

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re:	:	
	:	MDL DOCKET NO. 1396
ST. JUDE MEDICAL, INC.	:	
SILZONE HEART VALVES PRODUCTS	:	All cases
LIABILITY LITIGATION	:	

**PRE-TRIAL ORDER NO. 5
(Designation of plaintiffs' Lead and Liaison Counsel)**

1. On October 4, 2001 at the initial pre-trial status conference a formal motion was made for appointment of James T. Capretz and Steven E. Angstreich as co-lead plaintiffs' counsel (hereinafter Co-Lead Counsel) for CLASS I, the putative monitoring class; appointment of Charles S. Zimmerman and J. Gordon Rudd, Jr., as liaison counsel; and appointment of Joe D. Jacobson and Green Schaaf & Jacobson, P.C. as plaintiffs' lead counsel (hereinafter Lead Counsel) for CLASS II, the putative class with documented Silzone® related injuries.

2. Counsel chosen for these roles are eminently qualified to handle litigation of this size and type.

3. With respect to the proposed co-lead CLASS I counsel, James T. Capretz currently serves as Special Counsel to the class in *Arthur Ray Bowling v. Pfizer*, Case No. C-91-256(Ohio) (Bjork Shiley Convexo-Concave heart valve Litigation); and is involved with the following MDL cases: *In Re Microsoft Corp.*, MDL 1332 (Maryland); *In Re Warfarin Sodium Antitrust Litigation*, MDL 1232; *In Re Propulsid Products Liability Litigation*, MDL 1355 (Louisiana); *In Re Resulin Products Liability Litigation*, MDL 1348 (New York). See Statements of Qualifications of Capretz & Associates (Exhibit A). Mr. Steven E. Angstreich has served as lead counsel, co-lead counsel or class counsel in class actions or shareholder derivative

actions in over fifteen actions including; *Basile v. H & R Block, et al*; *Domh v. City of Philadelphia*; *Hoffman v. Geriatric & Medical Centers, Inc.*; *McShea v. City of Philadelphia*, *Hagendorff v. Rohm & Haas Company*; and *Shapiro v. Jiffy Industries*. See Statement of Qualification of Levy, Angstreich, Finney, Baldante, Rubenstein, & Coren, P.C. (Exhibit B).

With respect to proposed liaison counsel, Charles S. Zimmerman is senior managing partner of his firm and has been appointed lead counsel and on the national steering committee on numerous national and multi-state class actions in Securities, Consumer, Mass Tort, Products Liability and Toxic Tort cases including the Castano tobacco litigation. J. Gordon Rudd, Jr. has been involved in complex consumer and products liability class actions including consumer protection litigation, Silicone Gel breast implant litigation, and Telectronics Pacing System Atrial-J Leads litigation. See Firm Resume for Zimmerman Reed, P.L.L.P. (Exhibit C).

Joe D. Jacobson of Green, Schaaf & Jacobson P.C. has been proposed as Lead Counsel for the putative class composed of members who have incurred injuries resulting from the implantation of their St. Jude Silzone® heart valves. Green, Schaaf & Jacobson serves as lead counsel *In Re Bank of America Securities Litigation* and as lead counsel or defendant's counsel in five other pending class actions. The firm's class action experience extends to securities, consumer rights, and injury cases. See Firm Resume of Green, Schaaf & Jacobson P.C. (Exhibit D).

4. Counsel proposed to act for plaintiffs in this litigation are highly qualified to handle the tasks they have agreed to undertake. For further information concerning the abilities and achievements of these counsel and their respective firms, refer to the individual firm resumes cited above as Exhibit A-D.

5. Class I Plaintiffs' co-lead counsel, James. T. Capretz and Steven E. Angstreich, shall be generally responsible for coordinating the activities of Class I and Class II plaintiffs during pre-trial proceedings and shall:

- i. determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of Class I plaintiffs on all matters arising during pretrial proceedings;
- ii. initiate and conduct discovery on behalf of Class I plaintiffs consistent with the requirements of Fed.R.Civ.P. 26(b)(1) and (2), and (g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
- iii. conduct settlement negotiations on behalf of Class I plaintiffs; but not enter binding agreements except to the extent expressly authorized by the Executive Committee as set forth in paragraph 16 of this order;
- iv. delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Class I plaintiffs is conducted effectively, efficiently and economically;
- v. enter into stipulations on behalf of Class I plaintiffs, with opposing counsel, necessary for the conduct of the litigation;
- vi. prepare and distribute to the parties periodic status reports;
- vii. maintain adequate time and disbursement records covering services provided in support of this litigation on behalf of the Class I plaintiffs;

- viii. monitor the activities of all Class I co-counsel to ensure that schedules are met and unnecessary expenditures or time and funds are avoided; and
- ix. perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court.

6. No discovery or other actions or work in this litigation on behalf of Class I Plaintiffs shall be undertaken except at the direction of or with permission by the Co-lead Counsel.

7. Time and Expense Records: Class I Plaintiffs' Counsel who anticipate seeking an award of attorney's fees and reimbursement of expenditures from the court shall comply with the directives contained in The Manual for Complex Litigation (Third) §41.32 regarding the maintenance and filing of conformance with any further guidelines developed and published by Class I co-lead counsel, James T. Capretz and Steven E. Angstreich.

8. Class II Plaintiffs' lead counsel, Joe D. Jacobson and green Schaaf & Jacobson, P.C., shall be generally responsible for coordinating the activities of Class II plaintiffs with co-lead counsel for Class I plaintiffs during pre-trial proceedings and shall:

- i. determine and present (in briefs, oral argument, or other such fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Class II plaintiffs on all matters arising during pretrial proceedings;
- ii. initiate and conduct discovery on behalf of Class II plaintiffs with the knowledge and consent of co-lead counsel for Class I plaintiffs consistent with the requirements of Fed.R.Civ.P.26(b)(1) and (2), and (g), including

- the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
- iii. conduct settlement negotiations on behalf of Class II plaintiffs, but not enter binding agreements except to the extent expressly discussed with the Executive Committee;
 - iv. delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Class II plaintiffs is conducted effectively, efficiently and economically;
 - v. with the knowledge and consent of co-lead counsel for Class I counsel, enter into stipulations on behalf of Class II plaintiffs, with opposing counsel, necessary for the conduct of the litigation;
 - vi. prepare and distribute to the parties periodic status reports;
 - vii. maintain adequate time and disbursement records covering services provided in support of this litigation on behalf of the Class II plaintiffs;
 - viii. monitor the activities of any other Class II co-counsel to ensure that schedules are met and unnecessary expenditures or time and funds are avoided; and
 - ix. perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court.

9. No discovery or other actions or work in this litigation exclusively on behalf of Class II Plaintiffs shall be undertaken except at the direction of and with the permission of the Lead Counsel.

10. Time and Expense Records: Class II Counsel who anticipate seeking an award of attorney's fees and reimbursement of expenditures from the court shall comply with the directives contained in The Manual for Complex Litigation (Third) §41.32 regarding the maintenance and filing of conformance with any further guidelines developed and published by Class II lead counsel, Joe D. Jacobson.

11. Plaintiffs' Liaison counsel shall:

- i. maintain and distribute to plaintiffs' counsel and to Defendants' Liaison Counsel an up-to-date service list;
- ii. receive and, as appropriate, distribute to plaintiffs' counsel orders from the Court and documents from opposing parties and counsel;
- iii. maintain and make available to plaintiffs' co-counsel at reasonable hours a complete file of all documents served by or upon each party except such documents as may be available at a document depository.

12. Privilege Preserved: No communications among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

13. Plaintiffs' counsel believes that the proposed structure of plaintiffs' counsel provides the necessary experience and expertise to meet the goals of "achieving efficiency, and economy without jeopardizing fairness to parties in the litigation" as envisioned by the Manual for Complex Litigation (Third) § 20.221.

Coordination Between the Two Classes

14. It is anticipated that much of the legal work to be performed in this case on behalf of plaintiffs shall benefit both Class I and Class II plaintiffs in that the questions of law and fact common to the claims of the members of both classes predominate over any question affecting only one class or affecting only individual members of either class. Counsel for the two Classes are therefore directed to coordinate their efforts and work together to the greatest extent possible consistent with their separate representation. Pleadings, discovery, motions, and briefs should be filed jointly on behalf of both classes at all times except as the Executive Committee shall otherwise determine to be appropriate.

15. All matters filed on behalf of both classes jointly shall be filed by the lead counsel of both Classes with a manual signature by the lead counsel for each class. All matters filed on behalf of one class only shall be filed by the lead counsel for that class. Liaison Counsel may be authorized on an as-needed basis to sign on behalf of lead or co-lead counsel.

16. To facilitate co-ordination, an Executive Committee shall be formed consisting of four members. These members are: James T. Capretz, Co-Lead Counsel for Class I; Steven E. Angstreich, Co-Lead Counsel for Class I; Joe D. Jacobson, Lead Counsel for Class II; and Charles S. Zimmerman, liaison counsel. The Executive Committee shall be chaired by Mr. Capretz. Three members of the committee shall constitute a quorum. The members of the Executive Committee shall communicate on a regular basis on a schedule and in a manner judged by the members thereof to be most beneficial to the efficient and effective prosecution of these actions.

- a. The Executive Committee shall generally direct and coordinate all discovery and work to be performed by counsel for the plaintiffs and shall be authorized to enter into a binding settlement agreement subsequent to approval of the Court. All discovery and discovery responses should be circulated among the members of the Executive Committee for review and comment prior to service upon defendant. Due to the greater numerosity of Class I, as compared to Class II, written discovery will ordinarily be initiated by the Class I co-lead counsel members of the Executive Committee, who will distribute the proposed discovery to the other Executive Committee members for comment and for supplementation for questions unique to the Class II members. In addition, and for the same reason, for depositions of the defendant and of third parties of interest to both classes, the attorney representing Class I will be the first plaintiff's counsel to inquiry. Counsel for Class II may also initiate discovery, but before doing so, counsel for class II will first distribute any proposed discovery to the other Executive Committee members for review, comment and, where appropriate, approval.
- b. The Executive Committee shall assign specific work assignments, such as the preparation of motions and briefs, among its members, and to other attorneys representing class members as needed, so as to minimize duplication and expense to the classes. It is recognized that the interests of Class I and Class II are not identical or consistent in all regards; therefore,

to the extent deemed necessary or appropriate by Class II lead counsel, Class II lead counsel may seek to perform work beneficial to Class II without assignment by the Executive Committee, taking care at all times, however, to give the other members of the Executive Committee reasonable advance notice of their intentions in this regard and to provide the other Executive Committee members notice of any such work proposed by Class II Lead Counsel for review, comment and, where appropriate, approval.

Dealings Between Lead Counsel and Defendants' Counsel

17. If defendant files a single pleading or other paper directed to all plaintiffs, the response on behalf of plaintiffs shall be made in a single pleading or other paper, unless the Executive Committee determines to file separate responsive papers.

Reporting Requirements

18. All counsel for plaintiffs shall submit to the chair of the Executive Committee, or his designee, class detailed time and expense reports reflecting the hours of work performed by each attorney, the applicable billing rates, the subject matter of the work, and the expenses incurred by that firm in connection with this action. These time and expense reports shall be submitted on a quarterly basis, with the first report for the quarter ended December 31, 2001, due January 31, 2002. Subsequent reports shall be transmitted to the chair of the Executive Committee, or his designee, and shall continue for each subsequent quarter thereafter.

Scope of the Order

19. The organizational structure established and appointments made by this Order shall govern the consolidated actions and any other tag-along cases that may be consolidated or coordinated with the consolidated actions, including any state court cases which may be ordered consolidated or coordinated herewith.

IT IS SO ORDERED.

**HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT JUDGE**

Dated: December 21, 2001

CC: All counsel of record