

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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1:16-md-02753-LM
September 9, 2019
1:22 p.m.
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TRANSCRIPT OF MOTION TO DISMISS
DAY ONE - AFTERNOON SESSION
BEFORE THE HONORABLE LANDYA B. McCAFFERTY

Appearances:

For the Plaintiffs:

Jonathan D. Orent, Esq.
Motley Rice, LLC

Brian A. Glasser, Esq.
Katherine E. Charonko, Esq.
Bailey & Glasser LLP

Susan Aileen Lowry, Esq.
Upton & Hatfield, LLP

D. Todd Mathews, Esq.
Gori, Julian & Associates, PC

For the Defendants:

Mark S. Cheffo, Esq.
Katherine Armstrong, Esq.
Katherine E. Unger Davis, Esq.
Dechert, LLP

APPEARANCES CONTINUED:For the Defendants:

Pierre A. Chabot, Esq.
Wadleigh, Starr & Peters PLLC

Court Reporter:

Liza W. Dubois, RMR, CRR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, New Hampshire 03301
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I N D E X

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WITNESS: Direct Cross Redirect Recross

PETER HJALMARSON Videotaped Deposition Played

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

2 THE COURT: Okay. So now we will go back
3 where we left off with the deposition. And I would say
4 that we'll give it another hour and a half unless
5 someone signals that they need some sort of earlier
6 departure.

7 And with respect to the PowerPoints, we're
8 just going to mark those as exhibits to this hearing,
9 Courtroom Exhibits A and B.

10 Is that okay with everybody?

11 MR. CHEFFO: Yes, your Honor. Mr. Orent and I
12 spoke. We were going to bring a copy tomorrow morning
13 for your Honor.

14 THE COURT: That's fine. That's fine. Thank
15 you.

16 MR. ORENT: Thank you, your Honor.

17 THE COURT: Okay. So we're ready then to
18 start back with the deposition.

19 (Videotaped Deposition of Peter Hjalmarson resumed.)

20 (Recess taken from 2:46 p.m. until 3:06 p.m.)

21 THE COURT: Okay. I understand it's two hours
22 instead of one.

23 MR. ORENT: Yes.

24 THE COURT: So we'll just be here then
25 watching his videotaped deposition and then we'll

1 adjourn at the end of the day.

2 MR. ORENT: Sounds good. Thank you, your
3 Honor.

4 THE COURT: And then was there some other
5 issue with respect to the sealed documents? No? Okay.

6 All right. Okay. Well, let's go ahead then
7 and queue up the videotaped deposition.

8 MR. ORENT: Just one other additional item,
9 your Honor, before you go.

10 Just from a logistical standpoint, you've seen
11 and heard a number of documents discussed here. We will
12 prepare and give your Honor a key that will equate the
13 deposition exhibit number to the trial exhibit number so
14 that if your Honor's taking notes based on the verbal
15 content as opposed to the visual content, you'll have an
16 easier -- easier time going back.

17 THE COURT: That was a question on my
18 housekeeping list, so I appreciate that.

19 MR. ORENT: Thank you, your Honor.

20 THE COURT: All right.

21 MR. CHEFFO: This is really just a request to
22 the Court, or a suggestion maybe. I'm just wondering --
23 and obviously it's totally your Honor's call. Is there
24 any way or appetite to not have to -- because, you know,
25 it's lot longer to watch this with the shuffling and the

1 questions back and forth. I suspect your Honor could
2 probably read the transcript in, you know, a half-hour.

3 So obviously we're all here for the Court, but
4 it's going to take three hours of hearing this. I'm
5 just offering what might be an easier way for the Court,
6 for the convenience, to submit these since we all
7 designated them.

8 THE COURT: Well, I would leave that to
9 Attorney Orent. I certainly have watched this gentleman
10 testify. I certainly have a sense of his demeanor and
11 his approach. But he's your witness and if you would
12 like to continue along these same lines, I will let do
13 you that.

14 And I think Attorney Cheffo is correct. I
15 could read probably much faster than the two hours it
16 would take to watch, but it's a key witness in your
17 case, so I will let you make that call.

18 MR. ORENT: Your Honor, we feel that some of
19 the financial testimony that is about to come, the true
20 context is best revealed by actually hearing the witness
21 talk about it.

22 The aspect of the case that we talked
23 about, that I talked about in my opening today, the
24 selling-below-cost aspect, is about to come and we feel
25 that that piece, along with the corporate formality

1 piece, really, this is the guy. This is the one person
2 that Getinge disclosed as their 30(b) on this.

3 So if your Honor would indulge us, I do think
4 that it is somewhat important to see him.

5 THE COURT: Okay. All right. I will do that.

6 And just to loop back around to the issue of
7 the sealed transcripts, my understanding is that
8 Attorney Armstrong is now working with somebody from
9 plaintiffs' team to narrow down the scope of that which
10 is sealed in just the briefs, the major briefs, and that
11 those will be provided to me perhaps sometime today,
12 this afternoon, maybe after the hearing. It may be that
13 when I look at those very more narrowed redactions that
14 those seem appropriate to me and I won't need to address
15 the issue with counsel.

16 So I'm just going to wait until I get that
17 newer, sort of more narrowed, set of redactions before I
18 ask for any sort of argument on that.

19 MR. ORENT: Okay.

20 THE COURT: Does that make sense?

21 MR. ORENT: It does, indeed, your Honor.

22 THE COURT: Okay. Go ahead.

23 (Videotaped deposition of Peter Hjalmarson resumed.)

24 THE COURT: Now that we have a court
25 reporter -- I'll give you a second -- I just want to put

1 on the record something that wouldn't be on the record
2 otherwise, which is that defense counsel at a point in
3 Mr. Hjalmarson's deposition testimony rose to indicate
4 that this is a portion of the testimony that counsel
5 would seek to seal, just in general, broader terms,
6 pages 452 to 490 of the transcript, and just brought my
7 attention to that.

8 But because everyone in the courtroom at the
9 time, frankly, was entitled to be in the courtroom for
10 that information, defense counsel did not ask to seal
11 the courtroom and there, frankly, was no other request
12 with respect to sealing that material, but he just
13 wanted to put on the record that this is a concern and
14 were there people in the courtroom, he would have asked
15 me to close the courtroom and seal it for that portion.

16 Is there anything else we need to cover this
17 afternoon before we adjourn for tomorrow morning at 9:00
18 a.m.?

19 MR. ORENT: Not for plaintiffs, your Honor.

20 MR. CHEFFO: No, thank you, your Honor.

21 THE COURT: Okay. So I'll see you at 9:00
22 a.m. tomorrow then.

23 (Proceedings adjourned at 5:06 p.m.)
24
25

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: 9/27/19

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