

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

-----

	)	
IN RE: STRYKER REJUVENATE	)	Case No. 13-MD-2441 (DWF/FLN)
AND ABG II HIP IMPLANT	)	
PRODUCTS LIABILITY LITIGATION	)	
_____	)	
	)	
This Document Relates to	)	St. Paul, Minnesota
All Actions	)	July 17, 2014
	)	9:55 a.m.
	)	

-----

BEFORE **THE HONORABLE DONOVAN W. FRANK**  
 UNITED STATES DISTRICT COURT JUDGE AND  
**THE HONORABLE FRANKLIN L. NOEL**  
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**STATUS CONFERENCE PROCEEDINGS**

**APPEARANCES:**

**FOR THE PLAINTIFFS:**

Plaintiffs' Lead Counsel  
 Committee Chairperson: Meyers & Flowers  
 PETER J. FLOWERS, ESQ.  
 225 West Wacker Drive, Suite 1515  
 Chicago, Illinois 60606

Plaintiffs' Lead Counsel  
 Committee Members: Zimmerman Reed, PLLP  
 GENEVIEVE M. ZIMMERMAN, ESQ.  
 1100 IDS Center  
 80 S. 8th Street  
 Minneapolis, Minnesota 55402-2015

Official Court Reporter: JEANNE M. ANDERSON, RMR-RPR  
 Suite 146 U.S. Courthouse  
 316 North Robert Street  
 St. Paul, Minnesota 55101

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1       **APPEARANCES (Continued):**

2       **For the Plaintiffs:**

3       Plaintiffs' Lead Counsel  
4       Committee Members (Continued):

5                               Levin Papantonio Thomas Mitchell  
6                               Rafferty & Proctor, P.A.  
7                               BEN GORDON, ESQ.  
8                               316 S. Baylen Street, Suite 600  
9                               P.O. Box 12308  
10                              Pensacola, Florida 32591

11                              Cory Watson Crowder & DeGaris, PC  
12                              ANNESLEY H. DeGARIS, ESQ.  
13                              2131 Magnolia Avenue South  
14                              Birmingham, Alabama 35205

15                              Leiff, Cabraser,  
16                              Heimann & Bernstein, LLP  
17                              WENDY R. FLEISHMAN, ESQ.  
18                              250 Hudson Street, Eighth Floor  
19                              New York, New York 10013

20       Plaintiffs' Liaison Counsel:

21       Liaison Counsel to the  
22       District of Minnesota:   Meshbeshier & Spence, Ltd.  
23                                   ANTHONY J. NEMO, ESQ.  
24                                   1616 Park Avenue South  
25                                   Minneapolis, Minnesota 55404

26       Liaison Counsel to  
27       The State Courts:       Kelly Bernheim & Dolinsky, LLC  
28                                   JESSE BERNHEIM, ESQ.  
29                                   8151 Peters Road, Suite 3200  
30                                   Plantation, Florida 33324

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

**APPEARANCES (Continued):**

**FOR THE DEFENDANTS:**

Defendants' Lead Counsel:

Sedgwick Law LLP  
KAREN E. WOODWARD, ESQ.  
801 S. Figueroa Street, 19th Floor  
Los Angeles, California 90017-5556

Defendants' Liaison Counsel:

Stinson Leonard Street LLP  
TIMOTHY P. GRIFFIN, ESQ.  
SHUBHA HARRIS, ESQ.  
150 S. 5th Street, Suite 2300  
Minneapolis, Minnesota 55402

**P R O C E E D I N G S****I N O P E N C O U R T**

1  
2  
3 THE HONORABLE JUDGE FRANK: You may be seated,  
4 thank you. First I would welcome everyone, including the  
5 lawyers who are on the phone. And just remind counsel, for  
6 those that are here, that whether they are speaking from the  
7 podium or from counsel table, that unless we speak into  
8 these microphones, and Judge Noel and I will try and do the  
9 same thing, then the folks on the phone cannot hear.

10 Something that wouldn't be apparent to anyone  
11 other than the individuals who were in chambers with  
12 Judge Noel and I up until a few moments ago, but so then --  
13 and then whether counsel wants to address it when we get to  
14 that on the agenda, I will leave that up to counsel. But,  
15 we will go ahead and rule now.

16 There was an issue on the August 1st date in the  
17 context of PTO Order No. 20 with respect to Defendant Fact  
18 Sheets being submitted. First of all, of course, the Order  
19 presupposes, and this won't be a surprise to counsel for  
20 either party, that these -- that you will work in good faith  
21 with each other and use best efforts to comply with the  
22 Order, because I think the Order is doable.

23 And in that context, the Court doesn't claim there  
24 is a stipulation between the parties, but Judge Noel and I  
25 had a chance to discuss it back there. And we will -- to

1 the extent that the Defense has requested August 21st, I  
2 will note their objection. To the extent the Plaintiffs  
3 have said to give some extension, because we don't claim  
4 there is an agreement, I believe August 11th is a Monday,  
5 Judge Noel? So, knowing the respective objections of each  
6 party, we will extend the submission date to the end of  
7 business day, which I will define as 5:00 Central Standard  
8 Time, Monday, August 11th, and modify that from August 1st.

9 Did you have anything else you wanted to add?

10 THE HONORABLE MAGISTRATE JUDGE NOEL: That is the  
11 Defendants Fact Sheet we're talking about.

12 THE HONORABLE JUDGE FRANK: Fact Sheet, yes. So  
13 that's -- and we will reflect that.

14 And when we get to that provision on the agenda  
15 item, if there is further inquiry or requests for  
16 clarification, we can take it up at that time. So, perhaps  
17 we could have counsel note their respective -- who is here  
18 and your role. We can start with Plaintiffs' counsel first  
19 so everybody, not just in the courtroom, but on the phone,  
20 knows who is here.

21 MS. ZIMMERMAN: Good morning, Your Honors.  
22 Genevieve Zimmerman for the Plaintiffs.

23 MR. GORDON: Good morning, Your Honors. Ben  
24 Gordon for the Plaintiffs.

25 MR. FLOWERS: Good morning, Your Honors. Pete

1 Flowers for the Plaintiffs.

2 MS. FLEISHMAN: Good morning, Your Honors. Wendy  
3 Fleishman for the Plaintiffs.

4 MR. DeGARIS: Good morning, Your Honors. Annesley  
5 DeGaris for the Plaintiffs.

6 MR. NEMO: Good morning, Your Honors. Tony Nemo  
7 for the Plaintiffs.

8 MR. BERNHEIM: Good morning, Your Honors. Jesse  
9 Bernheim for the Plaintiffs.

10 MS. WOODWARD: Good morning, Your Honors. Karen  
11 Woodward for the Defendants.

12 MR. GRIFFIN: Good morning, Your Honors. Tim  
13 Griffin from Stinson Leonard Street for the Defendants. And  
14 I have with me an associate, Shubha Harris, who is making  
15 her first appearance.

16 THE HONORABLE JUDGE FRANK: Good morning to you  
17 all. And something Judge Noel and I didn't discuss, but  
18 perhaps we should have is, have you thought about maybe at  
19 the next conference with the microphones there, you could  
20 kind of come up with an introductory song of some kind, you  
21 know, with the harmony on the good morning piece, you know  
22 with the different tones, and both for Plaintiff and  
23 Defense. I am not suggesting we would have to do it  
24 altogether, but we can maybe take that up as an agenda item  
25 at the next meeting or have a telephone conference.

1 MR. NEMO: We'll put something together.

2 THE HONORABLE JUDGE FRANK: With that in mind,  
3 absent an objection, we will walk down through the  
4 conference agenda. And then, of course, at the end we can  
5 cover anything that is not here that we covered in chambers.  
6 So whenever counsel is ready?

7 And I understand, unfortunately, perhaps for both  
8 parties, we have a couple of your lawyers, and you can even  
9 feel free to say so, that have been stranded at airports in  
10 various parts of the country, one for Plaintiffs, one for  
11 Defendants.

12 MS. WOODWARD: That is right, Your Honor. They  
13 were both on the East Coast. Mr. Campillo, I think, might  
14 be on a flight right now. He tried to get out last night,  
15 but he was unable to do so.

16 MR. FLOWERS: And Mr. Kennedy extends his  
17 apologies. He was in Boston, as well. And his flight got  
18 cancelled. He had no way to make it.

19 THE HONORABLE JUDGE FRANK: And perhaps I could  
20 say something I said in chambers. I won't reference the MDL  
21 it was or the lawyer's name, but I said in chambers for  
22 those of you who weren't there and those of you on the phone  
23 that are also listening, that I am surprised, since in one  
24 of my former cases I had to disallow -- I just assumed  
25 everybody was flying private charter jets into St. Paul,

1 here, down the street. Because I actually did get that  
2 request and did disallow it, and after the plane was sitting  
3 on the runway down here. But, unfortunately, with all  
4 kidding aside, because that did happen; but, that probably  
5 has happened to a number of us in personal and professional  
6 situations. So, it is unfortunate. But, we will somehow  
7 try to go on without them this morning. So, whenever you  
8 are ready.

9 MS. WOODWARD: Thank you, Your Honor. A brief  
10 update on the MDL filings. We will note that there have  
11 been a quite a few filings over the past three weeks. And  
12 our numbers are changing daily in terms of actually even  
13 being able to process them through our system.

14 Right now we have a total number of cases filed or  
15 on their way to the MDL of 1,857, which I believe is close  
16 to where we are on the Plaintiffs' side, is that right?

17 MR. NEMO: Yeah, we are real close, Judge. We  
18 have 1,867 plus 10, which would be that Consolidated  
19 Complaint.

20 MS. WOODWARD: Our New Jersey number hasn't  
21 changed. They are at 2,108. And according to our numbers  
22 we have about 112 total State Court cases pending.

23 THE HONORABLE JUDGE FRANK: And perhaps, and maybe  
24 if Judge Noel -- should we just have them -- you had made  
25 that observation about the parallel increase. And maybe for



1 the benefit of those listening you could just touch on that.

2 THE HONORABLE MAGISTRATE JUDGE NOEL: Sure. I was  
3 going to say that it appears that since I have been coming  
4 to these conferences starting in, I guess, last September,  
5 it appears that the New Jersey numbers and the MDL numbers  
6 have sort of grown in tandem. So that now we are both  
7 hovering around 2,000 cases. And I just made that  
8 observation for whatever it is worth. And it appears that  
9 people still keep filing cases in New Jersey and people  
10 still keep filing cases in the MDL.

11 THE HONORABLE JUDGE FRANK: And I think there was  
12 some suggestion back in chambers that, well, some of this  
13 may be tied to statute of limitations, as well.

14 MR. FLOWERS: Yeah, there's reasons I think we  
15 have seen increases --

16 THE HONORABLE JUDGE FRANK: Right.

17 MR. FLOWERS: -- and will continue to see filings.

18 THE HONORABLE JUDGE FRANK: All right. We can  
19 move on.

20 MS. WOODWARD: With regard to State Court  
21 developments, Your Honor, there are a few things we do want  
22 to bring to your attention. The hearing on the Plaintiffs'  
23 motion in Broward County regarding ex parte contact with  
24 treating physicians, that did take place in mid-June.

25 An order has not been entered, though the Judge

1 did ask for further information on a couple of those issues.  
2 So, the parties are working with her on that. Though, I do  
3 note that she did put in place an interim order that we've  
4 not contacted the eight physicians that are identified in  
5 that particular motion. So, obviously, we are complying  
6 with that Order.

7 In addition, in Broward County, the Plaintiffs  
8 have filed a Motion to Compel Discovery that we want to  
9 bring to Your Honors' attention. We will provide you with a  
10 copy of that motion. It covers a number of areas, but could  
11 significantly increase the scope of document production in  
12 this litigation. So, it is a motion that needs to be  
13 carefully considered and coordinated.

14 Our opposition to the motion is due July 28th, and  
15 I believe the hearing date is set for August 6th. So, we  
16 will provide that to you right away so that you can reach  
17 out to Judge Henning and have some conversations with her  
18 about it.

19 THE HONORABLE JUDGE FRANK: Well, and I will just  
20 indicate as I did in chambers that the lines of  
21 communication are open with both Judge Henning and the other  
22 Judges, including the presiding Judge in the Palm Beach  
23 area. So, I think we have open lines of communication and  
24 we have all expressed a willingness and obligation to try  
25 to -- you know, everybody has to carry out their own

1 responsibilities, but to coordinate with one another,  
2 hopefully, to the benefit of all parties.

3 So, I will reach out to them, just as I did with  
4 the issue with the ex parte contact with the physicians.  
5 And I have said to them what they have said to us, that our  
6 goal is to coordinate with, as much as we can, with one  
7 another. So hopefully, everyone on all sides benefits. So,  
8 we will reach out to them. I will do that, if not today or  
9 tomorrow, early next week.

10 MS. WOODWARD: Also, in the State Court case  
11 pending in Indiana, there is pending discovery that we would  
12 also appreciate Your Honor assisting with coordination of.  
13 We will provide you the judicial contact information --

14 THE HONORABLE JUDGE FRANK: All right.

15 MS. WOODWARD: -- shortly after the status  
16 conference.

17 THE HONORABLE JUDGE FRANK: All right.

18 MS. WOODWARD: That is all I have on State Court  
19 developments.

20 MR. FLOWERS: I remain silent, Your Honors.

21 THE HONORABLE JUDGE FRANK: Well, and I would just  
22 indicate, without suggesting that we may not touch on this  
23 later on another agenda item, that I continue to have  
24 conversation with Judge Martinotti in New Jersey. And he  
25 and I are going to -- again, we will try to have some

1 additional discussions this next week, just because of  
2 the -- we know there was a get-together in Philadelphia this  
3 past few days. So, we will keep the parties informed of  
4 that, as well.

5 MS. WOODWARD: Moving on to the next section on  
6 the agenda, the report on discovery, I believe our proposed  
7 Second Amended PTO 8 has been submitted. And both sides are  
8 in agreement with the language that is in that draft amended  
9 PTO. And it lays out the fact sheet obligations or lack of  
10 obligations for Plaintiffs who have not yet been revised,  
11 and what they will need to do if and when their revision  
12 surgery does occur, in terms of submitting fact sheets.

13 MR. FLOWERS: Just for the benefit of -- the  
14 people that are on the phone may not have seen this, Your  
15 Honors. This specifically deals with not having an  
16 obligation to file a PFS if you have not been revised. The  
17 obligation switches when you get revised.

18 MS. WOODWARD: With regard to PTO No. 20, in the  
19 Parties Joint Report, we set forth an agreement related to  
20 some of the scope of obligations within PTO 20, and I would  
21 refer folks who are present or on the phone to section of  
22 the Joint Report 2B(i), Parties Agreement.

23 MR. FLOWERS: Your Honor, this basically deals  
24 with some obligations that were associated with the  
25 bellwether pool PFSs. And essentially, the bellwether pool

1 remains to be cases that are filed before, or as of April  
2 28th of 2014. And then alleged deficiencies we're dealing  
3 with and I've had multiple conversations. And hopefully  
4 we'll reach some agreements on some of the issues there,  
5 otherwise we will seek your assistance.

6 THE HONORABLE JUDGE FRANK: As we said in  
7 chambers, that we'll -- and Judge Noel maybe you want to  
8 respond to that? We have -- well, just rather than me  
9 characterize it, I will go to Judge Noel.

10 THE HONORABLE MAGISTRATE JUDGE NOEL: So, Judge  
11 Frank and I talked about it. In chambers there was some  
12 extended conversation regarding the deficiency letters that  
13 Defendant has been sending pursuant to Pretrial Order No. 20  
14 identifying and highlighting ways in which certain Plaintiff  
15 Fact Sheets are deficient.

16 There was concern that the Defendant was  
17 nitpicking or flyspecking the Plaintiffs Fact Sheets.  
18 Plaintiffs requested that we have some hearing to identify  
19 which pieces of the fact sheet are material, or at least to  
20 identify some that are immaterial.

21 Judge Frank and I chatted and concluded that we  
22 think that PTO 20 speaks for itself. It will continue to  
23 govern. And we are confident that the lawyers will comply  
24 with it and administer it in good faith for the purpose that  
25 it is intended, which is to come up with a list of a

1 category of bellwether cases that are bellwether eligible,  
2 and then to nominate cases that will ultimately be the  
3 bellwether cases. And we have to rely on the lawyers to  
4 operate in good faith in getting to that end.

5 MS. WOODWARD: Thank you, Your Honor. We will do  
6 that. Thank you also for the extension to August 11th for  
7 submission of Defendants Fact Sheets in connection with PTO  
8 20.

9 MR. FLOWERS: Yeah, document production is next,  
10 Your Honor. For the record this is Pete Flowers.

11 The Defendant has produced, and hopefully the  
12 remaining 26 materially relevant custodians are in my office  
13 by now, but they have produced the other custodians which we  
14 have reviewed a majority of the records. We remain  
15 concerned, as we pointed out last time in court about the  
16 lack of document production in this case, the lack of email  
17 production, the lack of any text. And we are very concerned  
18 that the production has not been complete.

19 And we have a 30(b)(6) that is set to proceed in  
20 the last week of August, which I think is going to get to  
21 this issue. My point just is, at the end of the day is, at  
22 the next status hearing, if we do not have a good feeling in  
23 terms of where this production is going, you will likely see  
24 some sort of motion directed at that, or it may happen after  
25 the 30(b)(6) deposition, as well.

1 THE HONORABLE JUDGE FRANK: All right.

2 MS. WOODWARD: And our response to that, Your  
3 Honor, is that this issue has come up at several consecutive  
4 status conferences. And we believe it is inappropriate to  
5 be poisoning the well with this type of information at this  
6 time.

7 There are a lot of reasons why the document  
8 production in this case may not be comparable to other  
9 litigations. And it is very difficult to compare one  
10 litigation to another, even where the products might be  
11 products that treat the same part of the body.

12 For instance, the size of the company, the number  
13 of divisions or groups overseeing the product, the number of  
14 employees or custodians, how long the custodians worked for  
15 the company, how long they worked for a specific product,  
16 what their precise responsibilities were, I could literally  
17 go on and give you a list of 20 other variables that might  
18 be influential.

19 We are responding to discovery subject to certain  
20 parameters of which the Plaintiffs are aware. And it is  
21 simply not appropriate at this time to suggest that there is  
22 something that would be a cause for concern.

23 After the deposition is taken -- and I will note  
24 that the Plaintiffs participated in a deposition of a  
25 witness on electronic discovery last August. So, they are

1 getting another deposition on this topic. And if there is  
2 something that concerns them after taking some depositions,  
3 they should raise that issue. We should meet and confer and  
4 see if we can't resolve whatever issues are raised, and then  
5 that issue should be brought to the Court.

6 MR. FLOWERS: Just briefly Your Honors,  
7 understanding we truly hope that all of these variables play  
8 a role, but being involved in litigations against big  
9 medical device companies -- this is not a small company --  
10 we typically see 20 million documents on a case like this.  
11 We have seen 78,000 documents. The discrepancy is too big  
12 to not have some problem.

13 In terms of the deposition that previously was  
14 conducted, it was actually stopped based on the lack of  
15 knowledge of the witness. So, that is why we are going  
16 forward. But, Ms. Woodward, I do agree with we will bring  
17 this to the Court's attention in the appropriate motion at  
18 the appropriate time.

19 THE HONORABLE JUDGE FRANK: And there is probably  
20 no need for us to repeat what we said back in chambers.  
21 Absent an agreement or protocol that is worked out, we will  
22 do what we need to do if you put it in front of us. So --

23 MR. FLOWERS: One additional point on document  
24 production, separate, Your Honor, is we are today actually  
25 forwarding correspondence to Ms. Woodward with an additional



1 20-ish custodians that we believe are relevant and asking  
2 for their production.

3 There's also some document requests we made before  
4 where we are asking them to answer them. We have to meet  
5 and confer about that, but there are other discovery issues  
6 out there is, I guess, my point.

7 MS. WOODWARD: And that would be our expectation.

8 THE HONORABLE JUDGE FRANK: All right.

9 MR. FLOWERS: The next thing on here, Your Honor,  
10 is the deposition protocol. What we did on this is we  
11 reached out to the New Jersey Plaintiffs and the liaison Mr.  
12 Bernheim for Florida. And we had a joint call with Stryker  
13 and agreed upon a protocol for depositions, a general  
14 protocol which involves two days, generally, for the  
15 depositions of an individual, as a general rule. There  
16 could be one. There may be instances where we request  
17 three, seven hours a day. One questioner, typically from  
18 each jurisdiction. The Plaintiffs, themselves, from the  
19 jurisdictions are going to have to agree on the split of  
20 time. But, I think we've essentially decided on that  
21 protocol, agreed on that protocol with one maybe issue with  
22 videoing it, but we are going to try and deal with that  
23 before we do anything else.

24 MS. WOODWARD: Our expectations on protocol will  
25 be submitted --

1 THE HONORABLE JUDGE FRANK: All right.

2 MS. WOODWARD: -- before the next status  
3 conference.

4 THE HONORABLE JUDGE FRANK: All right.

5 MR. FLOWERS: The next agenda item, Your Honor, is  
6 depositions. The MDL has served, they served -- we served  
7 five 30(b)(6)s and two regular dep notices. The dep notices  
8 are for two individuals who are involved in testing and  
9 premarket actions involving both the Rejuvenate and the ABG.

10 The five 30(b)(6)s we met and conferred on, we  
11 actually reduced some of the topics in those. We agreed  
12 upon three depositions to go forward. One deals with this whole  
13 issue of e-mail retention, litigation holds, things of that  
14 nature. The second deals with device failures, the analysis  
15 of device failures internally at Stryker. The third deals  
16 with marketing of the devices.

17 We agreed that the depositions will begin to  
18 proceed the last week of August. I have actually forwarded  
19 correspondence two days ago to Mr. Campillo with the order  
20 in which we would like them to proceed, and that was  
21 pursuant to an agreement amongst the jurisdictions, as well.  
22 So, we are off to the races on depositions, and we have got  
23 a lot to do, obviously.

24 MS. WOODWARD: We do. We have had some very  
25 successful meet and confers on these deposition topics. So,

1 that is a success that we should note for the future.

2 MR. FLOWERS: Celebrate?

3 MS. WOODWARD: Celebrate.

4 MR. FLOWERS: Your Honor, we had previously both  
5 submitted letters consenting to Judge Boylan being involved,  
6 as you deem fit. So, that's kind of all we have --

7 THE HONORABLE JUDGE FRANK: Well, and what I said  
8 in chambers is I will send out, before we sign the order  
9 confirming that or making it official, I will send you out  
10 an order as the statute and rule requires. And we will act  
11 accordingly in the next few days. So --

12 MR. FLOWERS: Okay, thank you.

13 THE HONORABLE JUDGE FRANK: Yes, and that includes  
14 Judge Noel getting a copy, too. So --

15 THE HONORABLE MAGISTRATE JUDGE NOEL: Thank you.

16 MS. WOODWARD: Your Honor, I am going to turn the  
17 podium over to my colleague, Mr. Griffin.

18 THE HONORABLE JUDGE FRANK: All right.

19 MS. WOODWARD: Thank you.

20 MR. FLOWERS: The next thing on here, Your Honor,  
21 is the deadline for Stryker to answer the Master Long Form  
22 Complaint, Short Form Complaint, or bring some type of  
23 motion. Prior to court today, we agreed on a deadline of  
24 August 18th if that meets with your approval.

25 THE HONORABLE JUDGE FRANK: I think we confirmed

1 that, yes.

2 MR. GRIFFIN: That was a deadline to respond to  
3 the Master Long Form Complaint, August 18th?

4 THE HONORABLE JUDGE FRANK: Yes.

5 MR. FLOWERS: The next two things, I should let  
6 you deal with.

7 MR. GRIFFIN: Sure. As the Court noted, there was  
8 a Motion to Amend the Complaint in one of the member  
9 actions. The Plaintiff's last name was Jenks. I have had  
10 communications with Plaintiff's counsel in Jenks. And the  
11 Defendants have consented to amendment and Plaintiff's  
12 counsel has agreed to file a Short Form Complaint prior to  
13 August 1st.

14 THE HONORABLE JUDGE FRANK: All right.

15 MR. GRIFFIN: The next item as the Court noted is  
16 the recent transfer of a Consolidated Complaint naming 10  
17 Plaintiffs. Here, too, I had communications with  
18 Plaintiffs' counsel and requested voluntary severance of  
19 those Plaintiffs' claims. Plaintiffs' counsel is not in a  
20 position to agree to that. And I am hopeful that absent a  
21 court order, the parties are able to resolve the issue  
22 without motion practice.

23 THE HONORABLE JUDGE FRANK: And I don't know if  
24 Plaintiff wants to be heard on this? And whether you do or  
25 not, then I will indicate what the Court said it would do in

1 fairness to all parties, including the counsel in this  
2 situation.

3 MR. FLOWERS: Your Honor, this particular  
4 complaint is not from anyone that is sitting in the room  
5 right now, so we will just defer to the Court.

6 THE HONORABLE JUDGE FRANK: Yeah, and what we said  
7 in chambers was that this was a Consolidated Complaint  
8 naming 10 Plaintiffs from 8 or 9 different states.

9 And relevant or not, it's rarely permitted in most  
10 MDLs across the country. And it is the exception, not the  
11 rule, here in this District. And in fairness to the counsel  
12 who filed it, even though we have had no direct contact, he  
13 had requested to be heard, formally or informally today.  
14 But, since there was no -- and I asked my chambers to  
15 contact him and indicate through, either directly or through  
16 counsel, that I wouldn't permit that today, in part, because  
17 we have not generally had that informality with counsel  
18 across the country, in any case. But to maximize fairness,  
19 what I said in chambers, and I will put it on the record  
20 now, we will be reaching out to him through Ms. Brenda  
21 Schaffer in my chambers, stating that we will accept a  
22 five-page -- not to exceed a five-page letter brief. And  
23 this, of course, assumes no agreement, short of either an  
24 order to sever and transfer the cases, or other agreement.

25 And I will reserve the right to seek a response

1 from Plaintiff and Defense counsel and reserve the right to  
2 either rule -- we will rule either without further hearing  
3 or reserve the right to set it. But, either way, we will  
4 resolve this in the immediate future without formal motion  
5 practice, because I don't think that would serve the best  
6 interests of any of the parties. But, I will permit counsel  
7 to make a submission to the Court.

8 So, Judge Noel, did you have anything further on  
9 that?

10 THE HONORABLE MAGISTRATE JUDGE NOEL: No, nothing  
11 further.

12 THE HONORABLE JUDGE FRANK: And unless either of  
13 you have anything further, we can move on.

14 MR. FLOWERS: Thank you.

15 MR. GRIFFIN: Nothing further, Your Honor.

16 THE HONORABLE JUDGE FRANK: All right.

17 MR. FLOWERS: The next thing, Your Honor, is on  
18 the stipulation to toll the statute of limitations on the  
19 French entities. This is something we agreed a while ago to  
20 and we are just putting it in the form of an order. We have  
21 exchanged drafts of it and there has been some hold-up in  
22 terms of getting authority to sign off on the draft and  
23 hopefully that will be accomplished within the next two  
24 weeks.

25 MR. GRIFFIN: That is correct, Your Honor. At the

1 last status conference there was a Motion to Amend and the  
2 parties were able to resolve that through a tolling  
3 agreement. We received a draft. I believe we have a  
4 finalized draft subject to authority on behalf of a French  
5 entity to execute it, which we hope will be coming in the  
6 next day or two.

7 THE HONORABLE JUDGE FRANK: All right.

8 MR. GRIFFIN: Your Honor, on the agenda, the last  
9 one is the appeal of the Common Benefit Order to the Eighth  
10 Circuit.

11 My understanding is that the Plaintiffs wanted  
12 this on the agenda in order to advise the Court of the  
13 briefing schedule, which the briefs will be required to be  
14 submitted over the next couple of months. We will be  
15 seeking to coordinate with Plaintiffs an adjustment to the  
16 briefing schedule.

17 MR. FLOWERS: Your Honor, it is factual, but one  
18 issue that did arise is whether the Defendant intends to  
19 comply with the Order pending this appeal. There has been  
20 no stay filed, and we would ask that they do comply with it.

21 THE HONORABLE JUDGE FRANK: Well, and I think Ms.  
22 Woodward -- and well, all, both Defense counsel said in  
23 chambers, and then they will soon correct me if I  
24 mischaracterize it, then I will have a suggestion, as well,  
25 it is not unique to this type of situation when there is an

1 appeal and the issue of stay comes up. And that is, "they,"  
2 meaning Defense counsel, are evaluating that issue at this  
3 time and will soon take a position.

4 My suggestion would be is regardless of the  
5 outcome of that, because obviously the Plaintiff had said,  
6 well absent an order of the Court that the law requires  
7 compliance with the Order, that the -- I mean, the way I  
8 have seen these handled in the past, separate from the  
9 merits of the issue with respect to, not the motion, itself,  
10 but the interlocutory appeal issue and the rest of it, that  
11 aside, when there is a stay issue sometimes the parties are  
12 able to agree to: Well, can we agree to this aspect being  
13 stayed, but we will carry out and comply with the rest? Or  
14 no, we can't, so the Judge is going to have to rule up or  
15 down. It seems to me there should be that brief discussion.  
16 And if we need to make the call on it, we will hopefully in  
17 the interests of all parties, we can do that without some --  
18 you can file a motion, but we won't have to go through the  
19 Local Rules that builds in an extraordinary delay and  
20 doesn't help either party. So, if we can't agree on either  
21 the status of some type of compliance or whatever the issue  
22 may be, or you can't agree once that step is reached, say  
23 you can't agree -- well, we can't either agree on how to  
24 submit it to the Court, I assume we will get the phone call  
25 and then we will just promise to expedite it.



1 Judge Noel, do you have anything further on that?

2 THE HONORABLE MAGISTRATE JUDGE NOEL: No.

3 THE HONORABLE JUDGE FRANK: All right.

4 MR. FLOWERS: The only other issue, I believe, is  
5 just reporting on the status conference being at 2:00 on  
6 August 21st, Your Honor.

7 THE HONORABLE JUDGE FRANK: Yeah, and I can say  
8 that I am the -- and we will come back to any other issues,  
9 and Judge Noel, we may have -- go ahead if you want to  
10 consult with counsel. That is an afternoon.

11 And actually, it contemplates that we get together  
12 at 1:15 in chambers that day, and then we head to the  
13 courtroom at 2:00, or shortly thereafter. And I am kind of  
14 the culprit with moving it from the morning, because I am  
15 trying to, out of respect to the trial, I will in all  
16 likelihood still be in -- out of respect to the lawyers and  
17 the parties and the jury in that case, I moved it to the  
18 afternoon to get in part of a day.

19 And then also we discussed that counsel will be  
20 discussing with one another and with Ms. Schaffer in the  
21 next -- in the upcoming days trying to adjust a date in  
22 September, because of the unavailability of one or more  
23 counsel.

24 So, we will do our best to work with you on that.  
25 And I guess that is where that sits. And there may be -- I

1 will first check with counsel before I check with Judge Noel  
2 on other issues you want to put before the Court today, or  
3 add to the agenda.

4 MR. GRIFFIN: Your Honor, may I confer with Mr.  
5 Flowers for one second?

6 THE HONORABLE JUDGE FRANK: Oh, certainly. And  
7 don't get too close to the mike, or we will hear everything  
8 you have to say.

9 (Discussion off the record.)

10 MR. GRIFFIN: Nothing further from the Defense,  
11 Your Honor.

12 MR. FLOWERS: Same for the Plaintiff. Nothing,  
13 Your Honor. Thank you.

14 THE HONORABLE JUDGE FRANK: And I don't believe  
15 the Court has anything further, unless there was something  
16 either Plaintiffs or Defense counsel said, we were hoping to  
17 address this or raise this issue of any upcoming events. We  
18 weren't going to go any further unless either Plaintiffs'  
19 counsel or Defense counsel had something they want to raise.

20 MR. FLOWERS: No thank you.

21 THE HONORABLE MAGISTRATE JUDGE NOEL: Okay. We  
22 talked about some stuff in chambers, and --

23 THE HONORABLE JUDGE FRANK: We will leave it  
24 there.

25 THE HONORABLE MAGISTRATE JUDGE NOEL: -- we will

1 leave it there.

2 THE HONORABLE JUDGE FRANK: Well, I thank you for  
3 -- unless there is anything further, safe travels. I hope  
4 you -- your respective co-counsel, if they get to wherever  
5 they are trying to head to, I mean we have all been in that  
6 situation probably with personal or, personal or  
7 professional issues in travel these days. So, we will  
8 adjourn the hearing.

9 And other than please reach out to us if there is  
10 an issue between now and the August get-together. And then  
11 you will be hearing from us with a proposed order on just  
12 finalizing the presence of -- it is always hard not to say,  
13 Judge Boylan -- what do they say now that he is retired?

14 THE HONORABLE MAGISTRATE JUDGE NOEL: I call him  
15 Art. And he calls me Frank.

16 THE HONORABLE JUDGE FRANK: Yes, and of course, if  
17 he were here, he would correct us and say: Don't use that  
18 judge stuff. But, it is always more, probably,  
19 uncomfortable for a lawyer saying: Well, do we say retired  
20 judge? Or, we are not going to say Art or Artie, or  
21 something else.

22 THE HONORABLE MAGISTRATE JUDGE NOEL: Artie is his  
23 son, who also appears before us.

24 THE HONORABLE JUDGE FRANK: Yes. We see him on a  
25 frequent basis.

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

With that, I wish everybody safe travels. And obviously, I think there was a couple of things said here in the courtroom. As soon as I get the information on, whether it is the presiding Judge in Indiana and the other information, I will reach out to them. And whatever exchanges I have with the Florida Judges and the New Jersey Court, we will update the parties as that goes along. And we will stand adjourned at this time.

ALL COUNSEL: Thank you, Your Honor.

THE HONORABLE JUDGE FRANK: Thank you all. We are adjourned.

(Adjournment.)

\* \* \*

I, Jeanne M. Anderson, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Jeanne M. Anderson  
Jeanne M. Anderson, RMR-RPR  
Official Court Reporter