

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

IN RE ST. JUDE MEDICAL, INC. :
SILZONE HEART VALVE PRODUCTS :
LIABILITY LITIGATION : **MDL DOCKET NO. 1396**

JOINT STATUS CONFERENCE REPORT
(November 19, 2003)

The parties have met and conferred and submit this status report to the Court.

I. PENDING MOTIONS

The Court has under submission St. Jude Medical's Motion for Summary Judgment based on the legal doctrine of Preemption, subclasses briefing in connection with Plaintiffs' Motion for Class Certification and the briefing concerning St. Jude Medical's privilege log.

II. STATUS OF PENDING LITIGATION

St. Jude Medical has tendered an updated litigation report to the Court and the Classes in anticipation of the November 19, 2003 Status Conference.

**III. REQUEST OF CLASS I AND CLASS II FOR COPIES OF
SJM STATE COURT DEPOSITIONS**

The PSC has asked St. Jude Medical to provide it with an ASCII computer file version of all depositions in its possession or control taken of a health care provider or its representative with knowledge about the Silzone prosthetic device, including but not limited to (1) its marketing, (2) its risks, benefits and dangers claimed or associated with same, and/or (3) any injury or harm caused or associated with same. A number of such depositions have been taken in state

Court Silzone matters where the counsel representing the Plaintiff involved is not associated with the PSC. Plaintiffs maintain that such depositions have discoverable information, such as, by way of illustration, the sales call representations made to surgeons on Silzone's safety and efficacy and the surgeon's understandings of the risks and benefits of the Silzone products at issue. Plaintiffs contend that there are no protective orders in place and that none of the depositions at issue have been ordered to be kept sealed. Plaintiffs argue that the act of the subject patients filing suit and putting their Silzone injury (or death) into issue waived their patient privacy rights. Further, SJM is not a "covered" entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") nor are the classes seeking protected health information of any patient. In any case, one of the HIPPA exceptions is Court-ordered disclosure which disclosure could address public health issues.

St. Jude Medical submits that the PSC's request is overly broad and not calculated to lead to the discovery of admissible evidence. St. Jude Medical further contends that the transcripts that Plaintiffs seek relate to patients who no longer have pending lawsuits against St. Jude Medical and as such, patient privacy issues prevent St. Jude Medical from sharing these transcripts with the PSC absent authorization from the patient. St. Jude Medical has suggested to the PSC that they contact counsel for these patients to obtain the depositions or the appropriate authorizations.

IV. CASE MANAGEMENT REVIEW

The classes believe a review of the case management schedule is in order. Due to impending Court decisions on preemption and class certification, the discovery schedule has been extended on three occasions by mutual agreement of the parties. St. Jude Medical has proposed that the case specific discovery cutoff date be extended until 120 days after the later of the Court's ruling on the preemption and/or class certification motions. Plaintiffs have proposed that PTO 28 be amended to provide that generic discovery be extended to April 1, 2004. Plaintiffs propose keeping all other paragraphs in place except that Plaintiffs propose to extend the deadline for the identification of the Plaintiffs' experts to March 1, 2004 and the identification of Defendant's experts to April 1, 2004. Plaintiffs also propose that the time for filing the joint list of experts who qualify for generic discovery be extended to April 15, 2004. The classes seek a review of the current PTO's and a new case management order, such order to include, but not be limited to, the setting of a final pre-trial conference and the setting of a jury trial date. Counsel for Plaintiffs note that the Court found in PTO 2 dated October 15, 2001 that SJM was desirous of evaluating the individual injury cases as soon as possible with a view toward possible resolution through the mediation process. The classes seek the Court's guidance as to the establishment of a mediation process to try to resolve the pending individual MDL cases since this MDL proceeding is now over two years old.

St. Jude Medical believes that it is still premature to set the class action cases for trial inasmuch as no final decision on certification or preemption has been made. With regard to the mediation process, St. Jude Medical believes the parties should follow the current pretrial order which provides for mediation at the appropriate time following the completion of case specific discovery.

V. STATUS OF CANADIAN LITIGATION

A mediation is scheduled for December 8 and 9 in Toronto.

ZIMMERMAN REED, P.L.L.P.

DATED: November 18, 2003

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