

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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

JOINT STATUS CONFERENCE REPORT

(March 18, 2004 Status Conference)

The parties have met and conferred and respectfully submit this Joint Status Conference Statement in anticipation of the March 18, 2004 status conference.

I. REPORT OF THE END GAME COMMITTEE

On March 1, 2004, the Court entered Pretrial Order No. 30 establishing the St. Jude Medical Silzone Heart Valve MDL Settlement and Mediation and appointing John W. Carey, Esq. to serve as Special Master to administer the settlement program and serve as mediator. Pretrial Order No. 30 also authorized the creation of an End Game Committee to assist Special Master Carey in administering the settlement program. The following is a summary of the first meeting of the End Game Committee which took place on February 19, 2004.

A. Scope of Responsibility

Committee members first discussed the scope of responsibility for the End Game Committee. In addition to establishing a mediation structure and protocol for the individual personal injury cases, Plaintiffs suggested that the Committee should also discuss how and when individual cases are remanded and issues relating to scheduling and trial of the class actions. St. Jude Medical agreed that discussions on these issues would be appropriate.

B. Potential Mediation of the Class Actions

Committee members discussed whether the scope of the mediator's responsibility will include mediation of the class actions. St. Jude Medical's position is that mediations of the individual personal injury cases should go forward as soon as possible because in most cases, sufficient medical records have been obtained to assess medical causation issues. Plaintiffs believe mediation of the class actions is appropriate. The parties believe that after the Court rules on the various issues being presently briefed by both sides relating to class certification issues, it may then be appropriate for the Special Master to address class action settlement issues. St. Jude Medical believes that such discussion may occur only after any Rule 23(f) issues have been resolved through appellate review. Plaintiffs believe that the appellate process, if any, should not delay mediation.

C. Mediation of Non-MDL Cases

Committee members also discussed whether the scope of mediation would be limited to MDL cases. Both sides agreed that it may be appropriate to include non-MDL cases and, to that end, discussed the possibility of a similar appointment of Mr. Carey in Ramsey County. St. Jude Medical agreed that, if Judge Gearin approves, Mr. Carey's assistance may be beneficial in the Ramsey County cases but that the initial focus should be on the MDL cases. However, the parties agree that non-MDL cases being handled by Class Counsel can be included in the mediation process, and have included some of those cases within the time schedule provided by the Special Master.

D. Responsibility for Payment of Mediation Expenses

Committee members also discussed payment of mediation fees. As proposed by the End Game Committee and the Special Master, individual plaintiffs and their counsel will be required to mediate their case in Minneapolis, absent special circumstances. Plaintiffs submit that St. Jude Medical can better afford the cost of the Special Master and are currently proposing that St.

Jude Medical pay the entire cost of the mediations unless the mediation results in a settlement in which case the parties will split the cost. St. Jude Medical has proposed the cost sharing arrangement which was implemented in the Baycol settlement program, namely that the parties split the cost of unsuccessful mediations with St. Jude Medical picking up the entire cost of successful mediations. Alternatively, St. Jude Medical proposes that both sides share the cost of the mediation. The parties are currently at an impasse and may request the Court's guidance on this issue.

II. MARCH 2, 2004 MEETING WITH SPECIAL MASTER CAREY

On March 2, 2004, members of the End Game Committee met with Special Master Carey to discuss the parameters of the settlement program. Plaintiffs and St Jude Medical provided Special Master Carey with background information they felt would be helpful in written submissions. Special Master Carey provided counsel with available dates for mediations in April, May and June. The parties agreed to work together to find available dates for mediations, and to determine how Special Master Carey wants to be educated on the individual cases, either by written submissions, oral presentations or both. Class Counsel has advised all MDL counsel of the process and the available dates and has prepared and has forwarded to the Special Master and St. Jude Medical counsel the dates selected and the cases to be presented each day.

III. MOTION TO DECERTIFY

On March 9, 2004, St Jude Medical filed a motion to decertify the class previously certified based on the Minnesota consumer fraud statutes. Plaintiffs' opposition to the motion is due on March 30, 2004. St Jude Medical's reply is due on April 10, 2004. Both sides request that the Court schedule oral argument on this motion on a date convenient to the Court and the parties.

IV. PLAINTIFFS MOTION TO RECONSIDER

Plaintiffs' Motion to Reconsider the Court's January 5, 2004 order concerning the scope of Class I was filed on February 6, 2004. St Jude Medical's opposition and briefing on substantive state medical monitoring law was filed on March 5, 2004. Plaintiffs' reply was filed on March 15, 2004.

St Jude Medical requests that it be authorized to file a reply to plaintiffs' response to its substantive briefing on medical monitoring law 10 days after plaintiffs' response is received. Plaintiffs object to any further briefing by St. Jude Medical. Because St. Jude Medical responded with a consolidated brief (opposition to Plaintiffs' motion for reconsideration and its own dissertation on the law of medical monitoring) Plaintiffs submit that any further submission would be a surreply which should not be permitted. Both sides request that the Court schedule oral argument on this motion on a date convenient to the court and the parties.

V. PRIVILEGE LOG

As the Court is aware from the last Status Conference, approximately 290 documents have been submitted to Special Master Solum for his review and determination as to whether those documents are entitled to attorney-client and/or work product protection. The parties have also provided the Special Master with briefing related to those documents. The Special Master has requested an additional affidavit from St. Jude Medical's in-house attorney, James Ladner, which will be submitted on March 17, 2004. Plaintiffs objected to the additional submission but the objection was overruled by the Special Master. Plaintiffs response to the Ladner affidavit, if any, is due on March 22, 2004 and it is expected that a final decision on these issues will be rendered by the end of this month.

VI. STATUS OF DISCOVERY

At the last Status Conference, the Court issued an order staying all discovery for a period of 45 days. The Court also directed that the depositions of 10 current and former employees of

St. Jude Medical go forward on or before May 24, 2003. The following depositions are currently scheduled:

Jim Phillips	April 23, 2004
Peter Gove	April 23, 2004
Dan Langanki	April 27, 2004
Steve Healy	April 28, 2004
Matt Ogle	April 29, 2004
Tina King	May 11, 2004
Robert Frater, M.D.	May 13, 2004
Peter Spadaro	May 13, 2004

St. Jude Medical expects that the dates for the remaining depositions of Terry Shepard and Bill Mirsch will be finalized within the next two weeks.

VII. MOTION FOR INTERLOCUTORY APPEAL REGARDING PREEMPTION

By March 31, 2004, St. Jude Medical will file a request to have this Court certify the issue of preemption for an immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Plaintiffs will oppose such request as the issue presented does not “involve a controlling question of **law** as to which there is a **substantial ground for difference of opinion**” Plaintiffs submit that in fact, the Court’s ruling was predicated upon the existence of genuine issues of material **fact**.

VIII. NEW PUTATIVE CLASS ACTION COMPLAINT ASSERTING CLAIM UNDER EUROPEAN PRODUCT DIRECTIVE

On February 11, 2004, the law firms of Zimmerman Reed; Levy, Angstreich, Finney, Baldante, Rubenstein & Coren; Kellogg & Sigelman, LLC; and Leigh Day & Co., a London firm, commenced a putative class action in Minnesota state court. The named plaintiffs are Shane O'Neill and Gabriele Sanio-O'Neill, citizens of the "Republic of Ireland, Europe and Canada" and "Germany and Europe" respectively. The O'Neills further purport to bring their lawsuit -- asserting a claim under the European Union Product Directive and seeking medical monitoring under Minnesota's consumer protection statutes -- on behalf of a putative class of

"[a]ll persons who, while residing in the original European Economic Union member states (i.e. - Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, Spain, Sweden, the Netherlands, Norway and United Kingdom)" were implanted with "a product with Silzone(r) coating." No U.S. citizen is a named or putative class plaintiff.

On March 12, 2004, St. Jude Medical removed the case to this Court, and believes that several dispositive legal issues will require this Court's determination before the merits are addressed or discovery conducted. St. Jude Medical accordingly requests that this court set a briefing schedule for these dispositive legal issues. Counsel for the EU class believe that the removal was improper and that the only motion for the Court to address will be the motion for remand. Further, counsel oppose any discussion of the EU class in this MDL proceeding because it is not a part of the MDL; the Multidistrict Panel not having approved of its transfer into these proceedings or ordering its transfer.

DATED:

ZIMMERMANN REED, P.L.L.P

By: _____

J. Gordon Rudd, Jr., No. 222082
Plaintiffs' Liaison Counsel

DATED:

CAPRETZ & ASSOCIATES

By: _____

James T. Capretz
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DATED:

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By:

David E. Stanley
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St. Jude Medical, Inc.