

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE: STRYKER REJUVENATE)
AND ABG II HIP IMPLANT) Case No. 13-MD-2441 (DWF/FLN)
PRODUCTS LIABILITY LITIGATION)
_____)
This Document Relates to) St. Paul, Minnesota
All Actions) April 9, 2015
) 11:32 a.m.

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

STATUS CONFERENCE PROCEEDINGS

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1 MR. RUDD: There it is. Gordon Rudd for Bucky
2 Zimmerman on behalf of Plaintiffs.

3 MR. KENNEDY: Good morning. Eric Kennedy on
4 behalf of Plaintiffs.

5 MR. DeGARIS: Annesley DeGaris, Your Honor, on
6 behalf of the Plaintiffs.

7 MR. NEMO: Good morning, Your Honors, Tony Nemo on
8 behalf of the Plaintiffs.

9 MR. BERNHEIM: Good morning, Your Honor, Jesse
10 Bernheim on behalf of the Plaintiffs.

11 THE HONORABLE JUDGE FRANK: For the Defense?

12 MR. GRIFFIN: Good morning, Tim Griffin on behalf
13 of the Defendants.

14 MR. CAMPILLO: Good morning. Ralph Campillo on
15 behalf of the Defendants.

16 MS. CATULLO: Good morning, Your Honor, Kim
17 Catullo on behalf of the Defendants.

18 THE HONORABLE JUDGE FRANK: And, of course, the
19 reason I made reference to the microphone, we have a number
20 of people appearing by phone, not the least of which is -- I
21 guess it is appropriate to say what we said back in chambers
22 when we announced to the group that we had Pete Flowers on.
23 And he is on now, too, back there. And we just assumed
24 Plaintiffs' lawyers controlled the Chicago International
25 Airport and all of the planes. But, he is stranded down

1 there in Chicago, so he appeared there.

2 So, with that in mind, we can go to the -- have a
3 short, relatively short agenda today, but we can proceed
4 with the report on the MDL enrollment status. Who is going
5 to step to the podium, maybe together?

6 MS. ZIMMERMAN: I think together, Your Honors.

7 THE COURT: All right.

8 MS. ZIMMERMAN: And we do have just a -- again,
9 Genevieve Zimmerman for the Plaintiffs. We have a very
10 brief agenda for today's MDL status conference. I think we
11 are both pleased to report to the Court that we have very
12 robust participation so far in the settlement program. We
13 are not quite at the 95 percent participation rate required
14 by the Master Settlement Agreement, but we are hopeful we
15 will get there.

16 And for the benefit of the folks listening on the
17 phone, to the extent you have any questions, we would
18 welcome those certainly on the lead counsel committee. I
19 know a lot of folks have been reaching out specifically to
20 liaison counsel, Tony Nemo.

21 We have had two extensions that have been
22 effective in increasing our participation rate, and really,
23 those have had to do with additional lienholder insurance
24 company issues and I think that as we have done the
25 extensions, that has really been to the benefit of both the

1 Plaintiffs and their attorneys in understanding how these
2 lienholder resolution programs will work for their benefit.

3 MS. CATULLO: Counsel --

4 THE HONORABLE JUDGE FRANK: And I can just
5 indicate that the lienholder issue is not unique to this
6 case and that is an issue that comes up in the other cases I
7 have had, and similar issues. So, I understand why you are
8 saying that.

9 We can hear from defense counsel and maybe one or
10 both of you can just, to -- if not refreshing other people's
11 memories for some of us older folks in the room, just kind
12 of where that leaves us with some of the timelines that are
13 in effect. I mean, they are all in the Orders, currently.
14 And then I interrupted counsel before you were going to
15 follow-up, so --

16 MS. CATULLO: Well, Judge, the new enrollment
17 deadline is April 17th. And as Ms. Zimmerman said,
18 everything is going well, but there is still a lot of work
19 to be done. I can tell you we are all working around the
20 clock, literally answer questions and helping folks
21 understand the nuances of the program.

22 I encourage people to reach out and get these
23 appointments for special masters. There are a lot of them
24 that are ongoing but that has been, I have heard, a great
25 resource to counsel who just need a little bit more

1 assistance with certain difficult cases or difficult
2 clients. So again, I would encourage folks to do that.

3 The deadline, the key deadline right now is April
4 17th. That is not going to move. So people need to work
5 hard to get their complete forms in for that.

6 And yes, the lien issue was another major issue
7 that was worked on a lot. And finally, we did get to an
8 agreement I think about a week and a half ago or so. So,
9 that has been very helpful in getting people to get their
10 claims in.

11 MS. ZIMMERMAN: Yes, and I think that I will echo
12 what Ms. Catullo said about the special master counseling
13 and just making sure that all of the clients and the
14 Plaintiffs out there have appropriate informed consent. For
15 the benefit of anybody on the phone who has a client who
16 would benefit from additional counseling on that, there are
17 three Special Masters appointed that have been very
18 instrumental in explaining the terms of the program and
19 really what the timeline is here. So, we can assist you in
20 any way with getting appointments set up with one of these
21 Special Masters if that would be beneficial for your client,
22 and we certainly welcome you doing that.

23 THE HONORABLE JUDGE FRANK: And their names again
24 for the record?

25 MS. ZIMMERMAN: Sure, Judge Hamlin, Judge Boylan

1 and Special Master Ed Gentle, as well. And we can get those
2 set up for anybody. I know they have literally been going
3 into the evening hours to work with people who potentially
4 have a work schedule issue and phone calls during the night
5 time hours are easier, the Special Masters have been a great
6 resource for us, here.

7 I think that we are also -- we hope to be on the
8 verge of announcing another large lienholder and essentially
9 a resolution with one more insurance company, so I encourage
10 everybody in the MDL to watch for emails from Tony Nemo, the
11 liaison counsel for the MDL. He is communicating deadlines
12 for everybody and the necessary paperwork, as well. So,
13 make sure to watch for emails from him and let us know if
14 you have any questions in that regard.

15 THE HONORABLE JUDGE FRANK: And I can just
16 indicate, I don't think it is particularly -- anyone is
17 asking; but, one, I had observed that cases continue to come
18 in here to the District. And currently, we have -- well,
19 the total is 2,566. The total open cases are 2,493. And
20 just -- a number just came in this past week, as well,
21 pursuant to the settlement agreement.

22 So, anything on that issue, Judge Noel?

23 THE HONORABLE MAGISTRATE JUDGE NOEL: No, I have
24 nothing further. Thank you.

25 THE HONORABLE JUDGE FRANK: All right. We can

1 move on, then, unless anybody else has any inquiry or
2 statements on the enrollment status, we can go to No. 2.

3 MS. ZIMMERMAN: Thank you, Your Honor, so the next
4 issue is a jointly proposed Pretrial Order No. 26; that is,
5 we have been getting a lot of questions about how
6 Plaintiffs' attorneys should communicate to the Court and to
7 the Defendants when their clients have undergone revision
8 surgery.

9 We have put together a very brief proposed
10 pretrial order jointly submitted where Plaintiffs attorneys
11 essentially indicate and notify Defendants when someone
12 undergoes a revision surgery and some very basic details
13 about that surgery. So, we would request that that be
14 approved.

15 THE HONORABLE JUDGE FRANK: And I think both
16 parties agree to that?

17 MS. CATULLO: Yes, Your Honor. Essentially, it
18 works out very effectively in New Jersey and --

19 THE HONORABLE JUDGE FRANK: Well, I will note for
20 the record, since you sent it in well in advance of today's
21 hearing, to the extent it is relevant, it will be Pretrial
22 Order No. 26.

23 I have had a chance to review it and we will, I
24 will sign that before the day is out. And it will be filed
25 maybe before the noon hour comes. So, that will be signed

1 today.

2 And for anybody listening and those in the
3 courtroom, not only does the Order address the notice of
4 revision surgery, but the -- the order -- but there is also
5 attached to Exhibit A to that, there is the notice, itself.
6 So, we will have the form for that. So, we will get that
7 done very soon.

8 MS. ZIMMERMAN: Okay, thank you, Your Honor.

9 I think with the exception of scheduling the next
10 status conference, that is really all we had to report
11 today.

12 THE HONORABLE JUDGE FRANK: I believe we agreed on
13 the following date, June 4th. And we would go back to the
14 same schedule that we have been on, except for today. So,
15 meet with counsel at 8:15 and come out here an hour later.

16 And obviously, with the same understanding, and I
17 will ask Judge Noel, as well, the same understanding as we
18 have had before, in the event, unlikely or otherwise, some
19 other issue is coming up, and whether that is a reach out to
20 status conference or reach out to State Judges or any other
21 issue, I assume counsel will get ahold of us and we will do
22 what we need to do.

23 Judge Noel, did you have anything?

24 THE HONORABLE MAGISTRATE JUDGE NOEL: No, just to
25 reiterate or echo what you just said, that we are available

1 for whatever we need to be available for.

2 MS. ZIMMERMAN: Thank you, Your Honors.

3 MS. CATULLO: Thank you.

4 THE HONORABLE JUDGE FRANK: Anything else? Other
5 than for those of you that came in here from elsewhere why
6 we couldn't order some sun? But, as I always remind people,
7 when I first came to the Federal Court in 1998, and it
8 always takes one's children to give you a little truth, dose
9 of truth and reality. They said: Dad, this Federal
10 Judgeship thing, I don't think is as big as people say it is
11 because you can't even get us decent seats at the Target
12 Center.

13 So -- and I guess that was true then, and it's
14 still true now. But, in all seriousness, I appreciate
15 everyone communicating, keeping us informed. And I will
16 just also repeat, but it also echoes what Judge Noel said,
17 if there is anything, please get ahold of us.

18 In other words, you will never hear from one of
19 our chambers, well, we are not due to see you until June
20 4th, so don't bother us. That is not the way these MDLs
21 work or are supposed to work. So, we wish everyone safe
22 travels. And thanks for accommodating my schedule today,
23 even though we got a later start today. Unless there is
24 anything further, we will stand adjourned.

25 Just to note, I sometimes call it the coronation,

1 but it is the public swearing in of our new Magistrate Judge
2 Becky Thorson is tomorrow in this building. Even though she
3 has been on the job -- and in fact last night I got an email
4 from her -- of course, you could relate to this, Judge Noel,
5 look at my phone bill. It was after 10:00 and she had just
6 finished up a settlement conference here.

7 And I said, hasn't anyone told you yet there is no
8 overtime pay? But, yeah, that is the nature of the work.
9 We stand in recess and thank you all very much.

10 ALL COUNSEL: Thank you, Your Honors.

11 (Adjournment.)

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15 I, Jeanne M. Anderson, certify that the foregoing
16 is a correct transcript from the record of proceedings in
17 the above-entitled matter.

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