

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC., :
SILZONE HEART VALVES PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1396

PRETRIAL ORDER NO.

The Court finds that the parties have met and conferred with regard to an Order addressing merits discovery. This merits discovery order does not address depositions of the parties' experts which, absent agreement or further order of the Court, are not to begin until the completion of merits discovery. The parties having stipulated thereto, the Court orders that:

I. FACT DISCOVERY OF DEFENDANTS

A. Governing Law: Discovery of defendants shall be governed by applicable Federal Rules of Civil Procedure and Local Rules except as otherwise provided herein or in any other Pretrial Order. Fact discovery has already begun in various state court proceedings. This Court has taken into consideration the present status and progress of discovery in fashioning a discovery schedule that will aid in fostering state and federal court coordination of these cases, and completing the tasks undertaken in this MDL 1396 with reasonable dispatch in keeping with the needs and expectations of litigants.

B. Completion of Fact Discovery: Fact discovery of all defendants shall be completed on or before February 14, 2003.

C. Interrogatories: On or after May 14, 2002 plaintiffs may serve interrogatories not to exceed one hundred fifty (150) in number including subparts. Defendants shall provide plaintiffs with written objections to interrogatories no later than thirty (30) days after service. Defendants shall provide plaintiffs with substantive responses to interrogatories no later than forty-five (45) days after service. The parties shall meet and confer as soon as practicable to resolve disputes concerning objections thereto. Motions to compel should only be filed on those issues that cannot in good faith be resolved.

D. Request for Production of Documents: On or after May 14, 2002 plaintiffs may serve requests for production of documents not to exceed one-hundred (100) in number including subparts. Plaintiffs shall endeavor to ensure that such requests are not duplicative of prior requests for production. Defendants shall provide plaintiffs with written objections to requests for production no later than thirty (30) days after service. Defendants shall begin providing plaintiffs with responsive documents no later than forty-five (45) days after service. The parties shall meet and confer as soon as practicable to resolve disputes concerning objections thereto. Motions to compel should only be filed on those issues that cannot in good faith be resolved.

E. Merits depositions of current and former employees of defendants.

All fact depositions shall be conducted pursuant to applicable Federal Rules of Civil Procedure and Local Rules, and as further specified below.

1. Deposition Notices. In addition to the information required by applicable Rule, each deposition notice shall include the name, if known, of the primary examiner(s) designated by the party noticing the deposition, and the date, time and place of the deposition. In order for counsel to make arrangements for adequate deposition space, whenever feasible, counsel who intend to attend a deposition noticed in MDL 1396 should provide notice to the

individual counsel signing the Notice of Deposition. Deposition notices shall state whether the deposition is to be videotaped and, if so, the name, firm and address of the videotape recorders.

2. Telephone Depositions. By indicating in its notice of deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ.P 30 (b) (7). Unless an objection is filed and served within ten calendar days after such notice is received, the court shall be deemed to have granted the motion. Other parties may examine the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not by word, sign or otherwise coach or suggest answers to the deponent.

3. Cross-Notices Between State Court Cases and These Proceedings. In order to avoid duplicative discovery and to prevent the unnecessary expenditure of judicial resources and the resources of the parties, steps should be taken to encourage counsel in related state court proceedings to coordinate their depositions with MDL 1396 depositions. Plaintiffs' State Liaison Counsel, Patrick Murphy, shall copy all known plaintiffs' counsel (by mail, courier, facsimile or electronic mail) on all deposition notices filed by plaintiffs in MDL 1396. Defendants' Liaison Counsel shall provide Plaintiffs' Liaison Counsel and plaintiffs' known state counsel with at least ten (10) days notice of any cross-notice in these proceedings by defendants of a deposition originally noticed in a state court. In the event any state court counsel participates in a joint deposition, questioning by state court counsel will not be counted against the time permitted for questioning pursuant to this MDL proceeding as described below. Nothing in this provision shall be construed as an injunctive or equitable order affecting state court proceedings. Rather, this provision is intended to reflect this Court's desire for voluntary state-federal coordination.

4. Number of Depositions, Former Employees. Defendants shall make available all present employees requested by plaintiffs for deposition, subject to the defendants' right to object to the taking of any particular employee's deposition for good cause shown. Defendants shall take reasonable steps to make available requested former employees, to the extent possible. If defendants are unable, despite their best good faith efforts, to produce former employees, then defendants shall provide the former employee's last known address and shall cooperate in any effort to obtain this Court's, or another court's, assistance to compel the former employee's attendance at the deposition. Plaintiffs shall only contact former employees not in the control of defendants and such contact shall be governed by the Rules of Professional Conduct. Plaintiffs shall be limited to a total of twenty (20) depositions of Defendants' present and former employees and third-party witnesses. Absent agreement by the defendants, plaintiffs may apply to the Court to conduct further depositions only upon a showing of good cause and the specific identification of the individuals sought to be deposed.

5. Supplemental Depositions. Each party who did not have reasonable notice of a deposition and who was not present or represented at the deposition (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court) may, within thirty (30) days after filing of the deposition (or, if later, within sixty (60) days after becoming a party in any action which is a part of this litigation), file a motion to conduct a supplemental deposition of the deponent. Within ten (10) days of the filing of any such motion, any party may file an opposition to the motion and seek a protective order prohibiting the supplemental deposition on the grounds that the MDL-1396 deposition fully covered the area or areas sought to be explored in the supplemental deposition or that the testimony is not relevant.

No further deposition by any party having received notice of the original deposition will be permitted, except upon order of the MDL-1396 Court on good cause shown. A showing by the moving party that a supplemental deposition is reasonably calculated to lead to the discovery of admissible evidence necessary to protect the interests of the moving party shall constitute good cause.

Assuming the movant has met this burden, and if no opposition or motion for a protective order is filed, or the opposition or motion for a protective order is denied, the supplemental deposition may be taken within such time as may be authorized by the Court.

The supplemental deposition shall be treated as the resumption of the deposition originally noticed. During the resumed deposition, any other party may conduct further examination of the witness only with regard to new subject areas authorized by the order allowing the resumed deposition. The resumed deposition shall be taken at the same location as the initial deposition unless otherwise agreed to by the parties and the deponent.

6. Scheduling. Plaintiffs may begin depositions of third party fact witnesses on or after May 14, 2002. Plaintiffs may begin depositions of St. Jude Medical's current or former employees on or after August 1, 2002. To the extent practicable, counsel shall consult with opposing counsel in an effort to schedule depositions at mutually convenient times and locations. Counsel for deponents who are employees of defendants are expected to cooperate, to the extent reasonably possible, in the scheduling of depositions requested by plaintiffs. The Court will resolve any deposition scheduling issues that Lead Counsel or their designees are unable to resolve.

7. Length of Direct Examination In Fact Depositions. The examination by the party noticing the deposition of a present or former employee of a defendant shall be no

more than seven (7) hours of actual examination time absent agreement or further order of this Court upon a showing of good cause. The Court expects that if a deposition requires additional time the parties will make a good faith effort to agree on an extension before coming to the Court for resolution. Direct examinations that are reasonably believed to require more than seven hours to complete shall be scheduled, to the extent possible consistent with the witness's schedule, for sufficient consecutive days for completion.

8. Postponements. Once a deposition has been scheduled, it shall not be taken off calendar, postponed, rescheduled, or relocated less than five (5) calendar days in advance of the date it is scheduled to occur, except upon agreement of counsel or by leave of Court for good cause shown. Given the number of attorneys involved in this litigation, the unavailability of counsel shall not be grounds for postponing a deposition if another attorney from the same firm who is familiar with the case or one who represents a party with similar interests is available to attend. If a motion is made to permit the rescheduling of a deposition on the grounds of unavailability of counsel, the moving party shall certify to the Court that neither an attorney from the same firm who is familiar with the case nor one who represents a party with similar interests is able to attend the scheduled deposition.

9. Production of Documents. Witnesses subpoenaed or noticed to testify and to produce documents shall be noticed and served with the subpoena or deposition notice and document request at least thirty (30) days before the scheduled deposition. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the interrogation commences. Responsive documents that are identical to those already produced to the Plaintiffs' do not have to be produced by the deponent, but the deponent bears the burden of demonstrating, if necessary, prior production.

10. Potential Deposition Exhibits. Parties are under no present obligation to disclose to the deponent's counsel prior to the date of a deposition the documents they expect to use during examination. In the event that the absence of advanced production of documents renders the depositions inefficient, the Court will, upon application, reconsider ordering prior document production.

11. Location of Depositions. Unless otherwise agreed to, any deposition of:

- a.** plaintiffs shall take place within the federal district in which that plaintiff resides;
- b.** current and former employees and officers will take place in the federal district of such employees' or officers' place of business. Defense counsel will make reasonable efforts to obtain the agreement of former employees of defendants to appear at the same location as current employees of the same defendant. Absent such agreement, that deposition will take place either within the federal district in which the former employee resides or at a location mutually agreeable to the former employee and the parties.

12. Cooperation. Counsel are expected to cooperate with, and be courteous to, each other and deponents during the course of any deposition. Counsel shall refrain from engaging in colloquy during depositions. Counsel shall recess from time to time during the deposition for meals and to permit periods of rest or refreshment reasonably required by the deponent, stenographers, and/or counsel conducting or defending the deposition.

13. Deposition Day. Absent agreement of the parties to the deposition, a deposition day shall be no longer than seven (7) hours of actual examination time.

14. Continuance of Deposition. If a deposition is not completed by 5:00 p.m. on a Friday, the deposition will recommence on the next business day, subject to the

availability of the witness. If the witness is not available for deposition on the next business day, the deposition will continue on a date to be agreed upon by counsel or, if agreement cannot be reached, a date specified in a notice of continued deposition.

15. Examination. The party noticing a merits deposition shall designate one attorney to conduct the examination of the deponent, except counsel for the Class II plaintiffs may also participate. Only one attorney may represent and assert objections on behalf of a deponent at any given time.

16. Objections and Directions Not to Answer. Unless otherwise agreed by the parties, and noted on the record, the following stipulations shall apply to all depositions in this action:

a. All objections are reserved until trial or other use of the deposition, except those objections regarding the form of the question or the existence of a privilege. Objecting counsel shall say simply the word "objection", and no more, to preserve all objections as to form.

b. Counsel shall not direct or request that a witness refuse to answer a question, unless that counsel has objected to the question on the ground that the question seeks privileged information, information that the Court has ordered may not be discovered, or a deponent seeks to present a motion to the Court for termination of the deposition on the grounds that it is being conducted in bad faith or in such a manner as to annoy, embarrass, or harass the party or the deponent. When a privilege is claimed, the witness shall nevertheless answer questions relevant to the existence, extent or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement was made, any other person to whom

the contents of the statement has been disclosed, and the general subject matter of the communication.

17. Private Consultation. Private conferences between deponents and their attorneys in the course of interrogation are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, such conferences may be held during normal recesses and adjournments.

18. Objections to Documents. All objections to the admissibility of any documents used during the course of a deposition are deemed reserved until the time of trial or use in any dispositive motion. No objections to the use of any document are necessary or shall be noted on the record at a deposition.

19. Disputes During Depositions. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the Court by telephone by calling the Court's Chambers. In the event the Judge is not available, the deposition shall continue as to matters not in dispute with full reservation of rights to continue the examination objected to pending a ruling at the earliest possible time.

If the nature of the dispute would not require the continuance of the deposition pending resolution thereof, the parties may elect to either present the matter to the Court by telephone at a time when the parties and the Court are available, or to present the dispute to the Court in writing. If the parties elect to present the dispute to the Court in writing, each side must submit a 1 page summary of its position and any authority relevant to the dispute. The Court will issue a prompt ruling, as its schedule permits.

20. Copies of Exhibits. Counsel who intends to take a deposition and use exhibits shall supply to opposing counsel at the deposition CD Roms of the documents to be used with the witness.

21. Marking of Deposition Exhibits. Any documents previously produced by defendants or third parties used as exhibits in a deposition shall be referred to by any Bates stamp number(s) appearing on the face of the documents. Documents that do not have Bates stamped number(s) shall be separately marked with sequential exhibit numbers. For example, if the deponent's name is "John Smith", the first exhibit to his deposition that has no identifiable Bates stamp number on its face shall be marked "Smith No. 1." The same document presented as an exhibit at subsequent depositions shall continue to be referred to as originally marked, and counsel should avoid marking that document with a different exhibit number at any subsequent deposition.

22. Depositions Pursuant to Rule 30(b)(6). In those instances when the Plaintiffs serve a deposition notice pursuant to Fed. R. Civ. P. 30(b)(6), the following shall apply (in addition to the foregoing general procedures governing depositions):

a. Depositions taken pursuant to F.R.C.P. 30(b)(6) will be taken pursuant to the Federal Rules of Civil Procedure and applicable case law.

b. The party wishing to take the deposition will in good faith describe with reasonable particularity the categories on which the party is requesting examination. Within a reasonable period of time after receiving the notice, the party to be deposed will in good faith attempt to inform the discovering party if it believes that multiple witnesses will be necessary to respond to the requested categories of information and to which category each witness will be produced to respond.

23. Stenographic Recording. A certified Court reporter shall stenographically record all deposition proceedings and testimony. The Court reporter shall administer the oath or affirmation to the deponent. A written transcript by the Court reporter, together with an index of all exhibits marked or referred to during the deposition, shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to the witness) and 30(f) (filing, exhibits). The transcript shall also contain the name of any attorney and any other person attending the deposition together with the name of his or her firm or organization, business address and, if applicable, the name of the person or organization he or she represents. The court reporter shall be requested to furnish the transcript in electronic form (floppy disks) in text-readable form and hard copy in Min-U-Script format to the representative of plaintiffs conducting the deposition and a designated representative of defendant attending or defending the deposition.

24. Videotaped Depositions. Any deposition may be videotaped at the request of any party pursuant to notice under the following terms and conditions:

a. All videotaped depositions shall be simultaneously stenographically recorded in accordance with this Order.

b. The party requesting videotaping of the deposition shall bear the expense of both the videotaping and the stenographic recording. Requests for the taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

c. The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

d. At the commencement of the deposition, each witness, attorney and any other person attending the deposition shall identify themselves on the record but not on camera.

e. No attorney or party shall direct instructions to the video operator as to the method of operating the equipment. The video camera operation will be suspended during the deposition only upon stipulation by counsel and "off the record" discussions. The video operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

f. The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at trial. Unless physically unable to do so, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent.

g. If the party noticing the deposition does not intend to convert the videotape to digital form, the videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the time at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any

interruption of continuous tape-recording occurs, whether for recesses, "off-the-record" discussions, mechanical failure, or otherwise.

h. After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter, and file a true copy of the video tape, the transcript, and certificate with Liaison Counsel for whomever noticed the deposition.

i. Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included on copies of the videotaped deposition.

25. Correction and Signing Depositions. Unless waived by the deponent, the transcript of a deposition, or any portion thereof, shall be submitted to the deponent for correction and signature within thirty (30) days after the completion of the deposition or any portion thereof. A deposition transcript, or a transcript of a portion thereof, may be signed by the deponent before any notary within thirty (30) days after the transcript, or any portion thereof, is submitted to the deponent. If no corrections are made during this time, the transcript will be presumed accurate.

II FACT DISCOVERY OF PLAINTIFFS.

The parties, through their appointed Lead Counsel, are to confer regarding the nature and extent of discovery of plaintiffs in MDL 1396, as well as deadlines and proposed procedures for the conduct of same, and to report back to the Court at the earliest practical time as agreed by Lead Counsel.

IT IS SO ORDERED:

Honorable John R. Tunheim

ENTERED: May 24, 2002