

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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IN RE: STRYKER REJUVENATE )  
AND ABG II HIP IMPLANT ) Case No. 13-MD-2441 (DWF/FLN)  
PRODUCTS LIABILITY LITIGATION )  
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\_\_\_\_\_ )  
This Document Relates to ) St. Paul, Minnesota  
All Actions ) July 16, 2015  
) 9:46 a.m.  
) )  
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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**

**APPEARANCES:**

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**APPEARANCES (Continued):**

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**P R O C E E D I N G S****I N O P E N C O U R T**

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2  
3 THE HONORABLE JUDGE FRANK: You may all be seated.  
4 Thank you. Why don't we have introductions of counsel,  
5 first. And then I will remind everyone -- I will welcome  
6 everybody who is appearing by telephone, as well -- and I  
7 will just remind everyone of what Ms. Schaffer reminded  
8 Judge Noel and I: Please speak into the microphone. And  
9 these aren't the fancy microphones, as you know like  
10 entertainers have.

11 So, if you are too far away from them, it won't  
12 pick you up. So, maybe we can start with Plaintiffs'  
13 counsel first?

14 MS. ZIMMERMAN: Good morning, Your Honor.  
15 Genevieve Zimmerman for Plaintiffs.

16 MR. GORDON: Good morning, Your Honors. Ben  
17 Gordon for Plaintiffs.

18 MR. FLOWERS: Good morning, Your Honors. Pete  
19 Flowers for the Plaintiffs.

20 MR. ZIMMERMAN: Good morning, Your Honors. This  
21 is Bucky Zimmerman for the Plaintiffs.

22 MR. DeGARIS: Good morning, Your Honors. Annesley  
23 DeGaris for the Plaintiffs.

24 MR. NEMO: Good morning, Your Honors. Tony Nemo  
25 for the Plaintiffs.

1 MR. GALLANT: Good morning, Your Honor. Michael  
2 Gallant for the Plaintiffs.

3 THE HONORABLE JUDGE FRANK: We will go over to the  
4 Defense.

5 MS. CATTULO: Good morning, Your Honors, Kim  
6 Catullo for the Defendants.

7 THE HONORABLE JUDGE FRANK: I think -- is the  
8 little green light on there?

9 MS. CATTULO: There we go. Good morning, Your  
10 Honors. Kim Catullo for the Defendants.

11 MR. GRIFFIN: Good morning, Your Honors. Tim  
12 Griffin for the Defendants.

13 THE HONORABLE JUDGE FRANK: And I would welcome  
14 everyone else who is here, whether they are in the  
15 courtroom, on the phone.

16 If we can then proceed with -- we have two agenda  
17 items, and then there will be something as Judge Noel and I  
18 mentioned in the get-together in chambers this morning that  
19 we always have beforehand, that we would be discussing with  
20 you not just the settlement program status, but also some  
21 important issues, not unique to this case at this stage of  
22 reaching out with and coordinating things with the lawyers  
23 in both the MDL, the State cases, whether they are in other  
24 states like New Jersey, Florida, Michigan or other states.  
25 And so, we will talk about that as well so we can all try to

1 work together cooperatively.

2 But, before we do that, why don't we proceed first  
3 with the settlement program status, and then maybe as part  
4 of that, because we had asked it in the chambers, as well,  
5 about any updates on the registration data and any update  
6 issues with the registration.

7 So, shall we start with Plaintiffs first? Mr.  
8 Flowers?

9 MR. FLOWERS: Thank you, Your Honor. In terms of  
10 the settlement, Your Honor, we are happy to report that  
11 everything is moving forward smoothly. We reached the 95  
12 percent necessary threshold nationally, I believe, and all  
13 of the dates have been followed in the MSA. The first  
14 funding of a large portion of the case is occurring, frankly  
15 as we speak, with additional fundings to come shortly. So,  
16 we are happy to report that that is going forward as planned  
17 with the super majority of the filed cases involved in that.

18 MS. CATTULO: I agree, Your Honor. Kim Cattulo  
19 for the Defendants. Mr. Flowers is correct. We have met  
20 all of those dates. The first funding has occurred, and the  
21 second funding is already in process.

22 THE HONORABLE JUDGE FRANK: Do you want to also  
23 address -- and any other issue that you feel you would like  
24 to update the Court on on the registration issue, as well?

25 MS. CATTULO: Sure, Your Honor. If I may, on that

1 issue, I think the Court is correct to raise that. As folks  
2 may recall, pursuant to the first Order that was entered by  
3 the Court after the settlement was announced, registration  
4 did occur. That was the first step, to know what the  
5 universe is out there. And that was cut off, as agreed, by  
6 December 20, I believe, was the date, 2014.

7 So, we have had some folks ask to update, and then  
8 we let that happen. And then it got to a point where we  
9 just were in the middle of dealing with the actual  
10 settlement process, itself. So, that stopped.

11 And so, there are a number of people, either  
12 registrants who have updated status, for example, people who  
13 registered as unrevised, who are now revised, as well as  
14 other people who have since retained counsel, have since,  
15 you know, been identified who are not part of that  
16 registration. So, I do think it makes sense actually across  
17 the country, probably, including the other litigations, to  
18 have an updated registration. That is not enrollment, it is  
19 different than that. But, just to know what that universe  
20 is both for court purposes and, I think, the parties, as  
21 well.

22 THE HONORABLE JUDGE FRANK: Mr. Flowers?

23 MR. FLOWERS: We agree, Your Honor. We think it  
24 is a good idea.

25 THE HONORABLE MAGISTRATE JUDGE NOEL: I'm sorry,

1       could I just ask, the original order for the registration,  
2       can you refresh our recollection as to the date of that  
3       order or the number? Or --

4               MS. CATTULO: I believe, Your Honor, I believe it  
5       was right around the time of, literally, the settlement  
6       announcement, November 3rd --

7               THE HONORABLE MAGISTRATE JUDGE NOEL: Back in  
8       November?

9               MS. CATULLO: -- but I will -- I don't have that  
10      Order in front of me, here.

11              MR. FLOWERS: We will have it shortly, Your Honor.

12              THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

13              THE HONORABLE JUDGE FRANK: It is that short-term  
14      memory loss, Judge Noel, that we experience. Not you, of  
15      course, but me.

16              Is there anything in that context that would be  
17      helpful? For example, I can state now -- we will talk about  
18      it more before we conclude, but we had indicated during our  
19      status conference that I will be reaching out in the next  
20      couple of days to the Florida Judges, and once I have the  
21      contact information of the Michigan Judge, and then the  
22      Judge I have had the most contact with, who is by the way  
23      nominated for a Federal Judgeship, Judge Martinotti, to have  
24      another status conference that led to the May Order, and I  
25      will talk more about that.

1           And Brenda -- PTO Order 25.

2           MR. FLOWERS: That is what Ms. Zimmerman just  
3 handed to me, as well.

4           THE HONORABLE JUDGE FRANK: I would like to  
5 pretend that I recall that --

6           THE HONORABLE MAGISTRATE JUDGE NOEL: Thank you.

7           THE HONORABLE JUDGE FRANK: But Brenda Schaffer  
8 just brought it up and handed it to me. So -- but, since I  
9 will be reaching out to and setting up a status conference  
10 with them, much like we did before that May Order when we  
11 all were working together.

12           Is that something -- it seems like that is  
13 something that I should discuss with the other Judges, as  
14 well?

15           MS. CATTULO: I think that makes sense, Your  
16 Honor. Again, I think Judge Martinotti actually entered an  
17 order right around the same time that this Court did for  
18 registration. I believe the other Judges recommended  
19 strongly that counsel participate in registration, so I do  
20 think that makes sense.

21           THE HONORABLE JUDGE FRANK: All right. Anything  
22 else before, perhaps, the Court -- we address a couple of  
23 things we did in chambers that we raised on the settlement  
24 piece.

25           MR. FLOWERS: The only other -- not on the

1 settlement piece, Your Honor. Not from the Plaintiffs'  
2 perspective.

3 MS. CATTULO: Agree, Your Honor.

4 THE HONORABLE JUDGE FRANK: Well, why don't you go  
5 ahead, Mr. Flowers? You were about to say, "The only  
6 other," and then you stopped and said, "not on the  
7 settlement piece."

8 MR. FLOWERS: And I stopped myself.

9 THE HONORABLE JUDGE FRANK: Go ahead.

10 MR. FLOWERS: I actually was just going to the  
11 second agenda item which is short.

12 THE HONORABLE JUDGE FRANK: Why don't you go  
13 ahead?

14 MR. FLOWERS: A short thing. There were some  
15 cases that were voluntarily dismissed that the Plaintiffs'  
16 lawyers who represent those individuals would like  
17 reinstated. There is a series of five cases. If it is okay  
18 with you, Your Honor, I was just going to read them into the  
19 record.

20 THE HONORABLE JUDGE FRANK: Sure.

21 MR. FLOWERS: There is the *Bowles* case,  
22 B-o-w-l-e-s, that is 14-01790. The *Hogan* case, 13-2053.  
23 The *Williams* case, 13-2054. And the Reed case, 13-2055.  
24 Those were all represented by the McGlamry Pope firm, who I  
25 believe is on the phone, and has indicated that they would

1 like those cases reinstated.

2 MS. CATTULO: Your Honor, there is one other case,  
3 as well, which is filed by the Aylstock Witkin firm. I have  
4 spoken to and emailed with Doug Kreis about that being  
5 reinstated. The name of that case is *Henrietta Palmer*, and  
6 the case number is 14-5077. That was re-filed in Broward  
7 County, Florida. And Mr. Kreis has agreed to dismiss that  
8 from Florida as long as it is reinstated into the MDL.

9 THE HONORABLE JUDGE FRANK: Well, I would just say  
10 two things. One, I would like to commend the lawyers on all  
11 sides on how they have kind of resolved this, because it  
12 makes sense to me.

13 And then secondly, as I said in chambers, part of  
14 this the Court has to take responsibility for -- not the  
15 commendation part, but I will criticize myself, because I am  
16 not going to criticize the Clerk's Office.

17 As I was signing the orders, and it is my  
18 responsibility to know how our filing system works, I wasn't  
19 aware, but that is my responsibility -- no one else's --  
20 that until that order gets done, all parties aren't  
21 notified.

22 And so, that responsibility lies with the Court,  
23 no one else, not the lawyers. And so -- but I do appreciate  
24 how it was resolved. That makes perfect sense.

25 Other items, by either counsel?

1 MR. FLOWERS: No, Your Honor.

2 MS. CATTULO: No, Your Honor.

3 THE HONORABLE JUDGE FRANK: Well maybe this is --  
4 and feel free to jump in, Judge Noel. I think it would be  
5 fair to say so those that are in the courtroom who weren't  
6 as part of the status conference in chambers that we always  
7 have, and those that are on the phone, one of the things we  
8 will be doing is -- not unlike what we did, but for similar  
9 but additional reasons, what we did prior to the May Order  
10 that we discussed with the stay through September 1st is,  
11 one, as I said not just today, but in other days, to the  
12 extent that a criticism for many years of MDL's, and  
13 sometimes that criticism comes to the Federal Bench,  
14 sometimes to the State Bench, sometimes to all of us, is not  
15 working together and meeting and conferring, reaching out to  
16 one another, coordinating, not just a discovery plan to hold  
17 down costs, but also giving the cases that remain, opt-out  
18 cases, other cases, calendar priority to come up with a  
19 trial management plan.

20 I will give you an example I didn't give in  
21 chambers. We did such a thing in the Guidant cases, as some  
22 of you know in here. And so, I actually sat down with two  
23 State Judges, and we coordinated -- the discovery plan, the  
24 lawyers reached out to one another both in the State cases  
25 and the MDL with, I think, few disagreements. And we got

1 involved, worked out a discovery plan.

2 And then also, they worked out, but they needed  
3 the Judges to work together to coordinate a trial management  
4 plan. We actually, as a group, sat down and came up with a  
5 trial management plan and coordinated trial dates, hearing  
6 dates, for every remaining case. Because it was many of the  
7 same witnesses with the experts, other things, and without  
8 delay and with calendar priority.

9 So, we actually coordinated day certain settings,  
10 because sometimes it involved, if not the same lawyers,  
11 people who wanted to be at the -- so, sometimes the same  
12 witnesses, sometimes not. We coordinated everything  
13 together. Neither side said: I am going. I am not going  
14 to talk to you.

15 So, my goal will be -- and that part I didn't --  
16 because that, specifically, as one or two lawyers in the  
17 room know, that is kind of what we ended up doing when we  
18 came up with that plan so one wouldn't conflict with the  
19 other. And we already agreed then to a coordinated  
20 discovery plan, where everybody met and conferred in the  
21 State and Federal cases and we worked out a coordinated  
22 plan.

23 I will, much like what predated the May Order, I  
24 will get on the phone immediately with the Judges that we  
25 talked to, Judge Martinotti. And he and I have had -- I

1 have had more contact with him than the other State Judges.  
2 But, the two Judges, including Judge Henning in Florida, and  
3 then the Judge in Michigan, and any others that are  
4 involved, and I will set up a status conference.

5 And as I will say here on the record in the  
6 courtroom, and I actually don't think -- and Judge Noel can  
7 jump in if he wishes. I think you would all agree to this  
8 before we even discussed it and encouraged it, and that is  
9 for the lawyers to reach out to all of the Plaintiffs'  
10 lawyers in the state cases and see if we can all work  
11 together, meet and confer. And then I will be doing the  
12 same with the State Judges.

13 So we can try to come up with one discovery plan  
14 that will be consistent with the existing order that took us  
15 through September 1st. But, I think we should go to work on  
16 that immediately and all work together and see if we can  
17 come up with one plan. That will be my goal to work with  
18 the State Judges and set up something immediately. And I  
19 will frankly tell them that we have asked all of the lawyers  
20 in our case to reach out and work with the State lawyers and  
21 see if we can come up with one plan that suits everybody's  
22 needs.

23 And then we will keep our end up on the May Order  
24 that promised calendar priority and expedited schedules.  
25 Because, let's phase it, the largest criticism of these

1 cases is that State and Federal people don't work and  
2 coordinate together and move things along. And we will do  
3 our very best to do that.

4 And I think, Judge Noel, as we said, if all of  
5 this meet and conferring is going on and trying to come up  
6 with a package both on the discovery plan, including all  
7 cases across the country that are left in a trial package  
8 plan, including, we can discuss coordinated day certain  
9 settings and other issues as we have done in other cases.

10 If for some reason, either to seek agreement on an  
11 issue that the lawyers have agreed on before our next  
12 get-together, which will be Wednesday, September 2nd at the  
13 same times, or you reach kind of an impasse trying to  
14 coordinate, nationally, cases, we will be accessible before  
15 that date. And I will have that same discussion with the  
16 State Judges.

17 In fact, before the day is out, I am going to try  
18 and set up a conference call much like we did in the -- that  
19 predated the May Order, because I know that that is on the  
20 mind of a lot of people. Judge Noel, did you want to --

21 THE HONORABLE MAGISTRATE JUDGE NOEL: No, I have  
22 nothing to add to that. That sounds good.

23 THE HONORABLE JUDGE FRANK: So, and then whether  
24 or not -- I will start with both counsel at the podium,  
25 here, anything you want to either agree with, disagree with,

1 or say: Okay, we understand what the expectations are here  
2 and the time frame and the plan, so --

3 MR. FLOWERS: Yeah, Your Honor, from the  
4 Plaintiffs' perspective, we understand the Court's  
5 expectations. And our intention, just so it is clear to  
6 everyone out there is for the Plaintiffs' side, we are going  
7 to meet with the leaders in each of these other  
8 jurisdictions and come up together with a mutual plan that  
9 suits everyone's needs across the country.

10 MS. CATTULO: And Your Honor, from the Defendants,  
11 we did understand from the May Order that coordination is  
12 key. We agree with that. And as I mentioned to Your Honor,  
13 there was a stay entered in Michigan on Monday of this week.  
14 And we would very much like the Michigan Judge to  
15 participate, as well. But, I think that makes sense. Thank  
16 you.

17 THE HONORABLE JUDGE FRANK: Well, and it is so  
18 important. It is not unique to this case. At this stage of  
19 the case, obviously, a lot of the folks have been in  
20 settlement, and I know everybody will do what they have to  
21 do in that area.

22 But also, obviously, I think now we can -- which  
23 is not, again, unique to this case, to come up with a  
24 coordinated plan that seems to be fair to everyone, but also  
25 moves things along and kind of reducing duplication and

1 saving money and time for everyone.

2 And so, that will be the goal of the Court, to  
3 work with, and coordinate with, as it was back prior to the  
4 May Order. So, that is why I think it is our obligation to  
5 reach out to everyone. And that is what we will be doing.

6 And I will -- and I assume if there are any issues  
7 that counsel has from either side of the aisle, if you need  
8 access to one or both of us, you have it before September  
9 2nd. And we have always tried to -- not unique just to this  
10 MDL of mine, but to tell the -- all of the other Judges,  
11 let's work together. If you need us to do something, or if  
12 there is an issue, please pick up the phone and give a call.  
13 We will work with you.

14 So, I think that is all I have at this time. I  
15 would note, without trying to be a poster child for it, that  
16 I believe that September 2nd date, whether you believe it is  
17 coincidence or not, is also a time when the State Fair is on  
18 here in Minnesota. Judge Noel did you have --

19 THE HONORABLE MAGISTRATE JUDGE NOEL: Just one  
20 more question I had, I guess. In terms of updating the  
21 registration list, did the parties anticipate submitting a  
22 similar order as the PTO No. 25 for the Court to issue  
23 requiring that updating to occur?

24 MS. CATTULO: Yes, Your Honor.

25 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

1 THE HONORABLE JUDGE FRANK: Anything else by the  
2 Plaintiffs?

3 MR. FLOWERS: No, Your Honors, thank you.

4 THE HONORABLE JUDGE FRANK: Defense?

5 I see people shaking their head no, so -- well, I  
6 appreciate everyone coming in. Safe travels to everybody  
7 who had to come in from out of the area. And I sincerely  
8 mean it. Good luck everyone as we start trying -- not that  
9 people haven't reached out before to all of the attorneys  
10 and individuals involved with both the State and Federal  
11 case, but we will do the same, immediately.

12 And then absent other contact, which may or may  
13 not come up between now and September 2nd; and then if there  
14 are any proposed orders that come in like on the updated  
15 registration, we will promptly respond to that, as well.

16 Unless there is anything else, we will stand in  
17 recess. And I will thank everybody who is on the phone,  
18 too, for participating. And we are adjourned.

19 MR. FLOWERS: Thank you.

20 MS. CATULLO: Thank you.

21 (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