

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
November 16, 2004
10:30 A.M.

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

(STATUS CONFERENCE VIA TELEPHONE)

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1 (In chambers.)

2 THE COURT: Hello, everyone.

3 MR. ANGSTREICH: Good morning, Your Honor.

4 THE COURT: Just for the record, because Kristine

5 is here with us, this is being recorded. Okay. This is

6 St. Jude Medical Silzone Heart Valve Products Liability

7 Litigation, multi district litigation docket number 1396.

8 We're here for a status conference today, November 16th,

9 2004.

10 Let's have counsel note their appearances

11 starting with the plaintiffs.

12 MR. CAPRETZ: Capretz for the plaintiff class.

13 MR. ANGSTREICH: Steven Angstreich for the
14 plaintiff class.

15 MR. RUDD: Gordon Rudd for plaintiff.

16 MR. JACOBSON: Joe Jacobson for plaintiff.

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

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

19 MS. VAN STEENBURGH: Tracy Van Steenburgh for
20 St. Jude Medical.

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

22 THE COURT: Okay. Very well. We have everyone

23 identified?

24 MR. CAPRETZ: I think so.

25 THE COURT: Let's proceed, Mr. Capretz.

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1 MR. CAPRETZ: Yes, sir. Thank you on behalf of
2 the class for doing this telephonically. As the Court can
3 see, this is a light agenda. We appreciate the opportunity
4 to do it telephonically. First of all, we have the status
5 of -- I hope we're not disconnected. Big brother is
6 watching us.

7 THE COURT: Maybe we should start over again.

8 MR. CAPRETZ: Sounds like it's connected to
9 another line in the court.

10 THE COURT: Must be. I'm not sure what is going
11 on. Let's proceed, and if I get disconnected from you,
12 we'll just call back.

13 MS. VAN STEENBURGH: Okay.

14 MR. CAPRETZ: First is the Eighth Circuit appeal.
15 As the Court may be aware, St. Jude Medical has filed their
16 opening brief on their behalf. Two entities have
17 petitioned to file amicus briefs, the Chamber of Commerce
18 of Minnesota and the products liability advisory council.

19 To the best of my knowledge, we don't have any
20 word as to whether or not the Court will entertain those
21 petitions.

22 THE COURT: What's the second one, Mr. Capretz?

23 MR. CAPRETZ: The product liability advisory

24 council.

25 THE COURT: Okay.

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1 MR. ANGSTREICH: Your Honor, this is Steve
2 Angstreich. We filed an objection to the motion of the
3 Chamber of Commerce, but not as to the other.

4 THE COURT: Oh, here we go. Let's keep going
5 until I exit.

6 MR. ANGSTREICH: Suddenly and promptly. The
7 class has, we have until the 22nd of November to prepare
8 our brief, and that's one of the reasons why it's probably
9 a good matter that we're able to do this telephonically
10 today because we're hard at work putting our brief
11 together, response brief.

12 And any people we are able -- that might want to
13 petition on our behalf or file amicus on behalf of the
14 causes of the class has until November the 29th to petition
15 the Court of Appeals for the right to file a brief. That's
16 basically it. At that point by the end of this month, the
17 briefing will have been concluded.

18 Is there anything further on that that anyone
19 knows of or wants to report on?

20 THE COURT: When is the reply due, then?

21 MR. STANLEY: I think it's December 6th, but I'm

22 not sure.

23 THE COURT: Do you have an oral argument date

24 yet?

25 MR. ANGSTREICH: No.

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1 MR. CAPRETZ: No.

2 THE COURT: Okay. Very well.

3 MR. CAPRETZ: That's it for the appeal. Again,
4 Your Honor, unless you have any other questions --

5 THE COURT: No. That's fine. Let's go on to the
6 discovery.

7 MR. CAPRETZ: All right. And I'll let my
8 colleague explain. We have several depositions scheduled
9 on behalf of the class, and we have several that we're
10 waiting for information from the AVERT study before those
11 depositions are set, and I can report that the individual
12 cases in the MDL discovery is continuing on both sides.

13 Perhaps Mr. Kohn or Mr. Stanley would want to
14 comment in that regard after Mr. Angstreich has explained
15 some pending discovery.

16 MR. ANGSTREICH: Your Honor, today we were
17 supposed to be taking Ms. Ellingworth's deposition, but
18 because the conference was put off, we're going to
19 reschedule that deposition. Mr. Solum allowed us to take
20 an additional 40 minutes of Mr. Ladner based upon his
21 errata sheet, so both of those will be scheduled shortly.

22 We still have three other depositions, one of
23 which is scheduled, two of which are not, and we're
24 awaiting completion of information from AVERT to schedule
25 three depositions.

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1 In addition to that, there are certain
2 interrogatories that were served on St. Jude Medical which
3 as of yesterday Mr. Stanley agreed would be responded to by
4 December 16th, so that we need not take the matter to the
5 special master, and that's basically where discovery is.

6 MR. CAPRETZ: Unless defense counsel wishes to
7 comment, David, or Steve Kohn?

8 MR. STANLEY: I don't think there is anything to
9 comment on.

10 MR. CAPRETZ: All right.

11 THE COURT: Okay. Sounds good. Let's go to the
12 Sliger case. Is there anything more on that?

13 MR. CAPRETZ: Yes, I think Mr. Stanley wanted to
14 speak about that as well as the item B, the motion to
15 dismiss the Jones case.

16 MR. STANLEY: Yes, Your Honor, I'll do the Jones
17 case first. We filed a motion to dismiss on October 26th
18 basically that the complaint had been filed a year ago or
19 so, and then in the interim, the plaintiff died. We wrote
20 several letters to the plaintiffs' counsel requesting him
21 to substitute a new plaintiff. Those letters went

22 unresponded to, so he didn't substitute a plaintiff within
23 the required time, so we filed a motion to dismiss.

24 I believe that that motion requires 45 days'
25 notice, so I don't think we would ask the Court to rule

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1 today on the motion. We would ask, however, that it be put
2 on the agenda for the next status conference so that we
3 address that.

4 THE COURT: Mr. Stanley, in the Jones case, is
5 all the briefing done that's going to be done then?

6 MR. STANLEY: I'm not sure, Your Honor. We filed
7 our brief, and there hasn't been any responsive brief,
8 although I'm not sure without a hearing date, I think the
9 hearing date may have some opposition, but I'm not exactly
10 sure about that. That's why we wanted to set it for
11 hearing.

12 THE COURT: Where is that case out of?

13 MR. STANLEY: I think it's out of Indiana, I want
14 to say.

15 MS. VAN STEENBURGH: That's right, David.

16 THE COURT: If we notice a hearing on counsel,
17 then we may or may not hear from them, I guess, huh?

18 MR. STANLEY: Right. That's correct. Yeah,
19 let's set that up to coincide with the next status
20 conference, and then we'll see what we get, if we have to
21 put it off or we can handle it then.

22 MR. STANLEY: Okay. And the Sliger case is sort
23 of similar. As the Court recalls from the last conference,
24 we were notified that Mrs. Sliger had died in August, and
25 we don't have any medical records relating to that, any

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1 records relating to any medical treatment this year.

2 The plaintiffs have moved to substitute her son
3 as the named plaintiff. I believe that's on the Court's
4 calendar, and but in the meantime, we need an updated fact
5 sheet, updated Rule 26, so we know where Mrs. Sliger had
6 gone for medical treatment and can evaluate the cause of
7 her death.

8 We also need, very importantly, updated medical
9 authorization because the authorizations we have now are no
10 longer any good. All of this, we have been in the midst of
11 deposition discovery which we stopped when we learned that
12 Mrs. Sliger had died, and what we requested from
13 Mr. Jacobson's office is a 90-day extension on the current
14 discovery deadline so we can get all of this updated
15 information and updated authorization to go get the record
16 and presumably complete our deposition discovery.

17 I had sent a letter to Mr. Jacobson's office a
18 week or two ago on this and asked for a response. I didn't
19 get one. That's why I put it on the agenda. Mr. Jacobson
20 and I have exchanged some correspondence that he is
21 amenable to an extension, but we just don't have it nailed

22 down. Since we're starting to get up close to the date, I
23 did want to get it nailed down.

24 MR. JACOBSON: This is Joe Jacobson. I didn't
25 see that letter. I'm not saying it didn't come in here.

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1 There is other people working on the case, but certainly we
2 have no problem with a 90-day extension on discovery in
3 this case. I wasn't aware that they wanted additional
4 medical records, but we can get that and get the additional
5 authorization for them. That's not a problem.

6 MR. STANLEY: Perfect, Your Honor. That's all we
7 want.

8 THE COURT: Okay. We'll go ahead with a 90-day
9 extension then.

10 MR. CAPRETZ: Your Honor, may I pick up on this
11 particular item?

12 THE COURT: You may.

13 MR. CAPRETZ: There are a couple of points. One
14 is, the Sliger case is a good segue to a somewhat
15 perplexing pleading I saw in the appeal for St. Jude
16 Medical. They questioned the appropriateness of the class
17 representative Bonnie Sliger and a gentleman by the name of
18 Joseph Sanchez who is a client of ours.

19 Yet, we have agreed with St. Jude Medical that
20 Mr. Sanchez does not have a medical injury. He may have a
21 subcellular injury, but he does not have a medical injury

22 that we're claiming from the St. Jude Medical Silzone
23 valve, and of course we know the Bonnie Sliger personal
24 injury class was not certified.
25 So I'm somewhat perplexed as to the argument that

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1 St. Jude Medical is making in its appeal, and the only
2 reason I raise that here is to make it clear on the record
3 that there is no personal injury class on appeal at this
4 point in time, and Mr. Sanchez, as I've told St. Jude
5 Medical, is no longer pursuing any claims as a class
6 representative in that regard. So I would like the record
7 to be clear on that.

8 THE COURT: Okay. Any response necessary,
9 Mr. Kohn or Mr. Stanley?

10 MR. KOHN: Steve Kohn. I don't think so, Your
11 Honor.

12 THE COURT: Okay.

13 MR. CAPRETZ: Okay. The other thing is, the
14 clarification of the dismissal of these cases of course, as
15 the Court is well aware, when a case is settled, it will be
16 dismissed with prejudice, but there was a technical glitch
17 on one of the class representative lawsuits that we had
18 filed by the name of Evelyn Fox.

19 That's being taken care of by the Court, but just
20 once again so the record is clear, when we dismissed the
21 class representative suits that are redundant or duplicate,

22 and right now there are still six showing on the record.
23 There were nine as of September. Those are without
24 prejudice as I think the Court and St. Jude Medical
25 understands and acknowledges.

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1 And we have an agreement with St. Jude Medical
2 that that is the circumstance, so I just call the Court's
3 attention to that. When it's a dismissal of a class
4 representative lawsuit, it's to be done without prejudice.

5 THE COURT: Yeah, I believe Ms. Gleason is taking
6 care of filing the new orders there. I think the problem
7 was incorrect draft orders had been submitted to the Court,
8 and she just went ahead and processed them rather than
9 looking back at the previous orders, so she will take care
10 of rectifying that problem in the next week or so.

11 MR. CAPRETZ: Okay. Very well. Thank you. Just
12 before we move into the individual case claims, and that
13 would be Mr. Stanley's report, Mr. Stanley was kind enough
14 to send around the circuit an updated list of the cases,
15 and the Court probably has received that as well.

16 According to our calculations as of September of
17 2004, there were nine class actions pending and 35
18 individual cases for a total of 44 cases with Ramsey County
19 state court matter having 23 pending cases.

20 As of the latest report from St. Jude Medical,
21 there are now six class cases pending and 21 individual

22 cases for a total of 27 in the MDL proceeding, and
23 apparently Ramsey County now has a total of 25 cases
24 pending, and with that, I can ask Mr. Stanley if he would
25 please report on the resolution of the MDL case claims and

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1 where we are with that.

2 MR. STANLEY: Yes, Your Honor. We have 21
3 pending cases in the MDL. That does not include the class
4 action cases. Of those, the Jones case, there is one
5 motion to dismiss. That's in the Jones case that we talked
6 about. There are six cases that the company will not
7 mediate because there hasn't been a demonstrated injury.

8 There are -- and four of the cases, mediations
9 are to be set, and in the other ten cases, ten other cases
10 did not settle in mediation, but in six of those cases,
11 we're still talking with the plaintiffs. So there is
12 really only four pending cases that didn't resolve in
13 mediation where there really were settlement discussions
14 that basically ended at this point.

15 THE COURT: Okay.

16 MR. CAPRETZ: Okay.

17 THE COURT: Good. And then is that Ramsey County
18 number accurate, Mr. Stanley?

19 MR. STANLEY: I would have to check. I didn't --
20 I didn't look at the Ramsey County numbers for this report.

21 THE COURT: Okay. Thank you. Anything else

22 there, Mr. Capretz, or anyone else?

23 MR. CAPRETZ: I think not. Just to give the

24 Court an overview of where we are, I think the individual

25 cases are moving along, as Mr. Stanley reported. There

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1 will be some that apparently will need to be remanded. So
2 we're very sensitive to that issue, and we want to continue
3 to move along in discovery where we can so that the cases
4 can be in a position to be remanded.

5 The basic problem in a sense is time delays in
6 getting those cases back to the court of original
7 jurisdiction would be with the experts, the generic
8 experts, the identification reports, any Daubert motions
9 that might be filed.

10 So it would appear that the earliest, assuming
11 everything moves smoothly and timely, the earliest we would
12 be in a position to have those reports made available to
13 counsel for individual trials would be the fall of 2005. I
14 think that might help with the big picture.

15 THE COURT: Okay.

16 MR. CAPRETZ: The next is the report on Canadian
17 litigation and Ramsey County. The Canadian litigation, as
18 I understand it, they are still waiting in Canada for a
19 ruling as to whether or not St. Jude Medical should have
20 the right to appeal the decision certifying the class.

21 There has been no new news that I'm aware of at this point

22 in time.

23 Either Steve Kohn or David have anything on that?

24 MR. KOHN: Your Honor, there is no developments

25 in Canada that I'm aware of above and beyond what we

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1 reported at the last conference.

2 MR. CAPRETZ: And there hasn't been much activity
3 other than filing and discussions between counsel as far as
4 the Ramsey County litigation is concerned. Discovery is
5 going on, we know, in certain of that litigation. Others
6 are pending discussions or mediations, but there is nothing
7 really new to report from Ramsey County that I think would
8 be of any significance or interest to the Court beyond
9 that.

10 THE COURT: Are there any trial dates set in
11 Ramsey County of matters that seem likely to go to trial
12 that aren't settleable?

13 MR. CAPRETZ: Well, we did have one of our cases
14 set for the first part of the new year, but the -- but that
15 was continued on our request because of the question of
16 generic experts. We really do need those in addition to
17 the case specific experts, so, you know, we delayed that.
18 I think it's now set for the fall of 2005.

19 THE COURT: Okay.

20 MR. CAPRETZ: Basically that's it, Your Honor,
21 unless any of my colleagues or St. Jude Medical counsel

22 have anything to add.

23 THE COURT: Mr. Angstreich, do you have anything

24 to add?

25 MR. ANGSTREICH: No, Your Honor, not at this

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1 time.

2 THE COURT: Okay. St. Jude lawyers?

3 MR. KOHN: No, Your Honor. Nothing further.

4 Thanks.

5 THE COURT: So we need to set a time for the next

6 status conference, sometime in December. Is that what

7 we're thinking about?

8 MR. ANGSTREICH: That would make the most sense,

9 Your Honor.

10 THE COURT: The other thing that I would like to

11 schedule, and it doesn't have to be scheduled at the same

12 time as the next status conference, but it can. I would

13 like to meet with the end game committee. We talked about

14 doing it today if we would have had an in-person

15 conference.

16 There is not a rush on doing it, but I would like

17 to have a meeting with the members of that committee

18 sometime that's convenient to set it up, and we could do it

19 in connection with the next status conference, but we

20 really don't have to do it then.

21 I would just like to get it on the calendar

22 before too long.

23 MR. ANGSTREICH: Okay.

24 THE COURT: In December, if we're looking at

25 about a month out --

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1 MR. STANLEY: Your Honor, if we could get it past
2 the 10th, that gives us the statutory time on the motion to
3 dismiss.

4 THE COURT: Okay. I'm looking at the, perhaps,
5 the 16th.

6 MR. JACOBSON: Your Honor, Joe Jacobson. I have
7 an argument at the Court of Appeals on the 16th. If
8 everybody else is there, I mean I feel comfortable having
9 other people in the room representing my part.

10 THE COURT: I think the 15th probably would work
11 as well. Wednesday the 15th or Thursday the 16th.

12 MR. CAPRETZ: Your Honor, I would ask that
13 St. Jude let us know if Ms. Ellingworth and Mr. Ladner
14 would be available. If we have the status conference on
15 the 15th, I would want their depositions on the 14th. If
16 we have the status conference on the 16th, I would want
17 their deposition on the 15th.

18 MS. VAN STEENBURGH: I know Mr. Ladner is not
19 available on either the 14th or 15th.

20 MR. ANGSTREICH: So the only thing we could then
21 do is to take Ms. Ellingworth the 14th or 15th depending on

22 which day the conference would be.

23 MR. CAPRETZ: Yeah, the 14th would not work for

24 me.

25 MR. ANGSTREICH: The 15th or 16th would be the

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1 conference, as I understand it, Your Honor.

2 THE COURT: Right.

3 MR. ANGSTREICH: The deposition would be the 14th
4 or 15th, if the status conference were the 16th.

5 MR. CAPRETZ: Okay.

6 MR. ANGSTREICH: The 15th and 16th are clear for
7 me.

8 MR. KOHN: Either one is fine for me. 16th is
9 probably better, but 15th would also.

10 MR. JACOBSON: If everybody is fine on the 15th
11 and I can't do it on the 16th, could we do it on the 15th?

12 THE COURT: 15th is fine. What time would you
13 prefer?

14 MR. ANGSTREICH: 9:30 would be the preferable
15 time.

16 MR. CAPRETZ: Yeah, Your Honor. I think we moved
17 to that earlier time so we could move on after that.

18 MR. ANGSTREICH: Especially if we are then going
19 to go into the end game committee discussions.

20 David, could you find out if Ms. Ellingworth is
21 available?

22 MR. STANLEY: Yes.

23 MR. ANGSTREICH: On the afternoon of the 14th?

24 MR. STANLEY: The 14th?

25 MR. ANGSTREICH: If the status conference is the

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1 15th, I prefer to do it the afternoon of the 14th. I have
2 to fly in on the 14th.

3 MR. STANLEY: I will check.

4 MR. ANGSTREICH: Terrific.

5 MS. VAN STEENBURGH: I have to say that I'm
6 afraid neither Jim Ladner nor myself are available on the
7 15th, and as to the status conference, I think that would
8 be okay if we did not attend, but if we are going to have
9 an end game committee meeting, we would like to be there.

10 THE COURT: Well, we could set that -- well, what
11 about the 16th, then?

12 MS. VAN STEENBURGH: That's fine.

13 THE COURT: Do you want to switch to the morning
14 of the 16th? Mr. Jacobson can't make that one, though.

15 MR. JACOBSON: There is enough lawyers on our
16 side that if I'm not there, we're not going to be
17 disadvantaged by me not being there.

18 THE COURT: Why don't we set it for 9:30 on the
19 16th, and if the parties wish to change that, that's
20 certainly fine. I'm away the first part of that week, but
21 I'm here Wednesday through Friday and can do it really

22 anytime.

23 MR. ANGSTREICH: Very good. Then, David, would

24 you find out if she's available on the 15th?

25 MR. STANLEY: Yes, I will.

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1 MR. ANGSTREICH: Terrific.

2 MR. STANLEY: Then, Your Honor, I can notice the
3 Jones motion for the 16th.

4 THE COURT: That's fine. We will set 9:30 on the
5 16th. Okay. Anything else for today?

6 MR. CAPRETZ: That's it, Your Honor. Appreciate
7 your time once again.

8 THE COURT: I think with respect to the end game
9 committee, I think I will have Ms. Gleason just get in
10 touch, and as the date gets closer, we will see if it works
11 to have a committee meeting then as well. If it doesn't,
12 we will set it up there not long thereafter.

13 MR. ANGSTREICH: Very good.

14 MR. STANLEY: Thank you, Your Honor.

15 MR. ANGSTREICH: Thank you, Your Honor.

16 MR. KOHN: Thank you, Your Honor.

17 THE COURT: Thank you. We will be in recess.

18 * * *

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

22

23

24 Certified by:

Kristine Mousseau, CRR-RPR

25 Dated: December 6, 2004

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