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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE:)	
MEDTRONIC, INC.,)	Multidistrict
SPRINT FIDELIS LEADS)	Litigation
PRODUCTS LIABILITY LITIGATION)	File No. 08-1905
)	(RHK/JSM)
THIS DOCUMENT RELATES)	
TO ALL CASES)	Saint Paul, Minnesota
)	August 27, 2008
)	10:15 a.m.
)	

BEFORE THE HONORABLE RICHARD H. KYLE
UNITED STATES DISTRICT COURT JUDGE
AND THE HONORABLE JANIE S. MAYERON
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(STATUS CONFERENCE)

APPEARANCES

For the Plaintiffs:	GUSTAFSON GLUEK
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For the Defendants:	MEYER BROWN, LLP DANIEL L. RING, ESQ. 71 South Wacker Drive Chicago, Illinois 60606
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Court Reporter:	CARLA R. BEBAULT, RPR 700 Federal Building 316 North Robert Street Saint Paul, Minnesota 55101

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1 outlined in that report on which agreement has not yet been
2 reached, perhaps will not be reached. And we discussed
3 those two items in there in some detail but I think it might
4 be appropriate just for the record here today to ask counsel
5 on each side to give a very brief summary of their positions
6 with respect to those two issues.

7 So, Mr. Gustafson, do you want to start?

8 MR. GUSTAFSON: Thank you, your Honor. Dan
9 Gustafson again on behalf of the Plaintiffs.

10 With respect to the Complaint By Adoption form
11 that's first on the agenda, we have reached agreement as you
12 indicated. We will provide -- we have provided that to the
13 Court but we will provide it with an agreed upon order
14 adopting that so that issue has been resolved.

15 With respect to the Tolling Agreement/Tolling
16 Order, we have not agreed. Plaintiff is taking the position
17 that the American Pipe doctrine tolls these cases because
18 there have been class actions filed here. We have set out
19 our positions in the joint status report. And we have,
20 after our conversations with respect to the informal matter,
21 we have agreed that the Court will resolve this issue
22 informally, that is without further formal motions or
23 briefs; and that the parties will meet and confer and see if
24 there's an agreed upon order that we can submit to the Court
25 with the understanding, obviously, that we disagree on

1 whether the order applies. And if not, we will submit
2 separate orders by September 15th.

3 THE COURT: And then we would take that matter up
4 at the next status conference which would be September 24th,
5 as I understand it.

6 MR. GUSTAFSON: September 24th, yes, your Honor.

7 The second issue that we have not agreed on is
8 referred to as the Multiple Parties Order in the agenda,
9 often called the Bundling Order, which is the question of
10 whether joining multiple Plaintiffs on one complaint would
11 be appropriate under the Rule 20 joinder law that's
12 applicable here.

13 Again, we have probably more agreement than we
14 have differences but we don't have an agreement yet. We're
15 going to meet and confer again on that issue and if we can
16 agree on sort of a scope of an appropriate Rule 20 joinder
17 for these complaints we will. If we cannot by September
18 15th we will submit separate orders to your Honors for
19 consideration. And, again, if the Court has questions or
20 issues that relate to that, we have agreed to take those up
21 at the September status conference.

22 With respect to the Preservation Order, electronic
23 discovery issues, the parties are continuing to meet and
24 confer. For the record, we have completed the observation
25 days of destructive testing at the Medtronic facilities here

1 in Minnesota and there have arisen some questions. The
2 parties have designated people to meet and confer on that
3 and we're working through that. We hope to have an agreed-
4 upon order to present to you at the next status conference.
5 And, again, if we cannot, we'll give you our two versions
6 and we can take those issues up then.

7 With respect to the state court cases, next on the
8 agenda, nothing has changed since our last status
9 conference. We have not had anything communicated by either
10 side from the Hennepin County Court in which these cases
11 have been centralized in the state court of Minnesota. And
12 so we have no activity or no requests for actions at this
13 time.

14 We suspect that Judge Riley will ultimately have a
15 status conference and we will be able to report back what
16 her pleasure is with respect to coordination.

17 The last issue on the agenda is the hearing date
18 which we have with the Court's help agreed to move from
19 election day to October 30th at 9:30 a.m. in Courtroom 7 in
20 the brand new, spanking, renovated, remodeled, rejuvenated
21 courthouse.

22 THE COURT: We hope.

23 MR. GUSTAFSON: We hope. Well, we saw the packing
24 cartons so we know you're ready.

25 THE COURT: We have to get the convention out of

1 town first.

2 MR. GUSTAFSON: That's right. We hate it when
3 those conventions get in the way. But in any event, if it
4 hasn't already happened we will send out an amended notice.
5 I'm not sure if that's happened yet or not, but we'll let
6 everyone know that it's been rescheduled.

7 THE COURT: And once we have had a chance to
8 review the briefs, we'll get out some information with
9 respect to how much time is appropriate. If you think you
10 need more or less we'll talk about it; but I would rather
11 set something in advance so everybody knows the rules of
12 engagement, so to speak.

13 What's the date, while we're on that subject,
14 what's the date for the October -- do we have a status
15 conference every month?

16 MR. GUSTAFSON: We do. It would be around the
17 25th but I don't know the date for sure.

18 THE COURT: Would it make sense to have that
19 conference while you're in here on the 30th for those
20 arguments as opposed to two trips in?

21 THE CLERK: I think it's the 29th. I'm pretty
22 sure it's the last Wednesday of every month.

23 MR. RING: Yeah, fourth Wednesday of every month.

24 MR. GUSTAFSON: From the Plaintiffs' perspective
25 that would make it a good thing so that people don't have to

1 come in twice. Even if it's the day before, it probably
2 would make sense to do it the same day. I don't anticipate
3 that we're going to have any issues. Because of the stay of
4 discovery and the like, we really don't have much going on
5 that --

6 THE COURT: Well, we could -- let's go ahead with
7 the arguments the first thing that day; and then if there
8 are issues to take up, we'll adjourn for half an hour and
9 come back and have a status conference.

10 MR. GUSTAFSON: That's a good suggestion.

11 THE COURT: But we'll cancel the one that's
12 otherwise on the calendar.

13 MR. RING: That makes sense to us as well.

14 MR. GUSTAFSON: That's all I have unless you have
15 more questions.

16 THE COURT: No.

17 MR. GUSTAFSON: Thank you.

18 THE COURT: Defense.

19 MR. RING: Dan Ring, your Honors. Just very
20 briefly, I think Mr. Gustafson summarized in court very
21 well.

22 On tolling, to be very brief, the position of
23 Medtronic is that a broad tolling order under American Pipe
24 is not appropriate. That the appropriate way to resolve
25 that is through disputes over statute of limitations where

1 the Court can balance the state interest and the federal
2 interest appropriately to determine whether American Pipe is
3 appropriate in particular disputes rather than in the
4 abstract.

5 As to bundling, our view is that a broad bundling
6 order creates rather than resolves administrative difficulty
7 and burden; and that while we will meet and confer to try
8 and see if we can reach common ground, if we cannot we will
9 submit our view of what would be appropriate if we can't
10 reach common ground. But we do believe a broad bundling
11 order statewide or judicial district wide is not consistent
12 with Rule 20 and will actually lead to problems rather than
13 avoid them.

14 THE COURT: Okay. Well, I think that --

15 MR. GUSTAFSON: I'm sorry, your Honor. There's
16 one thing I forgot to mention is we had submitted a letter
17 on the reporting of time and expenses and we had discussed
18 in chambers that we would submit a proposed order
19 memorializing that.

20 THE COURT: Right. And we'll either issue an
21 order based upon that proposed order or we'll put it off and
22 take it up on the 30th with the status conference, but I
23 suspect that we can get it resolved.

24 MR. GUSTAFSON: Thank you, your Honors.

25 THE COURT: Okay. Is there anything else that

1 anybody wants to bring to our attention?

2 MAGISTRATE JUDGE MAYERON: We do have a status
3 conference set, however, just to be clear, on September 24th
4 at 9:30 a.m., unless once we see the agenda we think we need
5 to start earlier. And otherwise the October status
6 conference will then be October 30th following the hearing
7 on the Motion to Dismiss.

8 MR. GUSTAFSON: Thank you.

9 THE COURT: Anything else?

10 MR. SHELQUIST: Excuse me, your Honor, 9:30 or
11 10:00?

12 MAGISTRATE JUDGE MAYERON: The status conference
13 in chambers, the chambers conference will begin at 9:30.
14 The actual hearing status conference that we're doing right
15 now will remain at 10:00 a.m. on September 24th.

16 THE COURT: And that will be across the way.

17 MAGISTRATE JUDGE MAYERON: Just to remind you all,
18 we will then be in the new building and you should plan on
19 going to Judge Kyle's chambers on the 7th floor. And also
20 for the hearing, status conference hearing on the 24th at
21 his courtroom -- is it courtroom 7?

22 THE COURT: 7A. We renumbered the courtrooms.
23 You'll find it.

24 MR. GUSTAFSON: Nothing else from the Plaintiffs,
25 your Honor.

1 THE COURT: From the defense?

2 MR. RING: And nothing from the defense.

3 THE COURT: Anything from anyone in the audience?

4 Okay. I think -- okay. We are in agreement then. Thank
5 you all for coming in.

6 MR. ZIMMERMAN: Thank you.

7 MR. GUSTAFSON: Thank you.

8 MR. RING: Thank you.

9 (Court adjourned at 10:26 a.m.)

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13 I, Carla R. Bebault, certify that the foregoing is
14 a correct transcript from the record of proceedings in the
15 above-entitled matter.

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18 Certified by: Carla R. Bebault, RPR, CSR

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