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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE: ATRIUM MEDICAL CORP.
C-QUR MESH PRODUCTS LIABILITY
LITIGATION

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16-md-2753-LM
February 7, 2017

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TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LANDYA B. McCAFFERTY

Appearances:
(Via Telephone)

For the Plaintiffs: Robert J. Bonsignore, Esq.
Bonsignore Trial Lawyers, PLLC
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For the Defendants: Enjolique D. Aytch, Esq.
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Court Reporter: Liza W. Dubois, LCR, CRR
Official Court Reporter
U.S. District Court
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Concord, New Hampshire 03301
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1 (Proceedings commenced in chambers at 11:39 a.m.)

2 THE COURT: All right. Counsel, let me just
3 tell you that we have a stenographer and we're doing
4 this all remotely.

5 Can everyone hear me?

6 MR. TURNER: Yes, your Honor.

7 MR. BONSIGNORE: Yes, your Honor. This is
8 Robert Bonsignore.

9 I think that was you, Turner?

10 THE COURT: Okay. Excellent. And I have a
11 stenographer as well who is going to be taking down what
12 say during this what I think will be a very brief
13 conference.

14 I also have law clerks with me remotely as
15 well.

16 So -- and I think my case manager is also on
17 the phone in case you had any questions about docketing
18 or filing.

19 Attorney Esposito, are you there?

20 THE CLERK: Yes, I'm here.

21 THE COURT: Okay. Your side is a little hard
22 to hear, just so you know, in case -- in case anyone in
23 my chambers needs to speak. I can hear everybody else
24 very well, but it's a little hard to hear you, so just
25 make sure I can -- I can hear you if you need to speak

1 up.

2 THE CLERK: Okay.

3 THE COURT: All right. Let me just announce
4 the case, just for the docket.

5 It is In Re: Atrium Medical Corp., C-Qur
6 Mesh, Products Liability Litigation, MDL docket number
7 16-MD-2753-LM, all cases.

8 Now, let me just have counsel introduce
9 themselves for the record. And if you could spell your
10 last name for the stenographer, that would be great.

11 And, then, when you speak up during the
12 conference, please identify yourself by name for our
13 stenographer as well.

14 Go ahead. Plaintiff's temporary lead counsel.

15 MR. BONSIGNORE: This is Robert Bosignore,
16 B as in boy, O, N as in Nancy, S as in Sam, I as in
17 island, G as in grape, N as in Nancy, O-R is R Robert,
18 E, Edward.

19 THE COURT: Excellent. All right.

20 And defense counsel?

21 MR. TURNER: This is Hugh Turner, Turner, on
22 behalf of Atrium and Maquet defendants, your Honor.

23 THE COURT: Excellent. Okay.

24 MS. AYTCH: Enjolique --

25 THE COURT: I very much appreciate -- I'm

1 sorry? Go ahead.

2 MS. AYTCH: I'm sorry, your Honor. Also on
3 the line is Enjolique Aytch. Enjolique is
4 E-n-j-o-l-i-q-u-e; Aytch, A-y-t, like Tom, c-h, also on
5 behalf of Atrium Medical Corporation and the Maquet
6 defendant.

7 THE COURT: Okay. And let me just start off
8 by just clarifying all the defendants.

9 Atrium Medical Corp., obviously, is the lead
10 defendant. There are also -- there is Maquet
11 Cardiovascular, LLC and, Attorney Aytch, you represent
12 Maquet?

13 MR. TURNER: I'll let -- I'm going to let
14 Enjolique speak, your Honor, today for the most part.
15 So she can address that question if that's all right
16 with your Honor.

17 THE COURT: Oh, okay.

18 MR. TURNER: Yeah.

19 THE COURT: All right. Sure. Are you guys
20 from the same firm?

21 MR. TURNER: Yes, she's -- we're -- we are
22 partners together, your Honor.

23 THE COURT: Okay.

24 MS. AYTCH: Yes. So we both represent Atrium
25 Medical as well as the Maquet defendants, your Honor.

1 THE COURT: Okay. All right.

2 What about the Getinge -- I'm not sure how you
3 pronounce that -- Getinge AB, Getinge Group AB, and
4 Getinge USA, Inc.?

5 MS. AYTCH: The same; I'm representing --
6 Hugh Turner and myself represent Atrium Medical
7 Corporation, Maquet Cardiovascular, Maquet
8 Cardiovascular U.S. Sales, as well as Getinge AB.

9 THE COURT: Okay. I'm guessing my -- my
10 judicial assistant put together a chart for me of the
11 counsel as well as the case names and the defendants and
12 it looks as though we do not have -- with respect to
13 Getinge, we -- let me tell you the names I have listed:
14 Getinge AB, Getinge Group AB, and then Getinge USA, Inc.
15 Those are listed on a chart. I'm not looking at my
16 docket right now, just so you understand.

17 And then it looks like there are Does 1
18 through 20 that might be interested in a complaint.

19 Can you clarify those for me?

20 MR. BONSIGNORE: We put those -- oh, go ahead.

21 MS. AYTCH: You wanted this on behalf of the
22 plaintiff. I was going to let your Honor know you're
23 correct; I believe the only case to our records that had
24 the Getinge USA defendant -- and my apologies forgetting
25 that one earlier -- is Richard Lady versus Atrium

1 Medical Corporation, et al.

2 But, yes; Hugh Turner and myself represent all
3 of the named defendants in the matters thus far to be
4 included: Atrium Medical Corporation, Maquet
5 Cardiovascular, Maquet Cardiovascular U.S. Sales,
6 Getinge AB, which is also Getinge Group AB. That's a
7 misnomer of the Getinge Group AB and Getinge USA, Inc.

8 THE COURT: Okay. I am wondering -- and maybe
9 Attorney Esposito could weigh in on this.

10 I'm wondering why Gail would not have counsel
11 for the defendants listed next to the Getinge
12 defendants.

13 Is there no clarity on that yet in the docket
14 that, in fact, counsel for Atrium and counsel for Maquet
15 also represent the other corporate defendants?

16 THE LAW CLERK: Your Honor -- this is Dan,
17 Dan Fisher, the judge's law clerk.

18 I'm just wondering -- based on my
19 understanding from defense counsel, and she can correct
20 me if I'm wrong, that Getinge Group AB doesn't actually
21 exist; is that -- is that right? It's essentially the
22 same thing as Getinge AB?

23 MS. AYTCH: That is correct. Getinge AB is
24 its corporate name. It does business as Getinge Group
25 sometimes in marketing, but Getinge AB is its --

1 THE LAW CLERK: So my understanding --

2 MS. AYTCH: -- corporate name.

3 THE LAW CLERK: Sorry.

4 My understanding then is the reason that at
5 least on the docket that defense counsel's not -- no
6 defense counsel is listed for Getinge Group AB is just
7 probably because there's no appearance on behalf of that
8 defendant since that defendant is tied up -- is actually
9 Getinge AB, which there is an appearance in front of.

10 I think that's all it is. It's more of a
11 clerical error. And somebody can correct me if that's
12 wrong.

13 THE COURT: Perfect. Thank you. Now, what
14 about Getinge USA, Inc. as well? Same thing; is it all
15 under Getinge AB?

16 THE LAW CLERK: Sorry. Just to -- on the
17 docket it looks as if defense counsel does represent
18 Getinge USA, Inc. It looks at least from the docket
19 that I'm looking at the only entity that is not
20 represented among the Getinge Groups are Getinge Group
21 AB, which appears to be just simply that issue that I
22 expressed. It looks like all the -- Getinge USA, Inc.
23 and Getinge AB are represented by defense counsel.

24 THE COURT: Okay. Well, then my chart is
25 probably in error.

1 All right. Well, good. So then we've got
2 clarity at least for the docket with respect to Getinge
3 Group AB.

4 Okay. All right. So thank you for that.

5 Let me just give you a sense of the two issues
6 that I wanted to talk about with you briefly today, and
7 they're two issues that really, frankly, focus really
8 more on the defendants and defense counsel here because
9 what I'm wondering -- let me start -- the two issues
10 are, first, venue; and, second, service of process and
11 whether or not you can agree with respect to service of
12 process to a -- certain waiver provisions, waiver of
13 summons formalities.

14 And -- so let's start with venue, because I
15 think that's fairly straightforward.

16 It just makes sense that defendants would
17 agree, but please weigh in and let me know if that -- if
18 the defendants would agree not to assert any objection
19 of improper venue as to any related cases filed directly
20 in the District of New Hampshire that come from
21 districts outside the District of New Hampshire that are
22 filed in this MDL; and then, of course, upon the
23 completion of the trial proceeding, that the case would
24 then transfer to a Federal District Court of proper
25 venue and the parties would have an opportunity to meet

1 and confer and be heard on that issue.

2 Is there any problem with waiving the venue
3 objections for purposes of the MDL?

4 MS. AYTCH: No, your Honor.

5 THE COURT: That was directed, obviously, to
6 the defendants. No problem with that?

7 MS. AYTCH: That is correct, your Honor; no
8 objection to direct filing into the MDL.

9 THE COURT: Okay. All right. Good. That was
10 easy. All right.

11 Service of process; what are your -- what are
12 your views on that? I'm simply trying to make it --
13 make it a rather simple process. I think we have one,
14 am I right -- that we have one complaint that has not
15 been served in terms of the cases that are currently in
16 the MDL?

17 Are there multiples, do you know,
18 Attorney Aytch?

19 MS. AYTCH: According to our records, there
20 are multiples that have not been served, not too great a
21 number, I believe -- I'm sorry? I'm sorry.

22 THE COURT: It's a little hard for me to
23 understand Attorney Aytch.

24 MS. AYTCH: I'm sorry. I will pick up.

25 According to our records, we have a -- a small

1 number that have not been served. I'm sorry; I'm just
2 trying to count that up.

3 THE COURT: That's okay. Take your time.

4 MS. AYTCH: I believe that there are four that
5 are currently in the MDL that have not been served.

6 THE COURT: Okay. And what are your views
7 with respect to service of process? Obviously, to the
8 extent you would waive formal service, you would waive
9 claims of affirmative defenses or other defenses of any
10 nature whatsoever except as related to service.

11 What are your views with respect to that?

12 MS. AYTCH: You articulated them perfectly,
13 your Honor. We don't have an objection to waiving the
14 formal service and retaining other defenses other
15 than in process.

16 THE COURT: Okay. What would you -- how would
17 you like to be served with respect to each case?

18 MS. AYTCH: The process that we've discussed
19 with some counsel would include service via e-mail --

20 THE COURT: What's that?

21 MS. AYTCH: -- directly to counsel with a
22 stamped filed copy or a conformed copy of the pleading
23 and then we would acknowledge that. And then, for the
24 record, executing a formal waiver of service form.

25 THE COURT: Okay. So let me just make sure I

1 get this right. Obviously, I'm going to issue an order
2 that just clarifies this, but via e-mail -- and would
3 that be directed to your e-mail?

4 MS. AYTCH: Yes, to -- to Hugh Turner and
5 Enjolique Aytch.

6 THE COURT: Okay. So it would be e-mailed to
7 two individuals, the two -- I'm presuming you both have
8 different e-mail addresses.

9 MS. AYTCH: Correct.

10 THE COURT: Okay. Why don't you do me the
11 favor of simply putting that into a short filing --
12 you can even just e-mail it to my case manager,
13 Donna Esposito -- and just lay out the terms of service
14 for me and then I will simply duplicate that in an
15 order. And I just want to make sure I'm consistent with
16 exactly what you -- what you want and what you've agreed
17 to.

18 So at least with respect to service, I will
19 make sure that I include, obviously, by waiving service
20 you're not waiving any other claims of any kind
21 whatsoever.

22 Would you be willing to just to lay those out
23 so that I can then put it into an order and make sure
24 I've got it precisely as you want it, which would
25 include your e-mail addresses?

1 MS. AYTCH: Yes.

2 THE COURT: That would be great.

3 And then once you receive it, you will then
4 acknowledge receipt. How would you envision doing that,
5 just return e-mail?

6 MS. AYTCH: Correct.

7 THE COURT: Okay. And then you would file a
8 formal waiver of service acknowledging receipt with the
9 Court so that we know you've been served?

10 MS. AYTCH: Correct.

11 THE COURT: Okay. Do you mind, do you -- can
12 you give me the docket numbers on the four cases that
13 you believe at this point you haven't gotten served?

14 I know we have only one. Let me tell you the
15 one we have. It's 16-cv-2762.

16 MS. AYTCH: 16-cv-276 -- correct. So
17 16-cv-2762, which is Rusher, is one of them.

18 THE COURT: Okay.

19 MS. AYTCH: The others may not have been
20 served, because although they may not technically --
21 they had a transfer, a notice of transfer, but I'm not
22 sure that it exactly has been.

23 But the other ones that we have are --

24 MR. BONSIGNORE: Caldwell, is that one of
25 them?

1 MS. AYTCH: No.

2 MR. BOSIGNORE: This is Mr. Bosignore.

3 No. It's been served? Okay.

4 MS. AYTCH: It's been served.

5 Yeah. So one of them, the last name is
6 Bartosiewicz and the transfer, the notice of tagalong,
7 has issued no objection, but I don't think it's actually
8 been assigned a docket number.

9 THE COURT: Okay.

10 MS. AYTCH: The other, Blackwood --

11 THE COURT: Okay.

12 MR. AYTCH: -- Let me clarify that.

13 The other is Brown, which is 1:17-cv-00004-LM.

14 THE COURT: Okay.

15 MS. AYTCH: The other is Cole,

16 1:16-cv-02760-LM.

17 THE COURT: Okay. So that we've got five
18 then?

19 MS. AYTCH: I have -- yes.

20 THE COURT: Okay. And so Blackwood -- I'm not
21 seeing Blackwood. So that's a tagalong that's in the
22 process of coming over.

23 THE CLERK: I -- Judge --

24 MS. AYTCH: Blackwood is actually there.

25 THE CLERK: Oh, sorry.

1 MS. AYTCH: I'm sorry.

2 That one has been served I had mistakenly
3 said.

4 The one that's a tagalong that should be
5 coming over are Bartosiewicz, B-a-r-t-o-s-i-e-w-i-c-z --

6 THE COURT: Okay.

7 MS. AYTCH: -- and the other in that same
8 status is Perrine, P-e-r-r-i-n-e.

9 THE COURT: Okay. All right.

10 THE COURT: All right. Okay.

11 All right. Now, let me -- I'm -- let me do
12 this via e-mail so that it can be -- so I can do this
13 expeditiously and just -- we don't have to incur any
14 filing fees or anything else and spend any time on it.

15 So if you could just send the terms of service
16 of process to my case manager. I'm going to -- she's on
17 the phone. I'm going to go ahead and give you her
18 e-mail address. And obviously just copy
19 Attorney Bonsignore.

20 Am I saying that correctly --

21 MR. BONSIGNORE: Yes, your Honor.

22 THE COURT: -- Bonsignore?

23 MR. BONSIGNORE: Yes, your Honor.

24 THE COURT: Okay. And it is Donna, D-o-n-n-a,
25 dot, Esposito --

1 THE CLERK: It's underscore, Judge.

2 THE COURT: -- at -- what's that?

3 THE CLERK: It's underscore.

4 THE COURT: I'm sorry. Thank you. Yeah.

5 Donna_Esposito -- and that's E-s-p-o-s-i-t-o --

6 @nhd -- that's New Hampshire District --

7 nhd.uscourts.gov.

8 MS. AYTCH: Got it. Thank you.

9 THE COURT: I'll repeat that for you. Donna,
10 D-o-n-n-a, underscore, Esposito, E-s-p-o-s-i-t-o,
11 @nhd.uscourts.gov.

12 MS. AYTCH: I have it noted. Thank you.

13 THE COURT: All right. Good. So those are
14 really, I think, the only two issues that I needed to
15 cover with you today.

16 Is there anything, Attorney Bonsignore, you
17 would like to add? I assume if you had anything to say,
18 you would have interrupted me.

19 MR. BONSIGNORE: Yes.

20 THE COURT: Are you -- are you all set at this
21 point? Anything further?

22 MR. BONSIGNORE: No. I -- I think
23 everything's moving along fine. We've had an initial
24 conference with defense counsel and are moving forward
25 to complete the tasks the Court has asked us to have

1 completed in a timely basis.

2 We've begun work early so that no one's
3 inconvenienced and we can accommodate the lawyers'
4 schedules. So I have nothing other to report other than
5 that.

6 THE COURT: Well, that's excellent. All
7 right.

8 Anything further from defense counsel before
9 we hang up?

10 MS. AYTCH: Nothing further. Thank you, your
11 Honor.

12 MR. TURNER: Nothing, your Honor. Thank you.

13 THE COURT: Okay. All right.

14 And let me ask my law clerks and my case
15 manager, is there any -- do you have any questions,
16 Attorney Esposito?

17 Do you guys have any questions, Dan, or Rob?

18 THE LAW CLERK: We're all set over here,
19 Judge.

20 THE COURT: You're all set. Okay. We're
21 going to get off the phone and then realize we had
22 questions before we should have hung up.

23 All right. So I will then await your briefs
24 before our first conference and I look forward to
25 receiving those.

1 I can tell you that based on the weather today
2 in New Hampshire, you're not really going to be that
3 excited to travel from Florida to come up to
4 New Hampshire for this conference. I guess I should say
5 Florida or Nevada. So -- but I do look forward to
6 meeting all of you.

7 I will get a little short order out notifying
8 everybody that the defendants are essentially going to
9 concede venue for purposes of the MDL and then make
10 service of process much more manageable as well.

11 So thank you very much and I'll see you -- I
12 believe it's the 24th.

13 MR. BONSIGNORE: Okay. Thank you, your Honor.

14 MS. AYTCH: Thank you, your Honor.

15 MR. TURNER: Thank you.

16 THE COURT: All right. Thank you.

17 Court is adjourned.

18 (Proceedings concluded at 12:03 p.m.)

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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 3/29/17

Liza W. Dubois
Liza Dubois, RMR, CRR
Licensed Court Reporter No. 104
State of New Hampshire