

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-02753-LM
* April 19, 2018
* 2:00 p.m.
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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

For the Plaintiffs:

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Official Court Reporter
United States District Court
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1 P R O C E E D I N G S

2 JUDGE MCCAFFERTY: Good afternoon, counsel.

3 This is Judge McCafferty.

4 I have a court reporter here and my law clerk,
5 and let me just for the record indicate this is our
6 monthly status conference in In Re: Atrium Medical
7 Corp. C-Qur Mesh Products Liability Litigation, MDL
8 number 16-md-2753-LM.

9 Let me have counsel, lead counsel, identify
10 themselves for the record. Per usual, if you speak
11 during the hearing, if you would just identify yourself
12 for our court reporter.

13 And those of you who are not lead counsel, if
14 you would please mute your phones. Do not put the phone
15 on hold.

16 Let's start with plaintiffs' counsel.

17 MR. HILLIARD: Your Honor, this is Russ
18 Hilliard, plaintiffs' liaison counsel.

19 MR. ORENT: Good afternoon, your Honor.
20 Jonathan Orent, plaintiff's lead counsel.

21 MR. MATHEWS: Good afternoon, your Honor.
22 Todd Mathews, plaintiffs' counsel.

23 MS. LOWRY: Hi, your Honor.

24 Susan Lowry for the plaintiffs -- plaintiffs'
25 counsel.

1 MR. SELBY: This is David Selby for the --

2 MR. EVANS: This is -- go ahead, David.

3 MR. SELBY: No. Go ahead.

4 MR. EVANS: Adam Evans for the plaintiffs.

5 MR. SELBY: This is David Selby for the
6 plaintiffs.

7 JUDGE MCCAFFERTY: Defense counsel.

8 MS. AYTCH: Good afternoon.

9 This is Enjolique Aytch for the defendants.

10 MS. OCARIZ: Rebecca Ocariz for the
11 defendants.

12 MR. CHABOT: Good afternoon, your Honor.

13 This is Pierre Chabot for the defendants.

14 MR. FRIBERG: Jack Friberg for the defendants.

15 JUDGE MCCAFFERTY: Okay. Excellent. We have
16 an agenda and I have an e-mail updating that agenda. So
17 let's just go item by item.

18 No. 1 -- and I'll just ask counsel -- it looks
19 like this agenda we can move through fairly quickly. It
20 looks like counsel have been hard at work meeting and
21 conferring and reaching agreements. Very pleasing to
22 the Court.

23 So let me start with agenda item No. 1, and
24 I'll let Attorney Aytch just go ahead and summarize
25 that.

1 MS. AYTCH: Good afternoon, your Honor.

2 On agenda item No. 1 we have been discussing
3 the proposed bellwether case management order to take us
4 out throughout the rest of this litigation into
5 bellwether's selection.

6 Plaintiffs have defendant's counterproposal
7 and is mulling over that, and I anticipate, as the
8 agenda requests, that within the next week or so we
9 should be able to nail down and come up with a final
10 proposal, or, if there are any disputes remaining, to at
11 least narrow those for the Court.

12 JUDGE MCCAFFERTY: Excellent. Anything you
13 want to add to that, Attorney Orent?

14 MR. ORENT: Not at this time, your Honor.

15 JUDGE MCCAFFERTY: Okay.

16 MR. ORENT: I think Ms. Aytch adequately
17 summed that up.

18 I would just I guess say that the two
19 proposals are not very far apart, I think a matter of
20 six months, which in the grand scheme of things may not
21 be a huge gulf between us. And I think that our
22 counterproposal will be to the defendants in the next
23 couple of days in an attempt to bridge that gap, and so
24 I think we're continuing to move ahead.

25 JUDGE MCCAFFERTY: Excellent. All right.

1 Agenda item No. 2, status of depositions.
2 That's a fairly detailed summary that you have provided
3 the Court, and I'm looking at it now and it looks as
4 though you've reached many agreements with respect to
5 depositions.

6 There is an objection to the depositions of
7 two gentlemen that you are addressing and I presume
8 still addressing, and it looks as though I don't have
9 anything that I need to resolve with respect to agenda
10 item No. 2 today.

11 Anybody want to add anything to what is here?

12 MR. ORENT: Your Honor, Jonathan Orent for the
13 plaintiffs.

14 As the agenda reflects, there are these two
15 depositions of individuals who are both board members
16 and employees of Getinge AB as well as board members of
17 Atrium. Defendants have raised some substantive
18 objections to providing dates for those depositions.

19 We are continuing to meet and confer to see if
20 we can at least narrow the issues on this before we seek
21 Court intervention. And if we do need Court
22 intervention ultimately, we will abide by the Court's
23 new procedure for informal dispute resolution so we
24 would have -- certainly you would have enough time to
25 rule in advance or look through the papers in advance of

1 any hearing.

2 JUDGE MCCAFFERTY: Okay. Excellent.

3 Attorney Aytch, do you want to add anything to
4 that?

5 MS. AYTCH: No, your Honor. I believe
6 Attorney Orent covered it.

7 JUDGE MCCAFFERTY: Okay. All right.

8 Agenda item No. 3 deals with the immunity
9 against transient jurisdiction for the Getinge AB
10 designees. And since the agenda was filed the parties
11 have reached an agreement and have proposed an order, an
12 assented to order.

13 I've looked over that order and I'm prepared
14 to issue that -- sign that for you after the status
15 conference today unless somebody wants to bring
16 something to my attention.

17 MR. ORENT: Nothing from plaintiffs, your
18 Honor.

19 MS. AYTCH: Nothing on behalf of the
20 defendants, your Honor.

21 JUDGE MCCAFFERTY: Okay. All right.

22 And then agenda item No. 4, let me have --
23 Attorney Orent, why don't you just go ahead and
24 summarize the substance of that paragraph.

25 MR. ORENT: Well, as your Honor is aware,

1 previously you had entered a procedure for objecting to
2 portions of depositions and giving dates, allowing for
3 three weeks for the parties to work together to try and
4 accomplish that, and if they're not successful, to
5 provide a date either way within three weeks of
6 plaintiffs requesting the deposition if there are scope
7 objections.

8 The order that you provided did not provide
9 for a procedure for defendants to object to a
10 deposition, or quite frankly plaintiffs also for an
11 objection in the entirety, and what we're doing is to
12 seek to bring this procedure into conformity with the
13 other orders that you've entered.

14 So what we propose here is that the plaintiffs
15 would -- or, excuse me, that the party whose obligation
16 it would be to file for a protective order would serve a
17 one-pager or a two-pager on the opposite party, and
18 there would be adequate time for a response, and bring
19 the issue to the Court when fully briefed. And so this
20 would again bring that procedure in line with the other
21 procedures that your Honor entered on March 9th.

22 JUDGE MCCAFFERTY: Okay. Excellent.

23 Attorney Aytch, do you want to add anything to
24 that?

25 MS. AYTCH: Again, Attorney Orent covered it

1 very well.

2 JUDGE MCCAFFERTY: Okay. All right. So that
3 is good and I approve of that.

4 Let's go to agenda item 5 then which is a
5 briefing schedule and essentially a continuance for the
6 personal jurisdiction dispute.

7 The parties have reached an agreement on
8 extending the jurisdictional discovery deadline by three
9 months, and then you've proposed a briefing schedule for
10 defendant's motion to dismiss to be due one month from
11 the close of jurisdictional discovery, and then
12 plaintiffs' opposition will be due one month from the
13 filing of the motion to dismiss, and you've given dates
14 in your e-mail that you filed with the Court before this
15 hearing, and then of course you've got reply dates and
16 surreply dates if necessary.

17 I do not think counsel needs to file a formal
18 motion. I'm prepared -- assuming there are no
19 objections, everybody is still in agreement on this
20 extension -- let me just state it for the record, the
21 date, so we're all on the same page.

22 The extension of the jurisdictional discovery
23 deadline by three months would mean it would move from
24 April 16 to July 16. The briefing schedule would be
25 defendant's motion to dismiss is due one month from the

1 close of jurisdictional discovery, or August 16 of 2018,
2 and then plaintiffs' opposition would be due one month
3 from the motion to dismiss, and that date is September
4 17, 2018. And then replies due in 14 days or what would
5 be October 1, 2018, and a surreply, if necessary, due in
6 14 days from the filing of the reply, or that date would
7 be October 15, 2018.

8 I'm prepared to just issue an order in
9 conformity with that assented to agreement, request, and
10 the parties do not need to file a formal motion unless
11 you tell me why you need to do that.

12 MR. ORENT: Thank you, your Honor.

13 JUDGE MCCAFFERTY: Okay. All right.

14 Attorney Aytch, you agree I'll just issue an
15 order consistent with the e-mail that you both filed
16 with the Court today?

17 MS. AYTCH: Yes. Thank you, your Honor. It's
18 appreciated.

19 JUDGE MCCAFFERTY: Okay. So agenda item No. 5
20 is good and completed.

21 And then No. 6, the motion to compel.

22 So, Attorney Orent, why don't you go ahead and
23 just sort of summarize where you are with respect to
24 this and let me know if everything is just still
25 consistent with the agenda item as described in document

1 581.

2 MR. ORENT: Sure, your Honor.

3 To start there, everything is in the place
4 where we left it with the motion -- excuse me -- with
5 docket number 581, the agenda for today's conference.

6 Plaintiffs have accepted the offer to
7 stipulate that the decision to co-brand Atrium Medical
8 Corporation and Getinge AB was made by the corporate
9 parents that at this point, number 2 points out, produce
10 all documents setting forth the rationale, time lines
11 and details related to co-branding effort, and then, as
12 the document further notes in four subparts, further
13 explanation as to the specific documents.

14 Then defendants are going to be giving us a
15 30(b)(6) witness on what they call co-branding as well.

16 Given this, we have agreed to at least
17 continue the motion and not pursue it unless or until
18 there are any holes in the production. We don't foresee
19 that happening, but obviously to protect ourselves, this
20 motion is still not fully briefed, but at this point we
21 are satisfied that this might meet the needs that we
22 have and are willing to work with the defendants on
23 this.

24 So we have -- in exchange for these items,
25 we've agreed to at least temporarily continue the motion

1 to compel and hold it in abeyance until or unless any
2 issues come up, and it's our hope that this will finally
3 resolve that item.

4 JUDGE MCCAFFERTY: All right. Anything to add
5 to that, Attorney Aytch?

6 MS. AYTCH: Yes, your Honor.

7 I may have misheard, but I just want to
8 clarify the record in case I didn't.

9 As to agenda item No. 6, bullet point 2, not
10 that we're producing all documents that may relate to
11 this issue on a broad scale but particularly those
12 documents that are further set forth in bullet points a
13 through d under item No. 2.

14 MR. ORENT: That's our understanding as well.

15 JUDGE MCCAFFERTY: Okay. And that's certainly
16 how the agenda item reads.

17 Okay. Anything further?

18 MR. ORENT: Your Honor, I do want to put one
19 further thing on the record, and I went over this with
20 Ms. Aytch prior to the call today, and that is
21 plaintiffs and defendants were willing to work out our
22 motion for sanctions. Defendants have agreed to produce
23 a privilege log by July 1st and to complete their
24 production of any nonprivileged items from the document
25 productions by July 1st as well, and we want those dates

1 to appear on the record. They're also I believe
2 memorialized in correspondence with the Court that
3 defendants sent.

4 I would also say that a lot of the frustration
5 that plaintiffs have -- we had a long discussion and
6 defendants have committed to us to be more forthcoming
7 when issues arise, and as part of that discussion
8 plaintiffs are satisfied with the way things went and as
9 a result were content to withdraw the motion for
10 sanctions.

11 JUDGE MCCAFFERTY: All right. Anything you
12 want to add to that, Attorney Aytch?

13 MS. AYTCH: Yes, your Honor. There's just one
14 minor clarification.

15 Pursuant to the letter that Attorney Orent
16 sent us with regard to this proposal, by July 1st in
17 addition to the production of a privilege log we would
18 also produce the non-privileged items that were withheld
19 as potentially privileged with reasonable extensions for
20 good cause shown.

21 While I doubt at this stage that there would
22 be a request for such an extension, I wanted to make
23 sure that the record reflects that caveat as well.

24 MR. ORENT: And we agree with that.

25 JUDGE MCCAFFERTY: Okay. Excellent. So the

1 record is clear then. I appreciate that.

2 Okay. And I appreciate that you were able to
3 work out the motion for sanctions. So good work all
4 around.

5 Anything further to accomplish with respect to
6 this status conference?

7 MR. MATHEWS: Judge, this is Todd Mathews for
8 the plaintiffs.

9 In looking at the calendar, I think our next
10 hearing would be on May the 10th, and I think we have a
11 deposition scheduled in this case on that day that I
12 think many on this call will be participating in. I
13 wonder if we should proceed on the 10th or if it should
14 be set for a different date.

15 JUDGE MCCAFFERTY: If everybody is in
16 agreement, why don't you just propose dates that work
17 for you with my case manager and we can change that date
18 in light of the situation. Obviously -- I think I
19 originally had said try not to make depositions -- try
20 not to schedule them for days we have our status
21 conference, but I understand that's not always going to
22 be possible.

23 So I think in the spirit of what has recently
24 been very successful meet-and-confers, the Court will
25 just ask you to present some dates to Attorney Esposito

1 and she will give you a new date that works, some date
2 close to the May 10th date.

3 MR. MATHEWS: Thank you, your Honor.

4 MR. ORENT: Thank you, your Honor.

5 JUDGE MCCAFFERTY: All right. Anything
6 further?

7 MR. ORENT: Nothing for the plaintiffs.

8 MS. AYTCH: Nothing for the defendants.

9 Mr. Mathews brought up the one thing that we
10 had additional.

11 Thank you, Todd.

12 MR. MATHEWS: Sure.

13 JUDGE MCCAFFERTY: All right. Thanks to
14 everyone.

15 Court is adjourned.

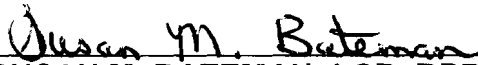
16 (Conclusion of hearing at 2:20 p.m.)
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C E R T I F I C A T E

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: 4-25-18


SUSAN M. BATEMAN, LCR, RPR, CRR
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STATE OF NEW HAMPSHIRE