

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: ST. JUDE MEDICAL, INC.)
SILZONE HEART VALVES)
PRODUCTS LIABILITY LITIGATION)
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FILE NO. 01-MD-1396
(JRT/FLN)

Minneapolis, Minnesota
Monday, July 9, 2007
2:00 P.M.

BEFORE THE HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT JUDGE

(TELEPHONE STATUS CONFERENCE)

TIMOTHY J. WILLETTE, RDR, CRR
Official Court Reporter - United States District Court
1005 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
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1 (2:00 p.m.)

2 P R O C E E D I N G S
3 I N C H A M B E R S

4 THE COURT: Good afternoon, everyone. I think
5 we're all in the afternoon, aren't we?

6 MR. CAPRETZ: Your Honor, you just tipped the
7 scales in California.

8 THE COURT: Let's start with everyone identifying
9 themselves so we have it all for the record here.

10 MR. CAPRETZ: Jim Capretz for the class.

11 MR. RUDD: Gordon Rudd.

12 MS. LINDHEIM: Carolyn Lindheim for the class.

13 MR. WEBER: Jeff Weber for Coy Daugherty.

14 MR. JACOBSON: Joe Jacobson for the class.

15 MR. MURPHY: Pat Murphy, plaintiffs' state liaison
16 counsel.

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

18 MS. PORTER: Liz Porter, in-house at St. Jude
19 Medical.

20 MR. SYLVESTER: Cort Sylvester for St. Jude
21 Medical.

22 THE COURT: Got everybody?

23 MR. CAPRETZ: I think it is.

24 THE COURT: Okay. Thanks for gathering by
25 telephone this afternoon. I see I have a proposed pretrial

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1 scheduling order relative to remaining discovery in
2 individual cases. Anyone have anything to say about that?
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3 MR. CAPRETZ: Well, that's the -- if you're
4 talking about the proposed case management order that we
5 submitted in Jurgena?

6 THE COURT: Yes.

7 MR. CAPRETZ: Yes, right. That's the one case,
8 your Honor, that I believe is positioned in your court. We
9 actually filed it there and so it would not be remanded
10 anywhere. And so Steve Kohn and myself have talked about a
11 proposed order, scheduling order, and submitted that, the one
12 that you have in front of you, for your consideration. I'm
13 also asking that you give us a tentative trial date on that
14 so that we have something to work with, you know, from that
15 particular case, but that's the only one that should be
16 treated in that way.

17 THE COURT: Is that the only one that's venued
18 here?

19 MR. CAPRETZ: To the best of my knowledge, it is.

20 MR. KOHN: Your Honor, I believe the Bailey case,
21 which is a -- one of the class action plaintiffs has also
22 filed in the District of Minnesota, but that case is a class
23 action.

24 MR. CAPRETZ: That is correct.

25 THE COURT: That's only a class?

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1 MR. KOHN: As far as I know, that's correct.

2 MR. CAPRETZ: To the best of my knowledge at this
3 point in time, as the Court can see from the remand report we

4 submitted, we didn't put that on the list or ask that that be
5 remanded because our investigation into whether or not
6 there's an individual claim there is still pending, I
7 believe, and therefore it may -- you know, it's uncertain as
8 to whether or not that's going to be remanded.

9 THE COURT: Okay. So you've agreed on the timing
10 on Jurgena?

11 MR. CAPRETZ: We have.

12 THE COURT: Okay.

13 MR. CAPRETZ: Everything but a trial date. We
14 have all the other dates that we're proposing. We do have
15 one issue in that matter that I did want to bring up, but if
16 you want to discuss the dates, that's fine, first.

17 THE COURT: When would you be ready for trial on
18 this one?

19 MR. CAPRETZ: Well, according to the schedule that
20 we're submitting, it would be sometime in the first part --
21 first quarter of 2008, I would say.

22 Steve, do you agree with that?

23 MR. KOHN: I think that's correct. I think
24 sometime in the February-March time frame probably would be
25 about right.

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1 THE COURT: Well, that would be fine. We can set
2 a trial date right now for it in February if that works on
3 calendars.

4 MR. CAPRETZ: It does. The only time in February
5 that I am not available is the week involving the 24th. I

6 don't have an '08 calendar in front of me, but --

7 MR. KOHN: Actually, early February is not good
8 for me, so I would prefer, if Jim's tied up the week of
9 February 24th, to move it to the first week of March, if
10 that's convenient for the Court.

11 THE COURT: What's the date on that?

12 MR. CAPRETZ: I don't have an '08 calendar.

13 THE COURT: We'll see if we can find one here.

14 (Pause)

15 UNIDENTIFIED COUNSEL: It looks like it's
16 March 3rd, the first Monday in March of '08.

17 MR. KOHN: That would be fine.

18 MR. CAPRETZ: Yeah, that's okay with us.

19 THE COURT: I think the 3rd of March looks fine
20 for me. Do you have an anticipated length?

21 MR. CAPRETZ: We have haven't discussed that, your
22 Honor, but I would say somewhere -- to present it as far as
23 trial days are concerned, somewhere between eight to ten.

24 MR. KOHN: I agree with that.

25 THE COURT: Okay. Well, let's set it -- we'll

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1 change the scheduling order and we'll add the trial date of
2 March 3rd. Sounds acceptable to everybody.

3 MR. KOHN: That's fine. Do you want us to submit
4 a new order, your Honor?

5 THE COURT: Yeah, why don't you. That's fine.

6 MR. KOHN: Okay.

7 MR. CAPRETZ: That's good.

8 And I just had one side order on that and Steve can
9 comment on it, but there is one issue that maybe by meeting
10 and conferring, if you will, we might resolve. And that is,
11 the explanted valve of this gentleman was taken by St. Jude
12 or sent to St. Jude after the valve was removed and they had
13 a consultant, St. Jude Medical did, review the valve and have
14 the valve in its possession, St. Jude's. We've made a
15 request for the valve. Steve Kohn has suggested that he
16 wants before sending it to us a protocol to be reviewed and
17 signed by us. I have expressed concerns since St. Jude has
18 had the valve and has had it reviewed and examined, there
19 shouldn't be any conditions on seeing that the valve is sent
20 to us as early as possible.

21 MR. KOHN: Well, let me say the review that was
22 done on the valve was not done for litigation purposes. It
23 was done as part of the regulatory process. And the protocol
24 that I haven't sent to Jim yet, but I will, is the same
25 protocol that we've used with the Levy Angstreich firm, which

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1 is -- I think when Mr. Capretz sees it we can work this out.
2 If we can't, I think we can come back to the Court to the
3 extent we can't. But we've used this same protocol with the
4 Levy Angstreich firm, I've used it with counsel in Canada,
5 and I think that it's a reasonable protocol. It protects the
6 interests of both sides.

7 MR. CAPRETZ: Well, I would -- I understand what
8 Steve is suggesting and there may be some room for discussion

9 here and I don't know the circumstances of the Levy
10 Angstreich agreement or with Canadian counsel. But here,
11 once again, a valve has been examined by the company. It
12 seems untoward now to make any kind of requirement or
13 restriction for the plaintiff to have the valve that -- he's
14 the person that owns the valve. It was taken without his
15 authority or consent. It's been inspected without his
16 authority or consent. We would expect that the valve would
17 be delivered to us and if we need to work out a protocol for
18 testing so no one is unduly prejudiced, I'm certain we could
19 do that.

20 MR. KOHN: And that's what we're talking about.

21 THE COURT: Well, Mr. Kohn, you submit your
22 protocol to Mr. Capretz and see if you can work it out. If
23 not, we'll have a telephone conference on that as soon as
24 it's necessary.

25 MR. KOHN: Okay. I'll do that. Thank you, your

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1 Honor.

2 THE COURT: Okay. So I see we've got some other
3 remands that are going forward. Can someone give me an
4 update on where the settlement or mediation is going right
5 now?

6 MR. CAPRETZ: Steve?

7 MR. KOHN: Yes. Well, your Honor, one of the
8 cases that was proposed, the Holt case, has been settled, so
9 there are only I believe four cases that are subject to the

10 remand order, and that would be the Daugherty case, the Jones
11 case, the Maronen case and the Wood case are the four cases
12 that are at this time, in everyone's view, I think, would be
13 appropriate to be remanded.

14 MR. CAPRETZ: It should be noted, your Honor, that
15 counsel for the Daugherty party is on the line, Arkansas
16 counsel. I know Mr. Weber has waited patiently for this day.
17 And I think Mr. Murphy might represent -- he certainly
18 represents some if not all of the balance.

19 MR. MURPHY: That's correct, your Honor.

20 And, Mr. Kohn, we have signed that stipulation that
21 your office had forwarded to us.

22 MR. KOHN: Right.

23 MR. MURPHY: So, your Honor, we're in the process
24 of attempting to mediate those three cases, Wood, Maronen,
25 and Jones.

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1 MR. WEBER: The case in Arkansas, the Daugherty
2 case, we've tried to mediate twice and have been
3 unsuccessful. We're ready to go to trial.

4 THE COURT: And did you say the -- was it the Holt
5 case that settled?

6 MR. KOHN: Yes, that's correct, your Honor.

7 THE COURT: Okay. Well, that sounds good. Well,
8 what's remaining besides the class case then?

9 MR. KOHN: Aside from the class representatives,
10 there are only two or three cases. I can just mention
11 briefly what they are.

12 There is the McFadden case in the District of
13 Missouri. I think that case is likely to be dismissed. It's
14 a non-injury case as far as we can tell.

15 I think it's your case, Mr. Capretz, correct?

16 MR. CAPRETZ: It is, it is, and we're still
17 investigating, but it may well be dismissed.

18 MR. KOHN: The Hasenbank case in the District of
19 Kansas, that case is similarly situated. We've been
20 unsuccessful reaching counsel for the Hasenbanks.

21 And I believe, Mr. Capretz, you've been
22 unsuccessful as well, is that correct?

23 MR. CAPRETZ: That's correct.

24 MR. KOHN: So we're attempting to obtain a
25 dismissal in that case, but thus far counsel seems not to be

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1 responsive, so that's why it's not on the remand list.

2 Wilkinson is a case that's in the Middle District
3 of Louisiana. That's another case that ought to be
4 dismissed. Our local counsel in Louisiana is talking to
5 plaintiff's counsel in that case and we're optimistic that
6 that case will be dismissed, so it's not on the remand list
7 at this time.

8 Another case that's on the Court's list, the
9 Sutherland case, has been dismissed. I believe the dismissal
10 has been filed with the Court. And that's all. I mean,
11 those are all the cases at this time.

12 THE COURT: Okay. And then -- good. So we'll get

13 these four cases remanded. And, Mr. Murphy, did you say
14 three of them are yours --

15 MR. MURPHY: Yes, your Honor --

16 THE COURT: -- the two Nevada cases?

17 MR. MURPHY: -- Wood, Maronen and Jones. I'm
18 co-counsel on Jones; I am counsel for Wood and Maronen.

19 THE COURT: Okay. And tell me where the state
20 cases are at now. Ramsey County, what's happening there?

21 MR. CAPRETZ: Well, I'll let attorney Carolyn
22 Lindheim speak to that.

23 MS. LINDHEIM: Your Honor, we had one case
24 scheduled for trial in May and that case settled. We believe
25 there are 12 to 14 more to be scheduled. We have no trial

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1 dates in those. We are moving for class certification in the
2 O'Neil case, which is the European case, and then we have one
3 more generic deposition to do of the expert, Gregory Wilson.
4 And things are moving, so --

5 THE COURT: Okay. But you don't have another
6 trial date set yet.

7 MS. LINDHEIM: Not yet, no.

8 THE COURT: Okay.

9 MS. LINDHEIM: Steve, that's correct, right?

10 MR. KOHN: Yes, that's an accurate summary, your
11 Honor.

12 THE COURT: Okay. So that's all, really. What's
13 happening at the circuit? Has briefing started yet?

14 MR. KOHN: In the Eighth Circuit, your Honor?
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15 THE COURT: Yes.

16 MR. KOHN: The briefing's been completed. We were
17 informed that we could anticipate oral argument probably in
18 September, but so far as I know, there hasn't been a date
19 established for that yet.

20 MR. CAPRETZ: That's consistent with our
21 information as well, your Honor. It should be sometime in
22 the fall when we have the oral argument.

23 THE COURT: Okay. Good. Okay. What else do we
24 have going on?

25 MR. CAPRETZ: That's about it. I don't know --

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1 maybe Mr. Kohn can give us a brief overview of the Canadian
2 class litigation status and I think that would be the last
3 outstanding issue.

4 MR. KOHN: Sure. I'm happy to do that.

5 Your Honor, as you know, there are three class
6 actions pending in Canada: British Columbia, Quebec, and the
7 one in Ontario. The one in Ontario has a trial date next
8 spring and at this time both sides are exchanging expert
9 reports and conducting expert discovery. So other than that,
10 the other two provinces, I don't believe there's any activity
11 at this time. I believe the trial date is either in March or
12 April of '08 in Ontario.

13 THE COURT: Okay. Sounds like we're making
14 progress.

15 MR. CAPRETZ: We are.

16 THE COURT: Well, good. I appreciate the update
17 today. Anything else anyone would like to raise, anyone
18 who's on the line?

19 MR. WEBER: Your Honor, do I need to submit a --
20 this is Jeff Weber for the Arkansas plaintiff -- or will the
21 Court just issue an order remanding the case?

22 THE COURT: The Court will issue an order. Have
23 we gotten the stipulation yet?

24 MR. KOHN: I believe the stipulated remand list
25 was filed with the Court, your Honor.

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1 THE COURT: Okay. As long as we have the
2 stipulations, we'll issue the remand orders and you don't
3 have to request anything specific.

4 MR. WEBER: Thank you.

5 THE COURT: So that should be heading its way back
6 to the Western District of Arkansas soon here.

7 MR. WEBER: Thank you so much.

8 THE COURT: Okay. Anything else anyone has?

9 MR. CAPRETZ: The only other issue, your Honor,
10 would be whether the Court would want to consider setting
11 another status conference sometime towards the end of the
12 year, or do you want to keep that open till more events
13 unfold?

14 THE COURT: Well, let's keep that open. I would
15 anticipate maybe doing another one in September maybe by
16 telephone just to check in, make sure we don't have any
17 problems developing anywhere. So we'll look for a date in

18 September and Ms. Holden will get in touch with everybody and
19 see if we can find a date for a telephone conference then.
20 If there is anything major that's developing, we can turn
21 that into an in-person conference.

22 MR. CAPRETZ: Okay.

23 THE COURT: But I don't think we need that at
24 this point in time.

25 MR. CAPRETZ: Oh.

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1 THE COURT: Okay?

2 MS. LINDHEIM: Thank you, your Honor.

3 THE COURT: Okay. Thanks, everyone.

4 ALL COUNSEL: Thank you, your Honor.

5 THE COURT: Talk to you soon. Bye.

6 (Proceedings concluded at 2:20 p.m.)

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11 C E R T I F I C A T E

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13 I, TIMOTHY J. WILLETTE, Official Court Reporter
14 for the United States District Court, do hereby
15 certify that the foregoing pages are a true and
16 accurate transcription of my shorthand notes,
17 taken in the aforementioned matter, to the best
18 of my skill and ability.

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