

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	)	May 11, 2016
	)	10:31 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**

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1 MR. DeGARIS: Annesley DeGaris for the Plaintiffs.

2 MR. NEMO: Tony Nemo for the Plaintiffs,.

3 MR. GALLANT: Michael Gallant for the Plaintiffs.

4 THE HONORABLE JUDGE FRANK: Then we can go over  
5 to -- did we get everyone? Can we go over to Defense  
6 counsel?

7 MS. CATULLO: Kim Catullo for the Defendants.

8 MR. GRIFFIN: Tim Griffin for the Defendants.

9 THE HONORABLE JUDGE FRANK: Did we miss anyone for  
10 the Plaintiff? Well, Mr. Flowers or Ms. Catullo or Mr.  
11 Griffin, if you want to step to the mike together or  
12 separately, I will leave that up to you. I think just by  
13 what we discussed in chambers, that we will probably have a  
14 focus here on the registration process for court docket  
15 management purposes, but I will leave that in substantial  
16 part to counsel.

17 MR. FLOWERS: Thank you, Your Honor.

18 Your Honors, so just generally speaking, the  
19 settlement has proceeded along well. The first phase of it,  
20 meaning the initial base awards have essentially been paid  
21 out. The enhanced awards are going through the process of  
22 being paid out, as well as us dealing with liens. So, from  
23 our perspective, we always want it to be quicker, but it has  
24 moved along quite well.

25 Kind of moving forward is the Defendants have

1 produced some additional written documents, and now I think  
2 we are in a position to try and determine what is remaining.  
3 So, with that I will turn it over to Kim to talk about  
4 registration.

5 MS. CATULLO: Your Honor, you had charged us with  
6 the task of trying to come up with a registration order as a  
7 court docketing tool.

8 THE HONORABLE JUDGE FRANK: Right, right. And  
9 maybe you could move that mike a little bit closer, because  
10 these aren't the fancy entertainment mikes, and so if we  
11 don't speak fairly closely, no one can hear us that is  
12 listening in.

13 MS. CATULLO: So, we did work on a registration  
14 order, both sides did, and we also included folks from New  
15 Jersey as well in that, and came up with an order that will  
16 be submitted to the Court early next week. That one of the  
17 things that the Court was involved in and counsel, has been  
18 frustrated by the idea that folks have actually registered  
19 people who don't even have these products, believe it or  
20 not. And as you know, we have been trying to clean up some  
21 of those cases from the docket.

22 So, one of the things that we focused on was  
23 trying to make it clear in this order that you need to do  
24 your due diligence on the product identification before you  
25 register.

1           And when you register, you do have to affirm that  
2           your client or pro se does indeed have these products. So,  
3           that is one of the things.

4           And the other thing, also, is to remember that  
5           this includes both updated registration for people who were  
6           registered before. For example, if someone was registered  
7           in November or December of 2014 and has since had a  
8           revision, that person's registration would need to be  
9           updated. The same -- it also will include people who --  
10          remember, that registration has been closed since December  
11          of 2014. So, there are a number of people who called me,  
12          asking to put people into the registration data and couldn't  
13          do that. So, this will be also updated registration for  
14          people who were not previously registered.

15          This is not a settlement program. The Court asked  
16          us to do this for court docketing purposes to know what is  
17          left, because it is a little difficult sometimes to figure  
18          that out. So, that is the purpose of this order.

19          And just one other thing, in terms of when it will  
20          open, I think that is important, that is going to be,  
21          assuming the orders get entered early next week, that will  
22          open on May 20th, so that Friday. And it will close on June  
23          30th.

24                 THE HONORABLE JUDGE FRANK: And perhaps you could  
25          -- and maybe we're talking or preaching to the choir here,

1 and we can make sure the order covers it, because some  
2 people may have forgotten that this goes back to December of  
3 2014.

4 But, when we use the phrase "registration  
5 process," maybe you could just indicate here, specifically,  
6 what we are talking about. Because some people may say,  
7 well, what is that again that the Court and the lawyers are  
8 talking about?

9 MS. CATULLO: Yeah. So, the order actually lays  
10 out in great detail, and there is a lot of underlining and  
11 bolding to try and guide people through it. And then there  
12 is going to be a -- within that will be a website that  
13 people can go and get information. I would imagine  
14 Plaintiffs will also do some educating on their side, as  
15 well. But, we will be using, because it is already there  
16 and there is a database. So, through Garden City Group  
17 we'll, in fact, do the updated registration.

18 So, it will be the same database, because the data  
19 is already there. It just needs to be updated.

20 MR. FLOWERS: It helps, Your Honor, to define,  
21 too, what is a revised case. Someone who has been revised  
22 and someone who has not been revised, that is data that  
23 frankly neither of us really have. And this will help us  
24 define what are in those groups.

25 THE HONORABLE JUDGE FRANK: And in addition to

1       however each of the parties, how they publicize the order,  
2       of course we will have it up on our public -- on our  
3       website, as well.

4               And so, in addition to the e-filing of the order,  
5       so hopefully that will kind of get the word out to everyone  
6       and they will -- like you said, Ms. Catullo, I think the  
7       order will very explicitly lay out everything as much as  
8       possible. So, anything else on that, on that topic?

9               MS. CATULLO: Your Honor, one other point I think  
10       is important. If someone has actually resolved their case,  
11       be it through the actual program that was announced in  
12       November of 2014 or otherwise, that person should not be  
13       registering. This is about people who have not resolved  
14       their cases, meaning they never enrolled. So, even, for  
15       example, if someone is enrolled but they have an enhancement  
16       benefit that has not yet been made, those people -- that is  
17       not what this is for. It is for people who have not  
18       otherwise resolved their matters.

19              THE HONORABLE JUDGE FRANK: And by otherwise not  
20       resolving their matters, it might be also someone who hasn't  
21       thus far enrolled?

22              MS. CATULLO: Yes. Or they will know if, for  
23       example, they have otherwise resolved through a bellwether  
24       mediation a long time ago or something like that. Those  
25       people should not register. We want accurate data here.

1 THE HONORABLE MAGISTRATE JUDGE NOEL: Just so I  
2 was clear, and maybe you just answered that question, by  
3 definition, anybody who has resolved their case would have  
4 necessarily already enrolled, would they not?

5 MS. CATULLO: Not necessarily, no.

6 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay.

7 MS. CATULLO: Because remember, we had a whole  
8 bellwether mediation process that led to resolution.

9 THE HONORABLE MAGISTRATE JUDGE NOEL: So, cases  
10 that were resolved before the November 14th, or the November  
11 of 2014 process started, those cases wouldn't necessarily  
12 have been registered; is that what you are saying?

13 MS. CATULLO: Correct.

14 MR. FLOWERS: I would just add, too, Your Honor,  
15 there were a series of cases that were filed that turned out  
16 to not be products involved in this MDL. And we have  
17 contacted those attorneys. And hopefully, they are now  
18 aware and are taking action for that.

19 Those folks should move their cases out of the MDL  
20 and not get on the registration, as well, or we will cloud  
21 where the numbers really are.

22 THE HONORABLE JUDGE FRANK: Anything else on the  
23 registration issue? Well, I will just add one thing. Once  
24 we process and file the order, I had mentioned to the group  
25 in chambers that it is the goal of Judge Martinotti,

1 obviously I think as most people know he is the presiding  
2 Judge in New Jersey. It is our goal to set up -- it won't  
3 be the first time we have set up a telephone conference with  
4 some of the other State Judges, but it is our goal also to  
5 encourage them to emphasize this registration process, and  
6 if possible, to do an order that would in many ways, I  
7 think, get the word out and mirror the process we are doing.

8 So, with or without the different orders being  
9 entered there, because I think that benefits all parties, we  
10 will emphasize that with the contact that we have in the  
11 next week or so.

12 Where does that leave us? I will start with Mr.  
13 Flowers?

14 MR. FLOWERS: I think it leaves us at the end of  
15 the agenda, Your Honor.

16 MS. CATULLO: I agree.

17 THE HONORABLE JUDGE FRANK: One thing I was going  
18 to say, and maybe -- well, it is repetitive from chambers,  
19 but I will likely be doing a short order, not because our  
20 chambers, our court has really had any phone calls. But, I  
21 will just say more for the benefit of the people in the  
22 courtroom who were not in chambers and for the people  
23 listening, that I think that I hear more positive waves than  
24 negative waves, and it will be an order updating, saying,  
25 hopefully the focus will continue to be addressing

1 separately the people in registration, moving forward with  
2 resolving any of the legitimate opt-outs, because we still  
3 have the larger number than any State Court, and I know  
4 Judge Martinotti feels the same way as I do.

5 So, I believe it is all -- and I appreciate the  
6 communication going on between counsel and trying to move  
7 forward. Because at one juncture, it was inquired of me,  
8 not by anyone here in the room of, well, we will reach a  
9 point at some point if there are one or more cases that need  
10 to be tried and discovery to move forward, but my focus has  
11 been on encouraging to address the legitimate opt-out issues  
12 that were -- "legitimate" is my word. I'm not quoting  
13 anybody. So, I am not really asking for any further  
14 updates, but I will just be doing an order just to kind of  
15 -- just to apprise the parties that that is kind of where we  
16 have been focused and as we move forward.

17 In that context, I will first ask Judge Noel if he  
18 has anything.

19 THE HONORABLE MAGISTRATE JUDGE NOEL: The only  
20 question I have, I think we talked briefly about it in  
21 chambers. In terms of the folks who are opt-in and are  
22 settling and going forward, CMS, is that working well? In  
23 other cases I have had issues where people say, gee, there  
24 is always a CMS bottleneck. Is that a thing or not a thing?

25 MR. FLOWERS: It is working relatively well, Your

1 Honor. The first wave was simple. The enhancements are a  
2 little more difficult. And if it gets to a stage that  
3 becomes too difficult, we will certainly be asking for  
4 assistance. But, thus far, the first wave is easier to deal  
5 with, so the enhancement is a little bit more difficult, but  
6 better than other litigations I have been involved in.

7 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay, thank  
8 you.

9 THE HONORABLE JUDGE FRANK: Anything further, Mr.  
10 Flowers?

11 MR. FLOWERS: No, Your Honors.

12 THE HONORABLE JUDGE FRANK: Ms. Catullo?

13 MS. CATULLO: No, Your Honor, thank you.

14 THE HONORABLE JUDGE FRANK: Well, I am sorry that  
15 for those of you who have traveled in here, you have  
16 unseasonably cold weather -- but look at the positive side,  
17 there is no snow coming down. Although, they might be  
18 predicting a -- we will be ready shortly. There is an  
19 in-custody sentencing that is coming at 11, so -- you're  
20 welcome to stay if you wish.

21 So, thanks for everybody's participation, your  
22 input and communication. And if I didn't state it clearly  
23 at the beginning, what I will do is reach out, we will reach  
24 out to the parties in the next 4 to 6 weeks to get an  
25 updated status.

1           And then my goal is to then with input from all of  
2 you to have -- we will come back together sometime in August  
3 of this year for a get-together. And I think that is how I  
4 kind of explained it to each of you when we were in  
5 chambers.

6           Will that work, Mr. Flowers, from the Plaintiffs'  
7 and your committee the LCC's point of view?

8           MR. FLOWERS: Yes, Your Honor, thank you.

9           THE HONORABLE JUDGE FRANK: And for Stryker?

10          MS. CATULLO: Yes, Your Honor.

11          THE HONORABLE JUDGE FRANK: All right. Safe  
12 travels, everyone, and we are adjourned. Thank you very  
13 much.

14                   (Adjournment.)

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18           I, Jeanne M. Anderson, certify that the foregoing  
19 is a correct transcript from the record of proceedings in  
20 the above-entitled matter.

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

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