

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
16-md-02753-LM
February 22, 2018
2:10 p.m.
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TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

For the Plaintiffs: Jonathan D. Orent, Esq.
Motley Rice, LLC

D. Todd Matthews, Esq.
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Kimberly A. Doherty, Esq.
Andrus Wagstaff, PC

APPEARANCES CONTINUED:For the Plaintiffs:

Robert E. Price, Esq.
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For the Defendants:

Enjolique D. Aytch, Esq.
Rebecca Ocariz, Esq.
Akerman, LLP

Pierre A. Chabot, Esq.
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Court Reporter:

Susan M. Bateman, LCR, RPR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-145

1 P R O C E E D I N G S

2 THE COURT: Good afternoon, counsel.

3 This is Judge McCafferty. I'm here with the court
4 reporter and my law clerks.

5 And let me begin by putting the case name on the
6 record, and then I'll ask you each to just state your name
7 for the court reporter.

8 I'll ask that nobody put a call on hold at any
9 time. If you need to take a moment, what you can do is just
10 mute the phone on your end, but please do not put it on hold.

11 And if you are lead counsel or involved with lead
12 counsel, then you may participate in the call.

13 The case is In Re: Atrium Medical Corp. C-Qur Mesh
14 Products Liability Litigation. The MDL number 2753. The
15 docket number is 16-md-02753-LM.

16 All right. Counsel go ahead and just identify
17 yourselves for the record starting with the plaintiffs.

18 MR. ORENT: Good afternoon, your Honor.

19 Jonathan Orent for the plaintiffs.

20 MR. SELBY: David Selby for the plaintiffs.

21 MR. TODD MATTHEWS: Todd Matthews for the
22 plaintiffs.

23 MS. SHIAVONE: Anne Shiovone for the plaintiffs.

24 MR. EVANS: Adam Evans for the plaintiffs.

25 MR. LOWRY: Susan Lowry for the plaintiffs.

1 MR. WAGES: Josh Wages for the plaintiffs.

2 MS. Dougherty: Kim Dougherty for the plaintiffs.

3 MR. PRICE: Robert Price for the plaintiffs.

4 THE COURT: Defense counsel.

5 MS. AYTCH: Good afternoon.

6 This is Enjolique Aytch, A-Y-T-C-H, for the
7 defendants.

8 MR. CHABOT: Good afternoon.

9 Pierre Chabot, C-H-A-B-O-T, for the defendants.

10 MS. OCARIZ: Rebecca Ocariz, O-C-A-R-I-Z, for the
11 defendants.

12 THE COURT: All right. Is that everybody?

13 MR. CHABOT: That's everybody for the defendants,
14 your Honor.

15 THE COURT: Okay. All right.

16 I have the agenda in front of me and I'm looking at
17 the agenda for this status conference, and I'm going to start
18 with No. 1 and I'm going to ask counsel if in fact they have
19 reached agreement after meeting and conferring last Friday.

20 MR. ORENT: Your Honor, this is Jonathan Orent for
21 the plaintiffs.

22 I'm going to be speaking, I guess, to 1 and 2 to
23 some degree to the extent that there is overlap.

24 First of all, we didn't end up meeting and
25 conferring last Friday. I was out most of last week with the

1 flu and it didn't materialize, but we were able to schedule a
2 meet and confer in person today. So actually a large number
3 of us are actually together today and have spent already
4 multiple hours working to resolve some of these issues, and I
5 anticipate we will be continuing for at least a couple more
6 hours after we're finished today.

7 With regard to the substance, so far we've
8 narrowly -- excuse me -- we've been able to narrow a large
9 number of the items that we've covered. We haven't gotten
10 through the entirety of what we need to go through, but it is
11 my hope and anticipation that to the extent that there are
12 items that we need to address with the Court at the next
13 conference, which I believe is March 8th, that we would be
14 able to handle them as individual items rather than dealing
15 with sets of discovery. I think we've made a large amount of
16 progress so far and hope to continue that as we go forward.

17 MS. AYTCH: Defendants have nothing additional to
18 add, and we agree with what Attorney Orent just said.

19 THE COURT: Okay. All right.

20 So with respect to No. 1 and No. 2 then do you want
21 me to just let the meet and confer continue and then you
22 bring individual issues at the next status conference on
23 March 8th?

24 MR. ORENT: Yes, your Honor. I think that as far
25 as the plaintiffs are concerned, we seem to be moving in the

1 right direction. I think everybody is committed to the
2 process at this point.

3 THE COURT: Terrific.

4 MR. ORENT: And we have no reason to believe that
5 there will be a large number of items or that the Court needs
6 to address anything right now. So I think the process is
7 working, your Honor.

8 THE COURT: Excellent. That's very good news.

9 So I'm going to move to then more of your I think
10 what I would call status updates.

11 No. 3. Is there anything anybody wants to say with
12 respect to No. 3? It seems as though that you're both
13 working toward resolving any issues you have with respect to
14 ESI.

15 MR. ORENT: The only thing, your Honor, is I just
16 want to point out that there had been a data issue with some
17 number of pages that were coming up as corrupted.

18 My understanding is that those will be produced
19 later this month. Having talked to counsel again this
20 morning about it, my understanding is still that those final
21 items need to be addressed later this month.

22 So without any change in that status I think that
23 that issue is dealt with in our papers, and we are now in the
24 process of going through those two point something many
25 pages.

1 THE COURT: Okay.

2 MS. AYTCH: Just a quick clarification.

3 I'm sorry. This is Ms. Aytch. It just caught me
4 off-guard.

5 Yes, as with regard to whatever the issue was with
6 the particular custodian's documents, those will be produced
7 by the end of the month, i.e., next week.

8 Some of the e-mails were coming up as corrupt, and
9 then you see a header and you're not seeing anything in the
10 body and it's jumbled. Whatever that issue is, my
11 understanding is that we're still running into ground. So as
12 reflected in the agenda, that will not be -- I don't think
13 that we or the vendors have figured out what's going on. So
14 I don't want to represent to the Court that that will be
15 produced next week.

16 THE COURT: Okay.

17 MS. AYTCH: So with that one clarification but
18 still within that time frame that is set forth in the agenda.

19 THE COURT: Okay. All right.

20 Anything further on No. 3?

21 MR. ORENT: Not for the plaintiffs, your Honor.

22 MS. AYTCH: Not for the defendants.

23 THE COURT: Okay. And then No. 4. I think you're
24 looking to the future there and indicating you want to think
25 about or begin thinking about at some point before the next

1 status conference, which as you mentioned is March 8th, you
2 would like to begin setting trial dates for bellwethers and
3 you intend -- plaintiffs intend to work with defendant on
4 that issue to try to minimize disputes.

5 Is there anything anybody wants to add to that,
6 No. 4?

7 MR. ORENT: Just to give your Honor sort of a
8 10,000-foot view of what the plaintiffs are thinking about is
9 basically setting a time frame of the summer to fall of 2019
10 for the first bellwether trials using plaintiffs' proposal.
11 We have not heard from defendants whether that works or not.
12 We are committed to giving defendants an outline of the plan
13 that I orally sketched out to them, but that is our initial
14 conception.

15 And that we would essentially use the second half
16 of 2018, this calendar year, to conduct the majority of the
17 corporate depositions that are going to need to be taken.
18 The idea would then be to take some number of cases from the
19 existing filed case inventory. The number that has come to
20 my mind is about a dozen each. Each party would select about
21 a dozen cases for selection into a bellwether pool ultimately
22 with an idea through either a one-step or a two-step tolling
23 process to have about four cases that are capable of trial in
24 that time frame.

25 The specifics of that -- we have yet to work out a

1 lot of the details, but it is our hope to present the Court
2 with something that is agreeable to both parties and the
3 Court as well.

4 THE COURT: Attorney Aytch, would you like to add
5 anything?

6 MS. AYTCH: I believe Attorney Orent has covered
7 it.

8 THE COURT: Okay.

9 MS. AYTCH: As he mentioned, he gave us his oral
10 picture of the way he sees this working out. There's no
11 facial objection to that.

12 He's going to -- he's very graciously willing to
13 take the first stab at this so we can get it in writing and
14 kind of go through the details and hopefully be able to
15 present the Court with something that we agree upon, but I
16 have no reason to think that we won't be able to nail this
17 down.

18 THE COURT: Terrific. All right.

19 Well, this is very good news then. You seem to be
20 working through all your disputes at least at this point.

21 With respect to the agenda then, we're through with
22 items 1 through 4 and we are through with the entirety of the
23 agenda.

24 Anything else you want to bring to my attention at
25 this point before we close?

1 MS. AYTCH: This is Attorney Aytch. I just wanted
2 to thank all parties and the Court for your indulgence with
3 my schedule and moving the conference and the other deadlines
4 to accommodate my medical issue. I really, really appreciate
5 it.

6 THE COURT: Absolutely no problem with that.

7 And I appreciate that everybody is working together
8 and things are moving along. So thank you all very much.

9 Anything further?

10 MR. ORENT: Nothing from the plaintiffs, your
11 Honor.

12 THE COURT: Okay. All right.

13 Well, then I will hear from you next for the March
14 8th status conference. If for some reason you are still
15 plugging along and you see no need for the status conference,
16 let my case manager know.

17 But to the extent obviously you run into some of
18 these discovery disputes on individual items, then obviously
19 we'll resolve those -- at least informally we'll resolve them
20 on the March 8th date.

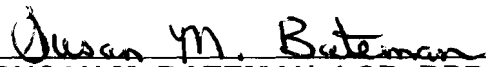
21 Thanks to everybody and Court is adjourned.

22 (Conclusion of hearing at 2:18 p.m.)
23
24
25

C E R T I F I C A T E

I, Susan M. Bateman, 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: 2-5-18


SUSAN M. BATEMAN, LCR, RPR, CRR
LICENSED COURT REPORTER, NO. 34
STATE OF NEW HAMPSHIRE