

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
October 5, 2004
11:10 A.M.

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

(TELEPHONE STATUS CONFERENCE)

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1 (In chambers.)

2 THE COURT: Hi, everyone. Just for the record,
3 Ms. Mousseau is here. This is In re: St. Jude Medical,
4 Incorporated, Silzone Heart Valves Products Liability
5 Litigation, civil case number 01-1396. We have a telephone
6 status conference today.

7 Let's go through counsel noting their
8 appearances, starting with the plaintiffs.

9 MR. CAPRETZ: Jim Capretz for the class.

10 MR. ANGSTREICH: Steven Angstreich for the class.

11 MR. RUDD: Gordon Rudd for the class.

12 THE COURT: For defendants?

13 MR. KOHN: Steven Kohn for St. Jude.

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

15 MS. VAN STEENBURGH: Tracy Van Steenburgh for
16 St. Jude Medical.

17 MS. PORTER: And Liz Porter for St. Jude Medical.

18 THE COURT: Okay. Very well. Let's move to the
19 agenda. I have an agenda here that has seven items.

20 Mr. Capretz, are you leading us off?

21 MR. CAPRETZ: Yes, Your Honor. Just mostly

22 today's conference will be an update, and we need some
23 instruction or direction, I suppose, on a few of these
24 issues, but the first item we had was the status of the
25 appeal.

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1 While in conference, the Court probably received
2 a copy of the notice concerning the appeal. I can run
3 through it briefly. The transcript is due on October the
4 12th. The appendix and the brief for the appellant with
5 addendum is due on October the 22nd.

6 The appellee and the class has until November the
7 22nd, and then the reply brief of the appellant is due
8 December the 6th. Everything else remains the same. Both
9 parties have filed the forms they need to file, and we're
10 just waiting for time now until we get the briefing.

11 I don't know if anyone else wants to add to that.

12 THE COURT: Has the circuit indicated any
13 expediting of this process at all, or are they following
14 the typical process?

15 MR. CAPRETZ: I don't know. I don't have an
16 answer on that. I don't know. Gordon or Tracy, do you
17 have any information? I would have thought that 23(f)
18 would by its nature get that expedited process, but I do
19 not know, to be honest.

20 MS. VAN STEENBURGH: I have not seen that it's on
21 an expedited basis.

22 MR. STANLEY: Right. I would agree with that.

23 THE COURT: Thank you. It's good to have an

24 indication of the schedule, and we'll keep a close eye on

25 that.

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1 MR. CAPRETZ: The next item in the sense of what
2 we're doing with the discovery deadlines, and the Court is
3 seeing the PTO's and signing the PTO's, I believe, that
4 have been tendered to it concerning the scheduling of what
5 we're doing, the general thesis being that we're staying
6 the case in chief as far as the class actions are concerned
7 until we see what the briefings show.

8 And also we're moving forward with the individual
9 cases because we -- it's part of our duty as the class sees
10 it to move forward and get these individual cases in a
11 position of being remanded to the court of original
12 jurisdiction.

13 A little further in this report, Mr. Stanley can
14 give us an update on mediations. We know some have
15 resolved in the latter half. Some still remain on the
16 docket, and some have yet to be mediated, but we're quite
17 confident that some of these matters will proceed because
18 St. Jude Medical has indicated they do not wish or intend
19 to mediate certain cases.

20 So we can report on the deposition schedule, and,
21 Steve, do you want to pick up on that?

22 MR. ANGSTREICH: Sure.
23 MR. CAPRETZ: Okay.
24 MR. KOHN: Which Steve are you talking about?
25 MR. CAPRETZ: I guess Steve A.

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1 MR. ANGSTREICH: Okay. There are four
2 depositions, two of which we have gotten dates for. One is
3 Mr. Shepherd, the other is Mr. Hosek. We took Dickie
4 Fraasen-Brader's deposition on the 28th. There are two
5 others that David Stanley is supposed to be getting us
6 dates for, and there are three depositions of the AVERT
7 doctors that Michael Coren is working on scheduling with
8 their counsel.

9 We're still waiting to get the documents from the
10 last go around and the report that I got, and next by the
11 way we'll delay the depositions, but the last report we got
12 was that we're still waiting at least an estimated 30 days
13 to get the updated document production despite the fact
14 that we've asked for this material back in the summer.

15 And the position that we got was that absent a
16 court order, that was the timetable they were going to come
17 forward with. Unfortunately, we just found this out
18 yesterday, so we may have to come before Your Honor with
19 a -- seeking a court order to get this expedited if Steve
20 Kohn can't assist us in getting the materials, but that's
21 the status of the depositions right now.

22 THE COURT: Which materials are you referring to,

23 Mr. Angstreich?

24 MR. ANGSTREICH: These are the latest go around

25 of AVERT data, and we have been talking about that with

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1 counsel back in the summer. Summer wasn't that long ago,
2 was it?

3 If we go to September 22nd, probably in July and
4 August were the discussions, and we were told as of
5 yesterday that the estimate is still another 30 days, and
6 without those documents, we can't get them to our experts,
7 and we can't really be in a position to schedule the three
8 depositions that we need.

9 We worked out in a sense the fact that if Your
10 Honor remembers at one of the status conferences, I pointed
11 out that we were trying to get the data in an SAS database,
12 and we were advised that we can't get it that way because
13 they will not give us the information with the patient's
14 names on it. So they're going to redact that information.
15 That's still something that I think is about two months old
16 now.

17 But those were the discussions with, actually it
18 was this morning, Mr. Coren's e-mail said, with Jeannine
19 Bertig who is counsel. So, again, I would ask Steve Kohn
20 to maybe intercede a little bit if he could to get them to
21 speed up the process.

22 THE COURT: Mr. Kohn?

23 MR. KOHN: This is Steve Kohn, and I have spoken

24 to Jeannine Bertig, and my understanding is as follows:

25 Number one, the data has already been provided to

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1 plaintiffs in Excel format by our office with the names
2 redacted, so they have the data, and it's the same data
3 that we have sent to our experts.

4 What they want apparently is in some other
5 computer format, and the counsel for the University from
6 this morning is going to make their best efforts to move as
7 quickly as possible to provide them with that information
8 in the so-called SAS format with the patient's names
9 redacted because I understand for the first time that they
10 have reached agreement now that the patient's names can be
11 redacted.

12 So I will give them a call after this conference
13 and see if I can move it along any faster than 30 days, but
14 based on my conversation this morning, it's going to take
15 some period of time to redact those names and put it in a
16 form that counsel wants it, but in the meantime, they do
17 have the data.

18 Whether they can use it or not, I don't know, but
19 certainly our experts are able to use it, so I'm assuming
20 they can get some benefit and get started on the process,
21 at least until we are able to get it in the SAS format.

22 MR. ANGSTREICH: Excuse me, Steve. According to
23 the e-mail I have, the AVERT recorded document production
24 is what she says will still take another 30 days. I don't
25 believe that the documents that you have or that you have

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1 supplied to us in Excel form include that, but I will
2 double-check.

3 MR. KOHN: No. What we gave you was the actual
4 statistical data from the AVERT study. We don't have, and
5 it has not been produced to us, any of the documents that
6 you're talking about.

7 MR. ANGSTREICH: Okay. We have asked for the
8 AVERT updated documents, whatever that is.

9 MR. KOHN: I have to find out from Michael Coren
10 what that means. That's the first I've heard about that.

11 THE COURT: Well, why don't you confer on this
12 matter. Hopefully this can move along quickly so that the
13 depositions can be scheduled soon.

14 MR. CAPRETZ: Your Honor, appreciate the
15 importance of it is that part of getting these individual
16 cases in a position to be remanded is, we need to get the
17 generic experts taken so that they can be used and go
18 through whatever procedures we need to clear those experts
19 for use at the prospective district courts, so the whole
20 process is held up.

21 While it might not impact immediately our class

22 action proceedings, it certainly does negatively impact the
23 attorneys waiting to get their cases remanded.

24 Okay. The next item we have is the report on the
25 Canadian litigation and Ramsey County litigation.

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1 THE COURT: Excuse me for a second, Mr. Capretz.

2 MR. CAPRETZ: Sure.

3 THE COURT: Mr. Stanley, did you want to report
4 on the mediations?

5 MR. STANLEY: Sure, Your Honor. I'll give sort
6 of the same report I gave at the last status conference.
7 If you exclude all the cases that have now been dismissed
8 or we have commitments for a dismissal, there are 26
9 pending cases in the MDL. Four of those cases are pending
10 as simply as class representatives, medical monitoring
11 class representatives. That includes the Maronen case.

12 There are eight cases that St. Jude will not
13 mediate because they don't feel there is any compensable
14 injury. There are nine cases set for mediation, and then
15 there are basically five cases out there that have -- that
16 are kind of failed mediation in that there are no current
17 plans for another mediation.

18 THE COURT: The nine that are set, are they
19 coming up soon, Mr. Stanley?

20 MR. STANLEY: Let me rephrase that. Nine that
21 are either set or will be settled, and there are a couple

22 this month and a couple in November. I don't have the set

23 not settled.

24 MR. ANGSTREICH: Your Honor, this is Steven

25 Angstreich. Does that include the ones that we're

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1 scheduling?

2 MR. STANLEY: Yeah, only two of the cases that
3 are in your group are in the MDL.

4 MR. ANGSTREICH: Right.

5 MR. STANLEY: Yes. That includes those two
6 cases.

7 MR. ANGSTREICH: Okay.

8 THE COURT: Okay. Very well. Let's move on to
9 the next item.

10 MR. CAPRETZ: The Canadian litigation and Ramsey
11 County litigation are related. The last information I had
12 was just several days ago in the Canadian litigation that
13 if the Court remembers, St. Jude Medical moved for the
14 right to appeal the class certification, and that matter
15 has been argued and is still being considered by the Court,
16 I believe.

17 Steve Kohn, can you verify that?

18 MR. KOHN: I don't think there has been any
19 change as far as I know.

20 MR. CAPRETZ: Right. And the only other
21 development is, there was a class action filed in Quebec

22 province. I think the Court is aware of that. The Court
23 certified the class, it's my understanding. The Court
24 certified the class in order that notice be sent out in
25 that particular litigation. At least that's the

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1 information I have.

2 Steve, do you have --

3 MR. KOHN: That's correct.

4 MR. CAPRETZ: Ramsey County has a little over 20
5 cases on file. Robins Kaplan we notice is back in the
6 game. We have a case set for trial in March of 2005 that
7 seems to be the first one set for trial in the group that
8 is pending before Judge Gearin, and matters are continuing
9 to move along in their due course with the parties agreeing
10 to various schedules.

11 MR. ANGSTREICH: Your Honor, in that regard, the
12 O'Neil matter, as I understand it, has been remanded back,
13 and we will be moving forward, as I understand it, with the
14 renewed motion to dismiss or a motion to dismiss in state
15 court.

16 Is that correct, Mr. Kohn?

17 MR. KOHN: That is.

18 MR. ANGSTREICH: And we will be responding, so
19 that's the status of that at this point.

20 THE COURT: Okay. Sounds good.

21 MR. ANGSTREICH: Your Honor, there is also a half

22 a dozen or more Canadian individual cases in state court
23 which will be the subject, hopefully, of mediation. We
24 have sent packages and information on 10 cases to Dave's
25 family, so hopefully we will have those mediated as well.

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1 THE COURT: Are those cases in which counsel from
2 this case are representing individuals?

3 MR. ANGSTREICH: Yes, Your Honor.

4 THE COURT: Okay. Anything else on Canada and
5 Ramsey County?

6 MR. CAPRETZ: I think that's it, Your Honor.

7 THE COURT: Okay. Let's move on to the next item
8 then.

9 MR. CAPRETZ: We have several housekeeping
10 matters. This is principally involving David Stanley and
11 myself, but, David, you had a couple of points. It falls
12 under the umbric of court instruction and direction when
13 enforcing the respective parties' rights during the
14 discovery.

15 There are several issues that as the Court might
16 see from the agenda that have arisen. That will probably
17 take a third party resolution, obviously Your Honor or a
18 special master. They're not that major, and I don't think
19 they'll be that time consuming.

20 The parties have worked together professionally
21 and courteously for the most part, but we have some

22 differences of opinions, and, David, did you want to bring
23 out your issues first?

24 MR. STANLEY: Yeah, Your Honor, just the first
25 item A in the Sliger case, it has some urgency only because

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1 I took the deposition of Dr. Graham back in June, took it
2 and completed it, and now the plaintiffs have come back and
3 noted that under the federal rules, they're required to
4 either obtain my stipulation or seek court permission to
5 redepose a witness.

6 That hasn't happened. I've asked Mr. Jacobson to
7 take the deposition off calendar, and they refused to do
8 it, and the depo is set for October 20th. So I would like
9 to try to get that issue resolved as soon as possible and
10 request, you know, what's the best way to get it resolved
11 as soon as possible.

12 THE COURT: Who has that one for the plaintiffs?

13 MR. STANLEY: Mr. Jacobson.

14 THE COURT: Okay.

15 MR. STANLEY: And it's a situation, Your Honor,
16 where the plaintiff, Mrs. Sliger, we were informed, I think
17 she died 45, 30 to 45 days ago, and they're in the process
18 of substituting in new plaintiffs in a wrongful death case.
19 We haven't completed our case specific discovery, and it
20 seems that, you know, the reason they want to notice this
21 depo I think is to preserve his testimony for trial because

22 he won't be available since he's in St. Louis, and the
23 trial in this case will be in Minnesota.

24 It seems to make sense to push this depo down the
25 road when discovery is finished and we have substituted in

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1 a new plaintiff and gotten all that done. So again, I've
2 tried to work it out with Mr. Jacobson, and I haven't been
3 able to do that, and the deposition sort of remains
4 noticed.

5 THE COURT: Okay.

6 MR. CAPRETZ: Your Honor?

7 THE COURT: Yes.

8 MR. CAPRETZ: This is Jim Capretz. I don't have
9 any input on that, except it's unfortunate Mr. Jacobson is
10 not present to argue his position, but maybe if the Court
11 indulges, we could go through. I think we have three or
12 four of these, and the Court could get to see the totality
13 of what is being dealt with and give us advice and
14 direction on these.

15 THE COURT: Very well.

16 MR. CAPRETZ: Rather than just responding to them
17 individually. I mean, I don't care but I just thought it
18 might be helpful.

19 THE COURT: That's fine. Go ahead.

20 MR. CAPRETZ: David, do you have another one?

21 MR. STANLEY: Sure. The second one, these are

22 three MDL cases where we have propounded written discovery,
23 interrogatories, requested production of documents. The
24 responses in these cases, in all three of these cases, were
25 due either in June or July.

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1 We've tried to meet and confer and just haven't
2 been successful in getting any type of response in these
3 three cases. So, yeah, that would be a fairly simple, you
4 know, matter to resolve.

5 The third matter involves Mr. Capretz's cases,
6 and it's my understanding that we have been involved in a
7 meet and confer with him and have agreed to produce
8 additional stuff. I'm not sure if that's even ripe for
9 discussion at this point.

10 MR. CAPRETZ: Well, David, yes, it is in a sense
11 that, yes, we did get -- we did meet and confer, and your
12 office did respond to us and did offer to provide certain
13 of the documentation and Answers to Interrogatories we were
14 seeking, but there is still points of disagreement.

15 So I am not going to fetter the Court with
16 details of that now, but I'm saying that there are points
17 that we will need direction on, I would think, and so the
18 Court is going to have to intercede.

19 So I think it fits within a pattern of the first
20 two in the sense that we just need to know what procedures
21 the Court wishes the parties to follow. Should we just

22 provide as if we're in an individual district court with
23 the federal rules of procedure, or how might the Court want
24 to address these?

25 THE COURT: The second matter, the Wood, Jones

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1 and Maronen cases, whose cases are those? Are those, what
2 counsel are involved in those cases?

3 MR. STANLEY: I believe those are Mr. Murphy's
4 cases.

5 THE COURT: Okay. Well, I think that it sounds
6 like in all three cases there has been at least some
7 meeting and conferring concerning the dispute, am I
8 correct?

9 MR. STANLEY: There has, Your Honor. There has.

10 THE COURT: Okay. And the third one may not yet
11 be ripe because there has been a response and we don't
12 really have a reply to that yet from Mr. Capretz probably
13 because he hasn't had a chance to go through to see exactly
14 what the updated response is.

15 Is that correct, Mr. Capretz?

16 MR. CAPRETZ: Well, we have the responses. I
17 mean, we're in a position to say, thank you for giving us
18 the additional information we were seeking, but there is
19 still information that they're suggesting that, you know,
20 they're not ready to turn over, and so we're going to need
21 specific answers to those.

22 I mean, I guess we could meet and confer further,
23 but I suppose we're at a loggerhead based on what I
24 understand the situation to be.

25 THE COURT: Well, why don't we do it this way:

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1 If any of them are ready for the Court to review and make a
2 determination, I wouldn't mind just receiving a letter
3 brief from the proponent and then, you know, within ten
4 days a reply letter brief or responsive letter brief, and
5 then I'll just resolve it, and if I can resolve it before
6 our next hearing, I'll do that.

7 MR. STANLEY: Thank you, Your Honor. I think
8 that that would work out great, Your Honor, but with
9 respect to the deposition of Dr. Graham, the problem is,
10 it's noticed for the 20th of October. That may not give us
11 sufficient time to get it briefed before that time.

12 Again, our position is, it was their burden to
13 bring a motion, and now we're sort of forced to bring a
14 protective order.

15 THE COURT: What we can do on that one is perhaps
16 set up a special telephone call with you and Mr. Jacobson.

17 MR. STANLEY: Okay.

18 THE COURT: We can do that probably for early
19 next week.

20 MR. STANLEY: Okay. I will check and see what
21 Joe's schedule is.

22 THE COURT: Just work with Ms. Gleason on that.

23 MR. STANLEY: Okay.

24 THE COURT: Okay. Anything else on these issues?

25 MR. CAPRETZ: Yes, Your Honor. On the generic

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1 right of the individual plaintiffs to seek interrogatories,
2 as the Court is well aware, there is a 25 limit rule. I
3 believe we extended that in the MDL as -- with other
4 circumstances, but I'm advocating that we have the need to
5 do the same for the individual cases to the extent that
6 certain of the affirmative defenses, for example, St. Jude
7 Medical has raised in various individual claims run from 15
8 to 25, I'd say, and even on a contention basis, the limit
9 of 25 interrogatories would be unduly restrictive.

10 I've had a meet and confer with Attorney Kohn
11 some weeks ago. I offered as a compromise, I think I said
12 20 -- Steve, correct me if I don't remember this right --
13 and he offered, perhaps agreed, to 10 more interrogatories.
14 To the best of my recollection, that's how we left it.

15 Steve, is that --

16 MR. KOHN: That's my recollection as well.

17 MR. CAPRETZ: This doesn't apply to any cases,
18 but cases any individual plaintiffs have in the MDL with
19 the right to go beyond the 25 at least by 10, but we had
20 argued for, put a necessity for 20 citing all these
21 affirmative defenses that are raised by St. Jude Medical.

22 THE COURT: Mr. Kohn?

23 MR. KOHN: Having looked at the first set that

24 Mr. Capretz sent us, it seemed to me these are boilerplate

25 form interrogatories that don't really advance the ball or

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1 help anyone. They just create a lot of work for no
2 particular reason, which is why I suggested he narrow down
3 the set to the ones he really cared about instead of
4 something what looked like came out of a form book.

5 That's why we went back and forth. I suggested
6 10 additional was more than enough, and he thinks it should
7 be 20, but that's the essence of the dispute.

8 MR. CAPRETZ: In our -- I don't have the
9 opportunity -- I don't have Attorney Wensink on the phone,
10 but she spent a considerable amount of time and responded
11 in most instances to the interrogatories and motions
12 produced that we submitted.

13 They're not canned form interrogatories, although
14 some may reek of that ilk, but for the most part, some of
15 them are contention interrogatories, so, again, those are
16 just examples of the situation that we're facing. We're
17 speaking on behalf of all plaintiffs in the MDL and their
18 right to ask for further interrogatories.

19 THE COURT: Well, this is in addition to the 25,
20 that is?

21 MR. CAPRETZ: Yes, sir.

22 THE COURT: Why don't we start with 10 more, and
23 if in any individual case there is a need for more than
24 that, you can raise it at the next status conference on
25 behalf of whoever is involved in that particular case.

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1 MR. CAPRETZ: Fair enough.

2 THE COURT: Okay. Okay. We already did the
3 mediation update. Anything else that we should discuss
4 today?

5 MR. CAPRETZ: Not for myself. I don't know if
6 anybody else has anything.

7 MR. KOHN: I just wanted to mention one
8 additional fact, and that is, there are a few cases that
9 are just now being transferred to the MDL which we are just
10 in the process of getting questionnaires, and we have no
11 medical records.

12 So it's possible that at some point down the road
13 that we're going to want to, once we get that information,
14 either schedule those for mediation or adjust the discovery
15 schedule in a way that will allow us to complete discovery
16 because it's not going to be possible to complete the fact
17 discovery in those newer cases.

18 THE COURT: That's fine. Just keep us posted on
19 that.

20 MR. KOHN: Okay.

21 MR. ANGSTREICH: Your Honor, this is Steve

22 Angstreich, just one other matter, but I assume we're going
23 to be dealing with Mr. Solum on it. We got some errata in
24 on Mr. Ladner's deposition. I'm sending Mr. Stanley a
25 letter addressing certain of the changes in the testimony

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1 which we believe make it substantive -- significant
2 substantive change which had he testified that way we would
3 have spent some time questioning about, and if there is a
4 dispute, I just wanted Your Honor to know that we will take
5 that to the special master.

6 THE COURT: Yeah, that should be taken to
7 Mr. Solum, and he would be prepared to resolve that if
8 there is something that needs to be resolved. We need also
9 to set a date for our next hearing.

10 MR. CAPRETZ: Yes, Your Honor. Let's see. The
11 week of November 16th, 15th, 16th, what does that week look
12 like for purposes of setting aside some time?

13 MR. ANGSTREICH: Your Honor, that entire calendar
14 week is open for me.

15 David Stanley?

16 MR. STANLEY: Yes.

17 MR. ANGSTREICH: If we could try to shoot for the
18 mediations that week?

19 MR. STANLEY: Mediation is already set for
20 November 10th.

21 MR. ANGSTREICH: Okay.

22 MR. CAPRETZ: This is Capretz, and it's open with

23 me.

24 MR. KOHN: Steve Kohn, it's okay for me, Your

25 Honor.

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1 THE COURT: If we look at maybe Tuesday the 16th.

2 MR. ANGSTREICH: Fine.

3 MR. CAPRETZ: That works. What time?

4 THE COURT: What time would you all prefer?

5 MR. KOHN: Will this be in person or telephonic?

6 THE COURT: I think we should do it in person
7 unless it's decided when we get close to the date that the
8 issues are not significant enough to warrant everyone
9 coming in.

10 MR. KOHN: Okay.

11 THE COURT: We should set aside the time for an
12 in person hearing but with the ability to pull back from
13 that if it just doesn't look like there is enough to argue
14 about it.

15 MR. KOHN: If it's in person, my preference would
16 be 9:00 or 9:30 start time.

17 MR. CAPRETZ: I think we agree with that. Steve
18 Kohn, Steve Angstreich, do you have input on it?

19 MR. ANGSTREICH: I have no problem with it. I
20 come in the evening before, so that way we should be done
21 to catch earlier flights than later flights.

22 MR. CAPRETZ: All right.
23 THE COURT: Let's do 9:30 on the 16th then.
24 MR. ANGSTREICH: Perfect.
25 MR. CAPRETZ: Okay.

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1 THE COURT: Okay?

2 MR. CAPRETZ: Well, thank you very much for your
3 time.

4 THE COURT: Anything else today?

5 MR. CAPRETZ: That should do it.

6 MR. ANGSTREICH: That should do it.

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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Dated: October 16, 2004

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