

November 3, 2014

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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 :

- - -

November 3, 2014

- - -

BEFORE: HON. BRIAN R. MARTINOTTI, JSC
HON. DIANE WELSH

TRANSCRIPT of Global Settlement Program
Hearing held at Bergen County Courthouse, 10 South Main
Street, Room 359, Hackensack, New Jersey, on the above
date, beginning at approximately 3:57 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 3	Page 5
<p>1 A P P E A R A N C E S: (continued)</p> <p>2</p> <p>3 WILENTZ FELDMAN & SPITZER BY: DANIEL LAPINSKI, ESQUIRE</p> <p>4 90 Woodbridge Center Drive Woodbridge, New Jersey 07095 5 (800) 864-6652 dlapinski@wilentz.com Representing the Plaintiffs</p> <p>6</p> <p>7 SEEGER WEISS LLP BY: DAVID R. BUCHANAN, ESQUIRE</p> <p>8 77 Water Street New York, New York 10005 9 (888) 584-0411 dbuchanan@seegerweiss.com 10 Representing the Plaintiffs</p> <p>11</p> <p>12 POPE, McGLAMRY, KILPATRICK, MORRISON & NORWOOD, LLP BY: KIRK POPE, ESQUIRE MICHAEL L. McGLAMRY, ESQUIRE</p> <p>13 The Pinnacle, Suite 925 3455 Peachtree Road, N.E. 14 P.O. Box 191625 (31119-1625) Atlanta, Georgia 30326-3243 15 mmcglamry@pmkm.com Representing the Plaintiffs</p> <p>16</p> <p>17 SULLIVAN, PAPAIN, BLOCK, MCGRATH & CANNAVO BY: FRANK V. FLORIANI, ESQUIRE ANDREW J. CARBOY, ESQUIRE</p> <p>18 120 Broadway, 18th Floor New York, New York 10271 19 (212) 732-9000 Representing the Plaintiffs</p> <p>20</p> <p>21 PRITZKER OLSEN, P.A. BY: DAVID J. SZERLAG, ESQUIRE</p> <p>22 Plaza VII Suite 2950 45 South Seventh Street 23 Minneapolis, Minnesota 55402 (612) 338-0202 24 david@pritzkerlaw.com</p> <p>25</p>	<p>1 APPEARANCES VIA TELEPHONE:</p> <p>2 GRIECO & DeFILIPPO, LLC BY: ALYSSA SPECTOR, ESQUIRE</p> <p>3 414 Eagle Rock Avenue West Orange, New Jersey 07052 4 aspector@godlawllc.com Representing Plaintiff, Frankle</p> <p>5</p> <p>6 LAW OFFICES OF JOHN DAVID HART BY: JOHN DAVID HART, ESQUIRE</p> <p>7 Wells Fargo Tower 201 Main Street, Suite 1720 8 Fort Worth, Texas 76102 (817) 870-2102 9 JHart@hartlaw.com Representing Plaintiff, Clayton</p> <p>10</p> <p>11 BRACH EICHLER, LLC BY: AUTUMN M. McCOURT, ESQUIRE</p> <p>12 101 Eisenhower Parkway Roseland, New Jersey 07068 13 (973) 228-5700 amccourt@bracheichler.com 14 Representing Plaintiff, Milo</p> <p>15</p> <p>16 ALTENPOHL LAW FIRM BY: MICHELLE ALTENPOHL, ESQUIRE</p> <p>17 328 Sweetbriar Road King of Prussia, Pennsylvania 19406 18 (609) 408 - 5726 altenpohl@altenpohllawfirm.com Representing Plaintiff, Freeman</p> <p>19</p> <p>20 TESCHON RICCOBENE and SISS, P.A. BY: MICHAEL HICKEY, ESQUIRE</p> <p>21 327 Godwin Avenue Midland Park, New Jersey 07432 22 (201) 670-4400 mike@trslawfirm.com 23 Representing Plaintiffs, Laauwe</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 APPEARANCES VIA TELEPHONE: (continued) 2 3 WILLIAMS CUKER BEREZOFSKY, L.L.C. 4 BY: ESTHER BEREZOFSKY, ESQUIRE 5 210 Lake Drive East, Suite 101 6 Cherry Hill, New Jersey 08002 7 856.667.0500 8 Eberezofsky@wcblegal.com 9 Representing Plaintiff 10 11 ANDREWS & THORNTON 12 BY: KARREN SCHAEFFER, ESQUIRE 13 2 Corporate Park, Suite 110 14 Irvine, California 92606 15 (949) 748-1000 16 kschaeffe@andrewsthornton.com 17 Representing Plaintiff, Green, et al. 18 19 LEVIN, FISHBEIN, SEDRAN & BERMAN 20 BY: LAURENCE S. BERMAN, ESQUIRE 21 510 Walnut Street, Suite 500 22 Philadelphia, Pennsylvania 19106 23 L.Berman@lfsblaw.com 24 (215) 592-1500 25 26 FARACI LANGE, LLP 27 BY: HADLEY L. MATARAZZO, ESQUIRE 28 28 East Main Street, Suite 1100 29 Rochester, New York 14614 30 (585) 325-5150 31 hmatarazzo@faraci.com 32 Representing Plaintiffs 33 34 THE LANIER LAW FIRM, PLLC 35 BY: JASON S. GOLDSTEIN, ESQUIRE 36 126 East 56th Street, 6th Floor 37 New York, New York 10022 38 (212) 421-2800 39 Jason.Goldstein@LanierLawFirm.com 40 Representing Plaintiffs, El Helou, et al. 41 42 43 44 45</p>	<p style="text-align: right;">Page 8</p> <p>1 JUDGE MARTINOTTI: We are on the record 2 In Re: Stryker Rejuvenate and ABG II Modular Hip 3 Implant Litigation. Docket Number is Case Number 296. 4 Master Docket Number BER-L-936-13. This matter is here 5 today based on an Order I entered this morning setting 6 up an emergent hearing for 4:00 p.m. this afternoon. 7 Counsel that are appearing 8 telephonically, you have knowledge of my prior orders 9 of protocol regarding how your appearances will be 10 noted. 11 Counsel in the courtroom before I enter 12 your appearances, seated to my left is Judge Welsh, 13 former US Magistrate who has been invaluable in 14 bringing this matter to conclusion. Welcome, Judge. 15 JUDGE WELSH: Thank you, Judge. 16 JUDGE MARTINOTTI: And to all on behalf 17 of Judge Peter Doyne, the assignment judge, Judge 18 Robert Polifroni, the presiding judge of the Civil 19 Division, I would like to welcome everyone to Bergen 20 County this afternoon for this rather historic event. 21 That being said, counsel in the 22 courtroom, your appearances for the record, please. 23 MS. RELKIN: Ellen Relkin from Weitz & 24 Luxenberg for the plaintiffs. 25 MR. WARRINER: Cal Warriner from Searcy</p>
<p style="text-align: right;">Page 7</p> <p>1 APPEARANCES VIA TELEPHONE: (continued) 2 FLEMING NOLEN & JEZ, L.L.P. 3 BY: G. SEAN JEZ, ESQUIRE 4 2800 Post Oak Boulevard, Suite 4000 5 Houston, Texas 77056 6 713.621.7944 7 Sean_jez@flaming-law.com 8 Representing Plaintiff, Zachary 9 10 BLUME DONNELLY FRIED FORTE ZERRES & MOLINARI 11 BY: DAVID M. FRIED, ESQUIRE 12 One Main Street 13 Chatham, New Jersey 07928 14 (973) 635-5400 15 DFried@njatty.com 16 Representing Plaintiff, Wilson 17 18 VONACHEN, LAWLESS, TRAGER & SLEVIN 19 BY: M. MICHAEL WATERS, ESQUIRE 20 456 Fulton Street, Suite 425 21 Peoria, Illinois 61602 22 (309) 676-8986 23 mwaters@vltslaw.com 24 Representing Plaintiff, Moushon 25 26 RHEINGOLD VALET RHEINGOLD MCCARTNEY & GIUFFRA, L.L.P. 27 BY: DAVID B. RHEINGOLD, ESQUIRE 28 113 East 37th Street 29 New York, New York 10016 30 212.684.1880 31 drheingold@rheingoldlaw.com 32 mmendoza@Rheingoldlaw.com 33 Representing Plaintiffs, Buechele, et al. 34 35 THE LAW OFFICES OF ROBERT J. FENSTERSHEIB & ASSOCIATES, P.A. 36 BY: CHARLES MINDLIN, ESQUIRE 37 520 West Hallandale Beach Boulevard 38 Hallandale, Florida 33009 39 954.456.2488 40 cm@fenstersheib.com 41 Representing Plaintiff, Doneson 42 43 44 45</p>	<p style="text-align: right;">Page 9</p> <p>1 Dennehey for the plaintiffs. 2 MR. MILLROOD: Tobi Millrood, Pogust, 3 Braslow & Millrood for the plaintiffs. 4 MS. SUTTON: Tara Sutton from Robins, 5 Kaplan, Miller & Ciresi for the plaintiffs. 6 MR. ANAPOL: Good afternoon, Your Honor 7 Thomas Anapol from Philadelphia, Anapol Schwarz. 8 MR. McGLAMRY: Good afternoon, Your 9 Honor. Mike McGlamry from Pope, McGlamry for 10 plaintiffs. 11 MR. BUCHANAN: David Buchanan, Seeger 12 Weiss for plaintiffs. 13 MR. POPE: Kirk Pope with Pope McGlamry 14 for plaintiffs. 15 MR. SZERLAG: David Szerlag, Pritzker 16 Olsen. 17 MS. FULMER: Brenda Fulmer, Searcy 18 Dennehey, West Palm Beach on behalf of the plaintiffs. 19 MS. DOLEJSI: Holly Dolejsi, from 20 Robins, Kaplan, Miller & Ciresi on behalf of 21 plaintiffs. 22 MR. FLORIANI: Frank Floriani, Sullivan, 23 Papain, Block, McGrath & Cannavo. 24 MR. CARBOY: Andrew Carboy, Sullivan, 25 Papain, Block, McGrath & Cannavo, for plaintiffs.</p>

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<p>1 MS. GOLD: Danielle Gold from Weitz & 2 Luxenberg for the plaintiffs. 3 MR. LAPINSKI: Good afternoon, Your 4 Honor. Daniel Lapinski from Wilentz law firm. 5 JUDGE MARTINOTTI: Any other 6 appearances, plaintiffs? 7 Defendants. 8 MS. CATULLO: Good afternoon, Your 9 Honor. Kim Catullo on behalf of the Defendant, 10 Howmedica Osteonics Corp. 11 MS. WOLF: Good afternoon, Your Honor. 12 Nora Wolf from Gibbons, PC on behalf of Defendant. 13 MS. SPICER: Samantha Spicer from 14 Gibbons, PC for the defendant. 15 MR. ASFENDIS: Paul Asfendis, from 16 Gibbons, PC on behalf of the defendant. 17 MS. CATULLO: And, Your Honor, I do have 18 here with me Ethan York, who is in-house counsel for 19 the company. 20 JUDGE MARTINOTTI: And I did witness 21 Mr. York signing some documents today in my chambers. 22 Welcome, sir. 23 MR. YORK: Thank you, Your Honor. 24 JUDGE MARTINOTTI: I trust everyone on 25 the phone can hear us? Good.</p>	<p>1 track to the ongoing litigation. We took the idea of 2 bellwether trial, selecting representative cases from 3 different law firms, varying levels of complexity, 4 gender and age, and applied those principles to the 5 mediation process. We then called them "bellwether 6 mediations." 7 Through the hard work of both sides, and 8 with the help of former Magistrate Judge Diane Welsh 9 and former New Jersey Superior Court Judge Judson 10 Hamlin, the parties successfully settled approximately 11 20 cases. With each mediation, the parties gained a 12 better understanding of the nature of the injuries and 13 the valuation of the claims. The parties and our chief 14 mediator, Judge Welsh, used this process and the 15 information gained as a framework to start talking 16 about a broader global resolution program. While we 17 started the mediation process here in New Jersey alone, 18 we were fortunate enough to get the support of our 19 colleagues in the MDL, and also benefitted from the 20 appointment of retired Federal Magistrate Judge Arthur 21 Boylan as a special master, who has been involved in 22 successfully mediating many MDL and state Rejuvenate 23 and ABG II cases, to help us get on the successful 24 juncture. 25 Through the parallel bellwether</p>
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<p>1 Okay. Again, I want to welcome everyone 2 to Bergen County to this proceeding regarding the 3 Stryker Rejuvenate and ABG II Modular Hip Implant 4 Litigation. This multi-county litigation has been 5 pending since January of 2013 when it was designated 6 for centralized management and for MCL status by the 7 Supreme Court of New Jersey. It has been proceeding in 8 tandem with the multi-district litigation commenced in 9 June of 2013 before Judge Donovan Frank in the United 10 States District Court for the District of Minnesota, as 11 well as other jurisdictions across the country. 12 We have scheduled this proceeding to 13 occur simultaneously with the hearing in the MDL to 14 announce an agreement between the parties in various 15 coordinated proceedings to settle thousands of cases 16 brought by individuals implanted with Stryker ABG II 17 and Rejuvenate modular hip -- modular neck hip stems. 18 As you will hear today, a very comprehensive global 19 settlement program has been developed for claimants who 20 have had these products removed. 21 Very briefly, relating to the New Jersey 22 consolidated actions, early on in the litigation, 23 working in conjunction with members of the New Jersey 24 Plaintiffs' Steering Committee and Stryker, we crafted 25 a voluntary mediation process that ran on a parallel</p>	<p>1 mediation process, counsel for the parties and Stryker 2 sought to do something that frankly I believe to be 3 historic-to get a well thought out and fair settlement 4 without the need for lengthy pre-trial proceedings and 5 without the need for very costly and uncertain trials. 6 I will leave the details to counsel who 7 are here today to layout the specifics of what they 8 have been able to accomplish, but, before we begin, I 9 want to thank Judge Welsh for her hard work and 10 dedication since the inception of this mediation 11 process, including managing and coordinating the 12 parties in achieving this agreement announced today. I 13 also want to thank the leadership on both sides of this 14 case. For approximately two years these lawyers have 15 not only labored diligently on discovery in the 16 coordination of these litigations, but also have been 17 mediating cases and most recently engaging in 18 negotiations and doing all this at the same time. 19 Although there have been many lawyers in 20 New Jersey litigation that have helped by participating 21 in the mediation program, I want to especially thank 22 the lawyers who have led this litigation on behalf of 23 the plaintiffs, especially Ellen Relkin, Tom Anapol, 24 Cal Warriner, and Tara Sutton. I would be remiss if I 25 didn't acknowledge both lawyers on the other side of</p>

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1 the V, especially Kim Catullo, Nora Wolf, Samantha
 2 Spicer, Paul -- how do you say your name, Paul? I'm
 3 sorry.
 4 MR. ASFENDIS: Asfendis.
 5 JUDGE MARTINOTTI: Thank you. And, of
 6 course, Ethan York, who is here today representing the
 7 company. It's been a truly monumental feat. I want to
 8 thank you for your labors and your corporation.
 9 These lawyers have exhibited the
 10 ultimate in professionalism and dedication throughout
 11 this litigation, as well as cooperation with each other
 12 and this court. Their respective clients have been
 13 well served by their lawyers' services and owe them a
 14 debt of gratitude.
 15 At this point I would like to ask Judge
 16 Welsh if she would like to say a few words.
 17 Judge, it's hard to believe it was a few
 18 months ago in July that I traveled down to
 19 Philadelphia, sat in your conference room, met, talked
 20 to some of the lawyers and the process started. I left
 21 them in your capable hands, and through your efforts
 22 and their cooperation, we're here today to announce the
 23 settlement so, again, thank you for a fine job and I
 24 would like to say a few words, if you don't mind.
 25 JUDGE WELSH: Thank you, Judge. It has

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1 been a privilege for me to work with you and under your
 2 tutelage. I have learned a lot from working with you
 3 over these months and this settlement never would have
 4 occurred without your brilliant and creative approach
 5 to tackling the challenge of resolving this complex and
 6 important litigation.
 7 It was also very gratifying for me to
 8 work with defense counsel Kim Catullo and the
 9 representatives of Stryker, who never viewed this
 10 litigation as a war to be won, but, instead, as a
 11 problem to be solved. And with plaintiff's counsel,
 12 Ms. Relkin, Mr. Warriner, Ms. Sutton, Mr. Anapol, who
 13 always had the best interests of their clients as
 14 paramount in everything that they did and every
 15 position that they took and for them, this meant both
 16 fair compensation, as well as prompt resolution because
 17 they know too well that many of their clients are of
 18 advancing age and that for those clients, justice
 19 delayed would, indeed, be justice delayed.
 20 Finally, we owe a debt of thanks to all
 21 the individuals who came forward to share with us their
 22 personal stories at the mediations. As a result of
 23 their efforts, thousands of people will be compensated
 24 through this settlement.
 25 JUDGE MARTINOTTI: Thank you, Judge.

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1 Ms. Relkin.
 2 MS. RELKIN: Good afternoon. I too
 3 didn't know if we would get here. It was a long, long
 4 road. And I thank Your Honor, Judge Martinotti, and
 5 Judge Welsh for your encouragement and guidance. I
 6 thank a wonderful team. We've had a fabulous team.
 7 The Plaintiffs' Steering Committee, the Negotiating
 8 Committee, Cal Warriner, Tara Sutton, Tom Anapol and
 9 then also on our PSC, Dave Buchanan, Toby Millrood,
 10 while they didn't have the opportunity to be in the
 11 negotiations because you just can't have that many
 12 people in a room practically, they helped get us here
 13 with their hard work on discovery and electronic, the
 14 ESI work, that was all very important. So good
 15 afternoon, it's fabulous to be here. It's been a long
 16 two years, especially for our clients who have been
 17 waiting eagerly for this day. But I'm pleased that
 18 we're here earlier than anyone could have expected.
 19 When Judge Martinotti suggested the
 20 early mediation program in the New Jersey litigation we
 21 were not quite sure what the outcome would be. We went
 22 through the process, just like selecting a bellwether
 23 trial, and were pleased to find out that not only were
 24 we settling the cases during and in some of the
 25 mediations, but also in follow-up sessions after the

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1 conclusion of very hard fought mediation days. But
 2 what we did find despite our struggles were that both
 3 sides were agreeing on certain aspects of evaluation of
 4 the cases and from those individual pieces of mediation
 5 where we would agree on certain evaluations, that
 6 helped form building blocks.
 7 This process would not have been a
 8 success without the fantastic work of our mediators
 9 Judge Welsh and Judge Hamlin -- I believe Judge Hamlin
 10 is in Europe right now -- as well as Kim Catullo of
 11 Gibbons, PC and Ethan York from Stryker, who during the
 12 mediation process listened earnestly and truly
 13 empathetically to our clients' stories. It was very
 14 impressive to see their empathy. And I know all of us
 15 who had clients who mediated, including other attorneys
 16 who are here in the room. Dave Szerlag had mediated
 17 cases and Tobi mediated cases. Everybody saw the
 18 concern for the clients from Stryker counsel, which is
 19 really very unusual.
 20 We also want to thank Alexis MacDowall
 21 from Stryker and Ralph Campill, the Stryker MDL counsel
 22 who joined the negotiations during the global
 23 settlement discussions.
 24 It would be difficult to overstate the
 25 value both sides gained from the bellwether mediation

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1 process. We got a read on how both sides were valuing
 2 the cases early on, began to identify some of the
 3 common situations that plaintiffs experienced and an
 4 in-depth understanding of the various types of injuries
 5 and procedures the various plaintiffs had gone through.
 6 Probably even more important, we were able to gain a
 7 level of trust and comfort with the defendant that you
 8 ordinarily did not get when you are sitting down at the
 9 table to negotiate a global settlement that is as large
 10 and complex as this one.

11 This is not to say that this process was
 12 easy, we fought over every term, literally, over the
 13 course of the negotiations to reach today's result.
 14 There were times when we didn't think it was going to
 15 happen, but it did. We're here. What got us here was
 16 the cooperation between New Jersey, the MDL and Stryker
 17 and our experience during the bellwether mediation
 18 process.

19 When negotiating a deal like this it is
 20 important that the interests of all plaintiffs are
 21 represented, regardless of where they and their
 22 attorneys have chosen to file their lawsuit. The
 23 ultimate goal is to create a program that will resolve
 24 most of the lawsuits filed throughout the country by
 25 providing fair compensation in a timely manner, given

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1 the needs of our aging client population. Along with
 2 our colleagues in the MDL we are confident that the
 3 terms of the agreement that will be discussed today are
 4 reasonable and balanced and will provide compensation
 5 to a large number of patients who have been implanted
 6 with these products, while also resolving a majority of
 7 the currently pending lawsuits.

8 I encourage everyone attending or
 9 listening in today, or those who will read this
 10 transcript later, to listen carefully to what everyone
 11 has to say as the terms of the agreement and the
 12 upcoming deadlines are discussed. We have tried to do
 13 our best to make this a fair and just result for
 14 affected patients.

15 And at this point I would like to turn
 16 this over to Cal Warriner.

17 Actually, one more thank I want to make,
 18 that is to Deborah Savours, who is my trusted assistant
 19 who has set up all of the phone conferences. Many of
 20 the attorneys in the litigation appear telephonically,
 21 including today, and it is she who shepherds the phone
 22 calls and makes that happen seamlessly.

23 JUDGE MARTINOTTI: Is Deborah here? Is
 24 Deborah here?
 25 MS. RELKIN: No, she is managing the

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1 phone.
 2 JUDGE MARTINOTTI: Oh, she's on the
 3 phone. Okay.
 4 MS. SAVOURS: I'm on the phone.
 5 JUDGE MARTINOTTI: Thank you.
 6 MR. WARRINER: Good afternoon.
 7 JUDGE MARTINOTTI: Welcome.
 8 MR. WARRINER: Your Honor, as a point of
 9 personal preference, I know you know, as well as most
 10 people in the courtroom know that I'm practicing here
 11 before you at the pleasure of the Court. I'm not a New
 12 Jersey barred lawyer and I want to express my
 13 appreciation to Your Honor for allowing me to do so.
 14 My personal goal for this case was to
 15 see it conclude before the courthouse parking garage
 16 was completed and as I drove up today I saw a mountain
 17 of dirt and they don't even have a foundation yet, so
 18 we have accomplished our goal.

19 My assignment for the group is to talk
 20 about payment of the claims and the claims processing
 21 goals. I can tell you having been in this process from
 22 the very beginning all the way through the end that it
 23 is genuinely Stryker's goal to ensure that people that
 24 are to be appropriately compensated in this program be
 25 compensated swiftly and efficiently. I've heard that

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1 said by both Ms. Catullo and Mr. York on numerous
 2 occasions and I honestly believe that is their
 3 significant desire is to see that done.

4 So along those lines, a lot of very
 5 comprehensive work has gone into looking at and trying
 6 to construct a claims administration process that is
 7 streamlined and efficient for these clients. And one
 8 of the benefits we have in doing that is that the folks
 9 that are giving their input here have a significant
 10 amount of experience resolving past cases and, as a
 11 result of that, they know what works and they know what
 12 doesn't work.

13 When you talk about streamlining a
 14 process, the defendants have chosen a claims
 15 administrator that has a significant amount of
 16 experience processing similar claims, which we all
 17 mutually believe will lead to a swift resolution of
 18 this. You will see that it is a objective process
 19 which lends to having a streamlined process and that it
 20 is both fair and efficient. Efficiency comes mainly
 21 once a very competent claims processor is selected.
 22 Now it is time for the plaintiffs' side to be -- to
 23 carry their water and do what is required of them.

24 I can honestly tell the Court to this
 25 point Stryker has done everything they can possibly do

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1 to ensure that this is swift and efficient and now the
 2 burden basically shifts to the plaintiffs to carry the
 3 water, to make sure that their submissions are timely,
 4 that their submissions are complete and if they are
 5 rejected by the claims processor, to absolutely and as
 6 quickly and efficiently to cure the defects as possible
 7 and if the plaintiffs do that, this process will be
 8 swift and efficient.

9 Now, in terms of deadlines, it is
 10 currently planned for registration only on December the
 11 14th. The forms for that are not complete yet but will
 12 be very soon. It is anticipated the registration will
 13 basically be a submission so that the claims
 14 administrator can build their database. It is
 15 anticipated that there will not be a lot of medical
 16 records in any submission for that, that's simply
 17 signing up.

18 The next major deadline will be on
 19 January the 16th and that will be enrollment -- the
 20 enrollment date or the beginning of submission of
 21 claims packages. The form of the claims package is not
 22 set yet but it will be very soon and, obviously,
 23 everybody that watches the updates on both Stryker's
 24 website and through their various leadership will know
 25 the minute that the format for that is set. That's

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1 where it is up to the plaintiffs to make sure that when
 2 you enroll your clients you do so with -- following the
 3 rules of the road and complying with the terms of the
 4 submissions so that you will get paid efficiently and
 5 timely.

6 The deadline for submission of base
 7 claim packages will be on March the 2nd, 2014. So, in
 8 essence, if you look at the timing that allow the
 9 people -- people are allowed to put these packages
 10 together and get them submitted, you're out to four
 11 months from today. Stryker then will have walkaway
 12 rights on June the 15th, 2014. It is suggested,
 13 although not contemplated, that they may exercise that
 14 right earlier but that is Stryker's complete and total
 15 right and it is Stryker's intent to begin funding
 16 shortly after their decision is made.

17 For enhancements, enrollment for
 18 enhancements will open on June the 16th. That will
 19 require another submission over and above base. And
 20 then September the 30th, 2014 is the deadline for
 21 submission of those packages.

22 So the framework is in place for
 23 efficient and swift administration of this settlement
 24 program. It's up to the plaintiffs to comply with the
 25 rules of the road, and I believe that will occur.

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1 JUDGE MARTINOTTI: Ms. Catullo.
 2 MS. CATULLO: Good afternoon, Your
 3 Honor. On behalf of Howmedica Osteonics Corporation
 4 Howmedica Osteonics Corp or Stryker Orthopedics, our
 5 legal team is here with me today; Nora Wolf, Samantha
 6 Spicer, Paul Asfendis and, of course, Ethan York from
 7 the company and with thanks to Your Honor, to Ellen
 8 Relkin here in New Jersey and Pete Flowers of the MDL
 9 and their leadership teams, and especially our chief
 10 mediator Judge Diane Welsh. We are pleased to advise
 11 Your Honor that the parties have reached a private
 12 Settlement Agreement that creates a settlement program
 13 for patients who are US citizens and residents who had
 14 either the ABG II modular neck system or the Rejuvenate
 15 modular neck system implanted in the United States and
 16 who had a qualified surgery to replace the device
 17 before today, November 3, 2014.

18 The settlement program is also open to
 19 certain patients who have been deemed, as of today, to
 20 be too infirmed to undergo an otherwise necessary
 21 revision surgery. This has been a thorough and
 22 complete process to get us here today, you have heard
 23 some of that from other counsel. The efforts were
 24 intended to create a program that provides a fair and
 25 reasonable settlement for affected patients and to do

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1 so at a relatively early stage of the litigation,
 2 resulting in payments being available to affected
 3 patients without endured, prolonged litigation. We
 4 believe the Settlement Agreement reached here today
 5 does just that.

6 Your Honor and Ellen have already spoken
 7 on this but it bears repeating, a constant touchstone
 8 through the negotiations was the invaluable information
 9 we gained through the bellwether mediation process
 10 first started by you, Judge Martinotti, here in New
 11 Jersey. Our experience during that process not only
 12 established a rapport between the parties but, more
 13 importantly, provided consistent and reliable results
 14 that allowed for the resolution of this litigation with
 15 unprecedented speed. We constantly came back to that
 16 information in this process.

17 I want to personally thank Judge
 18 Martinotti for his endless encouragement, his late
 19 night/early morning texts and e-mails and his support
 20 while the parties simultaneously pursued the bellwether
 21 mediations, while also advancing the litigation, which
 22 was an important part of this. We all believe and we
 23 hope that Your Honor will likewise believe that this
 24 program is good for patients and helps bring finality
 25 to all litigation.

<p style="text-align: right;">Page 26</p> <p>1 Now I'm going to go and cover some -- in 2 broad stroke, some of the key details of the settlement 3 program. Just by way of outline, number one is going 4 to be eligibility, two will be registration, three, 5 enrollment, four, settlement awards and, five, the 6 claims process.</p> <p>7 Number one, eligibility. In order to be 8 eligible for the settlement program you must, as of 9 today, one, be a US citizen or legal resident. Two, be 10 implanted with either an ABG II Modular Neck System or 11 Rejuvenate Modular Neck System, what the Settlement 12 Agreement calls "Affected Products" in the United 13 States or a US military hospital. And three, have 14 underwent a qualified revision surgery to remove an 15 affected product prior to today, November 3, 2014. In 16 order for the revision surgery to be qualified you must 17 have the stem and neck of the affected product removed 18 during a revision surgery that took place in the US or 19 at a US military hospital.</p> <p>20 You may also be eligible for the 21 settlement program if, as of today, your treating 22 orthopedic surgeon has recommended a revision surgery 23 for the reasons underlying the voluntary recall but it 24 has been medically determined that you are too infirmed 25 to undergo the procedure.</p>	<p style="text-align: right;">Page 28</p> <p>1 settlement program's website in the near future at 2 StrykerModularHipSettlement.com. Again, 3 StrykerModularHipSettlement.com. So please keep 4 checking back.</p> <p>5 Next subject is enrollment. You do not 6 need a pending lawsuit to participate in this program. 7 The unfiled claims of unrepresented patients may also 8 be resolved through the settlement program. Claim 9 forms and registration packets will eventually be made 10 available through your lawyers or on the claims 11 processor's website. All deadlines will also be posted 12 on the claims processor's website.</p> <p>13 Next topic is settlement awards. 14 Revised patients who are qualified to participate in 15 the settlement program will receive a base award of 16 \$300,000, subject to potential reductions. If a 17 patient had both hips replaced with an affected product 18 and both hips have undergone a qualified revision 19 surgery, that patient will receive a base award for 20 each hip. If a patient had both hips replaced with an 21 affected product and only one hip was revised, your 22 claims with respect to that unrevised hip are 23 preserved.</p> <p>24 Patients may also receive additional 25 awards which are referred to as enhancements. Those</p>
<p style="text-align: right;">Page 27</p> <p>1 Next I want to talk about registration. 2 In the coming days the parties will file a motion with 3 the Court seeking implementation of a registration 4 process. This registration order will allow the 5 parties and the Court to get more information and to 6 make more informed decisions about the future. 7 Importantly, the registration process requires the 8 registration of all claims and lawsuits or that the 9 patient is revised or unrevised, represented or 10 unrepresented by an attorney and whether the patient 11 has decided to file a lawsuit. Registration is 12 required to participate in the settlement program but 13 does not mean that the individual must participate and 14 enroll in the settlement program. This registration 15 process is going to help the parties and the courts 16 manage this large litigation and also allow the parties 17 to set their expectations for the settlement program.</p> <p>18 The steps and procedures for the 19 registration will be set forth in the Registration 20 Order but the parties intend to have the deadline to be 21 set for December 14, 2014. Again, registration 22 deadline is December 14, 2014. The claims processor, 23 The Garden City Group, will be assisting with the 24 registration process and all of the resources that you 25 will need to register will be available on the</p>	<p style="text-align: right;">Page 29</p> <p>1 will come at a later date if they can demonstrate that 2 they meet the eligibility requirements for the 3 categories set forth in the Settlement Agreement. 4 Qualifying for a base award does not automatically 5 entitle a patient to any enhancements. The application 6 process for base award and enhancements will occur at 7 different times. Certain records must be produced to 8 document all claims for a base award or enhancements. 9 With respect to enhancements, the parties have 10 structured the enhancements program in such a way that 11 it is driven by procedures that a patient underwent. 12 The basis for each award is whether the patient can 13 prove that he or she has undergone specified procedures 14 or experienced an identified serious medical event. We 15 structured the enhancement program in this way in an 16 effort to make qualifying for and receiving an 17 enhancement a streamlined process that provides 18 compensation to reflect the medical experience of the 19 patient litigant. This process allows for fair 20 compensation and allows payment to get to those 21 affected patients more quickly. Each enhancement 22 category has its own eligibility requirements and 23 limitations, which are set forth in the Settlement 24 Agreement. There are reasonable caps on the 25 enhancements that an individual can receive. Again,</p>

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1 those details are set out in the Settlement Agreement.
 2 This settlement also takes into account
 3 events that happened after patients enroll and qualify
 4 for the settlement program. We call these future
 5 enhancements. So if you have a revision surgery within
 6 the last year there may be some concern, you may ask
 7 yourself what happens if I have a re-revision or what
 8 happens if I have a dislocation? This program takes
 9 that into consideration and provides for enhancements
 10 for those covered events that have occurred within two
 11 years of the last surgical procedure.
 12 Finally, claims processor. Stryker has
 13 engaged The Garden City Group as the claims processor.
 14 Garden City is a claims processing and resolution
 15 company that has an incredible depth of experience in
 16 managing large, complex and high profile matters. Both
 17 sides are excited to be partnering with Garden City as
 18 we implement this settlement program.
 19 The official website for the settlement
 20 program is StrykerModularHipSettlement.com and will go
 21 live shortly. This website will be frequently updated
 22 with information regarding the program so I ask that
 23 you check it regularly. Please be aware that there are
 24 all sorts of websites out there about this litigation
 25 and a potential settlement, however, the claims

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1 processor website StrykerModularHipSettlement.com is
 2 the only official website for the settlement program.
 3 We're most grateful to Your Honor for
 4 your careful and fair management of this large
 5 litigation. We truly appreciate the confidence you had
 6 in all of us and the time and space that you and the
 7 MDL judges gave us to permit these complex negotiations
 8 to develop as they did. We hope that you will now give
 9 the US patients and their lawyers around the country
 10 the time and space they need to consider carefully the
 11 benefits of this important program so that they can
 12 make an informed personal decision on whether
 13 participation is good for them. Each eligible patient
 14 must have the right and ability to consider the
 15 benefits of this program and to receive accurate and
 16 objective information about it, not rumor and
 17 speculation. We will all require time to make that
 18 happen.
 19 As for patients who are not eligible for
 20 the settlement program because they have not been
 21 revised, Stryker's existing program for reimbursement
 22 of eligible out-of-pocket costs, administered by
 23 Broadspire, remains available. It's important to note
 24 the decision to undergo a revision surgery is a medical
 25 decision, it is not a legal decision. It should be

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1 made by patients with their surgeons. If you are not
 2 eligible for the settlement program, all of your legal
 3 rights and claims are preserved. This also applies to
 4 patients who have been implanted with an affected
 5 product in both hips but only one hip has been revised.
 6 Again, I just want to thank you, Your
 7 Honor, thank Judge Welsh and thank all counsel. It's
 8 been my privilege to be a part of this process.
 9 JUDGE MARTINOTTI: Thank you.
 10 MS. CATULLO: I turn it over to Tara
 11 Sutton at this point.
 12 JUDGE MARTINOTTI: Thank you.
 13 Ms. Sutton.
 14 MS. SUTTON: Good afternoon, Your Honor,
 15 and Judge Welsh. May it please the Court: I want to
 16 take just a few minutes to discuss lien resolution in
 17 the settlement but before I do that, I wanted to thank
 18 Your Honor for giving me, a Minnesota lawyer who is not
 19 a member of the New Jersey bar, a chance to be involved
 20 in leadership of this litigation. It has been a very
 21 gratifying experience.
 22 With respect to lien resolution,
 23 patients who enroll in the settlement program will be
 24 responsible for any valid liens that are directly
 25 related to the revision surgery or to any other

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1 qualified surgery. However, in order to assist
 2 claimants in resolving these medical liens, the
 3 plaintiffs' Settlement Oversight Committee has hired a
 4 professional lien resolution company called Providio
 5 MediSolutions to assist. In the Settlement Agreement
 6 Providio is referred to as the lien resolution
 7 administrator or the LRA.
 8 Providio will be our partner in
 9 resolving any liens that are asserted by Medicare, by
 10 Medicaid, by Medicare Advantage or Medicare known as
 11 Medicare Part C or by any other federal healthcare
 12 program. All enrolled claimants and their counsel will
 13 have the option, if they choose, to hire Providio to
 14 resolve their other healthcare liens, such as private
 15 healthcare liens.
 16 Providio will also be charged with
 17 establishing and administering the qualified settlement
 18 fund. The individuals from Providio who will be
 19 directly involved in the lien resolution program are
 20 Ginger Sussman of Providio's Denver office and Robert
 21 Marcino, who is based in Philadelphia. Both lawyers,
 22 Ms. Sussman and Mr. Marcino, have decades of experience
 23 in the intricacies of public and private lien
 24 resolution and we look forward to working with them to
 25 promptly, efficiently and economically resolve liens to

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1 the benefit of those who enroll in the settlement
 2 program.
 3 Now I'm going to ask my colleague, Tom
 4 Anapol, to discuss claims administration.
 5 JUDGE MARTINOTTI: Thank you, Counsel.
 6 MR. ANAPOL: Thanks, Tara.
 7 Judge, good afternoon again. I'm very
 8 excited to be here. Thanks to all involved, Stryker
 9 and my colleagues. Just going to spend a few minutes
 10 talking about the claims administration process and I
 11 guess, more importantly, the appeals process, to the
 12 extent there is one through the Settlement Agreement.
 13 So as Kim had noted earlier, Garden City
 14 Group is the claims administrator. All of the claims
 15 will be submitted through that administrator and to the
 16 extent -- and let me say, if I can just back up for a
 17 moment, I would suggest for all the conversations we've
 18 had it's our expectation, our hope and I think what we
 19 expect to see is an inclusive process, but to the
 20 extent that claims are not approved for whatever
 21 reason, claimants will have an appeal process right
 22 through a special master program. There will be three
 23 special masters that have been appointed. Retired New
 24 Jersey mass tort Judge Judson Hamlin from the MDL and
 25 special master for this settlement, former Magistrate

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1 Judge Arthur Boylan and attorney and special master Ed
 2 Gentle from Alabama. Those three will be the special
 3 masters who will, to the extent you have an appeal to
 4 either a base award or an enhanced award that you feel
 5 is improper, you have a right first to appeal through
 6 those special masters.
 7 And, of course, we needed a claims
 8 administrator above and beyond those three special
 9 masters. That I think for both parties concerned was a
 10 real easy pick. Judge Welsh from Philadelphia, my
 11 hometown. As the judge has already said, I echo, and
 12 everybody has said, was instrumental in putting this
 13 deal together and keeping the parties at the table. We
 14 spent days upon days in front of Judge Welsh and,
 15 really, Judge Welsh probably knows this Settlement
 16 Agreement as well or better than the parties and she
 17 will be the final and ultimate arbiter to the extent
 18 appeals beyond the special master are unacceptable by
 19 either side, Judge Welsh will have that final say.
 20 Beyond that Cal has already spent some
 21 time talking about the claims administration process so
 22 I'm not going to get into that detail again and, other
 23 than that, I'm going to turn the floor back over to
 24 Ellen Relkin.
 25 MS. RELKIN: Actually, I think, Tara

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1 Sutton handle --
 2 MR. ANAPOL: Oh, I'm sorry.
 3 MS. SUTTON: The next item to be
 4 addressed are costs assessments. I think it's obvious
 5 from this complex settlement program there are costs
 6 associated with managing this settlement. While as
 7 Ms. Catullo mentioned, Stryker will have full
 8 responsibility for paying Garden City Group for claims
 9 processing, there are certain costs that the plaintiffs
 10 will share in. That includes sharing in the cost of
 11 the special master and the claims administrator. There
 12 are also going to be costs that the plaintiffs will
 13 bear with respect to paying Providio and, in
 14 particular, there are costs for paying Providio for
 15 establishing the QFS and for Medicare/Medicaid lien
 16 verification. Those sums will be paid by the
 17 plaintiffs Settlement Oversight Committee.
 18 Enrollees in the settlement, however,
 19 will be responsible for their own lien resolution
 20 costs, both the private liens and certain portions of
 21 the public lien resolution cost. By enrolling in the
 22 settlement individuals whose claims were filed in the
 23 MCL court prior to execution of the Settlement
 24 Agreement and individuals who are represented by
 25 attorneys who have only filed claims in the MCL court

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1 agree to a one half percent cost assessment of their
 2 gross recovery. This assessment will be used to pay
 3 for a variety of things, portions of the lien
 4 administration expenses that we've discussed, the costs
 5 of the special masters and the claims administrator,
 6 the cost of establishing the QFS and to reimburse costs
 7 of the PSC and plaintiff's Leadership Committees in
 8 litigating and working up this case towards settlement.
 9 The leadership of this litigation very
 10 early on contributed to a fund to pay the substantial
 11 costs of the litigation. The amounts have been spent
 12 in acquiring transcripts, in creating and maintaining
 13 an electronic document depository, in hiring experts
 14 and paying for medical research and for costs incurred
 15 in traveling and mediation fees. These costs will be
 16 reviewed by Your Honor and will be reimbursed from the
 17 one half percent cost assessment. To the extent that
 18 there are any funds remaining after Your Honor has
 19 reviewed them, those funds will be returned to the
 20 enrollees in the settlement.
 21 I think that completes the presentation
 22 of counsel. If there are any other questions from the
 23 Court. Mr. Warriner was going to address deadlines
 24 next but I think he covered those already so turning
 25 them over.

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1 JUDGE MARTINOTTI: Okay. Any liaison
 2 counsel wish to be heard?
 3 MS. RELKIN: I think I neglected to
 4 mention one thing. There was a Settlement Oversight
 5 Committee that's been appointed. It will be comprised
 6 of both representatives from the negotiating team from
 7 New Jersey, who I've already identified, and, also, in
 8 the MDL. And Pete Flowers, who is the lead counsel for
 9 the MDL and I will be the representatives, will be the
 10 zones for the SOC or the Settlement Oversight
 11 Committee. And the terms of the Settlement Agreement
 12 give various responsibilities to the Settlement
 13 Oversight Committee in making sure, on the plaintiffs'
 14 end, that it's being administered in an appropriate
 15 manner, which we have no doubt it will be.
 16 JUDGE MARTINOTTI: Anything further from
 17 liaison counsel?
 18 MS. CATULLO: No, Your Honor.
 19 JUDGE MARTINOTTI: You know, I can
 20 remember your faces when I threw out the possibility of
 21 mediation in one of our very first conferences. There
 22 was a little surprise. I think no one ever thought
 23 about mediating a case this early and running it down
 24 parallel tracks, but you were certainly willing to
 25 cooperate and you did cooperate and you settled cases

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1 early on. We heard counsel talk about the settlements.
 2 I think the settlements were invaluable for a variety
 3 of reasons. First of all, it gave some benchmark, some
 4 bellwether, if you will, as to certain valuations.
 5 But what it really did, and Ms. Relkin
 6 and Ms. Catullo touched on it, it really developed a
 7 certain level of trust and cooperation by and between
 8 counsel and I dare say without that level of trust and
 9 without that level of cooperation early on in the case
 10 under Judge Welsh's leadership, we could not have
 11 brought this home today. So, counsel, you did an
 12 outstanding job and it's been my honor and privilege to
 13 work with all of you and the judges. There were --
 14 your dedication is second to none, whether it's getting
 15 a 4:30 e-mail from me or a phone call on the weekend,
 16 you were always very responsive. I appreciated that
 17 and you were able to bring this home.
 18 This really is unprecedented in the area
 19 of multi-county aggregate mass litigation. It's the
 20 first time I know of that anyone entered into the world
 21 of bellwether mediations and bellwether settlements but
 22 I bet and I dare say that we're going to be hearing
 23 about this moving forward in many different litigations
 24 because of the success we've had so far, and I am sure
 25 we're going to have continued success as we move

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1 through this process.
 2 So, again, I think it's important to
 3 recognize in light of today's history and the
 4 developments with respect to this case there's a need,
 5 and this court is certainly willing to do that, to
 6 afford counsel across the country sufficient
 7 opportunity to meet and confer with their respective
 8 clients. This will take some time and it's going to be
 9 time well spent. I'm going to confer with counsel for
 10 the parties before doing so, but I expect to take
 11 further action with respect to the pending cases to
 12 give the parties and counsel the time that is needed to
 13 allow this impressive, unprecedented settlement program
 14 to develop. I encourage and hope my fellow judges
 15 across the country will do the same.
 16 That being said, we will close this
 17 hearing, we will adjourn with the thanks of the Court,
 18 with the thanks of the administration, with the thanks
 19 of my team here in Bergen County and, of course,
 20 mention throughout this litigation we would not be here
 21 without Judge Welsh. And, Judge, thank you again,
 22 welcome back to Bergen County. And we are adjourned.
 23 We're off the record.
 24 (Hearing concluded 4:41 p.m.)
 25 ---

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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
 21
 22
 23
 24
 25

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