend my prior order and
 19 will announce the ten cases that I will select for
 20 Phase III at our next conference, which is in
 21 September.
 22 I know counsel have been diligently
 23 working regarding the exemplar production and
 24 Answers to Interrogatories. Defendants will answer
 25 plaintiffs' exemplar Interrogatories and provide an

Page 10

1 updated product chart list by August 6th.
 2 I've been advised that counsel for
 3 the defendant had employed the use of hand counters
 4 to ascertain the exact number of exemplars
 5 outstanding; and more Rejuvenate matters have been
 6 located in inventory; is that correct, Ms. Catullo?
 7 MS. CATULLO: Yes, Your Honor.
 8 THE COURT: And sometimes I guess
 9 there's nothing like good old-fashioned rolling up
 10 your sleeves and just counting one at a time,
 11 notwithstanding our computer models, and even though
 12 the statistical people are probably going to be very
 13 upset with you. But in any event, thank you for
 14 those efforts to produce that by Wednesday.
 15 Counsel met and conferred regarding a
 16 notice that's going to be attached to this order and
 17 posted on the website entitled a "Notice of Revision
 18 Surgery." This is for a plaintiff who actually
 19 undergoes a revision surgery after filing his or her
 20 short form complaint shall file with the Court the
 21 appropriate notice that is going to be annexed to
 22 this order setting forth the details of the revision
 23 surgery without the need to seek consent from the
 24 Court or counsel for the defendants.
 25 The filing of the notice shall be

Page 11

1 deemed an amendment to the complaint and that shall
 2 likewise be deemed denied by the defendants, so we
 3 need not go into additional filings.
 4 Service of the Notice of Revision
 5 shall be made consistent with the amended prior
 6 order regarding alternative option for service of
 7 complaints. Again, a responsive pleading to the
 8 Notice of Revision is not required to be filed or
 9 served. The form of the notice has been agreed upon
 10 by the parties and will be, again, annexed to this
 11 order and attached to the -- strike that -- and
 12 posted on the website.
 13 Now we're going to get into something
 14 that we came up with a very technical term called
 15 housekeeping. Apparently, there have been some
 16 complaints filed which do not address or do not
 17 refer to -- or are improperly filed because it is
 18 not part of this litigation.
 19 Just as a reminder, the Supreme
 20 Court's order only assigned those cases arriving out
 21 of the use of a Stryker Rejuvenate Modular and/or
 22 ABG II Modular Hip Stems for multicounty litigation.
 23 Plaintiffs should note that cases alleging the use
 24 of other products, including Monolithic products,
 25 are not properly part of this litigation.

Page 12

1 Counsel have done their due diligence
 2 and have set forth a list, which is in this order,
 3 which identify and allege products that are not
 4 properly before this Court in this litigation. I'm
 5 not going to read the list. It is in the order and
 6 it'll be part of the order. Counsel will file a
 7 motion to dismiss that should remove these matters
 8 from this litigation. This way, plaintiffs' counsel
 9 have proper notice of the issue.
 10 Likewise, it's come to my attention
 11 that there may be duplicate complaints filed. In
 12 other words, a plaintiff reaches out to one lawyer
 13 who files a complaint. Counsel files a complaint on
 14 their behalf. Same plaintiff will reach out to
 15 another lawyer who serves a complaint on the same
 16 plaintiff, same product, same allegation.
 17 Again, defense counsel have -- will
 18 notify plaintiffs' counsel who have duplicate
 19 matters within 14 days. Plaintiffs' counsel will
 20 meet and confer and report back to the Court via
 21 e-mail to Ms. Gibson -- her e-mail address is here
 22 -- and a copy to liaison counsel how this matter has
 23 been resolved by and between counsel. Again, there
 24 is a list of matters that are the same plaintiff,
 25 making the same allegations, filed by separate

Page 13

1 counsel.
 2 Counsel, it's just a reminder and I'm
 3 sure when these plaintiffs come to you, you ask if
 4 there are any other litigations pending or if they
 5 filed a lawsuit in this litigation. I'm sure the
 6 answer is no. A reminder that you do have to file
 7 that certification indicating that there are no
 8 pending matters known to you, and I'm sure there are
 9 not.
 10 But just moving forward, as an
 11 additional safeguard, prior to filing any complaint,
 12 it's incumbent upon plaintiffs' counsel to search
 13 the docket to assure there were no prior complaints
 14 filed by this plaintiff in this litigation.
 15 The list is available on the
 16 judiciary's website. We put the website there. You
 17 can do a search just to make sure that there are, in
 18 fact, no prior litigations pending with this
 19 plaintiff in this litigation before me. It'll save
 20 us a lot of time and effort moving forward.
 21 Just as of August 1st, we now have
 22 2,044 cases pending in New Jersey. And our next
 23 case management conference is September 22nd at 1:00
 24 p.m. Again, liaison counsel will meet prior to
 25 thereto.

Page 14

1 I know a lot of work has been done
 2 and the parties have been litigating very diligently
 3 over the course of the past couple of months. I
 4 appreciate that. I believe we are moving on
 5 parallel tracks. We have mediations and we have
 6 litigation, and hopefully we'll move this matter as
 7 expeditiously as possible.
 8 Anyone in court need to be heard?
 9 Ms. Relkin?
 10 MS. RELKIN: No, Your Honor.
 11 THE COURT: Good weather again, Cal.
 12 MR. WARRINER: How long till those
 13 pilings are finished being driven?
 14 THE COURT: Who knows?
 15 MR. WARRINER: I can't imagine you
 16 haven't asked that question.
 17 THE COURT: All I know is that we've
 18 -- they have been making our plugs come loose --
 19 it's not so bad here. You should go in the other
 20 courtrooms if you really want to have some fun. It
 21 is a nice beat to work to (Indicating).
 22 MR. WARRINER: Do you hear this at
 23 night when you're sleeping?
 24 THE COURT: Yes, yes.
 25 MR. WARRINER: Does it take about an

Page 15

1 hour after you leave work to stop that?
 2 THE COURT: I don't know what to do
 3 when I get home.
 4 Anybody in the courtroom on the
 5 plaintiffs' side? No?
 6 Defense?
 7 MS. CATULLO: No, Your Honor.
 8 THE COURT: Anybody telephonically
 9 who wants to make a statement for the record?
 10 That being said, counsel, enjoy the
 11 rest of your summer. I hope you get some
 12 well-deserved time off and enjoy the summer and
 13 enjoy the vacation. It's my pleasure -- this will
 14 be Ms. Cary's last conference. She is moving on to
 15 the private sector so she can pay some bills, and I
 16 am sure you will enjoy working with her if she is
 17 ever an adversary or co-counsel. She has done an
 18 admirable job, an outstanding job. She is going to
 19 be missed here and we wish her well. So she has a
 20 couple more weeks left, but it's been a pleasure
 21 working with her.
 22 That being said, counsel, enjoy the
 23 day. We're off the record.
 24 (Case management conference concluded
 25 at approximately 1:38 p.m.)

Page 16

1 CERTIFICATE

2
 3 I, KIMBERLY A. CAHILL, a Notary
 4 Public and Certified Court Reporter of the State of
 5 New Jersey, do hereby certify that the foregoing is
 6 a verbatim transcript of the conference 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 the action.
 16
 17
 18
 19

 20 KIMBERLY A. CAHILL, CCR, RMR
 21 Notary Number: 2160369
 22 Notary Expiration: February 20, 2019
 23 CCR Number: 30XI00188400
 24 Dated: August 4, 2014
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Page 17

1 LAWYER'S NOTES

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<p style="text-align: center;">A</p> <p>abg 1:4 11:22 ability 16:9 acarboy 3:13 action 16:12,15 additional 8:18 11:3 13:11 address 11:16 12:21 adesmond 6:8 admirable 15:18 adrianna 6:6 adversary 15:17 advised 10:2 afternoon 7:9,15,17 7:21,24 8:2,5 agenda 8:14 agreed 11:9 al 4:15 5:4,14 alabama 5:7 alexandria 5:12 allegation 12:16 allegations 12:25 allege 12:3 alleging 11:23 allen 5:6 altenpohl 5:1,1,4 altenpohllawfirm 5:4 alternative 11:6 alyssa 4:3 amccourt 5:22 amend 9:18 amended 11:5 amendment 11:1 anapol 3:1,1 7:15 7:16 anapolschwartz 3:4 andrew 3:11 8:3 annexed 10:21 11:10 announce 9:19 answer 9:24 13:6 answers 9:24 anybody 15:4,8 apologize 9:6</p>	<p>apparently 11:15 appearances 2:1 4:1 7:6,8 appearing 7:4 appreciate 14:4 appropriate 10:21 approved 1:18 approximately 1:17 15:25 areas 9:12 arriving 11:20 arsenault 5:10 ascertain 10:4 asked 14:16 aspector 4:5 assigned 11:20 assure 13:13 atlanta 4:20 attached 10:16 11:11 attention 12:10 attorney 16:11,14 attorneys 6:21 august 1:10 10:1 13:21 16:21 autumn 5:20 available 13:15 avenue 2:13 4:3 5:2 5:16</p> <p style="text-align: center;">B</p> <p>b 5:16 back 12:20 bad 14:19 barnhart 2:22 beach 2:23,23 beard 5:10 beasley 5:6 beasleyallen 5:8 beat 14:21 beginning 1:17 behalf 8:6 12:14 believe 14:4 bergen 1:2,15 bernadette 5:23 bernlieb 6:12</p>	<p>bernstein 6:9 best 16:8 bills 15:15 block 3:11 8:3 blume 6:13 bonaventure 5:11 boulevard 2:23 6:2 box 2:8 4:20 5:12 brach 5:20 bracheichler 5:22 braslow 2:17 7:14 brian 1:12 bridge 2:18 broadway 2:3 3:12 buechele 4:15</p> <p style="text-align: center;">C</p> <p>c 2:22 3:6,11,20 4:17 5:6,20 6:17 8:6 cahill 1:18 16:3,19 cal 7:11 14:11 california 6:7 called 11:14 calvin 2:22 campbell 5:11 cannavo 3:11 8:4 cant 14:15 carboy 3:11 8:2,3 carl 5:11 caroline 4:18 carolinemcglamry 4:22 carys 15:14 case 1:4,14 8:17 13:23 15:24 cases 8:23 9:8,16 9:19 11:20,23 13:22 catullo 3:21 8:5,6 10:6,7 15:7 ccr 16:19,20 ccw 2:24 cedar 3:7 center 2:8 3:22 certificate 16:1</p>	<p>certification 13:7 certified 1:19 16:4 certify 16:5,10 chambers 8:13 chart 10:1 chatham 6:15 cherry 3:3 clark 4:17 clarkrosengarten 4:21 cocounsel 15:17 com 1:24 2:5,10,15 2:20,24 3:4,9,13 3:18,23,24 4:5,10 4:15,21,22 5:4,8 5:13,18,22 6:3,8 6:12,16,20,24 come 12:10 13:3 14:18 commerce 5:7 complaint 10:20 11:1 12:13,13,15 13:11 complaints 11:7,16 12:11 13:13 completed 8:19 comprised 8:23 computer 10:11 concerned 9:10 concluded 15:24 confer 12:20 conference 1:14 8:18 9:20 13:23 15:14,24 16:6 conferred 10:15 conferring 9:15 consent 10:23 conshohocken 2:19 consistent 11:5 contd 4:1 cooper 5:14 copy 12:22 corp 3:25 8:7,9 correct 10:6 counsel 7:2,7 8:10 8:14 9:3,22 10:2</p>	<p>10:15,24 12:1,6,8 12:13,17,18,19,22 12:23 13:1,2,12 13:24 15:10,22 16:12,14 counters 10:3 counting 10:10 county 1:2,15 couple 14:3 15:20 course 14:3 court 1:1,19 5:11 7:2 8:10 10:8,20 10:24 12:4,20 14:8,11,14,17,24 15:2,8 16:4 courthouse 1:15 courtroom 7:3,8 15:4 courtrooms 14:20 courts 11:20 crawford 6:5 crow 5:6</p> <p style="text-align: center;">D</p> <p>d 5:11 dallas 6:19 daniel 2:7 7:25 dare 9:11 date 1:17 9:16,17 16:8 dated 16:21 david 3:16,18 7:17 davis 3:6 7:22 day 15:23 days 12:19 deemed 11:1,2 defendant 3:24 8:7 8:9 10:3 defendants 9:24 10:24 11:2 defense 12:17 15:6 defilippo 4:2 denied 11:2 denney 2:22 7:12 deps 1:24 desmond 6:6</p>
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details 10:22	expanding 9:16	gibbons 3:20 8:6	howmedica 3:24	kelly 4:8,10
diligence 8:15 12:1	expeditiously 14:7	gibbonslaw 3:23,24	8:7,9	kilpatrick 4:17
diligently 9:22 14:2	expiration 16:20	gibson 12:21	huber 6:21,22	kim 3:21 8:6
dismiss 12:7	<hr/>	giuffra 4:12	<hr/>	kimberly 1:18 16:3
division 1:2	F	go 11:3 14:19	I	16:19
dlapinski 2:10	fact 13:18	godwin 5:16	identify 12:3	kings 3:2
docket 13:13	fax 1:24	going 9:18 10:12,16	ii 1:4 8:19,24,25	know 7:4 9:22 14:1
donna 5:4	february 16:20	10:21 11:13 12:5	11:22	14:17 15:2
donnely 6:13	federally 1:18	15:18	iii 2:22 5:11 9:14	known 13:8
dont 15:2	felecia 6:10	goldman 2:7	9:20	knows 14:14
drive 2:8	file 10:20 12:6 13:6	golkow 1:23,24	im 8:25 9:15 12:4	krempskijones
driven 14:13	filed 11:8,16,17	good 7:9,15,17,21	13:2,5,8	8:21
dsllaw 3:9	12:11,25 13:5,14	7:24 8:2,5 10:9	imagine 14:15	<hr/>
due 12:1	files 12:13,13	14:11	implant 1:5	L
duplicate 12:11,18	filing 10:19,25	gregory 6:22	improperly 11:17	12:17 3:21 5:20,20
<hr/>	13:11	grieco 4:2	including 11:24	6:1,1,10,17,17,18
E	filings 11:3	grossman 9:1	incumbent 13:12	1102613 8:20
e 4:3,19	financially 16:14	guess 10:8	indicating 13:7	laauwe 5:18
eagle 4:3	finished 14:13	<hr/>	14:21	lakes 2:23
early 9:7	firm 2:12 5:1 7:25	H	interested 16:15	lane 3:7
east 4:13 6:10	fleming 6:1	hackensack 1:16	interrogatories	lapinski 2:7 7:24,25
effort 13:20	fleminglaw 6:3	hand 10:3	9:24,25	law 1:2 2:12 5:1
efforts 10:14	floor 2:3,13	harbor 5:3	inventory 10:6	6:17
eichler 5:20	florida 2:23 6:23	hard 8:15 9:11	issue 12:9	lawsuit 13:5
eisenhower 5:21	followed 7:5	havent 14:16	itll 12:6 13:19	lawyer 12:12,15
eligible 9:16	foregoing 16:5	hear 14:22	ive 9:6 10:2	lawyers 9:10 17:1
ellen 2:3 7:9	form 10:20 11:9	heard 14:8	<hr/>	leave 15:1
email 12:21,21	forte 6:13	held 1:15	J	left 15:20
employed 10:3	forth 10:22 12:2	helen 5:14	j 3:11,16 6:14	liaison 8:14 12:22
employee 16:11,13	16:8	hereinbefore 16:8	jeffrey 6:14	13:24
enjoy 15:10,12,13	forward 8:16 13:10	highway 3:2	jersey 1:1,16,20 2:9	liebhard 6:9
15:16,22	13:20	hill 3:3	3:3,8,22 4:4 5:3	likewise 11:2 12:10
entitled 10:17	francisco 6:7	hillcrest 6:18	5:17,21 6:15	line 17:2
erelkin 2:5	freeman 5:4	hillel 2:12 7:19	13:22 16:5	list 10:1 12:2,5,24
esquire 2:3,7,12,17	fried 6:13	hip 1:5 2:15 11:22	jez 6:1,1,3	13:15
2:22 3:1,7,11,16	fstern 6:12	hiplaw 2:15	job 9:4 15:18,18	litigants 9:10
3:21,21 4:3,8,13	fun 14:20	home 15:3	joseph 5:23 6:5	litigating 14:2
4:17,18 5:1,6,11	further 16:10	hon 1:12	jr 5:6	litigation 1:5 8:16
5:16,20 6:1,6,10	<hr/>	honor 7:16,25 8:3,6	jsc 1:12	9:7,7 11:18,22,25
6:14,18,22	G	10:7 14:10 15:7	judge 7:21	12:4,8 13:5,14,19
et 4:15 5:4,14	g 6:1	hope 7:4 15:11	judiciarys 13:16	14:6
event 10:13	gateway 3:22	hopefully 14:6	jupiter 6:23	litigations 13:4,18
exact 10:4	gdllawllc 4:5	hour 15:1	jzenna 6:16	llc 2:12 4:2
exemplar 9:23,25	geisler 8:20	housekeeping	<hr/>	llp 4:12 6:9
exemplars 10:4	georgia 4:20	11:15	K	located 10:6
expanded 9:18	ghuber 6:24	houston 6:2	kay 6:18,20	long 14:12
			kcatullo 3:23	

loose 14:18	milo 5:23	noted 7:6	pending 13:4,8,18 13:22	procter 8:19
lot 13:20 14:1	minneapolis 3:17 4:9	notes 17:1	pennsylvania 2:19	produce 10:14
louisiana 5:12	minnesota 3:17 4:9	notice 10:16,17,21 10:25 11:4,8,9 12:9	people 10:12	product 10:1 12:16
luxenberg 2:2 7:10	missed 15:19	notify 12:18	ph 1:24	production 9:23
M	mmendoza 4:15	notwithstanding 10:11	phase 8:19,24,24 8:25,25 9:14,20	products 11:24,24 12:3
m 1:17 3:21 5:20 13:24 15:25	models 10:11	number 10:4 16:19 16:20	phone 7:3	progressing 9:8
madison 2:13	modular 1:5 11:21 11:22	numerous 9:6	pilings 14:13	proper 12:9
main 1:15 6:14	molinari 6:13	O	pinnacle 4:18	properly 7:6 11:25 12:4
making 12:25 14:18	monolithic 11:24	o 4:20 5:12	place 16:7	protocol 7:5 8:12
management 1:14 8:17 13:23 15:24	montgomery 5:7	oak 6:2	plaintiff 5:4 10:18 12:12,14,16,24 13:14,19	provide 9:25
march 9:17	months 14:3	oldfashioned 10:9	plaintiffs 2:5,10,15 2:20,25 3:4,9,14 3:19 4:6,11,15,22 5:9,14,18,23 6:4,8 6:12,16,20,24 7:10,12,14,16,18 7:20,23 8:1,4 9:25 11:23 12:8,18,19 13:3,12 15:5	public 1:20 16:4
martinotti 1:12	morrison 4:17	olsen 3:15 4:7 7:18	plaza 3:16 4:8	put 13:16
matter 8:20,20,21 9:1 12:22 14:6	motion 12:7	option 11:6	pleading 11:7	Q
matters 8:18,22,25 9:5,9 10:5 12:7,19 12:24 13:8	move 14:6	orange 4:4	please 7:8	question 14:16
mccartney 4:12	moving 8:15 9:13 13:10,20 14:4 15:14	order 9:18 10:16,22 11:6,11,20 12:2,5 12:6	pleasure 15:13,20	R
mccourt 5:20	multicounty 11:22	osteonics 3:24 8:7,9	plugs 14:18	r 1:12 2:7 3:1
mcglamry 4:17,18	myinjuryjustice 6:24	outstanding 10:5 15:18	pmkm 4:21,22	reach 12:14
mcgrath 3:11 8:3	N	P	pogust 2:17 7:13	reaches 12:12
mcnabb 4:8	n 3:2 4:19	p 1:17 2:7 3:6,11,15 3:20 4:7,17,20 5:6 5:12,15 6:1,17,21 6:22 8:6 13:24 15:25	pope 4:17	read 12:5
mediated 8:23	navan 5:6,8	page 17:2	portis 5:6	really 14:20
mediating 9:4,8	nbalawfirm 5:13	palm 2:23,23	positive 9:9	record 7:3,6 15:9 15:23
mediation 8:19 9:2	neblett 5:10	papain 3:11 8:3	possible 14:7	refer 11:17
mediations 14:5	need 10:23 11:3 14:8	parallel 14:5	posted 10:17 11:12	regarding 9:14,23 10:15 11:6
mediators 9:4	needs 7:5	park 5:17	post 6:2	registered 1:19
meet 12:20 13:24	neither 16:11,13	parkway 5:21	posted 10:17 11:12 13:11,13,18,24	rejuvenate 1:4 10:5 11:21
meetandconfer 8:13	new 1:1,16,20 2:4,4 2:9,14,14 3:3,8,12 3:12,22 4:4,14,14 5:3,17,21 6:11,11 6:15 13:22 16:5	parness 2:12,12 7:19,19	prior 9:18 11:5 13:11,13,18,24	relative 16:11,13
meeting 9:15	newark 3:22	part 11:18,25 12:6	pritzker 3:15 4:7 7:18	relkin 2:3 7:9,10 14:9,10
melissa 4:13	nice 14:21	parties 9:10,15 11:10 14:2 16:12	pritzkerlaw 3:18 4:10	remaining 8:25
mendoza 4:13	night 14:23	pay 15:15	private 15:15	reminder 11:19 13:2,6
merit 1:19	njatty 6:16	pbmattorneys 2:20	probably 9:12 10:12	remove 12:7
met 10:15	nolen 6:1	peachtree 4:19	process 9:1	report 12:20
methvin 5:6	norwood 4:17			reporter 1:19,19 16:4
michelle 5:1	notary 1:20 16:3,19 16:20			representing 2:5,10 2:15,20,25 3:4,9 3:14,19,24 4:6,11 4:15,22 5:4,9,14
midland 5:17	note 11:23			
miles 5:6				
military 6:22				
millrood 2:17,17 7:13,13,14				

<p>5:18,23 6:4,8,12 6:16,20,24 required 11:8 resolved 8:23 12:23 resolving 9:8 responsive 11:7 rest 15:11 revision 10:17,19 10:22 11:4,8 rheingold 4:12,12 rheingoldlaw 4:15 riccobene 5:15 rmr 16:19 road 4:19 6:18 rock 4:3 rolling 10:9 room 1:16 roseland 5:21 rosengarten 4:17 rteschon 5:18 russel 5:16</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safeguard 13:11 salomon 3:6 7:22 samantha 3:21 8:8 san 6:7 sansome 6:6 saperstein 3:6 7:22 save 13:19 scarola 2:22 scheduled 9:2 schwartz 3:1 schwedock 5:9 sean 6:1,3 search 13:12,17 searcy 2:22 7:12 searcylaw 2:24 second 5:2 sector 15:15 seek 10:23 select 9:19 separate 12:25 september 9:21 13:23 served 11:9</p>	<p>serves 12:15 service 11:4,6 set 12:2 16:8 setting 10:22 settled 8:24 seventh 3:17 4:9 shipley 2:22 short 10:20 side 15:5 sis 5:15 situation 9:5 sixth 2:13 skikos 6:5,5 skikoscrawford 6:8 sleeping 14:23 sleeves 10:10 smith 3:7 7:21,22 sorry 8:25 south 1:15 3:17 4:9 spector 4:3 spicer 3:21 8:8,8 spitzer 2:7 sspicer 3:24 state 1:20 16:4 statement 15:9 statistical 10:12 stems 11:22 stenographically 16:7 stern 6:10 stone 5:3 stop 15:1 street 1:16 2:18 3:17 4:9,13 5:7 6:6,10,14 strike 11:11 stryker 1:4 11:21 suarez 6:6 submission 8:14 suite 2:8,18 3:2,16 4:4,8,19 5:2 6:2,6 6:18,22 sullivan 3:11 8:3 summer 15:11,12 superior 1:1 supreme 11:19</p>	<p>sure 7:5 13:3,5,8,17 15:16 surgery 10:18,19 10:23 szerlag 3:16 7:17 7:18</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 14:25 taken 16:6 tanapol 3:4 tcampbell 5:13 teaneck 3:8 technical 11:14 technologies 1:23 telephone 4:1 telephonically 7:4 15:8 ten 9:19 term 11:14 terrence 3:7 7:22 teschon 5:15,16 texas 6:2,19 thank 8:10,13 9:3 9:11 10:13 thats 10:16 theres 10:9 thereto 13:25 think 9:5,9 thomas 3:1 three 8:18,24 till 14:12 time 10:10 13:20 15:12 16:7 times 9:6 tmillrood 2:20 tobias 2:17 toby 7:13 todd 5:11 tom 7:16 tower 2:18 tracks 14:5 trail 6:22 transcript 1:14 16:6 trial 6:21</p>	<p>triallaw1 3:13 trslawfirm 5:18 tsmith 3:9 two 8:22</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>undergoes 10:19 unique 9:5 unprecedented 9:12 updated 10:1 upset 10:13 use 10:3 11:21,23</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacation 15:13 valet 4:12 van 6:17,18 vanweylaw 6:20 verbatim 16:6 vii 3:16 4:8</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>want 8:13 9:3 14:20 wants 15:9 ward 5:6,8 warriner 2:22 7:11 7:11 14:12,15,22 14:25 washington 2:18 way 12:8 weather 14:11 website 10:17 11:12 13:16,16 wednesday 10:14 weeks 15:20 weitz 2:2 7:10 weitzlux 2:5 welcome 7:2 welldeserved 15:12 west 2:23 4:4 weve 14:17 wey 6:17,18 wilentz 2:7,10 7:25 wish 15:19 woodbridge 2:8,9</p>	<p>words 12:12 work 8:15 9:11 14:1,21 15:1 working 9:23 15:16 15:21</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>york 2:4,4,14,14 3:12,12 4:14,14 6:11,11 youre 14:23</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zele 6:21 zenna 6:14 zerrres 6:13</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00 13:23 044 13:22 07052 4:4 07068 5:21 07095 2:9 071025310 3:22 07432 5:17 07666 3:8 07928 6:15 08034 3:3 08247 5:3</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 1:17 13:23 15:25 10 1:15 2:8 6:10 10003 2:4 10016 2:14 4:14 6:11 101 5:21 10271 3:12 1040 3:2 113 4:13 1190 5:12 120 3:12 12720 6:18 136 2:13 14 12:19</p>
--	--	--	---	--

1520 2:18	359 1:16	<hr/> 7 <hr/>		
161 2:18	36104 5:7	700 2:3		
19 8:24	370 1:24	713 6:3		
191625 4:20	375 3:7	71301 5:12		
19428 2:19	37th 4:13	725 6:18		
1st 9:17 13:21	38 15:25	732 2:9		
<hr/> 2 <hr/>	<hr/> 4 <hr/>	7329000 3:13		
2 13:22	4 1:10 16:21	75230 6:19		
20 1:17 16:20	4000 6:2	77056 6:2		
200 4:4	404 4:21	7791414 6:11		
201 3:8 5:17	4085726 5:3	<hr/> 8 <hr/>		
2014 1:10 9:17	40th 6:10	8 2:18		
16:21	411 5:2	800 5:13		
2019 16:20	414 4:3	8001 5:2		
21 8:23,24	415 6:7	856 3:3		
212 2:4 3:13 4:14	45 3:17 4:9	877 1:24		
6:11,22	4600 6:22	<hr/> 9 <hr/>		
2139 2:23	4821600 3:3	90 2:8		
214 6:19	<hr/> 5 <hr/>	900 2:8		
2160369 16:19	502313 8:21	9075000 3:8		
218 5:7	503513 8:20	917 1:24		
2220 5:11	5237706 4:21	925 4:19		
2285700 5:22	5268261 2:14	94014 6:7		
22nd 13:23	5467300 6:7	9414204 2:19		
2432099 4:5	55402 3:17 4:9	973 3:23 4:5 5:22		
2561050 5:13	5585500 2:4	6:15		
2692343 5:8	561 2:24 6:23			
2800 6:2	5672 1:24			
2830 6:6	591 1:24			
2950 3:16 4:8	5964500 3:23			
296 1:5	5th 2:3			
<hr/> 3 <hr/>	<hr/> 6 <hr/>			
30326 4:20	609 5:3			
304 3:2	610 2:19			
30xi00188400	612 3:18 4:10			
16:20	6217944 6:3			
327 5:16	6309700 6:23			
3291350 6:19	6355400 6:15			
334 5:8	6368000 2:9			
33409 2:23	646 2:14			
33458 6:23	6704400 5:17			
3377 1:24	6841880 4:14			
3380202 3:18 4:10	6866300 2:24			
3455 4:19	6th 10:1			