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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 2:06-cv-00135-WJM

In Re: Human Products Liability :
Litigation. : TRANSCRIPT OF PROCEEDINGS
: (Status conference)
- - - - - x

Newark, New Jersey
November 13, 2009

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record as
taken stenographically in the above entitled proceedings.

S/WALTER J. PERELLI

WALTER J. PERELLI, CCR, CRR
Official Court Reporter

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1 THE COURT: Good morning, everyone. Please be
2 seated.

3 Again, good morning.

4 This is the matter of In Re Human Tissue.

5 Good morning, Mr. DePalma.

6 MR. DePALMA: Good morning.

7 Joseph DePalma for Plaintiffs.

8 MR. COHAN: Larry Cohan for the Plaintiffs.

9 MR. MASIAS: Jason Masias for the Plaintiffs, your
10 Honor.

11 MR. DEAN: Good morning, Judge. Kevin Dean.

12 THE COURT: Okay. And for the Defendants?

13 MR. WEGRYN: Good morning, your Honor. Richard
14 Wegryn, Cozen O'Connor, on behalf of RTI.

15 MS. LEDY-GURREN: Nancy Ledy-Gurren from
16 Ledy-Gurren Bass & Siff for RTI.

17 THE COURT: All right.

18 MR. LEVIN: Good morning, your Honor. Murray
19 Levin for Medtronic.

20 MR. HUSIK: Good morning, your Honor. Adam Husik
21 for Tutogen Medical, Inc. and Tutogen Medical United States,
22 Inc.

23 THE COURT: All right. We just reconvened I think
24 to get an update as to where you are with respect to your
25 settlement discussions. I guess I indicated that obviously at

1 some point we need to know whether or not to continue this
2 process, or if not, then to make some decisions with respect to
3 scheduling and further discovery, et cetera.

4 So, Mr. Cohan, would you like to report back to me
5 first?

6 MR. COHAN: Your Honor, I think that Ms.
7 Ledy-Gurren has been the point person for many of the
8 Defendants. I'll let her introduce the subject of where we're
9 at and then we can comment on that.

10 THE COURT: All right. Ms. Gurren.

11 MS. LEDY-GURREN: Thank you, your Honor.

12 Just as a threshold matter, your Honor, I am
13 admitted to practice in the Second Circuit and before the
14 Southern District but not before this Court, and I wanted to
15 bring that to your attention while we're on the record.

16 THE COURT: All right. I appreciate that. But go
17 ahead.

18 MS. LEDY-GURREN: Okay.

19 THE COURT: I'll accept your appearance at this
20 point. Primarily you've been here to assist RTI in terms of
21 internally seeing if a resolution can be reached. Correct?

22 MS. LEDY-GURREN: Yes, absolutely, your Honor.

23 THE COURT: Okay.

24 MS. LEDY-GURREN: And I'm pleased to report that
25 significant, if not perhaps penultimate, progress has been made

1 in the sense that we have agreed in principle to settlements on
2 the MDL side among RTI, Medtronic and the Tutogen, Zimmer
3 Defendants on the MDL side, and on the state side, Medtronic
4 and RTI have agreed in principle with the Rice firm and with
5 the remaining non Motley Rice cases. There are only five other
6 cases that are out there, and they are in active negotiations
7 and we have every hope that they, too, will be resolved.

8 When I use the word "in principle," I mean the
9 hardest issue, that of the dollar amount has been resolved.
10 What remains is the negotiation of the respective term sheets
11 for the settlement. And the only issue really that is of some
12 complexity with respect to that is the number of Plaintiffs
13 that will sign on or be, for lack of a better term, opted out
14 necessitating the litigation to go on that will be accepted by
15 the Defendants as a vitiated fact, or by the Plaintiffs as
16 wanting it to go forward, the settlement to go forward anyway.

17 And so that is a sticky wicket. But I think on
18 the state side we've made -- we're almost there. It's a matter
19 of language and the participation of Judge Monico in Florida
20 whom we've already received word is going to work with us and
21 Mr. Dean's firm to accomplish a hearing of sorts with the court
22 before too long. And the MDL is a little more complicated
23 because there are so many more Plaintiffs' representatives and
24 so it is not quite as easy for the MDL counsel or defense
25 counsel to negotiate that process. And that's really I think

1 where we are. But I would certainly defer to my colleagues on
2 the other side of the aisle for any corrections.

3 THE COURT: All right.

4 Mr. Cohan.

5 MR. COHAN: Your Honor.

6 THE COURT: Thank you, Ms. Gurren.

7 MR. COHAN: Larry Cohan.

8 I'll address the MDL cases. That is an accurate
9 assessment of where we're at. We have reached, at least in
10 principle, an agreement. We've reached terms in terms of
11 dollars and cents globally. The term sheet is being
12 negotiated. Timing and participation remains an issue. And,
13 of course, as MDL lead counsel or co-lead counsel I'm in a
14 little different position than a Plaintiffs' lawyer who
15 represents all the Plaintiffs. We may represent a hundred or
16 so of the 350. We have been in contact with and now presented
17 to the universe of lawyers around the country which numbers 60
18 or 70 other lawyers that aren't in the courtroom, we've
19 presented them with the terms and we now are in the process of
20 seeking their consent, affirmation.

21 THE COURT: How recently did you communicate with
22 them? Did you do it by e-mail or did you do it by letter?

23 MR. COHAN: We've been communicating across the
24 board regularly since this process began. But after we were
25 close, if not in agreement on where we were at in terms of

1 dollars and cents, earlier this week on Tuesday of this week,
2 the 10th, we had a national meeting/conference call with the
3 MDL lawyers from around the country and fully laid out the
4 final details and what their respective clients could expect.
5 And the response has been very favorable so far.

6 We are now seeking written final authorization to
7 participate. And as of today, Judge, I'm happy to say we have
8 very, very little opposition or negative response. There is
9 the one case, your Honor, that I know you're aware of, the
10 Plaintiff from Alaska over whom we have no control. Other than
11 that one we're hoping to have strong, if not complete
12 participation.

13 THE COURT: What kind of time frame are you
14 working with in terms of people getting back to you?

15 MR. COHAN: Right now it's on an ASAP basis. We
16 don't have a term sheet that has the exact deadlines set. We
17 need to work that out, and that's part of the negotiation, is
18 by what date do we need to have participation, by what date do
19 we need to have releases signed, and we're working on that.
20 I'm not prepared to commit because we've asked the lawyers from
21 around the country and our own clients to get back written
22 confirmation ASAP, and they were told hours or days, not weeks
23 or months. And as soon as we come to terms we will give them
24 deadlines.

25 THE COURT: As soon as you come to terms with?

1 MR. COHAN: The term sheet, in terms of what time
2 frames --

3 THE COURT: I thought the term sheet was agreed
4 upon. I thought you agreed upon dollars.

5 MS. LEDY-GURREN: We had agreed upon dollars, your
6 Honor. It's a question -- first of all, I would like to
7 interrupt and say, just making sure that I haven't misled the
8 Court in any way unwittingly. This settlement applies to all
9 the recipient cases only.

10 THE COURT: Right. Not the family donor --

11 MS. LEDY-GURREN: Not the donor cases.

12 MR. COHAN: Correct.

13 MS. LEDY-GURREN: The issue is whether there is a
14 contingency of amount of participation and finality is reached
15 on the MDL side by participation of the individual claimants.

16 THE COURT: Right. You're confident on the state
17 recipient --

18 MS. LEDY-GURREN: We'll we're much further along
19 in getting a system involving court participation, a hearing
20 and authority, because --

21 THE COURT: In Florida.

22 MS. LEDY-GURREN: -- most of the claimants belong
23 to a single firm.

24 THE COURT: Would it be of any help to this
25 process if there was an order or a directive of the Court that

1 some date be set that would help you with your attorneys, some
2 reasonable date was set to say they should respond by this
3 date?

4 MR. COHAN: I think, Judge, ultimately the answer
5 to that is yes. We were talking about that before we came in
6 here today. I guess my request would be to let us get that
7 initial response.

8 THE COURT: All right.

9 MR. COHAN: I don't want to alarm the whole
10 universe of lawyers and have a hundred of them here in your
11 courtroom. I think we should get the initial response. And my
12 thinking would be that to the extent there are a few Plaintiffs
13 out there that have difficulties, questions, or are not
14 responding, that an Order to Show Cause be issued as to those
15 individual Plaintiffs. And I would imagine in the next couple
16 of weeks we should know who they are.

17 THE COURT: All right. No, that makes sense.
18 There's no need to -- although I don't think in anybody's best
19 interest to keep this going too long. So I think within a
20 couple of weeks you should let us know what the status is with
21 the other counsel and the other Plaintiffs that you're not
22 representing directly, and then if need be we'll figure out
23 whether we should do it by an Order to Show Cause. I don't
24 know exactly what we would do; order them to show cause why
25 they shouldn't participate in a settlement or to order them to

1 show cause -- I would have to give some thought to that.

2 MR. COHAN: And we will as well.

3 THE COURT: Give some thought as to what type of
4 intervention by the Court at the appropriate time, not too far
5 down the road, would be the best way to determine if people are
6 going to opt in to the settlement or not, and then I guess
7 depending on the numbers there will determine whether or not
8 you'll enter into a final agreement. Is that it? Obviously,
9 if you only get 50 percent participation you're not interested,
10 probably.

11 MS. LEDY-GURREN: Correct. And I think, too, your
12 Honor, one of the things from a cost analysis is, if the appeal
13 in the Third Circuit has to go forward on, you know, X number
14 of cases, that might be a risk that the client wishes to take.
15 On the other hand, if the lack of participation involves some
16 of the cases that your Honor has severed out and would be on a
17 discovery trial track, then --

18 THE COURT: That discovery trial track probably
19 wouldn't be commenced again until after I've seen what the
20 Third Circuit does. I don't think you'd be pressing that
21 beforehand, would you?

22 MR. COHAN: No.

23 THE COURT: I mean, because depending on,
24 obviously, if the Circuit affirms my decision, Plaintiffs even
25 in those cases may think twice as to how to proceed, may want

1 to reconsider further settlement discussions then.

2 Am I right? Am I speaking out of line?

3 MR. COHAN: I believe you're correct.

4 THE COURT: Those are all variables that none of
5 us know.

6 MS. LEDY-GURREN: But from a pure cost
7 perspective, a case that is at its beginning stages that is
8 left out is a much bigger risk to take in terms of cost going
9 forward and it might tilt the balance in favor of this is not a
10 settlement worth making only to re-litigate --

11 THE COURT: So you're talking about incorporating
12 in the settlement the cases which have been stayed or not part
13 of the Court's opinion?

14 MS. LEDY-GURREN: Yes.

15 THE COURT: And you would like to know from
16 Plaintiffs' counsel what their position is as to those handful
17 of cases?

18 MS. LEDY-GURREN: Yes. We have communicated, we
19 have had an open --

20 THE COURT: No, I'm sure you have.

21 MS. LEDY-GURREN: Yeah.

22 THE COURT: But I'm saying, I just want to be sure
23 that that's, in fact -- I mean, it would make sense if it can
24 be done that those cases be included in the settlement at some
25 value, and I think they're really in the infancy stages of

1 discovery, if at all. Right?

2 MR. COHAN: We intend to include all cases
3 non-donor to the extent possible.

4 THE COURT: Yes, it would be the goal, I think you
5 should. Because litigating those handful of cases would be a
6 very time-consuming, costly, uncertain -- I think I've said it
7 to you before, it's no secret even in those cases you have the
8 whole issue, if not the Science First issue that I addressed,
9 you'd have the issues of sterilization and causation and a lot
10 of other things. I'm not saying anything that you don't all
11 know by now, we all know that.

12 So I would agree that settlement should try to
13 include all of those as well.

14 With respect to the family cases, just since we're
15 here --

16 MR. COHAN: Judge, if I may?

17 THE COURT: No, go ahead.

18 MR. COHAN: Just so street record is complete,
19 counsel for LifeCell is not here. The situation with LifeCell
20 is very similar. We have an agreement in principle as to
21 dollars. We're working on terms. There are some issues about
22 some of the LifeCell cases that we're working on, but I just
23 wanted to put --

24 THE COURT: They have some standing issues, they
25 have a motion that addresses some standing issues. Correct?

1 MR. COHAN: There's some motions. There is one
2 issue of -- that your Honor should be aware of, of a Donor
3 Class and there are some Class Plaintiffs that have to be
4 addressed, and LifeCell and counsel are working on those.

5 THE COURT: As far as -- and again, we can go back
6 to any of this, but just for a moment -- as far as the family
7 cases, the family donor cases, are you continuing discussions
8 on those with RTI or are you just putting those on the back
9 burner for now?

10 MR. COHAN: I'll address LifeCell first. The
11 answer is yes, they're looking and are working on a global
12 resolution.

13 With respect to RTI?

14 MS. LEDY-GURREN: With respect to RTI, your Honor,
15 as we had disclosed to you and to the Plaintiffs, we are
16 currently in an uncertain situation on the insurance side of
17 that equation, and we have been keeping Plaintiffs' counsel
18 abreast of our efforts on that. And while we have certainly
19 not closed the door to discussion, our efforts are at
20 increasing our coverage and increasing our pot and moving
21 forward with the litigation. Certainly we are litigating in
22 New York and are open to continuing the litigation process
23 certainly any other place that family donor cases reside.

24 THE COURT: In New York you have the deposition of
25 Mastromarino scheduled for mid December. Correct?

1 MS. LEDY-GURREN: That's correct, your Honor.

2 MR. COHAN: Correct.

3 THE COURT: Okay. And all counsel have been
4 noticed for that?

5 So you're only going to have one shot to probably
6 depose him so whether it's for the MDL or whether it's for the
7 state court proceedings.

8 MR. COHAN: Not to not mention them, Judge, but
9 there are several dozen cases in Philadelphia which is a big
10 donor case jurisdiction. Everything will be cross-noticed
11 there.

12 THE COURT: Okay. New Jersey as well. There's
13 some in State Court. Right?

14 MR. COHAN: Yes.

15 THE COURT: Which also brings me to the topic of
16 trying to coordinate all of this.

17 I think I'm going to reach out to Judge Maltese in
18 New York. There's more of those cases. I only have six of
19 those cases and probably only three from New Jersey in terms of
20 jurisdiction in the MDL, the others came in from other places.
21 And since Mastromarino is in New York and a lot of the issues
22 are New York issues, I may -- I'm willing to listen to you -- I
23 may discuss with him his taking the initiative on those cases
24 if he's agreeable to it. I'll still have the few MDLs that I
25 have and I'll still continue. But as far as letting him

1 coordinate all of the discovery in terms of one order that
2 would apply here at the MDL as well. I don't see any reason
3 why that shouldn't be done, trying to coordinate that with the
4 other three judges; Philadelphia, New Jersey, myself and Judge
5 Maltese and see if Judge Maltese has interest in it.

6 I'll certainly do it, but he has 27 of those
7 cases, I only have six and I only have three that I could
8 possibly even try here if I wanted to, otherwise they would all
9 have to go back at the end of discovery or motions. So all of
10 the motions that would be filed under the Uniform Anatomical
11 Gift Act, there's no sense that there should be a motion here,
12 a motion there, unless the parties can't agree. I think
13 whatever motions are filed there would apply.

14 Do you have any thoughts on that?

15 MR. COHAN: Judge, my initial reaction to that --

16 THE COURT: Give it some thought.

17 MR. COHAN: Speaking for myself, my clients and I
18 certainly would consult with my colleagues, is that that does
19 make some sense.

20 THE COURT: It's basically New York law, too, I
21 think, although it's probably uniform in New Jersey as well.

22 MR. COHAN: There may be some nuances, but I think
23 coordinating the discovery which will kick off with the
24 Mastromarino dep and then, of course, we've got the privileged
25 documents issue that has to be resolved --

1 THE COURT: It probably won't be resolved until
2 the spring and then you may have some additional discovery
3 after that depending on what the ruling is there.

4 MR. COHAN: That's true.

5 THE COURT: Yes.

6 MR. COHAN: Judge, I would urge you, if you're
7 going to call Judge Maltese, please call Judge Allen Tereshko
8 in Philadelphia. He's a very busy judge who we have not had a
9 hearing in some time. He has stayed those proceedings pending
10 the outcome of these negotiations, and I think he's awaiting
11 word.

12 THE COURT: Okay.

13 MR. COHAN: So if you are going to discuss
14 coordination with Judge Maltese, I would ask and encourage your
15 Honor to call Judge Tereshko and see if we can get everybody on
16 the same page.

17 THE COURT: No, it would seem to me, also is there
18 one judge in New Jersey who is handling the state -- there's
19 only three of them in New Jersey. Isn't that correct?

20 MR. WEGRYN: There's two, your Honor.

21 Your Honor, if I may, Richard Wegryn for RTI. I'm
22 here on behalf of Denise Bense, defense liaison, who
23 unfortunately had to be out of state today.

24 Not to go back too far in the Court's memory, but
25 just to refresh the Court, we're in the process of completing

1 the good faith immunity discovery that your Honor had ordered
2 last year. Towards the end of that process a dispute about the
3 privileged documents arose. There were motions filed in New
4 York and ultimately determined by Judge Falk here.

5 Judge Falk determined the Category One documents
6 and that ruling was confirmed by your Honor's Order dated April
7 23rd. Judge Maltese followed up with an Order of the remaining
8 documents on May 14th. Both those Orders are now on appeal
9 your Honor. There's one in the Third Circuit, one in the New
10 York Appellate Division. And we expect rulings, as your Honor
11 mentioned, this spring.

12 In the interim I think all parties agree that we
13 can't move forward with our good faith immunity summary
14 judgment motion, at least RTI cannot, until those privilege
15 issues are determined. In the vacuum, if you will, Judge
16 Maltese has moved forward with Plaintiff discovery and we have
17 our lead New York counsel, Mr. D'Avanzo here, to explain
18 anything the Court may want to know about the New York process.
19 However, we have begun Plaintiff depositions in New York. And
20 I guess the question --

21 THE COURT: You're saying the Defendants have
22 begun taking the Plaintiffs' depositions in New York?

23 MR. WEGRYN: There have been actually bills of
24 particular that have been served by RTI and have been responded
25 to by Plaintiffs. There's some issues with them being fully

1 completed, and Plaintiffs are also in the process of amending
2 their Complaints to come up with a master Complaint that
3 asserts that all parties agree to the applicable causes of
4 action that should go forward in New York. Once that's taken
5 care of, I believe the Plaintiff depositions will resume in New
6 York and the question then becomes whether they should also go
7 forward in the MDL and in Pennsylvania.

8 Obviously, I would second Mr. Cohan's comment --

9 THE COURT: You're talking about discovery of the
10 Plaintiffs in terms of emotional distress and interference with
11 their work and all of those facts?

12 MR. WEGRYN: Exactly, your Honor.

13 THE COURT: So you would have to be deposing
14 eventually each of the Plaintiffs?

15 MR. WEGRYN: Right.

16 THE COURT: These are the family members?

17 MR. WEGRYN: And we've maintained, RTI has
18 maintained that those depositions are not essential to our good
19 faith immunity motion.

20 THE COURT: They are?

21 MR. WEGRYN: They are not. And we were prepared
22 initially to go forward with a motion for summary judgment at
23 the end of last year.

24 THE COURT: Well, you can't until -- you really
25 can't until the privilege issue is resolved, can you?

1 MR. WEGRYN: Yes, I agree, your Honor. But on the
2 issue of --

3 THE COURT: You were denied it. Initially you
4 made a motion and I denied it. I denied it on the basis that
5 there's facts out there that could very well affect the
6 application of the Uniform Anatomical Gift Act consent issue,
7 good faith consent issue.

8 MR. WEGRYN: Correct

9 THE COURT: And then you may renew it depending
10 upon the facts when you do further -- when the privilege issue
11 is determined, and then there's going to have to be some
12 further discovery then.

13 MR. WEGRYN: Right. We would agree with that,
14 your Honor.

15 I was speaking strictly on the issue of
16 Plaintiffs' depositions, whether they're actually necessary to
17 go forward with the good faith immunity motion.

18 And so far we've taken limited depositions, but
19 for the most part are almost exclusively --

20 THE COURT: I don't see -- why would the discovery
21 of Plaintiffs in the family cases be required to address the
22 good faith immunity issue?

23 MR. WEGRYN: Well, your Honor, we have taken the
24 position that it's not necessary. It's really discovery that
25 we're doing in anticipation of the possibility that the motion

1 is denied and we have to proceed to trial.

2 THE COURT: Well, I think you have some decision
3 to make. In other words, you know, the cost of this litigation
4 is significant. You have a limited amount of insurance perhaps
5 available for the family cases. Ms. Gurren is trying to
6 maximize that. If you use a lot of those funds or the funds of
7 the Defendant to do these depositions now it's going to get
8 costly. That was I think the initial reason why you came in
9 here saying the cost of doing depositions in the Florida cases
10 was getting so excessive that you thought -- someone wrote to
11 me and said maybe it's time to have settlement discussions,
12 which we've been doing, and apparently are making some
13 progress.

14 I don't know exactly what you're asking, Mr.
15 Wegryn. Are you saying you want to go ahead and start the
16 depositions of Plaintiffs in the family cases?

17 MR. WEGRYN: Well, your Honor, we're just
18 addressing the Court's concern. I think Plaintiffs are
19 concerned that these cases move forward while the privilege
20 documents issue is being decided by the appellate courts, and
21 to inform --

22 THE COURT: Do Plaintiffs want to proceed with
23 these depositions now and the costs involved, or do you want to
24 wait and see what happens on the privilege documents and the
25 summary judgment motions?

1 MR. COHAN: Well, your Honor, as you said, you've
2 only got really three here that can be litigated here.

3 THE COURT: Right.

4 MR. COHAN: So I think it's really a question
5 that's got to be addressed in Philadelphia and in New York in
6 terms of the practicalities of what those judges want to do.

7 MS. LEDY-GURREN: Excuse me, sorry for the
8 interruption, Mr. Wegryn.

9 I think this has been, unbeknownst to Cozen, the
10 subject of discussion amongst myself and Plaintiffs' counsel
11 and it's my fault for not sharing it. The fact of the matter
12 is that I think our objective today was to achieve what the
13 Court has already stated, which is that there be a coordination
14 of any required discovery. And the Plaintiffs will request
15 that depositions go forward of those clients and the Defendants
16 will request depositions as they are needed. The objective
17 being that it be done in an orderly process so there are not
18 50,000 lawyers taking depositions at the same time.

19 THE COURT: I mean, the other option is -- and
20 this probably would be up to Judge Maltese or Tereshko who have
21 more of these cases than I do --

22 MS. LEDY-GURREN: Yes.

23 THE COURT: -- I mean, I could do it, but the
24 other option might be if the parties can agree on a few
25 bellwether cases, conduct the discovery of Plaintiffs as to

1 those and have those ready to go after the privilege issue is
2 resolved and some limited discovery time then, and then have
3 those ready for the fall maybe or some time in the summer
4 rather than do discovery on all the Plaintiffs, 27, 23 and
5 three, whatever is it -- 65 family cases or something?

6 MS. LEDY-GURREN: Yes.

7 THE COURT: So rather than do discovery on all of
8 those cases, if the parties can agree, or with the assistance
9 of either Judge Maltese or myself or Judge Tereshko --

10 MS. LEDY-GURREN: I think at this point, your
11 Honor, I think because of the cost involved and the insurance
12 side involved, that the Plaintiffs and RTI have been working
13 together to try to come up with a discovery schedule that makes
14 sense. And so I think our only point at this point is that I
15 don't think we need -- Mr. Cohan, you can correct me if I'm
16 wrong -- the Court's assistance in setting a discovery schedule
17 for the family cases at this point.

18 THE COURT: I think Judge Maltese will have a
19 better -- or bigger interest than I will right now because he
20 has 27 of these cases.

21 MS. LEDY-GURREN: And we have appeared before him
22 and --

23 THE COURT: So he may determine otherwise. He may
24 determine he wants to be more actively participating in your
25 discovery decisions there.

1 MS. LEDY-GURREN: Correct. And we have appeared
2 before him last Friday and set initial objectives that will be
3 met, your Honor.

4 THE COURT: Well, I guess in terms of the few
5 cases that I have here, I will speak to these other two judges
6 to see how they intend to proceed by way of discovery. If the
7 parties work it out and you come up with a consent order as to
8 how you're going to proceed with discovery, then I'll determine
9 if it would just apply here as well.

10 MR. COHAN: Judge, I think -- excuse me.

11 MR. WEGRYN: I think it is exclusive to your
12 Court, your Honor, the issue of the Class actions that have
13 been asserted, there are four pending before your Honor, and
14 Judge Maltese has already dealt with that motion on his own
15 accord, dismissed the only pending state action before him.

16 THE COURT: The State Class action?

17 MR. WEGRYN: I'm sorry, the State Class action
18 before him.

19 We would on behalf of RTI state that the same
20 analysis applies to the Class actions pending before your
21 Honor. I think Plaintiffs' counsel may have something to say
22 about that.

23 THE COURT: Did you have an opportunity to brief
24 that issue before Judge Maltese or he just did it sua sponte?

25 MR. WEGRYN: He ruled sue sponte, your Honor.

1 THE COURT: Do you want to have an opportunity to
2 submit something here, or not?

3 My initial reaction is, I don't think class would
4 be appropriate here. I mean, I think the individual Plaintiffs
5 are so different and the conduct in each case would be so
6 different. But I don't want to preclude you from submitting
7 something if you want to, limited -- you know, I'll put some
8 limited page -- but if you want to, Mr. Cohan, argue why class
9 would be appropriate here, try to do it in ten pages and I'll
10 give counsel for the defense ten pages to oppose it.

11 MR. COHAN: Judge --

12 THE COURT: We can get that out of the way. I
13 don't want to just do it sua sponte, I would rather you have a
14 chance to address it.

15 MR. COHAN: I didn't want to leave the last
16 discovery issue. We did want to address the Class action
17 issues.

18 THE COURT: I just did. So do you want to do it
19 that way? And I'll give you a chance to go back, but let's get
20 let this off the table.

21 MR. COHAN: I thought we had moved on --

22 THE COURT: I don't think it's complicated. I'm
23 telling you, if you want to have a couple of weeks to submit a
24 ten-page memorandum as to why class would be appropriate here,
25 if you need more than that I'll let have you a few more pages.

1 MR. COHAN: We would. We would. There are a
2 few --

3 THE COURT: Okay.

4 MR. COHAN: And counsel in probably what I'm going
5 to describe as the most significant Class here, Van White is
6 here, and I actually had asked him to address this issue with
7 respect to his Class and I think he would want a brief
8 opportunity.

9 MR. WHITE: Judge, very briefly.

10 We did file a motion probably two years ago and
11 there are papers there. We would rely, and I think the Court
12 is wise to make a decision so that we can figure out what we
13 need to do in this Court in terms of unnamed parties.

14 THE COURT: You know what, I don't recall, I know
15 there's a motion pending. But did you submit a brief at that
16 time?

17 MR. WHITE: I believe, Judge -- it's been a while
18 since looked -- but I believe the brief is attached.

19 THE COURT: We'll look, because I haven't looked
20 at it in a long time. But if we have your brief -- and I don't
21 know if we have an opposition to it -- if we don't, we'll give
22 counsel for the Defendants a chance to submit an opposition.

23 MS. LEDY-GURREN: Fine.

24 THE COURT: So Kelly, my law clerk will, one, let
25 you all know if we have that brief. If you submitted it --

1 you're not sure you submitted it?

2 MR. WHITE: Judge, we did submit it in the Western
3 District but then we got transferred here. So what I'll do is
4 resubmit it. Would that be okay?

5 THE COURT: Would you, please? That might be --
6 would you, please? Because it may not have come with the --
7 maybe the motion did but maybe the brief didn't. So if you
8 would resubmit it within the next week?

9 MR. WHITE: Very well.

10 MR. COHAN: If we could have 10 days, Judge, there
11 are some other classes --

12 THE COURT: Okay.

13 MR. COHAN: -- and we'll make a determination.
14 We'll stick to that ten-page limit to decide whether we need to
15 file.

16 THE COURT: If you need a few more pages, go
17 ahead.

18 MR. COHAN: Okay.

19 THE COURT: Why don't we get everything in from
20 the Plaintiffs' side on the Class issue by November 25th -- oh
21 no, no -- yeah, November 25th. It's a week and a half.

22 MR. COHAN: How about the 26th? That's a holiday
23 weekend.

24 THE COURT: Oh, no, that's Thanksgiving Day.

25 MR. COHAN: Let's go beyond that weekend.

1 THE COURT: How about the 1st, December 1st?

2 MR. COHAN: What day of the week?

3 THE DEPUTY CLERK: Tuesday.

4 THE COURT: Tuesday, December 1st. Okay?

5 And you'll resubmit, Mr. -- is it Fields?

6 MR. WHITE: White. Thank you very much.

7 THE COURT: Just resubmit your papers.

8 MR. WHITE: I think we're going to coordinate that
9 with counsel.

10 THE COURT: Okay. Whatever it is for the
11 Plaintiffs' side as to the pending class matters before me have
12 in by December 1st.

13 And then you can have two weeks from there to
14 submit any response.

15 MR. WHITE: Very good.

16 THE COURT: Or any opposition. Okay?

17 MS. LEDY-GURREN: That would make it December 14th
18 or 15th?

19 THE COURT: Yes, December 15th, two weeks exactly.

20 MS. LEDY-GURREN: Thank you.

21 THE COURT: Is that okay?

22 MS. LEDY-GURREN: That's fine.

23 THE COURT: Okay.

24 MR. HUSIK: If I may, Adam Husik for Tutogen.

25 You also have motions pending in this Court --

1 THE COURT: Please use the microphone.

2 MR. HUSIK: You have motions pending here relative
3 to standing in the family cases.

4 THE COURT: That motion is pending. Right?

5 MR. HUSIK: Correct. Tutogen would like to seek
6 leave, your Honor, to join in that motion for the same reasons.

7 THE COURT: I'm having trouble hearing you.

8 MR. HUSIK: Simply, Tutogen would like to file a
9 joinder in one of the pending motions based on its lack of
10 receipt of tissue in a case, and I believe Mr. Field for
11 LifeCell has another motion pending, and Tutogen would like to
12 join.

13 THE COURT: He does, yes.

14 MR. HUSIK: We wanted to advise your Honor that we
15 would like to join those motions for the same reasons.

16 THE COURT: All right. Why don't you just submit
17 a letter or a motion saying you wish to join in those motions.
18 Okay?

19 MR. HUSIK: Very well. Thank you.

20 MR. WEGRYN: One other housekeeping --

21 THE COURT: Would you do that as well by the 1st?
22 Do you need that time?

23 MR. HUSIK: I could do it in a week, your Honor.

24 THE COURT: Okay.

25 (The Court confers with the Court off the record.)

1 THE COURT: We have not gotten any oppositions.

2 MR. COHAN: We would just like 10 days beyond the
3 1st to look at them. It may that we're not going to oppose
4 these.

5 THE COURT: Let's use the same date. If you want
6 to join in, do it by the 1st so we have one day, and then if
7 you need to oppose those, do it by the 15th did I say? I don't
8 remember.

9 MR. COHAN: If I'm not mistaken, I want to make
10 sure I understand. These are motions dealing with cases where
11 your client didn't have the product?

12 MR. HUSIK: That's correct, and Plaintiffs have
13 not voluntarily dismissed Defendants.

14 MR. COHAN: One of the things we have to do,
15 Judge, is there are lawyers around the country in the MDL who
16 don't fully understand that not all of the Defendants got
17 products from everybody. So they have to see the motion and
18 understand it, it has to be served on the proper counsel out
19 there so that they have an opportunity to respond or at least
20 understand why that defendant is being dismissed from their
21 case.

22 THE COURT: Okay.

23 MR. HUSIK: Okay.

24 MR. WEGRYN: Your Honor --

25 MR. HUSIK: Thank you.

1 THE COURT: Will you have adequate time to do
2 that?

3 MR. COHAN: Well, on our cases certainly, and as
4 long as they serve it promptly and properly on the right
5 lawyer --

6 THE COURT: Okay.

7 MR. COHAN: -- I don't think there should be an
8 issue.

9 THE COURT: All right. You understand?

10 MR. HUSIK: Actually all the attorneys are in the
11 room, so it's more of a local issue.

12 MR. COHAN: All the lawyers are here?

13 MR. HUSIK: Correct. It's two cases.

14 MR. COHAN: Very good.

15 THE COURT: We'll take care of that.

16 MR. WEGRYN: Your Honor, one additional
17 housekeeping matter.

18 The Plaintiffs in the six cases before the Court
19 have asserted a desire to add an additional party, RTI Donor
20 Services, Inc. And as your Honor knows, the Defendants have
21 not yet filed Answers in this case.

22 We would agree -- by stipulation would agree to
23 the amendment reserving all of our substantive and statutory
24 defenses which presumably would be asserted in the event that
25 the motion for summary judgment on the UAGA is denied.

1 THE COURT: You wish to do that by way of
2 stipulation. Correct?

3 MR. WEGRYN: Correct, your Honor.

4 THE COURT: Do you have any problem with that, Mr.
5 Cohan?

6 MR. COHAN: No. We actually prepared the
7 paperwork and we're waiting for the agreement. We wanted to
8 let the Court know as well.

9 THE COURT: Thank you.

10 Anything else?

11 MR. WEGRYN: If I could just follow up on Mr.
12 Cohan's sentiment to urge the Court to reach out to Judge
13 Tereshko and Judge Maltese in terms of coordinating the cases.
14 As an attorney in these cases it's been difficult to try to
15 coordinate the different jurisdictions and we would appreciate
16 anything your Honor can do to foster cooperation.

17 Thank you.

18 THE COURT: Well, I will do that. I'll speak to
19 Judge Maltese. I have not spoken to Judge Tereshko ever, but I
20 will try or I'll have Judge Maltese perhaps speak to him.

21 Because they have many more cases on each of their
22 calendars I think it's more appropriate that one of those two
23 judges work with you to set up, and hopefully they'll
24 coordinate together, and I'll, unless it's an unreasonable
25 schedule, which I don't think it would be, I'll probably adopt

1 it or you'll agree -- you know, whatever you agree with them
2 you can apply to the MDL cases here I think.

3 MR. COHAN: That was actually a few moments ago
4 the comment that I was going to make, and that sounds
5 appropriate, Judge.

6 THE COURT: I mean, I'll talk to Judge Maltese,
7 unless he has no desire to do that. One of us should, and I
8 think he will from my previous conversations with Judge
9 Maltese. I know he was very much aware he had 27 of these
10 cases and he wanted to at least get them going or have them in
11 a place where they could proceed once some of these discovery
12 issues are taken care of.

13 Mr. Levin.

14 MR. LEVIN: Murray Levin for Medtronic, your
15 Honor.

16 May I reply for a moment to the recipient cases?
17 I would like to make a brief statement and a suggestion.

18 THE COURT: On the recipient cases?

19 MR. LEVIN: Yes.

20 THE COURT: Go ahead. We're back there.

21 MR. LEVIN: I did want to say that after we left
22 your Honor approximately two weeks ago, I was at one degree of
23 separation from the one-on-one discussions that went on. And I
24 do want to compliment Nancy and Larry and Kevin for the amazing
25 amount of hours and hard work to get to an agreement in

1 principle certainly as to the dollar amounts. I wanted to note
2 that for Medtronic, the key point here for us is finality. And
3 we are on board and want now to work with Larry and Kevin and
4 others to achieve finality.

5 My suggestion is that, as Larry Cohan thought,
6 let's give a little bit of time and see what degree of buy-in
7 he gets; 50 percent, 70 percent, 80 percent, and I suggest that
8 within a time that makes sense for us, if it's one week or 10
9 days or two weeks, we be permitted to suggest to your Honor how
10 you might help us, either by calling upon those who haven't
11 responded by some type of an Order to Show Cause which we might
12 jointly be able to propose to your Honor.

13 I also note that there's one little wrinkle out
14 there, which is that although the Third Circuit has granted
15 some type of an extension for a response I think to December
16 1st, we are still facing the need to file that unless we do
17 achieve a settlement.

18 THE COURT: You're talking about the briefs on
19 the --

20 MR. LEVIN: Yes.

21 THE COURT: -- Science First issue on that appeal,
22 not the privilege?

23 MR. LEVIN: Correct.

24 THE COURT: Okay. That's due in December?

25 MR. LEVIN: I believe that the new date is

1 December the 1st --

2 THE COURT: For the Defendants --

3 MR. LEVIN: -- December 21st.

4 THE COURT: For the Defendants to submit their
5 briefs, is that it?

6 MR. LEVIN: Yes.

7 THE COURT: You would have the time to submit your
8 opposition. Correct?

9 MR. LEVIN: Yes.

10 THE COURT: Mr. Cohan. Correct?

11 MR. COHAN: December -- that's their opposition.

12 MR. LEVIN: Yeah. We're the ones --

13 THE COURT: That's right. You did the appeal,
14 that's right. I'm sorry. You already filed your briefs and
15 your reply, if any?

16 MR. COHAN: That would be in early January.

17 THE COURT: Right.

18 MR. LEVIN: We have some work to do amongst the
19 group, but I think that there has been the kind of effort and
20 good faith that shows that we can get, if not all the way
21 there, close to being there, and it's my suspicion that with
22 the Court pushing we might be able to get all the way there.

23 THE COURT: You're talking about the settlement
24 now?

25 MR. LEVIN: Yes.

1 THE COURT: And the date for the filing of the
2 opposition?

3 MR. LEVIN: I'm told it's December 21st.

4 THE COURT: December 21st?

5 MR. WEGRYN: That's correct.

6 THE COURT: Why don't we do this: Why don't we
7 have, Mr. Cohan, your group, we'll set up another conference
8 call on December 1st and you'll report then as to what kind of
9 participation you have by the Plaintiffs, and if there's a need
10 for the Court to intervene on an Order to Show Cause, I'll do
11 it within 10 days of then. We'll get an order Out. Give some
12 thought to the kind of Order that you might agree on, and then
13 that will be about a week or so before your briefs are due.
14 That's about the best we can do I think with the time frame we
15 have.

16 MR. LEVIN: That sounds very good.

17 MR. COHAN: Fine.

18 THE COURT: That will help you as far as seeing
19 where you stand.

20 All right. If there's not anything else right
21 now, I did want to speak to defense counsel alone; and then
22 yourselves alone, just briefly. Okay?

23 MR. COHAN: Okay.

24 THE COURT: All right.

25 (Conclusion of proceedings.)

1 (The Court confers with Counsel in chambers off
2 the record.)

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