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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 \* 16-md-02753-LM  
LITIGATION \* October 10, 2019  
\* 3:00 p.m.  
\*  
\*

\* \* \* \* \*

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

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

Russell F. Hilliard, Esq.  
Susan Aileen Lowry, Esq.  
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Anne W. Schiavone, Esq.  
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For the Defendants: Katherine A. Armstrong, Esq.  
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Pierre A. Chabot, Esq.  
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Court Reporter: Susan M. Bateman, LCR, RPR, CRR  
Official Court Reporter  
United States District Court  
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1 P R O C E E D I N G S

2 THE COURT: Hello, counsel. This is Judge  
3 McCafferty.

4 Let me do the usual. I'll just state the  
5 docket name for the record and then have counsel  
6 introduce themselves for the record.

7 And I'll ask everybody to mute their phones.  
8 So everybody who gets on the call should mute their  
9 phone as well.

10 If you're speaking at any time, just please  
11 identify yourself by name for our court reporter.

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

15 Let's have counsel identify themselves,  
16 starting with plaintiffs' counsel.

17 MR. HILLIARD: This is Russ Hilliard for the  
18 plaintiffs, your Honor.

19 Good afternoon.

20 THE COURT: Good afternoon.

21 MR. ORENT: Good afternoon, your Honor.  
22 Jonathan Orent.

23 THE COURT: Hello, Attorney Orent.

24 MS. LOWRY: And Susan Lowry as well, your  
25 Honor.

1 THE COURT: Hi, Attorney Lowry.

2 MS. SCHIAVONE: Your Honor, Anne Schiavone is  
3 also on the call.

4 THE COURT: Okay. How are you?

5 MS. SCHIAVONE: Good. Thank you.

6 THE COURT: Good.

7 And defense counsel.

8 MS. ARMSTRONG: Good afternoon, your Honor.

9 This is Katherine Armstrong for the  
10 defendants.

11 THE COURT: Good afternoon.

12 MR. CHABOT: Good afternoon, your Honor.

13 This is Pierre Chabot also for the defendants.

14 THE COURT: Okay. Thank you all.

15 Let's move through the agenda. I want to  
16 cover just a couple of matters, sort of housekeeping  
17 matters.

18 There are two -- I believe two sets of  
19 duplicate cases that we're still waiting to have cleared  
20 up. Let me just tell you the names of these cases.

21 I believe that Attorney Esposito has  
22 communicated with counsel. There has been an e-mail  
23 correspondence indicating in both instances that counsel  
24 will be moving to dismiss the latest filed case in each  
25 duplicate set. However, it just hasn't happened yet,

1 and that's something we want to do by way of cleaning up  
2 the docket.

3 So the first is Bobbi Larson, and those case  
4 numbers are 19-cv-552 and 19-cv-962, and the second is  
5 Gary and Cindia Carroll, and those are docket numbers  
6 18-cv-977 and 19-cv-918.

7 So those -- I know that Attorney Esposito is  
8 eager to see that cleared up and cleaned up. So if  
9 counsel could just light a fire under whomever it is  
10 that needs to file those motions to get rid of the last  
11 filed case, the Court would appreciate that.

12 MS. ARMSTRONG: Your Honor, this is Katherine  
13 Armstrong for the defendants.

14 At the last status conference I think you  
15 indicated that you preferred for the plaintiffs to be  
16 responsible for filing the motion to dismiss, and so we  
17 have been watching the correspondence between Ms.  
18 Esposito and plaintiffs' counsel. But if at any point  
19 you need defendants to file a motion to dismiss the  
20 second filed case as a duplicate, just let us know and  
21 we'll do that.

22 THE COURT: I appreciate the offer, and I  
23 think what I'll do is just let Attorney Esposito watch  
24 and wait. And if she waits much further, then I may  
25 seek your assistance. So thank you.

1           With respect to the briefing, the recent  
2 briefing, there was a question about due dates of your  
3 replies or responses and they fell -- the due date fell  
4 on a holiday, and so, yes, the answer is let's use the  
5 October I think 15th, which is a Tuesday, as our due  
6 date.

7           MR. ORENT: Thank you.

8           MS. ARMSTRONG: Thank you, your Honor.

9           THE COURT: You're welcome.

10           And nobody has filed a motion to seal the  
11 unredacted versions of at least the first briefs, and  
12 then there are five exhibits I think attached to  
13 document 1143 at least.

14           So I think Attorney Esposito has just  
15 provisionally sealed them. So we would be eager to see  
16 the highlighted versions. You may have already filed  
17 those with Attorney Esposito, but I can look at those at  
18 this point, and I think -- Attorney Armstrong, I think  
19 you have a clear sense of what I'm willing to approve by  
20 way of redactions, so my hope was that you would lead  
21 the way with respect to highlighting any proposed  
22 redactions on any of the briefing that has been filed  
23 and will be filed.

24           So I just put that out there to let you know  
25 that right now we've provisionally sealed the documents,

1 but I know we're waiting for a motion to seal with your  
2 proposed highlighted redactions.

3 Is that okay?

4 MS. ARMSTRONG: Yes. Thank you, your Honor.

5 So our -- the brief that was to be filed by  
6 defendants, there were no redactions and we're not  
7 seeking to seal that.

8 With respect to plaintiffs' brief, they did  
9 send us a copy of it in advance of filing it, and I did  
10 send them our proposed redactions which I believe to be  
11 consistent with the Court's rulings that were made  
12 during the hearing, and those were the things that were  
13 redacted.

14 I guess I'm a little confused by the change in  
15 the local rule. I apologize for that.

16 So are you looking for defendants to file a  
17 motion to seal the brief that was filed by plaintiffs,  
18 you know, a highlighted version, because we'll do so.

19 THE COURT: I think that's probably  
20 appropriate here only because I think plaintiffs have  
21 taken the position they really aren't sealing anything  
22 or even agreeing to seal anything, and they have an  
23 argument that they've put on the record, I assume it's  
24 the same, public right to access, but they weren't  
25 really arguing that there was no prejudice to the

1 defense with respect to those issues. As a result, I  
2 think I ruled that with respect to the narrow proposals  
3 you made, Attorney Armstrong, that I agreed with those  
4 redactions.

5 I think it would make sense if you would file  
6 the motion to seal and just send me attached to that in  
7 yellow highlight the portions that you do want redacted,  
8 and then I can look at that and just confirm. My  
9 expectation is that I would confirm that you have a  
10 clear understanding of what I'm willing to redact, and  
11 my guess is I will simply grant that motion and then the  
12 redacted version would then be made public.

13 So I think Attorney Esposito -- you may want  
14 to consult with her as to how best to do this, but I  
15 think what she would want is ultimately a redacted  
16 version that she can put on the public record.

17 MS. ARMSTRONG: Okay. So I think there is a  
18 redacted version on the public record now which  
19 defendants are okay with.

20 So we will send you a motion to seal, but I  
21 don't expect it to differ from what is -- I don't expect  
22 the redactions to differ from what's currently on the  
23 record because, as I said, the plaintiffs did consult  
24 with us before filing.

25 THE COURT: Okay. And is there something I

1 can look at very quickly that's in yellow highlights  
2 that you filed or is it --

3 MS. ARMSTRONG: Jon, did y'all send a copy to  
4 the Court in yellow highlights, or do we need to do  
5 that?

6 MR. ORENT: You know, I honestly don't know,  
7 but if -- maybe it's easier if Ben -- Ben Lajoie, who is  
8 our lead briefer, he's out of town, so I don't know, but  
9 we can send another copy certainly.

10 THE COURT: That would be great. It makes it  
11 so much easier for me to figure out what is being  
12 requested. So if you would do that, that would be  
13 appreciated, and then I can rule on that and we can make  
14 public what needs to be public.

15 All right. Let me just also confirm something  
16 with respect to scheduling bellwether trial cases.

17 Now, I haven't gotten to the agenda yet, but I  
18 will tell you I'm just focused on the chart under  
19 Proposed Extension of Expert Deadlines II, and I notice  
20 that you did have a trial date in there of May 20, 2020,  
21 but I'm also aware that in case management order 3H,  
22 also at document No. 638, the parties did propose a  
23 schedule and a manner of handling bellwether trials in  
24 that document, and I believe you recently got extensions  
25 pursuant to some of the deadlines in that document.



1           Sometime in early December the parties will be  
2 filing a brief with the Court proposing the manner of  
3 trying those bellwether cases, and at that point we  
4 would then be talking about scheduling pretrials, final  
5 pretrials, and getting it on a trial schedule.

6           Is what I just said consistent with counsels'  
7 understanding of how this is going to play out in the  
8 next few months?

9           MR. ORENT: I --

10          MS. ARMSTRONG: Your Honor, for the  
11 defendants -- I'm sorry, Jon. Go ahead.

12          MR. ORENT: I was going to say, your Honor, my  
13 understanding was that that December date was going to  
14 actually decide which of the cases but that the schedule  
15 the defendants mapped out of that May trial date was  
16 going to hold regardless so that we all knew that there  
17 was a date certain by which we would have a trial. It  
18 was just a matter of which of the cases that are being  
19 worked up all at the same pace would tee off at that  
20 date.

21          THE COURT: Okay. All right.

22          I just want to make sure then that we go ahead  
23 and schedule final pretrials and any court dates and  
24 other deadlines that need to be scheduled in time for  
25 the -- or in accordance with that May 20, 2020, trial

1 date.

2 So I think -- that just confirms --

3 Attorney Esposito is on the line, so I think  
4 that just confirms her understanding that you had  
5 selected May 20, 2020, as a trial date.

6 So she will probably then send out, you know,  
7 final pretrial order dates and such to counsel with it  
8 in mind that that would be the first bellwether trial.

9 Does that make sense?

10 THE CLERK: Judge -- not to interrupt, your  
11 Honor, I apologize. The date would be -- May 19th is  
12 your trial period, it's a Tuesday, not May 20th.

13 THE COURT: Okay. All right. Okay. Thank  
14 you for that.

15 Anybody want to clarify anything else about  
16 that? I didn't mean to jump ahead into the agenda.

17 MS. ARMSTRONG: Your Honor, this is the  
18 defendants.

19 I think our understanding was that December  
20 2nd was the deadline to propose -- it does say the  
21 manner of trial, but we understand that to be the  
22 selection of bellwether and other things that would  
23 impact the manner of trial, but we did understand May --  
24 I have it as 20 on this, but May 19, 2020, to be the  
25 first trial date.

1 THE COURT: Okay. All right.

2 Any questions about that, Attorney Esposito?

3 THE CLERK: No. Thank you, your Honor.

4 THE COURT: Okay. All right.

5 All right. Well, let's just jump into this  
6 agenda. It looks like this will go pretty quickly.

7 Item No. 1 is the status of depositions, and  
8 that is a summary of where you're at with respect to  
9 scheduling depositions with respect to former and  
10 current defendant employees.

11 B is discovery pool depositions, and it looks  
12 like those have been completed, and then C is trial pool  
13 depositions, and you've got those selected and are  
14 conducting depositions now of certain health care  
15 practitioners and plan to depose family members  
16 designated as trial witnesses.

17 Anything else need to be said about I, status  
18 of depositions?

19 MR. ORENT: Your Honor, from the plaintiffs,  
20 just two minor pieces.

21 Plaintiffs have withdrawn the notice of Steve  
22 Herweck, which is No. 26, so that's coming off the  
23 calendar.

24 And then, secondarily, we had selected a date  
25 for Lena Hagman, which will be in November, and I've

1 communicated that with defense counsel.

2 With those two minor clarifications, there's  
3 nothing else to add from the plaintiffs.

4 MS. ARMSTRONG: And nothing from defendants,  
5 your Honor.

6 THE COURT: All right. So II deals with the  
7 proposed extension of expert deadlines, and the parties  
8 are requesting in II certain extensions listed in the  
9 chart, and I certainly approve those extensions.

10 Anything else need to be said about that? And  
11 we've already talked about the trial date of May 19.

12 MR. ORENT: Your Honor, just point of  
13 clarification actually with regard to scheduling, not so  
14 much the extension.

15 We did not put down on the calendar any  
16 proposal for whether the Court wants some sort of live  
17 argument on Daubert and motions in limine, when that  
18 might be scheduled, and also summary judgment.

19 So to the extent that the Court wants us  
20 live -- I'm just throwing that out there that as we're  
21 planning the pretrial calendar, that that is not an  
22 issue that the parties have provided so that's not  
23 currently on the calendar, and that would need to be  
24 something if you wanted us live for we would need to  
25 schedule.

1 THE COURT: Okay. I don't have a sense of  
2 that yet. I certainly would -- if counsel has a strong  
3 desire to be heard, you should speak to each other, meet  
4 and confer, and propose something to me. Otherwise, I  
5 will let you know, you know, once I receive the motions  
6 whether or not I think I need to hear argument.

7 In the meantime --

8 MR. ORENT: Thank you, your Honor.

9 THE COURT: In the meantime, just consult with  
10 Attorney Esposito with respect to scheduling.

11 If you're going to propose something and it's  
12 jointly agreed to and Attorney Esposito has cleared the  
13 calendar, I won't stand in the way.

14 All right. III, summarizing the motions to  
15 dismiss and where we are with respect to those. Is  
16 there anything anybody needs to speak to with respect to  
17 anything under III?

18 You have attached a set of revised orders  
19 making no substantive changes, only replacing the  
20 Akerman attorneys with the -- is it Dechert, Dechert  
21 attorneys?

22 MS. ARMSTRONG: Dechert. That's correct, your  
23 Honor.

24 THE COURT: In the notice provisions. And I  
25 approve those attached revised orders, and so those

1 would need to go onto our website so that people can  
2 access those fairly easily and quickly and obviously  
3 would be on the docket as well.

4 The docket becomes so large it becomes  
5 unmanageable I think for somebody who's visiting the  
6 docket. But if they go to our web page, they can find  
7 the major orders in the case much more easily.

8 So those are approved, and that's under IV,  
9 and it looks as though there really are no matters  
10 requiring Court intervention as of now.

11 Is there anything else anybody wants to talk  
12 about under III?

13 (No response)

14 Okay. There being no noise on that, I will  
15 presume that nobody has anything they want to add under  
16 III A, B, or C.

17 And IV, I've approved those revised orders; V,  
18 outstanding meet and confer issues.

19 Anything else anybody would like to bring up  
20 with the Court?

21 MS. ARMSTRONG: Your Honor, I have one  
22 question for the Court on confidentiality.

23 This is Katherine Armstrong.

24 You issued an order telling us to make  
25 confidentiality designations as to Mr. Messina who

1 testified live at trial. He testified in a closed  
2 session.

3 We would like the opportunity -- and we're  
4 reviewing the transcripts now. I think the deadline is  
5 October 14th or October 15th for the first -- I guess  
6 it's October 15th because October 14th is a holiday.

7 With respect to the other transcripts I think  
8 we had indicated when we were discussing issues of  
9 confidentiality that we weren't going to ask for the  
10 courtroom to be sealed for any other witnesses but we  
11 would like the opportunity to review the transcripts and  
12 maybe make specific designations as to confidentiality  
13 in the transcripts.

14 We would still like the opportunity to do  
15 that. As you know, we're trying to be as narrow as  
16 possible in our designations, but it may be that  
17 somebody was asked about -- there were various  
18 references with various witnesses as to profit margins  
19 and things like that, and we just want to make sure we  
20 are able to review the transcripts and make those  
21 designations.

22 THE COURT: That would be with respect to your  
23 expert?

24 MS. ARMSTRONG: Our expert and Mr. Carlton.

25 THE COURT: Mr. Carlton. I don't remember any

1 motion to seal any part of it.

2 Am I misremembering that? Had you filed a  
3 request?

4 MS. ARMSTRONG: We did not make a motion to  
5 seal Mr. Carlton's live testimony, but we had asked if  
6 we would have the ability -- because we weren't going to  
7 ask to seal the courtroom during him. We had indicated  
8 initially that we would want the courtroom sealed during  
9 our expert's testimony, but we ended up not doing so.

10 THE COURT: Yes.

11 MS. ARMSTRONG: With respect to Mr. Carlton, I  
12 think we indicated we weren't going to ask you to seal  
13 the courtroom, but we did want the opportunity to review  
14 the testimony, the transcript, and see if there were  
15 things that we wanted to designate.

16 THE COURT: I'm sure you're correct, Attorney  
17 Armstrong. That makes sense to me.

18 Any problem with that as you just heard it,  
19 Attorney Orent? That seems consistent with my memory.

20 MR. ORENT: That is correct, your Honor. We  
21 have no objections to that process.

22 THE COURT: Okay. All right.

23 Well, that sounds fine, Attorney Armstrong.  
24 Thank you very much.

25 Does anybody else want to say anything before



1 we get off our monthly call?

2 MR. ORENT: All set, your Honor. Thank you.

3 MS. ARMSTRONG: Thank you, your Honor.

4 THE COURT: All right.

5 Thank you very much, and have a nice October.

6 I'll talk to you in November. All right.

7 Court's adjourned.

8 (Conclusion of hearing at 3:25 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: 10-18-19

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