

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

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4 In Re: St. Jude Medical, Inc. 01-MD-1396 JRT/FLN
5 Silzone Heart Valves Products
6 Liability Litigation.

7 Minneapolis, Minnesota
8 July 24, 2002
9 12:40 p.m.

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11 TRANSCRIPT OF PROCEEDINGS
12 (Status Conference)

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

16 APPEARANCES:

17 On behalf of plaintiffs: James T. Capretz
18 Tony Jensen
19 Steven E. Angstreich
20 Carolyn Lindheim
21 J. Gordon Rudd, Jr.
22 Michael Coren
23 David T. Butsch
24 Mario G. Silva
25 Fletcher M. Johnson, Jr.
Patrick J. Murphy

On behalf of defendant: Steven M. Kohn
David E. Stanley
Tracy J. Van Steenburgh
Liz Porter

Court Reporter: Karen J. Grufman
U.S. Courthouse, Suite 1005
Minneapolis, MN 55415
612-664-5105

1 THE COURT: On the Court's civil calendar today is
2 case number 01-1396, the multidistrict litigation case
3 involving the St. Jude Medical, Incorporated Silzone Heart
4 Valves Products Liability Litigation.

5 Counsel, would you note appearances today?

6 MR. CAPRETZ: For the class, James Capretz.

7 MR. ANGSTREICH: Steven Angstreich for the class.

8 MR. RUDD: Gordon Rudd for the class.

9 MR. JENSEN Tony Jensen for the class.

10 MS. LINDHEIM: Carolyn Lindheim for the class.

11 MR. COREN: Michael Coren for the class.

12 MR. BUTSCH: David Butsch for Class II.

13 MR. SILVA: Mario Silva for Bonnie Sliger and Class

14 II.

15 MR. MURPHY: Pat Murphy, state liaison counsel.

16 MR. JOHNSON: Fletcher Johnson for the class and
17 plaintiff Ronald Linker.

18 MR. KOHN: Steven Kohn, St. Jude Medical.

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

20 MS. PORTER: Liz Porter, in-house counsel for St.
21 Jude Medical.

22 MS. VAN STEENBURGH: Tracy Van Steenburgh for St.
23 Jude Medical.

24 THE COURT: Good afternoon to all of you.

25 We have an agenda proposed. And I presume that everyone

1 has agreed upon the agenda. Any objections?

2 Mr. Capretz, you want to begin?

3 MR. CAPRETZ: Yes, Your Honor.

4 Good afternoon once again.

5 We have a limited but important agenda before the Court
6 today, Your Honor. The two matters that are on the table on
7 our arrival in reference to the Web site proposal, we'll
8 include, with the consent of the Court, discussion of that
9 item under item nine, Web site status. And the letter,
10 proposed letter to the state court judges under item eight,
11 report of state liaison counsel.

12 We would like to start just an overview of the situation
13 as we have in our joint status conference report. The class
14 certification motion, as the Court is aware, we filed in May
15 the brief for class certification. The defendants responded
16 on June 17. And our reply brief is due on August 16.

17 Based on the information we have at this time from the
18 experts that we're working with that help formulate our
19 response, that date should work, and we should be able to be
20 on schedule.

21 THE COURT: I think September 10 is the date set.

22 MR. CAPRETZ: And the hearing date is set for
23 September 10. I think it was for 1:30 in the afternoon?

24 THE CLERK: 12:30.

25 MR. CAPRETZ: 12:30. Excuse me.

1 And that brings us then, Your Honor, to the discovery
2 matters, which my co-lead counsel Mr. Angstreich, will cover.

3 THE COURT: Very well. Mr. Angstreich?

4 MR. ANGSTREICH: Thank you.

5 We have scheduled depositions starting April 7 and 8 with
6 Spire. We're working at getting --

7 THE COURT: August?

8 MR. ANGSTREICH: August 7 and 8, and then the 22nd
9 and 23rd.

10 There have been some glitches in discovery that we have
11 gotten from St. Jude. And we've been in discussion with them.
12 We've gotten, I think we're now up to 50 CD-ROMS in the MDL,
13 and ten from another case called Nickerson. We've had some
14 problems with a couple of the Nickerson disks and some of the
15 MDL disks. The numbers don't exist right now. So they're
16 checking on that. But that's moving along.

17 What we really have run into at this moment is a problem
18 with objections, and one specific area relating to discovery
19 of materials from foreign countries. And I'll just take a
20 step back first on the general objections.

21 We're going to try to work those out because we've now
22 gotten their answers. And we're going to go through the
23 documents to see whether the -- notwithstanding the form of
24 the objection, we've gotten what we want anyway.

25 But one of the most troubling objections that we've

1 gotten is that St. Jude hasn't finished its investigation into
2 the facts of the case and the documents. That's a very
3 troubling statement. Notwithstanding the fact that the
4 response that I got when I raised that with Mr. Stanley was
5 that they have in good faith done their review. It still
6 wasn't a complete response as to whether or not we're still
7 going to be involved in getting dribs and drabs of responses
8 to merits discovery two months and three months and four
9 months from now.

10 This case has gone on long enough for them to have
11 completed their review, and I think it's not an appropriate
12 objection to say that they haven't done that yet. I think the
13 rules require that. So we need clarification from them as to
14 where that stands.

15 That's a critical one. The others I think we can work
16 out. And we'll see what happens when we look at the actual
17 answers to interrogatories and documents.

18 But there is one that is one that we just can't reach
19 agreement on. As you know, the valve was marketed and sold in
20 Australia, the United Kingdom, in Canada, and elsewhere before
21 it was marketed in the United States.

22 The literature that was sent and circulated with the
23 Silzone valves in the foreign countries is different than the
24 literature that the FDA allowed St. Jude to use because, as
25 the Court knows from this case, the FDA said that they could

1 not market it or promote it as being efficacious for fighting
2 endocarditis. However, that was not a prohibition that was
3 placed upon St. Jude in Canada and elsewhere.

4 We have asked for the marketing literature that was used
5 in these other countries. Simply because notwithstanding the
6 fact that the world is, quote, big, it's very small
7 informationally. There are symposiums. There are papers
8 being present the all the time that are attended by thoracic
9 surgeons and others from the United States. Canada is very
10 close to our borders.

11 And it's very clear that what was being promoted
12 elsewhere was that it was in fact efficacious. And that's I
13 think a very important factor for us to establish what the St.
14 Jude people were saying in Europe, in Australia, in the United
15 Kingdom, and Canada, so that we can establish that there was a
16 pattern of trying to promote this product in the United States
17 as well. Because that's how you do it. You do it by word of
18 mouth, you do it by surgeon to surgeon, and presentation to
19 presentation. And what their detail, the equivalent of detail
20 men were telling those communities, and how they were selling
21 their product.

22 So we think it is very relevant, and we think it will
23 lead to the discovery of admissible evidence. We've been told
24 that they see no relevance to it at all. That is a major,
25 major difference.

1 In addition to that, we've asked for communications
2 between St. Jude and the equivalent to the FDA, the MDA, and
3 the like, in the various other countries. And the response
4 that we got today during our meet and confer was that if it
5 related to an adverse incident, we've gotten it. But if it
6 related to the submissions given to those entities to permit
7 St. Jude to market the product, they were not going to give it
8 to us.

9 First, we have -- where I'm clear as to the definition
10 that they're applying to adverse incident, they say that it's
11 the definition that we've given them, although I don't recall
12 our definition, or that we in fact gave them such a
13 definition.

14 There is a difference between a specific adverse
15 incident, where Mrs. Jones' valve is explanted because there
16 was paravalvular leakage, and communications between these
17 entities and St. Jude because problems of a generic nature
18 with no specific incident is referenced.

19 And it's not clear that we've gotten those documents.
20 And we think that not only should we get whatever was sent to
21 these regulatory bodies as it relates to getting permission to
22 sell it, we should get the entire package, from beginning to
23 end, so that we can examine that. And we truly believe that
24 it will lead to the discovery of admissible evidence. It's
25 the same valve.

1 So that's really the major stumbling block at this
2 moment. Hopefully, there won't be any other stumbling blocks
3 that we'll need to bring to the Court's attention as far as
4 discovery is concerned come August 27. But that will give us
5 at least the opportunity to go over the documents and the
6 answers to interrogatories.

7 So that the Court's aware, we got the answers to
8 interrogatories on Monday. And while we got seven CD-ROMS,
9 the problem that we had was that the Excel spreadsheet that
10 was to tell us which specific document was responsive to which
11 specific request didn't come to us until Monday as well. So
12 that we have not been in a position to make certain that what
13 it said, we don't understand what you mean by this, or we're
14 only going to give you that, as an objection, notwithstanding
15 we'll produce certain things, that notwithstanding has given
16 us what we want.

17 So that's where we are on discovery.

18 We've worked out an agreement relating to third-party
19 discovery, their production of documents. And we've agreed
20 that any third-party, excluding Spire, whose depositions have
21 already been scheduled, will produce the documents to both
22 sides. We will not exchange them or give them to any expert
23 or anyone else for ten days, to give St. Jude an opportunity
24 to tell us what they deem to be confidential.

25 If those ten days are not sufficient, St. Jude will let

1 us know, and then we will in good faith discuss it with them
2 and see whether or not we can agree on an extended period
3 beyond ten days.

4 That's basically where we are, Your Honor.

5 THE COURT: Okay. Very well.

6 Mr. Capretz, did you have something else?

7 MR. CAPRETZ: Well, just, Your Honor, that also on
8 your -- Mr. Angstreich may not have noticed -- but we have
9 just a deposition schedule. It's posted. We have several
10 depositions scheduled. We're going to be presenting to the
11 defendants a list of proposed deponents from the company
12 shortly.

13 And in that regard, in regards to the cross noticing,
14 possible cross noticing of depositions, we understand that the
15 Robins Kaplan firm has recently given to the defendants a list
16 of people they would want to have deposed in the state
17 proceeding. And for the record, we have a state status
18 conference tomorrow afternoon with Judge Bjorkman. And
19 counsel informs me, counsel Kohn, that they're going to
20 respond shortly. They only recently got the list, and they do
21 intend on cross noticing certain of the depositions, and they
22 will afford us an opportunity to make sure that the scheduling
23 works out so that we can be there and cover the deposition at
24 the same time.

25 But that's the only other issue. We believe, as the

1 Court will hear momentarily, we need to get on with this
2 discovery and get the discovery portion of the case wrapped up
3 soon.

4 THE COURT: So just to clarify for me. At this
5 point then, the deposition schedule is being coordinated with
6 the Ramsey County action. Is that correct?

7 MR. CAPRETZ: Well, no, I don't think it's fair it
8 is being coordinated. But there have been efforts made, shall
9 we say. And we'll see what happens.

10 I suspect we're going to have to wait until tomorrow to
11 see. Because as I mentioned before, the Robins Kaplan firm is
12 interested proceeding on their own track. If we want to
13 coordinate with them, fine. But we're going to have to see if
14 that all works.

15 But we're making efforts, and we are communicating with
16 counsel to try to make that happen.

17 THE COURT: Okay.

18 Mr. Kohn or Mr. Stanley?

19 MR. STANLEY: Just to speak briefly on the discovery
20 issues raised by Mr. Angstreich. I'm not sure if there really
21 is an issue. I know he's taken offense to our statement that,
22 you know, we're continuing to investigate and gather our
23 facts. They made the exact same statement in their discovery
24 responses.

25 But what I advised Mr. Angstreich this week was that our

1 merits discovery responses are about, in terms of the
2 documents that we produced, is about 90 percent completed.
3 And the remainder of the --

4 THE COURT: Document production on merits is 90
5 percent completed?

6 MR. STANLEY: That's correct, Your Honor. And I
7 understand that the remaining ten percent has to do with
8 production of some electronic data, the power points, that Mr.
9 Coren has requested, most of which has duplicative material.
10 That's being reviewed and prepared. And we think that within
11 the next 30 to 45 days we're going to have 99.9 percent of
12 this done.

13 Again, you know, there still could be more investigation
14 to be done in terms of any case specific discovery we might do
15 in the class action if we wanted to. For example, depose
16 implanting physicians or treating physicians of the class
17 representatives, assuming the class was certified, and we
18 wanted to do all of that. Certainly that's more investigation
19 and fact gathering that we need to do.

20 So again, I'm not sure what the issue is with regard to
21 that statement.

22 THE COURT: So your view is that perhaps throughout
23 the litigation, investigation is continuing?

24 MR. STANLEY: That's correct.

25 THE COURT: But as a practical matter, you have

1 disclosed about 90 percent of the material at this point, and
2 within another 30 to 45 days, did you say, nearly 100-percent
3 would be disclosed?

4 MR. STANLEY: That's correct. With the exception of
5 some FER's which, as you know, continue to be processed. And
6 some, you know -- that's what we're looking at. That's what
7 my document people have told me.

8 As far as the --

9 THE COURT: Just let me clarify. Do you think then,
10 say, by September, what, 10th, you could safely say that the
11 remaining material would have been gone through and disclosed
12 to the other side, with the exception of any additional
13 investigation that you may feel the need to commence and
14 complete as the case goes along?

15 MR. STANLEY: That's correct, Your Honor.

16 THE COURT: Okay.

17 MR. STANLEY: And as far as the other issues that
18 Mr. Angstreich brought up, Mr. Kohn will deal with those.

19 THE COURT: Mr. Kohn.

20 MR. KOHN: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. KOHN: Let me start first with the foreign
23 marketing materials. The valve, as counsel pointed out, was
24 marketed around the world. In fact, a majority of the
25 implants that occurred with this valve occurred in foreign

1 countries. And the regulations vary from country to country
2 as to what's allowed with respect to promotion. The
3 regulations vary from country to country with respect to the
4 regulatory submission that's required, the degree of reporting
5 that's required. Certainly in some countries, such as the UK,
6 it more closely tracks what occurs here in the United States.
7 But in other countries, it's totally different.

8 I can't stand here and tell the Court that St. Jude has
9 gone out to every nook and cranny of the world and rounded up
10 all of the foreign marketing materials. In fact, I can almost
11 tell you certainly that we have not done that. We have not
12 produced that in any of the other state court actions where
13 discovery was further along than here.

14 So we heard really for the first time today in a
15 conference called before this morning, where this issue was
16 discussed with counsel, that they now believe that foreign
17 marketing materials, indeed all foreign materials with any
18 regulatory agency are somehow relevant and might lead to
19 admissible evidence.

20 I frankly can't see how it can be relevant with respect
21 to promotional materials. But even if it were true, that it
22 was marginally relevant, the burden of having to go all around
23 the world and round all this up, in many instances to get it
24 translated, to get it reviewed and produced, I think is
25 something we would like to be able to have an opportunity to

1 brief the Court as to the extent of these materials, where
2 they're located, and what would be involved. Because I can't
3 stand here and really tell Your Honor the amount of work that
4 would be required, because the burden may well exceed any
5 probative value that these materials have.

6 In this litigation, there are only about 30 doctors who
7 implanted the valve who are part of the MDL proceeding, 35
8 cases. And I haven't heard any evidence at all that any of
9 those physicians referred to, relied on, considered, or were
10 involved in any foreign jurisdictions where marketing
11 materials might have been made available to them.

12 So it's hard for me to understand what the relevance is
13 with that in mind.

14 THE COURT: Which countries were involved with
15 approving the device?

16 MR. KOHN: It was approved in Australia. It was
17 approved in Europe by what's called a Common Mark, which then
18 made it available for distribution in most European countries.
19 It was approved in Canada. And I know it was also distributed
20 in many, many, many other countries, including the Middle
21 East, in Russia, in China. And I frankly am not familiar with
22 the regulatory process in those other places to be able to
23 tell Your Honor at this point precisely what hoops had to be
24 gone through in order to get that approval. But we would
25 happy to brief that, if necessary.

1 THE COURT: Well, it strikes me that there may be
2 some relevance in some of the locations. I'm not sure what
3 value the regulatory process in China would bring us here.
4 Probably nothing. Perhaps that might be different in Canada
5 or the UK.

6 I think it would be helpful to perhaps address this issue
7 a little bit more thoroughly in briefing, rather than to try
8 to resolve it now.

9 It strikes me, on the other hand, that a request for
10 everything in all locations is overbroad and unnecessarily
11 burdensome. And perhaps through either briefing or
12 discussion, we can narrow this down to a more appropriate
13 scope.

14 I'm not sure, again, if any of it's relevant. But there
15 is the requirement that it simply be calculated to lead to the
16 discovery of relevant material. So it's a little bit broader
17 standard.

18 But I do think this area requires a little bit more
19 thought on my part, and perhaps with the assistance of
20 briefing, if we can do that relatively quickly. And maybe you
21 can do a quick survey about exactly what might be out there,
22 too, so we have a better idea.

23 Mr. Angstreich, did you want to respond briefly?

24 MR. ANGSTREICH: Very briefly.

25 I don't have our initial discovery requests which had the

1 definitions and scope. But my recollection was that we asked
2 for the UK, we asked for Australia, we asked for Canada. And
3 I'm certain that those -- at least those three. We didn't ask
4 for the entire world, as I recall. We asked for those, at
5 least those three. I wish I had a definitional section.

6 But we have no problem limiting it initially to that.
7 And Europe. Europe is very important, because as part of the
8 MERP documents, as Your Honor will recall, we argued about
9 whether we could get unredacted portions.

10 There's a heavy center in Germany, which also, as I
11 recall, was part of the AVERT study, one of the institutions
12 in Germany participated in the AVERT study. So that would be
13 an important area. So if there's one centralized agency that
14 relates to all Europe, that might make it easier.

15 THE COURT: And again, what you were looking for was
16 all regulatory materials and all marketing materials.
17 Correct?

18 MR. ANGSTREICH: That's right. The communications
19 between the regulatory agency at St. Jude from the time that
20 they were first asked to approve it, until the time they were
21 told it had to come off the market and/or St. Jude agreed to
22 take it off the market, and the marketing literature that was
23 disseminated.

24 It's my understanding that St. Jude has an advertising
25 agency in the United States. We have served them with a

1 third-party subpoena for the documents.

2 And I assume that there are similar agencies, advertising
3 agencies located in other countries. And they might be the
4 best source initially to ask for that, if St. Jude has a
5 problem going through their own files to determine what was
6 the marketing literature in those other places.

7 Obviously, we're not looking for them to give us a
8 certification that we've seen every single piece of paper that
9 may have ever been used. But clearly, there was a marketing
10 program similar to what eventually became the marketing
11 program in the United States.

12 And one of the things that we have found is that the
13 original marketing literature, which related to the efficacy
14 of Silzone for endocarditis which they were not allowed to
15 effectively use, they got themselves ready to use it. And I'm
16 fairly certain that that's the same kind of, it mirrored from
17 what was used elsewhere. So maybe we could at least ask their
18 advertising agencies to get the materials.

19 If there's a problem in translation, maybe we'll have to
20 bear that expense if they really need that. But I think St.
21 Jude probably approved the ad copy, and then it was put into
22 the language in the particular area. I don't think we'll have
23 a problem figuring out Australia, Canada, or the UK though.

24 THE COURT: Mr. Kohn?

25 MR. KOHN: Your Honor, we would like the

1 opportunity, as the Court suggested, to advise counsel and the
2 Court what the scope of these materials are. We're prepared
3 to do that within the next two weeks, and then meet and confer
4 with counsel. We may be able to work this out.

5 MR. ANGSTREICH: No problem, Your Honor.

6 MR. KOHN: And if not, we could have it on for the
7 next status conference.

8 THE COURT: Very good. If you need to set up a
9 briefing schedule on it, that's certainly fine, too, if it
10 comes to that after the meet and confer.

11 MR. ANGSTREICH: Your Honor, I assume that as part
12 of the discovery and discussion, you didn't want to get into
13 the statement of discovery that we provided to the Court
14 relating to preemption at this point, if at all.

15 THE COURT: Right. We had that listed on here
16 separately.

17 MR. CAPRETZ: That's next.

18 MR. ANGSTREICH: We might as well jump to that.

19 THE COURT: Let's see if Mr. Kohn -- Mr. Kohn, did
20 you have anything else?

21 MR. KOHN: The only other thing that I wanted to
22 mention, and that is unlike the marketing materials, which I
23 put in a different category than the regulatory materials, we
24 have produced, to the best of my knowledge, all of the adverse
25 events from wherever they have originated. And those have

1 been produced and made available. So -- and including any
2 correspondence from any foreign regulatory agency --

3 THE COURT: Relative to the adverse events.

4 MR. KOHN: Right.

5 Now, counsel advised us this morning that they didn't
6 feel our production was complete. We're going to meet and
7 confer with them and see if we can't work that out, if indeed
8 that's the fact.

9 MR. ANGSTREICH: That's correct. And that goes into
10 what our definition, if we had one, of adverse incident.

11 We did reach another agreement. And that is that
12 discovery, except for case specific discovery -- that's the
13 individual cases that are part of the MDL -- and expert
14 depositions will in fact be completed by February 3, which was
15 the date that's in one of our PTO's.

16 THE COURT: Very good.

17 MR. ANGSTREICH: Your Honor, we have provided to you
18 our statement on the discovery that we believe we need. I
19 assume that St. Jude would like an opportunity to respond to
20 it. I don't know, we didn't really establish a procedure on
21 what happens next, after giving that to you.

22 And there is one thing though that we did want to touch
23 on. And that is that to the extent that someone falls within
24 the category of a deposition relating to preemption, but is
25 also a merits discovery person, we have this issue of this

1 "one day seven hours" rule. And what we think would be fair
2 is that that person be questioned on preemption, and that not
3 impact upon the time that would be involved in merits.

4 The best example that we could give you would be Alan
5 Flory, who is the gentleman that filed, or gave us the
6 certification that's about yea high, I don't know that
7 there's any way that we could ever go through his
8 certification on the preemption submission in one day and
9 seven hours, let alone take him on full merits simultaneously.

10 THE COURT: How many depositions on preemption are
11 you talking about?

12 MR. ANGSTREICH: Well, we've listed 24.

13 MR. STANLEY: More than that.

14 MR. ANGSTREICH: We listed 24 categories. Now, it
15 may require more than one person.

16 THE CLERK: Was that in a pretrial order at all?

17 MR. ANGSTREICH: That was directed that we supply on
18 the 22nd, as part of one of the PTO's.

19 THE COURT: Twenty-four?

20 MR. ANGSTREICH: There are 24 categories. Some of
21 them ask for multiple people, unless there's somebody that is
22 sufficiently knowledgeable to cover the full gamut of
23 regulatory submissions. And that would be in number nine,
24 number ten, number eleven. There are certain representative
25 issues dealing with the salespeople, because I think it's

1 important that we go through what the sales, some of the sales
2 force was telling the doctors and the hospital staff when they
3 were marketing and putting this out.

4 So there are a substantial number of depositions. Some
5 of them we would never take specifically as it relates to
6 merits. So there's really, there's twofold issues with
7 respect to the depositions.

8 The first is: How does it play with the "one day seven
9 hours," where it's an overlap, it is a preemption and merits.

10 And secondly: How does it impact upon the 20 merits
11 depositions that we, that the Court has allowed us to take?

12 We've suggested -- and again, they've not responded to
13 this because they just got it on Monday -- but we've suggested
14 that if it's an overlap situation, that we get more than "one
15 day seven hours" to do both preemption and merits. And then
16 if it's just a preemption deposition, that it does not reduce
17 our number for merits.

18 The same would apply, because we've suggested that there
19 are interrogatories geared to preemption. And those shouldn't
20 impact upon the number of interrogatories that we agreed on.

21 Although I think that we would, we wouldn't be close to the
22 full amount anyway, even if you took these.

23 But the point is that if we're being forced to focus in
24 on preemption discovery, that should not impact upon the
25 number of requests for production of documents, the number of

1 interrogatories, or the deposition or timing. We will try not
2 to inconvenience somebody, take them on preemption, and then
3 six weeks later, two weeks later, take them on merits if we
4 can do that.

5 THE COURT: So you'll try to do both at the same
6 time.

7 MR. ANGSTREICH: We'll try to do them both at the
8 same time, with the understanding that there are a number of
9 individuals that would probably require more than "one day
10 seven hours."

11 But again, Your Honor, I don't know how you want to
12 address this. I would assume, based upon St. Jude's earlier
13 submission, that they don't believe there's any specific
14 discovery that's necessary to address preemption. Whether or
15 not they're going to respond to our submission and then we get
16 a chance to tell you why, from a legal theory standpoint, this
17 discovery is important and relevant to how we fight
18 preemption. Because the Court didn't schedule that, we didn't
19 address it the last time.

20 THE COURT: Are you intending to respond in writing
21 to this? I think it was just a couple days ago when it was
22 dated.

23 MR. KOHN: Yes, Your Honor. We intend to have our
24 response before the Court within two weeks from today, and
25 we'll be addressing not only the scope of what's being asked

1 for, but we can also address the issue of the number of
2 interrogatories and depositions and the time limitations that
3 counsel has indicated.

4 THE COURT: Let's get this in as soon as possible,
5 and then any reply that the plaintiffs wish to make. You say
6 two weeks from now?

7 MR. KOHN: No later than two weeks from today, Your
8 Honor.

9 THE COURT: That would be August 7th.

10 MR. KOHN: Right.

11 THE COURT: And then can you respond in a week, or
12 would you like longer?

13 MR. ANGSTREICH: Our next conference is the 27th,
14 with the Court?

15 THE COURT: Yes.

16 MR. ANGSTREICH: If we get it in by the 21st, Your
17 Honor will have had some time to review it?

18 THE COURT: That's fine. And if you can, as you go
19 along, see areas where you can narrow this down and lessen the
20 dispute, that would be appreciated.

21 MR. ANGSTREICH: We'll be happy to meet and confer.
22 Thank you, Your Honor.

23 THE COURT: The confidentiality issue that was
24 raised in the status report, is that still pending, or has
25 that been resolved?

1 MR. ANGSTREICH: It has not fully been resolved.
2 We're pointing at each other as to who has the burden of going
3 forward at this point. We'll try one more time to meet and
4 confer. We have a list of things to talk about. We'll try to
5 do it this week. I didn't want to take the time to deal with
6 it before Your Honor.

7 THE COURT: Okay. Very well.

8 Is there anything else on discovery that we need to talk
9 about today?

10 MR. CAPRETZ: Your Honor, not generically, but when
11 we get to the scheduling order that the Court had suggested at
12 our last conference that we meet and confer, we have met and
13 conferred, and we're prepared to discuss that. We want to
14 talk further about discovery at that time, or we could do it
15 now, if the Court wishes.

16 But as the Court is well aware, the function is not only
17 to hear the merits of the class certification requirement and
18 the Unfair Trade Practices Act claims, but -- try that here --
19 but to prepare the other matters for trial back to the Court.
20 So we have asked -- what we have suggested to counsel, and
21 counsel Kohn said that was his intention, to submit a schedule
22 of discovery on a case specific situation, so that we can make
23 sure that these matters are addressed as early as possible.

24 I think, I may have misunderstood Mr. Angstreich, but I
25 think what our position is, and what the other side has agreed

1 to, is that all class discovery will end that date that we
2 have assigned in the pretrial order, I think it's February 14.

3 I may be mistaken on that. What date is that?

4 MR. ANGSTREICH: Then I misspoke. I thought I said
5 the 3rd. But if it's the 14th. But it's both ways, both
6 sides.

7 MR. CAPRETZ: But the one additional point is --

8 THE COURT: Is this for merits discovery?

9 MR. CAPRETZ: That's for merits discovery -- well,
10 we can address that case specific. Merits discovery, yes, the
11 class claims.

12 THE COURT: Merits discovery for the class claims.
13 Okay.

14 MR. CAPRETZ: Yes, Your Honor. Because we are
15 interested -- we're kind of segueing into the scheduling
16 order, which I guess we can do at this point -- is we would
17 like the trial on the merits to be held as early as possible,
18 as well as these cases prepared to be remanded back to the
19 individual district courts as early as possible.

20 And I think what we have agreed is that the February 14
21 date is a cut-off both ways, as Mr. Angstreich suggests, on
22 the merits discovery. But we were going to come forward or
23 present to the Court a proposal for expert discovery. And the
24 idea would be that the plaintiffs will submit a proposed order
25 for the taking of depositions of the experts.

1 And we have suggested that that would follow by the time
2 discovery ends, the merits discovery, on February 14. And we
3 have also suggested that the defense, at the same time we
4 tender our order, although this is all in a discussion stage
5 at this point, identify what experts for any affirmative
6 defenses they claim on asserting be identified by the
7 defendants at that time.

8 So it's up to us, the way we left it, was we would submit
9 a proposed order to the defense, and they will get back with
10 their suggestions or comments on that order.

11 THE COURT: Good.

12 MR. CAPRETZ: And I think that brings it up.

13 I would like to, you know, it will be the position,
14 although we recognize this is a preliminary discussion, but it
15 is the position of the class that we ask the Court to set as
16 early as possible a trial date on the class matters. We
17 recognize that the class certification issue has to be heard
18 first.

19 If I could go back to another point, and that is the
20 discovery and the preemption motion, Your Honor. It's the
21 general position, and the record should be clear that the
22 class maintains that it needs to take all fact discovery
23 before a dispositive motion like preemption is to be heard.
24 So it's on that basis and on those grounds that we furnish the
25 Court the list that we have.

1 One other note in regards to individual cases. Mr. Kohn
2 brought out in our meet and confer that there are certain
3 unidentified cases at this particular point in time. In other
4 words, people will be filing cases, and there's no way that
5 they can say that all of their discovery will be complete by a
6 certain date. Because obviously, there may be a case filed on
7 February 1 that they need to respond to.

8 I told them, obviously, we would adjust for that and make
9 provisions, case specific discovery that might be needed. But
10 we hope to get back to the Court no later than the next status
11 conference scheduled for late August with that particular
12 matter.

13 THE COURT: Okay.

14 MR. CAPRETZ: The pretrial orders, Common Benefit
15 Fund order, we have agreed with everything except the
16 confidentiality provision. And that is to the extent that it
17 be disclosed as to what amount is in the fund.

18 We have submitted, as the Court probably has read, two
19 proposed orders. The bottom line is we believe that at least
20 certain people at the plaintiff's executive committee need to
21 know what's in the fund. Defendants are concerned about
22 confidentiality of settlements, that it could be figured out
23 what a case settled for if they disclose that.

24 The only way we see that would be possible, if there's an
25 individual case settlement, the fund increases by X dollars,

1 it would be obvious that that case settled for that amount.
2 But perhaps if there's some provision that says the amounts be
3 disclosed at a time that two or more settlements are made, and
4 there's no way to bifurcate the settlements, and for us to
5 know what the settlement amount is, might alleviate the
6 defendants' concern in that regard.

7 But if they wish to comment.

8 MR. STANLEY: Your Honor, I think at the last
9 conference, I made it clear that obviously, confidentiality is
10 our primary concern here. And we only have 27 cases,
11 individual injury cases in the MDL. And this is -- you know,
12 Baycol has 10,000 cases. And a lot of these other MDL's have
13 a substantial number of claims.

14 And the point in time when cases start to settle -- we
15 got three, four, ten, 20, 50 cases settling a month -- you
16 know, obviously, we can't, you know, there's no way to
17 determine what the settlements are going to be. And when
18 you've got an MDL with 27 cases, you know, and they're all
19 with different plaintiffs, so it's not like we're going to
20 settle ten at a time here. It just seems that they'll be able
21 to figure out every single one of our settlements.

22 Even if it's only two, they can -- again, they're, now
23 they're in the ballpark getting ranges. It just seems to be
24 very unfair to allow that to happen.

25 That's our position.

1 THE COURT: Well, there should be some way to do
2 this in order to mask the settlements and protect the
3 confidentiality of the settlements, which I agree is a
4 significant issue for the defendant.

5 The problem is that there aren't, as you have identified,
6 there aren't that many cases. So settlements are pretty
7 obvious.

8 Perhaps we could devise a procedure by which a portion of
9 each settlement is added to the fund each month, up to a
10 maximum of three months, and then monthly disclosure. And
11 then you can have numbers going into the fund all the time.

12 I'm just thinking out loud. I'm trying to figure out
13 some way that you can mask it, but at the same time within
14 any, say, quarterly period, eventually have an accurate
15 number.

16 MR. STANLEY: I looked at other MDL's on this. And
17 unfortunately, there's either been no report to the
18 plaintiff's liaison counsel, or there's been a report. There
19 hasn't been that middle ground. Maybe we need to go back to
20 the drawing board and try to figure something out.

21 The reports, I think the order calls for the reports to
22 go to the Court. I'm sure they're anxious to get their order
23 in place. We're very concerned about the confidentiality.

24 THE COURT: Mr. Capretz?

25 MR. CAPRETZ: One other thought, maybe, Your Honor,

1 there could be periodic reporting by whomever, whether it's
2 this Court, or a magistrate, or whatever, to the plaintiffs'
3 executive committee what amount in the fund, whether it's
4 quarterly, semiannually, or whatever it might be.

5 It is important, and I would urge the Court to consider
6 signing this order in whichever form as early as possible.
7 Because this ties in the liaison for state counsel their
8 knowing what the tithe is, and, us whatever hard work time and
9 effort we're contributing will be paid for at some point in
10 time.

11 And we've been talking about this order for several
12 months. So if we can get some kind of resolution, it would be
13 appreciated.

14 MR. STANLEY: Perhaps the thing to do, to give us
15 more time, would be to sign our order, and we'll have a meet
16 and confer. And if at some point they can't come to
17 agreement, they can bring their proposal. If they want their
18 order signed today.

19 THE COURT: One way to do it is just to have
20 reporting at more of a stretched-out period of time, say
21 quarterly, or twice a year, for example. I mean that could be
22 done, too. With bimonthly or monthly reports to the Court, so
23 that if the plaintiffs at any given time had a special concern
24 about this, you could apply to the Court to find out what's in
25 the fund, and we can all confer about that.

1 I mean that might be a way to handle it for now, say, a
2 semiannual report to the executive group of the plaintiffs'
3 lawyers, and then monthly reports to the Court, for example.
4 So the information would be here.

5 And plaintiffs would be assured that if there comes a
6 certain point where they really need to know, they can apply
7 to the Court, who would have the information to supply to you,
8 if that becomes necessary. That might be the best way to
9 proceed for now. And we can always change it later if it
10 turns out that it's insufficient.

11 MR. CAPRETZ: We're amenable to that sort of
12 suggestion. I would ask that you consider quarterly. Because
13 if we do, if we are able to move at the speed we're hoping,
14 then this, certainly within one year, this matter could be
15 resolved and the cases dispatched to the individual district
16 courts if not resolved. Except for new cases, of course.

17 I do think the number, I think the number is 36, 33 here
18 with three coming.

19 MR. STANLEY: There are nine class actions.

20 MR. CAPRETZ: Okay. That includes class action.

21 THE COURT: What do you think, Mr. Stanley, about
22 this?

23 MR. STANLEY: I conferred with the client, and I
24 think that's something, if we're talking about a twice a year
25 to them with monthly reports, bimonthly reports to the Court,

1 I think we could live with that.

2 THE COURT: Let's start it that way. We can always
3 change this, if need be. Let's start -- when would be the
4 appropriate time for the first report to the plaintiffs?

5 MR. STANLEY: Since there would be zero money in the
6 account --

7 THE COURT: Right now.

8 MR. STANLEY: -- we'll send a report today.

9 MR. CAPRETZ: They're willing to have it one way,
10 but not the other.

11 THE COURT: He might want to for a period of time
12 submit daily reports.

13 MR. CAPRETZ: Perhaps we could make it maybe the
14 first one, the first quarter of 2003?

15 THE COURT: We could --

16 MR. CAPRETZ: January of 2003.

17 THE COURT: We could do January 1 for the first
18 report. And then just why don't we do bimonthly reports to
19 the Court.

20 MR. STANLEY: You want those to start on January 1
21 as well?

22 THE COURT: I think that's probably fine. I don't
23 think there's going to be too much activity before that time.
24 So that would be fine.

25 MR. CAPRETZ: If it's any indication, Your Honor, I

1 saw Mr. Kohn put his wallet through the security, and it was
2 really fat. So maybe something is going to happen within the
3 next several minutes.

4 MR. KOHN: Those were pictures of my children.

5 (Laughter)

6 THE COURT: So if one of you would revise your
7 proposed order to reflect this, perhaps Mr. Stanley can do
8 that, and the Court will sign it.

9 MR. STANLEY: I will do that.

10 MR. CAPRETZ: The next item we had, Your Honor, was
11 coordination with Ramsey County. I have read the Court's
12 proposed letter to the state judges. I do have some comments
13 on each of these proposals. But perhaps the Court could say,
14 was there one conference, I think at the last status
15 conference you indicated you had a short conversation with
16 Judge Bjorkman.

17 THE COURT: Yeah, I've talked with her a couple of
18 times, including a fairly lengthy conference. We didn't
19 really resolve anything, other than I wanted her to know what
20 we were doing here and what I was proposing to do with the
21 letter. And I was trying to reach Judge Halbeck who, from my
22 review of the state court cases, seems to have the largest
23 number of cases. Is that not true?

24 MR. STANLEY: Your Honor, I marked our little
25 changes to the letter. Judge Benton is the judge in Harris

1 County that has all of the cases.

2 THE COURT: He has them all now?

3 MR. STANLEY: Yes.

4 THE COURT: Then I will try to reach him right away,
5 because Judge Halbeck has been on vacation. I will call him
6 before I send this letter out. Because I wanted to talk with
7 the judges that had the most cases before the letter was
8 coming.

9 MR. STANLEY: The only other comment we had, Your
10 Honor, was there are no longer any pending cases in South
11 Carolina, but there is a pending state case in New York.

12 THE COURT: New York?

13 MR. STANLEY: Yes. I can give our comment to Mr.
14 Capretz. Those are our comments to the letter.

15 MR. CAPRETZ: Okay. Let me just finish with the
16 state court and give --

17 THE COURT: I anticipate this letter will go out
18 before the end of the week. But I do want to reach Judge
19 Benton first.

20 MR. CAPRETZ: And counsel handed me, as the Court
21 undoubtedly heard, a couple of comments. It looks like it
22 incorporates what he just said.

23 And I just had a couple comments. I was on the number,
24 before I turned the podium over to Mr. Murphy, the 33, I guess
25 36, there were three pending transfers here.

1 THE COURT: We haven't seen them yet, is the
2 problem. We're aware there's three that are pending before
3 the panel. But they haven't yet arrived on our docket.

4 MR. CAPRETZ: Okay. The only other suggestion that
5 I had, Your Honor -- and I'll see if any other counsel for the
6 class have any comments on the letter to the judge.

7 In the first sentence, at the end of the third line, for
8 voluntary pretrial coordination, those words are used, that's
9 the third line, "for voluntary pretrial coordination." And
10 communication? I think the magic words are coordination
11 communication.

12 THE COURT: And communication?

13 MR. CAPRETZ: Yes, sir.

14 THE COURT: Okay. That's fine.

15 MR. CAPRETZ: I'll let Mr. Murphy, state liaison
16 counsel --

17 THE COURT: Mr. Murphy.

18 MR. MURPHY: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. MURPHY: By way of prefatory comments, contrary
21 to my colleagues' beliefs, and despite the insistence by Mr.
22 Rudd, yesterday afternoon was a beautiful Midwest day. It's
23 only after the arrival of Mr. Capretz into the state that the
24 sky is dark and the weather threatened. So if Your Honor
25 could entertain some type of motion that we could bar him from

1 the state, I'm sure the people of Minnesota would greatly
2 appreciate it.

3 THE COURT: I was going to say the defendants for
4 sure will stipulate to that.

5 (Laughter).

6 MR. MURPHY: First, I would like to thank you for
7 your letter to the courts.

8 By way of follow-up if any of the judges contact you,
9 certainly if you could inform them that if plaintiffs counsel
10 are seeking information, please have them contact my office.
11 We'll be happy to talk to them.

12 I want to thank Your Honor for coming up with the
13 compromise on the Common Benefit Fund order. My role as state
14 liaison counsel has been trying to, like shoot pool with a
15 piece of rope without the order in place. So now I have
16 something that we can kind of go forward with.

17 I called my office this morning. And one of my people is
18 out, but the other one appears that there might be two new
19 state court actions.

20 THE COURT: Beyond the 89?

21 MR. MURPHY: Yes. As of this morning. And I need
22 to check that when I get back.

23 THE COURT: Why don't you let Ms. Gleason know.
24 We'll change the number if we have additional judges.

25 MR. MURPHY: I'll be going back late Thursday. So

1 it will probably be Friday before I can get confirmation of
2 that.

3 THE COURT: Okay.

4 MR. MURPHY: And lastly, as Mr. Capretz said, Mr.
5 Coren and myself will be attending the conference with Judge
6 Bjorkman tomorrow, and we'll advise the Court of any
7 developments, if we need to do that.

8 THE COURT: Okay. Thank you, Mr. Murphy.

9 MR. CAPRETZ: Okay, the next item, Your Honor, the
10 case filings/case list, the numbers have been mentioned now.
11 It's 89 state, and apparently 36 federal, and possibly two
12 other state now reported.

13 On the next item, the Web site status --

14 THE COURT: Can I ask a question?

15 MR. CAPRETZ: Of course.

16 THE COURT: Defense counsel perhaps may be more
17 likely to know the answer. Are there any cases in other
18 jurisdictions besides Canada? We have a class action, I
19 guess, in Canada we talked about at times, although I'm not
20 really sure the status at this point of that case, or those
21 cases. Are there other cases developing anywhere else that
22 you're aware of?

23 MR. KOHN: No, Your Honor. The only other litigated
24 matter is in Canada. And there are class actions in Toronto
25 and British Columbia.

1 THE COURT: So two separate class actions? Are
2 there individual cases as well?

3 MR. KOHN: To my knowledge, there are no individual
4 cases. I believe the class actions in Toronto are joined,
5 even though there were two separate ones. And the one in
6 British Columbia is a separate action.

7 THE COURT: And I know that through everyone's
8 excellent cooperation, we worked out an arrangement on sharing
9 the discovery coming out of the Canadian cases.

10 What would be the best way to at least keep the Court
11 apprised about what's going on in Canada? I don't really have
12 any contact with the courts there, and that would probably be
13 fairly unusual to do that. But if there's some manner in
14 which perhaps the defendant could provide the Court with a
15 periodic report on any developments in the Canadian case, that
16 would help us from a coordination standpoint, too.

17 MR. KOHN: We'll be happy to do that, Your Honor. I
18 could briefly update you on what I know at this moment. But
19 at this point, there are no dates certain set for class
20 certification in Canada. There will probably be some
21 evidentiary rulings related to the class, most likely taking
22 place during the month of August. And we would expect that
23 once those are concluded, that there will be a date set for
24 the class certification.

25 But other than that, nothing else is known.

1 THE COURT: Maybe even a brief letter quarterly from
2 you, that just brings the Court up to date on what's going on
3 in Canada. Then we don't have to take up time in our status
4 conferences to discuss the matter. But I would just be
5 curious as to my ability to simply follow from afar what's
6 going on in Canada.

7 MR. KOHN: Sure. Be happy to do that.

8 THE COURT: Okay.

9 Go ahead, Mr. Capretz.

10 MR. CAPRETZ: I will add, Your Honor, like Mr. Kohn
11 involved, at least tangentially, I am acting of counsel to
12 certain law firms in that area. So we're pretty much apprised
13 of the Canadian action, except for the one in British
14 Columbia. I'm not current with that. So perhaps Mr. Kohn
15 could pass the reporting to us, and we'll take a look.

16 They did have a class -- I'll mention two other things.
17 They did have an earlier class certification. They were ahead
18 of the curve here, from the prospective of being ready to go
19 forward with a class certification hearing. But due to
20 certain motions filed by the defense, matters have been
21 postponed until -- they have a September date. That date is
22 likely to be vacated because, as Mr. Kohn correctly said,
23 there are evidentiary questions that are at issue.

24 They call depositions "cross examinations," as you may be
25 aware. A certain amount of the experts is taking place. So a

1 new date is yet to be set in that matter.

2 But I will say that this Court, by agreeing to the
3 document sharing and information sharing, it was a case of
4 first impression, at least to our knowledge, the Baycol
5 litigation, recently, at the last status conference, was held
6 in California. And at that point in time, a question arose as
7 to the coordination of the efforts in Canada and here in
8 Minnesota. And we were able to use our knowledge and
9 information from this proceeding to inform Judge Davis. I did
10 talk to him informally as well, asked perhaps he would want to
11 talk with you about it, about setting up a system or way of
12 coordination between the two courts.

13 So I think a good precedent has been set. Because
14 Canadian class action law is just developing. And I would say
15 they're 20 years behind where we are at this point. But
16 they're moving rapidly to develop more in that particular
17 discipline.

18 As for the Web site status -- does that answer the
19 Court's question?

20 THE COURT: Yes, it does. Thank you.

21 MR. CAPRETZ: I have a few comments. It might be
22 booed and hissed, but, I think we need to put these in as to
23 our position. I don't know, does defense have any comment on
24 the Web site?

25 MR. STANLEY: No problem.

1 MR. CAPRETZ: Anybody from our side that wants to
2 comment?

3 The first thing was just a number of cases. We've been
4 through that in the first paragraph.

5 THE COURT: My intent is to continually change that
6 number as cases come in, so that we have an accurate figure at
7 all times.

8 MR. CAPRETZ: Okay.

9 The next comment would simply be in the second paragraph,
10 where the Court refers to, "St. Jude Medical voluntarily
11 recalled," that is factually correct, although I think it
12 bears upon being argumentative. From a plaintiff class
13 viewpoint, I don't know if "voluntarily" brings anything to
14 the party, because it's a question of FDA involvement, and
15 what's typical in this case is manufacturers, quote,
16 voluntarily recall products just when the dogs of the FDA are
17 begging at their heels. So it is somewhat argumentative.

18 In the last sentence of that paragraph, it says, "This
19 recall followed the company's receipt of information from a
20 clinical trial showing an increase." The words actually used
21 were a significantly significant increase in number of
22 explants due to paravalvular leakage.

23 In other words, for it to be of any moment, it had to be
24 statistically significant.

25 THE COURT: I think the proposed language was,

1 "small, but statistically significant." And we can add that
2 in there. I have wasn't sure whether that really added
3 anything beyond just saying that there was an increase. One
4 would have to assume from seeing an increase that it must have
5 been significant enough to provoke a recall.

6 MR. CAPRETZ: I don't think a lot of those folks are
7 going -- you're absolutely correct -- but I don't think a lot
8 of these folks are going to be that sophisticated. Does that
9 mean one, or a hundred, you know. That's just a suggestion.

10 THE COURT: I can return to the language that St.
11 Jude proposed.

12 MR. CAPRETZ: Okay, that's fine.

13 THE COURT: Which was small --

14 MR. CAPRETZ: I agree.

15 MR. STANLEY: That's fine.

16 MR. CAPRETZ: The next paragraph is an important
17 point, Your Honor.

18 The class maintains that all people who received
19 Silzone-coated heart valves have been injured. So where it
20 says, "Silzone-coated valves caused some patients to die,
21 while others experienced personal injury or required surgery,"
22 we would appreciate the Court considering some language like,
23 "or experienced" -- let's see. I can't read the writing.

24 THE COURT: Well, we could just say --

25 MR. CAPRETZ: "Other serious personal injury," is

1 what we scribbled in here.

2 THE COURT: "Others experience personal injury,
3 including requiring surgery to replace the valve"?

4 MR. CAPRETZ: Yes, fine.

5 Well, except -- excuse me. I mean, it says, "while
6 others." But it's the position of the class that all who have
7 implanted valves have been injured. And that will be
8 explained in the class cert papers.

9 So it's important to us that the records say that the
10 class maintains that everyone has been injured, by the
11 definition that we use.

12 So something to say -- we could say if we want to use
13 the, "while others have experienced serious personal injuries
14 or required surgery." In other words, that distinguishes from
15 the "any injury" versus a serious.

16 THE COURT: So just by adding the word "serious
17 personal injury?" "Plaintiffs allege that the Silzone-coated
18 heart valves caused some patients to die, while others
19 experienced serious personal injury, including requiring
20 surgery to replace the valve"?

21 MR. CAPRETZ: That technically I think would be
22 correct. It protects our position of arguing that everyone
23 has been injured. At least to the extent the definition of
24 injury by the law.

25 THE COURT: Mr. Stanley, did you have anything on

1 that? Mr. Kohn?

2 MR. KOHN: My only comment on the word "voluntary"
3 is that that is totally appropriate. There is absolutely no
4 evidence that this recall was mandated by the FDA or any other
5 agency.

6 THE COURT: That's my understanding, too. So I
7 think we'll leave "voluntarily" in.

8 MR. CAPRETZ: While they're looking at that, Your
9 Honor, we might want to go on. The last part of that
10 paragraph, I wanted to include that also we're alleging a
11 violation of the Minnesota Unfair Trade Practices Act and
12 related consumer fraud statutes in addition to the common law
13 remedies.

14 MR. STANLEY: Going back to the first sentence,
15 "while others experienced serious personal injury or required
16 surgery to replace" --

17 THE COURT: Including requiring surgery to replace
18 the Silzone valve.

19 MR. STANLEY: That's fine, Your Honor. We don't
20 have any problem with that.

21 THE COURT: And then Mr. Capretz raised the issue of
22 including several statutory claims at the end of paragraph
23 three.

24 MR. KOHN: I don't think that's terribly informative
25 for the person that's coming to look at this Web site, other

1 than if we put we have a preemption defense. We're getting
2 into the nuances of legal claims or defenses, which I think
3 might make claims a little confusing.

4 MR. CAPRETZ: I think it's a claim we're asserting.
5 I'm not sure if it's confusing. That's what factually, just
6 as you say voluntarily is a factual correct statement.

7 THE COURT: I think we'll leave it the way it is.
8 This is part of the Web site which has the names of counsel.
9 It has a lot of other material relative to the lawsuit. And
10 those that wish to research further, it would be pretty easy
11 to do.

12 This was intended to be a general introduction to explain
13 the facts of the case. I think the most important point of
14 all this is that there is this case going on involving these
15 Silzone-coated valves. And that's the main point that people
16 need to know. And I think the general nature of the claims
17 here is probably good enough at this stage.

18 MR. CAPRETZ: Can I take you to Washington,
19 figuratively, for a moment, and see if we can have a
20 compromise on that, and suggest this? Where it says,
21 "Plaintiffs further allege," we put somewhere, "among other
22 things"? You see that?

23 THE COURT: Yeah, I see that. We could just say at
24 the end, "and raise certain statutory claims."

25 MR. CAPRETZ: That's fine.

1 And the only other comment, Your Honor, would be in the
2 second to the last paragraph, last sentence, "All St. Jude
3 Medical Silzone heart valve cases have been ordered
4 transferred," so there isn't any confusion that all St. Jude
5 Medical Silzone heart valve cases filed in federal district
6 courts.

7 THE COURT: Or we could just say all St. Jude
8 Medical Silzone heart valve federal cases.

9 MR. CAPRETZ: That's fine.

10 THE COURT: Anything else?

11 MR. CAPRETZ: That's it. I don't know if anybody
12 else has any comments.

13 MR. ANGSTREICH: That's fine.

14 THE COURT: Very good.

15 MR. CAPRETZ: We have our next conference scheduled
16 for August 27? And that's at 12:30?

17 THE COURT: Yes.

18 MR. CAPRETZ: And then the following one would be
19 the class certification hearing on September 10th. I don't
20 know if there are any other issues that we have.

21 MR. ANGSTREICH: I don't think so.

22 THE COURT: Okay, anything else that any of
23 plaintiffs or class counsel who are here wish to raise?

24 MR. ANGSTREICH: No, Your Honor.

25 THE COURT: Anything else from the defense?

1 MR. KOHN: No, Your Honor.

2 THE COURT: Okay. Very well.

3 We'll look forward to receiving the reply. I guess
4 that's August 16 on class certification. And then we'll see
5 you all on August 27, unless there's some urgent need to meet
6 earlier.

7 The Court will be in recess. Thank you very much.

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20 CERTIFIED:

Karen J. Grufman
Official Court Reporter

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