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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * NO. 07-MD-1842ML
*
IN RE: KUGEL MESH HERNIA *
PATCH PRODUCTS * SEPTEMBER 27, 2007
LIABILITY LITIGATION * 1:30 P.M.
* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE MARY M. LHSI,
CHIEF JUDGE
(Chambers Conference)

DISTRICT COURT
DISTRICT OF RHODE ISLAND

2008 JAN -8 A 10:45

FILED

Court Reporter: Karen M. Wischnowsky, RPR-RMR-CRR
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Providence, RI 02903
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ORIGINAL

1 27 SEPTEMBER 2007 -- 1:30 P.M.

2 THE COURT: For those of you who are
3 out-of-towners, welcome to Rhode Island. I hope that
4 we've made a favorable impression so far; and if you
5 don't like the weather today, wait a minute. It could
6 snow tomorrow.

7 I thought I would start off this afternoon by
8 introducing myself, our magistrate judge who is going
9 to be working with me on this case, and the members of
10 our staffs with whom you may be having contact over the
11 next several months.

12 For those of you who haven't figured it out, I'm
13 Judge Lisi, and the MDL matter has been assigned to me.
14 I see a couple of familiar faces in the crowd. To my
15 left is Magistrate Judge Almond, who is also going to
16 be working with me and who may have contact with some
17 of you on some of the motions that have already been
18 filed and perhaps on others that will be filed in the
19 coming months.

20 We work very well together as a team. It will
21 be up to you to figure out which of us is the good cop
22 and which is the bad cop.

23 To my left is Barbara Barletta, who is my
24 calendar clerk, and you may be having some contact with
25 her. If you would like phone numbers for all of these

1 folks, check in at the clerk's office or after the
2 session today, and they'll give you their phone
3 numbers.

4 To my right is Karen Wischnowsky, my court
5 reporter, again, with whom you may be having some
6 contact. Karen is, I say, the best court reporter in
7 the entire world, and she takes down every single word
8 with 100 percent accuracy.

9 Let me see now, where did John go? John Duhamel
10 is my courtroom deputy. Some of you have already met
11 him. And, Jeannine, do you want to just stand up and
12 say hello. Jeannine is Judge Almond's clerk, and so
13 you may have some contact with her as well.

14 In addition to the clerks who work for the two
15 judges assigned to this case, we have a number of our
16 court personnel here, some of whom are IT people, our
17 chief deputy. Everyone is here.

18 I thought it would be helpful that we have
19 everybody with whom you will be having contact or at
20 the very least that this case will have some contact
21 with to be here at least for this first session so that
22 we're all on the same page as we move forward and so
23 that we can eliminate any potential problems before
24 they become real big problems.

25 David DiMarzio is our clerk of court, and he's

1 just come in. You'll be seeing his name a lot, but you
2 probably will not be seeing David, I would think.

3 I wanted to make a couple of comments, and then
4 I really need to hear from you on the issues that I've
5 set down for an agenda today. I purposely kept the
6 agenda light for today because I think that once a
7 Plaintiff steering committee and lead liaison counsel
8 are in place, then we can get down to the real business
9 of moving this case forward efficiently, effectively
10 and fairly. And so, as I say, today the calendar is
11 somewhat light.

12 One of the announcements I wanted to make today
13 is that, as in some of the other MDLs across the
14 country, we will be putting a button on our Web site.
15 And my intention at this point is to put on that
16 special button that you push, and I don't use the
17 terminology correctly because I don't understand
18 computers and I don't want to understand computers, but
19 you all will understand what I'm talking about, but
20 that anyone from outside who wishes to keep track of
21 what's going on in these cases will simply go to our
22 Web site, click on that button, and they will have
23 copies of the agendas, orders, and minutes of all of
24 the meetings.

25 For those of you who are involved in the Vioxx

1 case with Judge Fallon, I know he's been doing that in
2 Louisiana, and that's been really helpful in
3 disseminating information.

4 I also -- some of you have heard me say this
5 before, but the transfer of these cases by the MDL to
6 Rhode Island is a historic event for those of us here
7 in the District of Rhode Island. This is the very
8 first time that Rhode Island has been selected to host
9 an MDL.

10 We're very proud of the fact that the MDL
11 thought enough of us to place this case in our hands.
12 We think we're very well equipped. Those of you who
13 practice here on a regular basis know that we're a
14 pretty efficient and friendly operation. So it's a
15 nice place to practice.

16 And we are actually celebrating the fact that
17 this case came here. So we'll be issuing a press
18 release to that effect sometime in the next couple of
19 weeks, just notifying the local press outlets that the
20 case is here and not to talk specifically about the
21 allegations and the claims that are made but, rather,
22 to talk about it in terms of process and procedure and
23 what it means for us as a court.

24 I tell you this now because as soon as I do
25 that, the reporters will probably want to come to you

1 for some statements or to answer questions. And I warn
2 you, it's up to you whether you want to answer them.
3 Obviously we don't want you tainting any potential jury
4 pool. So although I won't issue a gag order, what I
5 would say is that you can be helpful without getting
6 too deep into the details and provide some information
7 for the reporter, particularly the one from the
8 Providence Journal is very, very good. He's very
9 knowledgeable about legal matters.

10 So he'll press you, but I will ask you to sort
11 of hold back a little bit, again, keeping in mind that
12 at some point in these cases we may be picking a jury
13 in this district to try some of these cases.

14 Item number two, I would like to hear, and I
15 don't know whether Plaintiffs' counsel knows this or
16 whether defense counsel can give me a ballpark of the
17 number of cases that you anticipate will be filed here
18 through the MDL. Anyone have a clue? Yes.

19 MR. MIGLIORI: Thank you, Judge Lisi. I'm Don
20 Migliori from Motley Rice, and thank you for hosting
21 this MDL. We were anxious to get it here, and we're
22 excited about it. And I can report that the
23 Plaintiffs' committee at least has enjoyed Raphael's
24 restaurant and had a nice evening.

25 THE COURT: We have a whole list of great

1 restaurants for you.

2 MR. MIGLIORI: We plan to go through many of
3 them. We endeavored on this agenda item to identify
4 for you what we believe is out there. And this is our
5 breakdown, and Mr. Griffis may have a close or somewhat
6 exact account; but we believe right now that there are
7 107 federal complaints of which 90 have formally been
8 transferred, which constitutes, we think, five class
9 actions in the federal system and the rest being
10 various level of product failure cases.

11 We take a little issue with how the Defendants
12 have divided those cases between ring breaks and
13 nonbreaks because these allegations are far beyond just
14 ring break.

15 THE COURT: That information, and I saw that in
16 the breakdown that the Defendants' counsel provided,
17 that's less important to me now than it may be later
18 on. What I'm trying to get a handle on, actually it's
19 Barbara and John who are trying to get a handle on
20 this, how many you think are going to be coming our
21 way. So at this point, that's the number you have.

22 MR. MIGLIORI: That's the number we have. And
23 so we anticipate, again, about 17 coming in already
24 filed. We are screening, on the Plaintiffs' side,
25 literally thousands of cases each month. And we're

1 finding that cases that meet our various criteria,
2 every firm has a slightly different criteria, but we're
3 finding that the cases are hitting anywhere from 5 to
4 30 percent of what we're getting as leads.

5 So it's very hard for us to predict. We know
6 that there were approximately 1,000 product -- 100,000
7 products that were affected by recall, one of the
8 various three recalls, and we don't know how many of
9 those would be clearly just a medical monitoring that
10 is in place and, therefore, not individual filings.

11 But right now it looks like between 5 and 10
12 percent are true cases that are individually -- ripe
13 for individual filing as we vat through them now. So
14 of the 100,000, we don't know how many ultimately, but
15 right now we're at 100.

16 THE COURT: Does defense counsel have any idea
17 of how many of the 100,000 that were recalled were
18 actually implanted? You don't have to give me a number
19 but if you have a ballpark percentage. Are we talking
20 50 percent or 90 percent?

21 MR. HOLLINGSWORTH: We think that -- I'm Joe
22 Hollingsworth on behalf of Bard and Davol from Spriggs
23 and Hollingsworth in Washington. By the way, with me
24 is Kirby Griffis to my right, one of my partners, and
25 to my left Kate Latimer, also one of my partners; and

1 behind us are co-counsel in Rhode Island, Mark Nugent
2 and Tom Robinson.

3 THE COURT: I actually know those guys.

4 MR. HOLLINGSWORTH: I thought you might. Maybe
5 you'd rather hear from them. We think it's about that
6 -- this is a difficult thing to estimate; but based on
7 the recalls and the lot numbers that were sold, that
8 100,000 or so patches made have been used in surgeries.

9 THE COURT: Okay. I was trying to get the grand
10 universe of what we could potentially be looking at;
11 and then from there, of course, we'll be looking at how
12 many actually file individually.

13 I should also tell you, Rhode Island, for those
14 of you from out of state, if you haven't figured it out
15 by now, it's a very small state, and Judge Gibney in
16 our state Superior Court has I think eight or nine of
17 these. Mr. Migliori, is that about right?

18 MR. MIGLIORI: The number now, your Honor, is
19 42.

20 THE COURT: Forty-two in state court?

21 MR. MIGLIORI: Right, individually.

22 THE COURT: And Judge Gibney and I have talked
23 about potentially the two of us at least, and if there
24 are any other states where you know there are a number
25 of these individual cases that have been filed, trying

1 to coordinate our efforts so that the parties in this
2 case only have to do one task one time, if that's at
3 all possible.

4 So I have talked with Judge Gibney and am
5 keeping her apprised of what we're doing here. And I'm
6 open to suggestions from all of you as to how she and I
7 can better coordinate those efforts, at least as it
8 impacts on all of you.

9 The next item on the agenda is the request, the
10 petition that has been filed by Mr. Migliori on behalf
11 of a consortium of counsel on Plaintiffs' side to be
12 named as Plaintiffs' steering committee, co-lead
13 counsel and liaison counsel.

14 That petition was filed in early September. I
15 checked the docket today. I didn't see anyone
16 objecting. So it looks, Mr. Migliori, like you did a
17 good job of convincing people that you and your fellow
18 proposed steering committee members are the appropriate
19 individuals to handle those assignments.

20 If there's anyone here today who has an issue
21 with that, I guess I can say it's too late; but I'm
22 willing to listen and hear from you if you think that
23 there's something missing. And, of course, the defense
24 side appears to be okay with the selection.

25 MR. HOLLINGSWORTH: With one caveat, your Honor.

1 We had a call just this week, for example, and I'm not
2 sure that -- how often this has happened, but from
3 counsel in a case, a federal case, asking us what was
4 going on in the MDL and, you know, was there going to
5 be a hearing soon.

6 So our client is interested in making sure that
7 notice gets out to all the appropriate Plaintiff
8 counsel in these cases. That's in our interest, of
9 course.

10 THE COURT: Of course.

11 MR. HOLLINGSWORTH: We don't want to be doing
12 the same thing twice because someone doesn't have
13 notice.

14 THE COURT: You won't.

15 MR. MIGLIORI: And that counsel, your Honor,
16 contacted us, and we closed the loop.

17 THE COURT: Okay. Excellent. In that case,
18 then, the Court will enter an order shortly after
19 today's conference naming the Plaintiffs' steering
20 committee submitted in the petition along with those
21 designated as co-lead counsel and Mr. Migliori as
22 liaison counsel, which I think makes sense. He's here.
23 He's pretty easy to find.

24 Mr. Hollingsworth, Mr. Griffis, I know you come
25 from Washington, which is a stone's throw away; but

1 you've got very able local counsel who practice here a
2 lot. And so if we need to get ourselves together, we
3 can certainly do that, either in person or by
4 telephone.

5 All of you seemed very interested in an
6 extension on the provisions of paragraph 5 of the
7 practice and procedure order to all cases subsequently
8 filed. I don't see a problem with that, and that will
9 be included in the order that comes out of this meeting
10 today.

11 The next item is a request for an entry of a
12 protective and confidentiality order. Perhaps,
13 Mr. Migliori, you can tell me whether you and
14 Mr. Hollingsworth have talked about trying to work on
15 such an order.

16 MR. MIGLIORI: We have, your Honor. And with
17 respect to the state filed cases, we actually
18 negotiated an order and signed it, and Judge Gibney has
19 entered it.

20 The case -- the order for this case has some
21 distinctions that we're working out, very few. We
22 think we can actually work them out this week and get
23 them by consent to you right away.

24 THE COURT: Okay. As soon as you have an order
25 that you're happy with, and I stress as long as there's

1 agreement, there's not a problem, we'll go ahead and
2 enter that order; but if there are things that you
3 think that you're not able to work out, you'll be
4 visiting with Judge Almond, and he will help you see
5 the light.

6 But if you can get that order over to me, you
7 can file it electronically and I can enter it
8 electronically so that it's out there.

9 MR. MIGLIORI: We will do that. Thank you, your
10 Honor.

11 THE COURT: Okay. And likewise, for an order
12 preserving evidence, have you worked something out in
13 state court?

14 MR. MIGLIORI: We have not, your Honor. This
15 was -- the basic dispute here is that the Defendants
16 feel that, as officers of the court, they have an
17 obligation on its face.

18 Our concern wasn't so much that they wouldn't
19 honor their obligations as officers of the court but
20 how you define what would be evidence that needs to be
21 preserved.

22 And, for example, if they define it as
23 information that only relates to the recalled products
24 and not the products that may be having problems but
25 not yet recalled, which there are cases pending that

1 are nonrecall products, then that's a problem in terms
2 of preservation.

3 So it's not so much about the concept of
4 preservation but the scope of it, and I think we can
5 try with the protective order to work it out alongside.
6 We may need to have a visit with the magistrate on a
7 particular issue.

8 THE COURT: Magistrate Judge Almond is an expert
9 in this area.

10 MAGISTRATE JUDGE ALMOND: Yes.

11 THE COURT: And so he will help you if that's
12 what you need.

13 MR. MIGLIORI: Thank you.

14 THE COURT: It's always better, as I say, for
15 you to try to work it out yourselves rather than to
16 interject us into the mix; but if you cannot, he will
17 be available to help you work through whatever
18 disagreements you might have.

19 The next item is one that I put on the agenda,
20 and I should tell you -- I'm sorry.

21 MR. GRIFFIS: I'm sorry, your Honor. Kirby
22 Griffis for Bard and Davol. I just want to state for
23 the record that we're opposed to having a preservation
24 order. I'm certainly not opposed to talking to
25 Mr. Migliori about what we've done in order to ease any

1 concerns that he might have as to the scope of
2 preservation, but we are opposed to the entry of an
3 order at this point.

4 THE COURT: I understand, but Mr. Migliori is
5 going to try to convince you otherwise. If he can't
6 and he still feels he needs some relief, he now knows
7 where he goes.

8 MR. GRIFFIS: Thank you.

9 THE COURT: I'm not meaning to foreclose you,
10 just to try to organize you today.

11 The next item is one that I placed on the agenda
12 for my own concerns. I noticed that in a number of the
13 cases that have already been filed, for instance, I
14 know in the case that was originally filed here -- is
15 it Montiel?

16 MR. MIGLIORI: Montiel.

17 THE COURT: Montiel. There's a motion to
18 dismiss pending, and we'll deal with that. There is in
19 a number of the other cases, I know is it the Von Essen
20 case in New Jersey, a motion for remand. I think there
21 was an R and R that was issued by the magistrate judge
22 down in New Jersey. And in a couple of other cases,
23 there are some motions pending.

24 I'm very concerned about the fact that those
25 motions have been pending for a period of time, and I'd

1 like to figure out which of those needs to be
2 addressed.

3 In thinking about this item, what I propose,
4 unless you tell me otherwise, and I should tell you
5 that I'm open to suggestion to try to work this out, as
6 I say, as efficiently as we can, is to have counsel
7 tell me which motions are pending.

8 And it may be some of the motions were filed
9 prior to transfer to the MDL, so they may be moot at
10 this point or the movant may feel that there's not a
11 need to press those or the opposing side may feel that
12 there's not a reason to oppose them.

13 And so whatever may have transpired in the
14 interim, I do not know. And so what I would like to do
15 is to put the onus on counsel to advise the Court as to
16 whether or not -- what the status is on those motions.

17 If it's resolved, let me know that, and you can
18 either file a stipulation to that effect or ask that
19 the motion be terminated. If it is a live motion and
20 you feel you need relief, let me know that so that I
21 can mark these up for a hearing.

22 What I need to know from you is time frame, how
23 long will it take you to go through all of these. As I
24 say, I have a partial list, but how long will it take
25 you to go through what's now pending so that I can set

1 a deadline by which I want to hear from you as to the
2 status of the pending motions?

3 MR. MIGLIORI: We caucused the folks who came in
4 town for today on the Plaintiffs' side, and we only
5 found the one motion to dismiss with Montiel and in a
6 Tennessee case a motion for a more definite statement
7 on an answer, I believe it was.

8 What we can do, I think the Defendants would
9 have certainly notice of all the motions, we can meet
10 and confer as liaison, try to come up with a list for
11 the Court and reach out to each counsel who may not be
12 here and try to come up with an index of what's pending
13 and find out whether they want to pursue it.

14 THE COURT: Those that have already been
15 transferred here, correct me if I'm wrong, Barbara, but
16 if you go through the docket on those, you ought to be
17 able to find out where the motions are.

18 MR. MIGLIORI: Okay.

19 THE COURT: As I said, we did this by hand with
20 the paper that I've had Barbara generate for me, but I
21 don't think this is an exhaustive list.

22 My concern is, as I say, to make sure that those
23 that require immediate attention. The one that jumps
24 out at me right now is Von Essen out of New Jersey. Is
25 that lawyer here?

1 MR. WILKEY: Yes, your Honor. Robert Wilkey
2 from Pogust & Braslow.

3 THE COURT: Hold on one second. We'll get you a
4 microphone. Don't you like it in federal court?

5 MR. WILKEY: We do very much, but we would
6 prefer it be remanded back to New Jersey. Robert
7 Wilkey from Pogust & Braslow on behalf of the Plaintiff
8 Jenine Von Essen.

9 From our understanding, the motion is still
10 outstanding, although the District Court of New Jersey
11 did issue a recommendation to remand it back.

12 THE COURT: Right. And that's the one that
13 really jumped out at me because you had the R and R
14 pending. Has there been a response filed to that?

15 MR. WILKEY: Yes, there has, your Honor.

16 THE COURT: Okay. So that one we'll have to
17 take a look at. Any others?

18 MR. BATASTINI: Your Honor, Armando Batastini on
19 behalf of Surgical Sense Incorporated and WCO. I'm
20 actually a one-off Defendant. We were sued in one
21 jurisdiction, the Western District of Arkansas. We
22 have a motion to dismiss on because both of my clients,
23 actually it's one entity, was dissolved as of 2002 in
24 Texas. So that may be a motion the Court would want to
25 address up front.

1 MR. GRIFFIS: We know of five motions for
2 summary judgment or motions to dismiss or partial
3 motions to dismiss that are pending, and I think within
4 two weeks we can all get together and determine what's
5 fully briefed and present it to you as a complete
6 package, resubmit all the briefing papers to you and
7 find out what counsels' position is for counsel that
8 aren't here as to outstanding motions.

9 One or two of them might become moot given our
10 respective positions on case management orders which
11 we're continuing to discuss.

12 THE COURT: And I appreciate one thing that you
13 said, and that is that if you have motions out there
14 that have to be heard, let's put them altogether so I
15 can decide one thing one time.

16 MR. GRIFFIS: It may also be the case, and I'm
17 not positive about this, that there are a couple of
18 motions that didn't get fully briefed because they were
19 transferred here. And in those cases, we would need to
20 bring that to your attention and for you to instruct
21 whoever is up next to respond to do so.

22 THE COURT: Okay. Mr. Migliori.

23 MR. MIGLIORI: The only one issue that I
24 potentially see is that we have, and some of our papers
25 that I imagine we'll take up in October suggested the

1 idea that for certain types of cases, there may be a
2 master complaint that the Court would want to approve.

3 And if, in fact, there is a master complaint, it
4 may resolve some of the bases for some of the motions
5 to dismiss if they're Rule 12 motions on the face of
6 the complaint. So some may be briefed, but they may
7 become moot depending on what the Court chooses to do
8 procedurally. So there are a couple of little
9 wrinkles.

10 THE COURT: I understand. I also understand
11 that Defendants are not thrilled with the idea of a
12 master complaint. So we'll have to cross that bridge
13 when we come to it. I heard Mr. Kirby say -- it's
14 Kirby, right?

15 MR. GRIFFIS: Griffis.

16 THE COURT: Griffis. Kirby's your first name.
17 You're one of those guys with two first names or two
18 last names, as the case may be. You know about that.

19 MAGISTRATE JUDGE ALMOND: How would I know?

20 THE COURT: You said you thought you might be
21 able to get me a status report on motions in about two
22 weeks. Is that about right, Mr. Migliori?

23 MR. MIGLIORI: I think that would be fine. We
24 can work together.

25 THE COURT: I didn't want to go ahead and issue

1 an order and then have you all start tearing your hair
2 out because you couldn't comply with it.

3 So to the extent that we can do this quickly and
4 efficiently, I'll set a two-week deadline for the
5 filing of status reports on pending motions.

6 For our next meeting at which I anticipate that
7 liaison counsel and counsel for the Defendants will
8 participate and Mr. Migliori and his band will be
9 charged with the responsibility of sending notice and
10 keeping everyone else in the loop, we will talk about
11 many of the other more substantial matters that were on
12 both of your lists.

13 I don't want you to leave here today thinking
14 that I didn't think they were important. I just didn't
15 think that it made sense for us to try to resolve some
16 of those issues until we got ourselves slightly
17 organized here today.

18 And so what I anticipate talking about at the
19 next conference, which I have scheduled for October 25
20 at 2 p.m., and that will be in chambers because we
21 won't have the cast of thousands we have today, and
22 that is Defendants' request for Plaintiffs to fill in
23 fact sheets.

24 And so, Mr. Migliori, talk with your people; and
25 if you can come to an agreement on that, that will make

1 life easier all around.

2 MR. MIGLIORI: We're nearly done with that
3 process.

4 THE COURT: Excellent. Plaintiffs' suggestion
5 that the Court designate some of the individual cases
6 as bellwether cases for trial. Two of the cases, as
7 you know, Jones and -- what's the other one?

8 MR. MIGLIORI: Tompkins.

9 THE COURT: Tompkins were brought here by
10 Defendants from state court, so we have jurisdiction in
11 those cases. I have some ideas on how you might want
12 to organize those as well. So we'll be talking about
13 those.

14 The suggestion that Plaintiffs file a master
15 complaint, as I said, I know the defense is not
16 entirely thrilled with that concept. I need to be
17 educated on that, so be prepared to educate me. I will
18 decide what to do about that.

19 And also Plaintiffs' request for a consolidated
20 class action complaint. I didn't see any response from
21 defense counsel on that one; but, again, you all should
22 talk together about these things before we come
23 together again.

24 Those were the items that I thought we could get
25 through today, but I'm open to hear whatever else

1 anyone might have to say.

2 MR. HOLLINGSWORTH: One small request, your
3 Honor, and we are going to ask your indulgence, but
4 we'll never do it again. There is a case --

5 THE COURT: Did you get that?

6 MR. HOLLINGSWORTH: Get that down. We won't.
7 But we do have one problem with your schedule for
8 October 25th. A case that Mr. Griffis and I were
9 involved in on trial and that Ms. Latimer and
10 Mr. Griffis and I have been involved in and arguing on
11 appeal is one in which --

12 THE COURT: Are you asking for a continuance?

13 MR. HOLLINGSWORTH: No, only brief.

14 THE COURT: You don't have to tell me the whole
15 story. The local folks will tell you I'm very easy.

16 MR. HOLLINGSWORTH: If you can set that hearing
17 for any time after the 25th and 26th when we're tied up
18 on appeal, we would very much appreciate it. So the
19 next week is fine with us, any time.

20 THE COURT: Barbara, can you pull up my calendar
21 for the 30th. Is morning okay?

22 MR. HOLLINGSWORTH: Yes, ma'am.

23 THE COURT: It's either that or Halloween.

24 UNIDENTIFIED SPEAKER: After lunch would be
25 better for travelers.

1 THE COURT: How's the 30th at 2:00?

2 MR. HOLLINGSWORTH: Thank you.

3 THE COURT: Any time you have a problem like
4 that, let us know.

5 MR. HOLLINGSWORTH: Thank you.

6 THE COURT: You're welcome. All right. So the
7 30th, then, at 2 p.m. for the next meeting. And,
8 Paulette, when will we have the Web site up?

9 MS. DUBE: Probably within a week or so.

10 THE COURT: So for those of you who won't be
11 coming back but will be communicating with the Court
12 through Mr. Migliori and company, if you want to go
13 onto the Web site, you can simply go to -- John, what's
14 the address?

15 MR. ETCHELLS: The address is
16 www.rid.uscourts.gov.

17 THE COURT: Anyone else have any questions or
18 comments? Yes, sir, in the back row. Just wait for
19 the microphone.

20 MR. ANDERSON: Thank you, your Honor. Dave
21 Anderson of the Miller firm in Virginia. You mentioned
22 you would be extending number five of the practice and
23 procedure order number one regarding separate
24 appearances before the Court. Is there any chance of
25 extending number seven regarding waiving pro hac vice

1 appearances for future cases filed directly in MDL?

2 THE COURT: I don't think you can file directly
3 into the MDL. I know that's one of the items on
4 Plaintiffs' list. I need to check that for sure, but I
5 don't think you can file it directly with the MDL.

6 If you want to file it here in Rhode Island, you
7 can't file if you're not admitted. So you need to
8 engage local counsel who can then move for your
9 admission pro hac vice.

10 The way to do it if you want to avoid that cost
11 is to file wherever you are, have it go through the
12 MDL, and it will be transferred here.

13 MR. MIGLIORI: Or maybe file here in the
14 district through local counsel and then it being tagged
15 along. It's the same.

16 THE COURT: Well, that's what I said; but if you
17 want to file from out of state, you have to engage
18 local counsel who can move for your admission. So if
19 you want to do it, you can do it by filing it in your
20 local jurisdiction and having it transferred in through
21 the MDL.

22 I know there was a suggestion that you could
23 file directly into the MDL, but that doesn't work
24 because on the chance that the case is not settled, it
25 has no place to go back to, and we do want to send them

1 back at some point.

2 Anyone else with a question, concern or comment?

3 MR. DiMARZIO: I just want to follow up. For
4 the convenience of counsel, we'll be happy to notify
5 legal liaison counsel once the Web site is up and
6 running so they can get the word out so people don't
7 have to keep checking our Web site.

8 THE COURT: We'll let both sides know.

9 MR. MIGLIORI: I don't know if this is helpful,
10 your Honor. In your order for today, you asked for a
11 list of counsel for what we understood to be cases. We
12 endeavored to put one together for the 107.

13 I don't know if it's helpful if the Court's
14 already done it, but it was part of your order. So we
15 tried to prepare a spreadsheet. It may help some of
16 the folks doing the IT or something.

17 THE COURT: If you can hand that up to my clerk.
18 Thank you. Anyone else with a question, comment or
19 concern that we have not addressed today?

20 I purposely told you what we're going to do next
21 time around so you can anticipate what the next step
22 will be. If anyone does have any questions or concerns
23 on the Plaintiffs' side, obviously now funnel them
24 through the Plaintiffs' steering committee, and
25 Mr. Migliori will bring them to my attention.

1 Yes. Hi. How are you?

2 MR. LANDAU: Your Honor, I have just one
3 question. There's three or four cases --

4 THE COURT: Would you state your name so
5 everybody knows who you are.

6 MR. LANDAU: Yes, Bob Landau, here on behalf of
7 Boulder City Hospital, which is in connection with just
8 one of the cases, the Nichol case.

9 I believe there's three other cases where
10 there's either a hospital or some health care provider.
11 Otherwise, we're in a rather small, unique group
12 compared to every other case where it's the
13 manufacturer involved.

14 So our interests are somewhat different, and
15 that may cause some need for differences in scheduling
16 and coordinating, and I just wanted to sort of bring
17 that to the Court's attention.

18 THE COURT: I noticed that there were a number
19 of the personal injury actions where the Plaintiff had
20 named the hospital, and I think in a couple even the
21 doctor was named as a party. Are there motions pending
22 in your case?

23 MR. LANDAU: No. I think what happened in my
24 case, which came out of Nevada, is that there was a
25 motion to remand based on the citizenship of the

1 hospital. That was denied, and it was transferred
2 over.

3 THE COURT: Okay. But there's been no -- but
4 you've not moved to dismiss your client?

5 MR. LANDAU: There's no motion pending.

6 THE COURT: Okay. All right. That's precisely
7 the sort of thing that I would hope Mr. Migliori and
8 counsel for Bard would alert me to. And so we can deal
9 with those situations and figure out what we do with
10 these third Defendants that have nothing to do with
11 Bard or Davol. Anyone else?

12 MR. MIGLIORI: I was passed a note and reminded
13 of one other issue. It's kind of wrapped up in the
14 protective order and the confidentiality order and
15 other issues; but we'd like to start, at least with
16 the first meeting, before the 30th of October on a
17 Rule 26(f) type conference to try to get our discovery
18 scope together, maybe have some of the more technical
19 people involved with E-discovery, start to introduce
20 each other and not to get necessarily anything resolved
21 but to start that process so we can report on the 30th.

22 THE COURT: You should do that. You should do
23 that. We ought to get this rolling. Any problem with
24 doing that before the 30th?

25 MR. GRIFFIS: I don't know exactly what

1 Mr. Migliori is suggesting, but I don't have any
2 problem about having technical discussions with him.

3 THE COURT: I think that you all are in this
4 together now for the next several months. So the best
5 thing you can do, I think, is to start really and truly
6 talking to each other toward the common goal of
7 resolving these cases.

8 So if you can, get yourselves together and try
9 to work out some of the things that you know you're
10 going to have to deal with rather than having to come
11 to court every 15 minutes and see Judge Almond. He's a
12 nice fella, but I don't think that helps anybody.

13 Anyone else with any questions, concerns or
14 issues that we have not addressed here today? Well,
15 again, I welcome those of you who traveled from afar to
16 come to our great state.

17 I recognize, as I said, my friend from Alabama.
18 You're going to come back in January? I think not. If
19 you're smart, you will not. If there's anything I or
20 any members of the court or the court staff --
21 Paulette, you had an issue?

22 MS. DUBE: E-filing, your Honor. Could
23 attorneys know that we've distinguished local liaison
24 counsel as lead counsel. Could they register now?

25 THE COURT: Yes. Those of you who are part of

1 the Plaintiffs' steering committee and defense counsel
2 ought to register. We'll get -- do we have to send
3 anything to them for them to do that?

4 MS. DUBE: The form is on the Web site.

5 MR. MIGLIORI: I can forward that on to
6 everybody on the committee. We've done it.

7 THE COURT: And, Mr. Griffis, maybe you could do
8 that. Mr. Nugent, you could do that for the defense
9 side.

10 MR. MIGLIORI: The question, your Honor, is, if
11 you're on the steering committee, are you admitted
12 pro hac vice? I understand your order is that
13 pro hac vice is not necessary.

14 THE COURT: We've suspended that rule for cases
15 that have been transferred. So there's not a need to
16 be admitted pro hac, but you have to register on our
17 ECF system in order to be able to file anything. And
18 that, as Paulette says, is up on the Web site for you
19 to be able to do that.

20 If you have any difficulty at all with the
21 ECF -- where's Paula? Paula Pletcher is our star in
22 ECF; and if you have any questions at all, she is
23 available by telephone, and she can walk you through
24 it. Barbara and John are also very good. I'm sure
25 Jeannine is as well. It's a wonderful thing.

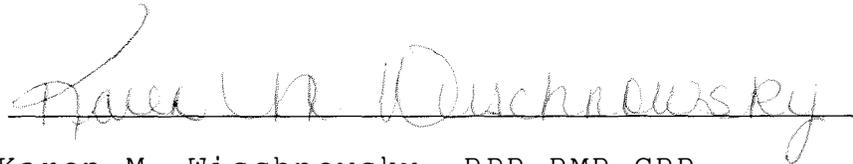
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All right. Mr. Migliori, take them out to lunch, and I thank you all. I'll see you on the 30th.
(Adjourned)

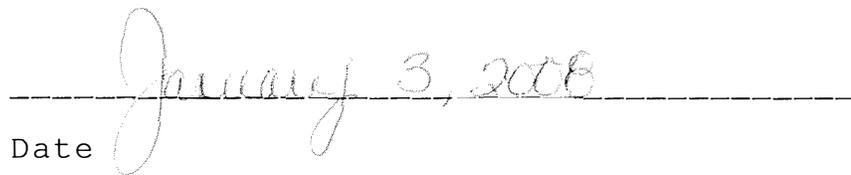
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C E R T I F I C A T I O N

I, Karen M. Wischnowsky, RPR-RMR-CRR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.



Karen M. Wischnowsky, RPR-RMR-CRR


Date