

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 25, 2007  
1:05 P.M.

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

(STATUS CONFERENCE)

APPEARANCES

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Proceedings recorded by mechanical stenography;  
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1 1:05 P.M.

2 (In open court.)

3 THE COURT: You may be seated, everyone. Good  
4 afternoon. This is civil case number 01-1396, multi  
5 district litigation, In re St. Jude Medical Silzone Heart  
6 Valve Products Liability Litigation. Let's have counsel  
7 note appearances today.

8 MR. CAPRETZ: Jim Capretz for the class.

9 MR. ANGSTREICH: Steven Angstreich for the class.

10 MR. RUDD: Good afternoon. Gordon Rudd for the  
11 plaintiffs.

12 MR. MURPHY: Good afternoon, Your Honor. Pat  
13 Murphy, plaintiffs' state liaison counsel.

14 THE COURT: Good afternoon to all of you.  
15 For the defense?

16 MR. KOHN: Good afternoon, Your Honor. Steven  
17 Kohn for St. Jude Medical.

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

19 MR. SYLVESTER: Court Sylvester also on behalf of  
20 St. Jude Medical.

21 MS. PORTER: Liz Porter for St. Jude Medical.

22 THE COURT: Very well. Good afternoon to all of  
23 you. It's been a while since we have convened in a status  
24 conference. I thought it would be appropriate to get back  
25 together and make sure that we have what we can do on track

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1 here.

2 Let's see. We have an agenda. Mr. Capretz, are  
3 you going to kick off the discussion?

4 MR. CAPRETZ: I will indeed. Does the Court have  
5 a copy of the agenda?

6 THE COURT: I do.

7 MR. CAPRETZ: The first thing that we had on the  
8 agenda is a report on the Eighth Circuit briefing. At this  
9 point in time, the appellant, St. Jude Medical, has filed  
10 their opening brief, and our response brief is due, I  
11 believe, February the 21st, and I don't think we have any  
12 other briefing schedule that I have seen modifying the  
13 original one.

14 So the only dates we have that we know at this  
15 point in time is our brief is due February 21st. The  
16 defense has given us such a hard time that we have had to  
17 retain other counsel to help us, Your Honor. The Kellogg  
18 firm out of Washington, D.C., will be assisting and leading  
19 the representation on the appeal for the class.

20 THE COURT: Any indication when it will go before  
21 a panel -- the panel, I should say?

22 MR. CAPRETZ: I don't think there is any  
23 indication. The only guideline we might have is what  
24 happened in the last go around as far as timing is  
25 concerned, but we're not sure how that might play out.

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1 THE COURT: Okay.

2 MR. CAPRETZ: All the parties would like it to be  
3 sooner rather than later so we know where we are. We also  
4 have for you a new PTO which I think counsel may have  
5 submitted, PTO 52.

6 THE COURT: I do have that in front of me with  
7 any motions to be filed by February 14th, is that the --

8 MR. CAPRETZ: Correct.

9 THE COURT: Are we anticipating motions?

10 MR. CAPRETZ: We are.

11 MR. KOHN: We will have probably three, Your  
12 Honor.

13 THE COURT: Okay.

14 MR. CAPRETZ: And our main concern here, Your  
15 Honor, was that obviously we have some cases, which we will  
16 talk about momentarily, that appear as though they will  
17 have to be tried, and I'm sure that all the counsel  
18 involved with those individual claims would like it to be  
19 sooner rather than later.

20 That schedule takes us out through April, and so  
21 we will be appreciative of any efforts that we can get to

22 get the Court's opinion on those motions as soon as  
23 possible. There is also in reference to this discussion,  
24 there is a motion for remand filed in the Daugherty case.  
25 That's an Arkansas case, and it was my understanding that

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1 counsel who had contacted us was going to arrange and had  
2 arranged to call in to discuss their motion.

3 I think St. Jude Medical responded to it  
4 basically saying that it's not -- it's premature until the  
5 Daubert motions, which are to be filed, are heard.

6 THE COURT: This is a case that has gone through  
7 mediation but no settlement, is that correct?

8 MR. KOHN: Actually, yes, Your Honor. It's gone  
9 through two mediations without a settlement.

10 THE COURT: And your position is that it's  
11 premature?

12 MR. KOHN: Our position is, and it's set out in  
13 the papers, is that until the Daubert challenges are ruled  
14 upon by this Court, they would premature to remand, and  
15 then correspondingly, there really is no basis in the  
16 moving papers. There is no medical emergency. Simply they  
17 would like to get the case remanded, and we would like to  
18 get it remanded, too, but not until this Court has  
19 completed its tasks.

20 To remand it now without the Daubert issues being  
21 resolved, there has been no expert discovery in this

22 underlying case, and the next step in that case is going to  
23 be to do the case specific experts which could really only  
24 go forward after the case is remanded, and we really can't  
25 do that until the generic expert, the scope of that

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1 testimony is decided upon by this Court.

2       So for those reasons we just think it's premature  
3 and should be deferred until this Court has had an  
4 opportunity to decide those motions.

5       MR. CAPRETZ: If you may, Your Honor, I don't  
6 know, and it's unfortunate counsel isn't present. Have  
7 they indicated that they are dependent upon the experts and  
8 the generic experts?

9       MR. KOHN: It's unclear, but when we deposed some  
10 of the treating physicians, they were relying on some of  
11 the opinions of the generic experts, and so my anticipation  
12 would be that they would need that in order to go forward  
13 with the case, but it's not clear from the moving papers.

14       MR. CAPRETZ: We may want to clarify. I'm  
15 disappointed that, you know, somehow there must have been a  
16 miscommunication that they are not present. Most of these  
17 cases have been pending a while. I'm not sure when that  
18 one was filed.

19       THE COURT: My plan on this one is to deny the  
20 motion to remand obviously without prejudice so that it can  
21 be raised at a more appropriate time. I do think we need

22 to get the generic expert issues out of the way first, and  
23 then it's probably appropriate at that point in time.

24 MR. CAPRETZ: Okay. We will see that the word is  
25 passed to counsel.

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1 THE COURT: We'll issue a written order as well.

2 MR. CAPRETZ: Thank you, Your Honor. The next  
3 item we have is a report on mediation program, and I will  
4 turn that over to counsel.

5 THE COURT: Mr. Stanley.

6 MR. STANLEY: Good afternoon, Your Honor. As of  
7 today, I think we have about 13 pending cases here. Of  
8 those, three of them are the class representatives. Those  
9 are Bailey, Grovatt and Sanchez. So those are the class  
10 reps.

11 Of the remaining 10, we have 4 cases which we  
12 consider to be noninjury cases. They're just, again,  
13 alleging no injury, just one medical monitoring. That is  
14 the Hasenbank case, the Maronen case, the McFadden case and  
15 the Wilkinson case.

16 Now, Mr. Capretz and I have had an exchange about  
17 two of those cases. He thought at least Maronen and  
18 McFadden had been dismissed. We don't have any record that  
19 they have been dismissed. We welcome a dismissal of those  
20 cases, as well as the other two noninjury cases, but that's  
21 the status there.

22           Of the six remaining cases, there are two that  
23 are relatively recent filings. It's the Jurgena case.  
24 That's Mr. Capretz's case, and the Sutherland case, and I  
25 think we're collecting records and trying to get all the

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1 information and probably will have mediations in those  
2 cases, and then there is three cases where there is ongoing  
3 negotiations.

4       There have been failed mediations, but  
5 discussions are ongoing, and then the only case really  
6 where it is currently dead in the water is this Daugherty  
7 case that you recently -- that you just ruled on in terms  
8 of the motion in limine. So that's the status of the cases  
9 of the MDL.

10       THE COURT: Okay. Looking ahead once we get  
11 through the Daubert related matters, and is there any  
12 proposal on how to proceed at that point? I imagine it  
13 will dependent in part on what is remaining of the  
14 individual cases, but it seems to me that it would be  
15 useful if there are remaining cases that are to be tried  
16 that we do one, whether it's here or someplace else.

17       I guess what I would like to see rather than  
18 resolving anything today, I would just like to have the  
19 parties confer about this in advance of the next status  
20 conference, and then let's talk about a plan at that point  
21 in time, whether this Court should be trying one of the

22 individual cases, whether it's a District of Minnesota case  
23 or a case in another district where I would have to go  
24 there in order to do it, or there is some other mechanism  
25 for resolving all the remaining individual cases so we can

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1 get that part taken care of.

2 Obviously on the class, we're going to have to  
3 wait for the circuit and see what the result is there, and  
4 there is nothing any of us can do at this point in time  
5 until that gets resolved, but as far as the remaining  
6 cases, I mean, it would be helpful, I think, to start  
7 focusing on a plan.

8 MR. STANLEY: Thank you, Your Honor.

9 THE COURT: Mr. Capretz.

10 MR. CAPRETZ: I can say that the Arkansas  
11 situation, at least from the perspective of counsel as  
12 related it to me was that they were at loggerheads, and  
13 there was no meaning to have any other mediations or  
14 conferences, that they want to try the case. That's all I  
15 know, but I do know they are very interested in proceeding  
16 with that.

17 The Court should have also received item number  
18 5, the pending MDL and state court litigation. Counsel  
19 just mentioned some of the numbers. I think that's what we  
20 had. We had a count of 13 federal, 5 of those class and 22  
21 state actions that are pending.

22 THE COURT: 22 are pending?  
23 MR. CAPRETZ: I counted 22, yes, Your Honor.  
24 THE COURT: Okay.  
25 MR. CAPRETZ: I think they are all in, as far as

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1 state court is concerned, in Ramsey County, is that right?

2 Okay. So they're all before Judge Gearin in Ramsey County.

3 Perhaps Mr. Angstreich can give us an update on that.

4 THE COURT: Mr. Angstreich.

5 MR. ANGSTREICH: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 MR. ANGSTREICH: Of the 22, 2 are going to be  
8 withdrawn. They're Canadian plaintiffs, and they are going  
9 to be put into the Canadian class, and that has been worked  
10 out with counsel for St. Jude. One of them is a class  
11 action on behalf of the European community.

12 THE COURT: One of the remaining 20?

13 MR. ANGSTREICH: One of the remaining 20, and we  
14 have no date, as I recall, for the class certification.  
15 I'm not certain whether all the medicals have been obtained  
16 yet, but we will be moving forward with that. One of the  
17 cases is scheduled for trial May 28. This is the MacLellan  
18 case, and I am unaware of any other trial dates, specific  
19 trial dates for any of the cases that Mr. Rudd and I are  
20 not involved in.

21 What is supposed to happen is, Judge Gearin will

22 either try one or if we can persuade her that it is sound  
23 to try several at the same time. St. Jude Medical has  
24 taken an apposite position on that, but our goal and our  
25 hope is that we would be able to put several together.

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1           We have a pretrial conference in MacLellan before  
2   Judge Gearin on April 12th or a settlement conference, and  
3   it's possible that that case may get resolved. One of the  
4   other cases is in negotiation outside of mediation but  
5   through direct communication between myself and counsel for  
6   the carrier.

7           Whether or not we will resolve that, I don't  
8   know, but the plan is that following May 28th, they're  
9   supposed to be cycled through, and that's how we're going  
10  to get it done.

11          THE COURT: Okay.

12          MR. ANGSTREICH: Thank you.

13          THE COURT: And Canada, what is happening there?

14          MR. CAPRETZ: Your Honor, I can or maybe Mr. Kohn  
15  can elaborate, but Canada is certainly set. The class  
16  matter is set for trial in September. I believe they have  
17  set aside 15 weeks for that trial. Depositions I believe  
18  have been concluded, but they're going through a process of  
19  challenges or undertakings, motions, in essence, that are  
20  going on at this time.

21          There is an interesting issue that has evolved

22 that may involve this court, and it concerns some  
23 confidentiality items. Certain evidence this court found  
24 to be protected evidence according to the request of  
25 St. Jude Medical, but in Canada, as I understand it, there

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1 is a de novo hearing on some of the same evidence as to  
2 whether or not it should be kept confidential.

3         And the interesting quirk here would be as far as  
4 commenting on international law, it would be if Canada  
5 allows the evidence to be admitted in a nonconfidential  
6 basis and we have a coordination agreement between the two  
7 class actions, the one in Canada and the one here where  
8 evidence available in the Canadian action is being made  
9 available to the Americans and the Americans to the  
10 Canadians.

11         So it might present an interesting challenge or  
12 situation if that arises, but that's academic at this point  
13 in time, as I understand it.

14         MR. ANGSTREICH: Your Honor, we should make one  
15 clarification for the record. We said that all of the  
16 state cases were in Ramsey County. There are three that  
17 are not. One in is Harris County, Texas. One is in Clark  
18 County, Nevada, and one is in Butler County, Missouri, at  
19 least as of this point.

20         MR. CAPRETZ: So other than -- other normal  
21 happenings in litigation, and the judge is not assigned.

22 In Canada, as I understand it, they do not assign the trial  
23 judge, or if it's assigned, it's not made public to the  
24 lawyers. They call them justices, I believe. So the  
25 justice who is going through these motions and all the

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1 discovery workings at this time is someone different, apart  
2 and different from who the trial judge might be in  
3 September.

4 Steve, is there more from you?

5 MR. KOHN: No. That covers it, Jim.

6 MR. CAPRETZ: Okay. So that's the status of that  
7 litigation.

8 THE COURT: Relative to the three motions, the  
9 Daubert related motions, Mr. Kohn or Mr. Stanley, are you  
10 anticipating requesting oral argument on those?

11 MR. KOHN: I think so, Your Honor. I think we  
12 will.

13 THE COURT: Should we at least provisionally set  
14 a date right now?

15 MR. KOHN: That's fine.

16 THE COURT: Looks like the briefing is done under  
17 the pretrial order by April 3rd. So mid-April, does that  
18 sound like an appropriate time?

19 MR. ANGSTREICH: That would be very good, Your  
20 Honor. If I could coordinate my appearance before Judge  
21 Gearin on the 12th and my appearance here somewhere around

22 the same time, either before or after, that would be

23 greatly appreciated.

24 THE COURT: That sounds like a good idea. That

25 particular date pose any problems? Let me just look at my

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1 calendar here. What about the 13th, the day after, does  
2 that work? Do you have an afternoon hearing with Judge  
3 Gearin?

4 MR. ANGSTREICH: I have an afternoon hearing, so  
5 the 13th would be fine for me or the morning of the 12th.  
6 I would come in the day before.

7 THE COURT: Looks like the 13th probably would  
8 work better for me.

9 MR. KOHN: I'm not sure I want to agree to Friday  
10 the 13th, Your Honor.

11 MR. ANGSTREICH: It's an ideal date.

12 MR. KOHN: The afternoon would work for us. We  
13 have some other issues in the morning.

14 THE COURT: On Friday?

15 MR. KOHN: Right.

16 THE COURT: Okay. Friday afternoon would be  
17 fine. Why don't we just provisionally set it at one  
18 o'clock on Friday, does that work?

19 MR. CAPRETZ: April 13th.

20 MR. ANGSTREICH: Yeah.

21 THE COURT: Would you rather have it at two?

22 Would you rather have it at two?

23 MR. KOHN: Two would be preferable.

24 THE COURT: Let's do two o'clock. Friday the

25 13th, two o'clock, and at least for now, let's set our next

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1 in-person status conference for that date as well.

2 MR. CAPRETZ: Your Honor, could we clarify? With  
3 the two o'clock hearing, we will be conclusive. I would  
4 not want to start that hearing and have to lap over to  
5 Monday. Besides our agreement, we will have enough time if  
6 we started at two. The class would agree to that.

7 MR. KOHN: I'm not anticipating an extensive  
8 argument. So I think two is adequate.

9 MR. CAPRETZ: Okay.

10 THE COURT: Well, if either of you think that  
11 setting aside a couple of hours maximum for that hearing is  
12 not enough, you could let me know.

13 MR. CAPRETZ: That's fine.

14 THE COURT: I will anticipate that it is going to  
15 be.

16 MR. ANGSTREICH: Your Honor, we're just speaking  
17 about argument on the motions?

18 THE COURT: Right.

19 MR. ANGSTREICH: As opposed to a hearing. One of  
20 the discussions that we had was whether or not either party  
21 would ask for presentation of the expert for purposes of

22 questioning, but we're limiting this to just --

23 THE COURT: This is argument. If that becomes an

24 issue, then you better get in touch with us, and we will

25 talk about a different date.

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1 MR. ANGSTREICH: Thank you.

2 THE COURT: Okay. And then I think that Lynn or  
3 Jenny will be in touch. Sometime in between we should have  
4 a telephone conference just to see what is, keep in touch  
5 with what is going on, but we can do that telephonically,  
6 probably around the 1st of March or so. Is that okay?

7 MR. ANGSTREICH: Very good.

8 THE COURT: If anyone needs any telephone  
9 conference before that, just let the Court know, and we can  
10 do that, and at our April hearing, one of the issues that I  
11 want to take up is focus on a trial plan or whatever we  
12 want to do for final resolution of the individual claims,  
13 or at least set up a schedule for it. Okay?

14 MR. MURPHY: Your Honor?

15 THE COURT: Mr. Murphy.

16 MR. MURPHY: One additional matter. May  
17 Mr. Stanley and I approach for side-bar?

18 THE COURT: Sure. Come on up.

19

20 (Side-bar discussion off the record.)

21 MR. MURPHY: This is off the record.

22

23

(In open court.)

24

THE COURT: Okay. Anything else for today?

25

MR. ANGSTREICH: No, Your Honor.

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1 MR. CAPRETZ: Your Honor, excuse me. Are we  
2 going to set a date and keep it open to the telephone  
3 conference?

4 THE COURT: Why don't we set a day, and then we  
5 will get the details later. I mean, I think that around  
6 March 1st probably would work the best. That day probably  
7 works with me. I have a series of one trial after another  
8 going on, so you will know where I am.

9 MR. CAPRETZ: What day of the week is that, do  
10 you happen to know?

11 THE COURT: That's a Thursday.

12 MR. CAPRETZ: Thursday.

13 MR. ANGSTREICH: Your Honor, that is the third  
14 day of a three-day trial that has been set aside. The  
15 probability is that we will be in the third day, if we even  
16 start it, but if we do start it, we will be in the third  
17 day.

18 THE COURT: Friday the 2nd?

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

20 MR. KOHN: That's fine.

21 THE COURT: We will figure out the time later,

22 but we will put a note on the schedule here that we will  
23 have a telephonic status conference in St. Jude Medical.  
24 Okay?  
25 MR. ANGSTREICH: Very good.

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1           MR. CAPRETZ: Just like to acknowledge, Your  
2 Honor, the cooperative assistance of your staff in trying  
3 to get some of these housekeeping ministerial matters taken  
4 care of. We appreciate that.

5           THE COURT: Great. Thank you, Mr. Capretz. We  
6 will be in recess. Thank you.

7                           \*     \*     \*

8           I, Kristine Mousseau, certify that the foregoing  
9 is a correct transcript from the record of proceedings in  
10 the above-entitled matter.

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14           Certified by:

                          Kristine Mousseau, CRR-RPR

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