

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

IN RE: C. R. BARD, INC., PELVIC REPAIR
SYSTEM PRODUCTS LIABILITY LITIGATION

MDL NO.
2:10-MD-2187

Charleston, West Virginia
October 21, 2013

TRANSCRIPT OF MDL MEETING
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

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Also Present for Bard:

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GREG A. DADIKA, ESQ., in-house counsel

For Defendants TSL/Sofradim:

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Also Present for TSL/Sofradim:

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1 Monday, October 21, 2013, at 1:35 p.m. in conference room

2 THE COURT: I called this meeting to discuss the
3 status of the so-called Bard MDL. It's been three years since
4 we started, and I feel that we have handled the litigation in
5 a cooperative fashion between counsel for the plaintiffs and
6 counsel -- and counsel for defendants.

7 I was persuaded by my experience, by counsel's ideas, and
8 by the experience of other MDL judges, particularly Judge
9 Eldon Fallon, that perhaps the bellwether trial route was the
10 most efficacious way to proceed. Thereafter, with input from
11 all counsel, we did nominations for cases, went through a
12 selection process and selected cases for bellwether trials.

13 The first trial was re-scheduled from November -- well,
14 let's see. We had the -- well, let's just say this: The
15 first set or round of bellwether trials hasn't amounted to
16 much. We had one case that went away early, another case that
17 settled, another case that the plaintiffs dismissed with
18 prejudice on the eve of trial, and one case that went to
19 trial. So in three years, the bellwether process that we
20 painstakingly put in place and was the subject matter of many
21 pretrial orders ends up with us trying one case.

22 The *Jones* case was re-scheduled from November 8th to
23 December 3rd to accommodate defense counsel who's in a trial
24 in Seattle. It's previously been moved at the request of the
25 parties. We also chose by PTO 55 one Align case, two Uretex,

1 U-r-e-t-e-x, cases, one PelviLace case, and one PelviSoft
2 case. I'll repeat the obvious. It was my responsibility to
3 resolve pretrial issues in a timely and expeditious manner. I
4 thought the bellwether case methodology was good for that,
5 along with whatever other discussions I could be of assistance
6 on.

7 I feel like it's failed. Bard is a 2010 case. It's
8 three years old. I've been willing at every turn to follow
9 the procedures requested by counsel, but we are three years
10 down the road and I've tried one case and I can't say we've
11 achieved any of the goals intended by the MDL process. We
12 certainly seem nowhere near resolution. We have about -- I
13 think the defendant's numbers are a little higher, but my
14 numbers in my notes are a little over 5,000 cases.

15 If I tried them as we tried the first one, 10 days at a
16 time, I can try 26 in a year, or I can try all of them in
17 about 193 years. If I take the cases in this MDL and the five
18 other mesh MDLs and divide them up among every active and
19 senior United States District Judge in the United States of
20 America and they spent five days a week every week for an
21 entire year, they still wouldn't be finished with all the
22 trials.

23 So we have to do something differently. These cases
24 cannot physically all be tried. My guess is they don't all
25 merit trial. I'm not pre-judging **summary** judgment motions.

1 I'm not pre-judging even motions to dismiss. I don't know
2 what's out there. But I'm looking for you -- looking to you,
3 as I have been, to come up with a plan to move these cases
4 forward. It is no surprise to you that I've considered
5 Rule 42 and consolidation. I've drafted -- that's the royal
6 I've drafted, just a sample order. It hasn't been edited,
7 revised or thought about by me beyond the general purpose for
8 which it was intended and in answer to certain questions I had
9 about Rule 42(a) and consolidation.

10 Suffice it to say I'm satisfied beyond a shadow of a
11 doubt that I can and will be able to consolidate trials on a
12 single product implanted in West Virginia on a West Virginia
13 plaintiff and take it to trial on that single issue with no
14 problem.

15 We've had three years. The next round of cases I guess
16 that we've got that we haven't settled on is off in August?

17 MR. GARRARD: Yes, sir.

18 THE COURT: That's a long time between now and
19 August, especially if all we have to do is deal with design
20 defect as the sole issue. So my current thinking, which I
21 will allow each of you to respond to and file a brief within a
22 week in opposition or support, is that I will combine all
23 West Virginia Uretex cases for trial the first week or
24 thereabouts of August. And then I will consolidate all West
25 Virginia qualifying Align cases for trial the following week.

1 So there'll be two consolidated trials in August. These two
2 products represent a pretty large chunk of the SUI docket.

3 And then as I sat around reflecting on my woebegone
4 state, I also am thinking about -- and knowing I have to do
5 something to move things along, I'm thinking about entering
6 docket control orders, that is, scheduling orders, tailored
7 discovery, motion practice, and so forth in 200 cases. That's
8 still -- when we finish all of that, we've still got the bulk
9 of the cases that nothing will have been done on in four
10 years. But it seems to me if I pick those 200 cases, or 100,
11 if you talk me into that, or if I have some qualified expert
12 do the picking, you will have something you didn't have
13 before, and that's detailed information about a very good
14 sample of cases, and I will have a large group of cases that I
15 can send back because they'll be ready to send back if we
16 haven't gotten anywhere.

17 I do not intend to pass on to what I am certain will be
18 my greater reward without having finished these MDLs. I
19 mentioned to a couple of you before that I'm not a really good
20 process guy, but I am a results guy. And I plan to push, and
21 I plan to shove, and I plan to get it done.

22 Now, do I care how you settle? Do I care if you settle?
23 Yeah, I kind of care if you settle. Normally I wouldn't if
24 you just had one case in front of me, because I figure that's
25 your business. But since you have so many, I kind of care if

1 you do. But if you don't, I want all other cases on a rolling
2 basis to be ready to send back in my lifetime for other judges
3 to deal with. I have this sneaking suspicion that the
4 possibility of resolution will be greatly enhanced by the
5 increase in knowledge that comes from trials and discovery.

6 Now, having said all that, that's the mischief that I'm
7 up to, and I suspect that both sides can find something about
8 that to hate. And you can spew your venom on the record at
9 considerable length, but that's what I intend to do in the
10 absence of an alternative that both parties believe is more
11 efficacious and both parties can represent to the Court as
12 moving forward.

13 Now, I'm not going to do this today and I'm not going to
14 do it tomorrow, but the schedule from August is going to
15 change. I'm going to wait until the December 3rd meeting to
16 enter the consolidation orders and the discovery orders. And
17 I'll be frank with you, my discovery, rolling discovery plan
18 is newfound gold, and I really on my own want additional time
19 to think it through because I've got to think how I want to
20 tailor it. I want you to think how it might be tailored.

21 I have an enormous amount of respect -- as I've told new
22 general counsel for Bard, I've had good lawyers on both sides
23 of this case. I'm very pleased with the representation. I'm
24 just not pleased with the results, and I want to move it down
25 the line.

1 So let me -- since it was the plaintiffs who originally
2 wanted to consolidate things, maybe not what I consolidated,
3 but since it was the plaintiffs that wanted to consolidate
4 things, let me allow the defense counsel the opportunity to
5 protect the record and state their opposition as to that
6 matter and say anything else, particularly since we have new
7 counsel here whose words I'm likely to take very seriously.

8 MR. MERRELL: I'll start off, Your Honor, and I'll
9 have Peter jump in, if that's --

10 THE COURT: I take yours very seriously too.

11 MR. KREINDLER: Let me start.

12 MR. MERRELL: Okay.

13 MR. KREINDLER: You know, Your Honor, we're
14 supportive of any efforts that can streamline and expedite
15 these cases. We have no objection to your consolidation of
16 discovery as you proposed or sending cases back on a rolling
17 basis. So we would support that.

18 As you know, we oppose consolidation, and I do want to
19 preserve that for the record, but we understand why Your Honor
20 is doing it and we'll try to be cooperative in working out the
21 terms of the consolidation.

22 You know, if I may, you know, I'm only five weeks into my
23 new job; and while I know a fair amount about this litigation,
24 I don't know everything, but, you know, it occurs to me that
25 there are several ways to expedite resolution of this case. I

1 think perhaps the most important is to get final resolution on
2 the FDA issue. So I don't think we can accurately evaluate
3 these cases without knowing ultimately whether the FDA
4 evidence is going to be admissible and, in particular, how it
5 may impact punitive damage to these cases. You know, I also
6 agree that, you know, motion practice -- I just might add, you
7 know, when I think about how to achieve resolution of the FDA
8 issue, it's not easy, but one possibility that comes to my
9 mind is obviously we will file our motion for a new trial on a
10 timely basis, but would be for you not to decide that motion
11 and to authorize an interlocutory appeal in the *Cisson* case
12 solely on the admissibility of the FDA evidence.

13 So we're supportive of an active motion practice. You
14 know, we think that many of these cases are barred by the
15 statute of limitations. So I think it would be helpful if you
16 would entertain and decide that motion. Again, I think it's
17 very important to evaluating the entire portfolio.

18 You know, we're also supportive of Your Honor's either
19 decision or inclination to try some SUI cases. They account
20 for, in terms of plurality, the overwhelming number of cases,
21 and I think it's very important for all of the parties to
22 understand whether those cases have any value at all. So, you
23 know, we are prepared to pursue that course.

24 I do think it's important, if you do consolidate, that
25 there be, you know, an opportunity for full discovery on each

1 of the consolidated plaintiffs, that the plaintiffs, in fact,
2 be parties to the consolidated trial and that there obviously
3 be regular motion practice before the consolidated trial. I
4 don't know how my brethren representing Covidien feel, but it
5 comes as no surprise to anyone that we do not object to trying
6 a Uretex case.

7 THE COURT: I don't know how Ms. Moeller feels about
8 that, but I can guess.

9 MR. KREINDLER: In any event, you know, I think
10 we've been in the spotlight long enough. The only cases that
11 have been scheduled for trial have been solely Bard cases,
12 and --

13 THE COURT: That's true.

14 MR. KREINDLER: -- you know, this case, you know,
15 you cannot resolve all of the Bard MDL without Covidien coming
16 to the table.

17 THE COURT: Well, Bard, for better or for worse,
18 was -- came into the circus tent first and have been here the
19 longest and --

20 MR. KREINDLER: There's nothing I can do to change
21 what's happened to date.

22 THE COURT: No.

23 MR. KREINDLER: I can try to help resolve these
24 cases going forward and --

25 THE COURT: We can characterize what's happened so

1 far as a high-wire act or a clown car, whichever.

2 MR. GARRARD: I believe it's a high-wire act.

3 MR. KREINDLER: Well, so far I haven't had the
4 opportunity to fall off, and I hope I don't, so -- but, you
5 know, I believe that Bard has been cooperative thus far, and I
6 can assure you that Bard will be cooperative in the future if
7 I have anything to say about it.

8 THE COURT: I certainly want you to have the
9 opportunity and actually the motion for a new trial seems to
10 me to be a good opportunity to brief or re-litigate any issue
11 you want. I will simply say making the same argument again
12 isn't going to -- I'm not likely to change my mind based on
13 the same argument.

14 If there is a new twist to it, if a new light shines
15 brightly in my eye, then I will, but this will come as
16 absolutely no surprise to you. I did not find the FDA issue
17 in the beginning easy at all. I don't even agree with the
18 Supreme Court's language upon which I relied. I don't mean
19 that in any disrespectful way to the highest court in the
20 land.

21 MR. KREINDLER: I suppose we've all disagreed with
22 the Supreme Court at one point or another in our careers.

23 THE COURT: I suspect we have. But I take their
24 language as written and wrote an opinion about it, and right
25 now I stand by it and expect to unless somebody convinces me

1 otherwise. I do not have -- no matter how much I'd like to
2 try to pretend that I do have a closed and fixed view of many
3 things in this world, my long life has allowed me to see that
4 a second and third look at things is sometimes worthwhile,
5 so --

6 MR. KREINDLER: Your Honor, I don't have any
7 expectation that you will change your mind on your ruling on
8 the admissibility of the FDA evidence. I think we would all
9 be well-served if we got an answer out of the Fourth Circuit
10 on that issue. You know, I think --

11 THE COURT: Let me just speculate with you for a
12 minute, with input from plaintiffs' counsel as well. I can't
13 imagine getting an answer out of the Fourth Circuit on a
14 question in less than a year.

15 MR. KREINDLER: You know, Your Honor, I mean I've
16 been involved in expedited appeals before. You know, I think
17 some of the concerns you expressed about the difficulties of
18 moving this case along, that the Court of Appeals would be
19 sensitive to; and, you know, we'd like an opportunity to
20 convince them that it's in the best interest of the judicial
21 system to get an answer to that question sooner rather than
22 later. And if *Cisson* just follows the normal course of
23 appeal, we're not going to have an answer to that question for
24 two or three years. And if we prevail on appeal, that means
25 that everything that's going to happen in the next two or

1 three years will be for naught.

2 THE COURT: And I would say to you that I gave --
3 every time I've ruled on anything -- you've probably heard
4 this story -- in this case, I've had to do so in a -- for me,
5 in an uncomfortable way; and that is, I've ruled with looking
6 over both shoulders at 40,000 cases behind me. I don't like
7 that.

8 MR. KREINDLER: Well, I assure you we don't like
9 being in 10,000 of them.

10 THE COURT: No. And it would be -- I certainly will
11 consider your arguments. I've considered it before. I denied
12 an expedited interlocutory appeal when the motion was made.
13 I've allowed the FDA argument -- which you say you're not
14 going to make it again, but I've allowed it to be argued three
15 or four times.

16 MR. GARRARD: Four times.

17 THE COURT: Four times.

18 MR. KREINDLER: We will not re-argue your ruling on
19 the admissibility.

20 THE COURT: You can make that argument and I'll be
21 glad to consider very seriously what you have to say about it;
22 I really will.

23 MR. KREINDLER: Well, we will then -- we'll file
24 that motion promptly. And, again, it will be limited solely
25 to asking you to --

1 THE COURT: There's no way in hell I'm going to
2 decide that between now and our December meeting, and I wanted
3 to make these other decisions and --

4 MR. KREINDLER: I don't -- Your Honor, I don't want
5 to put any deadlines on you. I obviously can't do that. It
6 will at least give you the opportunity to rule when it's
7 convenient for you.

8 THE COURT: This I'll say to you knowing that she's
9 writing it down and knowing you don't even need to hear it,
10 nor does anybody else in this room, but I need to hear my head
11 roar on it.

12 MR. KREINDLER: I'm sorry?

13 THE COURT: I need to hear my head roar on it
14 without regard to that; and that is to say, the Court of
15 Appeals in my judgment is going to be mindful of my problems.
16 I think they will be mindful that I have 40,000 cases and will
17 give due regard to my efforts, I think.

18 MR. KREINDLER: I have no doubt. I just -- you
19 know, I throw it out as, you know, one of the ways that I
20 think could help to expedite a resolution of these cases.

21 THE COURT: I'm so glad to have you here. I'm happy
22 to consider all your arguments.

23 MR. KREINDLER: Well, we'll see how you feel several
24 months down the road, Your Honor.

25 THE COURT: Well, you know, I think Ms. Moeller can

1 tell you I just keep treating people nice, don't I?

2 MS. MOELLER: We might have one or two things to say
3 about that, Judge.

4 THE COURT: Just because of my ruling today or --

5 MS. MOELLER: No, no, I'm teasing. And, first of
6 all, Judge, before I speak, I want to introduce you to Marc
7 Polk, who is vice-president and chief litigation counsel,
8 who's here with me today.

9 THE COURT: It's nice to see you. I didn't know we
10 had another high legal official here. I'm delighted.

11 MR. POLK: We don't.

12 THE COURT: That's good.

13 MR. POLK: It's nice to meet you, Your Honor. It's
14 a pleasure to be here.

15 THE COURT: You did what Ms. Moeller has been doing
16 the entire time. She's been trying to get as far away from
17 the center of the action as she could.

18 MR. POLK: Tried to set it up that way.

19 MR. KREINDLER: If you will, let me say one more
20 thing, that you should not in any way consider my appearance
21 here or the fact that I intend to play an active role in these
22 cases as in any way denigrating Greenberg Traurig. I have
23 enormous respect for the firm and for Lori Cohen, and so they
24 will remain as they are.

25 THE COURT: They've done a good job for you, and I'm

1 sure you appreciate that. You've had a lot of experience with
2 outside lawyers, and you've been in private practice yourself.
3 So I know you appreciate them. And you cannot, no matter how
4 many new suits you buy in the rest of your life expectancy,
5 spend as much on your clothes as Lori Cohen does.

6 MR. DADIKA: She's not even here.

7 MR. KREINDLER: I don't think that's a topic I want
8 to weigh in on. Your Honor, I have been on all three sides of
9 the table. I was in-house counsel and as an outside litigator
10 and, you know, as the clerk for two esteemed federal judges.
11 So I think I understand all aspects of this proceeding.

12 THE COURT: Okay. Well, that was my attempt to
13 throw something in the middle of the table that would give off
14 an aroma.

15 MS. MOELLER: Judge, we have a little --

16 THE COURT: I would like for you to.

17 MS. MOELLER: First of all, I think you're being too
18 hard on yourself, Judge, in terms of this process not working,
19 because if you recall, when we picked the first round of
20 bellwethers, it was February 2012 and we had 65 cases. So
21 while technically some of these cases have been around for
22 three years, the bulk of this MDL has not. And after that
23 date, all the other players came to your courtroom. And so
24 there was such a mass of administrative headache, I don't
25 think it's fair to say that we let this process run,

1 particularly I think as to Sofradim, my client.

2 And I was really rooting for Bard's GC. I was agreeing
3 with everything he said up until he said the word Uretex, and
4 then we kind of drifted apart. But before that, I mean I
5 think we're on the same page there, but, Judge, I think we did
6 actually have a Sofradim case in the first round of MDLs. We
7 worked all -- we spent a lot of money working the cases up,
8 had experts ready, and then we were dismissed.

9 THE COURT: Uh-huh.

10 MS. MOELLER: As you'll recall, we pushed very hard
11 to have a second round of bellwethers that would follow
12 closely on the heels of the first round of bellwethers.
13 Those, as I've stated, all of those other intervening acts
14 came, and through no fault of anyone here, that all got moved
15 off.

16 THE COURT: That's a very good point, and I'm going
17 to mark one big point up for your side. That is why we didn't
18 move along into another round with you all, and that was my
19 doing and not yours. So I take your point.

20 MS. MOELLER: And even as late as a few weeks ago
21 when we had the April trial date, that got pushed off again,
22 and so we would actually like the opportunity for our client
23 to have the bellwether process work as to us. And I think
24 what we need to do is have more than just a handful of cases.
25 We'd be willing to work up more, but we don't feel like we've

1 had a chance to have the bellwether process applied to our
2 client. And we -- before you take what we consider to be very
3 drastic measures that we don't agree with on the
4 consolidation, we'd like to have that opportunity first.

5 THE COURT: Can I interrupt you for a minute,
6 please?

7 MS. MOELLER: Yes.

8 THE COURT: Do you have a case that you've got
9 moving along that you think that you and plaintiffs' counsel
10 could get ready to try here in the next three or four months?

11 MS. MOELLER: We have not been moving our cases
12 along, Judge, because Henry has been in trial.

13 THE COURT: Uh-huh.

14 MS. MOELLER: The Uretex -- you know, the other
15 reason I think that ours has fallen behind a little bit more,
16 all of our witnesses are in Europe.

17 THE COURT: Uh-huh.

18 MS. MOELLER: And that makes it more difficult to
19 quickly -- those people never work over there, frankly.
20 There's vacations every time we try to schedule something.
21 And so we'd be willing to do what we needed to do to get
22 something, but we do not currently have a case that we have
23 been preparing.

24 THE COURT: I'll take your point and I'll consider
25 it.

1 MS. MOELLER: One additional thing, Judge, I just
2 want to make a record on. To the extent that you go down the
3 consolidation road, we're opposed to having it be West
4 Virginia cases --

5 THE COURT: Uh-huh.

6 MS. MOELLER: -- because we don't think that that's
7 really -- we think that that's an outlier in lots of legal
8 issues and juror pools and other things.

9 THE COURT: I think the Learned Intermediary
10 Doctrine --

11 MS. MOELLER: Right, among other things.

12 THE COURT: It bothers me a great deal. I happen to
13 be the judge who predicted that and I think correctly
14 predicted what our Supreme Court would do. I didn't say I
15 agreed with them.

16 MS. MOELLER: But that's been a concern all along,
17 as you know, Judge --

18 THE COURT: Yes.

19 MS. MOELLER: -- so other than that, we agree with
20 Bard in terms of motion practice --

21 THE COURT: I don't want any of you to think I'm
22 back-peddling or that Ms. Moeller has just shoved me clear
23 back from the table, but I remain open to suggestions and
24 alternatives. I am simply saying, in the absence of something
25 better, this is what I'm going to do. And in the absence of

1 something better, I mean something better before
2 December 3rd, or whatever our next meeting is. Because you,
3 as I understand it, indemnify Bard on the products it
4 distributed, they want you as a player in any discussions that
5 they have and anything that's going on. It affects their
6 position in the lawsuit. I'm sure that to the extent you're
7 in it by yourselves, you'd want to -- you'd rather be in it by
8 yourselves and not have to worry about it.

9 MS. MOELLER: That's not actually correct, Judge.

10 THE COURT: Okay. I mean I don't know. I'm --

11 MS. MOELLER: I think we agree with them on that
12 too. I think any interaction should involve both defendants.
13 I think that we're all aligned on that aspect.

14 THE COURT: And maybe there's something you can work
15 out in that regard. I frankly think there's very little the
16 parties can't agree to in terms of what I try and where I try
17 it and when I do it. I know what the Supreme Court said; so
18 do you. I also know, probably have said, that the Inter-
19 circuit Assignment Committee I am confident will let me go
20 anywhere in the country I want to go and try the cases there,
21 and I'm willing to do that.

22 I told Mr. Clark this morning that he's got a lot of SUI
23 cases in Texas. He's got so many there that he's thinking
24 about filing a lot more in state court I hear, that I'll come
25 down there and try them. I'm not averse to going anywhere and

1 I'm not averse to any mechanism that you legally believe on
2 both sides that I can try here, just like we tried the *Cisson*
3 case here.

4 I am not wedded to West Virginia. For some of the
5 reasons -- I don't know why I'm agreeing with you so much
6 today.

7 MS. MOELLER: Because you never have until today,
8 Judge.

9 THE COURT: Is that what it was?

10 MS. MOELLER: Yes.

11 THE COURT: Okay. It's just your turn?

12 MS. MOELLER: It was my turn, finally. I've been
13 waiting a long time.

14 THE COURT: For example, the Learned Intermediary
15 thing bothers me, but there are a lot of cases in West
16 Virginia. But I have a feeling if I start down this road, I'm
17 going to try a batch of consolidated cases on this and then
18 I'm going to go someplace else and try probably a batch of POP
19 cases, and I don't know what defendant, but that's probably
20 what I'll do. In the meantime, everybody will be in the
21 process of doing discovery.

22 Now, I said this morning -- and not out of any spirit of
23 malice or meanness but out of my experience of 40-some
24 years -- that I know if I start all this discovery business,
25 I'm going to make your lives miserable. And I don't really

1 like that because I like lawyers. But I don't know any other
2 way. I don't know any other way that I can get this moving.

3 Now, I don't care if it's a public movement, a private
4 movement, or whatever. I'm a fairly discreet fellow, and as
5 long as both sides can tell me discreetly together that
6 something is going on and you'd rather do that than this or
7 you'd rather do something else than this, I'm game. I have
8 been all along and I remain that way.

9 Now, I had Mr. Garrard very happy until I got in this
10 colloquy with you, and now he's probably not near as happy as
11 he was, so I'm going to let him talk.

12 MS. MOELLER: Can I say one more thing?

13 THE COURT: Sure, while you're on a roll.

14 MS. MOELLER: I would also encourage the Court to
15 think rather than -- because, really, all the MDLs started at
16 the same time, but the few outliers we had before here,
17 there's just very few because really everything came to a boil
18 at the same time.

19 So I know that you get judged on how old cases are, but
20 in terms of this MDL, it seems to me that rather than focusing
21 on first here, first under the tent, that market share makes a
22 much more --

23 THE COURT: Everybody wants me to try Johnson &
24 Johnson, and I'm well aware of their position in the
25 marketplace. I'm well aware of where they are, and I'm well

1 aware of discussions that I'm having with them on both sides,
2 which I'm not going to tell you about.

3 MS. MOELLER: And I'm not specifically saying
4 Johnson & Johnson.

5 THE COURT: I know you're not.

6 MS. MOELLER: I'm just saying market share in
7 general, because we come out at the very end, both of us.

8 THE COURT: If you'll check with -- who did I meet
9 with this morning?

10 CLERK FIFE: Boston --

11 THE COURT: Boston Scientific. If you'll check with
12 them, they will have heard exactly what you heard about
13 consolidated trials and discovery. So I didn't single out
14 Bard for that.

15 MS. MOELLER: So what trial date did they get?

16 THE COURT: Huh?

17 MS. MOELLER: After us? Their trial dates are after
18 us?

19 THE COURT: They're going to get a choice. I've got
20 a June date if somebody wants to do June.

21 MS. MOELLER: Okay.

22 THE COURT: Actually for one product with design
23 defect, the way I see it structured, it's expert witness
24 heavy, anybody can get it ready by June, but -- all right,
25 Mr. Garrard.

1 MR. GARRARD: Well, as the Court is well aware, I
2 have been a proponent of consolidation for a long time, and I
3 believe it's an important move on the part of the Court. I do
4 have a bit of a concern if defect only is tried as to how that
5 then applies to individual cases. I have a concern because
6 under the context of defect, that defect causing the injury to
7 the particular individuals is part and parcel of the law of
8 defect. And then the second component of defect is that the
9 product when it reaches the consumer, which in this case would
10 be the woman, is in the same condition it was in when it left
11 the hands of the manufacturer.

12 THE COURT: What I know the law to be is -- the West
13 Virginia law, and I understand that, and we would be trying
14 the sole issue of whether the device as designed was
15 reasonably safe for the intended purpose when it left the
16 hands of the manufacturer. That's all we would be trying.

17 MR. GARRARD: Yes, sir, I understand that. And I
18 quickly read your -- whatever it is in here, your
19 consolidation piece, but I'd be remiss if I didn't tell the
20 Court that while I want consolidation, I think it's important,
21 I think it's important to get movement in these cases, I never
22 want to help lead a court in a direction where at the end of
23 the day you can't do something effective with what you're
24 doing. And those are just concerns that I have.

25 I'm all in favor of it. If Ms. Moeller wants a trial on

1 an Avaulta BioSynthetic case in the next four months, I'll try
2 an Avaulta BioSynthetic case. That case could be tried, it
3 could be worked up, and it could be put up. I don't know if
4 she really wants that or not, but if she does, I'll do it. At
5 the same time that we are preparing for however the
6 consolidation works out, we will do that, and we think that's
7 important.

8 THE COURT: I certainly -- I certainly hope that you
9 all would talk after we met.

10 MR. GARRARD: I would hope that we would too, Your
11 Honor. I'm in favor of trying a Uretex case.

12 THE COURT: My --

13 MR. GARRARD: And I think that's important, Your
14 Honor, that if there's ever going to be a resolution, it takes
15 some combination of Bard and Sofradim, who is underwritten by
16 Covidien. I know Marc. I have met with Marc. We have worked
17 with Marc, and I believe him to be on behalf of this company a
18 very astute individual who I suspect Peter will find someone
19 good to work with.

20 I welcome Peter to the mix. As I told him this morning
21 when I met him for a few moments, in the little bit of
22 research I could do on him, I found things back as far as
23 1955, and he has had a remarkable career.

24 THE COURT: He was playing Little League baseball
25 then.

1 MR. GARRARD: No, he was speed-skating, Judge. He
2 was a champion speed-skater in 1955.

3 THE COURT: Is that right?

4 MR. GARRARD: That's right. And something I have
5 always wanted to do is be able to skate and I never have.

6 MR. KREINDLER: Well --

7 MR. GARRARD: But the point I'm making is that I
8 think this litigation in this particular MDL is at an
9 interesting place.

10 THE COURT: It is. Let's go off the record.

11 (On-the-record meeting concluded at 2:18 p.m.)

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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.

24

25 /s/Teresa M. Ruffner

October 23, 2013