

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: St. Jude Medical, Inc.	File No. 01-MD-1396
Silzone Heart Valves	(JRT/FLN)
Products Liability Litigation	Minneapolis, Minnesota
Medical Monitoring Plaintiffs	April 11, 2008
	2:05 P.M.

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

(TELEPHONE STATUS CONFERENCE)

APPEARANCES

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1 2:05 p.m.

2 (In chambers via telephone.)

3 THE COURT: Good afternoon, everyone. I think we
4 all, we have everyone's name recorded here for the record.
5 Just briefly, this is MDL Number 01-1396, and we have a
6 telephone status conference today, and I don't believe we
7 have a formal agenda, but shall I turn to Mr. Capretz to
8 start?

9 MR. CAPRETZ: Yes, sir. Well, we don't have a
10 formal agenda. I apologize for not sending something out,
11 but travel has made that a bit of a challenge. I thought
12 we would think about and we might discuss this, if anyone
13 wants to add anything first, is report on the Eighth
14 Circuit ruling and the discussion of same.

15 Second, some miscellaneous MDL discovery issues,
16 just a couple of small points. Third would be a brief
17 report on the remanded cases or cases to be remanded, and
18 then we might mention the Ramsey County and Canadian
19 litigation.

20 I don't know if anyone has anything else.

21 MR. ANGSTREICH: Sounds inclusive to me.

22 MR. CAPRETZ: Then we might start with the Eighth
23 Circuit ruling, and I'm sure the Court is aware and
24 received its copy of that, and I don't know if the Court
25 wants to make any preliminary comments before claimants

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1 discuss it?

2 THE COURT: No. Just go ahead. I would be
3 interested to get your perspectives here about what is
4 left.

5 MR. ANGSTREICH: Well, Your Honor, this is Steve
6 Angstreich. We are preparing and will be submitting a
7 motion for rehearing en banc on the basis of certain
8 positions that we think need to be advanced, and depending
9 upon that determination, should we be denied or should the,
10 should we get it and the rehearing affirmed, it's our
11 intention to come back to Your Honor and seek a
12 certification outside the scope of issues relating to
13 consumer fraud predicated upon reliance aspects, and we
14 will bring that to the Court's attention as we proceed with
15 the rehearing, the reargument.

16 THE COURT: Your plan right now is to file a
17 motion for a rehearing and for the Court to hear it en
18 banc, correct?

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

20 THE COURT: Okay.

21 MR. CAPRETZ: And we have apparently 15 days to

22 do that.

23 THE COURT: Okay. Well, that sounds good. We

24 will wait to hear the result of that then before we take

25 any further action. I did want to ask about the one case

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1 that we had tentatively set on for trial. Is there any
2 update on that?

3 MR. CAPRETZ: Well, there is. You're probably
4 referring to the Jurgena vs. St. Jude Medical, a case that
5 is one of ours?

6 THE COURT: Yes.

7 MR. CAPRETZ: And I reported to Lynn Holden, your
8 calendar clerk, yesterday that we had settled that case
9 this week, actually to my chagrin, and it was before Judge
10 Solum, whom we had chosen as the mediator, and we had a
11 meeting or mediation earlier this week. The matter is now
12 being consummated. Mr. Stanley has prepared a draft of a
13 settlement agreement which I have approved after discussing
14 a few issues with him.

15 It has been sent to the plaintiffs for execution,
16 and we assume that settlement will be completed.

17 THE COURT: Okay. That sounds good. You
18 mentioned there are some discovery issues, Mr. Capretz?

19 MR. CAPRETZ: Well, just a couple of small
20 points. First, we understand that there is a data freeze
21 from the AVERT study as of January 8th, and I can't

22 remember the gentleman's name. There was an e-mail
23 indicating that St. Jude Medical was or whomever was
24 redacting patient information, privileged and confidential
25 information, and then that data would be transmitted or

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1 submitted to us, and I would be interested in hearing when
2 we might reasonably expect that to be received.

3 The second issue concerns an MDL trial
4 preservation depo, a Dr. Greg Wilson, who is one of the
5 generic experts. We're trying to -- it's a nonissue right
6 at the moment. We're trying to find a way to get the
7 testimony, but I understand there were some problems
8 getting it done in a timely fashion because his testimony
9 was assumed to be needed in a trial in a matter called
10 Daugherty vs. St. Jude Medical, which is a matter which was
11 before the Court, and it was remanded back to the Arkansas
12 court for trial.

13 That trial is now scheduled to start on May 7th
14 in federal district court in Hot Springs, Arkansas. At
15 this point in time the Dr. Wilson depo is not anything we
16 need the Court's guidance on because we had little
17 differences of opinion as to the timing of the depo and
18 whether or not it was feasible to put a trial protection
19 video depo together within the short time frame we have,
20 but it looks as though now we might be able to work around
21 that.

22 The other question, we would like to see if we
23 can get a response from St. Jude Medical on the latest
24 AVERT data.
25 MR. KOHN: This is Steve Kohn for St. Jude. I

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1 know that the University of Pittsburgh counsel are at work
2 doing the redactions. I don't have a precise time frame,
3 but the best information I have at this moment is it will
4 be in the next three weeks, no more than 30 days before we
5 will produce the database that you're talking about.

6 If it is longer than that, I will let you know,
7 but that's what it appears to be at this point.

8 MR. ANGSTREICH: Your Honor, this is Steve
9 Angstreich. We have received some other data on AVERT that
10 Steve Kohn had agreed to provide to us, and we're going
11 through that. There were some questions that were raised.
12 My partner Mike Coren and Dave Bickham are working the
13 details out and making certain that there are no issues.
14 So I really don't perceive a discovery problem of any
15 nature existing at this point.

16 THE COURT: Okay. Sounds good. Mr. Kohn, did
17 you have anything else on that?

18 MR. KOHN: No. I agree with what Mr. Angstreich
19 said. I think we're going to work all this out, and we'll
20 have all the data produced hopefully within the next 30
21 days.

22 THE COURT: Okay. The remaining individual
23 cases, how many remaining individual cases do we have? I
24 just want to make sure my record is clear on that. Does
25 anyone have a list in front of them?

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1 MR. CAPRETZ: I do not. We did have the
2 question, but I'm not sure what the status is. I'm not
3 sure anyone on the call has, on the remand of that
4 Hasenbank and Wilkinson matter. That was a matter on the
5 agenda at the February 5th hearing, but I'm not sure.

6 Steve, you would probably be the most
7 knowledgeable of other cases, but I don't know if you're --

8 MR. KOHN: I don't have a list in front of me,
9 either, but I don't recall seeing the remand order yet on
10 Hasenbank and Wilkinson. However, those cases we discussed
11 last time, and everyone agreed they should be remanded. As
12 far as I know, other than those two cases, all of the
13 remaining cases in the MDL, the individual cases, are all
14 class representatives.

15 MR. ANGSTREICH: I believe that's correct.

16 THE COURT: Does that include Sanchez?

17 MR. CAPRETZ: Yes. Sanchez is a, well, Sanchez
18 will be. That's a good point. Sanchez is one amongst
19 several that we are in discussions with Mr. Kohn's office
20 to see if they might be resolved, but Sanchez has an
21 individual claim in addition to being a class rep, as does

22 Ms. Bailey, Beatrice Bailey. I'm not sure if I'm missing
23 any others.

24 There are about four or five miscellaneous claims
25 that our office has that two or three of them were class

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1 reps, and my understanding is that two offices are working
2 to see if we can come to some accord on these particular
3 claims of gathering the evidence of the medical conditions,
4 as I recall.

5 THE COURT: Is McFadden included in those, too,
6 Mr. Capretz?

7 MR. CAPRETZ: McFadden, I thought, I could stand
8 to be corrected, but I thought McFadden was dismissed.

9 MR. STANLEY: I thought I saw a dismissal.

10 MR. CAPRETZ: I'm pretty sure --

11 MR. KOHN: I'm sure McFadden had been dismissed.
12 I'm not sure whether the paperwork reached the MDL court
13 yet, however.

14 THE COURT: The one starting in Arkansas, is that
15 the Daugherty case?

16 MR. KOHN: That's correct.

17 THE COURT: So Bailey and Sanchez are two that
18 you're talking about, and then you mentioned Hasenbank and
19 Wilkinson earlier. I think that's all I have on my list.

20 Anything happening in Ramsey County?

21 MR. CAPRETZ: Yeah. Steve, do you want to talk

22 about that?

23 MR. ANGSTREICH: Your Honor, there are eight

24 cases. The Court has, the Court has ruled on certain

25 motions that were filed relating to consolidation of them

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1 and trying to try them as consolidated cases, and the Court
2 has denied that motion. So we're trying to schedule the
3 first trial within a reasonable period of time from now.

4 There is two mediations, two cases that are going
5 to be mediated with Rick Solum on April 22nd. The hope is
6 that we can get them resolved and maybe resolve the
7 remainder of them. We have argued the class certification
8 motion in O'Neil. My gut tells me that in light of the
9 Eighth Circuit's ruling, we will probably not be certified
10 by the state court, despite the fact that the analysis is
11 not really the same, and there really isn't a lot else
12 going on in Ramsey County that we're involved in.

13 THE COURT: Okay. Mr. Kohn, Mr. Stanley, did you
14 have anything on the Ramsey County stuff?

15 MR. KOHN: No, Your Honor. I think that's a
16 correct assessment. We are optimistic as well that the
17 mediations on the 22nd will be successful.

18 THE COURT: Anything in Canada?

19 MR. CAPRETZ: I will defer to Mr. Kohn on that.
20 I know the case is pending trial, but it's more than
21 several months away. Steve, would you pick up on that?

22 MR. KOHN: It's more than several months. The
23 Ontario class action was scheduled to be tried beginning in
24 March of this year, and it has now been put over to March
25 of 2009, so there is a fair amount of discovery going on

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1 with respect to expert discovery.

2 The British Columbia class, there was a tentative
3 settlement reached which is now scheduled to be approved by
4 some court in the summer. In the meantime, there is a
5 number of other complications, for lack of a better word,
6 that have arisen with respect to whether the Province of
7 British Columbia does or does not have subrogation rights.

8 So those issues are going to have to be
9 adjudicated by the Court as well. The other classes in
10 Quebec, I understand there is no activity in that province,
11 and that's the report from Canada as it now stands.

12 THE COURT: Okay. Anything else we need to talk
13 about today?

14 MR. ANGSTREICH: I don't think that there is.

15 THE COURT: Okay. Well, let's plan another
16 telephone conference here, maybe a couple months down the
17 way. Would that seem to make sense?

18 MR. CAPRETZ: It would.

19 MR. ANGSTREICH: Yes.

20 THE COURT: If we're maybe early June, maybe
21 somewhere around the first week in June or second week in

22 June?

23 MR. CAPRETZ: I think maybe the second week would

24 give us a little more time to see what might develop with

25 the appellate court.

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1 THE COURT: Sounds good. Any day that doesn't
2 work for anybody, the second week, the week of the 10th?

3 MR. JACOBSON: Joe Jacobson, Judge. I don't
4 think I need to be a part of it. I'm not going to be in
5 the country then. Other lawyers can handle it. We don't
6 need five lawyers from our side.

7 MR. ANGSTREICH: That week is fine.

8 MR. KOHN: Any day that week is fine for me, Your
9 Honor. Steve Kohn.

10 THE COURT: Shall we suggest Wednesday?

11 MR. CAPRETZ: What date?

12 THE COURT: Wednesday, June 11th.

13 MR. ANGSTREICH: That's fine.

14 THE COURT: Let's set, let's see. How about,
15 shall we set two o'clock again?

16 MR. ANGSTREICH: Two o'clock central time, Your
17 Honor?

18 THE COURT: Two o'clock central.

19 MR. CAPRETZ: Your Honor, my line for some reason
20 disconnected. You folks went on the other side of the
21 moon. I didn't hear anything until we asked the date of

22 Wednesday --

23 MR. ANGSTREICH: June 11th.

24 THE COURT: And two o'clock central.

25 MR. CAPRETZ: That's fine with me.

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1 THE COURT: Okay. Sounds good. We will set it
2 for that time. Anything comes up before then, just let
3 Lynn know, and we can do an earlier telephone conference if
4 necessary.

5 MR. ANGSTREICH: Very good.

6 MR. CAPRETZ: Thank you for your time.

7 MR. KOHN: Thank you, Your Honor.

8 THE COURT: Thank you, Counsel.

9 * * *

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

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16 Certified by:
Kristine Mousseau, CRR-RPR

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