

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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IN RE: STRYKER REJUVENATE)	Case No. 13-MD-2441 (DWF/FLN)
AND ABG II HIP IMPLANT)	
PRODUCTS LIABILITY LITIGATION)	
_____)	
)	
This Document Relates to)	St. Paul, Minnesota
All Actions)	August 21, 2014
)	2:30 p.m.
)	

BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE AND
THE HONORABLE FRANKLIN L. NOEL
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

STATUS CONFERENCE PROCEEDINGS

APPEARANCES:

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1 the -- obviously, as many of the lawyers know in the room,
2 we preceded the in-the-courtroom hearing, much like prior
3 hearings in this MDL and others, at least in the ones I have
4 had, with counsel in chambers.

5 So, we will proceed with going through the agenda
6 at this time, and discussing the issues on there and the
7 status of the case at this time. So, we can proceed
8 whenever you are ready.

9 I will indicate this, and if someone is wondering,
10 well, why was it at 2:00 today? And we will go back
11 contrary to the agenda, because I just -- thanking counsel
12 discussing it, I thought I would be in trial today, so we
13 moved it. But, whether I am in trial on the September 22nd
14 date or not, in chambers will be at 8:15 on September 22nd,
15 and then we will proceed to the courtroom at 9:00 or shortly
16 thereafter. And so that is typically what we have been
17 doing. And I said that back in chambers, so that -- and we
18 will reflect that on the docket, as well. It will be
19 September 22nd, but 8:15 in chambers and then back to the
20 regular schedule that we have had.

21 So, with that, we can proceed with the agenda as
22 listed here. Who would like to step to the -- and I guess
23 we can decide whether it is step to the podium or step off
24 the curb depending on your point of view. So --

25 MS. WOODWARD: Good afternoon, Your Honors, Karen

1 Woodward.

2 MR. FLOWERS: And Pete Flowers, again, Your
3 Honors.

4 MS. WOODWARD: We have a fairly abbreviated
5 schedule for today's status conference, Your Honors. The
6 first item on the agenda is our typical report on MDL
7 filings. Our numbers are a little bit different. The
8 Plaintiffs' numbers are a little bit higher than ours.

9 We have 1,882 cases in the MDL or on their way to
10 the MDL. In New Jersey State Court, we note 2,018 cases.
11 Among all of the State Court cases, we have 115 cases.

12 MR. FLOWERS: And Your Honor, our numbers that are
13 kept by Mr. Nemo very accurately reflect actually 1,945
14 cases in the MDL at this stage in Minnesota.

15 MS. WOODWARD: Except for grand totals, we're
16 probably around 4,100 cases.

17 THE HONORABLE JUDGE FRANK: And those are
18 substantially consistent with the numbers we have, as well,
19 so --

20 MS. WOODWARD: Your Honor, I will provide a brief
21 report on depositions. There have been at least three
22 depositions scheduled, and we are still arranging for dates
23 on several more. The first deposition will start next week.

24 The parties have reached some initial agreements
25 regarding the conduct of the depositions. The Defendants

1 anticipate submitting to the Court a more formalized
2 deposition protocol. There are still some points within
3 that protocol that I think the parties need to meet and
4 confer on. But, by the next status conference at the
5 latest, we anticipate submitting a protocol for Your Honors'
6 consideration.

7 Along the lines of State Court coordination, we
8 will note that any depositions that are noticed in the MDL
9 are being cross-noticed. It is very important to the
10 Defendants to minimize any burden on our witnesses from
11 being deposed in multiple jurisdictions at different times.
12 And we believe that the deposition protocol will facilitate
13 the orderly conduct and the fair conduct of depositions in
14 this litigation.

15 MR. FLOWERS: Thus far I agree with everything Ms.
16 Woodward has said, Your Honors.

17 THE HONORABLE JUDGE FRANK: Can we get that? Can
18 we make sure that got down on tape?

19 MR. FLOWERS: That's power. That's why I used
20 that, Your Honor.

21 THE HONORABLE JUDGE FRANK: Maybe I could say
22 something along the State Court coordination that I
23 explained in chambers and on our judicial contacts. I had
24 said to the lawyers in the last week, not unlike the last
25 time we were together, I talked to Judge Martinotti in New

1 Jersey. And in the last week I have talked to Judge Henning
2 and will be reaching out again to her, who has the largest
3 number of cases in Broward County in Florida.

4 But, as we noted before, those are separate from
5 like, for example, the presiding Judge in West Palm Beach,
6 Florida. But, I have been reaching out, and obviously the
7 message is always the same, and that is, these cases across
8 the country are -- and reasonable people may differ on
9 whether they want to blame more frequently the Bench or the
10 Bar. But, the primary, if not only justification for these
11 cases is to save money and time, and I guess the phrase
12 "economies of scale across the board" in both the State and
13 Federal proceedings, and therefore coordination without
14 prejudicing people proceeding as they see fit.

15 So, that is always my message, not that anybody is
16 supposed to follow us, but when I reached out to those
17 Judges, I said, well, let's continue to try to coordinate
18 some of these things. Because if we can't save time, money
19 and minimize delay for the parties, that is the sole reason
20 why we are -- a lot of these cases are handled the way they
21 are.

22 I have had those conversations in the last week.
23 As I mentioned before, both sides of the case are always
24 giving me updated lists of the State Judges around the
25 country, whether they have one case or more than one. And I

1 communicate at a minimum with all of them in writing. And
2 those letters are on the docket, saying: Here we are.
3 Please feel free to contact us. And phone calls thus far
4 with the two Judges in Florida, and more frequently with
5 Judge Martinotti in New Jersey.

6 And that is, I guess, how I would conclude with
7 the judicial contacts and state coordination, unless you
8 have anything else on that. All right.

9 THE HONORABLE MAGISTRATE JUDGE NOEL: No.

10 MS. WOODWARD: I believe the next item on the
11 agenda is PTO No. 22. Defendants don't have any position or
12 comments with regard to that PTO.

13 MR. FLOWERS: And from the Plaintiffs' perspective
14 we welcome Mr. Zimmerman to our Leadership Committee. And
15 one of the reasons that we have a reduced agenda today is
16 because there are some substantive issues that we think we
17 would like to have his opinion on. So, we kind of slowed
18 things up, temporarily; but, the pace will pick up right
19 after this court hearing.

20 THE HONORABLE JUDGE FRANK: Well, and what I said
21 in chambers, so I won't repeat everything, but I think the
22 record speaks for itself. And the record is exactly what
23 happened. We did not consult anyone, haven't since then.
24 It was just a fact. Ms. Zimmerman is with a new firm. And
25 rather than have a firm who begin the case -- regardless of

1 the status of the cases, because we made no inquiry, we
2 didn't consult anyone, but to avoid making that inquiry but
3 keeping everything out in the open, we simply added Mr.
4 Zimmerman. And if they would have requested a different
5 representative from the firm, all we -- the only inquiry we
6 made is confirming, when we heard from each party here is
7 the status, and so that is what we did.

8 And I was asked in chambers, well, is there
9 supposed to be something read into this about what the
10 position of Ms. Zimmerman is? Of course not. There were no
11 negative connotations. We are not involved and don't intend
12 to get involved in however it is resolved, except it is our
13 expectation that it will be resolved. But, other than that,
14 without consulting anyone, including the lawyers on either
15 committee or anything else, I added that.

16 And so, anybody -- well, they can read what they
17 want into it, but there is simply nothing to read into it.
18 I don't know if you want to say anything further than that?

19 THE HONORABLE MAGISTRATE JUDGE NOEL: Nothing
20 more.

21 THE HONORABLE JUDGE FRANK: But, the record
22 really -- it speaks for itself. That's what it is. Well,
23 if it looks like the Court didn't consult anyone and it just
24 added an additional firm, that is correct. Including not
25 consulting anyone, including Mr. Flowers, or anybody on the

1 defense, that is what we -- that is how it was handled. So
2 --

3 MS. WOODWARD: Thank you, Your Honors. So, our
4 next item on the agenda is a report on the bellwether trial
5 case selection. And I will turn it over to Mr. Flowers.

6 MR. FLOWERS: Your Honor, we had asked for a
7 slight extension to provide you the names of the bellwether
8 selections from each side, not to slow down the process in
9 any way, I think under the pre-existing Order you, if we
10 were unable to agree, would be making a decision September
11 22nd after we submitted 300 words on each of the Plaintiffs
12 as to why they are representative.

13 We want that date to go forward. We are just
14 asking for a little more time to disclose the names and the
15 300 words. And we had asked until September 10th to do
16 that.

17 THE HONORABLE MAGISTRATE JUDGE NOEL: We talked
18 about that in chambers and we agreed that September 10th
19 would be the date that the parties will submit to us either
20 their agreed upon list of bellwether cases, or if they can't
21 agree, their separate proposed lists with the 300 words
22 describing why each one is representative. The Court does
23 still intend to keep to the September 22nd date, and we will
24 select the fifteen cases, three from each of the five
25 bellwether categories before our next status conference.

1 MR. FLOWERS: Thank you. The next thing on here,
2 Your Honors, is a stipulation that we have been working on
3 for a while to toll the Statute of Limitations on the French
4 Entities. We reached an agreement. We submitted in the
5 report an exhibit with that stipulation.

6 THE HONORABLE JUDGE FRANK: And we would just --
7 we would note that and we --

8 THE HONORABLE MAGISTRATE JUDGE NOEL: Does that
9 require -- I'm sorry, does that require an order from us?
10 Or is that just a stipulation that gets filed and that is
11 it? Or do we need to sign something?

12 MS. WOODWARD: I believe it is just a stipulation.

13 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

14 MS. WOODWARD: With that, I am going to actually
15 invite Mr. Griffin up to address the rest of the items on
16 the agenda. Thank you.

17 THE HONORABLE JUDGE FRANK: All right.

18 MS. ZIMMERMAN: Your Honors, I think that we are
19 pleased to report, as we did in chambers, that we had
20 reached an agreement on what had been Defendants' Motion to
21 Partially Stay the Obligations under the Common Benefit
22 Order entered by this Court. So, we will be, as we
23 indicated, submitting a proposed order for the Court's
24 consideration by email either later today or early tomorrow
25 morning.

1 MR. GRIFFIN: That is correct, Your Honors. Tim
2 Griffin on behalf of the Defendants. Part of the
3 stipulation will be the withdrawal of the Defendant's Motion
4 assuming that the proposed order is acceptable to the Court.

5 THE HONORABLE JUDGE FRANK: And based upon what
6 was explained to us, and that it will be acceptable, it
7 seems like a reasonable way to handle this on this temporary
8 basis. So yes, we can move forward with that.

9 MS. ZIMMERMAN: Thank you.

10 MR. GRIFFIN: Thank you, Your Honors.

11 MS. ZIMMERMAN: Did the Court want to address the
12 multi-party complaint issue? There was one additional
13 agenda item.

14 THE HONORABLE JUDGE FRANK: Well, we had just
15 raised in chambers -- and actually, the Court had added it
16 to the agenda, where even though with few exceptions around
17 the country multi-party complaints are not permitted. And
18 this was filed, and we discussed it with counsel. And we
19 will be requiring it severed.

20 And I think he anticipates that. And then the --
21 and for the record, to the extent -- and it was filed, his
22 response, meaning Mr. Gregory Pals, P-a-l-s -- and maybe I
23 have mispronounced his name, from the Driscoll Firm in
24 Missouri.

25 MS. ZIMMERMAN: Missouri?

1 MR. GRIFFIN: St. Louis, Your Honor.

2 THE HONORABLE JUDGE FRANK: St. Louis, that has
3 been in the news quite a bit for rather unfortunate reasons.
4 But, we will indicate that they were required to be severed.
5 And I think to the credit of both parties -- it is rarely
6 allowed. And this isn't a legal term, it is a procedural
7 nightmare where 15 or 20 plaintiffs mostly unrelated to each
8 other, and different -- all join on the same complaint. I
9 know that he observed that, well, that is still permitted in
10 some extent down in the Eastern District of Missouri. But,
11 any kind of quick glance at any MDLs around the country, or
12 the hornbooks on the topic will suggest actually it works to
13 the benefit of parties on both sides not to have that.

14 And the issue that neither one took a position on,
15 and that falls on our shoulders is: Well, the severance is
16 the easy part. Does that mean a filing fee comes along with
17 each of the other 13 or 14? And as you heard Judge Noel and
18 I say back there, sometimes people in the Clerk's Office
19 will come and have a chat with the Court before we -- but,
20 we will resolve that. But, we did add it to the agenda just
21 so you had any input if you wanted it.

22 MS. ZIMMERMAN: Plaintiffs have nothing more to
23 add on that.

24 THE HONORABLE JUDGE FRANK: And I guess for the
25 benefit of the folks on the phone, my apologies since these

1 aren't the fancy, as you heard me say before, entertainer
2 mikes, if we don't speak closely to the mikes, the
3 individuals listening on the phone cannot hear what we are
4 saying in the courtroom. And I just got that directive from
5 Brenda from chambers. And she said that applies to both of
6 us, I guess, too.

7 THE HONORABLE MAGISTRATE JUDGE NOEL: Oh, my bad.

8 MS. ZIMMERMAN: My bad. Just in time for the end
9 of the status conference, it seems. Perfect.

10 THE HONORABLE JUDGE FRANK: So, by adding it to
11 the agenda, being it is an issue that comes up from time to
12 time, it is kind of a non-issue in most areas of the country
13 just because of electronic filing and other issues. If you
14 don't have separate complaints, there is no way to track the
15 cases from near or afar, and it makes it very difficult.
16 So, that rests on our shoulders. But, we just added it to
17 give you any input.

18 But, we will take care of that and work something
19 out that is acceptable to Plaintiffs' counsel there so we
20 can all move on.

21 MR. GRIFFIN: Defendants have nothing further on
22 the agenda, Your Honor.

23 MS. ZIMMERMAN: I thought we were in agreement
24 again, but Mr. Flowers has ruined the moment.

25 MR. FLOWERS: I can't say completely in agreement,

1 Your Honors. One thing we raised in chambers is the
2 Plaintiffs have some, what we consider to be, very
3 significant discovery issues.

4 THE HONORABLE JUDGE FRANK: Yes, because we --

5 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay, we did
6 talk about it. And then we were about to ignore it.

7 Here is what I would suggest we do. Now that I
8 have said this, it just occurs to me that the thing I came
9 up with doesn't really work.

10 As I understand it, then you have got a series of
11 concerns that you raised with us in chambers, but have not
12 been delineated in a written form to the Defendants. Is
13 that a fair statement?

14 MR. FLOWERS: Not exactly, Your Honor. Several of
15 them have already exchanged correspondence, but what has not
16 occurred is the completion of the meet and confer process
17 which we --

18 THE HONORABLE JUDGE FRANK: And these are
19 discovery issues I think we should make --

20 THE HONORABLE MAGISTRATE JUDGE NOEL: Yes, I'm
21 sorry, just so it is clear, so what Mr. Flowers raised in
22 chambers is a series of discovery disputes that he would
23 like to be resolved before the September 22nd, next status
24 conference, because the resolution would impact depositions
25 that are currently scheduled to occur between now and

1 September 22nd. Is that a fair statement?

2 MR. FLOWERS: Yes.

3 THE HONORABLE MAGISTRATE JUDGE NOEL: And the
4 Defendants were opposed saying, we have this schedule in
5 place for a reason. The reason is to decide these things
6 and to put them on the agenda in the ordinary course. And
7 that is why we have the things and the status conferences
8 and we should address this at the September 22nd conference.

9 In chambers Judge Frank and I decided we would
10 chat about it before we came out. We did. And what I would
11 suggest we do is that each side send me a letter by next
12 Wednesday, which I believe would be August 27th, telling me
13 what the issues are, and why we need a hearing.

14 And then after a review of those letters, the
15 Court will decide whether to have a hearing, whether you
16 have to come and argue it or whether we can do it on the
17 telephone. Whatever it is going to be, the Court will
18 decide after reading your letters on Wednesday whether we
19 need a hearing before September 22nd.

20 MR. FLOWERS: Thank you, Your Honor.

21 MR. GRIFFIN: Thank you, Your Honors.

22 MR. CAMPILLO: Your Honor, if I may, that sounds
23 appropriate, generally, but we don't know all of the issues,
24 unless they are limited to the ones that Mr. Flowers
25 addressed in chambers. If those are the issues, we would be

1 happy to respond by next week. But, to the extent they
2 interject anything that wasn't mentioned to you or Your
3 Honors today, then we should have time to identify them and
4 respond.

5 THE HONORABLE MAGISTRATE JUDGE NOEL: I will read
6 your respective letters, and if it looks like somebody has
7 raised yet something new that hasn't been talked about
8 today, I will be aware of that.

9 MR. CAMPILLO: Thank you, Your Honor.

10 MR. FLOWERS: Thank you.

11 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay. Is --

12 THE HONORABLE JUDGE FRANK: Anything else?

13 MR. FLOWERS: Not from the Plaintiffs.

14 MR. GRIFFIN: Not from the Defendants, Your
15 Honors.

16 THE HONORABLE MAGISTRATE JUDGE NOEL: Just one
17 other thing I wanted to do, before everyone leaves the
18 building, or before Mr. Campillo and Mr. Flowers leave the
19 building, if you could meet us back in chambers for just
20 about a two-second conversation that would be useful.

21 MR. FLOWERS: That is fine, Your Honors.

22 MR. CAMPILLO: Yes.

23 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

24 THE HONORABLE JUDGE FRANK: Again, so there's --
25 speak into the microphone.

1 Just to remind, again, to repeat, if somebody has
2 a hard copy they are looking at, whether they are in the
3 courtroom or on the phone, it will be in chambers, September
4 22nd, same date, 8:15. And we will proceed to the courtroom
5 shortly after 9:00 on that date. And we will put that on
6 the docket. But, it was going to be 2:00, but it is not
7 going to be changed again, whether I am in trial or not that
8 day. So, we will move it back, because I think the
9 consensus of the people in chambers was it works much
10 better.

11 And actually, the whole purpose of the earlier
12 morning is then if there are contested issues or motions, we
13 can do the best we can to have everything heard, unless
14 there is a reason to have it sooner that day. So, we
15 minimize the different trips to the -- not that you don't
16 want to come to beautiful Downtown St. Paul.

17 By the way, it is the first day of the State Fair
18 today, so if you are of a mind to go out there, have at it.
19 So, we will thank everybody for their attendance. And
20 unless there is something further, we will stand adjourned.
21 Thank you all. Safe travels, everyone.

22 ALL COUNSEL: Thank you, Your Honors.

23 (Adjournment.)
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I, Jeanne M. Anderson, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Jeanne M. Anderson
Jeanne M. Anderson, RMR-RPR
Official Court Reporter