

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In Re: St. Jude Medical, Inc.      File No. 01-MD-1396  
Silzone Heart Valves                      (JRT/FLN)  
Products Liability Litigation

Las Vegas, Nevada  
January 16, 2004  
1:45 P.M.

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BEFORE THE HONORABLE JOHN R. TUNHEIM  
UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

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Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 (In open court.)

2 THE COURT: You may be seated, everyone. Good  
3 afternoon. On the Court's calendar this afternoon is multi  
4 district litigation docket number 1396, In re: St. Jude  
5 Medical, Incorporated, Silzone heart valve products  
6 liability litigation.

7 Counsel, would you note your appearances today?

8 MR. CAPRETZ: Jim Capretz for the class.

9 MR. ANGSTREICH: Steven Angstreich for the class.

10 MR. ZIMMERMAN: Charles Zimmerman, Your Honor,  
11 for the class.

12 MR. JACOBSON: Joe Jacobson for plaintiffs.

13 MR. CHU: Anthony Chu for the class.

14 MR. RUDD: Gordon Rudd for the class.

15 MR. SILVA: Mario Silva for Bonnie Sliger and the  
16 class.

17 MR. MURPHY: Pat Murphy, plaintiffs' state  
18 liaison counsel.

19 MR. JOHNSON: Fletcher Johnson for the class and  
20 for Ronald Linker and the estate of Lorraine Jamilkowski.

21 MR. NILAN: Michael Nilan for St. Jude Medical.

22 MR. KOHN: Steven Kohn for St. Jude Medical.

23 MR. STANLEY: David Stanley for St. Jude Medical.

24 MS. PORTER: Liz Porter in-house for St. Jude  
25 Medical.

1 MS. VAN STEENBURGH: Tracy Van Steenburgh for  
2 St. Jude Medical.

3 THE COURT: Good afternoon to all of you. We  
4 have a number of matters on the agenda this afternoon, and  
5 I guess we should go to Mr. Capretz.

6 MR. CAPRETZ: Yes, sir. Good afternoon, once  
7 again, and viva Las Vegas. We all, I think, appreciate the  
8 Court's imagination and initiative in setting this status  
9 conference here in Las Vegas, and everyone seems to be  
10 having a good time, and I think it's a great idea.

11 I would like to acknowledge, if the Court will  
12 indulge me, the great efforts of Mr. Murphy, the state  
13 liaison counsel, and his most capable assistant Jennifer.  
14 They did a fantastic job in seeing that everyone was  
15 coordinated and orchestrated for this brief stay in Las  
16 Vegas.

17 So we very much appreciate their efforts.

18 THE COURT: Your point is well taken.

19 MR. CAPRETZ: Yes, Your Honor. We can go through  
20 the agenda as it has been presented to the Court, and as  
21 the Court is aware, we are prepared to address the issues  
22 in a more informal setting or off-the-record setting at  
23 such time as we go through the formal proceedings.

24 The first matter on the agenda concern two items  
25 that are outstanding, have been outstanding for a period of

1 time. One concerns the obligation or not of St. Jude  
2 Medical to provide copies of the medical doctor  
3 depositions.

4 That matter has been fully briefed and tendered  
5 to the Court. We have, as Mr. Stanley had suggested in  
6 earlier conferences, we have liaison with those attorneys  
7 that were involved in taking the ones that have been taken  
8 to date, at least that we know about, and we have been  
9 fortunate enough to get their cooperation and assistance in  
10 getting copies of those depositions.

11 THE COURT: Have there been any objections raised  
12 by any -- anyone?

13 MR. CAPRETZ: No, sir. The only objection raised  
14 by one counsel was, he was concerned because of  
15 confidentiality provisions in the settlement agreement  
16 whether or not he was violating that agreement. He  
17 contacted Mr. Stanley, and Mr. Stanley said they had no  
18 objection, and therefore he tendered them.

19 But the plaintiffs' steering committee is not  
20 quite so certain that we'll always know, A, when these  
21 other depositions are taken and, B, whether or not we're  
22 going to be so fortunate to have the cooperation as we have  
23 had to date.

24 So we do ask the Court to kindly consider the  
25 proposal and give us the Court's ruling when that

1 opportunity avails itself.

2           The other matter that is perfunctory  
3 housekeeping, if you will, concerns, and although I use the  
4 word, perfunctory, only in the sense of it's been ongoing,  
5 and it is indeed a housekeeping matter. It's a matter of  
6 extreme urgency, in my view, to the plaintiffs' steering  
7 committee.

8           And that is, the privilege log that was tendered  
9 to us -- and by the way we recently received a supplemental  
10 privilege log, and there will be more on that later -- from  
11 St. Jude Medical contained many documents that were  
12 allegedly protected.

13           This Court, as it well recalls, reviewed certain  
14 of those documents and made rulings, and the defendants  
15 have tendered those documents that the Court ordered  
16 released. Most recently we received that. However, there  
17 are approximately 350 other documents. This Court  
18 appointed the special master to review these.

19           The plaintiffs and the defendant have a different  
20 view as to where the burden is in establishing the  
21 protection. The idea was to try to meet and confer to see  
22 if we could make some progress without burdening the  
23 special master, but I'm here to say, and so is my  
24 co-counsel who has had direct relations with the attorney  
25 that has been handling it for the defendant, that we have a

1 problem there.

2           And one of the problems is that there is a desire  
3 by St. Jude Medical to further meet and confer. As this  
4 Court is going to hear to a significant degree today, we  
5 are very troubled by the time frame that everything is  
6 taking in getting documents and getting the discovery we  
7 need.

8           And we believe certain of these documents may be  
9 critical to the position of the class in a pending  
10 litigation, so rather than any further delay, we would like  
11 to see this matter get into a situation where we can send  
12 it directly to the special master and have him make some  
13 rulings.

14           If he needs further briefings or comments and  
15 wants to discuss it with the parties, so be it, but we  
16 believe it's very important that we get this matter  
17 underway. So the Court need not do anything at this  
18 particular point in time, but we're suggesting to the Court  
19 that it is a matter of urgency to us, and we are very  
20 anxious to see and have a ruling on whether or not these  
21 documents should be released to us.

22           We have the second item as the Court orders of  
23 January 5th. I don't think there is any need, unless  
24 defense counsel would like to offer or tender any comments,  
25 to discuss the general rulings of the Court. There are

1 parts of the rulings that we're prepared to discuss today.  
2 The Court has asked us to raise certain points and discuss  
3 them at the hearing, and we will be prepared to do that.

4 But other than that, I don't know if there is  
5 anything that St. Jude Medical would like to say or tender  
6 in this regard or reference?

7 So with that, I can just pass over to item three.  
8 We, since those orders, the plaintiffs' steering committee  
9 submitted to the Court a letter requesting permission to  
10 file a motion for reconsideration of certain items, three  
11 items in particular. That matter is now pending. It is my  
12 understanding a local rule requires you to do this. You  
13 file a motion, and we seek a ruling from the Court in that  
14 regard.

15 Ramsey County litigation? Matters continue to  
16 move it along. Many of those cases have been settled, as  
17 the Court is aware. The Robins Kaplan group was settled.  
18 The group of cases being handled by a local attorney named  
19 Chuck Johnson, Charles Johnson, were settled.

20 We have had, I have a group of cases in that  
21 litigation, and I have initiated discussions and have  
22 settled one of our claims. We have a status conference  
23 with that judge, I believe it's now for January 20th, in  
24 which we will look at the balance of the cases. I had  
25 several cases pending for trial in that regard, and we're

1 looking at trial dates in this calendar year, and we should  
2 know more about that a little later this month.

3 The report on the Canadian litigation I think we  
4 set out in a joint status report to the Court, and I was  
5 just telling Mr. Angstreich that technology is such today,  
6 as he is well aware, that you can instant news, breaking  
7 news.

8 I have a ruling that was just issued today by  
9 Justice Cullity after further deliberations on January  
10 14th. We referred to those, to a hearing on January 14th,  
11 a joint status report, and I'm prepared to tender a copy of  
12 that to the Court for its edification and background.

13 THE COURT: Does it relate to class  
14 certifications?

15 MR. CAPRETZ: Yes, it does and the definitions of  
16 the class. The only other thing that we had on a formal  
17 calendar, Your Honor, is the desire to set the next status  
18 conference. I'm not sure it's going to be as exotic a  
19 location, but certainly the Court is welcome to go to New  
20 Orleans, my home turf, or even California, but certain  
21 things will be argued and said today that I think will  
22 establish that the plaintiffs are, again, very concerned  
23 about the timetable here.

24 We have people, over 11,000, approximately,  
25 American citizens were implanted with this valve. We're

1 running into different situations. Just this week I  
2 received a call from someone in a small town, in Sierras,  
3 California, that indicated that he had no knowledge of the  
4 fact that he had a Silzone valve, which in fact he did. He  
5 has valve leakage, but he has no knowledge about anything  
6 that has been going on.

7 He heard it incidentally through an Internet  
8 contact that he made. So we believe that time has been  
9 expiring involving a matter of public health of citizens  
10 across the country, and as a result, we need to do whatever  
11 we can, and the plaintiffs' steering committee certainly  
12 intends to do that to expedite matters, and we'll talk  
13 about that when we go off the record.

14 So I would ask the Court to consider a status  
15 conference in the next month.

16 THE COURT: Okay. Before we finish today, we'll  
17 address the date. I have some proposed dates, and we'll  
18 look at calendars.

19 MR. CAPRETZ: Very well. Unless defense counsel  
20 or my colleagues have something they would like to raise --

21 MR. KOHN: We have a couple things.

22 MR. CAPRETZ: Sure.

23 MR. ANGSTREICH: Say, before you do that, Your  
24 Honor, Mr. Capretz mentioned the privilege log issue, and  
25 although it is not of the highest priority today, as Your

1 Honor is aware, we're still waiting to finish Mr. Ladner's  
2 deposition, and as the joint status report reflects,  
3 St. Jude Medical has agreed to declassify a group of the  
4 350.

5 They haven't told us which ones, and they haven't  
6 told us how many. The real issue is whether or not further  
7 meet and confer makes any sense, and we've explained why it  
8 doesn't because we viewed the documents in the same context  
9 as we viewed the documents that we wrote to Your Honor  
10 about that Your Honor reviewed.

11 Sitting down and discussing it further doesn't  
12 help, so what we propose, as the joint status report  
13 indicates, that they simply turn over the ones that they're  
14 not going to declassify through the special discovery  
15 master, that if there is a basis for the privilege that has  
16 been asserted that does not appear on the face of the  
17 privilege log that they would like to bring to the special  
18 master's attention, they should do so.

19 We could then respond and then let the special  
20 master review it. If we don't get that process going  
21 quickly, then the discovery that we really want to  
22 undertake will be slowed down again because certain of the  
23 documents we firmly believe need to be resolved.

24 The other issue on the privilege log is, we did  
25 get a supplemental privilege log that just came in. It's

1 unclear whether there is any more, there are any more  
2 documents, whether there are any more privilege documents  
3 that are going to appear. It was not said with a finality,  
4 so it would be helpful if St. Jude would tell us whether or  
5 not the privilege log that we got is in fact the final  
6 document.

7 THE COURT: How many documents fall into the  
8 category of still disputed?

9 MR. ANGSTREICH: Well, there is 350 from the  
10 February 25, 2003. I don't know how many were on that.  
11 There were a lot more than the 350.

12 What we tried to do when we went through the  
13 privilege log was to take categories similar to the  
14 categories that Your Honor had authorized be classified.  
15 Those that we believe should be declassified, but Your  
16 Honor has already denied declassification for similar kinds  
17 of documents, we didn't ask the special master to review.

18 So I don't know how many still are in dispute  
19 because the group that they're going to declassify, they  
20 haven't told me whether it's 1, 150, so I couldn't tell you  
21 how many the special master would have to look at.

22 I can also let Your Honor know that from the new  
23 privilege log there may be a half a dozen to a dozen  
24 additional documents that we would want to challenge, and  
25 we would let St. Jude know about that as quickly as

1 possible. Thank you.

2 THE COURT: Mr. Kohn, are you working on this  
3 matter?

4 MR. KOHN: I am, Your Honor. First let me  
5 address the finality issue. The company periodically goes  
6 through its documents as they're generated and produces  
7 additional documents, so the supplemental production that  
8 was done in December was simply the result of additional  
9 documents that have been generated since the last  
10 production.

11 That process is going to go on as long as this  
12 litigation goes on, and so to the extent that privilege  
13 documents are amongst those that get reviewed, there will  
14 be additional privilege documents. The quantity is not  
15 substantial, but there is no way we can sit here today and  
16 say there will never be another document that is pertinent  
17 to Silzone, and we can't say that there won't be a  
18 privilege document that results from that.

19 As to the comments of Mr. Angstreich concerning  
20 the special master, it's our view that plaintiffs have  
21 failed to meet their burden. They have not identified  
22 among the 350 documents that they have said they are  
23 challenging, they have not told us any basis whatsoever as  
24 to why they think those documents are not entitled to  
25 either work product or attorney/client privilege.

1           They have not told us which categories those  
2 documents fall in, either substantively or in line with the  
3 Court's prior ruling. So what we're left with is having  
4 ourselves to go through 350 documents and trying to divine  
5 what they're thinking. We're trying to do that as best we  
6 can. We already identified a group which we believe may  
7 fit in line with what the Court has indicated should be  
8 released.

9           As to the rest, I think it's appropriate and  
10 probably expeditious to have the special master meet with  
11 us and plaintiffs' counsel and come up with a process,  
12 either through meet and confer or if necessary have the  
13 special master look at all the documents, if that's what he  
14 elects to do, which I think is going to be wasteful of his  
15 time and the parties', but I do think at this point a meet  
16 and confer with the special master to work out the process  
17 as to any disputed documents will get this thing done  
18 quickly and efficiently for everyone.

19           THE COURT: You said that there is a group that  
20 you identified that are going to be released. How many  
21 roughly are in that category?

22           MR. KOHN: Somewhere in the neighborhood of 50  
23 documents of the 350. That's my best estimate. There  
24 might be a few more or few less, but that's the ball park.  
25 Thank you.

1 MR. ANGSTREICH: Your Honor? Your Honor, if I  
2 could just respond because I'm very troubled by the comment  
3 from Mr. Kohn that these are new documents and just  
4 generated documents. I can understand that any document  
5 that they're producing or they're reviewing post February  
6 25, 2003, would not have been on an earlier list.

7 The first document on the first page is from  
8 August 2, 2002. The next document is from December 12,  
9 1997. The next document is February -- May 29, 2002; June  
10 3, 1998; March 13th, 2002, and so on. There is four  
11 documents on the first page from 2000. On the next page  
12 they go back to 1998, 1999, 2000.

13 Very few of these documents that have now  
14 appeared on the supplemental privilege log are in fact  
15 documents generated by St. Jude post February 25, 2003. So  
16 I again ask, these are not newly created documents. These  
17 are documents that have existed for years.

18 How many more are there? When will we find out  
19 that we've closed the loop, and when will we know that  
20 document production is over? At least as of those  
21 documents that were created today, as of today, going  
22 backwards in time, we're entitled to that, Judge.

23 We just can't wait for them to keep looking as  
24 this case goes on. It's two years into the case. They  
25 have been the subject of discovery in every state

1 proceeding. We need to know that, so I would ask that  
2 Mr. Kohn at least tell us when we're going to know about  
3 these old documents.

4 MR. KOHN: There are no additional old documents  
5 as far as I know.

6 MR. ANGSTREICH: Here is your privilege log that  
7 you just sent me, Steve. Take a look.

8 MR. KOHN: I've seen it. I know what it says.

9 MR. ANGSTREICH: Okay.

10 MR. KOHN: To the extent that there are documents  
11 with older dates on that, these are documents for the most  
12 part that were produced in various state court litigations  
13 that were not produced in this litigation. We went back  
14 through those and produced them here so there would be a  
15 consistency.

16 But in terms of ongoing document review of  
17 documents at the company, we have produced everything that  
18 there is to produce at this time.

19 MR. ANGSTREICH: So as far as this record is  
20 concerned, every document that was produced by St. Jude in  
21 any of the other cases that should have been produced to us  
22 now that we've gotten this new privilege log have been  
23 produced and reviewed?

24 MR. KOHN: To the best of my knowledge, that's  
25 correct.

1 MR. ANGSTREICH: Okay.

2 MR. CAPRETZ: And, Your Honor, if I may to put an  
3 exclamation point, the point that I have raised to the  
4 Court about the timeliness issue is, this litigation is now  
5 over two years in this particular court. That's not long  
6 for certain MDL's, but this is not a Baycol or a breast  
7 implant kind of a litigation.

8 We have a deadline on generic discovery April  
9 9th. We postponed that several times. We need to, and we  
10 intend, to complete our discovery by April the 9th. You  
11 can hear later on we're going to ask for a trial date prior  
12 to the end of this calendar year.

13 So we need the full cooperation and demanding  
14 from the Court if necessary to make sure we have the  
15 documentation. We have been holding up taking Mr. Ladner's  
16 deposition, as Mr. Angstreich pointed out. We have many  
17 more principals in the company that we need to take their  
18 depositions, and we need these documents to be prepared for  
19 those depositions, so we would appreciate the Court's  
20 consideration.

21 THE COURT: It sounds like this additional round  
22 of searching through the state court cases has produced  
23 additional documents, and that review, as I understand it,  
24 Mr. Kohn, is complete, is that right?

25 MR. KOHN: That's correct, Your Honor.

1 THE COURT: That covers all the state court cases  
2 to make sure that there are not documents produced in one  
3 of the state court cases that hasn't been produced here?

4 MR. KOHN: Right.

5 THE COURT: So that part is done, and I presume  
6 that the search for documents throughout the company has  
7 been completed, so I do appreciate the fact that one never  
8 knows when something will turn up that no one anticipated  
9 was put in the wrong file or something like that.

10 So I don't know that you can absolutely  
11 guarantee, but it sounds like we're at the end of what is  
12 the company's production process. Sounds like it?

13 MR. KOHN: That's right.

14 THE COURT: Okay. I just, it seems to me, there  
15 is some lack of clarity as to exactly how many documents  
16 are going to be in this last group of challenged privilege  
17 or work product documents.

18 I think that Mr. Kohn's suggestion that the  
19 parties meet together with the special master to review  
20 where everyone is at in these documents and if necessary  
21 determine the process is a good suggestion. I think that  
22 is the way that this should proceed, and it should proceed  
23 quickly so that we can get all of these privilege issues  
24 taken care of.

25 I would suggest that we try to get that done

1     sometime in the next two weeks.

2             MR. ANGSTREICH: Your Honor, we'll be prepared to  
3     meet, but I would ask before we do that, I would like to  
4     not only get the number of documents being declassified. I  
5     would like to get them. One of the reasons that we think  
6     that these other documents fall within the scope of Your  
7     Honor's order is that we have compared what we asked for,  
8     what Your Honor ordered be declassified and what also  
9     appears in the privilege log.

10            With these additional approximate 50 documents,  
11     it will also assist us in determining where they fit within  
12     the scope of the privilege log, and too early a meeting  
13     with the special master without those documents may not be  
14     as fruitful.

15            THE COURT: Do you know when those documents will  
16     be available?

17            MR. KOHN: I expect they will be definitely  
18     within the next two weeks, Your Honor. Hopefully within  
19     the next ten days.

20            THE COURT: Can we set a time frame of meeting  
21     within two weeks of the disclosure of those documents?

22            MR. ANGSTREICH: Absolutely, Your Honor.

23            MR. KOHN: That's fine.

24            THE COURT: Okay. Very well.

25            MR. ANGSTREICH: Thank you.

1 THE COURT: Mr. Nilan?

2 MR. NILAN: Your Honor, I would like to briefly  
3 address the motion for reconsideration on the record, but  
4 first of all, in regard to our meeting here in Las Vegas, I  
5 would like to formally complain about my string of very bad  
6 luck at the blackjack table, and I'm hoping that  
7 plaintiffs' counsel will put together an escrow fund which  
8 I can draw on to get myself out of this city and go home  
9 and truthfully say I am still whole.

10 THE COURT: I think if anyone could do that,  
11 probably Mr. Murphy could.

12 MR. NILAN: I'll take that up with him in the  
13 informal conference, Your Honor.

14 MR. ANGSTREICH: Your Honor, I'm curious. Do I  
15 understand that we're going to have an argument on whether  
16 or not we should be allowed leave for reconsideration when  
17 we haven't briefed anything other than that we followed the  
18 rule, which was to ask Your Honor for permission?

19 I don't believe that St. Jude has standing to  
20 object to our request to Your Honor for leave to seek  
21 reconsideration, and certainly we are not prepared to  
22 respond to any argument as to that because as far as we're  
23 concerned, they don't have status just so that the record  
24 is clear on that.

25 THE COURT: I'll hear from Mr. Nilan, and if

1 there is anything that you need additional time to respond  
2 on, I'll grant you that time.

3 MR. ANGSTREICH: Thank you.

4 MR. NILAN: At this stage, Your Honor, it's going  
5 to be very brief, simply to say that it's hard to imagine  
6 an issue that has been more fully and more frequently  
7 briefed than the class certification issues.

8 Not only was there comprehensive briefing and  
9 extensive appendices attached, as I'm sure the Court well  
10 recalls. We spent hours in oral argument. If the  
11 plaintiffs want to get this case moving forward, we think  
12 the first order of business is to obtain from the  
13 plaintiffs' counsel a comprehensive trial plan as to how we  
14 are actually going to move this case forward.

15 We believe, Your Honor, once that plan is  
16 received and we're able to respond to it, and included  
17 within that plan are the identified named class  
18 representatives for the classes that is going forward, but  
19 we believe, Your Honor, once the Court gets a  
20 comprehensive, realistic trial plan and we are able to  
21 respond, we will be able to demonstrate that given the  
22 complexities and the manner in which the case is now  
23 procedurally postured that it simply is not going to be  
24 able to go forward as a class action.

25 The preclusive effects we don't believe that's

1 mentioned in the Court's order in footnote 8 that the  
2 plaintiffs will be able to find a way around that and  
3 present the Court with an order that you can go forward and  
4 give you the confidence that you probably need to go  
5 forward.

6 In addition with the personal injury class now  
7 being decertified, we don't believe the consumer fraud  
8 class is viable anymore, and we're not going to address  
9 that now, but we'll address that in response to the  
10 plaintiff.

11 Briefly stated, Your Honor, the same facts and  
12 circumstances are involved in both the personal injury  
13 actions and the consumer fraud action. You would quickly  
14 get into a Seventh Amendment problem with two juries  
15 considering the very same facts and circumstances and  
16 coming to a conclusion.

17 So, Your Honor, without arguing all that and  
18 getting into any more depth, we think the way to go forward  
19 is start with a comprehensive trial plan to get that in  
20 front of the Court as soon as possible with named  
21 identified class representatives, and then we can respond  
22 to that and the issues that that presents, and I think in a  
23 relatively short course the Court can plot a course for  
24 this case.

25 THE COURT: Thank you, Mr. Nilan.

1 MR. ANGSTREICH: Your Honor, this I guess leads  
2 us into the informal part. I sort of sensed a motion for  
3 reconsideration being raised by Mr. Nilan concerning the  
4 Court's certification of the UDAP class. I haven't seen a  
5 letter requesting that opportunity, but I did sense that.

6 Let me say on the record in response, there is  
7 nothing further from accuracy as it relates to any  
8 difficulties with the UDAP class. It is a case involving  
9 market misrepresentation. It is under one law. It is  
10 applicable to all the 11,655 class members.

11 There are no personal injury overtones to it or  
12 other state laws to apply. It is a single class of  
13 consumer fraud victims similar to the case that is  
14 presently pending in the -- in Your Honor's court over  
15 consumer fraud, the brotherhood -- Lutheran Brotherhood  
16 case. It's a civil case. Speaking about the trial plan  
17 which we'll talk about when we go off the record, it's just  
18 very clear that that is not a problem.

19 With respect to footnote 8, which we'll talk off  
20 the record, there is no issue preclusion. There is no  
21 claim splitting problem, and we can talk about that, and  
22 now if we could go off the record because this would be a  
23 good time to segue off the record, Your Honor has  
24 indicated --

25 THE COURT: We'll go off the record for this. I

1 think we have some other things to do, so if you want to go  
2 off the record, that's fine.

3 (Off-the-record discussion.)

4 (Recess taken.)

5 THE COURT: Let's go back on the record. First  
6 of all, we touched briefly earlier on the issue of the  
7 state court case depositions, and I'm not sure how many  
8 more really fall into this category because of the work of  
9 the plaintiffs in contacting other plaintiffs' attorneys,  
10 but just to smooth this issue and keep this issue moving  
11 along, I did have a chance to read the primary case cited  
12 and to look at several other cases.

13 And I'm going to order that the depositions that  
14 are at issue be released to the plaintiffs in all cases in  
15 which there is no protective order or sealed record  
16 concerning the depositions.

17 Now, because they are depositions that discuss  
18 medical related issues, there may well be some that are  
19 sealed in some cases. I just don't know, and I'm not going  
20 to order those seals to be lifted because I can't do that,  
21 but if there is no seal, I will order that there has been a  
22 sufficient waiver of the physician/patient privilege in  
23 order for those transcripts to be disclosed to the  
24 plaintiff.

25 Now, with respect to the tripartite motion or I

1 guess not a motion, it's a suggestion from the plaintiffs  
2 that the Court's recent order be reconsidered, the 7.1G  
3 motion. First of all, with respect to the state of  
4 Illinois, frankly, the Court just made a mistake on that,  
5 and Illinois will be added, and the Court will take care of  
6 doing that.

7 With respect to the motion to reconsider the  
8 injury class, that request is denied. With respect to the  
9 request to reconsider the subcellular injury group, for  
10 lack of a better term, I will permit the plaintiffs to file  
11 a motion for reconsideration.

12 I would like to have that as quickly as possible  
13 so that this matter can be finally resolved, and then  
14 obviously I would like to hear the defendants' response to  
15 that. So if we could work out a relatively quick briefing  
16 time on that matter, give that matter some priority, that  
17 would be helpful to the Court so we can get that finally  
18 taken care of.

19 MR. ANGSTREICH: Your Honor, is two weeks  
20 sufficient?

21 THE COURT: Two weeks is fine. What would you  
22 like for responding?

23 MR. KOHN: We would like at least two weeks, Your  
24 Honor.

25 THE COURT: Okay.

1 MR. KOHN: And we would like the opportunity to  
2 revisit that if what we get is substantially more than what  
3 I am presently anticipating, but two weeks.

4 THE COURT: Okay. Let's set it for two weeks  
5 right now, and it is limited to that, the issue we have  
6 been discussing here today concerning the so-called or  
7 alleged subcellular injury.

8 MR. ANGSTREICH: Yes, Your Honor.

9 THE COURT: And then if you want maybe three days  
10 to reply after that unless you see that there is something  
11 new that you want to ask for more, you can ask for more,  
12 Mr. Angstreich.

13 MR. ANGSTREICH: Thank you.

14 THE COURT: That will get that matter back on  
15 quickly. I will give the defendants an opportunity later.  
16 I would like to resolve this issue first, the subcellular  
17 injury class related issue first. After that's resolved, I  
18 will set up a brief time for any additional briefing the  
19 defendant wants to do relative to moving to subtract states  
20 or add states.

21 There was so much briefing when we went through  
22 the process before that I'm not sure that we all had an  
23 opportunity to look closely at each state, and this will  
24 give the defendants an opportunity and the plaintiffs as  
25 well to address the issue of which states are included and

1 which are not.

2 We will not set up a time right now because I  
3 would like to resolve the other subcellular injury first.  
4 As to a settlement master, I think it's a good suggestion  
5 to get that process started. If the parties can agree on a  
6 person, that surely would be fine with the Court. So I  
7 just am going to order the parties to meet and confer on  
8 that issue.

9 If there is no agreement, then I would like each  
10 side to submit up to five names to me, and we'll have a  
11 further report on that at the next status conference, so  
12 the meet and confer on that issue should take place between  
13 now and the next status conference.

14 The issue of the consumer fraud class case, which  
15 has been raised today and I think a creative proposal and  
16 at least one that is intriguing to the Court, I would like  
17 to return to this issue at the next status conference, but  
18 I would like the parties to discuss this between now and  
19 then so that each side can identify all of the potential  
20 problems or lack of problems associated with moving on a  
21 separate track to try at an early date the consumer fraud  
22 class case.

23 And I would also like while we're meeting and  
24 conferring before the next status conference to also have  
25 the parties address the issue of an end game committee.

1 Again, I'm not opposing anything like that right now, but I  
2 would like the parties to discuss that so we can return to  
3 that subject at the next status conference.

4 The other thing that I'm going to do, I'm going  
5 to take up Mr. Capretz's suggestion, and at the next status  
6 conference, which will be back in Minnesota, to at least  
7 offer the opportunity for an informal meeting in chambers  
8 following the hearing at which both sides would be present.

9 It's not necessary, but if both sides agree, it  
10 could be helpful. I will offer a time at that next status  
11 conference so that we can have some additional time  
12 informally off the record in chambers.

13 Okay. I think that's the list that I have been  
14 compiling up here, but I might have missed something  
15 because a lot of issues came and went and came back again  
16 this afternoon.

17 Mr. Angstreich?

18 MR. ANGSTREICH: Your Honor, along with meeting  
19 and conferring with respect to UDAP, could we at the same  
20 time have put in that discussion about the form of notice?

21 THE COURT: You may, yes.

22 MR. ANGSTREICH: Thank you.

23 THE COURT: Okay. Let's look at a date for the  
24 next status conference. So if we are looking at  
25 mid-February, the dates of February 10th through the 13th,

1 that's a Tuesday, Wednesday, Thursday, Friday. Are any of  
2 those dates available?

3 MR. CAPRETZ: I think those dates will probably  
4 work from our side.

5 MR. ANGSTREICH: The 10th is fine. The 13th I  
6 cannot do.

7 THE COURT: Okay.

8 MR. ANGSTREICH: But the 11th or 12th could be  
9 done, Your Honor.

10 THE COURT: I think the following week, the 17th  
11 is --

12 MR. CAPRETZ: Your Honor, I'm going to be out of  
13 the country. If it's possible, could we do that that first  
14 week? That would be better.

15 THE COURT: So that's not okay for you,  
16 Mr. Capretz? Mr. Kohn?

17 MR. KOHN: 11th or 12th, Your Honor, would be  
18 preferable for us.

19 THE COURT: The 11th or 12th? Anyone have  
20 problems with the 11th or 12th?

21 MR. ZIMMERMAN: I would prefer the 12th to the  
22 11th, Your Honor, because I have something.

23 THE COURT: 12th is okay?

24 MR. ANGSTREICH: That's Lincoln's birthday.

25 MR. ZIMMERMAN: Perfect. It's the day of

1 fairness.

2 THE COURT: Okay. Should we go for the 1:30 time  
3 slot or 12:30? What were we doing before?

4 MR. CAPRETZ: We moved it. We had 12:30, and we  
5 moved it on our request because coming from California, the  
6 earliest we can get to the airport is 12:30, so we moved it  
7 to 1:30.

8 MR. ANGSTREICH: Your Honor, I really think with  
9 all of the items that we have, starting at 1:30, especially  
10 if we do want to take up Your Honor's suggestion of  
11 informal discussions in chambers, I think if we want to  
12 start earlier, that means that everybody has to come the  
13 night before.

14 That might make the most sense. If it's good for  
15 Your Honor's calendar to start at 9:30, that I think would  
16 be preferable. That gives us plenty of time to resolve  
17 issues.

18 MR. CAPRETZ: And we could go out that evening,  
19 so that does make sense.

20 THE COURT: I could start at ten that morning.

21 MR. ANGSTREICH: That would be great, Your Honor.

22 THE COURT: Is that okay with defendants?

23 MR. KOHN: That's great.

24 THE COURT: Okay. We'll start at ten o'clock on  
25 February 12th. I have a nine o'clock motion, so we'll

1 follow that. Okay. Okay? Anything else we can discuss  
2 today? Okay. Very well.

3 Thank you all for coming, and I appreciate the --  
4 also appreciated the chance to be in a different locale for  
5 one of these meetings. That's helpful, and we'll see over  
6 the long haul whether it's helpful.

7 I want to express my appreciation for the  
8 organizational work that Mr. Murphy has done. We  
9 appreciate that, everyone does. And Jennifer, thank you  
10 for your help and for the help of both sides in getting  
11 this done, so thank you very much.

12 We will be in recess, and we'll see everyone in  
13 Minnesota.

14 \* \* \*

15 I, Kristine Mousseau, certify that the foregoing  
16 is a correct transcript from the record of proceedings in  
17 the above-entitled matter.

18

19

20

21 Certified by:

Kristine Mousseau, CRR-RPR

22

Dated: January 21, 2004

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