

NO COPY OF THIS TRANSCRIPT MAY BE MADE PRIOR TO 8/22/2018

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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

16-md-2753-LM  
May 17, 2018  
2:00 p.m.

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE LANDYA B. McCAFFERTY

Appearances:

For the Plaintiffs: Jonathan D. Orent, Esq. (Via tele)  
Motley Rice, LLC

Susan A. Lowry, Esq. (Via tele)  
Upton & Hatfield, LLP

D. Todd Mathews, Esq. (Via tele)  
Gori Julian & Associates PC

Adam M. Evans, Esq. (Via tele)  
Hollis Law Firm, PA

Anne W. Schiavone, Esq. (Via tele)  
Holman Schiavone, LLC

Josh B. Wages, Esq. (Via tele)  
Blasingame Burch Garrard & Ashley

Amanda Summerlin, Esq. (Via tele)  
Taylor Martino PC

For the Defendants: Enjolique D. Aytch, Esq. (Via tele)  
Rebecca Ocariz, Esq. (Via tele)  
Akerman, LLP

Pierre A. Chabot, Esq. (Via tele)  
Wadleigh Starr & Peters, PLLC

Court Reporter: Sandra L. Bailey, LCR, CRR  
USDC - 55 Pleasant Street  
Concord, NH 03301  
(603) 225-1454

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

2 THE COURT: Good afternoon, counsel, this is  
3 Judge McCafferty. I'm here in my chambers with a court  
4 reporter and with my law clerk, Dan Fisher.

5 Let me just for the record because we have the  
6 court reporter here, I'll state the name of the case,  
7 the docket number and issue the typical reminders and  
8 then have counsel identify themselves for the record.  
9 And then for the benefit of our court reporter, just  
10 simply whenever you're speaking just identify yourself  
11 for the court reporter.

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

15 If you have a speaking role, then obviously  
16 you don't want to mute your phones, but otherwise if you  
17 would mute your phones and please don't put phones on  
18 hold, and if you're not in a speaking role we expect you  
19 to just remain mute.

20 So, let me have those who are on the line go  
21 ahead and identify themselves for the record.  
22 Plaintiffs' counsel.

23 MR. ORENT: Good afternoon your Honor,  
24 Jonathan Orent, and I'm actually here with Josh Wagers.

25 THE COURT: With who?

1 MR. ORENT: Josh Wagers from the Blasingame  
2 firm. He will be the liaison. Mr. Matthews is, Mr. Jim  
3 Matthews is Josh's law partner.

4 THE COURT: Nobody else with plaintiffs?

5 MR. MATHEWS: Your Honor, Todd Mathews for the  
6 plaintiffs also.

7 MS. SCHIAVONE: And Anne Schiavone, your  
8 Honor, for the plaintiffs.

9 MS. LOWRY: Your Honor, Susan Lowry for the  
10 plaintiffs.

11 MS. SUMMERLIN: Amanda Summerlin for  
12 plaintiffs.

13 MR. EVANS: And Adam Evans for the plaintiffs.

14 THE COURT: And can Amanda -- last name I  
15 missed.

16 MS. SUMMERLIN: Sure. It's Summerlin,  
17 S-U-M-M-E-R-L-I-N.

18 THE COURT: Okay. All right. And defense  
19 counsel.

20 MS. AYTCH: Good afternoon. This is Enjolique  
21 Aytch. A-Y-T-C-H is the last name.

22 MS. OCARIZ: Rebecca Ocariz, O-C-A-R-I-Z.

23 MR. CHABOT: Good afternoon, your Honor,  
24 Pierre Chabot, C-H-A-B-O-T.

25 THE COURT: Okay, I think we've got everybody.

1 And if -- has anyone since joined the call? Okay. All  
2 right, let's just go through the agenda.

3 I'm aware there's one dispute that I will be  
4 resolving informally for you and we'll move that to the  
5 end.

6 The first item on the agenda is just the  
7 status of depositions, and I just assume that you're  
8 just putting that into the record by way of recording  
9 all your agreements accurately for the record.

10 Is there anything else you need me to do with  
11 agenda item number one other than resolve the dispute?

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

14 So, with regard to number one, the only issue  
15 that we have aside from the disputed issue is I wanted  
16 to advise the Court that there has been some movement of  
17 a couple dates, and we've been working with the  
18 defendants. In particular we did move the two  
19 30(b)(6)'s that were scheduled for last week and are  
20 working to reschedule those. That was by agreement.  
21 And we're going to reschedule a deposition that's set  
22 for next week by agreement. The defendants alerted me  
23 yesterday to a document production issue that they just  
24 learned of, and I do want to actually at this point say  
25 that I do appreciate the defendants' raising that issue

1 with us promptly. As a result of that we made the  
2 collective decision that it would be better to push next  
3 week's deposition, the one on the 24th, until we can get  
4 all of the document issues resolved. It remains to be  
5 seen whether or not one on the end of the month will go  
6 forward, and that's again based on some of these  
7 document issues, but we have been working well with  
8 defendants on this issue. Like I said, I very much  
9 appreciated the fact that they brought these issues to  
10 us as soon as they learned of them from their vendors.

11 So, that's the only change that I want to make  
12 from the submission.

13 THE COURT: Anything to add, defense counsel?

14 MS. AYTCH: I'm sorry, your Honor, there was a  
15 little bit of background noise as you spoke. I think  
16 you just asked if there was anything from defense  
17 counsel, but you cut out for a moment.

18 THE COURT: Sorry about that. That's correct.

19 MS. AYTCH: No, nothing further. As Mr. Orent  
20 stated, we still need to have further discussion about  
21 the deposition and just make sure that we are certain,  
22 and I thought that the one that is still scheduled at  
23 the very end of the month on the 31st for Anders  
24 Selander would still go forward, so I just want to  
25 circle back with Mr. Orent after that, but there's

1 nothing more to add to the agenda, I mean to item number  
2 one on the agenda.

3 THE COURT: Okay. Let's go to number two, and  
4 I wasn't really clear on where you were going with  
5 number two. It looks like you're just alerting me that  
6 there may be some issues, you're just waiting to figure  
7 out exactly how to handle these with respect to  
8 Litigation Management, Inc. and the joint records  
9 collection agreement.

10 MS. AYTCH: Correct.

11 THE COURT: Anything further you want to put  
12 on the record or discuss with regard to number two?

13 MR. ORENT: Well, your Honor, just with number  
14 two, you know, our position as the plaintiffs' executive  
15 committee is quite frankly that we don't have the  
16 authority on a case specific basis to allow some of the  
17 modifications or solutions that have been proposed,  
18 things like whitening out dates on a particular  
19 authorization that's expired and things like that.  
20 Quite frankly we think that individual plaintiffs'  
21 counsel need to be consulted on a case by case basis. I  
22 personally, and I know that other members of the  
23 executive committee feel the same way, that we just  
24 don't have the authority to give them on a case specific  
25 level the guidance that they need or authority that they

1 need, and that for my own cases I'm more than happy to  
2 give the accommodations after consulting with my  
3 clients, but quite frankly on authorization issues I  
4 think that individual case counsel do need to be  
5 consulted.

6 And that's sort of our issue with some of the  
7 solutions, not the principles underlying them, but  
8 rather I don't feel that we as an executive committee  
9 can make those binding decisions. They need to be made  
10 by individual plaintiffs' counsel.

11 THE COURT: Okay. And individual plaintiffs'  
12 counsel finds out about these issues how?

13 MR. ORENT: LMI would be the ones to email  
14 them and say we have an expired authorization form, can  
15 we white it out, for example, as opposed to having a  
16 blanket policy that says we're going to white out all  
17 expired authorizations. So that's -- right now  
18 individual counsel get notifications when there are  
19 facility specific authorizations that are required or  
20 when records get uploaded. And we would just support  
21 the same type of outreach when questions like this  
22 arise.

23 THE COURT: Okay. And is LMI amenable to that  
24 individualized approach?

25 MS. AYTCH: This is Enjolique Aytch, your

1 Honor. That is the approach they've been taking to  
2 date. My understanding is the concern just to see if  
3 there is a more global approach that could have been  
4 struck because of course the additional time that they  
5 put in is the additional time that the parties have to  
6 pay for. But if that cannot be done because the  
7 plaintiffs' executive committee does not have the  
8 authorization to do so, they're fine with that, they  
9 just need to hear from the plaintiffs' executive  
10 committee one way or the other. My understanding is  
11 that nothing had been communicated to them. And of  
12 course from the defense side we definitely don't have  
13 the authorization to do so.

14 So I'm sure that they're amenable to it.  
15 We're just looking for a response so that they know how  
16 to proceed going forward or the way that they are  
17 currently proceeding is a way that needs to remain,  
18 that's fine as well, they just needed a response.

19 THE COURT: Okay. And so is there anything  
20 you need from me with respect to item number two,  
21 anything further?

22 MR. ORENT: Not from the plaintiffs, your  
23 Honor.

24 MS. AYTCH: Not from the defense, your Honor.

25 THE COURT: Okay. All right. The proposed



1 Bellwether Case Management Order I've read through. I'm  
2 impressed the parties have reached agreement on that. I  
3 appreciate that you've chosen cases that are, over which  
4 I have plenary jurisdiction. I am prepared to approve  
5 that after this conference.

6 Is there anything else you want to accomplish  
7 with respect to agenda item number three?

8 MS. AYTCH: Not from the defense, your Honor.

9 MR. ORENT: Not from the plaintiffs either.

10 THE COURT: Okay. Agenda item four is the  
11 dispute, and let's just jump ahead to agenda item five,  
12 and the parties agree that you want to amend or seek an  
13 addition to the Court's procedural order, and that seems  
14 fine by the Court, so I will adopt that. And I'll take  
15 whatever action on my end, we'll make that obvious in  
16 orders going forth.

17 MR. ORENT: Thank you, your Honor.

18 THE COURT: So number five, anything else on  
19 number five?

20 MR. ORENT: Not for the plaintiffs.

21 THE COURT: Okay. All right. So now really,  
22 frankly, on to agenda item number four, the two  
23 depositions in dispute. And I have reviewed the letter  
24 briefs and I think what I'd like to do is just hear a  
25 little bit more from defense counsel as to how Malmquist

1 and Viebke, I don't know if I'm pronouncing those  
2 correctly, but the two proposed deponents, how it is  
3 that they are duplicative or cumulative of people that  
4 are already on the list and where would that evidence be  
5 such that plaintiffs would have awareness or knowledge  
6 of it or could just consult that and be persuaded that  
7 essentially they don't need those two depositions.

8 MS. AYTCH: Thank you, your Honor. So, as far  
9 as through the myriad of documents that have been  
10 produced as a first level, I mean, the facts that they  
11 are, that Johan is a current board member and past  
12 president of the Getinge AB and that Jens Viebke is the  
13 president of the business area of ACT is noted in the  
14 numerous documents. But more to the point, any  
15 knowledge that they would have in terms of the corporate  
16 structure or how these things function or their  
17 relationships with each other or anything bearing upon  
18 the jurisdictional issue has been teased out through the  
19 numerous written discovery as well and more importantly  
20 through the depositions that are going to be had,  
21 including the Getinge AB 30(b)(6) deposition, and to our  
22 awareness thus far the fourth coming notice of 30(b)(6)  
23 deposition for Atrium. So on both sides, anything that  
24 these two people would speak to would be gathered  
25 through those means and would just purely be cumulative.

1 THE COURT: Okay. And with respect to  
2 anything that plaintiffs would discover in upcoming  
3 depositions, that would be information at this point  
4 they wouldn't necessarily have access to.

5 MS. AYTCH: That they would -- no, I mean,  
6 what they would tease out in the upcoming depositions of  
7 course not, your Honor, as they have not come in, but  
8 based on the topic that they have identified through  
9 their 30(b)(6), based on the four, request for four sets  
10 of request for admissions that we have received as well  
11 as the two document notices of requests to produce  
12 documents that they've received, they are on the pathway  
13 to understanding what it is that these two deponents  
14 would speak to and would have a method of accessing that  
15 information from the depositions as well as from the  
16 discovery that has already been taken.

17 THE COURT: Okay. Attorney Orent, how do you  
18 respond to that, because I get from your letter brief  
19 and, you know, footnote ten that you don't really have  
20 any idea how these gentlemen, how the depositions would  
21 be duplicative or cumulative from defense perspective.

22 MR. ORENT: That's correct, your Honor. In  
23 our view these individuals, particularly Jens Viebke,  
24 have information that is not apex information, that is  
25 information speaking to the activities of the companies,

1 but we actually seek the unique information of  
2 individuals for tasks and involvement that they  
3 specifically had.

4           So, to give your Honor just a little bit of  
5 background on Jens Viebke. He was simultaneously an  
6 employee of Getinge AB but also a board member and  
7 president at the same we believe of Atrium. And we're  
8 wanting to know how is it that he was hired in that dual  
9 position. How was it that he was able to operate  
10 day-to-day, what level of actual control did Getinge  
11 exercise over him, day-to-day over decisionmaking.  
12 That's actually the quintessential issue in alterego  
13 analysis.

14           We also now understand the key part of the  
15 Acute Care Therapies. Acute Care Therapies is part of a  
16 reorganization that occurred in the last year and a half  
17 at Getinge that we believe merged the company out of the  
18 operating unit model that it previously had held to the  
19 point that Atrium is no longer functioning as an  
20 individual company. Mr. Viebke was instrumental, we  
21 believe, in actually deploying that personally in New  
22 Hampshire. He was, at least by the moniker on his  
23 email, he was located in New Hampshire and was  
24 responsible for it since he himself communicated and  
25 executed orders to restructure. He himself deployed

1 town hall meetings. We did not see any transcripts of  
2 these town hall meetings. We've not seen many notes of  
3 these town hall meetings. These are things that he has  
4 personal information.

5           And like I said, how is it that he is able to  
6 function in the fiduciary duty of an Atrium president  
7 while being an employee of Getinge. That's a  
8 quintessential question to this analysis that we can't  
9 get an answer to, except for from him. And then you add  
10 to the fact that we don't think, based on the evidence  
11 that we've seen, that the Atrium board has actually met  
12 since 2012. And I think that that's an important piece  
13 because we have individuals who are dual board members.  
14 How do they get appointed to those dual board positions.

15           All of this comes back to the level of  
16 exercising control of the operations that Atrium is  
17 placed under by Getinge.

18           So, that's just a small slice of the issue,  
19 and I can elaborate further if the Court wants.

20           THE COURT: Okay. Can you talk just a little  
21 bit more about Malmquist.

22           MR. ORENT: Actually Malmquist, and we've  
23 actually talked quite a bit about this and, your Honor,  
24 between the two, Malmquist is far less important and,  
25 you know, if the Court were to make a decision and

1 distinguish the two, I think it would be to allow the  
2 deposition of Viebke, and Malmquist is not as essential.

3 Malmquist is actually for a different theory  
4 of liability. One of the theories that has recently  
5 surfaced is whether or not the Court has direct  
6 jurisdiction over Getinge AB.

7 We've been pursuing the alterego approach so  
8 far as well as the agency approach, as the Court is  
9 aware, but we've now have become aware of actual direct  
10 involvement of Getinge in the United States, and in fact  
11 we know that the board of directors where Malmquist was  
12 a part of it came to the United States and met in the  
13 United States on multiple occasions, that they've made  
14 decisions, actual decisions over the finances of various  
15 things, they interacted with federal agencies including  
16 the Federal Trade Commission, and that there are  
17 individual involvement from members of the board and  
18 individuals, particularly Malmquist, in some of these  
19 actions, actions that had previously been denied to the  
20 Court as part of a claim that there's no personal  
21 jurisdiction.

22 So, we think that there is this other theory  
23 that we are developing and we quite frankly want  
24 answers.

25 There's also questions about the merger

1 documents themselves. The merger documents themselves  
2 allow for certain areas of control at the time of  
3 turnover, but it does seem like there's been a series of  
4 reconstructions of the company since the time of the  
5 original merger, and we feel that Mr. Malmquist can  
6 speak to the decisionmaking and the areas of that.

7 But like I said, in terms of the alterego  
8 analysis and in terms of some of these other things, Mr.  
9 Viebke is far more important and far more directly  
10 related.

11 THE COURT: And it sounds like you are finding  
12 a great deal of information in documents themselves  
13 which is part of Attorney Aytch's argument.

14 MR. ORENT: We have, but there's a lot  
15 missing. Again, there's no board minutes for Atrium,  
16 and so Mr. Malmquist, again, at the same time where he's  
17 a board member of Atrium -- excuse me, of Getinge, is  
18 also a board member of Atrium. And what we have are,  
19 because the board hasn't met since 2012, we have a  
20 series of decisions that are just the decision without  
21 any of the debate, without any analysis, without any  
22 presentations, and so there are some real important  
23 issues and questions in this case about how the Atrium  
24 board has met and made decisions that affects whether or  
25 not Atrium is acting in Atrium's fiduciary best

1 interests or whether it is merely serving the fiduciary  
2 interest of Getinge AB without having any decisionmaking  
3 without having actual meetings. This board of  
4 directors, Johan Malmquist was a member and the head of  
5 in his dual capacity. They are essential to get to the  
6 understanding of. And, you know, the defendant so far  
7 has produced less than 200 documents on speaking to  
8 these issues.

9           So there's quite a lot of holes on this. And  
10 so we've done our best to piece together what we think  
11 the mosaic looks like at this point, but again, there's  
12 some central holes to it and these two individuals are  
13 the key players through their own individual contact,  
14 individual decisionmaking, and so these are not saying  
15 their individual thought processes, their individual  
16 activities of these two gentlemen are the types of  
17 things that don't subject them to apex and quite frankly  
18 make it nonduplicative and not able to be gained through  
19 documentation.

20           THE COURT: And so you're telling me that the  
21 30(b)(6) depositions that you've already agreed to take,  
22 those depositions will not get you answers to some of  
23 these questions. You're saying Viebke is really going  
24 to have information that other 30(b)(6) deponents will  
25 not have.



1 MR. ORENT: That's correct.

2 THE COURT: Okay. Attorney Aytch.

3 MS. AYTCH: Yes, so, based on our  
4 understanding in the same documents I just want to  
5 correct a couple of things.

6 Johan Malmquist was not a board member  
7 simultaneously of Atrium and Getinge AB as I believe  
8 that I continue to hear Mr. Orent state. He is, was a  
9 president of AB formally so, Swedish citizen with all of  
10 those contingencies that must be had, and he's a current  
11 board member of AB, but not that of Atrium and no longer  
12 president of AB.

13 Jens Viebke was never an employee in your  
14 understanding or board member of AB. He is the  
15 president of ACT which is the business area under which  
16 Atrium falls. Mr. Orent is correct that he is in  
17 Atrium's building in New Hampshire, but he is not an  
18 officer nor has ever been a director of AB.

19 But moreover, all of the information that it  
20 seems that plaintiffs are seeking can be had and  
21 actually likely will be had from the 30(b)(6)  
22 depositions. We need to know that the Atrium 30(b)(6)  
23 notice still has not been provided to defendants. So,  
24 any of these topics that the plaintiffs are inquiring  
25 about from the Atrium side can be put in such a notice

1 and then it is incumbent upon us to prepare a deponent  
2 who will be able to answer questions about those topics,  
3 be it Jens Viebke, Johan Malmquist or whoever if they  
4 have the sole information, that that's the point of the  
5 argument that they didn't, and that there are other less  
6 intrusive means and actually more proportional means in  
7 order to get the information that plaintiffs are  
8 seeking.

9           If they're looking to know how the  
10 implementation of the business area structure that I  
11 believe has been in place more than a year, they can add  
12 both, I believe that is a topic of the current (audio  
13 cut out) so they will have that perspective from Getinge  
14 AB's representative, Peter Hjalmarson, who would have  
15 personal knowledge on that, and we would also be  
16 prepared with additional information as well as being  
17 able to ask that same information from the Atrium  
18 30(b)(6) whenever we get that forthcoming notice of  
19 deposition.

20           We have never opposed that and we still stand  
21 ready once we receive it to agree to that and then to  
22 put up how many ever witnesses are necessary in order to  
23 cover the topics of inquiry that are proportional and  
24 that plaintiffs are requesting.

25           That is also true as to any of the direct

1 involvement that AB may have had any time. If there has  
2 been a board meeting that happened on the U.S., what's  
3 the surrounding circumstances, all of those are topics  
4 that we stand ready to have someone answer.

5 So, you know, just to be succinct about this,  
6 all of this information can be had via the depositions  
7 that are already noticed, the documents that Mr. Orent  
8 is referencing and the still forthcoming notice of  
9 deposition as to Atrium for its 30(b)(6).

10 THE COURT: Okay. All right.

11 MR. ORENT: Your Honor, if I might just ask  
12 one thing, which is if your Honor were to go to the  
13 website of Getinge AB and look at the executive team of  
14 Getinge AB, there is a section on Mr. Viebke, and with  
15 regard to Mr. Viebke it actually states that he is an  
16 employee of Getinge since 2010, that he owns X number of  
17 shares, et cetera, et cetera, and that he is also the  
18 chief technology officer of Acute Care Therapies which  
19 is part of Getinge.

20 The defendant has also conceded today that  
21 he's president of Atrium. So, that alone, forgetting  
22 the dispute because I think we do dispute and we had  
23 served some RFPs, excuse me, requests for admissions on  
24 some of these and there is a dispute as to who held what  
25 title and when. That is something that the documents

1 are contradictory on.

2 But there is no question that if the Court  
3 were to go to Getinge AB's website, that it says this  
4 about Mr. Viebke today, and there is a quintessential  
5 question that how can a president and day-to-day  
6 operator of Atrium also be a Getinge employee since 2010  
7 and also the CTO of Acute Care Therapies when at the  
8 same time the defendant has denied that Acute Care  
9 Therapies is a separate company, or is a company. And  
10 so there is a significant question even as to what this  
11 individual's role is.

12 We think the president of Acute Care Therapies  
13 means he is an AB employee underneath the board of AB.  
14 Defendants are now saying that he's president of Atrium.  
15 We don't think Atrium operates anymore, quite frankly,  
16 your Honor. We don't think Atrium is a company that  
17 does business that makes products. We think it's all  
18 Acute Care Therapies and it's all under the Getinge AB  
19 name. So, this is a -- and he's not an active Atrium  
20 president in our view.

21 So we think that there are a lot of open  
22 questions, particularly how did he get this job. We  
23 can't even agree on the phone who he is based on the  
24 websites and contradictory documents. I think that  
25 alone justifies getting the man in the chair and asking

1 him these kind of questions. Again, these are the kind  
2 of questions of an individual who is an employee of  
3 Getinge, he's a board member, called president of Acute  
4 Care Therapies, defendant has said he's the president of  
5 Atrium. I think we need him in a chair.

6 THE COURT: Attorney Aytch.

7 MS. AYTCH: Your Honor, may I -- yes.

8 THE COURT: Of course.

9 MS. AYTCH: So again, the Getinge AB website  
10 will reveal the executive team. Under Swedish law and  
11 how that entity is set up, it is not officers. I would  
12 proffer that everything that plaintiffs are seeking and  
13 has raised just now can be and likely will be  
14 ascertained from the Getinge AB 30(b)(6) deposition  
15 which is, you know, how this executive team is set up.  
16 As people are listed here, what entity are they an  
17 employee of. And it would not be Getinge AB. Getinge,  
18 that represents people who are employees of various  
19 subsidiaries of Getinge AB that are comprised in the  
20 Getinge Group, but again, one of the topics is the  
21 corporate structure and how the subsidiaries interact  
22 with each other and all of this means. Again, that  
23 would be gotten from the Getinge AB 30(b)(6) website --  
24 I mean 30(b)(6) deposition.

25 The president of Atrium Medical Corporation is

1 Jack Carlson. If I misspoke, I did not mean to. Jens  
2 Viebke is the present of Acute Care Therapies which is  
3 the business area under which Atrium is held. If anyone  
4 wants to know about how those day-to-day operations are  
5 had, what his title is, what his interaction is, again,  
6 that can be had from an Atrium 30(b)(6) deposition.

7 Just to add, all of this information can and  
8 should be ascertained and seems to have been ascertained  
9 in piece from the documents, the discovery that has  
10 already been provided, and the discovery that I proffer  
11 will be provided, because Viebke is simply not an AB  
12 employee and all of the questions that are surrounding  
13 what it seems that plaintiff believes is a complex  
14 structure will be illuminated from those 30(b)(6)  
15 depositions.

16 THE COURT: Okay. Anybody want to say  
17 anything else? Okay. Based on everything I've read and  
18 based on everything I've heard at this point, and  
19 frankly, plaintiffs have already indicated at least a  
20 concession with respect to Malmquist, I think ultimately  
21 you'd probably prefer to take his deposition and get him  
22 in a seat as you say, but you're conceding he's not as  
23 essential to your case, your jurisdictional case as  
24 Viebke.

25 I am inclined to move on that concession and

1 deny the request for Malmquist, but based on everything  
2 that I have heard thus far, I'm persuaded that there's  
3 enough here to allow the deposition of Viebke, and so  
4 that's how I would resolve this informally. That's how  
5 I am resolving it informally. And to the extent you  
6 want to have formal litigation over Viebke, I would  
7 suggest to Attorney Aytch to file formal -- let us know  
8 whether you're going to pursue formal litigation by  
9 Monday, May 21st, and if you intend to we'll get you an  
10 expedited briefing schedule so I can resolve it in a  
11 more formal way rather quickly for you so you don't get  
12 off track. But that's how I would informally resolve  
13 this. Viebke is permitted, Malmquist is not.

14 Okay. Is there anything else that I need to  
15 accomplish at this status conference?

16 MR. ORENT: Your Honor, for the plaintiffs --

17 MS. AYTCH: I'm sorry, go ahead, Jon.

18 MR. ORENT: For the plaintiffs, your Honor, I  
19 just wanted to highlight while we don't have a scheduled  
20 conference for another month, in all likelihood we've  
21 begun the meet and confer process with the defendants on  
22 some document issues relating to redactions, but in all  
23 likelihood we're going to want to get those issues  
24 resolved, and I'm quite frankly not sure we're going to  
25 be able to. We do have some more meet and conferring to

1 do and I just wanted to let the Court know that we might  
2 be seeking an additional hearing between now and the  
3 next monthly conference on that issue if the Court is  
4 amenable to it if we're not able --

5 THE COURT: I'm amenable to it.

6 MR. ORENT: Okay. Thank you, your Honor.

7 THE COURT: Anything further from anyone?

8 MS. AYTCH: Nothing from the defendant.

9 THE COURT: Anything from plaintiffs' counsel?

10 MR. ORENT: Nothing, your Honor.

11 THE COURT: All right. All right. Thank you  
12 to everyone, and I'll talk to you in a month if not  
13 sooner. Court is adjourned.

14 MR. ORENT: Thank you.

15 (Hearing concluded at 2:40 p.m.)

16

17

18

19

20

21

22

23

24

25

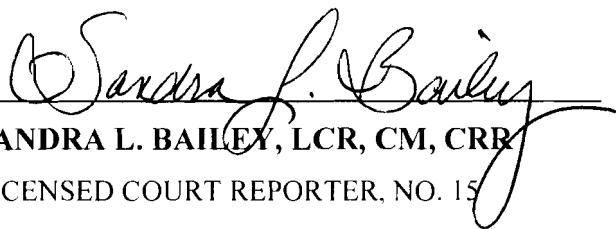


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Sandra L. Bailey, 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: 5/23/2018

  
SANDRA L. BAILEY, LCR, CM, CRR  
LICENSED COURT REPORTER, NO. 15  
STATE OF NEW HAMPSHIRE