

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

Minneapolis, Minnesota  
January 20, 2006  
1:00 P.M.

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

(TELEPHONIC STATUS CONFERENCE)

APPEARANCES

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1 (In chambers via telephone.)

2 THE COURT: Hello, everyone.

3 MR. CAPRETZ: Hi, Judge.

4 MR. ANGSTREICH: Good afternoon, Your Honor.

5 THE COURT: We'll get this started here. Just

6 for the record, this is civil case number 01-1396, In re:

7 St. Jude Medical, Incorporated, Silzone Heart Valves

8 Products Liability Litigation.

9 Just for the record, if counsel would note their

10 appearances, that would be helpful.

11 MR. CAPRETZ: Jim Capretz for the class.

12 MR. ANGSTREICH: Steve Angstreich for the class.

13 MR. MURPHY: Pat Murray plaintiffs' state liaison

14 counsel.

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

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

17 MS. PORTER: Liz Porter in-house counsel at

18 St. Jude Medical.

19 MR. ROUNDTREE: Robert Roundtree, plaintiffs'

20 counsel.

21 THE COURT: Okay. We have an agenda here which

22 the Court has in front of it.

23 Mr. Capretz, are you going to get us started?

24 MR. CAPRETZ: Sure. Sure, Your Honor. It's a

25 pretty perfunctory agenda, except Mr. Roundtree I think

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1 would like to be heard about his particular case. Class  
2 certification briefing as per the appeals court ruling is  
3 well on the way.

4 Plaintiffs filed their brief as mandated and  
5 agreed by the pretrial order 50. Defendant now has until  
6 the 10th to respond, and then we get a reply opportunity by  
7 March the 24th, so that process is well underway, and I  
8 don't think there is more that needs to be said about that.

9 But does anyone want to comment or add anything  
10 to it?

11 THE COURT: In terms of a time for a hearing,  
12 should we be looking at early April?

13 MR. CAPRETZ: I think early April probably would  
14 fit.

15 Steve, what do you think?

16 MR. KOHN: As far as I know, that's fine.

17 THE COURT: Okay. Ms. Bagwell will be back in  
18 touch, and we will look for some dates, and we will try to  
19 set that up on the calendar. Okay. What's next?

20 MR. CAPRETZ: Well, next is the expert reports,  
21 and there is a PTO 51 that somehow slipped by me.

22 Dave Stanley, would you mind reciting that or

23 what those dates are?

24 MR. STANLEY: Okay. I wasn't prepared to recite

25 the dates, so give me one second.

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1 MR. CAPRETZ: Okay. Thanks.

2 MR. STANLEY: Right now, it would call for  
3 St. Jude Medical to identify liability experts and produce  
4 Rule 26 reports by February 14th. Then by March 4th, the  
5 plaintiffs would identify their rebuttal experts.  
6 Depositions of the generic liability experts would go  
7 forward between March 14th and June 13th, and those are  
8 basically the dates.

9 MR. CAPRETZ: Okay. And what Dave didn't say but  
10 what is implied is that we have tendered plaintiffs', you  
11 know, the expert -- first round of expert disclosures.  
12 Okay, Dave.

13 Your Honor, should we move on to the next one  
14 or --

15 THE COURT: That's fine.

16 MR. CAPRETZ: Dave, you're back up, if you don't  
17 mind, you or Steve. We've got the mediation program.  
18 Basically we can say that the case load in both federal and  
19 state court has stayed about the same, except there have  
20 been a couple of cases apparently resolved recently, and  
21 that would bring the number down.

22 I don't think anything has been added to either  
23 the state or federal side, at least from the information I  
24 have.

25 MR. STANLEY: Yeah. Your Honor, with the

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1 settlement of the Meaux case yesterday, that's M-e-a-u-x,  
2 in the MDL, we have 19 pending cases, 4 of which are class  
3 actions, 11 of which we are still negotiating, although  
4 Mr. Roundtree may have something to say about at least one  
5 of those, and then 5 of the cases we will not, the company  
6 is not willing to mediate because in our view they are not  
7 injury cases.

8           So that's the latest. We have settled some  
9 Ramsey County cases as well recently, and we are in  
10 settlement.

11           THE COURT: Okay. Anyone else have anything else  
12 on the settlements? Mr. Roundtree, is this what you would  
13 like to talk about?

14           MR. ROUNDTREE: There is no current negotiation  
15 going on with our case.

16           MR. CAPRETZ: Do you want to explain your  
17 position, Mr. Roundtree, as to I think you were interested  
18 in the course and progress of the MDL?

19           MR. ROUNDTREE: I've gotten all the information I  
20 need right now, so I'm just kind of watching things unfold.

21           THE COURT: Okay. That sounds fine.

22 MR. ROUNDTREE: I would hope to have the case

23 back by now, but it's going to take a while longer, I

24 think.

25 MR. CAPRETZ: And I think I could just add that

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1 to the best of my knowledge, the Kemper Insurance Company  
2 related entity is still the one that's involved in these  
3 settlements.

4 I think that's right, Steve or Dave?

5 MR. KOHN: That's correct, Your Honor, Steve  
6 Kohn. The Kemper insurance is still viable and is involved  
7 in the most recent settlements.

8 MR. CAPRETZ: The next is, I think it's --  
9 correct me if I'm wrong there, Steve, but three carriers  
10 when Kemper completes its obligation.

11 MR. KOHN: Correct.

12 MR. CAPRETZ: Next layer of insurance, but we're  
13 not there yet.

14 THE COURT: One question that I had on the eleven  
15 cases that are still in negotiations, are they in active  
16 negotiations, or are they still technically pending but  
17 nothing is going on?

18 MR. KOHN: Your Honor, this is Steve Kohn. In  
19 some instances there is active negotiation, and I'm  
20 informed in a couple of instances they're fairly close to  
21 settlement. In other instances, the cases are relatively

22 new. We're still gathering medical records and reviewing  
23 those records with our consultants, so we have not yet been  
24 in the position to begin negotiations.

25 And in others, we are still waiting to get

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1 authority from the carrier to institute either initial  
2 negotiations or in some instances, for example, in the case  
3 of Mr. Roundtree's case, the Daugherty case, there was one  
4 mediation in that case, and while there hasn't been any  
5 activity in it for quite some time, it's possible when the  
6 new carriers come on line, which probably will happen in  
7 the next 30 days, that there could be some renewed  
8 discussions on that case.

9 THE COURT: And the ones that fall into these  
10 categories are all among the eleven that were mentioned by  
11 Mr. Stanley?

12 MR. KOHN: That's correct.

13 THE COURT: Okay. Okay. Good. Okay. Anything  
14 else on mediation? Okay.

15 Mr. Capretz, number 4?

16 MR. CAPRETZ: Well, that was incorporated in our  
17 discussions, Your Honor. There was a report on the pending  
18 MDL and the state court litigation, and we have it as  
19 number five. It's somewhat overlapping the status in  
20 Ramsey County and Canadian litigation. If the Court  
21 recalls they have three class actions pending.

22           To the best of my knowledge, they're all still  
23 pending, one in Quebec, one in British Columbia and one in  
24 Ontario. I would say the principal litigation is in  
25 Ontario, and that matter, the basic discovery, they just

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1 recently went through a series of deposition taking, and  
2 there have been some challenges to questions, and I guess  
3 they referred to it as undertakings.

4 And there is to be some further deposition  
5 testimony or rejection of further testimony, but there is  
6 still discovery going on. I think they're working towards  
7 getting a trial date somewhere in mid '07, I think.

8 Is that fair, Steve?

9 MR. KOHN: I believe that's correct. I think it  
10 was actually late '07.

11 MR. CAPRETZ: What I heard was, the defense was  
12 looking at late '07. Plaintiffs were looking at early '07,  
13 so they may get a compromise, but I'm not 100 percent up to  
14 speed on that, but at any rate, things are proceeding  
15 along, and there is still an appeal pending over the  
16 attorneys' fee awards, the plaintiffs, pursuant to Canadian  
17 law, and I don't think there has been a resolution of that  
18 issue yet.

19 It might be a good one to follow. It's supposed  
20 to be a seminal case for fee awards in Canada due to the  
21 amount involved and the fact that it's considered to be a

22 precedent setting case over there from what I'm told.  
23         Ramsey County, not too much to report from my  
24 end. Steve, I will let you chime in, but we have the one  
25 case that we are -- we have mentioned in the past,

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1 Cosentino, that I believe we will need to get to trial, and  
2 that's all.

3 We've got a new, relatively new Case Management  
4 Order, but that's been constantly changed as a result of  
5 needing the MDL generic expert information. So we're still  
6 in process there, but I know Steve has that, has that EU  
7 action and in several Canadian claims.

8 Do you have any comment on that, Steve  
9 Angstreich?

10 MR. ANGSTREICH: Nothing new is happening in the  
11 EU action at this moment. Two of the Canadian cases were  
12 just settled. We just filed another case in Ramsey County,  
13 which David is aware of, and I think we're trying to get  
14 things moving. We're also trying to negotiate some more of  
15 the cases that are pending there, but that's as much as I  
16 know at this moment, which doesn't seem to be much.

17 THE COURT: Is there a trial date set for any of  
18 the cases?

19 MR. ANGSTREICH: No.

20 THE COURT: In Ramsey?

21 MR. ANGSTREICH: We have no trial date at this

22 moment.

23 THE COURT: Okay. Okay. That's fine. So really

24 the next item for us to focus on here really is the renewed

25 motion for class certification with the hearing to be set

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1    sometime in early April, correct?

2           MR. CAPRETZ: That's correct, Your Honor.

3           MR. ANGSTREICH: That's correct, Your Honor.

4           THE COURT: The expert reports are moving  
5 forward, and there doesn't seem to be anything that the  
6 Court needs to do in the mediation side right now. So  
7 other than watching the rest of the other cases, the focus  
8 needs to be, I guess, on the class certification.

9           MR. ANGSTREICH: That's really where it is.

10          MR. CAPRETZ: Yeah.

11          THE COURT: Okay. Any other issues that anyone  
12 else has today?

13          MR. CAPRETZ: That should do it.

14          THE COURT: I think we should probably have  
15 another teleconference perhaps in March, maybe early part  
16 of March, and then we'll gather for the hearing on the  
17 class action motion certification motion sometime a month  
18 or so after that.

19          Does that sound like an appropriate schedule?

20          MR. ANGSTREICH: That's sound good.

21          MR. CAPRETZ: Good plan. The defense side, that

22 brief is due on March 10th, so maybe we want to make it  
23 right around that time or right after that, the next  
24 conference.

25 THE COURT: Yeah, right after that probably would

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1 work.

2 MR. ANGSTREICH: Our reply is due -- our reply is  
3 due, what is that, ten days --

4 MR. CAPRETZ: March the 24th, but I'm a little  
5 concerned if we wait that -- if we go that far out that,  
6 you know, we will be a little backed up to get an early  
7 April hearing.

8 MR. ANGSTREICH: That's fine. I have no problem  
9 with that. I just have one bad day in April at this  
10 moment, and that's the 17th. So other than that, I'm fine.

11 THE COURT: Mr. Murphy is engaged on that day,  
12 too, I believe.

13 MR. MURPHY: No, that would be March 17th.

14 THE COURT: Oh, I thought you were talking about  
15 April.

16 MR. CAPRETZ: He will celebrate in April as well.

17 MR. MURPHY: It would be the 30-day anniversary  
18 of St. Patrick.

19 THE COURT: There we go. The 15th of March, does  
20 that work? It's a Wednesday.

21 MR. KOHN: I think it's fine for St. Jude, Your

22 Honor.

23 MR. ANGSTREICH: That's fine, Your Honor.

24 THE COURT: We will set up a teleconference on

25 that date. Sarah will set up the time. If there is any

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1 need to meet in person, I will depend on someone letting us  
2 know, otherwise I will presume it is by teleconference.

3 MR. MURPHY: Your Honor, all I would say is that  
4 you heed your Shakespeare which says beware of the Ides of  
5 March.

6 THE COURT: That's why we're meeting in April.

7 MR. CAPRETZ: Pat, are you the delegated court  
8 jester as well?

9 THE COURT: And we will look at sometime in April  
10 for a possible hearing date. You can get times from Sarah.  
11 My schedule looks relatively open the first of April.

12 MR. CAPRETZ: As far as the conference on the  
13 15th, are we looking at two your time or one your time?

14 THE COURT: Let's see. Why don't we say two  
15 o'clock central. Does that work?

16 MR. ANGSTREICH: That's fine.

17 MR. KOHN: Fine, Your Honor.

18 THE COURT: Let's set it on the 15th of March at  
19 two o'clock, and if any of you believes that an issue has  
20 come up that you need an earlier one, please contact Sarah.

21 MR. CAPRETZ: I might just mention Mr. Rudd is in

22 a trial. That is why he is not on. I thought his  
23 colleague David was on the line, but apparently he's not,  
24 but I do know he apparently started a trial earlier this  
25 week.

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1 THE COURT: Where is the pretrial order number 51  
2 at?

3 MR. STANLEY: It's on Mr. Capretz's chair.

4 MR. CAPRETZ: I'm sure they sent it out. I'm  
5 sure he did, and they probably sent me another one.

6 THE COURT: So that would be coming in soon?

7 MR. CAPRETZ: David, was it submitted to the  
8 Court?

9 MR. STANLEY: Well, if you give it your blessing,  
10 Jim, I can --

11 MR. CAPRETZ: All right. We'll do that  
12 momentarily.

13 THE COURT: Anything else?

14 MR. CAPRETZ: Thank you for your time.

15 THE COURT: We will be in recess. Thank you,  
16 everyone.

17 \* \* \*

18 I, Kristine Mousseau, certify that the foregoing  
19 is a correct transcript from the record of proceedings in  
20 the above-entitled matter.

21

22

23 Certified by:

Kristine Mousseau, CRR-RPR

24

Dated: February 10, 2006

25

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