

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

3	In re:	)	
		)	MDL Docket No. 2329
4	WRIGHT MEDICAL	)	
	TECHNOLOGY INC., CONSERVE	)	1:12-MD-2329-WSD
5	HIP IMPLANT PRODUCTS	)	
	LIABILITY LITIGATION	)	Atlanta, Georgia
6		)	
	_____	)	
7	Robyn Christiansen, et al.	)	
8		)	
	Plaintiffs,	)	
9	v.	)	Civil Action Case
		)	No. 1:13-CV-297-WSD
10	Wright Medical Technology	)	
	Incorporated, et al.	)	Atlanta, Georgia
11		)	
	Defendants.	)	
12	_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,  
UNITED STATES DISTRICT JUDGE

**Tuesday, December 8, 2015**

APPEARANCES OF COUNSEL:

**For the Plaintiffs:** Michael Lee McGlamry,  
Helen E. Zukin, Raymond Paul Boucher

**For the Defendants:** Dana J. Ash, Matthew A. Taylor,  
J. Scott Kramer

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*  
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Tuesday Afternoon Session

December 8, 2015

3:58 p.m.

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P R O C E E D I N G S

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(In chambers by teleconference:)

THE COURT: Good afternoon.

MR. McGLAMRY: Good afternoon, Judge.

MS. ZUKIN: Good afternoon, Your Honor.

MR. ASH: Good afternoon.

THE COURT: Do I have Mr. McGlamry, Mr. Boucher and Ms. Zukin on for the plaintiffs?

MR. McGLAMRY: Yes, Your Honor.

THE COURT: And Mr. Ash, Mr. Taylor and Mr. Kramer for the defendants?

MR. ASH: Yes, Your Honor.

THE COURT: There are two things I wanted to talk about.

First is the schedule for the filing of posttrial motions. We had done some independent research, and I have always thought that these rules and their timing were a little confusing.

I'm not sure that I can extend this without any prejudice to you, but it probably makes sense to allow you to

1 file the motions themselves with the statement of your  
2 arguments in a more bare-bones pleading, do that within the  
3 28 days, but then agree upon the briefing schedule, if  
4 everybody is amenable to doing that?

5 MR. McGLAMRY: The briefing schedule in Dana's  
6 e-mail, Your Honor?

7 THE COURT: Well, let's first talk about the  
8 general structure of filing the motions by -- within the  
9 28-day period, and then agreeing upon the briefing  
10 schedule. We can begin by discussing what Mr. Ash  
11 proposed.

12 So I guess there is nobody that objects to that  
13 process; is that right?

14 MR. McGLAMRY: That's right, Your Honor.

15 MR. ASH: Correct, sir.

16 THE COURT: All right. So what day would you like  
17 to set as the date for filing the motions?

18 MR. ASH: Judge, we think that that bare-bones  
19 motion would need to be filed on December 28th.

20 THE COURT: Okay. So let's set --

21 MR. ASH: The verdict was entered on -- judgment  
22 was entered on November 30th, so the 28 days would be  
23 December 28th.

24 THE COURT: We can set that as the date for the  
25 filing of the motions, and then let's talk about the briefing

1 schedule.

2 Do the plaintiffs have any objections to the one  
3 proposed by Mr. Ash in his December 3rd e-mail?

4 MR. McGLAMRY: No, Your Honor.

5 THE COURT: So you want to just adopt that, as the  
6 briefs would be filed on the 19th of January, responses on  
7 February 9th. Would you like more time than just -- I guess  
8 that's three weeks. Is everybody satisfied with three weeks  
9 to respond?

10 MR. McGLAMRY: Well, Your Honor, we will always  
11 take a little more time to respond if it's up to the  
12 Court. But we are amenable to however you want to do it.

13 THE COURT: Well, first, do you think you have  
14 enough time to file briefs by January 19th, or would it help  
15 to give you a few more days?

16 MR. ASH: A few more days, Your Honor, would very  
17 much help.

18 THE COURT: All right. Let me get a calendar and  
19 let's pick a date.

20 MS. ZUKIN: Your Honor, excuse me for  
21 interrupting. Mr. Boucher is at a courthouse and his phone  
22 evidently cut off, and he wanted me to advise the Court that  
23 that's the reason he's not on.

24 THE COURT: Okay.

25 MR. BOUCHER: I just got back on, so thank

1 you. Sorry, Your Honor.

2 THE COURT: No, that's fine.

3 How about the 25th for the filing of opening  
4 briefs, then the 26th of February for responses, and the 11th  
5 of March for replies.

6 Did I say the 27th? It should say the 26th for  
7 responses, and the 11th for replies.

8 MR. McGLAMRY: That's fine with us, Your Honor.

9 MR. ASH: That's good with us too, sir. Thank you.

10 THE COURT: Okay. And we will do a docket entry to  
11 that effect.

12 I was looking at the record and the docket of the  
13 case, and we really can't find the docket entry that complies  
14 with, not -- it's just because we might have failed to do  
15 this, but there is an order that I entered on August 19th of  
16 2014 that set the bellweather trial pool and the schedule,  
17 and you were supposed to identify the cases that were listed,  
18 and you were supposed to identify on September 30th of 2014  
19 the two bellweather cases that were going to go to trial.

20 Well, I know you designated one of them because we  
21 tried it, but I don't recall what the other case was that you  
22 had identified as the two trial cases.

23 MR. McGLAMRY: Your Honor, I will be honest, off  
24 the top of my head -- I know we have a second one.

25 Dana, you may remember the name of it. We did

1 identify two.

2 MR. ASH: We did, and I think that the case was the  
3 Glassco case.

4 MR. McGLAMRY: That's right. Your Honor, he's  
5 correct.

6 THE COURT: Okay. Now, I raised this sometime when  
7 we talked before the trial about the MDL process, and I have  
8 a better sense of the trials now that we have tried one of  
9 them, but the purpose of bellweather trials is to see if you  
10 can get a benchmark upon which to resolve the cases, or at  
11 least that's the way the judiciary looks at it.

12 But based now on the trial that we have had and  
13 under the atmospherics of the case, I'm just not sure that's  
14 going to happen in this case, and should we consider, now  
15 that the MDL has managed the case through the first trial and  
16 discovery is completed, of sending these back to the  
17 transferee courts?

18 MR. ASH: I think, Judge, from the defendant's  
19 perspective, that's something that we obviously would all  
20 want to give pretty careful thought to and we would want  
21 probably an opportunity to discuss that with Wright Medical  
22 and their carriers and everyone else that would be interested  
23 in that decision too.

24 THE COURT: I understand that, and I'm happy to  
25 continue to preside over these, but, you know, if this

1 process is not going to be productive and efficient, it's  
2 probably better to make that decision now rather than letting  
3 it linger.

4 I mean, if you just look at the schedule for this  
5 case, it basically anticipated that it would take -- we  
6 thought it would take three or four months just to get the  
7 case ready for trial, but as things always happen, it's going  
8 to take longer than that.

9 I'm assuming there is going to be another motion  
10 for summary judgment, and so it's about a year turn-around on  
11 each of these cases.

12 MR. BOUCHER: Your Honor, from the plaintiff's  
13 perspective, we are certainly willing obviously to sit down  
14 with Dana and Wright Medical to confer and have a further  
15 discussion and maybe provide the Court which position we  
16 favor, but at this point we are obviously disappointed that  
17 it looks like we are going to be trying several of these  
18 cases.

19 And if that is the case, then the Court is correct  
20 that this isn't the purpose of having the MDL, and it  
21 certainly makes some sense to distribute them back to the  
22 referring courts and let them get tried if that's what  
23 ultimately has to happen.

24 THE COURT: It -- I will say, just because I have  
25 spent a lot of time with my MDL colleagues, that this would

1 be one of the few cases across the country where the  
2 bellweather trials and the litigation as consolidated did not  
3 get resolved.

4 And I have had one case referred back to me in an  
5 MDL that was I guess three or four years ago, and so from  
6 somebody who had transferred a case, then to get it back  
7 years later, I know how inefficient that is for everybody,  
8 including the courts that transferred them to begin with.

9 But I also think that the issue depends upon other  
10 litigation that's going on with the insurers. And in talking  
11 to your mediator, it looks to me like that litigation is not  
12 really very mature yet.

13 MR. ASH: I think that's right, Judge. And I think  
14 from our perspective on the defense, I'm not sure we would be  
15 so pessimistic yet that the MDL trial won't yield some  
16 benefits there. I think it might be a little early to make  
17 that call and decide to abandon that process.

18 THE COURT: Well, I'm not saying we have to make  
19 this decision now, but I did want my thinking about this to  
20 go into the mix, because, one, it's a substantial investment  
21 of our time, and my time personally, and if it's not going to  
22 produce the desired results, you know, we ought to just begin  
23 thinking about what to do then.

24 MR. McGLAMRY: Agreed, Your Honor.

25 THE COURT: So I just offer that up for your



1 consideration, and we can talk about it again in the next  
2 couple of weeks.

3 And if there is anything I can do to help with the  
4 process, although I don't like to get involved in mediation  
5 of cases over which I'm presiding, but this is probably an  
6 exceptional circumstance because I'm presiding over so many  
7 different cases, that if it would be helpful for me to have  
8 any input with whomever is making these decisions, I'm happy  
9 to do that.

10 MR. ASH: All right. Thank you, Your Honor.

11 THE COURT: So those are the two things I had. I  
12 don't know if there is really anything else that's on the  
13 table to be discussed, unless you have something?

14 MR. BOUCHER: No, Your Honor.

15 MR. ASH: Judge, I would mention that I have had  
16 some conversations with Mr. McGlamry, and I'm sure everything  
17 will be worked out between us, but we are looking at the  
18 issue of security required for this judgment, and just to  
19 alert the Court by way of this discussion that there might be  
20 some motion that's filed along those lines seeking approval  
21 of judgment -- of security for the judgment.

22 THE COURT: Okay. Well, you are reasonable people,  
23 and, I mean, my sense is that this is -- I'm not sure how  
24 good an indicator this case is for you, which is one of the  
25 other reasons why I feel that this will make it a little more

1 difficult to use this as a model for structuring some  
2 resolution, if, in fact, you even needed this. I don't  
3 know.

4 But try to have good discussions and try to reach a  
5 resolution on the security, and if you agree to it, I'm sure  
6 I will. And if you can't, then I will try to determine what  
7 I think is in the best interest and required by the law.

8 MR. McGLAMRY: And, Your Honor, Dana is  
9 correct. And as I understand it, Mr. Kramer has agreed to  
10 personally guarantee the judgment, which is something we are  
11 working towards.

12 MR. KRAMER: I'm still thinking on that,  
13 Your Honor. The holidays are coming up, so it might press me  
14 a little bit.

15 THE COURT: Actually, I thought that was a fine  
16 suggestion, but I would require then Mr. Kramer to draft it,  
17 because I always like to improve and expand my vocabulary.

18 I hope, Mr. Kramer, you are not taking any offense  
19 at us poking fun at you.

20 MR. KRAMER: Not at all, sir. I'm flattered by  
21 your remarks.

22 THE COURT: Well, I'm actually having a pretty good  
23 time doing it.

24 Okay. Well, let me know where you come out on  
25 that, and maybe we should circle back -- I don't know if you

1 want to do that before the holiday or after the holiday on  
2 where you all are on the bellweather idea and further  
3 bellweather trials.

4 MR. McGLAMRY: Your Honor, let us -- sorry.

5 THE COURT: No, just think about it and let me know  
6 what you think is the best timetable for that.

7 MR. McGLAMRY: Will do.

8 MS. ZUKIN: Very good, Your Honor.

9 MR. ASH: Thank you, sir.

10 THE COURT: Well, everybody have a good holiday.

11 MR. McGLAMRY: You too, Your Honor.

12 MS. ZUKIN: Yes, you too.

13 MR. KRAMER: Thank you, Your Honor.

14 MR. ASH: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Proceedings adjourn at 4:13 p.m.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA :  
:  
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 12 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 9th day of December, 2015.

*/s/ Nicholas A. Marrone*

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NICHOLAS A. MARRONE, RMR, CRR  
Registered Merit Reporter  
Certified Realtime Reporter  
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Northern District of Georgia