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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a-MAGNUM CAUSE NUMBER  
HIP IMPLANT PRODUCTS LIABILITY 3:12MD02391  
LITIGATION

NOVEMBER 18, 2013

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT L. MILLER, JR.

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*Federal Certified Realtime and Registered Merit Reporter*  
*United States District Court*  
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*Proceedings reported in machine shorthand. Transcript  
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1 APPEARANCES

2 For Plaintiffs:

3 MR. W. MARK LANIER (telephonically)  
4 MR. THOMAS R. ANAPOL  
5 MR. ROBERT DASSOW

6 (see docket for addresses)

7 For Defendant:

8 MR. JOHN LaDUE  
9 MR. JOHN D. WINTER  
10 MS. ERIN HANIG  
11 MR. BLAINE DART

12 (see docket for addresses)

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1           **THE COURT:** Good morning.

2           This is Cause Number 3:12MD2391.

3           We are gathered in court with participants on the  
4 phone.

5           If I could ask you folks to state your appearances  
6 for the record.

7           **MR. DASSOW:** Good morning, Your Honor.

8           Rob Dassow, Hovde, Dassow, Deets for the Plaintiffs.

9           **MR. ANAPOL:** Good morning, Your Honor.

10          Tom Anapol for the Plaintiffs.

11          **MR. WINTER:** Good morning, Your Honor.

12          John Winter for Defendants.

13          **MR. LaDUE:** John LaDue for the Defendants.

14          **MR. DART:** Blaine Dart with the Defendants.

15          **MS. HANIG:** And Erin Hanig for the Defendants.

16          **THE COURT:** Okay. Counsel and I met in chambers  
17 before this hearing. We have been doing this just to get a  
18 feel as to what we're going to be talking about and being  
19 sure that I am able to get on the same page as everybody.  
20 This morning, we probably went a little more deeply into it  
21 than we have in other such conferences, and, accordingly,  
22 we're going to -- I'm going to let the attorneys summarize  
23 what was said on a couple of the issues to make a fuller  
24 record than was possible in an off-the-record conference.  
25 Ordinarily, in an off-the-record conference, I try to

1 summarize what was said, but I think there was enough  
2 covered that we should leave it to the attorneys.

3 We did talk about the discovery status. We talked  
4 about the scheduling order. We talked about the possibility  
5 of a suspended docket for non-revision cases. We talked  
6 about a proposal for the Plaintiffs' Steering Committee  
7 reappointment process, and that I think I can summarize  
8 because that was a unilateral issue, and I indicated that it  
9 would be fine if the Steering Committee submitted a single  
10 filing with respect to new people who were applying through  
11 the Steering Committee. The Steering Committee could  
12 include their applications and the information that was  
13 required for an initial appointment. Obviously, anybody  
14 else who wants to apply under the order can apply  
15 separately, and with respect to those who are seeking  
16 reappointment, to include them all in a single application  
17 but include the information as to what their personal  
18 involvement has been over the past year. So we probably  
19 don't have to reprise that one, and it was not exactly a  
20 controversial topic.

21 Mr. Anapol, let me turn it over to you, first, to  
22 summarize what we had to say, and then I'll let Mr. Winter  
23 do the same, and then I'll come back to you to see if  
24 there's anything else that we should be talking about here.

25 **MR. ANAPOL:** Thank you, Your Honor, and good

1 morning, again.

2 So as Your Honor is aware, as you've just said, we  
3 met for about an hour this morning.

4 There are two key issues from the Plaintiffs'  
5 perspective that we'd like to put on the record and to  
6 summarize for you, and they're tied together.

7 Your Honor, as you're aware, there are various  
8 discovery disputes with respect to the production, with  
9 respect to documents that have not been produced from 2008  
10 and prior, with respect to the Defendant's fact sheets,  
11 interrogatory responses, and a whole host of other discovery  
12 disputes that are ongoing. It is relevant to the extent  
13 that what we are asking for is a full and complete  
14 production of these documents and specifically as it relates  
15 to beginning the real discovery process and the taking of  
16 depositions in this matter.

17 Your Honor has asked us to submit a scheduling  
18 order. We've done that. Defendants have submitted one, as  
19 well, and the key issue, I think, that overrides both of  
20 these issues is the timing in that scheduling order.  
21 Defendants have asked for, roughly, ninety days at the  
22 completion of this month, from November 31st (sic), to give  
23 us ninety days to complete discovery, basically, on all  
24 custodial files and then to get into the bellwether process  
25 thereafter. At that date -- and the reason November 31st

1 (sic) is critical is because that's the date they suggest  
2 the custodial files will be certified, somewhat complete or  
3 reasonably complete, I think, are the words.

4 Where we have a problem with that, specifically, are  
5 the 2008 and backward documents. Your Honor is aware that  
6 many of these documents are on backup tapes. The parties  
7 are trying to work together to come to resolution as to the  
8 production of those documents, and how we get to look at  
9 them and where that takes us, I think, will take some time  
10 to get to, and so tied to all of this is the need or the  
11 request by Plaintiffs' counsel for a special master and  
12 whether a special master is appointed in this case, which  
13 the Plaintiffs seek, or whether Your Honor or the Magistrate  
14 Judge becomes more involved in the ongoing discovery  
15 disputes. What Plaintiffs assert is that we need additional  
16 court intervention to help us through this process. A  
17 special master is one option. If that doesn't happen, we'd  
18 ask that Your Honor defer that ruling to some later date, to  
19 the extent that we need one down the road, but that, at a  
20 minimum, we need additional judicial intervention to help us  
21 through these issues.

22 The pre-documents are really probably at the core of  
23 the discovery disputes. Without those documents, we are  
24 severely hampered in our ability to prove our case. They do  
25 exist and we need time to get them, and the parties are

1 working together, at least, initially, to try and come up  
2 with a platform and an ability to do that.

3 Without getting too specific, Your Honor -- again,  
4 we don't want to revisit all of the prior rulings that Your  
5 Honor has made in this case vis-a-vis predictive coding and  
6 unilateral production - we do ask that as we move forward  
7 with this process that an alternative route to getting these  
8 documents be considered, that there be bilateral or joint  
9 working together -- that's what I'm really searching for --  
10 to have us work together with the Defendant and have a  
11 bilateral meet and confer and we work through these issues  
12 and the documents specifically together.

13 One issue that we've raised today that we also want  
14 to put on the record is the production of the Defense Fact  
15 Sheets. Specifically, the Defense Fact Sheets have been  
16 redacted for HIPAA reasons. What the Plaintiffs are seeking  
17 is that those redactions be removed in individual cases and  
18 that those documents be produced to the attorney of record  
19 in those claims. We recognize and understand why the  
20 Defendants need to redact them for purposes of general  
21 production but object and insist that they be produced in  
22 their full form to the individual claimants' attorneys.

23 There continues to be a dispute over one custodial  
24 file in particular, the current CEO. We want his  
25 deposition. We want his custodial file. The Defendants

1 have refused.

2           So the point of this summary, I guess, is to just  
3 lay out some of the discovery disputes that the parties are  
4 having. Your Honor is aware of these and several more that  
5 we talked about in chambers. But at the end of the day, as  
6 it relates to the scheduling of this case, we have submitted  
7 what we believe to be a reasoned and fair scheduling order  
8 which will carry this case forward for a year plus, two  
9 years plus -- I'm sorry -- very consistent with the other  
10 metal-on-metal hip litigations that are currently ongoing  
11 and resolving as we speak.

12           And so at the end of the day, as it relates to all  
13 of this and the scheduling of depositions, it's very  
14 difficult for Plaintiffs to move forward unless we take  
15 multiple depositions of the same party, particularly in  
16 light of our lack of production of these pre-'08 documents,  
17 and so, without that information, we feel as though if we  
18 get it six months from now or whenever we get it, we're  
19 going to need to take depositions a second time, and we want  
20 to make sure that what we have is, in fact, a full,  
21 certified file for each and every one of these custodians.

22           So just as a general philosophy, that's where we  
23 stand. You know, I can get into much more detail on these  
24 issues. Your Honor is aware of them. But for purposes of  
25 just putting on the record some of the disputes we're

1 having, those are the key ones.

2 **THE COURT:** Thank you, sir.

3 Mr. Winter.

4 I should say that the spirit in which the discussion  
5 was had in chambers was not with a view toward the Court  
6 resolving any of the discovery issues, but simply to  
7 understand how each side saw what the discovery issues were  
8 with respect to scheduling and the request for appointment  
9 of a special master, but those discussions were important  
10 from that standpoint.

11 Mr. Winter. Sorry to interrupt.

12 **MR. WINTER:** No problem.

13 Thank you, Your Honor. Good morning.

14 I will respond to the three basic points that  
15 Mr. Anapol raised. As Mr. Anapol said, to the extent the  
16 Court has additional questions, we're happy to respond to  
17 them, not quite necessarily in the order that Mr. Anapol  
18 raised them.

19 The **Patterson** case in the Seventh Circuit is pretty  
20 clear on when a CEO or apex person in a company can be  
21 deposed. We are happy to brief for you the fact that  
22 Mr. Binder does not have the unique knowledge and  
23 information that the Seventh Circuit says the person needs  
24 to have to be subject to a deposition. And if we want to  
25 move these cases along and someone wants to make a motion on

1 that, we're happy to respond to it, because I think that  
2 issue -- we've met and conferred. We're not going to agree  
3 on that one issue. We've agreed on sixty-nine other  
4 custodians. So if they want to brief that issue, we can  
5 brief that issue.

6 On the Defendant Fact Sheets, Your Honor, those  
7 include the files that the company accumulates when it finds  
8 out about a possible adverse event. In this case, a  
9 revision. So information's collected. It goes in a file.  
10 The file then becomes part of what is submitted to FDA and  
11 other regulatory bodies as a medical device report.  
12 Sometimes it's thick, sometimes it's thin, depending on the  
13 information that we get. We have to -- and everyone  
14 agrees -- take out patient-identifying information, and  
15 that's what the Defendant Fact Sheet order required, and  
16 that's what we did.

17 In those complaint files, if you are a plaintiff's  
18 lawyer, you can look at it, and you should know who the  
19 surgeon was who operated on your client. If someone needs  
20 to see the Defendant Fact Sheet unredacted because the  
21 plaintiff's lawyer does not know the surgeon who did the  
22 implanting or the revision surgery, I would, respectfully,  
23 suggest to Your Honor that there are significant problems  
24 with someone having filed that lawsuit without that  
25 information and them needing it, allegedly, from us. So

1 looking at that file, any plaintiff's lawyer with the  
2 redacted form is going to know who the surgeon is.

3 Obviously, they're going to know who their client is.

4 And if it turns out, it says, "Patient revised on  
5 May 3rd," and the lawyer believes the patient was revised on  
6 April 3rd, then they can say, "What's going on here?" They  
7 would have the underlying medical records, and they're going  
8 to be able to tell what the surgeon did or did not say that  
9 we were able to record in whatever the file says.

10 Now, we have hundreds of these cases, and we think  
11 it is an undo burden to have to unredact for every  
12 particular case. We've suggested and we're still discussing  
13 whether there's some subset, whether they be bellwether  
14 cases or some sampling, where we'll give the unredacted  
15 files. But having gone through this process, having  
16 produced them because that's the way the law requires us to  
17 do them, we shouldn't, at this point, be forced to go back  
18 and re-do it.

19 But we're still discussing whether it's a sample of  
20 twenty, ten, or twenty-five. We may have to come back to  
21 you on that, which is a lot of the way these issues are  
22 working. And we've had times when there's been a gap in the  
23 response, and maybe we need to do a better job on closing  
24 that gap so we can get to the point like we are today with  
25 Mr. Binder. So I don't think that's special master

1 territory. I think that some either better effort by the  
2 parties or a little bit more on the phone with you or the  
3 Magistrate Judge on a somewhat regular basis.

4 As to the documents from before 2008, we actually  
5 have identified a couple of backup tapes. We have gone back  
6 and forth. And our concern, Judge -- and we're very clear  
7 about this -- is there is a procedure in place that we've  
8 litigated twice in front of you already as to how we produce  
9 documents. We intend to follow what you ordered in April,  
10 what has been modified since then incorporating search terms  
11 that our good colleague's proposed, incorporating into the  
12 predictive coding the additional documents that our good  
13 colleagues proposed, and whatever comes out of that review  
14 of whatever group of backup tapes we consensually agree on.  
15 And if it turns out that there are four that are easy and  
16 one that's really hard, either we agree to do the four that  
17 are easy or we litigate, if we have to do the one that's  
18 hard, but that issue can be brought to your attention  
19 quickly. But we don't want to go backwards anymore in terms  
20 of documents.

21 We have a schedule we've proposed to you. There is  
22 more than a year difference in almost every point of it.  
23 Our schedule was a function of comments you made back in  
24 February, I believe, at a pretrial conference, as to when  
25 you wanted the first bellwether trial, not that you were

1 setting it in stone, but that's what you had in mind. You  
2 told us you wanted us to complete our document production  
3 over the summer. We're arguing now over what other pieces  
4 are there, but we did that. We completed the production as  
5 of August, which is what we said we would do. And in any  
6 document production of this size, there are always going to  
7 be ancillary issues that come up and the parties address.  
8 We've done that, and, you know, we've almost doubled the  
9 number of custodians now because, at a certain point in  
10 August, we were asked about additional custodians, and we've  
11 resolved that.

12 So we think the schedule we proposed to you is a  
13 fair and reasonable one in terms of deadlines. We, clearly,  
14 need deadlines from you so that we move this forward, but,  
15 we really, respectfully, urge you that we adhere to the  
16 production parameters, production process that you ordered  
17 back earlier this year, because if we don't have that, we're  
18 very concerned we're just going to completely go off track.

19 Thank you, Your Honor.

20 **THE COURT:** Thank you, sir.

21 I'm sorry. Mr. Anapol.

22 **MR. ANAPOL:** Just briefly, Your Honor.

23 We're in agreement in certain things from what  
24 Mr. Winter just suggested. If I may, just indulge me a  
25 moment to just kind of respond to the issues he's raised.

1           We do think it's time we brief the Binder issue,  
2 find out whether that's a custodian we should be entitled  
3 to. We want to brief that.

4           The Defense Fact Sheet, if we're still in a  
5 meet-and-confer process -- I'm not sure if we are or not --  
6 with respect to the redaction of the complaint file, the  
7 adverse event reports, that's something that we're going to  
8 want to either have a special master or the Magistrate Judge  
9 or Your Honor involved in more acutely.

10           The other issue with the Defense Fact sheet, which I  
11 didn't reference earlier, is the production to non-PSC  
12 members. We have a whole issue with that that needs to be  
13 addressed.

14           The protocol and procedure for the '08 documents,  
15 again, if we're at a stand still, it needs to be briefed.  
16 It needs to be discussed in front of Your Honor or the  
17 Magistrate or a special master.

18           And then the last thing that neither of us raised  
19 initially is the scheduling of the statute of limitations  
20 cases, which we fervently are opposed to and that the  
21 Defendants are seeking.

22           So there are a whole host of issues that need  
23 greater analysis, greater input from the Court, and so I  
24 think that, in part and parcel, goes to why we want the  
25 special master and/or additional judicial intervention.

1           **THE COURT:** Thank you, sir.

2           Mr. Anapol's comments note one out of the two  
3 additional things we talked about, and I didn't invite  
4 comments on those here because the Parties' differences are  
5 very easily stated.

6           We talked about the non-revision cases, people who  
7 still have the hip at issue and it has not been removed or  
8 replaced. Biomet would like to have a suspense docket of  
9 some sort for non-revision cases with a way for a Plaintiff  
10 to move from the suspense docket to the active docket, if he  
11 or she undergoes revision, and the Plaintiffs are in general  
12 agreement with respect to the need to find a separate track  
13 or stay them or one thing or another but disagree as to a  
14 narrow range of cases as to whether it would be persons who  
15 have not had the revision but have had a physician recommend  
16 the revision but it can't be done for some medical reason or  
17 Plaintiffs who have shown some other medical symptom -- that  
18 isn't the right word, but it's the closest thing that comes  
19 to me -- that there may have been some metallic poisoning or  
20 the like, so they would like to see a broader range of  
21 non-revision cases, which everybody anticipates would still  
22 be a fairly small range, that could stay in the active  
23 cases, and I told them I would try to get something out on  
24 that.

25           Biomet also would like to see a bellwether approach

1 to cases in which they believe the statute of limitations  
2 defeats the claims. Biomet calculates it somewhere in the  
3 range of twenty percent of the document, and they would like  
4 to be able to come up with some approach that would allow a  
5 ruling on those, at least with a sampling, a bellwether  
6 approach. The Plaintiffs -- and, effectively, Biomet does  
7 not want to see those remanded, if anything is remanded, and  
8 the Plaintiffs view those as being -- since they are so  
9 state sensitive and fact specific, the Plaintiffs believe  
10 that it is an issue better addressed by the transferor judge  
11 on remand than by me as the transferee judge, and, again, I  
12 indicated I would give some guidance, hopefully, yet this  
13 week in a ruling addressing all of these topics.

14 Does that accurately sum up what everybody's  
15 position was on those two topics?

16 **MR. WINTER:** I believe it does.

17 Judge, there was something on the non-revision cases  
18 which I would like to bring to the Court's attention, if I  
19 may.

20 **THE COURT:** Okay.

21 **MR. WINTER:** Your Honor, Mr. Anapol got a copy of  
22 the letter that I'm about to refer to as to why we think  
23 these non-revision cases really need to be moved to the side  
24 and set aside as soon as possible because, quite frankly,  
25 it's a waste of judicial resources and my client' resources.

1 The case I'm going to bring to your attention is **Massingale**,  
2 and it's 13-564.

3 **THE COURT:** Thirteen F.3d?

4 **MR. WINTER:** 13CV564. It's one of the cases in  
5 this --

6 **THE COURT:** Oh, in this case. I see.

7 **MR. WINTER:** Right.

8 This is what's happened with **Massingale**, Judge.  
9 It's a non-revision case, and when we got the fact sheet  
10 from the Plaintiff, we found out the Plaintiff is now  
11 deceased. When we looked at that, we sent out the  
12 suggestion of death that, I believe, Rule 25 obligates us to  
13 do. The Plaintiffs' counsel then filed a motion to  
14 substitute.

15 The Fact Sheet contains the following information,  
16 Judge: No revision prior to death. No elevated metal ions.  
17 No metallosis. No pseudotumor, and there's all sorts of  
18 acronyms for something like pseudotumor. None of that. And  
19 the cause of death was end-stage liver disease, alcohol and  
20 drug abuse.

21 So we have, quite frankly, wasted your time, the  
22 staff of this Court's time, and our time on this case far  
23 more than it needs to be. And I'm not saying, Judge, that  
24 all the non-revision cases are like this, but if we have  
25 issues to deal with, we should be dealing with those issues

1 and not non-revision cases.

2 **THE COURT:** Okay. Thank you, sir.

3 **MR. ANAPOL:** If I may, Your Honor.

4 Mr. Winter and I have been talking for several  
5 months about non-revision cases. The PSC is in full  
6 agreement, certainly, in part, on what we do with these  
7 non-revision cases.

8 I'm not quite sure why we're addressing one  
9 individual claimant. And if what Mr. Winter suggests is  
10 accurate, maybe that case needs to be dismissed. I'm not  
11 quite sure we're wasting so much time other than the  
12 discussion we're having about it right now. Beyond that,  
13 there are, clearly, cases of non-revision that will turn  
14 into revision. Problems will develop over time. And to  
15 suggest that all non-revision cases, even by the recognition  
16 of this case, are going to be consistent with all other  
17 non-revisions is not right. There are dozens and dozens, if  
18 not hundreds, of claimants who have an evolving problem  
19 where they have a device that is starting to wear, and, as  
20 of today, maybe their surgeon isn't recommending revision,  
21 but, a year from now, eighteen months from now, two years  
22 from now, when this device fails, it will become a revision  
23 case, and to suggest that these are all non-events is  
24 just -- it's inaccurate. It's unfair.

25 And so, just to reiterate, also, we do think there

1 are two buckets of these cases out there, the non-revisions  
2 that may become cases down the road, and that's why we don't  
3 want to dismiss these cases. We think a suspension docket  
4 or a deferral docket is appropriate under those  
5 circumstances. There are a handful of cases and growing of  
6 folks, either because of their age, because of other medical  
7 conditions, have metal wear in their bodies, have a failing  
8 device, but, because of other reasons, simply can't have it  
9 removed, and we think those are viable cases.

10 So to suggest that because one case, one filing --  
11 assuming Mr. Winter is accurate -- looks like that doesn't  
12 mean that's what all of these non-revisions cases are, so I  
13 needed to just say that.

14 And beyond that, we submitted an order, a proposed  
15 order to Your Honor this morning. Mr. Winter had this for  
16 weeks. And we agree; we need to do something with these  
17 non-revisions. We don't want them spending their time doing  
18 Fact Sheets on a case that's premature either.

19 **THE COURT:** I hope I summarized accurately. It  
20 appears there's general agreement but disagreement as to the  
21 margins on that issue.

22 I think we've got everything -- that we've talked  
23 about everything on the agenda other than pending motions.  
24 Let me just tell you what our records show.

25 We have eleven motions to dismiss pending on failure

1 to submit Plaintiff Fact Sheets, and I can tell you what  
2 those are, if your numbers differ. Four motions to dismiss  
3 or remand, and we also have a motion, not a motion, a case  
4 with a suggestion of death, not **Massingale** but **Roman**,  
5 13-568, which also has a motion to dismiss for failure to  
6 submit Plaintiff Fact Sheets.

7 So, anyway, that's where it looks to us that we  
8 stand as far as pending motions.

9 I assume that the motions were placed on the agenda  
10 by the Defense, so Ms. Hanig.

11 **MS. HANIG:** Judge, you're correct, at least our  
12 records are jiving with yours. In terms of the motions to  
13 dismiss for the deficient Plaintiff's Fact Sheets, we also  
14 counted eleven. Three of those motioner past due, so, in  
15 those cases, we can go ahead and submit the proposed order  
16 to dismiss for you. The other eight, those responses are  
17 due today, so we can wait and actually just submit a batch  
18 of all the proposed orders tomorrow on those eleven.

19 As far as the Rule 25 suggestions of death, I count  
20 two. The first was the **Roman** case that you pointed out, and  
21 the second was **Massingale**, the 13CV564, so those are ripe  
22 for dismissal.

23 And then in terms of the motions to remand, we also  
24 had the same numbers in terms of the motions to  
25 dismiss/remand. There's four. The one that was most

1 recently briefed that I've seen is the **Demontel** case, that I  
2 know was fully briefed. So if Your Honor wants to set a  
3 hearing on any of those cases, Defendant is ready to have  
4 those cases heard.

5 **THE COURT:** So all four of those are ripe as you see  
6 it?

7 **MS. HANIG:** I know that the **Demontel** case is ripe.  
8 The other three I can check on, but I'm pretty sure, as  
9 well, that anything else that's outstanding has been ripe  
10 for a while.

11 **THE COURT:** All right. I've checked off everything  
12 on the agenda, but that doesn't mean anything necessarily.

13 Anything further for the Plaintiffs today, other  
14 than picking a date for the next conference?

15 **MR. ANAPOL:** Well, Your Honor, we need to pick a  
16 date for the next conference, and we can either start to  
17 brief some of these issues we've raised today or wait for a  
18 ruling from you vis-a-vis whether a special master will be  
19 appointed, whether we should work with your Magistrate Judge  
20 and so just some understanding of the time frame, and I  
21 think that will help us.

22 **THE COURT:** I think, before starting any briefing --  
23 although, I don't want to delay it unnecessarily -- I think  
24 it would be helpful to figure out what path we're going down  
25 before we get underway, and I will get at least much of the

1 ruling out this week. I don't want to promise the whole  
2 thing because I've got at least four major issues here that  
3 I need to look at.

4 Anything else on the Defendant's side?

5 **MR. WINTER:** No, Your Honor.

6 **THE COURT:** Okay. I'm going to give you a pretty  
7 narrow range of dates for the next conference. I hope you  
8 are available. If you're not, you're not. It appears to me  
9 that if we try to gather any time before the week of  
10 Christmas or the week after Christmas, we probably will not  
11 have had enough time to really justify it. I can offer you  
12 January 6th. On January 8th, I am having shoulder surgery,  
13 and they told me not to decide anything for three weeks  
14 after that, which is an occupational problem. So I guess if  
15 we can't do it January 6th, I would offer February 3rd as  
16 the next Monday on which I'm allowed to decide things. It  
17 seems to me February 3rd is further down the road than would  
18 be optimal, but, on the other hand, I know I'm only offering  
19 you one day. And if you can't do it on the 6th,  
20 February 3rd looks like the best shot.

21 **MR. ANAPOL:** Your Honor, I am available. I would  
22 like to hear from Mark Lanier, who may be on the phone, to  
23 see if he's available. But with the constraints that we've  
24 got, we'll probably move forward whether he is or isn't.

25 **THE COURT:** Mr. Lanier, are you there?

1           **MR. LANIER:** Yes, I am Your Honor.

2           And let me also say thank you very much for allowing  
3 me to appear by phone. In a different hip litigation, I've  
4 got depositions in Cleveland that I have to leave for  
5 shortly, and the flights are better out of Houston than  
6 South Bend, so this has been very helpful.

7           Your Honor, I do show depositions in a case that  
8 day. I am assuming I can get someone to cover those  
9 depositions, and I will be there with bells on.

10          **THE COURT:** Okay.

11          **MR. LANIER:** So I will absolutely make  
12 January 6th work.

13           I wish you the best for your shoulder surgery.

14          **MR. WINTER:** January 6th works for us, Judge.

15          **THE COURT:** Okay. I'll show it at 9:30, and, again,  
16 we can gather beforehand for an off-the-record discussion.  
17 And if that's going to be very long, we'll move the in-court  
18 conference to 10:00, as we did today.

19           Sorry for giving you such a narrow range of date.  
20 Ordinarily, I prefer to give you a little greater margin for  
21 error.

22           Thank you. I know several of you went through some  
23 bad weather to get here, and I appreciate it, and I will see  
24 you all in January.

25           Happy holidays.

1 MR. ANAPOL: Thank you, Your Honor.

2 MR. WINTER: Happy holidays, Your Honor.

3 MR. LANIER: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Lanier.

5 (Proceedings concluded.)

6 CERTIFICATE

7 I, DEBRA J. BONK, certify that the foregoing is a  
8 correct transcript from the record of proceedings in the  
9 above-entitled matter.

10 DATED THIS 11TH DAY OF DECEMBER, 2013.

11 S/S DEBRA J. BONK

12 DEBRA J. BONK  
13 FEDERAL CERTIFIED REALTIME REPORTER

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