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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE
IMPLANT PRODUCTS LIABILITY
LITIGATION,

) Docket No. 11 C 5468
)
)
)
) Chicago, Illinois
) September 16, 2011
) 9:37 a.m.

TRANSCRIPT OF PROCEEDINGS - Rule 16 Conference
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

- For the Plaintiffs:
 - MS. KAREN H. BEYEA-SCHROEDER
 - MR. DANIEL CHRISTOPHER BURKE
 - MR. PAUL R. CORDELLA
 - MR. TIMOTHY BECKER
 - MS. SHEILA M. BOSSIER
 - MR. PETER J. FLOWERS
 - MR. RONALD S. GOLDSER
 - MR. ROBERT J. GORDON
 - MR. D. DOUGLAS GRUBBS
 - MS. RANDI KASSAN
 - MR. DANIEL R. LAPINSKI
 - MR. MICHAEL A. LONDON
 - MR. TOBIAS L. MILLROOD
 - MR. VINCENT J. MOCCIO
 - MS. ALYSON OLIVER
 - MR. JAMES R. RONCA
 - MR. JOSEPH A. OSBORNE
 - MR. NEIL D. OVERHOLTZ
 - MR. HUNTER J. SHKOLNIK
 - MS. LAURA L. SINGLETARY
 - MR. JASON J. THOMPSON

- For the Defendants:
 - MR. JOSEPH H. YEAGER, JR.
 - MS. ANDREA R. PIERSON
 - MR. KURT STITCHER
 - MR. PETER A. MEYER

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1 THE CLERK: 11 C 5468, In Re: Zimmer Nexgen Knee
2 Implant Products Liability for motions and Rule 16
3 conference.

4 THE COURT: Good morning.

5 I know my court reporter has already circulated a
6 sign-in sheet, but I guess I would like your appearances,
7 those of you who will be speaking. I recognize that a number
8 of you here may be participating in the litigation but not
9 speaking this morning.

10 We can begin with plaintiffs.

11 MR. FLOWERS: Thank you.

12 I am Pete Flowers on behalf of the plaintiffs.

13 I figured I would introduce a group of plaintiffs'
14 attorneys here. There will be just a few that are speaking.

15 THE COURT: Okay.

16 MR. FLOWERS: Next to me is Tobi Millrood from
17 Pennsylvania.

18 MR. MILLROOD: Good morning, your Honor.

19 THE COURT: Good morning.

20 MR. FLOWERS: Jim Ronca, also from Pennsylvania.

21 MR. RONCA: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. FLOWERS: Tim Becker from Minneapolis.

24 MR. BECKER: Good morning, your Honor.

25 THE COURT: Good morning.

1 MR. FLOWERS: Laura Singletary from Louisiana.

2 MS. SINGLETARY: Good morning, your Honor.

3 THE COURT: Good morning.

4 MR. FLOWERS: Doug Grubbs from Texas.

5 MR. GRUBBS: Good morning.

6 MR. FLOWERS: Joe Osborne from Florida.

7 MR. OSBORNE: Good morning, your Honor.

8 MR. FLOWERS: Sheila Bossier from Mississippi.

9 MS. BOSSIER: Good morning, your Honor.

10 MR. FLOWERS: Dan Lapinski from New Jersey.

11 MR. LAPINSKI: Good morning, your Honor.

12 MR. FLOWERS: Ron Goldser from Minneapolis.

13 MR. GOLDSER: Good morning.

14 MR. FLOWERS: Neil Overholtz from Pensacola.

15 MR. OVERHOLTZ: Good morning, your Honor.

16 MR. FLOWERS: Hunter Shkolnik from New York.

17 MR. SHKOLNIK: Good morning, your Honor.

18 MR. FLOWERS: Randi Kassin from New York.

19 MS. KASSAN: Good morning, your Honor.

20 MR. FLOWERS: Alyson Oliver from Michigan.

21 MS. OLIVER: Good morning, your Honor.

22 MR. FLOWERS: Mike London from New York.

23 MR. LONDON: Good morning.

24 MR. FLOWERS: Rob Gordon from New York.

25 MR. GORDON: Good morning.

1 MR. FLOWERS: Paul Cordella from New York.

2 MR. CORDELLA: Good morning, your Honor.

3 MR. FLOWERS: Dan Burke from New Jersey.

4 MR. BURKE: Good morning, your Honor.

5 MR. FLOWERS: Karen Beyea-Schroeder from Houston.

6 MS. BEYEA-SCHROEDER: Good morning, your Honor.

7 MR. FLOWERS: Vince Moccio from Minneapolis.

8 MR. MOCCIO: Good morning, your Honor.

9 MR. FLOWERS: Hopefully, your Honor, I have got all
10 of these correct. I apologize if I missed someone.

11 I believe, from the plaintiffs' perspective,
12 Mr. Ronca is going to do the majority of the speaking today
13 on behalf of all of us. We have all agreed that he will take
14 that oar.

15 THE COURT: That's great.

16 MR. FLOWERS: Thank you.

17 THE COURT: And for the defendants?

18 MR. STITCHER: Good morning, your Honor.

19 Kurt Stitcher on behalf of the defendants. With me
20 are my partners and lead counsel Jay Yeager.

21 MR. YEAGER: Good morning.

22 MR. STITCHER: And Andrea Pierson.

23 MS. PIERSON: Good morning.

24 MR. STITCHER: And our associate Peter Meyer, all
25 from Baker & Daniels.

1 THE COURT: Good morning.

2 All right. I do have the proposed case management
3 order. I have got the plaintiffs' proposed protective order.
4 And I have proposals regarding lead counsel, liaison counsel,
5 and the plaintiffs' steering committee.

6 Mr. Ronca, you are going to be speaking?

7 MR. RONCA: Yes, your Honor.

8 Regarding the motions for plaintiffs' steering
9 committee, in the interim time the plaintiffs' lawyers have
10 agreed on our side to a slate of lawyers to represent the
11 plaintiffs consisting of those who applied, with the
12 exception of one, and the others that were listed in the
13 motion, the combined motion.

14 So we would appreciate if the Court would consider
15 today -- and I think it is teed up to be handled today -- the
16 motion, because we can't really officially act on behalf of
17 the plaintiffs until we have a group.

18 We think we made our position very clear in our
19 written papers. However, I am here to answer any of the
20 Court's questions that you have about what we have proposed.
21 And if you have no questions, then we would rather hear from
22 the defense opposition, which we find to be very unusual. In
23 fact, we question whether there is even standing for the
24 defense to oppose it in the manner that they have.

25 I would like, then, an opportunity to reply to any

1 arguments they make as to why we can't organize the
2 plaintiffs' side in the manner, with your Court's permission,
3 that is -- we think promotes the efficiency of the litigation
4 and enables us to act on behalf of the plaintiffs in an
5 effective manner.

6 THE COURT: I will certainly want to hear from
7 defense counsel, and I have reviewed the papers that have
8 been filed.

9 Let me ask -- I recognize that the original
10 proposal regarding lead counsel, liaison, and the PSC is
11 subject to a little change because there have been additional
12 motions.

13 Is there disagreement about any of the additional
14 people who have moved for inclusion in the PSC?

15 MR. RONCA: There is no disagreement, your Honor.

16 I spoke to Vince Moccio yesterday. He is here. He
17 can speak for himself, if necessary. But he was going to
18 withdraw his position to be on the PSC, but we were going to
19 agree to work with him and his firm to the extent that it
20 helps the PSC.

21 THE COURT: And the others who moved for inclusion
22 were Ms. Beyea-Schroeder, who's here; Mr. Burke and
23 Mr. Lanier.

24 MR. RONCA: Correct.

25 THE COURT: And those individuals will serve on the

1 PSC; is that right?

2 MR. RONCA: We have no objection. In fact, we
3 promote their service on the PSC.

4 THE COURT: All right. So on the plaintiffs' side,
5 there is agreement about the membership of the PSC. And
6 there is agreement that Mr. Flowers will be the liaison
7 counsel and that the three of you -- Mr. Ronca, Mr. Becker,
8 Mr. Millroad -- will be lead counsel.

9 MR. RONCA: This is what we would like the Court to
10 approve.

11 THE COURT: All right. Let me hear, then, from
12 defendants. And I will give you an opportunity to reply, if
13 you wish to do so.

14 MR. RONCA: Thank you.

15 THE COURT: Sure.

16 MR. YEAGER: Thank you, your Honor. Good morning.
17 What interest do the defendants have in this?

18 The interest the defendants have, and I think it's
19 perhaps similar to the Court's interest, is in making some
20 use of the efficiency that is supposed to flow from an MDL.

21 There is at least an irony in having a steering
22 committee that reflects -- I don't know what the numbers will
23 be now with these additions -- but over 80 percent of all the
24 plaintiffs will be represented by members of the steering
25 committee.

1 It's too big. It's too big to be practical. The
2 cases that are cited in the response briefs with regard to
3 other steering committees that were large, some of those were
4 probably not contested. Some of them were from much bigger
5 cases. Some of those cases had thousands of plaintiffs.

6 Now, we are told there will be a thousand in this
7 case, and that may well be. But we are not there yet. So to
8 have -- by my count, we are up to 19 law firms -- not
9 19 lawyers, 19 law firms -- to represent the plaintiffs in
10 these cases, without them taking the position that there are
11 different interests among the plaintiffs. We haven't heard
12 that from them. And that was a subject, as the Court may
13 know, from the MDL hearing. And that would be one basis upon
14 which one might want to have a larger committee. But we
15 haven't heard them say that.

16 What we would -- and what is our interest in this?

17 Our interest in this is, if you have more people on
18 a steering committee and more people in a joint prosecution
19 group, later in the case presumably these lawyers are going
20 to be coming to the Court asking for some fee, some cut of
21 the fees from any settlement or award in the cases.

22 And of course, we have an economic interest in that
23 because it makes the cases harder to settle, to the extent
24 cases are settled. Some of these cases may be settled, some
25 will go to trial. So that's why I think we have standing to

1 raise this issue, as well as the complexity. And either --
2 whenever it's the Court's pleasure, we are going to be
3 talking about the protective order and we are going to talk
4 about cross-product discovery and how the Court should handle
5 that, and what's the fair and appropriate way to handle it?

6 The plaintiffs have proposed that the entire group
7 have access to all the discovery on every one of the ten
8 products that are now at issue in this case. That has a very
9 large impact on Zimmer's interest.

10 This is not a fly-by-night industry. This is a
11 high-tech, highly refined, highly researched, and competitive
12 industry. The information they are going to be seeking
13 discovery of is proprietary information, trade secret
14 information and otherwise confidential information. And they
15 propose that not only a person with a claim on product one
16 get that information, but that everyone else in the steering
17 committee and everyone else in the joint prosecution group
18 get that information.

19 Now, we don't think that should happen. And the
20 Court is probably going to hear from us on that at some
21 point, why that shouldn't happen. But I just wanted to put a
22 marker down on the subject of a broad committee. The bigger
23 this committee, the bigger that problem becomes.

24 What we would suggest might make sense -- and I
25 think this has happened in other cases -- is for the Court to

1 appoint the lead counsel and liaison counsel -- we have
2 worked with them well; we have absolutely no problem with
3 them -- and appoint maybe two or three or four or five folks
4 to the steering committee now.

5 And if there becomes a bigger case, if there are a
6 thousand cases or thousands of cases, as has been suggested,
7 then the Court could revisit then.

8 THE COURT: All right. Thank you.

9 MR. YEAGER: Thank you.

10 THE COURT: Mr. Ronca, reply?

11 MR. RONCA: Response to a number of things.

12 I will start with the ten-product argument.

13 The defendants argued the ten-product argument
14 strenuously as the JPML panel described it at the JPML
15 hearing in opposing that this be consolidated for an MDL.

16 Nevertheless, the court found, and I think very
17 clearly in their opinion, that there are many common issues,
18 regardless of how they decide to define the products.

19 And in addition, when Zimmer went to the FDA and
20 said, we would like these products approved, they didn't do
21 new applications for each one. They did a 510(k)
22 application, which basically says, this product is
23 substantially the same as a prior product.

24 And if you went through each of the 510(k)
25 applications to the FDA, it is Zimmer saying that these

1 products are identical except for some minor changes. And in
2 fact, the defect that's alleged and the recall that's alleged
3 are the same whether it's a tibial plate or the femoral
4 plate.

5 So there really isn't any of this cross-product
6 problem, but I think the Court can cross that when it comes
7 to the protective order.

8 We have common issues, and we need enough lawyers
9 and enough weight on this side of the courtroom to be able to
10 fight against a multibillion-dollar corporation and a law
11 firm which has more lawyers in it than all these law firms
12 combined.

13 If, for example -- and --

14 THE COURT: Hold on.

15 Is that true?

16 MR. YEAGER: I just asked Ms. Pierson. I am not
17 sure. I haven't counted them all up, but there are 19 of
18 them and one of us. It looks like the bride is less popular
19 than the groom here, your Honor.

20 MR. RONCA: That's because they didn't bring the
21 whole family, your Honor.

22 (Laughter.)

23 MR. RONCA: They have 370 lawyers at Baker &
24 Daniels. I counted them up, and these 19 law firms don't
25 have 370 lawyers. And not everybody at all these law firms

1 are going to be working on this case.

2 The defendants decided to use *Trasylo1* as an example in
3 their papers. I was co-lead counsel of *Trasylo1*.

4 When the court and Judge Middlebrooks approved the
5 plaintiffs' steering committee in that litigation, there were
6 63 cases filed. He approved 12 ultimately. Shortly
7 thereafter, up to 15 members. That case grew, based on what
8 we predicted, and the court saw up to 2,000 cases later.

9 But if you add people later, then they haven't been
10 involved in litigation all along. And there's a catching-up
11 process, which makes it very inefficient for us to act.

12 Secondly, in cases of these types, it is not
13 unusual -- in fact, it is common -- to have at least
14 10 million pages of documents. Using a reasonable rate per
15 day for someone to review these documents, because we will
16 receive them without any objective coding, it would take
17 roughly 50,000 lawyer hours to review 10 million pages. It
18 would take roughly 25 lawyers a full year.

19 To the extent that the steering committee is
20 confined to a small group, where are we going to get the
21 workforce to be able to do that work which is essential not
22 only to the plaintiffs represented by this group but to the
23 larger group that exists and will exist and continue to grow
24 with more and more firms attached?

25 And they will be reliant on the work that we do

1 because no individual firm is going to sit and go through
2 10 million pages of documents. They are going to be relying
3 on what we do and the depositions that we take. And it is a
4 mammoth undertaking, and it takes a substantial workforce.

5 Concerns about contact and organization, I have
6 worked with approximately half of these lawyers on the
7 *Trasylo1* case. The other lawyers I know well. And I can say
8 that we are not going to have a problem with cooperation, and
9 we are not going to have a problem with having specific
10 contact with the defendants. As they said, there hasn't been
11 a problem up until now. And they are not going to be hearing
12 from 20 or -- from 10 or 12 or 15 different people. They are
13 going to be hearing from the lead counsel.

14 And I invite your Honor to ask Judge Middlebrooks
15 how well the cooperation and efficiency went in that *Trasylo1*
16 litigation cited by the defendants, because I think
17 Judge Middlebrooks will tell you he was hardly bothered by
18 it; that we many times worked everything out ahead of time;
19 that there was no squabbling between the plaintiffs; and in
20 fact, that litigation, I think, is pretty much a model of how
21 things have run efficiently.

22 And finally, I don't quite understand how the
23 defendants have standing to say how the plaintiffs can
24 organize themselves on the basis of some farfetched economic
25 interest because at some point the lawyers on this side, who

1 will have to put out the money to create the document
2 depository to pay the court reporters, to pay for experts
3 could get their expenses back and perhaps get a common
4 benefit fee, which will be determined later by your Honor.
5 We don't even understand at this point how that impacts the
6 creation of a committee.

7 No one on this committee is going to try to run up
8 their hours to try to get common benefit.

9 Everybody on this side represents actual
10 plaintiffs. The cases cited by the defense are all class
11 action cases. In class action cases, almost all of the
12 plaintiffs don't even know there is a lawsuit filed, all the
13 members of the class. You have some named plaintiffs who
14 represent a bunch of unnamed people out there in the world.

15 In this case, every single plaintiff in this
16 coordinated, not consolidated, action is represented by an
17 individual lawyer. And if there is a problem with what the
18 PSE is doing, those individual lawyers can bring it to the
19 Court's attention.

20 So no one on the plaintiffs' side, no plaintiff is
21 being negatively impacted by the work. In fact, they are
22 being benefited, as is the Court and is the defendants,
23 because even in the hundred case we have, they are only
24 facing one deposition of their chief custodians as opposed to
25 100.

1 So we think that the formulation of this committee
2 will work very well for this Court, and we ask the Court to
3 please approve it.

4 THE COURT: Anything further from the defendant?

5 MR. YEAGER: May I have two minutes --

6 THE COURT: Sure.

7 MR. YEAGER: -- just to respond very quickly to
8 what Mr. Ronca raised?

9 In the order of the judicial panel sending the case
10 to this Court, the Court -- the panel did not decide all
11 these multiproduct issues and cross-product issues. They
12 were discussed.

13 And what the panel said was that this Court can
14 employ any number of pretrial techniques, such as
15 establishing separate discovery tracks or motion tracks. And
16 it goes on to say, as the litigation progresses, the
17 transferee judge may conclude that issues concerning one or
18 more of the Zimmer components are sufficiently dissimilar,
19 that the associated claims or actions should be remanded to
20 their transferor districts while pretrial proceedings as to
21 the other actions continue in the MDL.

22 We are not here to talk about that today, and
23 that's a little bit down the road. But I wanted to make it
24 clear what the panel decided and what it deferred to this
25 Court.

1 With regard to the issues across the products being
2 the same or different, I am not sure that I understood
3 Mr. Ronca clearly. But to be clear, there was an event that
4 the FDA denominated as a recall. I believe it is the event
5 that he is referring to. That was a recall that was actually
6 the result of a doctor letter that Zimmer originated as to a
7 tibial component. And as we get on the road in the case, the
8 Court may already know that there is a tibial component that
9 goes in the top of the tibia and femoral components. That
10 recall did not affect the femoral components. It was the
11 tibial component.

12 The 510(k)s, when the time comes to talk about the
13 protective order, whenever the Court would like to hear about
14 that, have that briefed and argued, we will talk about what
15 the 510(k)s really say and what they don't say.

16 What they don't say is that these products are all
17 the same. What they say is very specifically they are the
18 same in these regards, and they are different in these
19 regards. And the regards on which they are different are the
20 regards -- many of the regards that are at issue here.

21 Thank you.

22 THE COURT: All right. Thanks.

23 I have thought about this, obviously, before you
24 came this morning. And I do have some concerns about the
25 size of the steering committee and the possibility that it

1 could be unwieldy.

2 I am, nevertheless, of the view that plaintiffs'
3 proposal should be approved. And let me explain why.

4 The concerns about cross-product discovery and the
5 protective order and who gets to see what are valid ones, but
6 they are not ones that I am in a position today to address.
7 And I am not sure that all of you would be either, because
8 probably what discovery is available to what lawyer depends
9 on which lawyer represents plaintiffs with particular -- any
10 particular circumstances or injuries.

11 The concern about fees is a potentially valid one.
12 I suppose plaintiffs would argue that there is really no
13 standing on the part of the defendant to even make that
14 argument. But I think it is or could be a valid one.

15 Let me suggest that to the extent that the
16 proposal, the management proposal, that the plaintiffs are
17 making ends up being overly expensive, it's the plaintiffs
18 that will, I think, ultimately pay the price because I am not
19 going to approve excessive fees. And if that's what it comes
20 to, it's the plaintiffs that will have to be penalized for
21 their decision to overly staff the case, if that's what they
22 are doing.

23 I want to point out that I share the observation
24 that an MDL is different from a class action in certain ways.
25 And one of them is that each -- there are individual cases

1 and that each case -- each lawyer who represents a plaintiff
2 is entitled to participate, at least at some level, in that
3 plaintiffs' case.

4 The only question we are talking about is, who
5 comes to court and who's involved in the depositions and the
6 like?

7 I would expect -- obviously, we don't have a
8 problem with co-lead counsel. There is no objection. We
9 don't have a problem be with liaison counsel. There is no
10 objection there.

11 We are now up to what sounds like a 19-person
12 plaintiffs' steering committee. I would expect that
13 plaintiffs on their own are going to recognize that we are
14 not going to have 19 people or 24 people -- 23 people, I
15 guess it would be, at a deposition. And we are not going to
16 have 20-some-odd firms looking at the same documents.

17 With that observation, I am going to, at least at
18 this point, approve the proposal that's been made and expect
19 the plaintiffs to explain to all of us who's doing what and
20 to demonstrate that they know how to manage their own time
21 and that they are not putting all kinds of lawyers on a case
22 to do all kinds of the same things. I think that's clear
23 enough that to the extent there are specific questions, we
24 can address them.

25 I do have before me the issue of a protective

1 order. I have got a copy. I also have the proposed case
2 management order.

3 Which of those should we begin with?

4 MR. RONCA: I think, your Honor, probably the best
5 thing to do is to deal with the case management order first.
6 I think it's simpler.

7 Amongst our lead counsel, Tobi Millrood has been
8 responsible for that, and I would ask him if he would speak
9 to that for the plaintiffs.

10 THE COURT: That's fine.

11 MR. MILLROOD: Good morning, your Honor.

12 Tobi Millrood. It's a pleasure to be before you.

13 THE COURT: Good morning.

14 MR. MILLROOD: As your Honor well knows, it's
15 customary at the beginning of one of these mass tort MDLs to
16 set the table. And the best way of doing that is to set out
17 some administrative guidelines and some procedural guidelines
18 through Case Management Order No. 1.

19 Plaintiffs' counsel, the now co-lead counsel, and
20 liaison counsel have worked cooperatively with Mr. Yeager,
21 Ms. Pierson over the last few weeks at trying to formulate an
22 agreed upon CMO1.

23 Your Honor at this point only has the proposal from
24 the plaintiffs.

25 THE COURT: Correct.

1 MR. MILLROOD: After that, the defendants submitted
2 to us their suggested changes through a redline document.
3 And we have been working through that over the last several
4 days.

5 I can report to the Court that there have been a
6 number of areas of agreement, and there are many of the
7 subparagraphs before your Honor that are agreed upon.

8 There are, however, some particular issues, which
9 if your Honor would like to know now the highlight of what's
10 disagreed, we can point that out. But it was the proposal of
11 the parties that in the next seven to ten days we try to work
12 through any remaining areas that we can find agreement. And
13 if we cannot find agreement, that in seven to ten days we
14 would put to your Honor just those areas of disagreement for
15 your Honor to rule upon and approve a CM01.

16 THE COURT: I think that makes sense. I think that
17 makes sense. You are likely to reach agreement on some
18 issues. And to the extent that you are not able to, I would
19 expect you will be able to present those to me in writing.
20 And I will then be able to be informed -- whether I rule in
21 writing or have you in, I will be informed on the basis of
22 your submissions.

23 MR. MILLROOD: Okay. So is there a particular
24 timeframe that your Honor would like to see that by?

25 THE COURT: If you think you can do that within

1 seven to ten days, I think that would be great. We can set
2 another -- a relatively short status date at which point I
3 would either have ruled or will rule.

4 By the way, on status I am assuming that we are
5 going to be seeing liaison counsel and potentially lead
6 counsel but not the steering committee in general. Is that
7 your understanding?

8 And we will see people from the defendant,
9 obviously.

10 All right. Today is September 16th. So we
11 could -- how do you feel about October 7th? That's a Friday.

12 MR. MILLROOD: I know that's fine for me, your
13 Honor, and fine with Mr. Flowers.

14 THE COURT: That's fine. We can say 10 o'clock, if
15 that works for you.

16 MR. MILLROOD: Your Honor, so that --

17 THE COURT: And then on the dates for your
18 submission to me, if you could get it to us in 14 days, I
19 will have a chance -- I assume that what you are going to
20 submit is your explanation of what the disagreements are.

21 MR. MILLROOD: Right.

22 THE COURT: So each side -- that will either be a
23 joint document or each side can submit their proposal.

24 MR. MILLROOD: Yes, your Honor. If it's okay, we
25 would submit simultaneous submissions from each side as to

1 the relative positions in 14 days, and then be set for a
2 decision on October 7th before you at 10 a.m.

3 THE COURT: That's fine.

4 MR. MILLROOD: Thank you, your Honor.

5 THE COURT: All right. I think the other -- that
6 relates to the case management order.

7 Where are we on the protective order? Has a
8 similar discussion been going on there?

9 MR. BECKER: Your Honor, I can address that.

10 We started the -- Tim Becker for the plaintiffs.

11 We started the discussion, your Honor, on the
12 protective order probably about three or four days ago and
13 identified five or six issues that we thought would be of
14 disagreement, substantive issues within the proposed version
15 that we supplied.

16 Now, granted the language of what they had -- what
17 defendants had provided us was different. They provided us a
18 different draft in its entirety. But from those two drafts,
19 we were able to identify six, give or take, issues.

20 My understanding is that we are down to about two,
21 maybe three, issues that would require some substantive
22 discussion with the Court.

23 One of those issues relates to who may see
24 confidential documents, whether or not the entire PSC can
25 view confidential documents. I think the Court has given

1 some hints today as to what your view may be on that.

2 The defendants' position is that confidential
3 documents would be limited to people who have a particular
4 file on suit involving a particular type of product.

5 I don't know if we are going to be able to reach an
6 agreement on that, but I, like Mr. Millrood, would propose we
7 go back and talk about it over the next seven to ten days,
8 see if we can come to some sort of an agreement on a
9 protective order.

10 The second issue relates to internal redaction of
11 otherwise relevant documents that are produced by the
12 defendants. I think, frankly, we are at an impasse on that
13 issue, and we may have to brief it up. And if we do have to
14 brief it up, we could use a similar schedule the Court
15 articulated and appear on October 7th as well to discuss
16 that.

17 Beyond that, I think we made pretty good strides in
18 our discussions with defense counsel. I am anticipating
19 getting a draft from them redlining our version, so I will
20 know more next Monday or Tuesday. And then I hope to
21 continue our discussions with them.

22 But those two issues I flagged I think are likely
23 going to require some direction from the Court.

24 MR. YEAGER: I think that's generally correct, your
25 Honor.

1 We would just note that, although the plaintiffs
2 filed the motion for the protective order -- and I have no
3 problem with that -- really it's an issue in which Zimmer has
4 a great interest because it's Zimmer's material that's being
5 protected.

6 THE COURT: Sure.

7 MR. YEAGER: And as has been said, we are working
8 together on it. I am not sure I can get the draft turned
9 around by Monday or Tuesday, but certainly by next week in
10 time for us to submit something to the Court on the schedule
11 that the Court has set forth.

12 And I am sure the Court will cover this, but there
13 are pending motions now both on the CMO and on the protective
14 order. And perhaps the entry for today could note that those
15 either are stayed or that they are going to be played out on
16 the schedule that has been discussed.

17 THE COURT: What I am doing with those motions,
18 apart from the issues regarding inclusion of certain
19 individuals within the plaintiffs' steering committee, which
20 I have effectively ruled on, the motions with respect to the
21 case management order and the proposed protective order will
22 be entered and continued until October 7th.

23 MR. YEAGER: Thank you.

24 THE COURT: All right. The other matter that was
25 touched on that perhaps may yet be premature is this whole

1 issue of cross-product discovery. I know you have talked
2 about that. It dovetails with protective order issues.

3 So will you be briefing that together with these
4 other issues?

5 MR. YEAGER: Yes, your Honor.

6 MR. BECKER: Yes, your Honor.

7 THE COURT: All right. What other matters should
8 we be taking up this morning?

9 MR. RONCA: One thing that we talked about was the
10 possibility of having master pleadings, which are often done
11 in these cases.

12 Last night the defendants proposed a schedule for
13 getting before your Honor the issue of -- first of all, the
14 parties need to decide whether we want to propose master
15 pleadings; but then, if we do, what they would contain and if
16 there was any disagreement about what should be contained
17 therein.

18 So we thought perhaps a schedule for doing that
19 maybe a little longer than the seven to ten days we have on
20 the initial projects.

21 So that was one area. Do we have master pleadings?

22 Typically in these cases, not having
23 interrogatories but rather having something that we call a
24 plaintiffs' fact sheet and a defendants' fact sheet, certain
25 information about the individual cases on both sides. For

1 example, on the plaintiffs' side, just background medical
2 information; on the defense side, who was the sales rep for
3 this particular device on this day? Working that out, again,
4 on a little bit more extended schedule than having that
5 decided by October 7th, but maybe having presentations by
6 that point.

7 Another area was, this Court has certain local
8 rules as to how motions are handled, et cetera, whether the
9 Court wants to just continue with those rules. It's
10 obviously totally up to you.

11 Sometimes in MDLs they have like a different
12 procedure so that these things can flow a little better. A
13 lot of times there are a lot of like mini motions that are to
14 individual cases that can pretty much be handled on paper and
15 very quickly.

16 THE COURT: Right. I did want to say, I do, first,
17 expect that we are going to have -- that the case management
18 order will dispense with the whole motions for leave to
19 appear *pro hac vice* procedure for purposes of this case.

20 I would expect that we would hear motions at the
21 dates that are set. I am going to set relatively regular
22 status dates with the thought that, you are right, many
23 motions can be resolved more or less on paper without the
24 intervention -- or without a formal appearance.

25 But at a minimum, if a motion needs to be heard

1 between now and, say, October 7th or whenever our next date
2 would be, I would expect at least five days' notice. I know
3 people are -- obviously, all of you are here from around the
4 country, and this date was set some time ago, so you were
5 able to make arrangements.

6 I don't think it's appropriate to adhere to our
7 ordinary two- or three-day notice schedule in a case of this
8 nature.

9 MR. RONCA: Another thing we thought might be
10 useful is perhaps a briefing or a position statement about
11 the litigation. We may know a little bit more about the
12 knees at this point than you do, your Honor, but we know you
13 are going to catch up.

14 But we thought that maybe position statements, not
15 super lengthy things, but something so you get an idea of
16 what we are talking about.

17 THE COURT: That would be great.

18 MR. RONCA: Might be able to do that. I don't know
19 if we can do it in seven to ten days, but in conjunction with
20 the protective order where there are these issues of
21 products. That might be a good idea.

22 THE COURT: Now, what I do in patent cases where
23 technology -- where it's important for the Court to have a
24 good handle on technology is ask you -- ask the parties --
25 and I will make this suggestion right now -- whether it can

1 be done without conflict, I don't know -- but sometimes kind
2 of a demonstration or a PowerPoint of some kind.

3 In this case you might want to bring in a couple of
4 knees. I wouldn't mind seeing it. Or if -- it may be
5 that -- I assume that Zimmer does some kind of promotional or
6 instructional programs about its products, and something like
7 that might be useful for me as well. So consider it.

8 We don't need to schedule it right now, but
9 consider, maybe when you come in on October 7th, talking
10 about what would be a good way to bring me up to speed on the
11 technology.

12 MR. RONCA: I actually had one for today, but I
13 didn't think we would get to use it. But I think that's
14 something that, again, we will work out and propose to the
15 Court for your approval.

16 THE COURT: Great.

17 MR. RONCA: Another important thing that needs to
18 be done that we have only slightly started on is a
19 preservation order, preservation of documents and relevant
20 information.

21 THE COURT: We here in our court, as you probably
22 are aware, adhere to the Sonoma protocol. In fact, we have
23 kind of a standing order about e-discovery. There is nothing
24 in it that would come as any kind of a surprise. You could
25 probably guess what's in it. You got to cooperate. You got

1 to be reasonable. You got to be proportional and the like.
2 I am sure that, based on what I have seen about the
3 qualifications of the lawyers here, that's not going to be a
4 problem.

5 MR. RONCA: And we think the protective order is
6 important to be on the fast track because we can't -- for
7 example, in some of the individual cases, third-party
8 subpoenas were sent out. And the production of those
9 documents has been waiting for a protective order. So we are
10 glad that that's on the fast track.

11 Other than those, those are the things that we
12 thought about. Defense may have other ideas. We have had
13 significant contact, particularly over the last week, with
14 the defense on various issues and the typical back-and-forth
15 of what it takes.

16 I don't know if anybody else has an issue.

17 THE COURT: All right. Anything the defendants
18 want to add to what's on our agenda?

19 MR. YEAGER: Just for clarification to make sure we
20 understand, I think Mr. Ronca's suggestion of position
21 statements is terrific. I think that would be helpful for us
22 to hear from them as well as for the Court to hear from them
23 and for them to hear from us. So we would be eager to do
24 that.

25 Is that something the Court would like us to

1 schedule within the case management order, to put something
2 in there on a schedule for presentation?

3 THE COURT: If you could, that would be great.

4 MR. YEAGER: Okay.

5 THE COURT: If you could, that would be great.

6 Obviously, we can be flexible about when, but the sooner I
7 understand it, probably the better for all of you.

8 MR. YEAGER: Yes. Okay.

9 I think that's it. Thank you.

10 THE COURT: All right.

11 Mr. Ronca?

12 MR. RONCA: Will it be possible in future
13 conferences for people to join by conference call if they
14 want to listen in? We have done this in other cases.

15 THE COURT: We do now have the technology for that,
16 and it should be possible.

17 What I am going to ask that you do is, one of you
18 remind us -- remind my staff maybe two or three days before
19 the date and let us -- give us an idea about how many people
20 we are talking about.

21 MR. RONCA: Okay.

22 THE COURT: The person who coordinates -- to the
23 extent that can't -- we don't really understand the equipment
24 all that well ourselves. The person in the building that
25 does is named Joe Novak. You may be in touch with him. It's

1 also possible through -- with Joe's assistance to use
2 videoconference equipment that can be wheeled into the
3 courtroom readily, if somebody would like to participate that
4 way.

5 MR. RONCA: If the parties need to contact the
6 Court for something -- let's say we are discussing something
7 and -- I don't know. Let's say Jay -- we have a date set and
8 Jay has a trial comes up. He gets attached for a trial.
9 Will there be a person that will be the contact for non -- no
10 *ex parte* contacts, but for joint contact, if we had to?

11 THE COURT: You can contact either my deputy,
12 Ms. Ventura, or my assistant. Her name is Susan Lenburg.
13 You know, what I am going to do, just because I happen to
14 have these, is give you her card. I have got a stack of them
15 here.

16 Ms. Ventura's contact information is on the Web
17 site as well.

18 MR. RONCA: Okay. Great.

19 I can't think of anything else right now.

20 THE COURT: All right. Well, welcome to Chicago,
21 those of you who haven't been here before. It's a terrific
22 city.

23 I am looking forward to working with the case. I
24 am honored to be chosen by the MDL panel, and I think it's
25 going to be very interesting. We don't have all that many

1 products cases in federal court because you have to have
2 diversity. This is very interesting to me.

3 And I always like a case where I am going to learn
4 something brand-new. That's great.

5 Thank you.

6 MR. YEAGER: Thank you.

7 MR. FLOWERS: Thank you, your Honor.

8 (An adjournment was taken at 10:13 a.m.)

9 * * * * *

10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 /s/ Frances Ward September 22, 2011.
13 Official Court Reporter
14 F/j
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